

SUPPORTING JUSTIFICATION
Safety and Health Requirements Related to Camp Cars
OMB No. 2130-NEW; RIN 2130-AC13

Summary

- This is a new collection of information associated with FRA’s Notice of Proposed Rulemaking (NPRM) titled Safety and Health Requirements Related to Camp Cars (49 CFR Part 228).
- FRA is publishing this NPRM in the **Federal Register** on January 3, 2011. See 76 FR 64.
- The total number of burden hours requested for this submission is **7,348 hours**.
- The total number of responses is **3,041**.
- By definition, this entire submission is a **program change**.

** The answer to question **number 12** itemizes the hourly burden associated with each requirement of this proposed rule (See pp. 22-115).

1. Circumstances that make collection of the information necessary.

This proposed rule is being issued primarily to help satisfy the requirements of section 420 of the Rail Safety Improvement Act of 2008 (RSIA), Pub. L. 110-432, Div. A, 122 Stat. 4848, October 16, 2008 (amending a provision of the hours of service laws at 49 U.S.C. 21106). RSIA requires the Secretary of Transportation (Secretary) to adopt regulations no later than April 1, 2010, establishing minimum standards for “employee sleeping quarters” in the form of “camp cars” that are provided by railroads. 49 U.S.C. 21106(a)(1), (c). Specifically, RSIA instructs the Secretary to prescribe regulations “to implement [49 U.S.C. 21106(a)(1)] to protect the safety and health of any employees and individuals employed to maintain the right of way of a railroad carrier that use camp cars” 49 U.S.C. 21106(c). The statutory term “employee” is defined in 49 U.S.C. 21101(3) to include a train employee, a signal employee, and a dispatching service employee, who as a group are sometimes referred to as “covered service employees.” As amended through 2008, 49 U.S.C. 21106(a)(1) provides that such camp cars must be—

clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees.

49 U.S.C. 21106(a)(1). RSIA requires the Secretary to conduct this rulemaking “in coordination with the Secretary of Labor,” and to “assess the action taken by any railroad carrier to fully retrofit or replace its camp cars” 49 U.S.C. 21106(c).

In addition, RSIA directly requires that railroads using camp cars must "fully retrofit or replace such cars in compliance with [49 U.S.C. 21106(a)]" by December 31, 2009. 49 U.S.C. 21106(b). As will be further explained below, FRA interprets 49 U.S.C. 21106(b) as applying the prohibition in 49 U.S.C. 21106(a)(2) against beginning construction or reconstruction of employee sleeping quarters near switching or humping operations to camp cars provided by railroads as sleeping quarters for individuals employed to maintain the railroad right of way (MOW workers) and setting a compliance date of December 31, 2009, with respect to such camp cars exclusively for MOW workers.

The Secretary has delegated the responsibility to carry out his responsibilities under RSIA to the Administrator of FRA. 74 FR 26981, 26982, June 5, 2009, codified at 49 CFR 1.49(o). See also 49 CFR 1.49(d), delegating the Secretary’s authority to carry out the hours of service laws to the Administrator of FRA, and 49 U.S.C. 103.

To carry out a 2008 Congressional rulemaking mandate, FRA is proposing to create regulations at new subpart E of part 228 prescribing minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees and individuals employed to maintain its right of way. The proposed regulations would supplant existing guidelines that interpret existing statutory requirements, enacted decades earlier, that railroad-provided camp cars be clean, safe, and sanitary, and afford those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the railroad. In further response to the rulemaking mandate, the proposed regulations would include the additional statutory requirements, enacted in 2008, that camp cars be provided with indoor toilets, potable water, and other features to protect the health of such workers. In developing this proposal, FRA coordinated with the U.S. Department of Labor, as required by the Congressional mandate.

Under separate but related statutory authority, FRA is proposing to amend subpart C of 49 CFR part 228, “Construction of Employee Sleeping Quarters.” This subpart contains FRA’s longstanding regulations implementing the statutory provision that prohibits railroads, effective July 8, 1976, from beginning the construction or reconstruction of railroad-provided sleeping quarters for train employees, signal employees, and dispatching service employees in an area or in the immediate vicinity of an area where railroad switching or humping of hazardous material occurs. Currently, these regulations affecting the location of sleeping quarters for covered service employees do not apply to sleeping quarters exclusively for individuals employed to maintain the right of way of a railroad. In particular, FRA proposes to implement a 2008 statutory amendment that, on and after December 31, 2009, camp cars provided by a railroad as sleeping quarters

exclusively for individuals employed to maintain the right of way of a railroad are within the scope of the prohibition against beginning construction or reconstruction of employee sleeping quarters near railroad switching or humping of hazardous material. FRA's existing guidelines with respect to the location, in relation to switching or humping of hazardous material, of a camp car that is occupied exclusively by individuals employed to maintain a railroad's right of way would be replaced with regulatory amendments prohibiting a railroad from positioning such a camp car in the immediate vicinity of the switching or humping of hazardous material.

Finally, FRA would make conforming changes to part 228, clarify its provision on applicability, remove an existing provision on the preemptive effect of part 228 as unnecessary, and move, without change, an existing provision on penalties for violation of part 228 from subpart B to subpart A.

