

SUMMARY OF RECENT LETTERS OF INTERPRETATION re: CFR 1910.95.
*Text is only brief excerpt... See http://www.osha.gov/pls/oshaweb/owares.do_search
 for complete list and FULL interpretation.*
RECENT LETTERS (Less than 13 years old)

Where an OSHA standard incorporates an earlier consensus standard, the only way the OSHA standard can be changed to adopt the new version is through rulemaking. However, while requiring employers to comply with existing OSHA standards, the Occupational Safety and Health Act of 1970 (OSH Act) also authorizes OSHA to treat certain violations, which have no direct or indirect relationship to safety and health, as *de minimis*. OSHA enforcement policy provides that a violation may be *de minimis* if an employer complies with an amendment of a consensus standard rather than with the OSHA standard, and the updated consensus standard is at least equally protective of employee safety and health. OSHA does not issue citations for *de minimis* violations, penalties are not proposed, and abatement of the violation is not required by the employee.

[01/12/2017] Clarifies a “successor employer” as one in which there is no substantial change in operations or employees as the business changes hands. In this situation, the successor employer may not change audiometric baselines. The transferring employer must transfer relevant records to the successor employer, who must retain the records for the duration of an employment. Successor employment requirements are the same when other OSHA standards or regulations apply to other hazard monitoring programs. The successor employer is only required to report under 29 CFR 1904.34 for work-related illness or injuries occurring after the business has transferred. The transferring employer must provide the successor employer all Part 1904 injury and illness records (e.g OSHA 300 form).

[05/10/2016] - Definition of a "physician" under 29 CFR 1910.95 and what credentials would qualify a person to perform the duties that are specifically ascribed to physicians by the standard[1910.95(g)(3); 1910.95(g)(9)]

[04/29/2016] OSHA 300 Log Recording if noise-exposure is reduced to less than 85 dBA after derating of the hearing protective device. Although OSHA allows the use of hearing protection in determining work-relatedness, this should not be the sole criteria in making this decision. Other work-place factors including actual use of the hearing protection, and training on their use must be considered. OSHA clarifies that in those who have had a significant threshold shift, hearing protector attenuation must be sufficient to reduce employee exposure to a TWA of 85 dB. This was in response to a question of what OSHA considers a “safe” level to consider when considering a hearing protector to which de-rating is applied.

[09/02/2014] – Occupational Noise Exposure - The use of hearing aids as hearing protection devices. [1910.95(j)(1)]. If hearing aid manufacturer can establish an approved NRR for the device, then it could be used.

6/10/2013 Clarification on the acceptability of individualized fit testing results to demonstrate compliance with 29CFR1910.95. OSHA must consult with NIOSH before making a determination on whether personal fit-test can be used to assess adequacy of hearing protective devices, what to do with personal fit-testing data already performed, and whether derating would still be required if personal

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fit testing was conducted.

[03/11/2013] - [Audiometric testing using insert earphones\[1910.95\(g\)\]](#). OSHA consulted with NIOSH and determined that insert earphones could be used for testing, however cautions that there may be discrepancies between insert and supra-oral earphones at 500 and 1000 Hz. This opinion rescinded a previous letter of interpretation which indicated a side-by-side comparison had to be made with supra-orals in order to convert to using insert earphones.

10/12/2012 [Clarification on whether both ears must be tested on a retest to confirm an STS](#). If the employer chooses to conduct a retest following the discovery of a possible STS, this must be conducted within 30 days and must include both ears..

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03/03/2011 [Clarification on whether a successor employer may establish a new baseline audiogram for employees of the former employer.](#) The successor employer is not permitted to establish new baselines for employees who had previously been enrolled in the HCP. Even if an employee is away from the noise environment for an extended time period, it does not make the baseline audiogram invalid. Audiograms performed by the new owner that show an employee has experienced a recordable STS must be recorded on the new owners' OSHA 300 Log or equivalent.

