



Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters

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March 4, 2011
(Via online at www.regulations.gov)

Docket Operations Facility
U.S. Department of Transportation
1200 New Jersey Ave., SE, W12-140
Washington, DC 20590

Re: Safety and Health Requirements Related to Camp Cars; Docket No. FRA-2009-0042

Comments of the Brotherhood of Maintenance of Way Employes Division (BMWED) of the International Brotherhood of Teamsters

The Brotherhood of Maintenance of Way Employes Division (BMWED) of the Teamsters Rail Conference submits these comments to the docket in the above-referenced matter. BMWED is a railroad labor organization representing approximately 35,000 maintenance of way (MW) employees who build, repair, inspect and maintain railroad tracks, bridges, buildings and related infrastructure on all Class 1 freight railroads, Amtrak, and numerous commuter, regional and short-line railroads. As such, BMWED and its members have a direct and vested interest in this rule making related to camp car safety and health requirements.

The order of these comments is not intended to reflect any sequential priorities of the BMWED. BMWED purposely is not addressing every item in the NPRM and is not waiving objections to unaddressed items at a later date. All language revisions specific to regulatory text proposed in the NPRM is formatted for ease of reference, with BMWED proposed language inserted in **underline and bold** and BMWED proposed language deletions struck through (e.g., ~~struck through~~). Not all BMWED comments/proposals presented herein have been reduced to regulatory text.

As stated in the NPRM, "FRA has consulted with officials of the only railroad currently known to be utilizing camp cars as sleeping quarters, Norfolk Southern Railway Company (NS)...." MW employees employed by NS are the only craft and class of railroad employees currently housed in railroad camp cars. As noted by the FRA (76 FR 65), NS contends that the 2008 RSIA amendments to 49 U.S.C. 21106 do not apply to the

placement of camp cars near railroad switching operations. Therefore, NS's position is that it may be required to perform limited physical retrofitting of camp cars, but it may still locate those camp cars and the MW employees housed in them adjacent to main line tracks (See Attachment #1), in hump yards, and in areas or in the immediate vicinity of areas where railroad switching or humping of hazardous materials occur. BMWED is unaware of any other railroad of any size anywhere in the United States housing railroad employees in camp cars. As such, this entire rulemaking is directed toward a single rail carrier that steadfastly refuses to enter the 21st century regarding the treatment of its MW employees who are working away from home. BMWED concurs in the FRA's thorough statutory analysis of the RSIA which rejects NS's absurd construction of the statute on this point.

Railroads gradually began phasing out the use of camp cars to house MW employees beginning in the mid-1970s, with all Class I railroads except NS abandoning the use of camp cars by the early 1990s. NS is the only Class I railroad that continues the practice of housing MW employees in camp cars in rail yards and along the right-of-way. CSX Railroad, which operates in the same geographical area as NS and operates gangs similar to those of NS, uses motel lodging exclusively to house MW employees on mobile gangs. Indeed, a large number of MW employees assigned to CSX traveling gangs are in single occupancy motel rooms.

Camp cars are vestiges of the past, as are the current FRA "guidelines" for clean, safe, sanitary camp cars. Camp cars should be tightly regulated by FRA in the Final Rule for a limited number of years. Thereafter, their use should be prohibited in favor of the more healthful and humane housing practices every other railroad in the country, except NS, adopted approximately two decades ago.

NS camp cars have multiple-occupancy lodging "spaces" and sometimes a "commissary car" where meals of dubious quality are provided to MW employees. Sharing overnight accommodations, shower facilities and bathroom facilities with multiple unrelated individuals does not provide an opportunity for MW employees to obtain a restful sleep. While MW work does not generally fall within the criteria of "covered service" as defined under the Hours of Service regulation (49 CFR § 228.5), MW employees are considered "safety-related employees" under various provisions of 49 CFR. Fatigue does not discriminate between "covered service" and "non-covered service" employees, therefore the lodging arrangements for "covered service" and "non-covered service" employees should not be discriminatory. Any FRA regulation governing the use of camp cars should include a sunset provision outlawing the housing of MOW workers in camp car within five years of the effective date of the Final Rule.

Section 228.3, Application and Responsibility for Compliance

FRA proposes to amend § 228.3 to indicate that “although subparts B and D apply to railroads and contractors and subcontractors to railroads, subparts C and E apply only to railroads.” BMWED is concerned with this proposal because it appears to exclude camp cars provided by contractors and subcontractors to house MOW workers from the scope of the rule. There is no evidence to suggest that Congress intended to exclude contractor-provided camp cars housing MOW workers from Section 21106 of the RSIA. The legislative history of the RSIA indicates that Congress intended for FRA to take a new, broader and more protective look at camp cars. It was the clear intent of Congress that FRA regulate camp cars housing MOW workers, regardless of whether the railroad or another entity actually provides the camp car. If subparts C and E only applied to railroads, a railroad such as Norfolk Southern may be free to procure non-compliant contractor-provided camp cars to house employees and MOW workers without regard to the regulation. Such would have the obvious effect of circumventing Congressional intent “to protect the safety and health of any employees and individuals employed to maintain the right of way of a railroad carrier that uses camp cars....” (Emphasis added)

FRA also proposes to “change the heading of subpart C from ‘Construction of Employee Sleeping Quarters’ to ‘Construction of Railroad-Provided Sleeping Quarters.’ ‘Railroad-Provided’ is added to emphasize that the regulations apply only to sleeping quarters that are provided by a railroad, and the word ‘Employee’ is deleted since the proposed subpart would apply not only to sleeping quarters occupied by an employee but also to sleeping quarters in the form of a camp car that are provided by a railroad to a MOW worker.” Again, this appears to exclude camp cars provided by contractors and subcontractors to house MOW workers from the scope of the rule.

