

**RAILROAD SAFETY ADVISORY COMMITTEE (RSAC)
Locomotive Cab Working Conditions Working Group**

**Minutes of Meeting
March 2-3, 2005**

In Attendance:

Mark Badders (Association of American Railroads (AAR)), Harvey Boyd (Railway Supply Institute (RSI)), Lyndle Burton (AAR), Lamont Byrd (International Brotherhood of Teamsters (IBT/BLET)), Grady Cothen (Federal Railroad Administration (FRA)), Charles Fraley (Sheet Metal Workers International Association (SMWIA)), Cynthia Gross (FRA), Robert Harvey (Brotherhood of Locomotive Engineers and Trainmen (BLET)), Jeffrey Horn (FRA), Thomas Jayne (AAR), Robin Dixon-Jefferson (FRA), George Lau (AAR), Larry Liukonen (AAR), Rich McCord (FRA), Christina McDonald (FRA), Alan Misiaszek (FRA), Mark Mitchell (AAR), Jeffrey Moller (AAR), James Pegues (FRA), Greg Pietruzynski (AAR), Aaron Ratledge (AAR), Donald Robey (AAR), John Sneed (FRA), James Stem (UTU), Robert Tully (AAR), and Don Usak (AAR). In addition, Mark M. Dudle (AAR) and Ed Leege (AAR) attended the March 1, 2005 Task Force meeting.

Meeting Documents:

CWC-N-05-FEB-01	<i>Summary of Public Comments</i>
CWC-N-05-FEB-02	<i>Agenda</i>
CWC-N-05-0301-01	<i>Meeting Document Reflecting WG Action on Public Comments.</i>
CWC-N-05-0301-02	<i>Sign-In Sheet</i>

Other Meeting Handouts:

U.S. Department of Labor, Occupational Safety & Health Administration (OSHA) letter, dated July 27, 1987, Free Audiometric Testing for Employees Exposed Over the Action Level.

NEXT WG MEETING: None scheduled.

BACKGROUND MEETING NOTES:

On June 23, 2004, FRA published a notice of proposed rulemaking (NPRM), Occupational Noise Exposure for Railroad Operating Employees (69 Federal Register (FR) 35146). Under these rules, FRA intends to amend its occupational noise standards for railroad employees whose predominant noise exposure occurs in the locomotive cab. The NPRM was the result of joint efforts of FRA and the RSAC

Locomotive Cab Working Conditions Working Group. FRA received approximately 40 written comments to its NPRM, requesting changes to a number of the rule's provisions. The Locomotive Cab Working Conditions Noise Task Force met on March 1, 2005, and the Locomotive Cab Working Conditions Working Group met on March 2-3, 2005, for the purpose of providing guidance and to assist FRA in dealing with each of the comments to the NPRM. In advance of the March 1-3, 2005, meetings, FRA prepared a summary of the NPRM public remarks (Meeting Document CWC-N-05-FEB-01). During the Locomotive Cab Working Conditions Working Group deliberations, each of the NPRM public remarks was addressed by the Working Group. The consensus Working Group action for each of the public comments to the NPRM appears in Meeting Document CWC-N-05-0301-01.

All meeting handouts will be accessible on the WG Internet Web Site and are not excerpted in their entirety in the WG Minutes. Copies of the public comments to the NPRM, are part of Docket No. FRA 2002-12357, and are not excerpted in their entirety in the meeting minutes.

March 2, 2005 Session

A Meeting of RSAC's Locomotive Cab Working Conditions Working Group (WG) was convened at 09:00 a.m., in the Golden Gate Room of the Serrano Hotel, 405 Taylor Street, San Francisco, California 94102, by the FRA's RSAC Facilitator, Cynthia Gross (FRA Office of Safety).

As Working Group members, or their alternates, assembled, attendance was recorded by sign-in sheet and by initialing and verifying organization and contact information on a matrix of the Locomotive Cab Working Conditions Working Group membership list (Meeting Document CWC-N-05-0301-02). Total meeting attendance, including presenters, support staff, and observers was approximately 26.

Facilitator Gross welcomes WG members. She explains that during the March 1, 2005, Task Force meeting, much progress was made in determining how FRA should deal with issues from public comments to FRA's Occupational Noise Exposure NPRM. She circulates Meeting Document CWC-N-05-0301-01. Meeting Document CWC-N-0301-01 builds on Meeting Document CWC-N-05-FEB-01, "Summary of Public Comments," by adding consensus WG and Task Force recommendations on how FRA should deal with each of the public comments to the NPRM. At the conclusion of the March 1-3, 2005 WG and Task Force meetings, each of the issues from public comments to FRA's Occupational Noise Exposure NPRM had a consensus WG response to accept or reject the comment, and whether to address the comment in the rule preamble, or rule text.

A majority of the WG members present are also members of the Task Force. Facilitator Gross asks for a motion that the WG accept the March 1, 2005, Task Force consensus recommendations for the public comments to the NPRM.

BY UNANIMOUS HAND VOTE, THE WG ACCEPTS THE CONSENSUS RECOMMENDATIONS FOR ADDRESSING THE PUBLIC COMMENTS TO THE NPRM THAT WERE DECIDED BY THE TASK FORCE ON MARCH 1, 2005.

The summary of public comments were arranged into ten broad item categories in Meeting Document CWC-N-05-0301-01. The items are: (I) Hearing Conservation Program and Monitoring; (II) Definitions and Qualifications; (III) Hearing Protection; (IV) Audiometric Testing; (V) Audiometric Test Rooms and Equipment; (VI) Audiometric Baselines and Follow-up; (VII) Training; (VIII) 49 Code of Federal Regulations (CFR) Part 227 Recordkeeping; (IX) 49 CFR Part 229 Performance and Maintenance Standards for Locomotives; and (X) Miscellaneous.

Facilitator Gross asks the WG for its recommendation concerning Item VI. (C) Use of National Hearing Conservation Association (NHCA) *Guidelines for Audiometric Baseline Revision* instead of OSHA provisions. FRA's NPRM adopted its baseline audiometric testing revision provision from OSHA. However, OSHA guidelines are unclear. NHCA guidelines offer specific recommendations concerning when audiometric baselines should be revised.