04/23/2010- [Whether use of an artificial ear ISO 318 coupler complies with the noise standard.](#) If the ISO 318 coupler is equivalent to the IEC 60318-3, OSHA would consider its use for both acoustical and exhaustive calibrations using the RETSPLs provided in the ANSI standard to be a *de minimis* violation

12/05/2008 [Whether employers have the option to establish new baseline audiograms when business ownership changes, but medical records are maintained for 30 years.](#) (confirmation of an earlier letter on similar topic... see #84, below) Employers do not have the option to establish new baselines. When an employer's business changes ownership and remains at the same location retaining the current employees, the employer is required to transfer all audiograms including baseline audiograms to the new employer.

#90 [08/29/2007 - Clarification of 1910.95 and 1904 regarding physicians and audiologists roles in determining work-relatedness of worker hearing loss.](#) (Provides little new information) Confirms that an employer may seek the guidance of either a physician or "other licensed health care professional" (including audiologists) as to whether a given hearing loss case is work-related under provisions of 1904.10(b)(6) and should be entered on the OSHA Log. Employers are still required under provisions of paragraph 1910.95(g)(8)(ii) of the OSHA Noise Standard to have a physician make the determination that an employee's hearing loss is not work-related.

89 [03/07/2007 - Administering the baseline audiogram either before or after an employee's first exposure.](#) The baseline audiogram may be given either before or after an employee's first exposure to noise but must be given no later than six months after an employee's exposure to noise above the action level.

#88 [2006 - 02/10/2006 - Clarification on revising a baseline audiogram if a standard threshold shift occurs in only one ear.](#)

Employer does not need to go back further than the previous year's audiogram and ensure all future audiograms are revised (re: separate ear baselines).

#87 [2005 - 02/14/2005 - Frequency of evaluating audiometric testing rooms to meet the specifications in Appendix D of the Occupational Noise standard.](#)

To meet the requirements of Appendix D for a mobile van, as a minimum, it may be necessary to do ambient testing whenever the van is relocated to a new location at a minimum. To ensure that the hearing test results are valid each time, it is advisable to check ambient noise levels every day you do audiometric testing along with the daily calibration check using a bioacoustical simulator. (Not necessary for fixed booths)

86 [2005 - 02/08/2005 - Audiometric baseline revisions in employee rehire situations.](#)

In a rehire situation, if the employer still has the original baseline audiogram, that audiogram may be the baseline since in fact it was obtained within 6 months (or one year in the case of audiograms taken in a mobile test van) of the employee's first noise exposure. Subsequent audiograms would be compared to that audiogram; if a STS appears, then the subsequent audiogram would become the revised baseline. The standard only requires employers to keep the audiometric test records for their length of employment. Employers may use the original baseline audiogram for rehired employees provided that: (1) the employer has retained the original baseline; and (2) the original baseline was valid.

LESS RECENT LETTERS (more than 12 years old)

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#85 2004 - 08/03/2004 - Application of the Occupational Noise standard to employees who are deaf or have a diminished capacity to hear.

84. 2004 - 04/27/2004 - Retention of exposure and audiometric testing records by successor employers.

83. 2004 - 03/04/2004 - Recording criteria for recordkeeping cases involving occupational hearing loss.

83. 2004 - 02/13/2004 - Minimum exposure for inclusion in the hearing conservation program (HCP); removal criteria

82. 2003 - 08/14/2003 - Retesting requirements if employee's annual audiogram shows a Standard Threshold Shift (STS).

81. 2003 - 05/08/2003 - Baseline audiogram revision due to persistent STS or improved thresholds; revision must be made for each ear separately.

[http://www.osha.gov/pls/oshaweb/owadisp.show_document?
p_table=INTERPRETATIONS&p_id=25014](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=25014)

10/02/2000 - Hearing protection and the responsibility for paying for the hearing protectors including replacement devices/parts.

70. 1995 - 01/23/1995 - Occupational Noise Exposure Standard when an employee with a history of off-the-job noise exposure.

69. 1994 - 08/01/1994 - Clarification of the policy for classifying violations as repeated, as well as clarification of specific regulations.

68. 1994 - 05/09/1994 - Hearing conservation standard questions.

67. 1993 - 08/31/1993 - Use of insert earphones for audiometric testing.

66. 1993 - 07/09/1993 - Noise exposure standard and impairment adjustments.

