mens from the carpet, taking two specimens from the center area and two specimens from each side area. The cut shall not be nearer than 6" from the outer edges of the carpet. Die cut the specimens, with the foam side against the cutting die. Weigh each specimen to the nearest 0.01 g.

Using an electric carving knife and supporting guides, separate the foam carpet backing by cutting at the line where the textile components meet the foam component. Cut as closely as possible without damaging the carpet-backing components. Put aside the slabs of foam for future use. Remove the remaining foam from the carpet backing by brushing it with a stiff wire-bristled brush. Weigh each resulting carpet specimen to the nearest 0.01 g.

Calculate the weight of the foam for each specimen as the difference between the total weight of the carpet with foam backing, and without foam backing. Report the average of the six specimens as the weight of the foam.

To convert grams to ounces per square yard, calculate as follows:

Average specimen weight in grams
$\times 81 \div 28.35 = \text{oz./sq. yd.}$

Subsection 5 Thickness: Mark the foam cut from each specimen for identification. Using a single determination, measure the total thickness of each specimen to the nearest 0.001". The thickness gage shall have a circular presser foot with a diameter if 1.129"±.001". The presser foot shall be allowed to exert a pressure of 100 g/sq in. The load shall be applied slowly without impact and the thickness shall be read immediately. The average of six readings shall be reported as the thickness of the foam.

Subsection 6 Density: The specimens measured for thickness shall then be weighed in grams to the nearest 0.01 g. Convert to pounds by multiplying by 0.002205. Redetermine the thickness in inches and obtain the volume in cubic feet by multiplying 4"×4"×thickness in inches×0.0005787. Then:

Density = weight in pounds ÷ volume in cubic feet

Subsection 7 Compression Set: Cut each 4" x 4" foam specimen into four 2" x 2" specimens. Pile up the 2" x 2" specimens, skin side to cut side, until the pile has a total thickness of approximately 1". Prepare two such piles. Using a fixture consisting of two parallel plates that are larger than 2" x 2", place the plied specimens in the fixture. Apply a load of 100 g/sq in and measure the thickness. Call this the original thickness, OT. Compress the specimens to 50 percent of the OT and hold. Place the fixture with its compressed specimens into a previously preheated-to-temperature circulation air oven at 158°±2° F. Keep in oven for 22 hour±½ hour. Remove from oven, unclamp immediately, and remove the specimens from the fixture. After a 5±½ hour recovery period remeasure the thickness of the plied specimens under a load of 100 g/sq in. Call this the final thickness, FT. Then

Compression set,
$\text{percent} = (OT - FT) \div OT \times 100$

Do test on both sets of specimens and report the average. If the plies adhere after the oven treatment do not separate before remeasuring.

Subsection 8 Compression Indentation Resistance: Using 2" x 2" foam specimens that were not used in the compression set test, form piles of plied specimens, skin side to cut side, approximately 1" thick. Place in a compression tester and, with a circular presser foot 1.129"±0.001" in diameter measure the thickness of the plied specimens under a load of 100 g/sq in. Then compress the specimens to 75 percent of this measured thickness and immediately determine the load required to compress the specimen this amount. This reading, exclusive of the 100-gram preload, is the compression resistance of the foam. Using a second set of specimens, repeat the test to obtain a second set of values. Both values shall be averaged and the result reported as the compression resistance.

Subsection 9 Delamination Strength: From the original sample cut a 2" x 6" strip lengthwise of the carpet, one from the center, and one from each side area. Cover the foam side with self-adhering tape. Separate the foam from the carpet for approximately 1½" at one end of the 2" wide ends. A tensile tester equivalent to that described in FTMS No. 191, Method 5100 shall be used. Set the clamps 1" apart, clamp the loose end of the attached foam in the lower clamp and the loose end of the attached carpet in the upper clamp. The clamps must be as wide as the strips that are being gripped. Start the tester at a speed of 12" per minute and record the five highest readings required to strip the attached foam from the carpet. Omit first peak. Test the three specimens, average the results, and divide by two to determine the load in pounds per inch of width. If the foam tears rather than delaminates before five peaks have been recorded, obtain the average from the recorded peaks, even if there was only a single peak.

Subsection 10 Accelerated Aging.—Heat Aging: Do not condition the specimens prior to testing. Place a 2" x 4" specimen of the foam attached to the carpet in a circulating air oven at 275° F for 24 hours. Allow specimen to cool to room temperature. The cushion is to be flexed 180° at a uniform rate, foam side out, over a 1" diameter mandrel, completing the bend within 3 to 5 seconds. Cushion shall remain flexible and serviceable.

Subsection 11 Ash Content: Test shall be made on the foam only according to ASTM D 297 under Muffle Furnace Method.

APPENDIX

As an aid in correlating U.S. customary units to metric units, conversion factors for units in this bulletin follow. They are in accordance with the International System of Units (abbreviated SI).

1 inch = 2.54 centimeters
1 ounce = 28.35 grams
1 pound (mass) = 453.6 grams
1 pound (force) = 4.448 newtons
1 square yard = 0.8361 square meter
1 cubic foot = 0.02832 cubic meter
1 pound force per inch = 175.1 newtons per meter
1 pound per square inch (psi) = 6.895 kilopascals
1 gram per square inch = 15.20 pascals
1 ounce per square yard = 33.91 grams per square meter
1 pound per cubic foot = 16.02 kilograms per cubic meter

$T_c = (t_f - 32)/1.8$

Where
t_c = temperature in degrees Celsius
t_f = temperature in degrees Fahrenheit

[FR Doc. 78-19896 Filed 7-18-78; 8:45 am]

[3410-11]

Title 36—Parks, Forests and Public Properties

CHAPTER II—FOREST SERVICE, DEPARTMENT OF AGRICULTURE

PART 211—ADMINISTRATION

Appeal Procedures

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This action deletes rules of procedure of the Board of Forest Appeals. The functions of the Board of Forest Appeals have been combined with those of the Department of Agriculture's Board of Contract Appeals.

EFFECTIVE DATE: June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Don D. Seaman, Range Staff, Forest Service, USDA, P.O. Box 2417, Washington D.C. 20013, 703-235-8139.

SUPPLEMENTARY INFORMATION: The functions of the Board of Forest Appeals, now obsolete, have been combined with those of the Department of Agriculture's Board of Contract Appeals, 7 CFR, Part 24 (30 FR 30912, August 26, 1974). The Rules of Procedure of the Board of Forest Appeals remained in effect for cases pending on September 25, 1974, the effective date of 7 CFR, Part 24 (Section 211.23 of this Title, 39 FR 30917, August 26, 1974).

Final administrative decisions have been made in all cases pending before the Board of Forest Appeals on September 25, 1974. The Secretary of Agriculture has terminated the Board of Forest Appeals by Secretary's Memorandum No. 1889, Revised, May 17, 1978. Since the Rules of Procedure are now obsolete, no purpose would be served in obtaining public comment pursuant to 5 U.S.C. § 553. Accordingly, Subpart C of Part 211, 36 CFR, Chapter II is deleted.

(Sec. 1, 30 Stat. 35, as amended (16 U.S.C. 551); 50 Stat. 56 (7 U.S.C. 1011(f)); 5 U.S.C. 301)

Dated: July 14, 1978.

JAMES NIELSON,
Acting Assistant Secretary.

