

## 49 CFR 227—Occupational Noise Exposure

### §227.9 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least \$550 and not more than \$11,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed \$27,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See appendix H to this part for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.  
[71 FR 63125, Oct. 27, 2006]

### §227.13 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section must be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.  
[71 FR 63125, Oct. 27, 2006]

## Subpart B—Occupational Noise Exposure for Railroad Operating Employees.

### §227.103 Noise monitoring program.

(a) Schedule. A railroad shall develop and implement a noise monitoring program to determine whether any employee covered by the scope of this subpart may be exposed to noise that may equal or exceed an 8-hour TWA of 85 dB(A), in accordance with the following schedule:

(1) Class 1, passenger, and commuter railroads no later than February 26, 2008.

(2) Railroads with 400,000 or more annual employee hours that are not Class 1, passenger, or commuter railroads no later than August 26, 2008.

(3) Railroads with fewer than 400,000 annual employee hours no later than August 26, 2009.

(b) Sampling strategy.

(1) In its monitoring program, the railroad shall use a sampling strategy that is designed to identify employees for inclusion in the hearing conservation program and to enable the proper selection of hearing protection.

(2) Where circumstances such as high worker mobility, significant variations in sound level, or a significant component of impulse noise make area monitoring generally inappropriate, the railroad shall use representative personal sampling to comply with the monitoring requirements of this section, unless the railroad can show that area sampling produces equivalent results.

(c) Noise measurements.

(1) All continuous, intermittent, and impulse sound levels from 80 decibels to 140 decibels shall be integrated into the noise measurements.

(2) Noise measurements shall be made under typical operating conditions using:

(i) A sound level meter conforming, at a minimum, to the requirements of ANSI S1.4-1983 (Reaffirmed 2001) (incorporated by reference, see § 227.103(h)), Type 2, and set to an A-weighted SLOW response;

(ii) An integrated sound level meter conforming, at a minimum, to the requirements of ANSI S1.43-1997 (Reaffirmed 2002) (incorporated by reference, see § 227.103(h)), Type 2, and set to an A-weighted slow response ; or

(iii) A noise dosimeter conforming, at a minimum, to the requirements of ANSI S1.25-1991 (Reaffirmed 2002) (incorporated by reference, see § 227.103(h)) and set to an A-weighted SLOW response.

(3) All instruments used to measure employee noise exposure shall be calibrated to ensure accurate measurements.

(d) The railroad shall repeat noise monitoring, consistent with the requirements of this section, whenever a change in operations, process, equipment, or controls increases noise exposures to the extent that:

(1) Additional employees may be exposed at or above the action level; or

(2) The attenuation provided by hearing protectors being used by employees may be inadequate to meet the requirements of § 227.103.

(e) In administering the monitoring program, the railroad shall take into consideration the identification of work environments where the use of hearing protectors may be omitted.

(f) Observation of monitoring. The railroad shall provide affected employees or their representatives with an opportunity to observe any noise dose measurements conducted pursuant to this section.

(g) Reporting of monitoring results.

(1) The railroad shall notify each monitored employee of the results of the monitoring.

(2) The railroad shall post the monitoring results at the appropriate crew origination point for a minimum of 30 days. The posting should include sufficient information to permit other crews to understand the meaning of the results in the context of the operations monitored.

(h) Incorporation by reference. The materials listed in this section are incorporated by reference in the corresponding sections noted. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated materials from the American National Standards Institute at 1819 L Street, NW., Washington, DC 20036 or <http://www.ansi.org>. You may inspect a copy of the incorporated standards at the Federal Railroad Administration, Docket Room, 1120 Vermont Ave., NW., Suite 700, Washington, DC 20005, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>.

(1) ANSI S1.4-1983 (Reaffirmed 2001), Specification for Sound Level Meters, incorporation by reference (IBR) approved for § 227.103(c)(2)(i).

(2) ANSI S1.43-1997 (Reaffirmed 2002), Specifications for Integrating-Averaging Sound Level Meters, IBR approved for § 227.103(c)(2)(ii).

(3) ANSI S1.25-1991 (Reaffirmed 2002), Specification for Personal Noise Dosimeters, IBR approved for § 227.103(c)(2)(iii).  
[71 FR 63126, Oct. 27, 2006]

### **§227.105 Protection of employees.**

(a) A railroad shall provide appropriate protection for its employees who are exposed to noise, as measured according to § 227.103, that exceeds the limits specified in appendix A of this part.