2. How, by whom, and for what purpose the information is to be used.

This is a new collection of information. The information collected under this proposed rule will be used by FRA to ensure that railroads operating camp cars comply with all of the requirements of this regulation in order to protect the health and safety of camp car occupants. Specifically, FRA inspectors will ensure that camp car lavatories and showering facilities that have water not supplied from a potable source have mandated signage stating that "the water is not suitable for human consumption" and "do not drink the water." This requirement will help ensure that signs are properly posted and that camp car occupants do not drink unhealthy water while washing their hands or showering.

The information collected will also be used by FRA inspectors to verify that railroads operating camp cars inspect each water hydrant, hose, or nozzle used for supplying potable water to a camp car water system prior to use and keep records of these inspections required under § 228.323. Each such hose or nozzle used must be cleaned and sanitized as part of the inspection. A signed, dated record of this inspection must be kept within the camp for the period of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated. Review of the required record enables FRA inspectors to closely monitor that water hydrants, hoses, and nozzles used for supplying potable water to a camp car water system are properly cleaned, sanitized, and inspected in order to prevent camp car occupants from drinking contaminated water.

The information collected under § 228.323 will also be used by FRA to confirm that only trained individuals are permitted to fill the potable water systems. Each individual who fills a potable water system must be trained in the following: (i) The approved method of inspecting, cleaning, and sanitizing hydrants, hoses, and nozzles used for filling potable

water systems; and (ii) The approved procedures to prevent contamination during watering. Individuals who are properly trained to fill potable water systems will help to ensure that the drinking water remains safe for all camp car occupants.

Furthermore, under this section, FRA inspectors will verify that railroads keep essential certification records/copies regarding the safety of potable water from a different local source. The requirement states that each time that potable water is drawn from a different local source, the railroad must obtain a certificate from a State or local health authority indicating that the water from this source is of a quality not less than that prescribed in the National Primary Drinking Water Regulations promulgated by the U.S. Environmental Protection Agency or obtain such a certificate by a certified laboratory following testing for compliance with those standards. The current certification must be kept within the camp for the duration of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated. Certification by a State or local health authority or testing by a certified laboratory and FRA review of certification records will help ensure that drinking water used by camp car occupants meets Federal standards and is safe for consumption.

Also, under § 228.323, FRA inspectors will verify that necessary flushing records are kept by railroads operating camp cars. Under the requirement, each potable water system must be drained and flushed with a disinfecting solution at least once every 120 days. The railroad must maintain a record of the draining and flushing of each separate system within the camp for the last two drain and flush cycles. The record must contain the date of the work and the name(s) of the individual(s) performing the work. The original record must be maintained with the camp. A copy of each of these records must be sent to a centralized location for the railroad and maintained for one year. To be safe for consumption by camp car occupants, it is critical that potable water systems be drained and flushed periodically with a disinfecting solution to prevent the growth of bacteria that causes sickness. FRA will closely monitor the required flushing and taste records to ensure that this necessary task is completed on a continuing basis while camp cars are operational, especially when camp car occupants report experiencing taste problems with the drinking water.

Finally, under § 228.323, following any report of a taste problem with the water from a system or a health problem resulting from the water in a system, samples of water from each tap or dispensing location on the system must be collected and sent to a laboratory approved by the U.S. Environmental Protection Agency for testing for heterotrophic plate counts, total coliform, and fecal coliform. If a single sample fails any of these tests, the system must be treated as follows: (i) *Heterotrophic plate count*. Drain and flush the system within two days, and then return it to service. (ii) *Total coliform*. Remove the system from service, drain and flush system, resample the system, and then return the system to service. (iii) *Fecal coliform*. Remove the system from service, drain and flush

the system, resample the system, and do not return the system to service until a satisfactory result on the test of the samples is obtained from the laboratory.

FRA will review these laboratory reports to ensure that the necessary testing is done as prescribed and the water kept safe to drink. The requirement states that all laboratory reports pertaining to the water system of the camp car must be maintained with the car. Within 15 days of the receipt of such a laboratory report, a copy of the report must be posted for a minimum of 10 calendar days at a conspicuous location within the camp car or cars affected for review by occupants. Thus, camp car occupants will use these reports to be kept fully informed of the status of their drinking water after reporting a taste problem and can be assured that water they are drinking is safe for consumption. The report must be maintained in the camp for the duration of the same connection. When the connection is terminated, the certification must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

3. Extent of automated information collection.

For many years, FRA has strongly endorsed and highly encouraged the use of the latest information technology, wherever feasible, to reduce burden on the railroad industry. FRA has particularly encouraged the use of electronic records by railroads and other respondents. In keeping with its longstanding practice and with the requirements of the Government Paperwork Elimination Act (GPEA) and the Paperwork Reduction Act (PRA) of 1995, § 228.335 of the proposed rule allows railroads to keep the records required under § 228.323 either on paper forms or electronically, if they so choose. Thus, approximately 57% of all estimated responses may be kept electronically by railroads, if they elect this option.

4. Efforts to identify duplication.

To our knowledge, the information collection requirements are unique and are not duplicated anywhere.

Similar data are unavailable from any other source.

5. Efforts to minimize the burden on small businesses.

“Small entity” is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a “small entity” in the railroad industry is a for profit “line-haul railroad” that has fewer than 1,500 employees, a “short line railroad” with fewer than 500 employees, or a “commuter rail system” with annual

receipts of less than seven million dollars. See “Size Eligibility Provisions and Standards,” 13 CFR part 121, subpart A.