[FR Doc. 78-19947 Filed 7-18-78; 8:45 am]

[4310-84]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5645]
[F-13962]

ALASKA

Withdrawal for Customs and Immigration Station

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

SUMMARY: This order withdraws 10 acres of public lands for use of the Bureau of Customs, Department of the Treasury, and the Immigration and Naturalization Service, as a customs and immigration station on United States-Canadian border, between Alaska and Dawson, Yukon.

EFFECTIVE DATE: July 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Eldon G. Hayes, 202-343-8731.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751, 43 U.S.C. 1714), it is hereby ordered as follows:

1. Subject to valid existing rights, the following described land is hereby withdrawn from settlement, sale, location, or entry, under all of the general land laws including the mining laws (30 U.S.C., Ch. 2), and reserved as an administrative site for the maintenance of the Poker Creek Customs Station under the jurisdiction of the Bureau of Customs, Department of the Treasury, for a period of 20 years:

COPPER RIVER MERIDIAN

A tract of land in protracted sec. 25, T. 27 N., R. 22 E., described as follows:

Beginning at the intersection of the Alaska-Canada international boundary with the centerline of the road between Boundary, Alaska and Dawson, Yukon at approximate latitude 64°05.1" N., longitude 141°00" W.; thence south along the international boundary 330 feet to corner No. 1; thence west 660 feet to corner No. 2; thence north 660 feet to corner No. 3; thence east 660 feet to corner No. 4 on the Alaska-Canada international boundary; thence south on said international boundary 330 feet to the point of beginning.

The area described contains approximately 10 acres.

2. The withdrawal made by this order shall be superior to, but shall not otherwise affect the withdrawal of a 60-foot strip along the Alaska-Canada border established by Presidential Proclamation on May 3, 1912 (37 Stat. 1741).

Dated: July 6, 1978.

GUY R. MARTIN,
Assistant Secretary of the Interior.

[FR Doc. 78-19891 Filed 7-18-78; 8:45 am]

[4910-06]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. HS-2, Notice No. 6]

PART 228—HOURS OF SERVICE OF RAILROAD EMPLOYEES

Construction of Railroad Employee Sleeping Quarters; Final Rules

AGENCY: Federal Railroad Administration (FRA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document issues final rules under which the Federal Railroad Administration (FRA) will consider whether proposed sites for the construction or reconstruction of sleeping quarters for railroad employees subject to the Hours of Service Act are "within or in the immediate vicinity * * * of any area where railroad switching or humping operations are performed." The rules are responsive to section 2(a)(4) of the Hours of Service Act (hereafter act), as amended by section 4(a) of the Federal Railroad Safety Act of 1976, which prohibits the construction or reconstruction of quarters for such employees within the immediate vicinity of switching and humping. The rules establish which prospective sites are subject to FRA approval, outline the information required with requests for site approvals, and indicate the general policy considerations which FRA applies in ruling on requests for such approvals.

EFFECTIVE DATE: These rules shall become effective August 18, 1978. However, carriers which have filed petitions for approval pursuant to the interim rules (41 FR 53028 (1976)) may elect to proceed wholly under the interim rules or these permanent rules.

FOR FURTHER INFORMATION CONTACT:

Lawrence I. Wagner, Office of Chief Counsel (RCC-30), Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-8836.

SUPPLEMENTARY INFORMATION: Section 2(a)(4) of the Hours of Service Act, as amended (45 U.S.C. 62(a)(4)), prohibits the construction or reconstruction of railroad employee sleeping quarters "within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary of Transportation) of any area where switching or humping operations are performed." This provision of law became effective on July 8, 1976. (See 94-348, 90 Stat. 818.) FRA administers and enforces the Hours of Service Act under section 6(f)(3)(A) of the Department of Transportation Act (45 U.S.C. 1655(f)(3)(A)) and a delegation from the Secretary of Transportation (49 CFR 1.49(d)).

On December 3, 1976, FRA published in the FEDERAL REGISTER interim rules for making the required determinations (41 FR 53028). A minor amendment to the interim rules was published on June 1, 1977 (42 FR 27895). A notice of proposed rulemaking (NPRM) with respect to permanent rules was also issued on December 3, 1976 (41 FR 53070). The extended deadline for written comments was February 17, 1977 (42 FR 2994; January 14, 1977). A public hearing was convened on March 1, 1977, to receive additional oral and written comments (see 42 FR 5387; January 28, 1977).

All comments, both written and oral, have now been evaluated by FRA. In addition, FRA has acquired considerable experience through the application of the interim rules, which closely parallel those set forth in the NPRM. FRA has now decided to issue final rules responsive to the mandate of the Hours of Service Act which adopt an approach essentially similar to the proposed rules but which have been refined in certain significant respects.

DISCUSSION OF MAJOR COMMENTS AND MODIFICATIONS OF PROPOSED RULES

PRELIMINARY DISCUSSION

One commenter objected to FRA's determination that this rulemaking does not require an evaluation of the regulatory impact of the proposed rules in accordance with the policies of the Department of Transportation as stated in the FEDERAL REGISTER (41 FR 16200; April 16, 1976), since the issuance of these regulations is required by statute. The same commenter also questioned the apparent absence of consideration of environmental impact required by section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). Two commenters objected to the conclusion that the economic consequences of this rule are limited and therefore, do not require an economic impact statement.

The basic position stated by the commenter with respect to the Secretary's regulatory impact policies is that, notwithstanding the exemption of regulations expressly mandated by statute, the only instance in which a statutorily mandated rulemaking pro-

ceeding is exempt from the impact evaluation procedure required by the Secretary's policies is where the agency has no discretion in issuing the rules.

The FRA does not agree entirely with this narrow interpretation of the policies established by the Secretary. The purpose of the regulatory impact evaluation required by the Secretary's policies is to assure that all of the potential costs and benefits of a proposed rulemaking action are adequately assessed and considered by the agency in an effort to improve the effectiveness of the proposed regulation and minimize unnecessary burdens on affected parties. Where a statute requires the issuance of a rule on a particular matter, the Secretary does not have the discretion to withhold rulemaking action even if it were shown that the possible benefits of the rule would not outweigh its potential costs. The result or impact of the rulemaking at hand is, in effect, prescribed by law, while FRA is granted discretion only as to how the prescribed result of the rule might be most reasonably achieved through regulation. Neither FRA nor any commenter has been able to identify any approach to fulfilling the mandate of the statute which would be less burdensome than the approach embodied in these rules. The statute requires the Secretary to implement a direct prohibition rather than to fashion means of achieving a more general goal. Accordingly, FRA has attempted to examine the potential alternate means of fulfilling the statutory mandate and has opted for an administrative mechanism which will facilitate the implementation of the statutory prohibition at the least possible cost to the industry. As reflected in the preamble to the NPRM and in this preamble, FRA has considered and rejected other approaches to distance limitation as well as different noise levels and descriptors. A more complete analysis of the kind which would be undertaken in the absence of a specific statutory mandate is not appropriate in this context.