To eliminate this potential loophole and fulfill the Congressional intent to protect the safety and health of “any employees and individuals” housed in camp cars, BMWED implores FRA to clarify in the Final Rule that any camp car used to house “an employee or MOW worker,” including camp cars which may be “contractor- and subcontractor-provided,” are covered within the scope of the Final Rule.

Section 228.5, Definitions

MOW worker duties are not limited to “maintenance” alone. MOW workers’ core duties also include inspection, construction, installation and repair of track, roadbed, and related right-of-way infrastructure. Therefore, consistent with the description of MW work found in 49 CFR § 209.303(b)(1) and the definition of Roadway Worker in § 214.7,

which more accurately describes the duties of MOW workers and the scope of MW work, we propose the following revisions to the definition of MOW worker:

MOW worker means an individual employed to **inspect, install, construct, repair or maintain track, roadbed, bridges, buildings, roadway facilities, roadway maintenance machines, electric traction systems, and** right of way of a railroad.

Section 228.102, Distance Requirements for Camp Cars Provided as Sleeping Quarters Exclusively to MOW Workers

BMWED appreciates FRA's efforts to make improvements in the safety and health requirements for camp cars; particularly the proposed provisions prohibiting a railroad from positioning camp cars within the immediate vicinity of certain "switching and humping operations" as defined in FRA regulations at 49 CFR 228.101(c)(3). Norfolk Southern is on record opposing this prohibition against positioning camp cars housing MW employees within "certain switching or humping operations," even though these same prohibitions have applied to train service employees, signal employees, and dispatching service employees since 1978. As noted in the NPRM:

"[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 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)"

The hazards of locating railroad worker sleeping quarters in an area or in the immediate vicinity of an area where railroad switching or humping of hazardous materials occur are self-evident. The hazards of fire, explosion, or chemical exposure to railroad workers caused by switching and humping accidents involving hazardous materials do not discriminate based on "covered service" or "non-covered service." BMWED applauds FRA for addressing this regulatory anomaly within the NPRM and prohibiting camp cars from being placed "in an area or in the immediate vicinity of an area where railroad

switching or humping of hazardous materials occurs.” Based upon the legislative history of 49 U.S.C. 21106 and the plain language of section 420 of the Rail Safety Improvement Act (RSIA), FRA’s interpretation applying the provisions of 49 U.S.C. 21106 (a)(2) to camp cars occupied exclusively by MOW workers is both correct and appropriate.

Section 228.303, Application and Responsibility for Compliance

As stated above, FRA must clarify that railroad contractors and subcontractors providing camp cars to house employees and/or MOW workers shall comply with all the provisions of the regulation.

BMWED recommends the following language be inserted in §228.303(b):

(b) Although the duties imposed by the subpart are generally stated in terms of the duty of a railroad, each person, including a contractor or subcontractor for a railroad, **who provides camp cars to house employees or MOW workers or who performs any task covered by this subpart, shall provide such camp cars or** shall perform that task in accordance with this subpart.

Section 228.307, Definitions

Amend the definition of “Occupant” as follows:

Occupant means an employee or an MOW worker (both as defined in § 228.5) whose sleeping quarters is a ~~railroad-provided~~ camp car.

Section 228.309, Structure, Emergency Egress, Lighting, Temperature, and Noise-level Standards

FRA invited specific comments on “whether the temperatures currently specified should be changed.” BMWED believes the minimum temperature during cold weather should be changed to 70 degrees Fahrenheit and the maximum temperature during hot weather should remain unchanged.

BMWED proposes § 228.309(g) be revised as follows:

(g) *Temperature.* Each camp car must be provided with equipment capable of maintaining a temperature of at least ~~68~~ **70** degrees Fahrenheit (F.) during cold weather and no greater than 75 degrees F. during hot weather.

This temperature range is both reasonable and attainable and will provide minimum and maximum temperature ranges conducive to affording camp car occupants an opportunity for restful sleep. We anticipate that NS will complain loudly that the temperature maximums in hot weather should be significantly raised and that the temperature minimums in cold weather should be significantly lowered. BMWED implores the FRA to reject these anticipated protestations based upon the following:

