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the U.S.; and FRA's Associate Administrator for Safety determines that the foreign requirements are consistent with the purpose and scope of this part. A "foreign railroad" refers to a railroad that is incorporated in a place outside the U.S. and is operated out of a foreign country but operates for some distance in the U.S.

§ 227.5 Definitions.

As used in this part—

Action level means an eight-hour time-weighted-average sound level (TWA) of 85 dB(A), or, equivalently, a dose of 50 percent, integrating all sound levels from 80 dB(A) to 140 dB(A).

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Artifact means any signal received or recorded by a noise measuring instrument that is not related to occupational noise exposure and may adversely impact the accuracy of the occupational noise measurement.

Audiogram means a record of audiometric testing, showing the thresholds of hearing sensitivity measured at discrete frequencies, as well as other recordkeeping information.

Audiologist means a professional, who provides comprehensive diagnostic and treatment/rehabilitative services for auditory, vestibular, and related impairments and who

(1) Has a Master's degree or doctoral degree in audiology and

(2) Is licensed as an audiologist by a State; or in the case of an individual who furnishes services in a State which does not license audiologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time audiology services after obtaining a master's or doctoral degree in audiology or a related field, and successfully completed a national examination in audiology approved by the Secretary of the U.S. Department of Health and Human Services.

Audiometry means the act or process of measuring hearing sensitivity at discrete frequencies. Audiometry can also be referred to as audiometric testing.

Baseline audiogram means an audiogram, recorded in accordance with § 227.109, against which subsequent audiograms are compared to determine the extent of change of hearing level.

Class I, Class II, and Class III railroads have the meaning assigned by the regulations of the Surface Transportation Board (49 CFR part 120; General Instructions 1–1).

Continuous noise means variations in sound level that involve maxima at intervals of 1 second or less.

Decibel (dB) means a unit of measurement of sound pressure levels.

dB(A) means the sound pressure level in decibels measured on the A-weighted scale.

Employee means any individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

Exchange rate means the change in sound level, in decibels, which would require halving or doubling of the allowable exposure time to maintain the same noise dose. For purposes of this part, the exchange rate is 5 decibels.

FRA means the Federal Railroad Administration.

Hearing protector means any device or material, which is capable of being worn on the head, covering the ear canal or inserted in the ear canal; is designed wholly or in part to reduce the level of sound entering the ear; and has a scientifically accepted indicator of its noise reduction value.

Hertz (Hz) means a unit of measurement of frequency numerically equal to cycles per second.

Medical pathology means a condition or disease affecting the ear which is medically or surgically treatable.

Noise operational controls means a method used to reduce noise exposure, other than hearing protectors or equipment modifications, by reducing the time a person is exposed to excessive noise.

Occasional service means service of not more than a total of 20 days in a calendar year.

Otolaryngologist means a physician specializing in diagnosis and treatment of disorders of the ear, nose, and throat.

Periodic audiogram is a record of follow-up audiometric testing conducted at regular intervals after the baseline audiometric test.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; an owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; an independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Professional Supervisor of the Audiometric Monitoring Program in a hearing conservation program means an audiologist, otolaryngologist, or a physician with experience and expertise in hearing and hearing loss.

Qualified Technician is a person who is certified by the Council for Accreditation in Occupational Hearing Conservation or equivalent organization; or who has satisfactorily demonstrated competence in administering audiometric examinations, obtaining valid audiograms, and properly using, maintaining, and checking calibration and proper functioning of the audiometers used; and is responsible to the Professional Supervisor of the Audiometric Testing Program.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guide-ways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads. The term "railroad" is also intended to mean a person that provides transportation by railroad, whether directly or by contracting out operation of the railroad to another person. The term does not include rapid transit operations in an urban area that are not

connected to the general railroad system of transportation.

Representative personal sampling means measurement of an employee's noise exposure that is representative of the exposures of other employees who operate similar equipment under similar conditions.

Sound level or Sound pressure level means ten times the common logarithm of the ratio of the square of the measured A-weighted sound pressure to the square of the standard reference pressure of twenty micropascals, measured in decibels. For purposes of this regulation, SLOW time response, in accordance with ANSI S1.43-1997 (Reaffirmed 2002), "Specifications for Integrating-Averaging Sound Level Meters," is required. The Director of the Federal Register approves this incorporation by reference of this standard in this section 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 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.

Standard threshold shift (STS) means a change in hearing sensitivity for the worse, relative to the baseline audiogram, or relative to the most recent revised baseline (where one has been established), of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

Time-weighted-average eight-hour (or 8-hour TWA) means the sound level, which, if constant over 8 hours, would result in the same noise dose as is measured. For purposes of this part, the exchange rate is 5 decibels.

Tourist, scenic, historic, or excursion operations means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular

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destination not being the principal purpose.

§ 227.7 Preemptive effect.

Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

§ 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.

§ 227.11 Responsibility for compliance.

Although the duties imposed by this part are generally stated in terms of the duty of a railroad, any person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

§ 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

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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.

§ 227.15 Information collection.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and are assigned OMB control number 2130–NEW.

(b) The information collection requirements are found in the following sections: §§ 227.13, 227.103, 227.107, 227.109, 227.111, 227.117, 227.119, and 227.121.

Subpart B—Occupational Noise Exposure for Railroad Operating Employees.

§ 227.101 Scope and applicability.

(a) This subpart shall apply to the noise-related working conditions of—

(1) Any person who regularly performs service subject to the provisions of the hours of service laws governing “train employees” (see 49 U.S.C. 21101(5) and 21103), but, subject to a railroad's election in paragraph (a)(3) of this section, does not apply to:

(i) Employees who move locomotives only within the confines of locomotive repair or servicing areas, as provided in §§ 218.5 and 218.29(a) of this chapter, or

(ii) Employees who move a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes, or

(iii) Contractors who operate historic equipment in occasional service, provided that the contractors have been provided with hearing protectors and, where necessary, are required to use the hearing protectors while operating the historic equipment;