Thomas R. Jayne (AAR) does not believe there is strong opposition to this topic. However, he also believes there is not enough information on the topic.

Lyndle Burton (AAR) adds that he knows of no one who uses these industry-accepted guidelines.

Mr. Jayne asks if the guidelines could be put in as an appendix to the NPRM?

Jeffrey Horn (FRA) explains that WG acceptance of the guidelines could create consistency as to when baseline audiometric test cases are reexamined.

James Pegues (FRA) asks if FRA queried OSHA about the use of the NHCA guidelines?

Christina McDonald (FRA) responds yes. She explained that FRA sent a letter to OSHA requesting their input on several matters related to the NPRM. OSHA has not yet provided a written response, however, during informal phone conversations, OSHA indicated that they had no problem with FRA using the NHCA guidelines as an appendix to FRA's rule.

Alan Misiaszek (FRA) inquired from the WG members what they thought the benefits would be from using the NHCA guidelines?

Mark Badders (AAR) says there are no two hearing specialists that agree. It appears that professional judgment is what is being used. For example, he says, a bad sinus attack can temporarily change a baseline hearing test.

Mr. Misiaszek says that Mr. Badders' example is just for a single test. He asks if there is a history, should there be criteria for adjusting the baseline hearing test?

Mr. Badders asks if FRA wants to take the need to adjust baseline hearing tests out of the hands of hearing professionals?

Mr. Misiaszek says that he is unaware of anything other than the published guidelines for adjusting baseline hearing tests.

Mr. Badders says that his audiologists tell him to "trust them." The NHCA guidelines are not being practiced by the industry. These guidelines are being advocated by NHCA.

Mr. Horn says that the proposal will just ask for additional documentation if the health care professional does not want to use the proposed guidelines.

Facilitator Gross asks WG members if they feel their hands are tied if this provision is put into the regulation?

Thomas Jayne (AAR) explains that if the provision is in the regulation, the railroad industry will have to pay for an audiologist to make a review.

Mr. Misiaszek asks what should the rail industry do if a person has a 30 dB hearing loss for 5 years from the base line hearing test, unless you revise the baseline hearing test?

Mr. Badders says that the rail industry does revise baseline hearing tests.

Mr. Jayne adds that if the rail industry is required to go to contractors doing OSHA work, it will add a layer of complexity.

Lamont Byrd (IBT/BLET) is concerned about the employee. If there is going to be an improvement in the employee, it is beneficial to standardize the criteria to change the baseline hearing test results.

Mr. Misiaszek asks if the railroad industry will do anything, if the rule does not specify the criteria?

Mr. Jayne responds that railroads will continue to do what they are presently doing.

Facilitator Gross asks if the WG will accept the NHCA recommendation as non-mandatory, but that it will become mandatory if adopted by OSHA?

Mr. Badders says non-mandatory is fine.

Mr. Horn proposes that the WG adopt the provision as an appendix to the NPRM with an effective date that is two years later than the rest of the rule.

Larry Liukonen (AAR) says FRA should not be pushing into areas where it has no expertise. Until OSHA makes a decision on these guidelines, the WG should not adopt them.

Lamont Byrd disagrees. He does not have a problem making these guidelines mandatory.

Thomas Jayne (AAR) says the current discussion emphasizes that the WG has no expertise in this area.

Jeffrey Moller (AAR) believes that the NHCA guidelines should be non-mandatory.

Facilitator Gross asks the WG to re-consider the option that the NHCA guidelines would be added as an appendix to the rule, but would not become effective until two years after the effective date of the rule.

Facilitator Gross addresses the next item, IV. Audiometric Testing (A) Require annual audiometric testing. Several NPRM public comments recommended that FRA require audiometric testing annually instead of the proposed interval of once every three years. The Task Force deferred action on this item pending a review of an OSHA letter, dated July 27, 1987. OSHA requires employers to make free audiometric testing available to all their employees who are exposed in a workday to at least the equivalence of 8 hours of noise of a constant sound pressure level of 85 dB(A). The WG did not accept the public comment recommendation to the NPRM of required annual audiometric testing.

By unanimous hand vote the WG rejects the public comment recommendation of annual audiometric testing and approves leaving the proposed testing interval of once every three years.

Facilitator Gross addresses the next item, II. Definitions and Qualifications (F) Definition of Hearing Protector (HP). A public comment to the NPRM requests that FRA clearly identify which rating(s) it wants to use for enforcement of noise attenuation. Whether noise reduction rating (NRR), NRR Subject Fit (SF), Method B, or something else. Another public comment requested that FRA revise the definition of hearing protector to include the phrases “covering the ear canal opening” after the phrase “worn on the head” and “being inserted” before “in the ear canal.”

Alan Misiaszek (FRA) responds that sometimes there is clarity in vagueness. FRA believes the language in the NPRM should not be changed so that when something better comes along, it can be adopted.

Robert Harvey (BLET) asks is anyone knows what the Environmental Protection Agency (EPA) says about labeling hearing protectors?

Mr. Misiaszek responds that no one has come up with a proceeding so far, to replace the EPA's noise reduction rating (NRR).

Mark Badders (AAR) says there are noise-canceling headsets now available. There are also custom molded technologies available. He would like that NRR not be the only accepted methodology.

After a brief discussion, Jeffrey Horn (FRA) asks the WG to reject the request to identify ratings for HP attenuation, but to accept the recommendation to include the phrases "covering the ear canal opening" after the phrase "worn on the head" and "being inserted" before "in the ear canal."

The WG reached consensus to reject the public comment recommendation that FRA identify ratings for HP attenuation, but to accept the public comment recommendation that FRA revise the definition of hearing protector to include the phrases "covering the ear canal opening" after the phrase "worn on the head" and "being inserted" before "in the ear canal."