Additionally, 5 USC 601(5) defines as “small entities” governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies use a different standard for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes “small entities” or “small businesses” as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR § 1201.1-1, which is \$20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR part 209. The \$20 million limit is based on the Surface Transportation Board’s revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR § 1201.1-1. FRA is using this definition for this rulemaking.

It should be noted that the operations of the following railroads, which are not part of the general railroad system of transportation, are exempt from the requirements of Part 228: (1) railroads that operate exclusively on track that is not part of that system (plant railroads, as that term is defined in § 228.5); (2) tourist, scenic, historic, or excursion railroads that are not part of the general railroad system of transportation, a term also defined in § 228.5 (tourist railroads); and (3) rapid transit operations in an urban area that are not connected to the general railroad system of transportation. The first two types of railroads are invariably small.

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The *factual basis* for the certification that this proposed rule will not have a significant economic impact on a substantial number of small entities is that no small entities are affected. This proposed rule would affect only one railroad, the Norfolk Southern Railway, which is a Class I railroad with revenues far exceeding inflation-adjusted \$20 million. Accordingly, FRA does not consider this impact to be significant.

6. Impact of less frequent collection of information.

If the information were not collected or collected less frequently, the health and safety of railroad workers occupying camp cars might be seriously jeopardized and an important part of FRA’s comprehensive national program to protect railroad workers would be significantly impeded. Specifically, without the information collected under § 228.319 and § 228.321, FRA would have no assurance that necessary signs were posted in

lavatories and showers to inform occupants of camp cars that water supplied from a non-potable is not suitable for human consumption. Without this information, camp car occupants might inadvertently drink contaminated water, thereby becoming seriously ill with any of the various types of bacterially borne disease. If these camp car occupants were to become ill, they would be unable to perform their normal duties for the railroad and railroad operations might be significantly hindered, thereby possibly jeopardizing rail safety.

Without the information collected under § 228.323, FRA would have no way to confirm each water hydrant, hose, or nozzle used for supplying potable water to a camp car water system is inspected prior to use. Without the required record, FRA inspectors would be unable to verify each such hose or nozzle is properly cleaned and sanitized as part of the inspection. Without such cleaning and sanitization, camp car occupants would be at higher risk for consuming contaminated water and thus more likely to fall ill from bacterially borne disease.

Without information collected under § 228.323, FRA would have no assurance that only individuals who are properly trained are permitted by railroads to fill potable water systems. It is essential for the health and well-being of camp car occupants that individuals be trained by railroads in the approved method of inspecting, cleaning, and sanitizing hydrants, hoses, and nozzles for filling potable water systems. These approved procedures are designed to prevent contamination and ensure the safe consumption of water. Railroad workers are exposed to many hazards in the rail environment, and drinking water should not be another one.

Without the certification information required under § 228.323, FRA would have no way of knowing about the quality of potable water drawn from a different local source and that such quality is not less than prescribed in the National Primary Drinking Water Regulations promulgated by the Environmental Protection Agency. A certificate by a certified laboratory following testing for compliance with the aforementioned standards serves to assure FRA inspectors that individuals occupying camp cars can safely drink the water and carry out their important duties without fear of consuming contaminated water that might make them seriously ill. Camp car occupants are also assured about the quality of their drinking water by these lab reports, since all lab reports pertaining to the water system of the camp car must be maintained with the car and posted for a minimum of 10 calendar days in a conspicuous location in the camp cars.

Without the flushing information required under § 228.323, FRA would have no record to consult to ensure that each potable water system is drained and flushed with a disinfecting solution at least once every 120 days. The draining and flushing must be done more frequently if an occupant reports a taste or health problem associated with the water or following any plumbing repair. Being able to report a taste problem and have it quickly remedied provides camp car occupants with confidence that their health and

safety regarding essential drinking water and consumption of food are not left to chance and that certain minimum standards are met to maintain and promote a safe environment while in camp cars.

In sum, this collection of information promotes and enhances FRA's national rail safety program by ensuring that camp cars are habitable so that camp car occupants can carry out their important daily duties and routines without fear of developing a serious – and perhaps fatal – illness from consumption of contaminated water or food. Thus, this proposed rule and accompanying collection of information serve as a vital component of FRA's multi-faceted safety program. It is essential in assisting FRA to fulfill its primary agency mission and objective.

7. **Special circumstances.**

All information collection requirements contained in this proposed rule are in compliance with this section.

8. **Compliance with 5 CFR 1320.8.**

FRA is publishing a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on January 3, 2011, soliciting public comments on the proposed rule and its accompanying information collection requirements. See 76 FR 64. In this document, FRA proposes to prescribe regulations regarding safety and health requirements related to camp cars, as required by the Rail Safety Improvement Act of 2008, and solicit public comments. FRA will respond to any comments received concerning the proposed rule and its associated collection of information at the final rule stage.

Background

Proposed subpart E is based extensively on FRA guidelines already in place, which, in turn, were based on the U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") standards for sanitation and temporary labor camps at 29 CFR 1910.141 and 1910.142, modified as appropriate for the railroad environment. See FRA's Guidelines for Clean, Safe, and Sanitary Railroad Provided Camp Cars (1990 Guidelines), 55 FR 30892, July 27, 1990, codified at 49 CFR part 228, app. C.