1. MOW workers spend their entire day in the outdoors performing railroad maintenance and repair work in all kinds of weather. They generally have no refuge from the extreme cold of winter and the extreme heat of summer while “on the clock” and performing MW work on the tracks and along the right of way. MOW workers are often at risk of heat exhaustion in the summer and hypothermia in the winter. They must have a place of refuge during their “off-duty hours” to cool down or warm up, as the case may be. The only such place of refuge for employees assigned to camp cars is the camp car itself.
2. Camp cars are relatively small from a square footage standpoint, with current NS floor plans containing approximately 400 square feet (See Attachment 2). It should not be difficult to maintain the ambient temperature within the maximum and minimum ranges proposed by BMWED provided that properly sized heating, ventilation, and air conditioning (HVAC) equipment and weatherproofing/insulation are properly installed and maintained.
3. At the turn of the century before refrigeration and the wide-spread distribution of electrical power, railroads routinely stored and carried perishables over great distances in box cars similar and sometime identical to camp cars. Railroads have a long and proud history of, and made vast fortunes from, shipping highly perishable shellfish, meat, fish and produce across the country in the wildest temperature extremes for well over 100 years and continuing to this day. Railroads have proven that they can maintain minimum and maximum temperature ranges when there are profits to be made. Railroads can surely maintain the modest temperature ranges proposed here to protect the health and safety of employees and MOW workers housed in camp cars and maintain environmental temperatures generally conducive to restful sleep.

With reference to the proposed lighting requirements of § 228.309(f)(2), the 10 foot-candles measured at the floor is inadequate to protect against slips, falls, cuts, and other accidents in toilet and shower rooms. There are no technological or mechanical barriers to providing the same illumination in toilet and shower rooms that the NPRM proposes for each habitable room.

BMWED proposes the following revision to § 228.309(f)(2):

(2) Toilet and shower rooms shall have controlled lighting that will illuminate the room to values of at least ~~10~~ 30 foot-candles measured at the floor;

Section 228.311, Minimum Space Requirements

It is noted in the preamble and supplementary information section of the NPRM that “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.”

BMWED believes the temporary labor camp regulations of 29 CFR 1910.142 are both inappropriate and inadequate as a baseline from which to develop a FRA camp car standard.

Camp cars are not “temporary labor camps” in the context used by OSHA in 29 CFR 1910.142. Rather, camp cars are actually “permanent” housing units that happen to be mobile. Camp cars are virtually identical to mobile homes that provide “permanent” housing but are otherwise mobile or semi-mobile and moved from time to time. Many MOW workers on NS spend their entire careers, or a substantial portion of their entire careers, in camp cars. Camp cars are not “temporary,” in any sense of the word. They are never abandoned after the completion of work, nor are they disassemble/dismantled or scrapped after the completion of a job. Railroad camp cars are permanent, albeit mobile, housing more closely associated with a mobile home than a “temporary camp.” The Final Rule on camp cars must reflect the reality that camp cars are “permanent” units of housing for as long as they will be allowed to be utilized under federal law. The location of a camp car may be “temporary” but both the structure itself and its occupancy is permanent for MOW workers assigned to traveling gangs housed in camp cars.

Based upon the “permanent housing” attributes of camp cars, the regulation must recognize camp cars used to house MOW workers in the same way it recognizes “Employee Sleep Quarters” as permanent housing for “covered employees” under the Hours of Service laws. To do anything less would be both discriminatory and inappropriate. Congress tasked FRA with taking a new, more protective approach to camp cars, recognizing the inadequacy of the current “guidelines.” Using the “temporary labor camp” regulations of 29 CFR 1910.142 as the basis for safe and healthful camp cars has been a complete failure since the guidelines were issued in 1990.

A more appropriate and protective baseline already exists to guide FRA in the development of a federal camp car standard. That baseline is current state law(s) governing camp cars to which NS has been required to comply since enacted by state legislatures. In Illinois and Indiana, states in which NS operates, current state regulations governing camp cars used within the state require a minimum of 80 square feet per occupant with a maximum of 4 occupants per car. Every NS camp car used in those states was retrofitted to comply with the minimum 80 square foot standard. The minimum 50 square foot per occupant requirement proposed in the NPRM is wholly inadequate and unacceptable as a federal standard.

By their own admission, NS camp cars have already been retrofitted to the minimum 80 square foot per occupant and four occupant maximum per car standard. See the corporate public relations video uploaded to <http://www.youtube.com/watch?v=H5eUA9vummA> by Norfolk Southern Corporation on September 27, 2007. The NS public relations video includes a floor diagram (See Attachment 2) which is accompanied by the following voice narrative:

“Norfolk Southern is modernizing its camp cars, converting them from eight person to four person sleepers. Each car features amenities such as refrigerators, private sleeping areas, closets, and private bath and shower facilities. These cars are inspected monthly to ensure safe standards and conditions.”

The cost to the railroad to meet the 80 square foot minimum per occupant and four occupant maximum per car standard is essentially zero. BMWED proposes that FRA adopt, at minimum, the current NS “floor plan” standard, which complies with existing state standards of at least 80 square feet per occupant with a maximum of four occupants per camp car sleeping quarters.