With respect to consideration of the environmental impact of the proposed regulations, the FRA has performed a general environmental assessment of the potential effects of safety regulatory actions and has determined that, as a class, they do not constitute major Federal actions significantly affecting the quality of the human environment. Furthermore, the FRA does not believe that the particular rules included in this document, as distinguished from the statutory mandate itself, will have a foreseeably significant impact upon the quality of the human environment. The commenter suggests that increased waste disposal requirements might arise in sparsely populated areas and that this effect of the rules should be taken into consideration. This commenter does not offer any evidence that this possible impact exists under the interim rules or would exist under permanent rules to such an extent that the quality of the human environment will be significantly impacted. Nor does the substantive law here implemented permit FRA to waive the statutory prohibition based on environmental considerations.

The commenter also criticized the FRA for not having evaluated the economic impact of this regulation. DOT order 2050.4 defines what actions are to be considered major proposals for purposes of determining whether an inflationary impact analysis must be undertaken pursuant to Executive Order 11821. For purposes of regulations which impact upon a single industry, the threshold level at which a particular action is to be considered "major" is an action which will result in increased expenses of $50 million in 1 year, or $75 million in any 2 consecutive years. The commenter stated that the additional cost to the railroads due to these regulations will exceed the threshold due to the increased use of commercial facilities, purchase price of land, and transportation costs necessitated by these regulations.

Again, the regulations merely implement the congressional mandate. Since the regulations do not go beyond the congressional mandate, and since no device has been proposed for fulfilling that mandate which would be faithful to the law and yet be less costly, it cannot be fairly asserted that the issuance of those rules will result in any economic impact.

The final rule permits the approval of sites under certain special conditions similar to those raised by the commenter. Through these provisions, FRA believes that the rules provide the broadest degree of flexibility which is possible within the meaning and intent of the statutory requirement. This flexibility should alleviate the more burdensome or costly impacts.

SECTION-BY-SECTION ANALYSIS

Section 228.101(a). One commenter suggests that all sleeping quarters now in use be removed a "safe distance" from areas where switching or humping operations are preformed. The only possible basis for requiring the relocation of existing facilities would be section 2(a)(3) of the Hours of Service Act (45 U.S.C. 62(a)(3)), which prohibits any carrier from providing sleeping quarters for employees which do not afford such employees "an opportunity for rest, free from interruptions caused by noise under the control of the railroad, in clean, safe, and sanitary quarters". Nothing in the legislative history of this provision suggests a congressional intent to require a wholesale relocation of existing facilities, nor would known safety considerations support that result.

Since the Decatur accident of July 19, 1974 (discussed below) and another major explosion in a Houston, Tex. yard 2 months later, measures have been instituted by FRA, the Department of Transportation and the railroads which have already had a significant benefical effect. See FRA Emergency Order No. 5, 39 FR 38230 (1974); Specifications for Pressure Tank Cars, 42 FR 46306 (September 15, 1977). Indeed, since those two incidents there has not been a single inadvertent release of flammable compressed gas from a railroad tank car during a switching operation. While absolute safety is not possible in any field of endeavor, FRA does not believe that it was the intent of Congress to require that existing sleeping quarters be moved based on existing risks related to the switching of hazardous materials. Further, FRA site visits to existing facilities since publication of the NPRM in this docket have disclosed that noise levels can often be kept within acceptable limits by use of proper construction techniques and/or insulating materials even where quarters are quite close to railroad operations. FRA will continue to monitor conditions in existing facilities to insure that they comply with the law.

Another commenter argued that sleeping quarters for employees engaged in the communication of train orders, such as operators and train dispatchers, should not be included under the coverage of the rules. This contention was based on a belief that employees covered by section 3 of the act are not subject to section 2(a) as it applies to "employees" defined in sections 1 and 3A. It is clear that the "operator, train dispatcher, or other employee" referred to in section 3 of the act (45 U.S.C. 63) is an "employee" for purposes of the statute generally, although some of the subject matter of section 1 is not applicable to such an employee. The provisions of section 2(a) (3) and (4) purport to apply to employees covered by the law generally; and there is no basis in the legislative history for inferring a more limited interpretation.

Section 228.101(b) defines "immediate vicinity" to mean the area within one-half mile of switching or humping, except as determined otherwise by FRA under these rules. One commenter claimed that Congress did not intend for FRA to place any specific distance limitation on the location of facilities. This contention was based on the House committee report on the 1976 legislation, which does not specify a mileage limitation on the location of sleeping quarters and states an intent to give the railroads "some

flexibility" when constructing lodgings. H.R. Rep. No. 1166, 94th Cong., 2d. Sess. 11 (1976). The commenter suggested that "immediate vicinity" be defined to denote any area where an explosion occurring during switching or humping operations would cause death or injury to employees inside sleeping quarters. The railroads would then furnish the FRA the basis for their conclusion that their facilities are located in accordance with these principles. It is difficult to understand how this approach differs from the application process outlined in § 228.103, unless it is intended that FRA should accept without active review the conclusions of the carrier. Certainly FRA, as the administering agency, is responsible for making the judgment called for by the statute.

Another commenter suggested that FRA adopt an additional rule limiting "immediate vicinity" to no farther from tracks on which switching or humping operations are conducted than the closest home, business, school, or other frequently occupied community facility. FRA is not oblivious to the irony that the policy of the statute appears to require railroad employee sleeping quarters to be at a greater distance from switching operations than some homes and schools. However, accepting the evident congressional judgment that the level of risk from hazardous materials incidents is sufficient to warrant the location of newly-constructed quarters outside the zone of danger from a major open-air detonation or similar event, FRA has no practical alternative.

Distances of one-third mile, 2,000 feet, and 1 mile were offered as alternative definitions of "immediate vicinity" by different commenters. However, none of the commenters offered any evidence to support their recommendations. FRA believes that the proposed standard of one-half mile is fully warranted by available information concerning the major occurrences in railroad yards during the current decade.

One commenter disputed the vapor cloud phenomenon discussion in the NPRM and its applicability to the Decatur, Ill. accident on the basis that none of the fatalities occurred to persons who were inside the dormitory. However, the National Transportation Safety Board report states that most of the seriously injured employees were either in the dormitory or adjacent to it. Report No. NTSB-RAR-75-4 (1974). The fact that 316 persons other than railroad employees suffered "burns, lacerations, contusions, anxiety, eye injuries, and concussions" is also significant with respect to the level of hazard to persons at some distance from the point of ignition. The NTSB report goes on to say that "the location of the dormitory subjected those employees to known hazards". Most likely, the existence of the quarters in that particular location contributed to the congregation of persons and the increased exposed population. Many of the severe injuries suffered by the 230 residents of East St. Louis and 235 residents of Houston (similar vapor cloud detonation occurrences in 1972 and 1974, respectively) resulted from structural damage and heat effects at some distance from the point of ignition. Since vapor clouds may spread for hundreds of feet before encountering a source of ignition, any potential sleeping quarters site within one-half mile could be affected, depending on the overall circumstances.

In support of an absolute 1-mile limitation, one commenter urged that the nearly 5 percent of large fragments that fall between one-half and 1 mile in a major explosion or detonation present an unacceptable risk to a person sleeping in that area. See NPRM, 41 FR 53071. FRA does not believe that the gain in real safety at this distance adequately justifies such a determination. Nor would the legislative history of the provision appear to provide any support for the proposition that Congress anticipated a rule of such rigidity.

Section 228.101(c) (1), (2). Subparagraphs (1) and (2) of § 228.101(c) define the terms "construction" and "reconstruction". Since the actions prohibited by the statute are integrally related to the types of facilities covered, comments addressing both issures are discussed here.