In addition, FRA has consulted with officials of the only railroad currently known to be utilizing camp cars as sleeping quarters, Norfolk Southern Railway Company (NS), to determine what actions it has taken to conform to the statutory requirements that the cars be not only clean, safe, and sanitary and provide an opportunity for rest uninterrupted by noise under the control of the railroad, but also have "indoor toilet facilities, potable water, and other features to protect the health" of employees and MOW workers and not be placed in the immediate vicinity of certain "switching or humping operations" as

defined in FRA regulations at 49 CFR 228.101(c)(3). NS has assured FRA that all of its camp cars comply with statutory requirements, but its interpretation asserts that camp cars exclusively occupied by MOW workers are not subject to 49 U.S.C. 21106(a)(2).

In the preamble to this proposed rule, FRA refutes this NS assertion in a detailed response. FRA notes that MOW workers have been given protection by limits of how close their sleeping quarters are to switching and hump operations. That protection formerly only applied to train employees, signal employees, and dispatching employees. In 1976, Congress required that all sleeping quarters, “including crew quarters, camp or bunk cars, and trailers,” provided by a railroad to its “employees” be “clean, safe, and sanitary” and provide an opportunity for rest without interruptions caused by noise under the control of the railroad. Pub. L. 94-348, sec. 4, adding subsection (a)(3) to section 2 of the Hours of Service Act, then codified at 45 U.S.C. 62(a)(3) (1976) and now codified as amended at 49 U.S.C. 21106(a)(1).¹ Again, the term “employees” included only those who, in the terminology of the present statute, are called “train employees,” “signal employees,” or “dispatching service employees,” and did not include MOW workers. In the same legislation, Congress prohibited railroads from beginning, on or after July 8, 1976, the construction or reconstruction of sleeping quarters for “employees” “within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary) of any area where railroad switching or humping operations are performed.” Pub. L. 94-348, sec. 4, adding subsection (a)(4) to section 2 of the Hours of Service Act, then codified at 45 U.S.C. 62(a)(4) (1976) and now codified as amended at 49 U.S.C. 21106(a)(2).

To carry out the 1976 statutory amendment at section 2(a)(3) of the Hours of Service Act, on July 18, 1978, FRA published interpretative guidance and a statement of policy regarding the provision requiring “clean, safe, and sanitary” sleeping quarters for employees free from railroad-controlled noise that would interrupt rest. Amendment to appendix A to 49 CFR part 228, 43 FR 30803, July 18, 1978.

To carry out the 1976 amendment at section 2(a)(4) of the Hours of Service Act, on July 19, 1978, FRA published regulations codified at 49 CFR part 228, subpart C (subpart C). 43 FR 31012. As stated in the preamble to those regulations,

[t]he primary impetus of this amendment to the Hours of Service Act was the accident that occurred at Decatur, Illinois, on July 19, 1974. (H.R. Report No. 94-1166 (1976) at page 11.) Seven employees were killed and another 33 were injured when an explosion demolished crew quarters that were located between and adjacent to two classification yards and did other extensive damage in the middle of the Norfolk and Western yard. Three hundred sixteen persons who lived or worked in the surrounding area were also injured. The explosion resulted from

¹ In the 1994 re-codification of Federal transportation laws, the Hours of Service Act was simultaneously repealed, re-enacted as revised, and re-codified as positive law primarily in 49 U.S.C. chapter 211. Pub. L. No. 103-272, July 5, 1994.

accidental release of product which occurred during the switching of hazardous materials.

* * *

In enacting the 1976 amendment to the law, Congress determined that additional protection from accidents such as the one that occurred at Decatur, Illinois, is required for crew quarters. 43 FR 31009.

Subpart C defines key terms in section 2(a)(4) of the Hours of Service Act, permits railroads to request a determination by FRA that a particular proposed site is not within the “immediate vicinity,” and states the criteria by which FRA will make the determination. See 49 CFR 228.101(a). FRA approval is necessary before a railroad may begin the “construction or reconstruction” of sleeping quarters for employees within the distance of switching or humping operations specified in the regulations. 49 CFR 228.101. The distance triggering the need for approval is one-half mile “as measured from the nearest rail of the nearest trackage where switching or humping operations are performed to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations.” 49 CFR 228.101(b). “Switching or humping operations” is defined to include “the classification of placarded railroad cars according to commodity or destination, assembling of placarded cars for train movements . . .” 49 CFR 228.101(c) (3). “Placarded car” is defined to mean “a railroad car required to be placarded by the Department of Transportation hazardous materials regulations (49 CFR 172.504).” 49 CFR 228.101(c)(4). “Construction” includes the “[p]lacement of a mobile or modular facility,” which includes placement of a camp car. 49 CFR 228.101(c)(1)(iii). On or after July 8, 1976, any railroad placing a camp car occupied by an employee near switching or humping operations must obtain FRA approval before doing so. 49 CFR 228.101(a).

In 1988, Congress redefined “employee” for purpose of section 2(a)(3) of the Hours of Service Act (now codified at 49 U.S.C. 21106(a)(1)) so as to include MOW workers, thereby making all sleeping quarters provided by a railroad to MOW workers subject to the same statutory standard. Pub. L. 100-342, sec. 19(b). It should be noted, however, that the 1988 amendment did not make MOW workers “employees” for purposes of the “location” requirement at section 2(a)(4) of the Hours of Service Act. Consequently, a camp car occupied only by employees or by both employees and MOW workers is subject to subpart C, but a camp car occupied only by MOW workers is not subject to subpart C.