Facilitator Gross addresses the next item, III. Hearing Protection (D) Define "variety of suitable hearing protectors" and "range of attenuation levels." Several public comments to the NPRM suggested that FRA require employers to provide a minimum number of HPs, e.g., "at least four different models of HPs with an appropriate range of attenuation levels including at least two types of earplugs and one type of earmuff." Another commenter believes that employers should provide HPs with different ergonomic characteristics.

Alan Misiaszek (FRA) proposes that FRA put language in the preamble, rather than the rule text to address these issues. He is reluctant to specify a minimum number of HPs and attenuation levels, because this will serve as a "floor" to available options.

Mark Badders (AAR) says that CSX Transportation (CSXT) uses a standard hearing protector, but there is a list of others that are available.

Mr. Misiaszek asks how CSXT verifies that an employee is protected?

Mr. Badders responds that every HP used is approved.

Mark Mitchell (AAR) says that providing variety has never been a problem at BNSF Railroad.

Facilitator Gross says she is hearing that the WG wants this issue as a preamble versus rules text discussion.

By consensus, the WG recommends that the following be included in a preamble discussion: A selection of physical types of HPs will include descriptions such as roll down foam earplugs, push-in foam earplugs, premolded-flanged or un-flanged earplugs, banded ear protectors, ear muffs, such that the employee can choose the devices for comfort. Within these groups of protector types, the “range of attenuation levels” must be sufficient for protection in the level of noise expected and still permit a level of communication necessary for the job. It is expected that railroads will employ or consult professionals, such as Industrial Hygienists, who can guide employees in their selections so that they are protected. The WG is reluctant to specify a minimum number HP devices that railroads should offer employees.

Alan Misiaszek (FRA) identifies the hotel meeting room’s fire and emergency exits. He volunteers to perform cardiopulmonary resuscitation (CPR) for any meeting attendee requiring emergency assistance. He advises that many attendees have cellular telephones and asks for volunteers to call the emergency telephone number, 911, should an emergency occur.

Facilitator Gross announces a morning break and meeting caucus breaks.

M O R N I N G B R E A K 10:05 A.M. - 11:05 A.M.

Facilitator Gross calls the meeting to order. She asks Jeffrey Moller (AAR) to respond to the AAR’s public comments to the NPRM (Docket No. FRA 2002-12357, comments 40 and 46). This is meeting agenda item IV. Audiometric Testing. Every three years, employees would be required to receive training and audiometric testing. But employees would be offered the opportunity to be tested and trained annually. From an administrative standpoint, the optional annual program needs flexibility due to the mobile workforce and because some communities do not have clinics and are dependent on mobile vans to conduct audiometric hearing tests.

Mr. Moller explains that the AAR is requesting that FRA revise the NPRM as follows: 49 CFR Part 227.119(b): (1) the railroad shall offer the training program at least once each calendar year; and (2) the railroad shall require each employee to complete the training at least once every three calendar years. He elaborates that under this proposal, every three years employees will receive an audiometric test and training, but employees could be offered the test and training annually. He says the railroad work force is mobile and that much of it is dependent on a mobile van testing facility for hearing tests. The railroad industry wants administrative relief from requirements that will put a railroad in technical violation of the rules. Railroad management needs flexibility. For

example, “calendar year, versus a 365-day year will add another employee test requirement every 10-13 years, if there is no other flexibility than “calendar year.”

Thomas Jayne (AAR) confirms that the rail industry is looking for flexibility. He adds that most of the audiometric testing and training will be accomplished within the first 6 months of the calendar year.

Robert Harvey (BLET) says that a new employee could receive a base-line audiogram and then not need to be re-tested for another 23 months under this proposed amendment. During that time, hearing loss can occur. He favors retaining the existing language in the NPRM.

Mark Badders says this discussion centers around the “optional test.”

Mr. Moller explains that currently, engineers are required to have audiometric testing. Audiometric testing is optional for other employees. This discussion is centering on administrative procedures for an “annual cycle.” There will be an audiogram in an employee’s file at 3-years. The rail industry is looking for flexibility in offering an optional annual hearing examination.

Grady Cothen (FRA) notes that the 3-year requirement is equivalent to 1,095 days. He asks if OSHA’s testing requirement is for an annual test?

Alan Misiaszek (FRA) says that the OSHA requirement is contingent on an employee having a baseline audiogram. OSHA does not require employees to receive a baseline audiogram if they are not exposed at or above the action level. FRA requirements will prescribe a 3-year audiogram. FRA is struggling with how to revise the language that requires railroads to offer an annual optional hearing test to employees.

Thomas Jayne (AAR) says that if the rule adheres to a 365-day year, it will be difficult to screen all employees.

Robert Harvey (BLET) understands that offering audiometric testing at small terminals is difficult. But, he asks, aren’t there medical facilities at the large terminals that could be used for audiometric testing? He asks how many employees will be affected?

Mr. Jayne responds that over a number of years, there will not be a significant impact. However, currently, a number of employees are not appearing for audiometric testing when the mobile vans make scheduled stops.

Lamont Byrd (IBT/BLET) does not see this issue as a legislative nightmare.

Mark Badders (AAR) says that the mobile vans serve all of the railroad crafts. If there is an intense work effort on a particular section of track, CSXT will re-schedule the van so that the audiometric testing does not interfere with the work. He asks what difference

will it make if the audiometric testing can be completed between 12-15 months as opposed to within 12 months?

Lamont Byrd says there can be a significant difference in hearing loss between 12 and 24 months.

Mr. Jayne asks what time period would FRA like to see in the rule?

Jeffrey Horn (FRA) says FRA would like annual testing with a 90-day grace period.

Larry Liukonen (AAR) says that would amount to less testing than the railroad industry is proposing.

Alan Misiaszek (FRA) sees an advantage during the first two years of the program. However, the program does not envision testing every employee every year.

Thomas Jayne says the railroad industry will need to change their existing testing programs.

Facilitator Gross asks if there will be additional costs associated with the audiometric testing vans showing up early?