(b) In assessing whether exposures exceed 115 dB(A), as set forth in paragraph (a) of this section and appendix A to this part, the apparent source of the noise exposures shall be observed and documented and measurement artifacts may be removed.

(c) Except as set forth in paragraph (d) of this section, exposure to continuous noise shall not exceed 115dB(A).

(d) Exposures to continuous noise greater than 115 dB(A) and equal to or less than 120 dB(A) are permissible, provided that the total daily duration does not exceed 5 seconds. [71 FR 63126, Oct. 27, 2006]

#### **§227.107 Hearing conservation program.**

(a) Consistent with the requirements of the noise monitoring program required by § 227.103, the railroad shall administer a continuing, effective hearing conservation program, as set forth in §§ 227.109 through 227.121, for all employees exposed to noise at or above the action level.

(b) For purposes of the hearing conservation program, employee noise exposure shall be computed in accordance with the tables in appendix A of this part, and without regard to any attenuation provided by the use of hearing protectors. [71 FR 63126, Oct. 27, 2006]

#### **§227.109 Audiometric testing program.**

(a) Each railroad shall establish and maintain an audiometric testing program as set forth in this section and include employees who are required to be included in a hearing conservation program pursuant to § 227.107.

(b) Cost. The audiometric tests shall be provided at no cost to employees.

(c) Tests. Audiometric tests shall be performed by:

(1) An audiologist, otolaryngologist, or other physician who has experience and expertise in hearing and hearing loss; or

(2) A qualified technician.

(d) [Reserved]

(e) Baseline audiogram. This paragraph (e) applies to employees who are required by § 227.107 to be included in a hearing conservation program.

(1) New employees.

(i) Except as provided in paragraph (e)(1)(ii), for employees hired after February 26, 2007, the railroad shall establish a valid baseline audiogram within 6 months of the new employee's first tour of duty.

(ii) Where mobile test vans are used to meet the requirement in paragraph (e)(1)(i), the railroad shall establish a valid baseline audiogram within one year of the new employee's first tour of duty.

(2) Existing employees.

(i) For all employees without a baseline audiogram as of February 26, 2007, Class 1, passenger, and commuter railroads, and railroads with 400,000 or more annual employee hours shall establish a valid baseline audiogram by February 26, 2009; and railroads with less than 400,000 annual employee hours shall establish a valid baseline audiogram by February 26, 2010.

(ii) If an employee has had a baseline audiogram as of February 26, 2007, and it was obtained under conditions that satisfy the requirements found in 29 CFR 1910.95(h), the railroad must use that baseline audiogram.

(iii) If the employee has had a baseline audiogram as of February 26, 2007, and it was obtained under conditions that satisfy the requirements in 29 CFR 1910.95(h)(1), but not the requirements found in 29 CFR 1910.95(h)(2) through (5), the railroad may elect to use that baseline audiogram provided that the Professional Supervisor of the Audiometric Monitoring Program makes a reasonable determination that the baseline audiogram is valid and is clinically consistent with other materials in the employee's medical file.

(3) Testing to establish a baseline audiogram shall be preceded by at least 14 hours without exposure to occupational noise in excess of the action level. Hearing protectors may be used as a substitute for the requirement that baseline audiograms be preceded by 14 hours without exposure to occupational noise.

(4) The railroad shall notify its employees of the need to avoid high levels of non-occupational noise exposure during the 14-hour period immediately preceding the audiometric examination.

(f) Periodic audiogram.

(1) The railroad shall offer an audiometric test to each employee included in the hearing conservation program at least once each calendar year. The interval between the date offered to any employee for a test in a calendar year and the date offered in the subsequent calendar year shall be no more than 450 days and no less than 280 days.

(2) The railroad shall require each employee included in the hearing conservation program to take an audiometric test at least once every 1095 days.

(g) Evaluation of audiogram.

(1) Each employee's periodic audiogram shall be compared to that employee's baseline audiogram to determine if the audiogram is valid and to determine if a standard threshold shift has occurred. This comparison may be done by a qualified technician.

(2) If the periodic audiogram demonstrates a standard threshold shift, a railroad may obtain a retest within 90 days. The railroad may consider the results of the retest as the periodic audiogram.