To carry out the 1988 statutory amendment, FRA issued an interpretation in 1990 of the terms “clean,” “safe,” and “sanitary” as applied to railroad-provided camp cars occupied by employees, MOW workers, or both based on standards established by OSHA. 49 CFR part 228, app. C. In FRA’s 1990 Guidelines, the agency noted that—

FRA believes that camp cars, either because of express limitations of local codes, or by virtue of their physical mobility, are generally not subject to state or local housing, sanitation, health, electrical or fire codes. Therefore, FRA is unable to rely upon state or local authorities to ensure that persons covered by the [Hours of Service] Act who reside in camp cars are afforded an opportunity for rest in ‘clean,’ ‘safe,’ and ‘sanitary’ conditions. Accordingly, FRA must determine what adverse conditions might reasonably be expected to interfere with the ordinary person’s ability to rest, so as to enunciate policy guidelines to be applied by FRA in enforcing the words ‘clean,’ ‘safe,’ and ‘sanitary’ for purposes of the Act. 55 FR 30892, 30893, July 27, 1990.

Twenty years after the 1988 statutory amendment, Congress enacted section 420 of RSIA. Congress added requirements that all sleeping quarters provided by railroads to employees or MOW workers have “indoor toilets, potable water, and other features to protect the health of [employees and MOW workers] (amending 49 U.S.C. 21106(a)(1));” that any railroad that uses camp cars must “fully retrofit or replace” such cars to be in compliance with 49 U.S.C. 21106(a) by December 31, 2009 (see new 49 U.S.C. 21106(b)); and that the Secretary prescribe regulations to implement 49 U.S.C. 21106(a)(1), requiring compliance by December 31, 2010 (see new 49 U.S.C. 21106(c)).

FRA has considered whether Congress intended for railroad-provided camp cars occupied by MOW workers to be subject to the restrictions of 49 U.S.C. 21106(a)(2) on their location. Clearly, by the express text of 49 U.S.C. 21106(c), the regulations mandated by that subsection are intended “to implement subsection (a)(1)” (i.e., 49 U.S.C. 21106(a)(1)), and not to implement both 49 U.S.C. 21106(a)(1) and 49 U.S.C. 21106(a)(2). Just as clearly, Congress did not amend 49 U.S.C. 21106(a)(2) itself, which bars beginning such construction or reconstruction of sleeping quarters for covered service employees on or after July 8, 1976; Congress did not, for example, add language to subsection (a)(2) to prohibit beginning construction or reconstruction of railroad-provided camp cars used as sleeping quarters for MOW workers, with a new effective date in subsection (a)(2) itself.

In the end, however, FRA concludes that Congress did intend such location restrictions in subsection (a)(2) to apply to camp cars exclusively occupied by MOW workers, based primarily on the language of subsection (b), which reads as follows:

(b) Camp cars.—Not later than December 31, 2009, any railroad carrier that uses camp cars shall fully retrofit or replace such cars in compliance with subsection (a). (Emphasis added).
49 U.S.C. 21106(b).

Congress could have written that the camp cars must be in compliance with “subsection (a)(1),” but it did not; instead Congress required compliance with subsection (a) as a whole, a two-paragraph provision that includes the prohibition on placing camp cars (and other forms of sleeping quarters) near certain switching or humping operations. It is a basic canon of statutory construction that all words of a statute should be given effect.

To give subsection (b) meaning, with respect to requiring camp cars to be in compliance with the old mandate of subsection (a)(2), some act must be required that is possible to perform in the future, specifically not later than the December 31, 2009, date stated in subsection (b). FRA reads that extra requirement imposed by subsection (b) to be that camp cars exclusively occupied by MOW workers be subject to subsection (a)(2). With respect to subsection (a)(2), which contains a compliance date about 32 years before the enactment of subsection (a)(2), a new compliance date would be necessary in order to avoid creating an unconstitutional, ex post facto law, and that is what Congress provided with the new statutory deadline for compliance of December 31, 2009. FRA does not read subsection (b) as supplanting the July 8, 1976, effective date of the prohibition in subsection (a)(2) with respect to construction or reconstruction of sleeping quarters occupied by train employees, signal employees, or dispatching service employees. Rather, FRA reads the text of section 21106(b) as a direct, statutory requirement that railroads using camp cars as sleeping quarters see to it that the cars exclusively occupied by MOW workers comply with the statutory requirements of not only subsection (a)(1), but also subsection (a)(2), and to do so by December 31, 2009.

Of course, it could be argued that Congress simply made a technical error in requiring that camp cars comply with all of subsection (a) and that it meant to say “subsection (a) (1),” particularly given that the requirement is to “retrofit or replace” the cars, not to “retrofit or replace and position” the cars. FRA thinks that the legislative history of section 420 of RSIA argues against such a strict interpretation. That legislative history indicates that that Congress invited FRA to take a new, more protective look at camp cars. The House precursor to section 420 of RSIA would have directly prohibited the use of camp cars entirely by statute, effective one year after the date of enactment. See section 202 of H.R. 2095 as reported by the House Committee on Transportation and Infrastructure in H.R. Rep. No. 110-336 and analysis at p. 39. The Senate precursor to section 420 of RSIA would have authorized FRA to prohibit railroads’ use of camp cars as sleeping quarters (i.e., by regulation or order) “if necessary to protect the health and safety of the employees.” See section 410 of S. 1889 as reported by the Senate Committee on Commerce, Science, and Transportation in S. Rep. No. 110-270. Based on the plain meaning of 49 U.S.C. 21106 and the legislative history of section 420 of RSIA, FRA believes its interpretation applying the location requirement of subsection (a)(2) to camp cars occupied exclusively by MOW workers is both correct and appropriate.