65. 1991 - 07/29/1991 - Committing a de minimis violation when using an insert earphone designated as ER-3A.

64. 1991 - 04/17/1991 - Retesting when audiogram shows employees have suffered STS shift

63. 1991 - 04/01/1991 - Occupational noise exposure limits

62. 1990 - 08/24/1990 - Product endorsement policy and telephone headsets.

61. 1990 - 03/05/1990 - Observation of monitoring requirement at 1910.95(f) in the occupational noise exposure standard

60. 1989 - 12/14/1989 - Noise inspection conducted at Robben's Roost, Louisville, Kentucky.

59. 1989 - 12/13/1989 - Audiometric earphones to be reviewed for acceptability for audiometric testing.

58. 1989 - 11/17/1989 - Identification of a standard threshold shift (STS) for individuals with a very poor sense of hearing.

57. 1989 - 07/19/1989 - Policy concerning OSHA's Hearing Conservation Amendment

56. 1988 - 03/29/1988 - Response to Freedom of Information Act request for standards and guidelines related to working around aircraft.

55. 1988 - 02/09/1988 - Posting of the Occupational Noise Exposure Standard.

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- 54. 1987 - 12/07/1987 - Hearing conservation programs and "ear blasts" on communication headsets
- 53. 1987 - 11/20/1987 - Reduction of noise exposure for metal spray operations.
- 52. 1987 - 07/27/1987 - Free audiometric testing for employees exposed over the action level.
- 51. 1987 - 06/15/1987 - Recertifying technicians who do audiometric testing and pulmonary function testing.
- 50. 1987 - 06/09/1987 - Requirement for instituting engineering and administrative controls for noise.
- 49. 1987 - 04/14/1987 - Use of Walkman Radio, Tape, or CD Players and Their Effect When Hearing Protection Is In Use
- 48. 1987 - 03/18/1987 - Calculating of hearing threshold shifts.
- 47. 1986 - 12/10/1986 - Calibration of noise dosimeters
- 46. 1986 - 10/10/1986 - Field calibration of noise dosimeters.
- 45. 1986 - 07/10/1986 - Response to letter suggesting that the noise standard of 90 dB(A) is set at too high a level, and should be 85 dB(A) or less.
- 44. 1986 - 06/25/1986 - Time period for notifying employees of a standard threshold shift (STS).
- 43. 1986 - 06/16/1986 - The noise standard applies to environments with undue atmospheric pressure.
- 42. 1986 - 06/04/1986 - Interpretation concerning persistent standard threshold shift (STS) .
- 41. 1986 - 04/10/1986 - General review of the OSHA noise standard.
- 40. 1985 - 10/10/1985 - Noise standards applicable to Metra are under the jurisdiction of the Federal Railroad Administration.
- 39. 1985 - 08/15/1985 - Some employers have banned portable stereo headsets.
- 38. 1985 - 07/16/1985 - Standard applicable to two point suspension scaffolds and power platforms used in window cleaning and to hazards in refrigeration plants.
- 37. 1985 - 06/18/1985 - Audiograms conducted in accordance with the hearing conservation amendment.
- 36. 1985 - 06/06/1985 - Interpretation of "effective hearing conservation program".
- 35. 1985 - 03/28/1985 - Respiratory protection for abrasive blasting with silica.
- 34. 1985 - 02/22/1985 - Fast response noise dosimetry measurement not acceptable.
- 33. 1984 - 12/14/1984 - Regulations for the calibration of spirometers and audiometers; Regulations for the calibration of spirometers and audiometers.
- 32. 1984 - 08/30/1984 - Quest Bio Acoustic Simulator may be used for daily audiometer checks.
- 31. 1984 - 05/08/1984 - Questions and answers relative to the noise standard.
- 30. 1984 - 03/26/1984 - Baseline audiograms must be established even if medical problem exists.
- 29. 1984 - 03/13/1984 - "Laboratory-based noise reduction" defined.