(3) The audiologist, otolaryngologist, or physician shall review problem audiograms and shall determine whether there is a need for further evaluation. A railroad shall provide all of the following information to the person performing this review:

(i) The baseline audiogram of the employee to be evaluated;

(ii) The most recent audiogram of the employee to be evaluated;

(iii) Measurements of background sound pressure levels in the audiometric test room as required in appendix D of this part: Audiometric Test Rooms; and

(iv) Records of audiometer calibrations required by § 227.111.

(h) Follow-up procedures.

(1) If a comparison of the periodic audiogram to the baseline audiogram indicates that a standard threshold shift has occurred, the railroad shall inform the employee in writing within 30 days of the determination.

(2) Unless a physician or audiologist determines that the standard threshold shift is not work-related or aggravated by occupational noise exposure, the railroad shall ensure that the following steps are taken:

(i) Employees not using hearing protectors shall be fitted with hearing protectors, shall be trained in their use and care, and shall be required to use them.

(ii) Employees already provided with hearing protectors shall be refitted, shall be retrained in the use of hearing protectors offering greater attenuation, if necessary, and shall be required to use them.

(iii) If subsequent audiometric testing is necessary or if the railroad suspects that a medical pathology of the ear is caused or aggravated by the wearing of hearing protectors, the railroad shall refer the employee for a clinical audiological evaluation or an otological examination.

(iv) If the railroad suspects that a medical pathology of the ear unrelated to the use of hearing protectors is present, the railroad shall inform the employee of the need for an otological examination.

(3) If subsequent audiometric testing of an employee, whose exposure to noise is less than an 8-hour TWA of 90 dB, indicates that a standard threshold shift is not persistent, the railroad shall inform the employee of the new audiometric interpretation and may discontinue the required use of hearing protectors for that employee.

(i) Revised baseline. A railroad shall use the following methods for revising baseline audiograms:

(1) Periodic audiograms from audiometric tests conducted through February 26, 2009, may be substituted for the baseline measurement by the Professional Supervisor of the Audiometric Monitoring Program who is evaluating the audiogram if:

(i) The standard threshold shift revealed by the audiogram is persistent; or

(ii) The hearing threshold shown in the periodic audiogram indicates significant improvement over the baseline audiogram.

(2) Baseline audiograms from audiometric tests conducted after February 26, 2009, shall be revised in accordance with the method specified in appendix C of this part: Audiometric Baseline Revision.

(j) Standard threshold shift. In determining whether a standard threshold shift has occurred, allowance may be made for the contribution of aging (presbycusis) to the change in hearing level by correcting the annual audiogram according to the procedure described in appendix F of this part: Calculation and Application of Age Correction to Audiograms.

[71 FR 63126, Oct. 27, 2006]

### **§227.111 Audiometric test requirements.**

(a) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations, with test frequencies including 500, 1000, 2000, 3000, 4000, 6000, and 8000 Hz. Tests at each frequency shall be taken separately for each ear.

(b) Audiometric tests shall be conducted with audiometers (including microprocessor audiometers) that meet the specifications of and are maintained and used in accordance with ANSI S3.6-2004 "Specification for Audiometers." The Director of the Federal Register approves the incorporation by reference of this standard in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated standard from the American National Standards Institute at 1819 L Street, NW., Washington, DC 20036 or <http://www.ansi.org>. You may inspect a copy of the incorporated standard at the Federal Railroad Administration, Docket Room, 1120 Vermont Ave., NW., Suite 700,

Washington, DC 20005, or at the National Archives and Records Administration (NARA). For more information on the availability of this material at NARA, call 202-741-6030, or go to <http://www.archives.gov/federal-register/code-of-federal-regulations/ibr-locations.html>.

(1) Pulsed-tone audiometers should be used with the following on and off times: F-J and J-K shall each have values of 225 35 milliseconds (ms).

(2) Use of insert earphones shall be consistent with the requirements listed in appendix E of this part: Use of Insert Earphones for Audiometric Testing.

(c) Audiometric examinations shall be administered in a room meeting the requirements listed in appendix D of this part: Audiometric Test Rooms.

(d) Audiometer calibration.

(1) The functional operation of the audiometer shall be checked before each day's use by testing a person with known, stable hearing thresholds or by appropriate calibration device, and by listening to the audiometer's output to make sure that the output is free from distorted or unwanted sounds. Deviations of 10 decibels or greater require an acoustic calibration.