Indiana state regulations governing camp cars prohibit the use of double deck bunks. Similar bills have been introduced in other states, including PA, TN, OH, and MS. FRA

must likewise prohibit the use of double and triple deck bunks in the Final Rule. Bunks are generally unsuitable for adult use for a number of reasons including but not limited to the small size of typical bunk beds, difficulty of adults (especially older adults) to climb up and down from bunks particularly at night, sensations of claustrophobia, temperature differentials affecting upper berths, large physical frames typical of MOW workers, etc. The federal rules on camp cars must prohibit the use of both cots and multi-level bunks and allow only single-level bedding of suitable size and proportion for each adult camp car occupant. NS has already retrofitted its camp cars for single level bedding, so there is no cost associated with federal rules prohibiting bunk beds and cots. FRA must also proportionally adjust the minimum square footage of floor space per occupant in facilities where occupants cook, live, and sleep. The minimum square footage in proposed § 228.311(c) must be increased proportionally from 90 square feet to 120 square feet. Finally, employees and MOW workers on other Class I railroads housed in hotels/motels and other types of railroad-provided housing are provided clean linens as part their carrier-provided hotel/motel accommodations. The NPRM does not address the issue of linens and blankets for camp car occupants. The Final Rule must address this issue and require the employer to provide clean linens and blankets to employees and MOW workers housed in camp cars.

BMWED proposes the following revisions to § 228.311 be incorporated and adopted in the Final Rule:

- (a) Each camp car used for sleeping purposes must contain at least ~~50~~ **80** square feet of floor space for each occupant, **with a maximum of 4 occupants per car.** At least a 7-foot ceiling, measured at the entrance to the car, must be provided.
- (b) A bed **for each occupant,** ~~cot, or bunk~~ and suitable storage facility such as a **lockable** wall locker or space for a **lockable** foot locker for **each occupant's** clothing and personal articles must be provided in every room used for sleeping purposes. Except where partitions are provided, such beds or similar facilities must be spaced not closer than 36 inches laterally (except in modular units, which shall be spaced not closer than 30 inches) and 30 inches end to end, and must be elevated at least 12 inches from the floor. ~~If double-deck bunks are used, they must be spaced not less than 48 inches both laterally and end to end. The minimum clear space between the lower and upper bunk must be not less than 27 inches.~~ **Cots and double-deck or** ~~Triple-deck bunks may~~ **shall** not be used.
 - (i) **Unless otherwise provided by a collective bargaining agreement, each occupant shall be provided with two sets of clean bed linens upon assignment to a camp car, including sheets, pillow case(s), and suitable blanket(s). Upon request by an occupant, the**

employer shall exchange one set of clean bed linens for each set of soiled bed linens turned in to the employer, not to exceed two sets per week.

(c) In a facility where occupants cook, live, and sleep, a minimum of ~~90~~ **120** square feet of floor space per occupant must be provided. Sanitary facilities must be provided for storing and preparing food.

(d) Male and female occupants shall be provided gender-separated camp car facilities for sleeping, showering, washing, urination and defecation.

Section 228.317, Toilets

NS is the only railroad still utilizing camp cars. As evidenced above, NS stated that they have converted their camp cars from an eight occupant configuration to a four occupant configuration. The Indiana and Illinois camp car laws, as well as camp car bills recently introduced by lawmakers in other states where NS operates, currently limit or propose to limit the number of occupants per car to a maximum of four persons. The NPRM reference to “a camp car with more than 10 occupants” in § 228.317(a) is irrelevant and insufficient due to: (1) the limited capacity of existing camp cars, (2) existing state laws (IL and IN) and pending bills that currently limit or propose to limit the number of occupants per car to four persons, and (3) the intent of Congress and the FRA to afford “employees and individuals an opportunity for rest....”

Consistent with current NS practice, current and pending state laws, Congressional intent, and FRA regulatory goals, BMWED proposes the following revisions to § 228.317 (a)(1):

(a) *Number of toilets provided.* (1) For each individual camp car that provides sleeping facilities, a minimum of two toilet rooms within the car is required. If a camp car has more than ~~10~~ **four** occupants, an additional toilet room within the car for each additional group of one to **two** ~~five~~ occupants is required.

Section 228.319, Lavatories

BMWED is adamantly opposed to the use of non-potable water for the washing and showering of persons. OSHA regulations expressly prohibit the use of non-potable water

for washing and bathing purposes. OSHA expressly requires potable water to be provided in all places of employment under 29 CFR 1910.141(b)(1)(i) which states:

(b) Water supply.

(1) Potable water.

- (i) Potable water shall be provided in all places of employment, for drinking, washing of the person, cooking, washing of foods, washing of cooking or eating utensils, washing of food preparation or processing premises, and personal service rooms. (Emphasis added)

Under the same standard, OSHA also limits the lawful use of non-potable water under 29 CFR 1910.141(b)(2)(i-iii) which states:

(b)(2) Nonpotable water.

- (i) Outlets for nonpotable water, such as water for industrial or firefighting purposes, shall be posted or otherwise marked in a manner that will indicate clearly that the water is unsafe and is not to be used for drinking, washing of the person, cooking, washing of food, washing of cooking or eating utensils, washing of food preparation or processing premises, or personal service rooms, or for washing clothes.

- (ii) Construction of nonpotable water systems or systems carrying any other nonpotable substance shall be such as to prevent backflow or back siphonage into a potable water system.

- (iii) Nonpotable water shall not be used for washing any portion of the person, cooking or eating utensils, or clothing. Nonpotable water may be used for cleaning work premises, other than food processing and preparation premises and personal service rooms: Provided, that this nonpotable water does not contain concentrations of chemicals, fecal coliform, or other substances which could create unsanitary conditions or be harmful to employees. (Emphasis added)

There is no acceptable justification for supplying non-potable water in camp car lavatories and showers for personal washing and bathing. Likewise, there is no acceptable reason for supplying only “tepid” running water in camp car lavatories. The water for showers and lavatory sinks is drawn from the same plumbing system supplying both hot and cold water. Therefore, lavatories and showers must have potable hot and cold running water. Finally, the number of functioning lavatories needs to be adjusted proportionately to the number of toilet rooms.