One commenter suggested that a new section be added to the regulation which would prohibit the railroads from locating any movable sleeping quarters within an unsafe distance of railroad yards. The commenter amplified this suggestion to include not only trailers and rolling stock, but also hotels and motels selected by the railroads for use by their employees. FRA did not intend placement of mobile sleeping quarters such as trailers, camp cars, or modular units to be outside the scope of these regulation. Potential hazards to employees in these facilities are no less serious than those imposed on employees housed in permanent facilities. To clarify this intent, the definition of "construction" in § 228.101(c)(1) has been expanded to include the placement of mobile or modular units. In addition, the acquisition of an existing structure for use as sleeping quarters is listed as an event clearly within the purview of the statute and these regulations.

However, the regulation of places of public accommodation such as commercial hotels and motels is beyond the scope of FRA authority under the Hours of Service Act. It is clear from the language of the act read in light of the legislative history that quarters provided in places of public accommodation under an ordinary arms-length transaction are not governed by section 2(a) (3) and (4). See H.R. Rep. No. 1166, 94th Cong., 2d Sess. 11 (1976). Of course, if a railroad acquired ownership or control of a commercial hotel or motel for the purpose of housing employees, the fact that the facility or some portion thereof was open to the public would not avoid the applicability of the Hours of Service Act and the prohibition of section 2(a)(4). In such a case, the emloyer-employee relationship would clearly be more relevant than the innkeeper-guest relationship when viewed in the light of the statute.

Concern was expressed by one commenter whether these rules would apply only to sleeping quarters constructed or reconstructed by a railroad or its agent and owned by the railroad, and not to sleeping quarters owned by others and rented by the railroad. Again, FRA does not believe that the legal or equitable ownership of newly constructed sleeping quarters is relevant to railroad employee safety. The act makes it unlawful for a carrier "to begin construction or reconstruction" of sleeping quarters which are to be provided for covered employees. It makes no difference that the carrier may act through an intermediary or that the quarters may be constructed on the property of others, so long as the carrier is acting to provide sleeping quarters. These rules are coextensive with the statute with respect to their coverage.

One commenter suggested that reconstruction be redefined to include all activity involving an expenditure of 50 percent or more of the original cost of a facility as adjusted to account for inflation. FRA believes that the replacement cost is a more realistic criterion and capable of surer application over a long period of time, since building costs do not follow overall price trends and original cost may not be available. Additionally, newer facilities may use different design and material specifications which make them not readily comparable to the original construction.

Indeed, FRA has noted in its administration of the interim rules that the phrase "more than 50 percent of the replacement cost of such facility" (Rule 1(c)(2); 41 FR 53030) is susceptible to two constructions. Specifically, "replacement cost" could be read to refer either to (1) the cost of replicating an existing structure by use of the original design and materials specifications or (2) the cost of replacing the old structure with a contemporary structure of the same capacity built according to contemporary methods with materials customarily used for such a facility at the time the expendi-

tures are commenced. FRA intended the second meaning; but it is recognized that the interim rule could be read either way. The final rule clarifies this issue by stating that the replacement cost is to be estimated on the basis of contemporary construction methods and materials and use of the existing site.

Concern was also expressed by a commenter that, under the proposed definition, a carrier could possibly stagger its expenditures over a period greater than 18 months and eventually reconstruct a new facility without FRA approval of the site. FRA agrees that the proposed definition does open an unwarranted avenue for evasion of the statutory prohibition. Accordingly, the final rule has been modified to include any work involving the expenditure of the specified amount irregardless of a fixed time period. Routine maintenance would still be excluded from the computation.

Section 228.101(c)(3) defines the term "switching or humping operations". (Since "humping" is really a method by which cars are switched, a separate definition is not provided in the regulations.) This definition provoked the greatest number and variety of comments of any provision in the proposed regulations. FRA's basic approach to defining this term has been to identify substantially all of those circumstances in which there is a potential for the occurrence of high speed impacts of cars which might result in the release of dangerous hazardous materials. Since this potential exists in many situations other than the classification yard (the area of highest risk), FRA has attempted to construct a reasonably inclusive definition.

A number of commenters remarked that the proposed definition of switching operations (§ 228.101(c)(3)) was too broad because movement of non-hazardous material cars was included. This contention was based on the belief that the act was not meant to bar construction of sleeping quarters near areas where only non-hazardous commodities are handled, assuming the criteria of section 2(a)(3) are met.

FRA agrees that primary impetus behind the enactment of section 2(a)(4) was the accident that occurred at Decatur, Ill. on July 19, 1974. As a result of an accidental release and resultant explosion of a product which occurred during the switching of hazardous materials, seven employees were killed and another 33 were injured. According to the National Transportation Safety Board: "Most of the injured employees were either in the dormitory or adjacent to it. All of those who were fatally burned were outside of the dormitory." Report No. NTSB-RAR-75-4 (July 19, 1974).

Since the commenters generally agreed that the proposed definition of switching operations was unnecessarily broad, the final rule has been modified to include only the switching of cars required to be placarded in accordance with the Department of Transportation Hazardous Materials Regulations (49 CFR 172.504). In determining whether hazardous materials cars are switched or humped within the distance for which approvals are required, the rule requires the carriers to ascertain whether such cars have been switched on the given trackage within the past 365 days. In this way, traffic is surveyed over an entire seasonal cycle. In addition, a carrier seeking to determine whether a petition should be filed must consider its plans for future use of the trackage.

FRA is aware that this approach to defining "switching operations" will mean that most operations considered "switching" under the proposed definition will also be considered "switching" under this definition. However, given the strong language of the statute it appears that little latitude exists. The Secretary is required to determine the area of significant risk around switching and humping operations. Acting under a delegation from the Secretary (49 CFR 1.49(d)), FRA has decided that enlightened determinations can be made only by examining concrete circumstances in the light of the statute's intent. Within the area of presumed risk (one-half mile), the rules requires that specific approval be sought.

The approach of the final rule goes beyond the suggestions of two commenters concerning the categories of hazardous materials which should be comprehended by the definition of "switching".

One commenter would have included only the switching of cars requiring special handling under Federal regulations. Another would have included most placarded cars, but would have excepted those containing substances such as corrosives, irritating materials, combustible liquids, class C explosives, radioactive materials, etc. FRA believes that the safety of employees would be best served by a careful examination of any situation in which placarded cars are switched within one-half mile.

However, the commenters seem correct in challenging whether the stringent requirements of the proposed § 228.105 are necessary with respect to sites within one-third mile of areas where some types of placarded cars are handled.

FRA recognizes that there may be locations where some local or industrial switching is conducted but where the most volatile or dangerous materials are not switched. Therefore, in order to assure appropriate flexibility, §§ 228.103 and 228.105 have been restructed. Section 228.103 now specifies basic requirements for petitions relating to all sites within one-half mile of switching or humping operations involving any cars required to be placarded by the Department's hazardous materials regulations. Section 228.105 now specifies additional, more stringent requirements for those proposed sites which are within one-third mile of switching which involves cars requiring special handling under the hazardous materials regulations (49 CFR 174.83(b)) or FRA emergency order No. 5 (39 FR 38230 (1974)). This refinement eliminates any unnecessarily harsh effect of the proposed one-third mile rule by assuring that the more strict features of that proposed provision will apply only where they are clearly required.