To carry out this statutory interpretation, FRA is proposing an amendment to subpart C. The statutory authority to conduct this aspect of the rulemaking is FRA’s authority under 49 U.S.C. 21106(a)(2) to prescribe regulations to implement that statutory provision, which reads (as revised during the 1994 recodification of the rail safety laws effected by Public Law No. 103-272) as follows:

A railroad carrier . . . (2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters . . . in an area or in the immediate vicinity of an area, as determined under

regulations prescribed by the Secretary of Transportation, in which railroad switching or humping operations are performed. [Emphasis added.]

This is the authority under which FRA originally prescribed subpart C. 41 FR 53070, Dec. 3, 1976.

9. Payments or gifts to respondents.

There are no monetary payments provided or gifts made to respondents associated with the information collection requirements contained in this regulation.

10. Assurance of confidentiality.

There is no information of a private or confidential nature requested to be submitted in this proposed rule. Thus, FRA offers no assurances of confidentiality.

11. Justification for any questions of a sensitive nature.

Again, there are no questions or information of a sensitive nature or data that would normally be considered private matters contained in this proposed rule.

12. Estimate of burden hours for information collected.

Note: Even though this proposed rule applies to all railroads on the general system of transportation, there is only one railroad – Norfolk Southern – that presently uses camp cars. Thus, the respondent universe is one (1) railroad. Also, based on the current agency data, NS operates approximately 292 camp cars.

Lavatories (§ 228.319)

A. Water. Each lavatory must be provided with either hot and cold running water or tepid running water. If the water supplied to a lavatory is not from a potable source or not supplied through a system maintained as required in § 228.323, the lavatory area must contain a sign, visible to the user when the lavatory is being used, bearing a message to the following effect: “The water is not suitable for human consumption. Do not drink the water.”

Since there are approximately 300 camp cars in use and each camp car will need approximately two (2) lavatory signs, FRA estimates that approximately 600 signs will be purchased and placed in lavatory areas under the above requirement. It is estimated that it will take approximately 2.5 minutes to place each sign in the appropriate lavatory area. Total annual burden for this requirement is 25 hours.

Respondent Universe:	1 railroad
Burden time per response:	2.5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	600 lavatory signs
Annual Burden:	25 hours

Calculation: 600 lavatory signs x 2.5 min. = 25 hours

Showering facilities (§ 228.321)

Signage. If the water supplied to the showers is not from a potable source or is from a potable source but supplied through a system that is not maintained as required in § 228.323, the shower area must contain a sign, visible to the user when the shower is being used, bearing a message to the following effect: “The water is not suitable for human consumption. Do not drink the water.”

Again, there are approximately 300 camp cars in use and each camp car will need a shower signs. Thus, FRA estimates that approximately 300 signs will be purchased and properly placed so that they are visible when the shower is being. It is estimated that it will take approximately 2.5 minutes to create each sign and place it in the appropriate shower area. Total annual burden for this requirement is 13 hours.

Respondent Universe:	1 railroad
Burden time per response:	2.5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	300 lavatory signs
Annual Burden:	13 hours

Calculation: 300 lavatory signs x 2.5 min. = 13 hours

Potable water (§ 228.323)

A. Potable water source. If potable water is provided in bottled form, it shall be stored in a manner recommended by the supplier in order to prevent contamination in storage. Bottled water shall contain a label identifying the packager and the source of the water.

This labeling, of course, is done by the company distributing bottled water at the time the water is bottled and comes under the aegis of the Food and Drug Administration (FDA). Thus, the burden associated with this labeling is already included under a separate FDA collection of information. Consequently, there is no burden associated with this requirement.

B. Water hydrants. Each water hydrant, hose, or nozzle used for supplying potable water to a camp car water system shall be inspected prior to use. Each such hose or nozzle used shall be cleaned and sanitized as part of the inspection. A signed, dated record of this inspection shall be kept within the camp for the period of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

The estimated 292 camp cars are broken down into large, medium, and small groups. Most of them are medium size groups and, thus, there are approximately 37 camps that are set up and broken down for 10 months each year. FRA estimates then that approximately 370 connections per year will be made and 370 water hydrants, hoses, and nozzles used for supplying potable water to a camp car water system will be inspected and a signed and dated record made under the above requirement. It is estimated that it will take approximately five (5) minutes to conduct each inspection and complete the required record. Total annual burden for this requirement is 31 hours.

Respondent Universe:	1 railroad
Burden time per response:	5 minutes
Frequency of Response:	On occasion
Annual number of Responses:	370 water hydrants, hoses, and nozzle inspections/records
Annual Burden:	31 hours

Calculation: 370 inspections/records x 5 min. = 31 hours

Additionally, FRA estimates that approximately 370 record copies will be made when the connection is terminated and kept in a centralized location as specified under the above requirement. It is estimated that it will take approximately 10 seconds to make and store each record copy. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	1 railroad
Burden time per response:	10 seconds
Frequency of Response:	On occasion
Annual number of Responses:	370 record copies
Annual Burden:	1 hour

Calculation: 370 record copies x 10 sec. = 1 hour

C. Training. Only a trained individual is permitted to fill the potable water systems. Each individual who fills a potable water system shall be trained in: (i) The approved method of inspecting, cleaning, and sanitizing hydrants, hoses, and nozzles used for filling

potable water systems; and (ii) The approved procedures to prevent contamination during watering.