Mr. Jayne says he does not think anyone can quantify costs yet. However, the proposed requirements will remove flexibility from administering the program.

Mark Badders proposes that audiometric testing be offered annually to employees. But there will be an 18-month window to complete the testing cycle. Employees will be made an offer of an annual audiometric exam within an 18-month period. He proposes the "annual cycle" to be 18-months.

Robert Harvey (BLET) does not want to see a calendar year grow to 18 months. However, he believes that labor could accept an 18-month cycle.

Grady Cothen (FRA) clarifies. Within each calendar year, each employee will receive an offer for audiometric testing. Within 15 months, each employee wanting to be tested will be tested.

Mark Badders (AAR) elaborates that 6 months would be the shortest testing cycle; 18 months would be the longest testing cycle.

Alan Misiaszek (FRA) sees a problem with this approach. Audiometric testing professionals are looking to compare test results for similar periods. There is a difference between 6 months and 18 months.

Mark Badders says that the annual test can help detect hearing loss early. But the audiometric test can be affected by an employee's temporary illness, such as a sinus infection.

Alan Misiaszek responds that a temporary threshold shift is something that is "temporary." A minor illness should not damage hearing permanently.

Mark Badders agrees that usually the hearing change stops and goes back following an illness.

Facilitator Gross proposes that FRA work on proposed language for the WG to consider during the lunch break. She announces the lunch break.

L U N C H B R E A K 11:48 A.M. - 1:00 P.M.

Facilitator Gross calls the meeting to order. She asks the WG is consider the following amendments to the NPRM to help resolve audiometric testing issues.

Section 227.109(f):

- (1) Each railroad shall offer an audiometric test to each employee included in the hearing conservation program at least once each calendar year. As to any employee, the interval between the date offered for a test in a calendar year and the date offered in the subsequent calendar year shall be not more than 450 days (15 months).
- (2) At least once every 36 months, the railroad shall require each employee included in the hearing conservation program to take an audiometric test.

Preamble Language:

227.109(f)(1): FRA will add a discussion on the administrative difficulties that railroads would face to complete required testing within a 12-month period.

227.109(f)(2): A 36 month period is defined as 1095 days. The clock starts running on the 36-month period from the day of the employee's last required audiogram, which could be either the employee's baseline audiogram or the employee's last 36-month periodic audiogram.

After observations on the proposed language from Grady Cothen, Facilitator Gross asks labor and railroad representatives for comments.

Jeffrey Moller (AAR) does not know if this language needs to be so specific in the rule.

Robert Harvey (BLET) approves of the language.

Alan Misiaszek (FRA) says that if you have hearing loss within a time frame, then you are comparing the hearing loss to a baseline test. He indicates his previous concern was about testing at wide intervals that were not referenced to a baseline hearing test.

Facilitator Gross asks for WG consensus to accept the proposed language for audiometric testing.

By unanimous hand vote, the WG accepts the proposed language for Section 227.109(f).

Jeffrey Horn (FRA) returns to Item VI. (C) Use of National Hearing Conservation Association (NHCA) *Guidelines for Audiometric Baseline Revision* instead of OSHA provisions. FRA's NPRM adopted its baseline revision provision from OSHA. However, OSHA guidelines are unclear. NHCA guidelines offer specific recommendations concerning when audiometric baselines should be revised. Mr. Horn asks WG approval to accept NHCA guidelines two years after the effective date of the rule.

After further consideration, the WG reached consensus to adopt the public comment from NHCA in its entirety. The WG recommends that FRA adopt the NHCA guidelines and place them in an appendix to the rule. FRA will make minor editorial changes (e.g., OSHA to FRA), where necessary, This new appendix will become effective two years after the effective date of the rule.

Facilitator Gross asks the WG to address Item VII. Training. (E) Base the training requirements on the calendar year. A public comment to the NPRM requested that FRA base the hearing conservation training requirements on a calendar year and not 365 days from the last training.

Robert Harvey (BLET) asks if there will be any exceptions to taking the training?

Alan Misiaszek (FRA) responds no.

After further consideration, the WG reached consensus to adopt the same approach and language used in the periodic testing section (see Section 227.109(f) language above).

Facilitator Gross asks the WG to address Item III (F) HP Overprotection. One public comment to the NPRM stated that employees with existing hearing loss have more problems communicating when using HPs. Another public comment to the NPRM believes that the preamble makes a misleading statement when it identifies benefits that accrue (i.e., improved compliance & reduced risk of ear infection) if employees refrain from overuse of HP (Docket No. FRA 2002-12357, comments 25 and 32).

Jeffrey Horn (FRA) recommends that the WG not change the language in the rule text to accommodate these public comments, noting that the second comment references ear infections and the overuse of HP. He recommends language changes in the preamble.

Lamont Byrd (IBT/BLET) believes that FRA should elaborate on compliance issues and delete references to ear infections.

James Stem (UTU) says that the WG has debated this issue at length. We do not want employees wearing HP equipment all the time.

Grady Cothen (FRA) adds (1) FRA does not want to tell people to wear this equipment when it is not necessary. This could lead to circumstances when employees might not wear equipment when it is necessary. (2) There may be other auditory clues that could interfere with duties if employees are wearing HP equipment all the time.

Mark Badders (AAR) says that CSXT has seen ear infections caused by employees not properly cleaning HP equipment.

Robert Harvey (BLET) responds that labor does not want employees to refuse to use HP equipment because they think they will receive an ear infection. He requests a meeting break for a labor caucus.

Facilitator Gross announces a labor caucus break

L A B O R C A U C U S B R E A K 1:45 P.M. - 2:05 P.M.

Facilitator Gross reconvenes the meeting. FRA proposes the following to address public comments to the NPRM regarding HP Overprotection: (1) no changes will be recommended to the rule text. Instead, FRA will clarify what already exists in the preamble. (2) FRA will present both sides of the issue related to ear infection. However, because of conflicting information, HP overprotection may, or may not be a source of ear infection. FRA's discussion in the preamble will include: employees should wear HP only where appropriate; and HP hygiene issues need to be discussed in training modules.