Other suggestions which would reduce the reach of the definition have been rejected. One commenter suggested that the definition include only the classification of cars by humping or flat switching and the making up of cars into trains by a yard crew for train movements, but that it not include changing the position of cars for purposes of loading, unloading, or weighing and the placing of locomotives and cars for repair. It was also suggested that the qualifying words "while enroute to the train's destination" be deleted from the exemption on movement of cars by a road locomotive.

FRA does not entirely agree with these suggestions. As stated above, assurance of safety requires that all operations which occur in a railroad yard or similar facility that have a potential for excessive speed impact or other accident involving hazardous materials be included. Yard movements of hazardous materials cars for repair or for loading, unloading, or weighing satisfy this criterion.

The definition of switching operations excludes "placing locomotives or cars in a train or removing them from a train by a road locomotive while en route to the train's destination." The purpose of the exclusion as used in this context was to except incidental picking up or setting off of cars by a train on the line of haul. As used in these rules, the exclusion is not intended to except the assembling of trains or reblocking of trains by road locomotive at a yard where switching locomotives are not available or where, for whatever reasons road power is used for switching functions. Switching operations performed by a road locomotive are not sufficiently distinct from those performed by a yard locomotive to justify their exclusion. In either situation, the potential for overspeed impacts exists. Accordingly, this language has been retained in the definition.

Another commenter suggested that the definition should include the

repair of locomotives to ensure that sleeping quarters are not placed near potential fire hazards and sources of noise. The proposed rule did include the placement of locomotives for repair within the difinition of switching. However, the central intent of the act and of these rules is to minimize the hazard to railroad employees from movements of cars containing hazardous materials and to afford employees an opportunity for uninterrupted rest. FRA has no data at this time indicating that locomotive shops and engine houses as a whole present hazards of an equivalent magnitude. In any event, in virtually every situation where a proposed site is close to such structures there will also be some operation defined as switching conducted within one-half mile of the site. FRA can then consider special circumstances related to locomotive repair in association with other relevant factors. (See revision to § 228.107(b)). Noise due to locomotive repair operations is more appropriately addressed under § 228.107, which requires an evaluation of projected noise levels from all noise sources under the control of the railroad. Any noise component resulting from repair activities would be reflected in that calculation.

Section 228.101(c)(3) has been revised to emphasize the fact that proposed sites may fall within the statute and rules by virtue of proximity to the operations of other railroads, as well as those of the carrier which proposes to undertake construction of sleeping quarters.

Section 228.101(c)(4) defines "placarded car" to mean a car required to be placarded by the Department's Hazardous Materials Regulations (49 CFR 172.504).

Section 228.101(c)(5) defines the technical noise descriptor "L_{eq} (8)". See discussion of § 228.107, below.

Section 228.103 outlines the information required to be submitted to FRA in connection with a petition for approval of any site located within one-half mile of switching or humping operations. A new paragraph (b) has been added to the section clarifying the effect of the new definition of switching operations (§ 228.101(c)(3)) on the requirement of FRA approval. In the absence of carrier records concerning traffic switched within one-half mile of the site, the rule creates a presumption that some hazardous materials are switched at the facility and that, therefore, a petition must be filed. The presumption is fully warranted by common traffic patterns in the industry. Indeed, relatively few locations exist where hazardous materials are not handled at all.

Section 228.103(c) now provides that petitions shall be filed with the Secretary of FRA's Railroad Safety Board instead of the docket clerk. This change conforms these rules to FRA's procedural rule on special approvals (49 CFR 211.55). The only other departure from the NPRM in this paragraph is a revision to subparagraph (7), which requires that the carrier's estimate of hazardous materials cars be based on a full seasonal cycle of 365 days. The rule does not specify any particular sampling technique; however, a representative sample is intended.

One commenter criticized the certification requirement (§ 228.103(c)(8)) for apparently requiring representations concerning planned utilization of trackage or construction of trackage by both the applying carrier and any other railroad with nearby property or trackage. FRA intends that a carrier be required to certify only its existing plans for utilization of trackage or the construction of new trackage. Obviously, it would be impossible for a carrier to certify information concerning the present intent of another railroad. (However, it is expected that the existence of railroad employee sleeping quarters should be an important determinant of future track location plans by a railroad.) The provision has been modified accordingly to better express this intent.

Section 228.103(d) requires that the carrier serve a copy of the petition on employee representatives and so indicate to FRA. The purpose of this provision is to assure timely comment by the principal parties who would be affected by any FRA action on the petition. (As a matter of administrative routine, FRA will notify any other interested person who wishes to be kept informed of the filing of such petitions and FRA action thereon.) One commenter suggested that more formal procedures for employee participation should be adopted. FRA will, of course, receive and consider any written protest to a petition and will provide opportunities for oral presentations in appropriate instances. However, FRA believes that the general rules of practice (49 CFR Part 211; 41 FR 54181 (1976)) provide an adequate framework for administering these approval procedures.

Section 228.105, as restructured for final issuance, specifies additional information which must be submitted and additional conditions precedent to FRA consideration of a petition for approval of a site located within one-third mile of switching or humping operations involving hazardous materials cars which require special handling. Unlike the proposed rule and interim rule, the additional requirements of this section would not apply to sites within one-third mile of trackage on which the enumerated types of traffic are not switched. This relaxation of requirements may provide additional flexibility with respect to crew change points on certain branch lines and locations where only local switching is conducted. However, no detriment to safety will result. Assuming some hazardous materials traffic is switched within one-half mile of the proposed site, FRA will still review the concrete circumstances involved under § 228.103 and may approve or disapprove the site.

Three commenters suggested that the approval procedures for construction within one-third mile be entirely deleted, arguing that the information required under § 228.103 is sufficient for evaluation purposes. FRA does not agree. Appropriate combinations of additional precautions and physical restrictions identified under § 228.105 (favorable topography, existence of barriers, soundproof construction) should be present for approval of sites which are quite close to areas of potential hazard. Moreover, under the policy of the statute a carrier should be required to exhaust all potentially feasible alternatives before proposing construction on a site within one-third mile of switching which may involve the possibility of a major hazardous materials accident. The rule as adopted addresses these concerns.

A number of commenters objected to the requirement of the proposed rule that no feasible alternate site be available "at any cost" before FRA is requested to approve a site within one-third mile. FRA is inclined to agree that commercial feasibility offers a more realistic test of the efforts of the carrier to locate the planned sleeping quarters beyond one-third mile. Therefore, the final rule has been revised accordingly (§ 228.105(a)(1)). Problems with alternate sites similar to those suggested by the commenters involving factors such as unavailability of land, isolation of facilities, limited water and sanitation capacity, etc., will be evaluated on a case-by-case basis, in conjunction with a thorough review of safety protection at the proposed site.

Two commenters claimed that the existence of adequate natural or artificial barriers by itself obviates the need for establishment of unavailability of an alternate site or for the submission of additional data. The FRA does not agree with this contention. Reliance on the existence of a barrier as the sole criterion in judging the safety of a potential construction location is not prudent. To prevent the diffusion of a toxic or flammable gas into crew quarters and to allow for unanticipated ignition sources under all conceivable circumstances, a completely effective barrier would have to enclose completely the switching operations or the quarters. Obviously, it will be necessary for the carrier and FRA to evaluate a number of other factors before reaching an informed decision.