As noted above, there are approximately 37 camp groups and FRA estimates that only one employee per camp will be trained under the above requirement. It is estimated that it will take approximately 15 minutes to train each employee. Total annual burden for this requirement is nine (9) hours.

Respondent Universe:	1 railroad
Burden time per response:	15 minutes
Frequency of Response:	One-time
Annual number of Responses:	37 trained employees
Annual Burden:	9 hours

Calculation: 37 trained employees x 15 min. = 9 hours

D. Certification. Each time that potable water is drawn from a different local source, the railroad shall obtain a certificate from a State or local health authority indicating that the water from this source is of a quality not less than that prescribed in the National Primary Drinking Water Regulations promulgated by the U.S. Environmental Protection Agency or obtain such a certificate by a certified laboratory following testing for compliance with those standards. The current certification shall be kept within the camp for the duration of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

As estimated previously, there are approximately 370 connections made each year relating to potable water. Thus, FRA estimates that approximately 370 certificates will be obtained each year by Norfolk Southern (NS) under the above requirement. It is estimated that it will take approximately two days or 16 hours to perform the necessary laboratory testing and complete/send the required certificate. Total annual burden for this requirement is 5,920 hours.

Respondent Universe:	1 railroad
Burden time per response:	16 hours
Frequency of Response:	On occasion
Annual number of Responses:	370 certificates
Annual Burden:	5,920 hours

Calculation: 370 certificates x 16 hrs. = 5,920 hours

Additionally, FRA estimates that approximately 370 certification copies will be made when the connection is terminated and kept in a centralized location as specified under

the above requirement. It is estimated that it will take approximately 10 seconds to make and store each certification copy. Total annual burden for this requirement is one (1) hour.

Respondent Universe:	1 railroad
Burden time per response:	10 seconds
Frequency of Response:	On occasion
Annual number of Responses:	370 certification copies
Annual Burden:	1 hour

Calculation: 370 certification copies x 10 sec. = 1 hour

E. Flushing. Each potable water system shall be drained and flushed with a disinfecting solution at least once every 120 days. The railroad shall maintain a record of the draining and flushing of each separate system within the camp for the last two drain and flush cycles. The record shall contain the date of the work and the name(s) of the individual(s) performing the work. The original record shall be maintained with the camp. A copy of each of these records shall be sent to a centralized location for the railroad and maintained for one year.

(i) The solution used for flushing and disinfection shall be a 100 parts per million by volume (ppm) chlorine solution.

(ii) The chlorine solution shall be held for one hour in all parts of the system to ensure disinfection.

(iii) The chlorine solution shall be purged from the system by a complete refilling and draining with fresh potable water.

(iv) The draining and flushing shall be done more frequently if an occupant reports a taste or health problem associated with the water, or following any plumbing repair.

As previously mentioned, NS operates approximately 292 camp cars. FRA estimates that approximately half of these or approximately 146 potable water systems will be need to be drained and flushed with a disinfecting solution four times a year (every 120 days) and a record kept as specified under the above requirement. It is estimated that it will take approximately two (2) hours to drain and flush each potable water system and complete the record. Total annual burden for this requirement is 1,168 hours.

Respondent Universe:	1 railroad
Burden time per response:	2 hours
Frequency of Response:	On occasion
Annual number of Responses:	584 potable water systems cleansing

Annual Burden:	(i.e., draining and flushing) records 1,168 hours
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Calculation: 584 potable water system cleansing records x 2 hrs. = 1168 hours

Additionally, FRA estimates that approximately 10 occupant taste reports will be made under the above requirement. These reports will be made verbally, so it is estimated that it will take approximately 10 seconds to complete each occupant taste report. Total annual burden for this requirement is .028 hours.

Respondent Universe:	1 railroad
Burden time per response:	10 seconds
Frequency of Response:	On occasion
Annual number of Responses:	10 occupant taste reports
Annual Burden:	.028 hour

Calculation: 10 occupant reports x 10 sec. = .028 hour

Furthermore, as a result of these occupant reports, FRA estimates that approximately 10 potable water systems will be drained and flushed with a disinfecting solution and a record kept as specified under the above requirement. Also, water samples will need to be sent out and tested by a laboratory and a certificate issues. It is estimated that it will take approximately two (2) hours to drain and flush each potable water system and complete the record and approximately 16 hours for the lab to conduct the necessary tests and issue the required certificate. Total annual burden for this requirement is 180 hours.

Respondent Universe:	1 railroad
Burden time per response:	2 hours + 16 hours
Frequency of Response:	On occasion
Annual number of Responses:	10 potable water systems cleansing (i.e., draining and flushing) records + 10 tests/certificates
Annual Burden:	180 hours

Calculation: 10 potable water system cleansing records x 2 hrs. + 10 lab tests/certificates x 16 hrs. = 180 hours

F. Reported problems. Following any report of a taste problem with the water from a system or a health problem resulting from the water in a system, samples of water from each tap or dispensing location on the system shall be collected and sent to a laboratory approved by the U.S. Environmental Protection Agency for testing for heterotrophic plate counts, total coliform, and fecal coliform. If a single sample fails any of these tests, the

system must be treated as follows: (i) *Heterotrophic plate count*. Drain and flush the system within two days, and then return it to service. (ii) *Total coliform*. Remove the system from service, drain and flush system, resample the system, and then return the system to service. (iii) *Fecal coliform*. Remove the system from service, drain and flush the system, resample the system, and do not return the system to service until a satisfactory result on the test of the samples is obtained from the laboratory.