BMWED proposes the following revisions to § 228.319, Lavatories:

- (a) *Number*. Each camp car that provides a sleeping facility must contain at least two functioning lavatories **for up to four occupants and one additional functioning lavatory for each additional one to two occupants.**
- (b) *Water supply and maintenance*. Each lavatory must be provided with either hot and cold running **potable** water, ~~or tepid running water. If the **W**ater supplied to a lavatory is ~~not~~ **shall be** from a potable source ~~or not~~ supplied through a system maintained as required in Sec. 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."~~~~
- (c) *Soap*. Unless otherwise provided by a collective bargaining agreement, hand soap or similar cleansing agents must be provided.
- (d) *Means of drying*. Unless otherwise provided by a collective bargaining agreement, individual hand towels, of cloth or paper, warm air blowers, or clean sections of continuous cloth toweling must be provided near the lavatories.

Section 228.321, Showering Facilities

BMWED is adamantly opposed to the use of non-potable water for personal bathing and showering. As noted above, OSHA regulation 29 CFR 1910.141(b)(2)(i-iii) expressly prohibits the use of non-potable water for washing and bathing purposes. OSHA expressly requires potable water to be provided in all places of employment under 29 CFR 1910.141(b)(1)(i). IL and IN State law also currently require hot and cold potable water for camp car lavatories and showers.

BMWED proposes the following language revisions for proposed § 228.319, Lavatories:

- (a) *Number*. For each individual camp car that provides sleeping facilities, a minimum of two showers within the car is required **for up to four occupants.** If a camp car has more than ~~10~~ **four** occupants, ~~an~~ **one** additional shower within the car for each additional group of one to **two** ~~five~~ occupants is required.
- (b) *Floors*. (1) Shower floors must be constructed of non-slippery materials;

- (2) Floor drains must be provided in all shower baths and shower rooms to remove waste water and facilitate cleaning;
- (3) All junctions of the curbing and the floor must be sealed; and
- (4) There shall be no fixed grate or other instrument on the shower floor significantly hindering the cleaning of the shower floor or drain.
- (c) *Walls and partitions.* The walls and partitions of a shower room must be smooth and impervious to the height of splash.
- (d) *Water.* An adequate supply of hot and cold running **potable** water must be provided for showering purposes.
- (e) **Water supply and maintenance.** ~~Signage. If the **The** water supplied to the showers **shall be** is not from a potable source or is from a potable source but supplied through a system that is not maintained as required in Sec. 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."~~
- (e) *Showering necessities.* (1) Unless otherwise provided by a collective bargaining agreement body soap or other appropriate cleansing agent convenient to the showers must be provided.
 - (2) Showers must be provided with hot and cold water feeding a common discharge line.
 - (3) Unless otherwise provided by a collective bargaining agreement, each occupant who uses a shower must be provided with an individual clean **bath** towel **daily**.

Section 228.323, Potable Water

To protect the safety and health of occupants, potable water must be available to employees and MOW workers occupying camp cars. Failure to provide potable water for all regular purposes, including but not limited to personal washing in camp car lavatories and showers, unnecessarily and discriminatorily poses risk of illness to camp car occupants.

In the Regulatory Impact Analysis (RIA), dated January 11, 2011 [RIN 2130-AC13], the FRA Office of Safety Analysis recognized the necessity of providing clean running water to camp cars for the washing of persons to prevent disease and illness. FRA's analysis states, in part:

"Camps cars can be especially vulnerable to GI illness outbreaks since employees reside in close living quarters and participate in a variety of activities, which can allow for easy transmission of organisms from person-to-person. There

is no potential for increasing personal hygiene where there is little or no running water for toilets, showers, or hand washing. Supplying toilets and clean tap water in camp cars will greatly increase the odds that employees will wash their hands after using the facilities due to the proximity of clean water to the toilet.”(See page 22, RIA)

The Regulatory Impact Analysis also acknowledges the high potential for gastrointestinal illnesses (GI) in the camp car environment, stating:

GI illnesses can be caused by organisms such as viruses, bacteria, or parasites. Depending on the organism causing the illness, people may experience stomach cramping, fever, vomiting, and/or diarrhea for several hours up to several weeks. GI illnesses caused by norovirus (i.e., gastroenteritis, also often referred to as the “stomach flu”) is a common cause of outbreaks in camp settings. The incubation period for norovirus (the time from exposure to the virus to symptom onset) is typically 12 to 48 hours. Affected persons typically have symptoms consisting of diarrhea, vomiting, low-grade fever, and/or stomach cramps for 1 to 2 days. There are three common ways for micro-organisms to penetrate the human body: (1) hand-to-mouth is the most common way to spread disease, and occurs during eating, drinking, and smoking; (2) contaminated organisms could easily enter the body as we breathe aerosolized particles or contaminated dust; and (3) skin contact with contaminated organisms occurs through cuts, scratches, or penetrating wounds, and can enter the body through the surfaces of the eyes, nose and mouth. (See RIA page 11)