One commenter suggested that the section on approval procedures for construction within one-third mile be expanded to include additional precautions for insuring employee safety from explosions and the escape of poisonous gases. Additionally, requirements concerning respiratory protection and minimum strength and construction of barriers would be specified under the commenter's approach.

FRA agrees that additional precautions may be appropriate in individual circumstances and that FRA should evaluate the adequacy of barriers and the need for further safeguards. However, it appears from the wide variety of circumstances encountered by FRA in administering the interim rules that such concerns are best evaluated in the context of individual petitions. The final rules indicate that it is the carrier's responsibility to consider additional safeguards prior to filing a petition (§ 228.105(a)(4)). Under § 228.107, FRA will independently review the carrier's plans and may impose specific conditions on approval of the petition.

With the restructure of §§ 228.103 and 228.105, a further editorial change has been made in § 228.105. Subparagraph (b)(4) of the proposed § 228.105 has been deleted as redundant, since §§ 228.103(c)(1) and 228.107(c) of the final rules adequately address the question of projected noise levels.

A new paragraph (b) has been added to § 228.105 stating that, in the absence of records establishing the absence of certain hazardous materials activity on the nearby trackage or adequate plans to divert such traffic from the nearby trackage in the future, approval of the site shall be subject to the additional requirements of § 228.105.

Section 228.107 covers the procedures and fundamental criteria for FRA action on petitions filed under § 228.103. In reading the final rules as a whole and this section, in particular, it should be appreciated that FRA action on any petition is, in the final analysis, discretionary. That is, compliance with the rules by a petitioning carrier will not, by itself, entitle a petitioning carrier to favorable action. If the myriad circumstances bearing on individual situations were capable of automatic quantification and application, an approval procedure would not be necessary.

The two general criteria for FRA action are set forth in paragraph (b) of § 228.107. In weighing the "material factors" which impact on those criteria (employee safety and projected interior noise), FRA will consider the information provided by the carrier, information developed by an FRA field investigation, and any information provided by other interested parties.

Subparagraph (b)(1) of §228.107 has been amended in its final form to reflect the fact that, once a site becomes subject to FRA scrutiny under these rules, FRA must consider all factors bearing on the safety of the facility. That is, FRA cannot divorce its responsiblities under section 2(a)(3) of the act (45 U.S.C. 62(a)(3)), relating to the safety of all sleeping quarters, from its responsibility under section 2(a)(4), relating to construction or reconstruction of such quarters.

Paragraph (c) of § 228.107 addresses the issue of maximum noise levels. Two commenters claimed that FRA lacks jurisdiction to promulgate noise regulations under section 2(a) of the Hours of Service Act. The purpose of addressing maximum noise levels in these regulations is to assure that FRA will not approve construction of a facility under these rules and then be forced to seek remedial action under section 2(a)(3) of the act because noise levels are excessive. Therefore, to the extent possible FRA will seek to ascertain that carrriers have made proper allowances in building design to assure that noise levels will be within limits permitting uninterrupted rest.

The purpose of specifying an objective standard which FRA will utilize in evaluating potential noise levels is to assure fairness and to encourage intelligent carrier planning. FRA recognizes that a single objective standard will fall short of producing perfect rest conditions in all settings. However, an objective maximum level for noise within the control of the carrier is necessary as a tool for administration of the act and as a benchmark for the industry.

Another commenter suggested that the noise levels should apply to all new and old sleeping quarters, not just those new quarters constructed within one-half mile of switching or humping. While that specific suggestion is beyond the scope of this rulemaking, FRA agrees that action should be taken to declare what basic standard FRA will employ in administering section 2(a)(3) of the act. Therefore, in a separate document also issued on this date, FRA declares that the standard adopted herein for new or reconstructed facilities shall be employed by FRA as a guideline in administering section 2(a)(3) of the act.

Through the NPRM, comments were solicited on the ability of the industry to meet the Department of Housing and Urban Development (HUD) noise criteria specified in the proposed § 228.107 and on whether upper limits should be set on intermittent noises exceeding the proposed 45 dB(A) standard (41 FR53 072 (1976)). The commenters took issue both with the proposed noise levels and the descriptors used to calculate given levels over time.

The Environmental Protection Agency (EPA) disagreed with FRA's use of the HUD descriptors set forth in HUD Circular 1390.2. EPA's recommendation was that FRA employ an equivalent steady state sound level (L_{eq}) as the descriptor, with an 8-hour criteria level of 45 dB(A). EPA pointed out that the HUD standards were not to designed to accommodate sounds of the character found in railroad operations.

FRA agrees with EPA that the L_{eq} descriptor is more appropriate for the railroad environment. The HUD criteria limit noise levels from exceeding 55 dB(A) for more than 60 minutes in any 24-period ($L_{4\text{-}2}$) or 45 dB(A) for more than 30 minutes in any 8 hour period ($L_{8\text{-}3}$). However, the HUD criteria make use of only the quietest (93 or 96 percent) of the total exposure. There is no limitation on the maximum single event levels which make up the noisiest seven or four percent of the time. These periods potentially have the greatest influence on sleep disturbance. "L_{eq}", which is a time-weighted energy mean descriptor, gives proper and significant weighting to high intensity short-lived noises which might not be adequately accounted for in the $L_{4\text{-}2}$ or $L_{8\text{-}3}$ scheme.

In support of the decision, it may be noted that L_{eq} is now being widely used in the accoustical community. In particular, the Department of Defense has officially adopted the descriptor in its program to control noise at military airfields. The Federal Aviation Administration has accepted L_{eq} as one of the descriptors for evaluation of civilian airport noise impact. The Federal Highway Administration has accepted L_{eq} as an alternative descriptor in its regulation on planning and design of new highway projects.

However, FRA believes that, with the implementation of the L_{eq} descriptor, a 55 dB(A) level is more appropriate than the 45 dB(A) HUD level. Because railroads generally operate on a 24-hour "around the clock" basis, this design goal should be met during an 8-hour period.

A number of commenters believed that the HUD 45 dB(A) level was too stringent and was not necessarily indicative of a poor sleeping environment. Concern was also expressed that the establishment of a 45 dB(A) level would prohibit the use of individual air conditioning and heating units. All of the commenters, with the exception of EPA, agreed by the time of the public hearing that a 55 dB(A) level would be more appropriate to the railroad environment and would provide an adequate measure of the conditions necessary to permit uninterrupted rest. In developing these standards, FRA has attempted to strike a balance between that which is most desirable and that which is feasible. The final determinant has been the ability of railroad employees to obtain uninter-

rupted rest. FRA agrees with those commenters who suggest that 55 dB(A) provides an acceptable measure.

One commenter suggested that an upper limit of 60 dB(A) be specified for intermittent noises which were permitted to exceed the 45 dB(A) standard for less than 30 minutes in an 8 hour day under the NPRM. Unfortunately, at this time, there are serious questions concerning adequacy of current sleep disturbance data that would support the selection of specific single-event maximum. FRA will be closely monitoring the utility of the adopted criteria in evaluating the effect of particular noise events on the sleeping environment near railroad operations. The L_{eq} descriptor will, of course, mitigate the effects of loud single-event intrusions by including all single-event maxima in the energy calculation.

The unanimous opinion of the commenters on the inclusion of background noise from air conditioning and heating systems in noise calculations was that individual units, under the control of the individual employee, should not be considered. FRA concurs that the inclusion of background noise from these units in noise evaluations would be inappropriate. The rule has been changed accordingly.