The burden for occupant taste reports and required laboratory tests/certificates is included above. Consequently, there is no additional burden associated with this requirement.

G. Reports. All laboratory reports pertaining to the water system of the camp car shall be maintained with the car. Within 15 days of the receipt of such a laboratory report, a copy of the report shall be posted for a minimum of 10 calendar days at a conspicuous location within the camp car or cars affected for review by occupants. The report shall be maintained in the camp for the duration of the same connection. When the connection is terminated, the certification must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

FRA estimates that approximately 10 laboratory report copies will be completed under the above requirement. It is estimated that it will take approximately two (2) minutes to complete each laboratory report copy. Total annual burden for this requirement is .3333 hour.

Respondent Universe:	1 railroad
Burden time per response:	2 minutes
Frequency of Response:	On occasion
Annual number of Responses:	10 laboratory report copies
Annual Burden:	.3333 hour

Calculation: 10 laboratory report copies x 2 min. = .3333 hour

Total annual burden for this entire requirement is 7,310 hours.

Total annual burden for this entire information collection is 7,348 hours.

13. Estimate of total annual costs to respondents.

There are no additional costs related to the proposed collection of information besides the burden hours enumerated in answer to question number 12 above.

14. Estimate of Cost to Federal Government.

There are no additional costs to the Federal Government relating to the proposed collection of information as FRA inspectors will accomplish them as part of their routine duties.

15. Explanation of program changes and adjustments.

This is a new collection of information associated with FRA's new Part 228 proposed rule. The total burden requested for this submission amounts to 7,348 hours. By definition, the entire requested burden is a **program change**.

As noted in the answer to question 13 above, there are no additional costs to respondents relating to the proposed collection of information.

16. Publication of results of data collection.

There are no plans for publication of this submission. Primarily, the information is used by specialists of the Office of Safety, as well as field personnel, to enforce the regulation.

17. Approval for not displaying the expiration date for OMB approval.

Once OMB approval is received, FRA will publish the approval number for these information collection requirements in the Federal Register.

18. Exception to certification statement.

No exceptions are taken at this time.

Meeting Department of Transportation (DOT) Strategic Goals

This information collection supports DOT's main strategic goal, transportation safety. Specifically, without the information collected under § 228.319 and § 228.321, FRA would have no assurance that necessary signs were posted in lavatories and showers to inform occupants of camp cars that water supplied from a non-potable is not suitable for human consumption. Without this information, camp car occupants might inadvertently drink contaminated water, thereby becoming seriously ill with any of the various types of bacterially borne disease. If these camp car occupants were to become ill, they would be unable to perform their normal duties for the railroad and railroad operations might be significantly hindered, thereby possibly jeopardizing rail safety.

Without the information collected under § 228.323, FRA would have no way to confirm each water hydrant, hose, or nozzle used for supplying potable water to a camp car water system is inspected prior to use. Without the required record, FRA inspectors would be unable to verify each such hose or nozzle is properly cleaned and sanitized as part of the inspection. Without such cleaning and sanitization, camp car occupants would be at higher risk for consuming contaminated water and thus more likely to fall ill from bacterially borne disease.

Without information collected under § 228.323, FRA would have no assurance that only individuals who are properly trained are permitted by railroads to fill potable water systems. It is essential for the health and well-being of camp car occupants that individuals be trained by railroads in the approved method of inspecting, cleaning, and sanitizing hydrants, hoses, and nozzles for filling potable water systems. These approved procedures are designed to prevent contamination and ensure the safe consumption of water. Railroad workers are exposed to many hazards in the rail environment, and drinking water should not be another one.

Without the certification information required under § 228.323, FRA would have no way of knowing about the quality of potable water drawn from a different local source and that such quality is not less than prescribed in the National Primary Drinking Water Regulations promulgated by the Environmental Protection Agency. A certificate by a certified laboratory following testing for compliance with the aforementioned standards serves to assure FRA inspectors that individuals occupying camp cars can safely drink the water and carry out their important duties without fear of consuming contaminated water that might make them seriously ill. Camp car occupants are also assured about the quality of their drinking water by these lab reports, since all lab reports pertaining to the water system of the camp car must be maintained with the car and posted for a minimum of 10 calendar days in a conspicuous location in the camp cars.

Without the flushing information required under § 228.323, FRA would have no record to consult to ensure that each potable water system is drained and flushed with a

disinfecting solution at least once every 120 days. The draining and flushing must be done more frequently if an occupant reports a taste or health problem associated with the water or following any plumbing repair. Being able to report a taste problem and have it quickly remedied provides camp car occupants with confidence that their health and safety regarding essential drinking water and consumption of food are not left to chance and that certain minimum standards are met to maintain and promote a safe environment while in camp cars.

In sum, this collection of information promotes and enhances FRA's national rail safety program by ensuring that camp cars are habitable so that camp car occupants can carry out their important daily duties and routines without fear of developing a serious – and perhaps fatal – illness from consumption of contaminated water or food. Thus, this proposed rule and accompanying collection of information serve as a vital component of FRA's multi-faceted safety program. It is essential in assisting FRA to fulfill its primary agency mission and objective.

In this information collection and indeed all its information collection activities, FRA seeks to do its very best to fulfill DOT Strategic Goals and to be an integral part of One DOT.