

## OSHA Delays New Policies on Noise Control

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Many of you may know that the U.S. Department of Labor's Occupational Safety and Health Administration (DOL/OSHA) has recently made – and then withdrawn – an interesting policy change. Back in 1983, just after OSHA had issued the final version of the hearing conservation amendment, the agency sent out a notice to its inspectors not to enforce the noise standard's requirements for feasible engineering and administrative controls until workers' time-weighted average exposure levels (TWAs) exceeded 100 dBA, and even then, only if the other elements of the hearing conservation program, specifically hearing protectors, did not adequately protect them. This policy stayed in effect for 28 years, although voices from the professional community, labor unions, and several organizations protested.

The result of OSHA's enforcement policy has been that the development and use of engineering noise control in this country has been virtually stagnant, at least in the workplace. The situation in the general environment isn't much better, because the Environmental Protection Agency's (EPA) Office of Noise Abatement has been closed since 1982. Any attempts to regulate or require labeling of noisy machines have died with it. That's not the case in Europe, Australia, and other parts of the world, where legislation and directives have provided incentives to manufacturers to make quieter equipment and employers to use them.

One of the arguments against the 1983 policy change is that OSHA implemented it without going through the public rule-making process, so its legality has been questioned. Another argument is that this policy is contrary to all other OSHA health and safety regulations, where engineering and administrative controls are the primary methods of hazard reduction. During this period, however, there were some major court cases, the outcomes of which required OSHA inspectors to perform cost-benefit assessments if they issued citations for lack of noise controls. So while other industrialized nations have developed quieter products and processes, the American workplace remains noisy. In Europe and Australia, noise control technology has greatly outpaced that of the U.S., as has the protection of workers against noise-induced hearing loss. Some American manufacturers market quiet products in Europe and noisy ones at home.

The OSHA noise standard also lags behind those of the rest of the world in other respects. Out of some 25 nations, there

are only two that use the OSHA 90-dBA permissible exposure limit (India and the U.S.) and four that use the 5-dB exchange rate (Brazil, Colombia, Israel, and the U.S.). Most others have adopted a limit of 85 dBA or below and the more protective 3-dBA exchange rate.

In more recent years, additional litigation has taken place, going as far as the U.S. Supreme Court, which struck down the necessity of a cost-benefit analysis. Consequently, on October 19, 2010, OSHA published in the *Federal Register* the intention of changing its current policy by redefining the word "feasible" as it relates to the noise standard as "capable of being done." The agency did say that if a noise control remedy threatened an employer's viability (the capacity to remain in business), it would not be considered feasible. OSHA encouraged the public to comment on the proposed change with a deadline of December 20, 2010, which had since been extended to March 21, 2011.


The Council for Accreditation in Occupational Hearing Conservation (CAOHC), along with the National Hearing Conservation association (NHCA) and the American Speech-Language-Hearing Association (ASHA) signed a coalition letter to David Michaels, OSHA director, supporting the recent policy change and requesting that the agency continue to make improvements to the existing regulation. NHCA later followed up with detailed reasons for this support, including the facts that workers are continuing to lose their hearing despite alleged compliance with the hearing conservation amendment; that workers often fail to wear their protectors or use them improperly; that hearing protectors can have an adverse effect on communication and the perception of warning signals; and that engineering controls can actually be less expensive in many situations because they are one-time rather than annual expenses. Also, there are many options available to OSHA to ease any resulting burdens on employers by giving long compliance times, exempting small businesses, and providing technical assistance.

Within a few weeks of its publication, there was a firestorm of objection from major business associations, such as the U.S. Chamber of Commerce and the National Association of Manufacturers, claiming that the policy change was not needed and that it would have an adverse effect on jobs. These groups maintained that employees were sufficiently protected with hearing

protectors and other elements of the hearing conservation program. They conveyed the impression to their members that OSHA would crack down on them immediately (an impossibility); and that the policy applied to workers exposed to noise *levels* over 90 dBA when in fact it was the *TWAs* (averages, not levels resulting in far fewer overexposed workers). They also maintained that this was something new rather than something that had been an integral part of the noise standard since 1971!

Also around this time, President Obama issued an executive order directing the agencies to re-examine the need for regulations, and certain members of Congress took a negative interest in OSHA's proposed policy change. As a result of all of this push-back, OSHA withdrew its policy on January 19, 2011, stating that this process required "much more public outreach" and that they needed to examine other alternatives. They would, however, review all comments that arrived by March 21 and some time after that hold a stakeholders meeting. The date of the meeting has not yet been determined.

Although the deadline has come and gone, OSHA officials have stated that the docket would continue to remain open and that interested parties could still send in comments. It would be particularly helpful to OSHA to learn about how some companies have used noise control in efficient and inexpensive ways. Comments on these issues may be sent to the OSHA Docket Office, Docket No. OSHA 2010-0032, U.S. Dept. Labor, 200 Constitution Ave. NW, Washington DC 20210.

For more information see OSHA's Federal Register notices at: [\t " \\_blank](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=21773) 

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Alice Suter, Ph.D., has worked in the area of noise effects and hearing conservation for more than 30 years. She has been influential in noise criteria development, regulation, and public policy, first at the U.S. EPA's Office of Noise Abatement and later at OSHA. At the EPA she participated in the development of criteria for noise effects, including the psychological, extra-auditory physiological, performance and communication effects, in addition to the effects of noise on hearing. As senior scientist and manager of the noise standard at OSHA, she was principal author of of the hearing conservation amendment to the noise standard. This editorial is based on "OSHA Policies on Noise Control" published in *CAOHC Update*, the newsletter of the Council for Accreditation in Occupational Hearing Conservation, Vol. 23, Issue 1, 2011.