After further consideration, the WG reached consensus regarding HP Overprotection: (1) no changes will be recommended to the rule text. Instead, FRA will clarify what already exists in the preamble. (2) FRA will present both sides of the issue related to ear infection. FRA's discussion in the preamble will include: employees should wear HP only where appropriate; and HP hygiene issues need to be discussed in training modules.

Facilitator Gross asks the WG to address Item V. Audiometric Test Rooms and Equipment. (E) Update American National Standards Institute (ANSI) Reference. FRA's proposed rule states that audiometric tests shall be conducted with audiometers that meet the specifications of ANSI S3.6-1996 or its successor. One public comment to the NPRM noted that this ANSI standard has been supplanted by ANSI S3.6-2004.

The WG reached consensus to accept this recommendation by majority hand vote. FRA will include a provision that subsequent ANSI or professional organizations updates will be added as they become effective after public notice with comments.

Grady Cothen (FRA) introduces the notion that when a new standard is introduced, it is desirable to use the new standard wherever possible, particularly when the new standard has equal protection. However, FRA would not want to automatically adopt the new standard if the new standard imposes new burdens. He asks Christina McDonald to include this language as she amends the NPRM.

Mark Badders (AAR) would like any audiograms taken before these rules are issued, under older ANSI standards, to remain valid as baseline audiograms. FRA responds that all audiograms taken with the older ANSI standards will still be valid.

Jeffrey Moller (AAR) asks how the standards will be adopted? He requests that FRA include some language in the rule that subsequent ANSI standards will be adopted after public notice.

Robert Harvey (BLET) asks if there is an existing statute that urges an Agency to use national consensus standards?

Grady Cothen responds yes.

Mr. Harvey asks if FRA's requirements for assessing new standards is that they do not diminish from existing safety levels?

Grady Cothen responds yes.

Facilitator Gross asks the WG to address Item VI. Audiometric Baselines and Follow-Up. (A) The American Industrial Hygiene Association (AIHA) requested that FRA shorten the 90-day retest period of employees who are found to have a standard threshold shift (STS) (Docket No. FRA 2002-12357, comment 30) to a retest within 30 days.

Alan Misiaszek (FRA) recommends the WG to reject the AIHA request. If an employee is suffering from a medical condition, a retest within 30 days may not be a valid test.

Mark Badders (AAR) asks if railroads should maintain a “test” or “retest” audiogram in the employee’s records?

Mr. Misiaszek responds that if the employee passes the audiometric retest, the retest should be kept in the employee’s record.

By consensus hand vote, the WG voted to reject the AIHA recommendation.

Facilitator Gross asks the WG to address Item VI. (B) Revise follow-up procedures for a non-persistent standard threshold shift (STS). The proposed rule states that if subsequent audiometric testing of an employee whose noise exposure is less than an 8-hour time weighted average (TWA) sound level of 90 dB(A) indicates that a STS is not persistent, the railroad shall inform the employee of the new audiometric interpretation and may discontinue the required use of HP for that employee. Several public comments to the NPRM object to this provision (Docket No. FRA 2002-12357, comments 29, 38, and 47). They believe that employees who show a non-persistent STS but are exposed to noise levels between 85-90 dB(A) should be required to continue wear HP.

Alan Misiaszek (FRA) recommends that the WG reject this proposal. FRA’s rule is consistent with OSHA requirements.

By consensus hand vote, the WG voted to reject this recommendation.

Grady Cothen makes an announcement. The Positive Train Control Rule will be published in the *Federal Register* on Monday, March 7, 2005.

Facilitator Gross announces an afternoon break.

A F T E R N O O N B R E A K 2:38 P.M. - 3:05 P.M.

Facilitator Gross reconvenes the meeting. She asks the WG to address Item VI. (E) Allow the use of HP in lieu of a 14-hour quiet period, but with stipulations. One of the public comments to the NPRM concurs that HPs can be used in lieu of a 14-hour quiet period, but put stipulations on the requirement: Within 5 days prior to the test, (1) the employee whose hearing is to be evaluated receives individual refresher training in the use of his or her HPs, (2) the condition of the HP to be worn is checked and found satisfactory, and (3) the HP selected is either an earmuff or a foam earplug or a device that has been fit tested and shown to provide adequate protection to reduce exposure to levels equivalent of less than 80 dB(A).

After a brief discussion, the WG voted to reject this recommendation by consensus hand vote.

Facilitator Gross asks the WG to address Item VII. Training (A) Require annual hearing conservation training. A few public comments to the NPRM recommended that railroads conduct hearing conservation training annually instead of the proposed interval of once every three years.

After a brief discussion, the WG voted to reject this recommendation. However, the WG voted to include the similar approach and language that was used for Item IV. Audiometric Testing (See Section 227.109(f) draft language above).

Facilitator Gross asks the WG to address Item VII. Training (B) Require interactive and face-to-face training. One public comment to the NPRM advocated interactive training as the most effective way to communicate a message. In addition, it was recommended that the initial training be face-to-face.

Robert Harvey (BLET) acknowledges that there is nothing better than face-to-face training to get information to employees.

Mark Badders (AAR) agrees, if there is a qualified trainer. He adds that if a railroad employee is just reading a script to other employees, the result is not the same. Unfortunately, the railroad industry does not have enough qualified employees to offer face-to-face training.

Lamont Byrd (IBT/BLET) has had success in using peer training.

Jeffrey Moller (AAR) suggests that the NPRM preamble already addresses this topic (69 FR 35168, dated June 23, 2004).

Facilitator Gross says that she knows that FRA Operating Practice inspectors will examine how railroads are meeting training requirements.

Alan Misiaszek (FRA) asks if the WG has a problem with how FRA treats the training issue in the NPRM?

The WG votes to reject the public commenter's recommendation for training. However, some WG members feel that face-to-face training is the preferred method for training. FRA enforcement activities of Industrial Hygienists will evaluate the efficacy of a railroad's training programs through an interview process with employees to discern the level of understanding of what the programs produce.