(2) Audiometer calibration shall be checked acoustically at least annually according to the procedures described in ANSI S3.6-2004. Frequencies below 500 Hz and above 8000 Hz may be omitted from this check. The audiometer must meet the sound pressure accuracy requirements of section 7.2 of ANSI S3.6-2004 of 3 dB at any test frequency between 500 and 5000 Hz and 5 dB at any test frequency 6000 Hz and higher for the specific type of transducer used. For air-conduction supra-aural earphones, the specifications in Table 6 of ANSI S3.6-2004 shall apply. For air-conduction insert earphones, the specifications in Table 7 of ANSI S3.6-2004 shall apply. Audiometers that do not meet these requirements must undergo an exhaustive calibration.

(3) Exhaustive Calibration. An exhaustive calibration shall be performed in accordance with ANSI S3.6-2004, according to the following schedule:

(i) At least once every two years on audiometers not used in mobile test vans. Test frequencies below 500 Hz and above 6000 Hz may be omitted from this calibration.

227.111(d)(3)(ii)

(ii) At least annually on audiometers used in mobile test vans.

[71 FR 63127, Oct. 27, 2006]

### **§227.115 Hearing protectors.**

(a) General requirements for hearing protectors.



(1) The railroad shall provide hearing protectors to employees at no cost to the employee.

(2) The railroad shall replace hearing protectors as necessary.

(3) When offering hearing protectors, a railroad shall consider an employee's ability to understand and respond to voice radio communications and audible warnings.

(4) The railroad shall give employees the opportunity to select their hearing protectors from a variety of suitable hearing protectors. The selection shall include devices with a range of attenuation levels.

(5) The railroad shall provide training in the use and care of all hearing protectors provided to employees.

(6) The railroad shall ensure proper initial fitting and supervise the correct use of all hearing protectors.

(b) Availability of hearing protectors. A railroad shall make hearing protectors available to all employees exposed to sound levels that meet or exceed the action level.

(c) Required use at action level. A railroad shall require the use of hearing protectors when an employee is exposed to sound levels that meet or exceed the action level, and the employee has:

(1) Not yet had a baseline audiogram established pursuant to § 227.109; or

(2) Experienced a standard threshold shift and is required to use hearing protectors under § 227.109(h).

(d) Required use for TWA of 90 dB(A). The railroad shall require the use of hearing protectors when an employee is exposed to sound levels equivalent to an 8-hour TWA of 90 dB(A) or greater. The hearing protectors should be used to reduce sound levels to within those levels required by appendix A of this part.

[71 FR 63128, Oct. 27, 2006]

#### **§227.117 Hearing protector attenuation.**

(a) A railroad shall evaluate hearing protector attenuation for the specific noise environments in which the protector will be used. The railroad shall use one of the evaluation methods described in appendix B of this part; "Methods for Estimating the Adequacy of Hearing Protector Attenuation."

(b) Hearing protectors shall attenuate employee exposure to an 8-hour TWA of 90 decibels or lower, as required by § 227.115.

(c) For employees who have experienced a standard threshold shift, hearing protectors must attenuate employee exposure to an 8-hour time-weighted average of 85 decibels or lower.

(d) The adequacy of hearing protector attenuation shall be re-evaluated whenever employee noise exposures increase to the extent that the hearing protectors provided may no longer provide adequate attenuation. A railroad shall provide more effective hearing protectors where necessary.

[71 FR 63128, Oct. 27, 2006]

**§227.119 Training program.**

(a) The railroad shall institute an occupational noise and hearing conservation training program for all employees included in the hearing conservation program.

(1) The railroad shall offer the training program to each employee included in the hearing conservation program at least once each calendar year. The interval between the date offered to any employee for the training in a calendar year and the date offered in the subsequent calendar year shall be no more than 450 days and no less than 280 days.

(2) The railroad shall require each employee included in the hearing conservation program to complete the training at least once every 1095 days.

(b) The railroad shall provide the training required by paragraph (a) of this section in accordance with the following:

(1) For employees hired after February 26, 2007, within six months of the employee's first tour of duty in a position identified within the scope of this part.

(2) For employees hired on or before February 26, 2007, by Class 1, passenger, and commuter railroads, and railroads with 400,000 or more annual employee hours, by no later than February 26, 2009;

(3) For employees hired on or before February 26, 2007, by railroads with fewer than 400,000 annual employee hours, by no later than February 26, 2010.