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28. 1984 - 02/16/1984 - A firm can meet training requirements if questions are answered.
27. 1984 - 02/03/1984 - March 1, 1984 is the deadline for baseline audiograms
26. 1984 - 02/01/1984 - Costs of employee training under the noise standard paid by employer.
25. 1984 - 01/03/1984 - Use of the "hold" switch on audiometers when background noise levels exceed the criteria in Table D-1.
24. 1983 - 10/17/1983 - One type of muff and plug available for employee hearing protector selection.
23. 1983 - 09/30/1983 - Ear muffs and ear plugs are not both required if one offers protection.
22. 1983 - 09/27/1983 - Notification requirements for standard threshold shifts.
21. 1983 - 09/16/1983 - Applicability of the noise standard to portable ear muff type radios.
20. 1983 - 08/15/1983 - Citation guidelines in relation to monitoring programs.
19. 1983 - 08/04/1983 - Methods of training for microprocessor audiometer technicians.
18. 1983 - 06/08/1983 - Audiometer calibration requirements of the March 8, 1983 Hearing Conservation Amendment.
17. 1983 - 05/24/1983 - Comparison to baseline audiograms and retest audiograms
16. 1983 - 05/11/1983 - Employee noise exposure assessment records are part of audiometric test record.
15. 1983 - 05/03/1983 - Requirement to make a positive determination of work-relatedness of threshold shift revoked.
14. 1983 - 05/01/1983 - Noise regulations apply to all places of entertainment.
13. 1983 - 04/26/1983 - Methods of training for microprocessor audiometer technicians.
12. 1983 - 04/06/1983 - No time limit from date of annual audiogram to standard threshold shift determination.
11. 1983 - 04/06/1983 - An electroacoustic ear can be used for daily testing of an audiometer.
10. 1983 - 03/29/1983 - The hearing conservation amendment does not cover construction or agriculture.
9. 1983 - 03/16/1983 - Positive determination of work-relatedness of standard threshold shift not required.
8. 1982 - 08/18/1982 - Revisions of hearing conservation standard under consideration applicable to logging industry.
7. 1982 - 07/13/1982 - Applicability of the noise standard to pulpwood logging.
6. 1982 - 06/03/1982 - Hearing conservation standard in relation to poultry processing industry.
5. 1982 - 03/26/1982 - Question of whether the noise standard is adjusted for workshifts greater than 8 hours.
4. 1982 - 01/19/1982 - Provisions to assure that workers are adequately protected from noise exposure.

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3. 1982 - 01/11/1982 - Variable day to day exposures cannot be averaged for compliance with action level

2. 1981 - 09/15/1981 - Compliance determination based on worst day noise exposure.

1. 1975 - 03/19/1975 - Administrative controls and PPE used to reduce exposure below limits if engineering controls are not feasible.

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In addition, there are some letters of interpretation re: CFR 1904.10 (Recording criteria for recordkeeping cases involving occupational hearing loss)

1. [08/29/2007 - Clarification of 1910.95 and 1904 regarding physicians and audiologists roles in determining work-relatedness of worker hearing loss.](#) (Basically, a long review of what had already been written in 1904.10 and 1910.95 re: who can determine work-relatedness. Take a long look at it and see for yourself how the agency has finessed use of "other health care provider" as it pertains to audiologists.)
2. [05/12/2006 - Recordkeeping requirements when an employer receives two or more differing medical recommendations for an injury/illness.](#) When an employer receives contemporaneous recommendations from two or more physicians or other licensed health care professionals, the employer may decide which recommendation is the most authoritative and record the case based on that recommendation. However, once medical treatment is provided for a work-related injury or illness, the case is recordable.
3. [2004 - 03/04/2004 - Recording criteria for recordkeeping cases involving occupational hearing loss.](#) Work-related hearing loss cases must be recorded if they meet the requirements of 1904.10. Two basic questions must be answered: Did the employee suffer a Standard Threshold Shift (STS) of 10 dB or more in one or both ears? Is the employee's overall hearing level 25 dB or more above audiometric zero in the same or both ears? If both questions can be answered yes, then it must be recorded on the OSHA 300 log.
4. [2003 - 05/08/2003 - Baseline audiogram revision due to persistent STS or improved thresholds; revision must be made for each ear separately.](#) When the professional evaluating the audiogram determines that a baseline revision is appropriate, whether due to a persistent STS or improved thresholds, the baseline must be revised for each ear separately