The FRA Regulatory Impact Analysis also acknowledges the RSIA mandate that potable water be provided to camp cars:

*“The RSIA requires railroads to provide **potable water** in camp cars if they are provided as sleeping quarters to covered personnel. This proposed section sets forth requirements to ensure that the water provided to the occupants of camp cars is safe. Paragraph (a) of proposed § 228.323 is akin to part 228, appendix C, paragraph 5.” (See RIA, page 26) (Emphasis added)*

BMWED does not agree with FRA’s assertion that “Paragraph (a) of proposed § 228.323 is akin to part 228, appendix C, paragraph 5.” Paragraph (a) of proposed § 228.323 is starkly different from part 228, Appendix C, paragraph 5. Paragraph 5 of Appendix C includes the requirement that potable water “be adequately and conveniently provided to all employees for drinking, **washing of the person**, cooking,....” Proposed § 228.323 inexplicably omits “washing of the person” in paragraph (a). This must be corrected in the final rule.

OSHA sanitation standard § 1910.141, which FRA used as a reference in the development of the NPRM, defines “potable water” as follows:

§ 1910.141(a)(2): “**Potable water** means water which meets the quality standards prescribed in the U.S. Public Health Service Drinking Water Standards, published in 42 CFR Part 72, or water which is approved for drinking purposes by the State or local authority having jurisdiction.”

When Congress enacted Section 420 of the RSIA, it added the requirement 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. There can be no doubt that in enacting Section 420 of the RSIA, it was the intent of the Congress that “potable water” as defined in § 1910.141(a)(2) be adequately and conveniently supplied to all camp car lavatories and showers for washing of the person. Had Congress intended to exclude camp car lavatories and showers from the potable water requirement of Section 420 of the RSIA, they would have explicitly done so. However, they did not.

The maintenance of way work environment, by its very nature, is dirty. Maintenance of way workers and their clothing are routinely subjected to heavy soiling and contamination from carcinogens such as creosote, solvents, oils, herbicides, grease, fuel, dusts, dead animals and animal excrement, and whatever additional chemicals and contaminants have sloshed out of freight containers onto the railroad right of way. Failure to provide potable water for all regular purposes, including but not limited to personal washing in camp car lavatories and showers, unnecessarily and discriminatorily poses risk of illness to camp car occupants.

BMWED is also on record expressing concerns to FRA about the health effects of toilet discharge from railroad conveyances along the right-of-way, such as wastes discharged from Microphor® style toilets installed in thousands of locomotives and passenger cars nationwide. MOW workers seldom if ever have access to potable water for personal washing in the field. MOW workers must usually wait until they leave the job site at the end of the day to gain access to potable water and soap to remove heavy soil and contaminants from their person and their clothing. To protect safety and health, potable water for personal washing, bathing, oral hygiene purposes and food preparation and clean up must be provided to MOW workers in camp car lavatories, showers, and food preparation and service areas.

To safeguard the safety and health of camp car occupants, each potable water system must be drained and flushed with a disinfecting solution at least once every 90 days by a person properly trained, qualified and designated by the employer.

BMWED proposes the following revisions to select subsections of proposed §228.323, Potable water:

- a) *General requirements.* (1) Potable **hot and cold running** water shall be adequately and conveniently provided to all occupants of a camp car for drinking, **washing of the person,** personal oral hygiene, cooking, washing of foods, washing of cooking or eating utensils **and surfaces,** and washing of premises for food preparation or processing.

- b) *Potable water source.* (1) If potable water is provided in bottled form, it shall be stored in a manner recommended by the supplier in order to prevent contamination **or spoilage** in storage. **Bottled water shall not be provided as a substitute for the hot and cold running potable water required to be supplied in lavatories, showers, and sinks under this Subpart E for the washing and bathing of the person, personal oral hygiene, cooking, washing of foods, washing of cooking or eating utensils and surfaces, and washing of premises used for food preparation or processing.**

- (5) *Training.* Only a trained individual is permitted to fill the potable water systems. Each individual who fills a potable water system shall be **properly** trained, **qualified and designated by the employer** in –

- (6) *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 **and an accurate and legible copy posted in a conspicuous location accessible to the camp car**

occupants. When the connection is terminated, **an accurate and legible** 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.

c) *Storage and distribution system –*

(4) *Flushing.* Each potable water system shall be drained and flushed with a disinfecting solution at least once every ~~120~~ **90** 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 **and an accurate and legible copy posted in a conspicuous location accessible to the camp car occupants.** **An accurate and legible** copy of each of these records shall be sent to a centralized location for the railroad and maintained for one year.

(5)(ii) Total Coliform. Remove the system from service, drain and flush system, resample the system, ~~and then return the system to service~~ **and do not return the system to service until a satisfactory result on the test of the samples is obtained from the laboratory.**

Section 228.325, Food Service in a Camp Car or Separate Kitchen or Dining Facility in a Camp

To protect the safety and health of camp car occupants from water-borne bacteria, viruses, and putrefied kitchen wastes, BMWED proposes the following new subsections

be added to § 228.325(c):

(c)(4)(iii) All kitchen area camp car sinks used for food washing and preparation and all kitchen area floor drains shall be connected to a public sewer where available and practicable, unless the car is equipped with a holding tank that is emptied in a sanitary manner.