Facilitator Gross asks the WG to address Item VII. Training (C) Require initial training to occur prior to an employee's exposure to hazardous noise. One public comment to the NPRM noted that FRA should require employees to receive training prior to exposure to hazardous noise. FRA does not concur with this position because employees are

otherwise protected during the 6-month initial employment period. OSHA is silent on this issue. FRA has stricter rules for the training of new employees.

James Stem (UTU) asks how many companies are providing this training now?

Alan Misiaszek (FRA) clarifies that the public comment assumes that a railroad employee will be exposed to noise without any training. With the current language in the NPRM, Mr. Misiaszek does not believe that any new employee will enter a noise environment unprotected.

Robert Harvey (BLET) asks if there is a baseline pre-employment audiometric test, would any training be required of the new employee?

Jeffrey Horn (FRA) explains that training will be required in order to wear hearing protection equipment.

Mr. Harvey asks if there is any kind of training requirements for new employees?

Mr. Misiaszek says that OSHA standards do not address when employees receive their first training. However, FRA standards specify a certain time period.

James Stem (UTU) says in a perfect world, every employee would receive training before they begin work. The WG had amended OSHA's provision for FRA's proposed rule; FRA allows employers to consider pre-employment audiometric test as baseline tests. The additional amount of time that is required for HP training during an audiometric test is approximately 18 minutes. He believes that HP training at the same time as an audiometric test (given as a condition of employment) should be required in the rule.

The WG votes to reject the public commenter's recommendation for training. The WG agreed that new employees will typically receive initial training when employed for new jobs before they are exposed. Employees will receive HP training when protection is issued or offered. FRA will clarify how training for the use of hearing protection relates to the requirement or optional use of hearing protection and not triggered by the pre-employment being used as the first baseline audiometric test. The baseline hearing test does not trigger the training, but the offering/issuing of hearing protection does.

Facilitator Gross asks the WG to address Item VII. Training (D) Amend requirement for new employee training to "within 6 months of" tour of duty. The proposed rule provides that the railroad shall provide training "for new employees, within six months after the employee's first tour of duty." A public comment to the NPRM requested that FRA change "after" to "of," which would permit an employer to provide the training before or after the employee's first tour of duty.

Mark Badders (AAR) wants to confirm that pre-employment audiometric testing will be accepted as the baseline test for employees.

Alan Misiaszek (FRA) wants to emphasize that railroads shall provide training in the proper use of hearing protection devices.

Grady Cothen adds that if new employees have not had a chance for full training, he believes they should receive training before being allowed to use the hearing protection equipment.

Facilitator Gross asks for assistance in wording the WG's recommendation.

The WG votes to reject this recommendation. The WG agreed that new employees will typically receive initial training when employed for new jobs before they are exposed. Employees will receive HP training when protection is issued or offered. FRA will clarify how training for the use of hearing protection relates to the requirement or optional use of hearing protection and not triggered by the pre-employment hearing test being used as the first baseline audiometric test. The baseline audiometric test does not trigger the training, but the offering/issuing of hearing protection does.

Facilitator Gross asks the WG to address Item VIII. Part 227 Recordkeeping (C). The proposed rule requires railroads to "maintain a record of all positions or persons or both designated by the railroad to be placed in a hearing conservation program (HCP). One commuter railroad noted that the bidding and bumping process employed at their railroad would make compliance with this requirement administratively burdensome and costly.

The WG rejects this recommendation. Railroads are compliant if they simply list positions. FRA proposes to add a missing word to the preamble, "and/or," related to this topic, which may have generated the public comment.

Facilitator Gross asks the WG to address Item X. Miscellaneous (A) Train Horn Location. A few public comments to the NPRM raised the issue of train horn (and bell) noise. They noted that train horn noise can be particularly harmful to on-board personnel. One comment suggested that FRA mandate the relocation of cab roof-mounted horns to the back of the cab on the engine compartment hood.

The WG rejects this recommendation.

Facilitator Gross asks the WG to address Item X. (B) Headsets as HP. Several public comments to the NPRM asked why FRA does not require the railroad industry to use noise canceling headsets with built-in communication microphones, similar to that used on airplanes. The AAR does not object to the use of noise-canceling radio headsets, but

does not want FRA to require the use of this technology. The use of this technology has been poorly received by train crews.

The WG rejects this recommendation. However, FRA will permit the use of noise canceling technology headsets if offered through the railroad's hearing conservation program.

Jeffrey Moller (AAR) adds that a lot of National Rail Passenger Corporation (Amtrak) locomotives were equipped with noise canceling headsets and the equipment ended-up not being used.

Facilitator Gross asks the WG to address Item X. (C) Hierarchy of Noise Controls. Several comments to the NPRM noted that FRA's proposed rule departed from the "traditional" hierarchy of noise controls, which is used by OSHA and the Mine Safety and Health Administration (MSHA). These public comments requested that FRA base its rule on the widely accepted concept of a hierarchy of controls. The preferred methods of lowering exposure to hazardous noise are: engineering controls, administrative controls, and hearing protectors.

The WG voted to reject this recommendation. FRA's approach could be viewed as being more strict than OSHA's rules for engineering controls. FRA will give a more detailed description on engineering controls, i.e., the NPRM's Part 229 requirements.

Facilitator Gross asks the WG to address Item X. (E) Employee Noise Exposure when Deadheading. One public comment to the NPRM noted some concern with the practice of deadheading a crew to or from a point at which they will be operating a train using transportation in a different train. Considering that the crew may ride in a locomotive (rather than a van or taxi) to access their train, they may have more than the 12 hour limit of time for noise exposure.

Alan Misiaszek (FRA) explains that this topic involves the calculation of noise dose for an employee who is in a locomotive cab as an engineer and then deadheads back in the same cab. He believes that this topic can be handled by training modules. Just because the employee is off the clock does not mean that noise dose is eliminated.

Mark Badders (AAR) says the only way to ensure noise reduction is to require hearing protection. If I have a train run that requires hearing protection, if that same employee deadheads, I must require that the employee wear hearing protection.