JUN 10 2013

Reply to the attention of:

Mr. Lee Hager
Hearing Conservation and Peltor Communications
3M Occup Health & Env Safety
Great Lakes Region
248 Church St.
Portland, MI 48875

Dear Mr. Hager:

Thank you for your January 9, 2013, questions submitted to the Occupational Safety and Health Administration's (OSHA) Directorate of Technical Support and Emergency Management. Your questions were forwarded to the Directorate of Enforcement Programs for a response. Your questions concerned OSHA's Occupational Noise Exposure standard, 29 CFR 1910.95, and its requirements as it relates to hearing protection devices (HPD) protection fit-testing. Your questions have been paraphrased below, followed by our replies.

Background: When OSHA promulgated the Hearing Conservation Amendment in 1983 which was the Agency's last major revision to 29 CFR 1910.95, it incorporated the U.S. Environmental Protection Agency's (EPA) laboratory testing requirements for hearing protection devices set forth at 40 CFR 211. See, Appendix B, *Methods for estimating the adequacy of hearing protector attenuation*, to 29 CFR 1910.95. The EPA also requires HPD manufacturers to include the noise reduction rating (NRR) on the HPD packaging. The NRR describes the average sound level reduction (attenuation) provided by the HPD under laboratory test conditions (the higher the NRR, the greater the noise reduction). Under OSHA's Noise standard, HPDs must attenuate the occupational noise received by the employee's ears to within levels specified in Table G-16 and Table G-16A of 29 CFR 1910.95 (b)(1).¹ Additionally, per paragraph 1910.95 (j)(1) employers must evaluate hearing protector attenuation for the specific noise environments in which the protection will be used, and this attenuation is to be evaluated using a method described in the standard's Appendix B.

In your January 9, 2013 email to OSHA, you stated that the Agency "uses a derating system to determine hearing protection sufficiency, taking the labeled [NRR] and subtracting an arbitrary amount or percentage of the labeled value to estimate real-world performance." You also stated that currently available field fit-testing technologies, such as the system developed by 3M, permit determination of hearing protector performance on individual workers.

Question 1: Will OSHA use the personal fit-test results to determine the adequacy of the hearing protection devices (HPDs)?

¹Appendix B to 29 CFR 1910.95 also allows employers to evaluate the adequacy of HPD attenuation by using one of three methods developed by the National Institute for Occupational Safety and Health (NIOSH). See, *List of Personal Hearing Protectors and Attenuation Data*, HEW Publication No. 76-120, 1975, pages 21-37.

Reply: As noted above, OSHA's current standard at 29 CFR 1910.95, Appendix B, describes methods to evaluate HPD attenuation, one of which is the EPA required laboratory testing of HPDs to determine the NRR. OSHA Instruction CPL 02-02-035, *29 CFR 1910.95(b)(1), Guidelines for Noise Enforcement; Appendix A* states "Apply a safety factor of 50 percent; i.e., divide the calculated laboratory-based attenuation [NRR] by 2." However, as this Instruction explains, OSHA only applies the 50 percent reduction factor to calculate noise attenuation when establishing whether feasible **engineering controls** for noise must be implemented, in accordance with 1910.95(b)(1), and not for determining the adequacy of attenuation for compliance with 1910.95(j)(1).

Question 2: What will OSHA do with the fit-testing data that are encountered in the field? Would the HPDs that have a subject-fit verification system have to also be derated by OSHA compliance officers?

Reply: OSHA needs further information and will consult with the National Institute for Occupational Safety and Health (NIOSH) on these two questions. Upon receipt of NIOSH's assessment we will respond to your questions. If new audiometric technologies, such as personal fit-testing of HPDs under field conditions, provide justification for OSHA to consider regulatory acknowledgement of an alternate protocol for determining the NRR of HPDs, any such regulatory change would need to be conducted through notice and comment rulemaking. Upon change(s) to the Noise standard, OSHA's compliance directive may be revised accordingly.

Thank you for your interest in occupational safety and health. We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can continue to consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please feel free to contact our Office of Health Enforcement at 202-693-2190.

Sincerely,



Thomas Galassi, Director
Directorate of Enforcement Programs