(c)(4)(iv) The sewage disposal method must not endanger the health of occupants.

(c)(4)(v) For kitchen area sinks and floor drains identified in § 228.325 (c)(4)(iii) connected to a holding tank, the tank must be constructed in a manner that prevents vermin from entry and odors from escaping into any camp car.

Section 228.327, Waste Collection and Disposal

To reduce odor, aid the removal of wastes, and assist in the maintenance of sanitary conditions, § 228.327(c) should be amended to include a requirement for “durable plastic bag trash receptacle liners.”

Section 228.329, Housekeeping

The cleanliness of camp cars is not contingent upon “the nature of the work performed by the occupants of the camp car.” Camp cars are required to be clean, safe, and sanitary. The cleanliness of camp cars has nothing whatsoever to do with the “nature of the work performed by the occupants of the camp car,” just as the cleanliness of a person’s home has nothing to do with that person’s occupation. MOW workers are not performing MW work in camp cars, therefore the nature of the work they perform has no impact on the requirement that camp cars be maintained in a clean, safe, and sanitary condition.

BMWED proposes the following revisions to §228.329(a)

A camp car must be kept clean to the extent allowed by the nature of the work performed by the occupants of the camp car., healthful and sanitary in accordance with this Subpart E. Rail carriers and their employees share the obligation to keep the camp car facilities clean and in good care. This shall be construed to mean that rail carriers are responsible for the regular and

thorough cleaning of all camp car facilities, while employees shall use good housekeeping practices.

Section 228.333, Repairs

Timely repairs to camp car facilities are necessary to maintain safe, healthful and sanitary conditions. BMWED proposes that the current reference to “72” hours in the first sentence of § 228.333 be struck and replaced with “24” hours. Non-compliant and defective conditions such as, but not limited to, damaged screens, broken stairway treads, broken railings, inoperable or defective lighting, broken glass, inoperable windows/doors, etc. pose potential risks to the safety and health of camp car occupants. Conditions such as inoperable windows and damaged screens can also affect the occupant’s ability to obtain restful sleep. Therefore, except as otherwise provided in § 228.333, non-complying conditions must be repaired within 24 hours.

Camp car occupants and employee labor organizations representing camp car occupants should have the right to provide “good-faith” notice to the employer of any non-compliant condition, and that condition should likewise be repaired within 24 hours. It makes little sense to require camp car occupants or employee labor organizations representing camp car occupants to file a formal complaint with FRA, have FRA schedule and conduct an inspection, have FRA issue a notice of non-compliance to the employer and then give the employer 72 hours to repair the non-compliant condition or cease use of the camp car as a sleeping quarters. Such a convoluted process is counterproductive and unnecessarily exposes camp car occupants to potentially dangerous and unhealthful conditions for prolonged periods.

BMWED proposes the following revisions to §228.333, Repairs:

A railroad shall, within ~~72~~ **24** hours after **receiving a good faith notice from a camp car occupant or an employee labor organization representing camp car occupants or** notice from the Federal Railroad Administration of noncompliance with this subpart, correct each non-complying condition on the camp car or cease use of the camp car as sleeping quarters for each occupant. In the event that such a condition affects the safety or health of an occupant, such as, **but not limited to, water, cooling, heating, or eating facilities, sanitation issues related to food storage, food handling or sewage disposal, vermin or pest infestation, electrical hazards, etc.,** the railroad must immediately upon notice provide alternative arrangements for housing and providing food to the employee or

MOW worker until the condition adverse to the safety or health of the occupant(s) is corrected. **As used in this section “immediately” means prompt, expeditious and without delay.**

Miscellaneous Items to be Addressed in the Final Rule

- The NPRM uses the terms “must” and “shall” seemingly interchangeably. BMWED suggests that the Final Rule replace the term “must” with the term “shall” for consistency and clarity purposes.
- To protect the safety and health of camp car occupants from fire, smoke and carbon monoxide, each camp car must be equipped with a portable fire extinguisher(s) meeting the requirements of 29 CFR §1910.157, a fire detection system meeting the requirements of 29 CFR 1910.164, and permanently wired, with battery backup, smoke detector(s) and carbon monoxide detector(s).
- To protect the safety and health of camp car occupants from severe storms, each camp car must have a permanently wired, with battery backup, emergency alert weather radio.
- To protect the safety and health of camp car occupants, each camp car must be required to display emergency evacuation instructions, as well as directions, address and phone number of the nearest emergency medical facility, specific to the housing location of the camp cars.
- Non-potable water spigots installed externally on or near camp cars for industrial use or fire prevention must be each marked with a sign, visible to the user at the spigot being used, bearing a message to the following effect: “Non-potable water. Not suitable for human consumption. Do not drink the water.”
- Congress correctly recognized the impotency of the current FRA “guidelines” and the limited effectiveness of individual and varying state laws. Sec. 402 of the RSIA expresses the clear intent of Congress “to protect the safety and health of any employees and individuals employed to maintain the right of way of a railroad carrier that uses camp cars...” Congress would not have mandated the Secretary of Transportation to coordinate with the Secretary of Labor in the development of FRA camp car regulations absent the ongoing “market failure” of Norfolk Southern to address safety, health, and sanitation issues related to camp cars.