The subject of noise generated by airports and traffic over highways was also raised in comment. One commenter cited the congressional committee report on the act and its statement that a railroad is responsibile only for the noise its operations are creating. H.R. Rep. No. 1166, 94th Cong., 2d Sess. 11 (1976). FRA agrees that Congress focused on noise created directly by the railroad in fashioning section 2(a)(3), which applies to existing and future sleeping quarters. Certainly a carrier does exercise a degree of control over environmental noise by virtue of its choice of site for lodging facilities. To the extent possible, FRA urges carriers, in their site selection plans, to consider such high noise sources and their effect on uninterrupted sleep for employees. However, given the unanimous view of the commenters on this issue, FRA will not consider noise which is not generated by railroad operations and associated railroad activities in making determinations under these rules. It should be noted that noises generated by railroad repair facilities, carrier public address systems, and central heating and cooling plants are "within the control of the railroad" and, thus, subject to the act.

These amendments are issued under authority of section 2(a)(4) of the Hours of Service Act (45 U.S.C. 62(a)(4)), as amended by section 4, Pub. L. No. 94-348, 90 Stat. 818, and § 1.49(d) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.49(d)).

The principal program draftsman of this document was Stephen Urman of the Office of Safety. The principal legal draftsman was Grady Cothen, Jr., of the Office of Chief Counsel.

In consideration of the foregoing, part 228 is amended as follows:

1. By dividing Part 228 into three subparts and revising the table of contents to read as follows:

Subpart A—General

Sec.
228.1 Scope.
228.3 Application.
228.5 Definitions.

Subpart B—Records and Reporting

228.7 Hours of duty.
228.9 Railroad records; general.
228.11 Hours of duty records.
228.13 Train delay records.
228.15 Record of train movements kept at reporting station.
228.17 Dispatcher's record of train movements.
228.19 Monthly reports of excess service.
228.21 Civil penalty.
228.23 Criminal penalty.

Subpart C—Construction of Employee Sleeping Quarters

228.101 Distance requirement; definitions.
228.103 Approval procedure; construction within one-half mile (2,640 feet) (804 meters).
228.105 Additional requirements; construction within one-third mile (1,760 feet) (536 meters) of certain switching.
228.107 Action on petition.

AUTHORITY: Sec. 2(a)(4) of the Hours of Service Act (45 U.S.C. 62 (a)(4)), as amended by sec. 4. Pub. L. No. 94-348, 90 Stat. 818; § 1.49(d) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.49(d)).

Subpart A—General

2. By inserting "Subpart A—General" as a centerhead immediately above § 228.1 and by revising § 228.1 to read as follows:

§ 228.1 Scope.

This part—

(a) Prescribes reporting and record keeping requirements with respect to the hours of service of certain railroad employees; and

(b) Establishes standards and procedures concerning the construction or reconstruction of employee sleeping quarters.

Subpart B—Records and Reporting

* * * * *

3. By inserting "Subpart B—Records and Reporting" as a centerhead immediately above § 228.7 and by adding the following new subpart:

Subpart C—Construction of Employee Sleeping Quarters

§ 228.101 Distance requirement: definitions.

(a) The Hours of Service Act, as amended (45 U.S.C. 61-64b), makes it unlawful for any common carrier engaged in interstate or foreign commerce by railroad to begin, on or after July 8, 1976, the construction or reconstruction of sleeping quarters for employees who perform duties covered by the act "within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary of Transportation) of any area where railroad switching or humping operations are performed." 45 U.S.C. 62(a)(4). This subpart sets forth (1) a general definition of "immediate vicinity" (§ 228.101(b)), (2) procedures under which a carrier may request a determination by the Federal Railroad Administration that a particular proposed site is not within the "immediate vicinity" of railroad switching or humping operations (§§ 228.103 and 228.105), and (3) the basic criteria utilized in evaluating proposed sites (§ 228.107).

(b) Except as determined in accordance with the provisions of this subpart. "The immediate vicinity" shall mean the area within one-half mile (2,640 feet) (804 meters) of switching or humping operations 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.

(c) As used in this subpart—

(1) "Construction" shall refer to the—

(i) Creation of a new facility;

(ii) Expansion of an existing facility;

(iii) Placement of a mobile or modular facility; or

(iv) Acquisition and use of an existing building.

(2) "Reconstruction" shall refer to the—

(i) Replacement of an existing facility with a new facility on the same site; or

(ii) Rehabilitation or improvement of an existing facility (normal periodic maintenance excepted) involving the expenditure of an amount representing more than 50 percent of the cost of replacing such facility on the same site at the time the work of rehabilitation or improvement began, the replacement cost to be estimated on the basis of contemporary construction methods and materials.

(3) "Switching or humping operations" includes the classification of placarded railroad cars according to commodity or destination, assembling

of placarded cars for train movements, changing the position of placarded cars for purposes of loading, unloading, or weighing, and the placing of placarded cars for repair. However, the term does not include the moving of rail equipment in connection with work service, the moving of a train or part of a train within yard limits by a road locomotive or placing locomotives or cars in a train or removing them from a train by a road locomotive while en route to the train's destination. The term does include operations within this definition which are conducted by any railroad; it is not limited to the operations of the carrier contemplating construction or reconstruction of railroad employee sleeping quarters.

(4) "Placarded car" shall mean a railroad car required to be placarded by the Department of Transportation hazardous materials regulations (49 CFR 172.504).

(5) The term "L_{eq} (8)" shall mean the equivalent steady state sound level which in 8 hours would contain the same acoustic energy as the time-varying sound level during the same time period.

§ 228.103 Approval procedure: construction within one-half mile (2,640 feet) (804 meters).

(a) A common carrier that has developed plans for the construction or reconstruction of sleeping quarters subject to this subpart and which is considering a site less than one-half mile (2,640 feet) (804 meters) from any area where switching or humping operations are performed, measured from the nearest rail of the nearest trackage utilized on a regular or intermittent basis for switching or humping operations 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, must obtain the approval of the Federal Railroad Administration before commencing construction or reconstruction on that site. Approval may be requested by filing a petition conforming to the requirements of this subpart.

(b) A carrier is deemed to have conducted switching or humping operations on particular trackage within the meaning of this subpart if placarded cars are subjected to the operations described in § 228.101(c)(3) within the 365-day period immediately preceding the date construction or reconstruction is commenced or if such operations are to be permitted on such trackage after such date. If the carrier does not have reliable records concerning the traffic handled on the trackage within the specified period, it shall be presumed that switching of placarded cars is conducted at the location and construction or reconstruction of sleeping quarters within one-half mile shall be subject to the approval procedures of this subpart.

