

## §210.7

*Noise defective* means the condition in which railroad equipment is found to exceed the Railroad Noise Emission Standards, 40 CFR part 201.

*Railroad equipment* means rail cars, locomotives, active retarders, and load cell test stands.

*Standards* means the Railroad Noise Emission Standards, 40 CFR part 201. (See appendix A in this part for a listing.)

### §210.7 Responsibility for noise defective railroad equipment.

Any railroad that uses railroad equipment that is noise defective or engages in a car coupling operating that results in excessive noise according to the criteria established in this part and in the Standards is responsible for compliance with this part. Subject to §210.9, such railroad shall—

- (a) Correct the noise defect;
- (b) Remove the noise defective railroad equipment from service; or
- (c) Modify the car coupling procedure to bring it within the prescribed noise limits.

### §210.9 Movement of a noise defective locomotive, rail car, or consist of a locomotive and rail cars.

A locomotive, rail car, or consist of a locomotive and rail cars that is noise defective may be moved no farther than the nearest forward facility where the noise defective conditions can be eliminated only after the locomotive, rail car, or consist of a locomotive and rail cars has been inspected and been determined to be safe to move.

### §210.11 Waivers.

(a) Any person may petition the Administrator for a waiver of compliance with any requirement in this part. A waiver of compliance with any requirement prescribed in the Standards may not be granted under this provision.

(b) Each petition for a waiver under this section must be filed in the manner and contain information required by 49 CFR part 211.

(c) If the Administrator finds that a waiver of compliance applied for under paragraph (a) of this section is in the public interest and is consistent with railroad noise abatement and safety, the Administrator may grant a waiver

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subject to any condition he deems necessary. Notice of each waiver granted, including a statement of the reasons therefor, will be published in the FEDERAL REGISTER.

### §210.13 Penalty.

Any person who operates railroad equipment subject to the Standards in violation of any requirement of this part or of the Standards is liable to penalty as prescribed in section 11 of the Noise Control Act of 1972 (42 U.S.C. 4910), as amended.

## Subpart B—Inspection and Testing

### §210.21 Scope of subpart.

This subpart prescribes the compliance criteria concerning the requirements for inspection and testing of railroad equipment or operations covered by the Standards.

### §210.23 Authorization.

(a) An inspector is authorized to perform any noise test prescribed in the Standards and in the procedures of this part at any time, at any appropriate location, and without prior notice to the railroad, for the purpose of determining whether railroad equipment is in compliance with the Standards.

(b)(1) An inspector is authorized to request that railroad equipment and appropriate railroad personnel be made available for a passby or stationary noise emission test, as prescribed in the Standards and in the procedures of this part, and to conduct such test, at a reasonable time and location, for the purpose of determining whether the railroad equipment is in compliance with the Standards.

(2) If the railroad has the capability to perform an appropriate noise emission test, as prescribed in the Standards and in the procedures of this part, an inspector is authorized to request that the railroad test railroad equipment. The railroad shall perform the appropriate test as soon as practicable.

(3) The request referred to in this paragraph will be in writing, will state the grounds upon which the inspector has reason to believe that the railroad equipment does not conform to the Standards, and will be presented to an

appropriate operating official of the railroad.

(4) Testing or submission for testing is not required if the cause of the noise defect is readily apparent and the inspector verifies that it is corrected by the replacement of defective components or by instituting a normal maintenance or repair procedure.

(c)(1) An inspector is authorized to inspect or examine a locomotive, rail car, or consist of a locomotive and rail cars operated by a railroad, or to request that the railroad inspect or examine the locomotive, rail car, or consist of a locomotive and rail cars, whenever the inspector has reason to believe that it does not conform to the requirements of the Standards.

(2) An inspector may request that a railroad conduct an inspection or examination of a locomotive, rail car, or consist of a locomotive and rail cars on the basis of an excessive noise emission level measured by a passby test. If, after such inspection or examination, no mechanical condition that would result in a noise defect can be found and the inspector verifies that no such mechanical condition exists, the locomotive, rail car, or consist of a locomotive and rail cars may be continued in service.

(3) The requests referred to in this paragraph will be in writing, will state the grounds upon which the inspector has reason to believe that the locomotive, rail car, or consist of a locomotive and rail cars does not conform to the Standards, and will be presented to an appropriate operating official of the railroad.

(4) The inspection or examination referred to in this paragraph may be conducted only at recognized inspection points or scheduled stopping points.

#### **§ 210.25 Measurement criteria and procedures.**

The parameters and procedures for the measurement of the noise emission levels are prescribed in the Standards.

(a) Quantities measured are defined in § 201.21 of the Standards.

(b) Requirements for measurement instrumentation are prescribed in § 201.22 of the Standards. In addition, the following calibration procedures shall be used:

(1)(i) The sound level measurement system including the microphone shall be calibrated and appropriately adjusted at one or more nominal frequencies in the range from 250 through 1000 Hz at the beginning of each series of measurements, at intervals not exceeding 1 (one) hour during continual use, and immediately following a measurement indicating a violation.

(ii) The sound level measurement system shall be checked not less than once each year by its manufacturer, a representative of its manufacturer, or a person of equivalent special competence to verify that its accuracy meets the manufacturer's design criteria.

(2) An acoustical calibrator of the microphone coupler type designed for the sound level measurement system in use shall be used to calibrate the sound level measurement system in accordance with paragraph (b)(1)(i) of this section. The calibration must meet or exceed the accuracy requirements specified in section 5.4.1 of the American National Standard Institute Standards, "Method for Measurement of Sound Pressure Levels," (ANSI S1.13-1971) for field method measurements.

(c) Acoustical environment, weather conditions, and background noise requirements are prescribed in § 201.23 of the Standards. In addition, a measurement tolerance of 2 dB(A) for a given measurement will be allowed to take into account the effects of the factors listed below and the interpretations of these effects by enforcement personnel:

(1) The common practice of reporting field sound level measurements to the nearest whole decibel;

(2) Variations resulting from commercial instrument tolerances;

(3) Variations resulting from the topography of the noise measurement site;

(4) Variations resulting from atmospheric conditions such as wind, ambient temperature, and atmospheric pressure; and

(5) Variations resulting from reflected sound from small objects allowed within the test site.

#### **§ 210.27 New locomotive certification.**

(a) A railroad shall not operate a locomotive built after December 31, 1979,