Robert Harvey (BLET) says that in the training modules, employees must be told that when an employee is off the clock, the employee can still be exposed to noise. It is a training issue.

Jeffrey Moller (AAR) says that the FRA must protect employees. It sounds like a training issue. In training sessions, the ear plugs can be passed out and it is up to the employees to use them.

Grady Cothen (FRA) responds if the rail industry is deadheading employees in locomotives, there will be additional noise exposure. It will matter to those employees who are exposed.

The WG votes to include a discussion of the public comment in the rule preamble, noting that employees must consider deadheading time when calculating noise dose.

Facilitator Gross announces an afternoon break. During the afternoon break, it was decided to end the Session.

S E S S I O N A D J O U R N E D 4:15 P.M.

March 3, 2005 Session

A continuation of the Meeting of RSAC's Locomotive Cab Working Conditions Working Group (WG) was convened at 8:00 a.m., in the Golden Gate Room of the Serrano Hotel, 405 Taylor Street, San Francisco, California 94102 by the FRA's RSAC Facilitator, Cynthia Gross (FRA Office of Safety).

Facilitator Gross welcomes Working Group Members and attendees. She distributes an update of Meeting Document CWC-N-05-0301-02, which contains the WG consensus votes on the NPRM Items addressed by the Task Force on March 1, 2005, and the WG on March 2, 2005.

Alan Misiaszek (FRA) identifies the hotel meeting room's fire and emergency exits. He volunteers to perform cardiopulmonary resuscitation (CPR) for any meeting attendee requiring emergency assistance. He advises that many attendees have cellular telephones and asks for volunteers to call the emergency telephone number, 911, should an emergency occur.

Facilitator Gross asks the WG to address Item IX. (A) Static noise testing for "new" locomotives. One public comment to the NPRM recommended that FRA require manufacturers to conduct static noise test on all new locomotives in a fleet, not just a percentage of the locomotives. Another public comment suggested that the 85 dB(A) maximum noise requirement for "new" locomotives serve as a minimum requirement; that if locomotives had already tested to lower levels, they should be required to maintain those lower levels.

Robert Harvey (BLET) asks if the preamble explains FRA's testing requirements for static noise testing?

Jeffrey Horn (FRA) says that FRA will elaborate on static noise testing in the rule preamble.

After a discussion, the WG votes to reject both requests. The NPRM language will remain the same in the Final Rule. However, the WG recommends that FRA further define "confidence level" and to clarify preamble language regarding the locomotive noise sampling process. For the second comment, FRA has already negotiated the locomotive noise standard in an RSAC WG.

Facilitator Gross asks the WG to address Item IX. (B) Records retention requirement for "excessive noise reports." The proposed rule requires railroads to keep excessive noise reports for 92 days if they are made pursuant to 49 CFR 229.21 and 1 year if they are made pursuant to 49 CFR 229.23. One public comment to the NPRM suggested that FRA should require railroads to keep these records for longer periods. The intent of the reporting requirements are to have a report when the locomotive goes into a repair shop. FRA does not want to treat this problem as if it is different from any other locomotive defect found. Any additional reporting requirements could be a burden for short line railroads.

Jeffrey Moller (AAR) explains there is already a great deal of recordkeeping required for locomotives.

Facilitator Gross asks labor for their position.

Robert Harvey (BLET) respond that labor will accept conformance to 49 CFR 229 requirements.

The WG voted to accept FRA's position as written in the NPRM. The WG does not want to treat repair items related to excessive noise reports any differently than other 49 CFR 229 issues. As a practical matter, several railroads noted that they already retain certain repair records for extended periods of time, so that might satisfy the commenter's concern. In the preamble of the final rule, FRA will also discuss its obligations under the Paperwork Reduction Act.

Facilitator Gross asks the WG to address Item IX. (D) Identify what triggers an excessive noise report. The proposed rule requires railroads to train employees on how to determine what can trigger an excessive noise report. One comment to the NPRM seeks clarification on what will be adequate to satisfy this requirement.

Facilitator Gross asks the AAR to explain this issue.

Jeffrey Moller (AAR) says that the railroad industry wants to comply with the rule, but it also wants guidance of what FRA wants. The railroad industry does not have dosimeters, or other noise measuring devices in locomotive cabs. He asks what the rail industry needs to do to comply? How does the rail industry train employees? How do rail employees differentiate between an “irritating” noise, and a “really bad irritating” noise?

Grady Cothen (FRA) responds that “loud,” persistent,” and “distracting” could be examples of noises that trigger an excessive noise report.

George Lau (AAR) says “excessive noise” is a very broad term.

Alan Misiaszek (FRA) says if the WG starts specifying examples of excessive noise, it will be a “can of worms.”

Mr. Moller says that the rail industry is just looking for some words in the rule preamble to address this issue.

Mark Mitchell (AAR) says that the rail industry is looking for a way to respond to a concern. The rail industry is not looking for an avenue to “make a statement;” it is not looking for a “check list.”

Mr. Moller requests a management caucus.

Facilitator Gross announces a caucus break

M A N A G E M E N T C A U C U S B R E A K 8:50 A.M. - 9:00 A.M.

Facilitator Gross reconvenes the meeting. She asks for a decision from the management caucus.

Jeffrey Moller (AAR) believes that what constitutes excessive noise is adequately described in the NPRM (69 FR 35190, dated June 23, 2004). Therefore, the AAR requests to withdraw its public comment to the NPRM from WG consideration.

The WG accepts the AAR request to withdraw its public comment to the NPRM.

69 FR 35190, under definitions, defines excessive noise.

Jeffrey Horn (FRA) asks the WG to address Item IX. (C) Set the same standard for maintaining locomotives as for building new locomotives. The proposed rule requires “new” locomotives to average less than or equal to 85 dB(A) when tested for static noise and prohibits alterations that cause the average sound level to exceed 82 dB(A). One

public comment to the NPRM requested that FRA set the limit for maintenance alterations to the same level as for new equipment, i.e., 85 dB(A). FRA recommends that the rule language not be changed.

