



Standard Interpretations - Table of Contents

• **Standard Number:** 1910.95; 1910.95(g)(9); 1910.95(m)(5); 1910.95(h); 1904.34; 1904.10(a)

March 8, 2011

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2001 Fifth Avenue
Troy, New York 12180

Dear Dr. Musto:

Thank you for your September 23, 2010, letter to the Occupational Safety and Health Administration's (OSHA's) Directorate of Enforcement Programs (DEP). In your letter, you requested information on the requirements of the Occupational Noise Exposure standard, 29 CFR 1910.95, as it relates to baseline audiograms. This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any question not delineated within your original correspondence. Your paraphrased statement, questions and OSHA's replies are provided below.

Statement: In previous OSHA noise standard interpretations dated April 27, 2004 and December 5, 2008, the transfer of audiograms from a previous owner to the successor employer has been addressed. However, OSHA has not addressed the determination of baselines for employees who had previously been enrolled in a hearing conservation program (HCP) but, were not enrolled at the time of the new employer's acquisition. These employees may not have been exposed to noise exceeding the action level for years prior to acquisition. In addition, some employees who were previously enrolled and were transferred to areas outside of the HCP required area are now returning.

Question 1: May the successor employer establish new baselines for employees who had previously been enrolled in the HCP, but are not enrolled at the time of acquisition by the successor employer, and are now returning to areas requiring re-enrollment in the HCP?

Reply 1: No. Generally, the successor employer is not permitted to establish new baseline audiograms for employees. OSHA's noise standard at Section 1910.95(m)(5) provides that when an employer ceases to do business, that employer is required to transfer all records required to be maintained by paragraph (m) to the successor employer. Therefore, a successor employer should continue to rely on the baseline audiograms established by the former employer for all employees. Please be aware that the standard at Section 1910.95(g)(9) states that a baseline audiogram may only be replaced by an annual audiogram if there is a standard threshold shift (STS) of greater than 10 dB, and (1) an audiologist, otolaryngologist or a physician has deemed the STS to be persistent; or (2) the annual audiogram's threshold indicates significant improvement over the baseline audiogram.

Question 2: Is there a criterion, for instance some time period away from workplace noise exposure, upon which a baseline audiogram can be considered invalid and can be revised?

Reply 2: No. Even if an employee is away from the noise environment for an extended time period, it does not make the baseline audiogram invalid. A baseline would be considered invalid if it did not meet the audiometric test requirements set forth in Section 1910.95(h). Those requirements include, among others, the following:

- The audiometric testing must be conducted at all of the required frequencies (500, 1000, 2000, 3000, 4000, and 6,000 Hz) for each ear;
- Audiograms must be conducted with audiometers that meet the American National Standard Specification for Audiometers, S3.6-1969 as referenced in §1910.6;
- Audiograms must be conducted in rooms meeting the specification listed in Appendix D;
- All audiometers must be calibrated as outlined in Appendix E.

Question 3: If an employee is enrolled in a hearing conservation program with an employer that is acquired by another, and that employee demonstrates an OSHA recordable standard threshold shift (STS) upon initial testing by the new employer, upon whose OSHA log should the threshold shift be entered, the former or the new employer.


Reply 3: Section 1904.34 of OSHA's injury and illness recordkeeping regulation addresses the situation when a particular employer ceases operations at an establishment during a calendar year, and the establishment is then operated by a new employer for the remainder of the year. When there is a change in ownership, Section 1904.34 requires the employer to transfer to the successor employer all records required to be maintained under Part 1904. The new owner is also required to save all illness and injury records kept by the prior owner, but is not required to update or correct such records.

Section 1904.10(a) requires that if an employee's audiogram reveals that the employee has experienced a work-related S I S in hearing in one or both ears, and the employee's total hearing level is 25 dB or more above audiometric zero (averaged at 2000, 3000, and 4000 Hz) in the same ear(s) as the STS, it must be recorded on the OSHA Log. 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.

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 interpretations of OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at www.osha.gov. If you have any further questions, please feel free to contact the Office of Health Enforcement at (202) 693-2190.

Sincerely,

Thomas Galassi, Director
Directorate of Enforcement Programs

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