(c) The training program shall include and the training materials shall reflect, at a minimum, information on all of the following:

(1) The effects of noise on hearing;

(2) The purpose of hearing protectors;

(3) The advantages, disadvantages, and attenuation of various types of hearing protectors;

(4) Instructions on selection, fitting, use, and care of hearing protectors;

(5) The purpose of audiometric testing, and an explanation of the test procedures;

(6) An explanation of noise operational controls, where used;

(7) General information concerning the expected range of workplace noise exposure levels associated with major categories of railroad equipment and operations (e.g., switching and road assignments, hump yards near retarders, etc.) and appropriate reference to requirements of the railroad concerning use of hearing protectors;

(8) The purpose of noise monitoring and a general description of monitoring procedures;

(9) The availability of a copy of this part, an explanation of the requirements of this part as they affect the responsibilities of employees, and employees' rights to access records under this part;

(10) How to determine what can trigger an excessive noise report, pursuant to § 229.121(b); and

(11) How to file an excessive noise report, pursuant to § 229.121(b).  
[71 FR 63128, Oct. 27, 2006]

#### **§227.121 Recordkeeping.**

##### **(a) General requirements.**

(1) Availability of records. Each railroad required to maintain and retain records under this part shall:

(i) Make all records available for inspection and copying/photocopying to representatives of the FRA, upon request;

(ii) Make an employee's records available for inspection and copying/photocopying to that employee, former employee, or such person's representative upon written authorization by such employee;

(iii) Make exposure measurement records for a given run or yard available for inspection and copying/photocopying to all employees who were present in the locomotive cab during the given run and/or who work in the same yard; and

(iv) Make exposure measurement records for specific locations available to regional or national labor representatives, upon request. These reports shall not contain identifying information of an employee unless an employee authorizes the release of such information in writing.

(2) Electronic records. All records required by this part may be kept in electronic form by the railroad. A railroad may maintain and transfer records through electronic transmission, storage, and retrieval provided that:

(i) The electronic system be designed so that the integrity of each record is maintained through appropriate levels of security such as recognition of an electronic signature, or other means, which uniquely identify the initiating person as the author of that record. No two persons shall have the same electronic identity;

(ii) The electronic system shall ensure that each record cannot be modified in any way, or replaced, once the record is transmitted and stored;

(iii) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment;

(iv) The electronic system shall provide for the maintenance of records as originally submitted without corruption or loss of data; and

(v) Paper copies of electronic records and amendments to those records, that may be necessary to document compliance with this part shall be made available for inspection and copying/photocopying by representatives of the FRA.

(3) Transfer of records. If a railroad ceases to do business, it shall transfer to the successor employer all records required to be maintained under this subpart, and the successor employer shall retain them for the remainder of the period prescribed in this part.

(b) Exposure measurements records. The railroad shall:

(1) Maintain an accurate record of all employee exposure measurements required by § 227.103; and

(2) Retain these records for the duration of the covered employee's employment plus thirty years.

(c) Audiometric test records. The railroad shall:

(1) Maintain employee audiometric test records required by § 227.109, including:

(i) The name and job classification of the employee;

(ii) The date of the audiogram;

(iii) The examiner's name;

(iv) The date of the last acoustic or exhaustive calibration of the audiometer;

(v) Accurate records of the measurements of the background sound pressure levels in audiometric test rooms;

(vi) The model and serial number of the audiometer used for testing; and

(2) Retain the records required by § 227.107 for the duration of the covered employee's employment plus thirty years.

(d) Positions and persons designated records. The railroad shall:

(1) Maintain a record of all positions or persons or both designated by the railroad to be placed in a Hearing Conservation Program pursuant to § 227.107; and

(2) Retain these records for the duration of the designation.

(e) Training program materials records. The railroad shall:

(1) Maintain copies of all training program materials used to comply with § 227.119(c) and a record of employees trained; and

(2) Retain these copies and records for three years.

(f) Standard threshold shift records. The railroad shall:

(1) Maintain a record of all employees who have been found to have experienced a standard threshold shift within the prior calendar year and include all of the following information for each employee on the record:

(i) Date of the employee's baseline audiogram;

(ii) Date of the employee's most recent audiogram;

(iii) Date of the establishment of a standard threshold shift;

(iv) The employee's job code; and

(v) An indication of how many standard threshold shifts the employee has experienced in the past, if any; and

(2) Retain these records for five years.

[71 FR 63129, Oct. 27, 2006]