Robert Tully (AAR) says there are circumstances where making an innovation to a locomotive might raise the noise level from 82dB(A) to 83dB(A), which is still below the 85dB(A) standard threshold for maximum noise dose. By adopting this recommendation, railroads would not be able to make this innovation without a waiver.

Grady Cothen (FRA) agrees that as different technology becomes available, FRA wants railroads to take advantage of the technology as long as the noise levels did not deteriorate significantly.

Mike Badders (AAR) explains that if locomotive cab noise was at 82 dB(A), but a correction was necessary, for example, to correct engine sway, that raised cab noise, would a railroad have to request a waiver?

Grady Cothen (FRA) says yes, and an explanation would have to be made. However, he is not in favor of waivers.

Jeffrey Horn (FRA) says that the NPRM (69 FR 35190, dated June 23, 2004) rule text provides specifics to this discussion.

Facilitator Gross says the sound pressure level of 82 dB(A) pertains to a static test.

James Stem (UTU) states the public comment request to the NPRM departs from what has already been agreed by the RSAC WG.

Robert Harvey (BLET) agrees.

Jeffrey Horn says that FRA recommends no changes to the rule text on this topic.

Donald Robey (AAR) asks what constitutes a change that requires a re-test?

Alan Misiaszek (FRA) responds if a railroad modifies a locomotive cab and it diminishes the sound protection beyond the levels in the standard ... 82 dB(A) or 85 dB(A) depending on its initial build level.

Mr. Robey asks what triggers the re-certification of a locomotive cab?

Mr. Misiaszek asks does it make a change?

Mr. Robey does not know. However, he does not like the word, "modification."

Alan Misiaszek (FRA) asks if railroad WG members are comfortable with the language in the rule?

The WG voted to retain the existing language in the NPRM on this Item (49 CFR 229.121 (a) (1,2)).

Jeffrey Moller (AAR) comments that if an 81 dB(A) locomotive is modified and the noise level goes to 83 dB(A), the railroad will have to request a waiver.

Facilitator Gross asks the WG to address Item IX. (E) Regular and routine maintenance of locomotives is important. A few public comments to the NPRM noted that regular and routine locomotive maintenance, e.g., replacing window seals, minor insulation repairs, can reduce the noise level in locomotive cabs. FRA believes that a discussion in the NPRM preamble discusses this issue. FRA believes the NPRM language should not be changed.

The WG voted to keep the existing language. FRA will add a further explanation of the current requirements to the NPRM preamble.

Facilitator Gross asks Harvey Boyd (Rail Supply Institute (RPI)) for a presentation.

Harvey Boyd notes that there is an error in the NPRM Appendix H–Part III, Procedures for Measurement (69 FR 35191, dated June 23, 2004). Most sound rating devices will not measure L_{av} sound levels. He says the correct measure should be L_{eq} . Also in Appendix H-Part III (8), Mr. Boyd recommends removing the specification of a 30 second duration for the sampling interval.

The WG accepts the request to change the expression, “ L_{av} ” to “ L_{eq} ” in Appendix H, Part III, and to eliminate the reference to a 30 second measure for the exchange rate in Appendix H, Part III (8).

With the conclusion of addressing all of the Action Items in Meeting Document CWC-N-05-0301-02, Facilitator Gross requests final WG approval of the consensus changes and recommendations made to Meeting Document CWC-N-05-0301-02.

By unanimous hand vote, the Locomotive Cab Working Conditions Working Group approved the consensus changes and recommendations made to Meeting Document CWC-N-05-0301-02.

Grady Cothen (FRA) thanks the WG for its efforts. FRA had a meeting with the Office of the Secretary of Transportation on its rulemaking agenda this week. The locomotive cab working conditions noise rulemaking was one of the topics on that agenda. FRA will now make the recommended changes and discussions to the NPRM and circulate the document back to the WG for errata. FRA will then circulate the NPRM to the full RSAC for a vote. This document will be on the RSAC Agenda at its May 18, 2005 meeting.

Following the full RSAC vote, FRA will prepare a Final Rule Document and then circulate this document back to this WG. Following the WG review of the Final Rule Document, FRA will put the rule in for Department of Transportation clearance.

Mark Badders (AAR) asks when the Final Rule might be published?

Grady Cothen responds that the clearance cycle will be the hold-up.

Jeffrey Horn (FRA) elaborates that FRA hopes that the Final Rule will go into clearance sometime between June-August 2005. Therefore, sometime between December 2005 and April 2006, the Final Rule will be published.

Grady Cothen offers to provide the WG with a proforma timetable. However, it may need adjustment along the way.

Mark Badders (AAR) notes that 49 CFR 229.121A(1) contains a date for compliance. He observes that FRA may need to change that date in the NPRM.

Grady Cothen thanks Mr. Badders for that observation.

Mark Badders also adds that representatives from General Electric (GE), and General Motors, Electromotive Division (EMD) also need to look at this compliance date.

Grady Cothen says that FRA will reach out to GE and EMD and ask for their advice for a compliance date.

Mark Badders (AR) asks if railroads can use audiometric testing data being collected now for future compliance with the Final Rule?

Grady Cothen believes yes. However, Christina McDonald (FRA) will confirm this request. He again thanks the WG for their efforts with this rulemaking.

Robert Harvey (BLET) observes that many locomotive engineer comments were useful in this process. He believes that short line railroads will have the biggest problem with compliance.

Jeffrey Moller (AAR) thanks FRA and the labor organizations for their efforts on this rule.

With no additional comments, Facilitator Gross adjourns the WG meeting.

M E E T I N G A D J O U R N E D 10:05 A.M.

These minutes are not a verbatim transcript of the proceedings. Also, handout materials distributed during the meeting will be posted on the Locomotive Cab Working Conditions Working Group Internet Web Site and are not excerpted in their entirety in the minutes.

Respectively submitted by John F. Sneed, Contractor.