(c) A petition shall be filed in triplicate with the Secretary, Railroad Safety Board, Federal Railroad Administration, Washington, D.C. 20590 and shall contain the following:

(1) A brief description of the type of construction planned, including materials to be employed, means of egress from the quarters, and actual and projected exterior noise levels and projected interior noise levels;

(2) The number of employees expected to utilize the quarters at full capacity;

(3) A brief description of the site, including:

(i) Distance from trackage where switching or humping operations are performed, specifying distances from particular functions such as classification, repair, assembling of trains from large groups of cars, etc. cetera;

(ii) Topography within a general area consisting of the site and all of the rail facilities close to the site;

(iii) Location of other physical improvements situated between the site and areas where railroad operations are conducted;

(4) A blueprint or other drawing showing the relationship of the site to trackage and other planned and existing facilities;

(5) The proposed or estimated date for commencement of construction;

(6) A description of the average number and variety of rail operations in the areas within one-half mile (2,640 feet) (804 meters) of the site (e.g., number of cars classified in 24-hour period; number of train movements);

(7) An estimate of the average daily number of placarded rail cars transporting hazardous materials through the railroad facility (where practicable, based on a 365-day period sample, that period not having ended more than 120 days prior to the date of filing the petition), specifying the—

(i) Number of such cars transporting class A explosives and poison gases; and

(ii) Number of DOT Specification 112A and 114A tank cars transporting flammable gas subject to FRA emergency order No. 5;

(8) A statement certified by a corporate officer of the carrier possessing authority over the subject matter explaining any plans of that carrier for utilization of existing trackage, or for the construction of new trackage, which may impact on the location of switching or humping operations within one-half mile of the proposed site (if there are no plans, the carrier official must so certify); and

(9) Any further information which is necessary for evaluation of the site.

(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 who will be utilizing the proposed sleeping quarters, together with a list of the employee representatives served.

§ 228.105 Additional requirements: construction within one-third mile (1,760 feet) (536 meters) of certain switching.

(a) In addition to providing the information specified by § 228.103, a carrier seeking approval of a site located within one-third mile (1,760 feet) (536 meters) of any area where railroad switching or humping operations are performed involving any cars required to be placarded "EXPLOSIVES A" or "POISON GAS" or any DOT Specification 112A or 114A tank cars transporting flammable gas subject to FRA emergency order No. 5 shall establish by a supplementary statement certified by a corporate officer possessing authority over the subject matter that—

(1) No feasible alternate site located at or beyond one-third mile from switching or humping operations is either presently available to the railroad or is obtainable within 3 miles (15,840 feet) (4,827 meters) of the reporting point for the employees who are to be housed in the sleeping quarters;

(2) Natural or other barriers exist or will be created prior to occupancy of the proposed facility between the proposed site and any areas in which switching or humping operations are performed which will be adequate to shield the facility from the direct and severe effects of a hazardous materials accident/incident arising in an area of switching or humping operations;

(3) The topography of the property is such as most likely to cause any hazardous materials unintentionally released during switching or humping to flow away from the proposed site; and

(4) Precautions for ensuring employee safety from toxic gases or explosions such as employee training and evacuation plans, availability of appropriate respiratory protection, and measures for fire protection, have been considered.

(b) In the absence of reliable records concerning traffic handled on trackage within the one-third mile area, it shall be presumed that the types of cars enumerated in paragraph (a) of this section are switched on that trackage; and the additional requirements of this section shall be met by the petitioning carrier, unless the carrier establishes that the switching of the enumerated cars will be effectively barred from the trackage if the petition is approved.

§ 228.107 Action on petition.

(a) Each petition for approval filed under § 228.103 is referred to the Rail-

road Safety Board for action in accordance with the provisions of part 211, Title 49, Code of Federal Regulations, concerning the processing of requests for special approvals.

(b) In considering a petition for approval filed under this subpart, the Railroad Safety Board evaluates the material factors bearing on—

(1) The safety of employees utilizing the proposed facility in the event of a hazardous materials accident/incident and in light of other relevant safety factors; and

(2) Interior noise levels in the facility.

(c) The Railroad Safety Board will not approve an application submitted under this subpart if it appears from the available information that the proposed sleeping quarters will be so situated and constructed as to permit interior noise levels due to noise under the control of the railroad to exceed an $L_{eq}(8)$ value of 55dB(A). If individual air conditioning and heating systems are to be utilized, projections may relate to noise levels with such units turned off.

(d) Approval of a petition filed under this subpart may be withdrawn or modified at any time if it is ascertained, after opportunity for a hearing, that any representation of fact or intent made by a carrier in materials submitted in support of a petition was not accurate or truthful at the time such representation was made.

Issued in Washington, D.C., on July 11, 1978.

JOHN M. SULLIVAN,
Administrator.

[FR Doc. 78-19903 Filed 7-18-78; 8:45 am]

[7035-01]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S. O. No. 1275, Amdt. 2]

PART 1033—CAR SERVICE

Erie Western Railway Co. Authorized To Operate Over Tracks Abandoned by Consolidated Rail Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, (Amendment No. 2 to Service Order No. 1275).

SUMMARY: Service Order No. 1275 authorizes Erie Western Railway Co. (EW) to operate over the former Erie Lackawanna (EL) line between Hammond and Decatur, Ind., via North Judson, Ind. Operation by the EW over these tracks of the former EL is necessary to provide rail service to shippers located adjacent to the line. Amendment No. 2 extends the order until January 15, 1979.

DATES: Effective 11:59 p.m., July 15, 1978. Expires 11:59 p.m., January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The Amendment is printed in full below.

Decided July 12, 1978.

Upon further consideration of Service Order No. 1275 (42 FR 48882 and 43 FR 2395), and good cause appearing therefor:

It is ordered,

§ 1033.1275 Service Order No. 1275

The Erie Western Railway Co., authorized to operate over tracks abandoned by Consolidated Rail Corp., is amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) Expiration Date. The provisions of this order shall expire at 11:59 p.m., January 15, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

Effective Date. This amendment shall become effective at 11:59 p.m., July 15, 1978.

(49 U.S.C. 1(10-17))

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member John R. Michael not participating.

NANCY L. WILSON,
Acting Secretary.

[FR Doc. 78-19949 Filed 7-18-78; 8:45 am]

[7035-01]

[S. O. No. 1270, Amdt. 2]

PART 1033—CAR SERVICE

Chesapeake & Ohio Railway Co. Authorized to Operate Over Tracks Abandoned by Grand Trunk Western Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order (Amendment No. 2 to Service Order No. 1270).

SUMMARY: Service Order No. 1270 authorizes The Chesapeake & Ohio Railway Co. to operate over approximately 0.6 miles of track authorized to be abandoned by the Grand Trunk Western Railroad, between Ferrysburg, Mich., and Grand Haven, Mich. The trackage involved is owned by the Grand Trunk Western but is used as an integral part of the Chesapeake & Ohio's line between Holland, Mich., and Muskegon, Mich. The order also authorizes the Chesapeake & Ohio to operate over an additional 0.2 miles of tracks abandoned by the Grand Trunk Western in order to provide continued rail service to a shipper located adjacent to those tracks. The amendment extends the order until January 15, 1979.

DATES: Effective 11:59 p.m., July 15, 1978. Expires 11:59 p.m., January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-5840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The amendment is printed in full below.

Decided July 12, 1978.

Upon further consideration of Service Order No. 1270 (42 FR 38379 and 43 FR 2725), and good cause appearing therefor:

It is ordered,

§ 1033.1270 Service Order No. 1270

The Chesapeake & Ohio Railway Co. authorized to operate over tracks abandoned by Grand Trunk Western Railroad Co. is amended by substituting the following paragraph (c) for paragraph (c) thereof:

(c) Expiration date. The provisions of this order shall expire at 11:59 p.m., January 15, 1979, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., July 15, 1978.

(49 U.S.C. 1(10-17))