- The Final Rule must be substantially more protective than the current FRA “guidelines for clean, safe and sanitary.” The NPRM makes significant progress in some areas, and is substantially deficient in other areas. It is these areas of substantial deficiencies where BMWED has concentrated its comments and offers necessary and common sense solutions.
- The Final Rule must require potable hot and cold running water in all lavatories, sinks, and showers. The NPRM is severely deficient in this regard. FRA must not allow the use of non-potable water for the washing of persons, nor should camp car occupants be expected to shower, wash or bath with bottled water. Congress was specific in its mandate that potable water be supplied to all camp cars. OSHA regulations specifically prohibit the use of non-potable water for bathing and washing of persons under 29 CFR §1910.141. NS has used camp cars for decades and there is ample and compelling historical evidence¹ that most NS camp cars were maintained in deplorable and unhealthful condition until several states stepped in to fill the federal regulatory void.
- There are no technological or mechanical barriers to NS providing potable water to all camp car lavatory and shower facilities. There are only a limited number of yards and sidings that can accommodate camp cars on the NS system. Potable water for camp cars can be readily obtained at each such location by tapping into existing municipal water lines or by tapping into certified underground sources. In the unlikely event that municipal and ground water sources of potable water are not available at a particular location, NS has the option of using and maintaining on-property potable water storage tanks, moving the cars, or providing alternative arrangements for housing and providing food to affected employees and MOW workers. There is no feasibility argument, no moral argument, and no health & safety argument to justify a federal regulation which allows non-potable water to flow from camp car taps used for washing and bathing of persons or clothing. Federal OSHA regulations (29 CFR § 1910.141) already prohibit the use of non-potable water for the washing of persons. FRA must not go backwards in this regard. FRA must require potable water in camp car lavatories and showers to fulfill its Congressional mandate to provide “potable water and other features to protect the health of employees.”

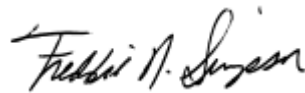
¹ View 2007 camp car video uploaded by TeamsterPower on September 22, 2007 at <http://www.youtube.com/watch?v=Ds7tmYKhKIU>. BMWED has on file scores of photographs and employee statements evidencing similarly deplorable camp car conditions from throughout the NS system; however, BMWED has purposely chosen not to embarrass NS by posting such additional evidence to the public docket with these comments.

- The Final Rule should include a requirement that a representative of the employee labor organization representing a class and craft of camp car occupants be provided an opportunity to accompany a FRA inspector during a camp car inspection. The OSH Act gives the workers' labor representative the right to accompany the OSHA inspector during inspections. The representative is chosen by the union (if there is one) or by the employees, never by the employer. Workers have a right to talk privately to the OSHA inspector on a confidential basis whether or not a workers' representative has been chosen. Workers are encouraged to point out hazards, describe accidents or illnesses that resulted from those hazards and relate past worker complaints about hazards. Workers are also encouraged to inform the OSHA inspector if working conditions are not the same as usually exist in the workplace. (See OSH Act Section 8 and 29 CFR 1903.8) The Final Rule should include a similar provision granting the workers' representative the right to accompany an FRA inspector conducting a camp car inspection.
- All camp car locations must be adequately drained, graded, and rendered free from depressions that pose a tripping hazard or allow water to collect. Camp car locations shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water. The discharge of "gray water" from camp car lavatories and showers shall be prohibited unless permitted by local laws and ordinances; however, in no case shall "gray water" from lavatories and showers be discharged closer than 200 feet of any camp car. Camp cars shall be located so the drainage from and through the location will not endanger any domestic or public water supply.
- The recognized representatives of camp car occupants must be notified any time a petition is filed with FRA for approval of camp car locations not meeting the distance requirements under proposed § 228.102. BMWED suggests the following revisions to § 228.103(d):
 - (d) A petition filed under this section must contain a statement that the petition has been served on the recognized representatives of the railroad employees **and MOW workers** who will be utilizing the proposed sleeping quarters, together with a list of the employee **and MOW worker** representatives served.
- CSXT railroad, which operates in the same geographical area as NS, eliminated the use of camp cars almost twenty years ago and houses MOW workers exclusively in hotels/motels. Every other Class I Railroad in the United States,

except NS, also eliminated the use of camp cars to house MOW workers. The Final Rule should prohibit the introduction or reintroduction of camp cars on any property not currently utilizing same as of January 3, 2011. The Final Rule should also include a sun set clause that prohibits the use of camp cars 5 years after promulgation of the Final Rule.

BMWED appreciates this opportunity to provide these comments to the docket. We respectfully request FRA to incorporate these comments into the Final Rule to protect camp car occupants and provide them an opportunity for restful sleep free from noise under the control of the carrier; to protect them against hazards related to the switching and humping of hazardous materials in the vicinity of camp cars; and to provide for safe, clean and sanitary conditions with indoor toilet facilities, potable water, and other features to protect the health and safety of camp car occupants as mandated by the United States Congress and the RSIA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Freddie N. Jensen". The signature is written in a cursive style with a prominent initial "F".

President