STS Update

The following was written to OSHA by NHCA in response to an internal OSHA compliance directive. Also printed is OSHA's response.

December 14, 1990

Mr. Gerald Scannell
Assistant Secretary, Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Mr. Scannell:

The National Hearing Conservation Association (NHCA) is a professional association composed of audiologists, physicians, industrial hygienists, engineers, occupational health nurses, equipment manufacturers, and others, all of whom are active in the field of industrial and military hearing conservation throughout the United States. We serve the noise-exposed industrial and military populations through consultation and direct service provision in the areas of noise exposure measurement, engineering and administrative control of noise exposure, audiometry, personal hearing protection and education and training.

In 1987, the Noise Committee of the American Industrial Hygiene Association (AIHA) prepared a position paper on A Recommended Criterion for Recording Occupational Hearing Loss on the OSHA Form 200. This position paper was approved by the AIHA Board of Directors and subsequently supported publicly by the American Speech-Language-Hearing Association and by NHCA. American industry continues to be concerned about the absence of a clearly-defined criterion for recording occupational hearing loss, especially in view of the recently increased diligence of OSHA compliance personnel in citing companies for failure to record such hearing loss. As professionals interested in the prevention of noise-induced occupational hearing loss, NHCA members also share this concern. We believe that it is vitally important that the Occupational Safety and Health Administration issue a clearly-defined criterion for recording occupational hearing loss at the earliest possible date.

It has recently come to our attention that on March 23, 1990, the OSHA Office of Field Programs issued a draft CPL which provided guidelines for enforcing the recording of incidents of occupational hearing loss by employees on OSHA Form 200. We commend OSHA for the development and field distribution of this document. However, we are concerned about the confusion which seems to exist about the application and enforcement of these draft guidelines at the present time. Telephone conversations with OSHA personnel in various regional offices have revealed that some Regions are following the guidelines at this time, while others are not. That is, in some parts of the country and in some states employers are being required to record incidents of Standard Threshold Shift (STS) on OSHA From 200, while in other parts of the country such recording is not mandatory unless the STS has been determined to be occupationally-related. It would be useful to employers and hearing conservation professionals alike if consistency in enforcement policy could be established.

Additionally, we have some concerns about specific items in the draft CPL:

1. It is unclear what is meant by "hearing loss" resulting from an instantaneous noise exposure in (f)(1). Does this term refer to OSHA's definition of a "material hearing impairment," or to the medically-sanctioned "average hearing loss at 500, 1000, 2000 and 3000 Hz," or to any hearing decrease whatsoever?

2. It is unclear from the wording of (F)(4)(b) whether subsequent STSs after an initial STS (in one or both ears) need to be recorded. If the baseline is revised, and a subsequent STS occurs from the revised baseline, does it need to be recorded?

3. The requirement in (F)(4)(a)(1) that the employer must have "substantial evidence the *entire shift* [italics added] in the threshold of hearing was caused by a nonwork-related event or exposure off premises" is, in the opinion of many physicians and audiologists we have consulted, a virtually impossible diagnosis to make. It is likely to lead to a sharp decrease in the number of employee referrals made by employers, since few employers will be willing to refer employees for a medical examination which will

essentially produce no benefit at all for the company (in terms of a possible finding of nonwork-relatedness of an STS). We are concerned that the chilling effect of this policy may serve to reduce the provision of needed health care for employees with medical problems, as well as to provide exaggerated data to the Bureau of Labor Statistics on the incidence of workplace-related hearing loss, since many incidents of temporary threshold shift and medically-related hearing loss will remain on OSHA Form 200.

4. The requirement in (F)(4)(a)(1)(a) that the "physician's written opinion.. must incorporate a *detailed explanation of why none of the hearing loss is work related* [italics added]" is, in our opinion, self-defeating. No physician is ever likely to attempt to write such a detailed explanation because of the physical impossibility of arriving at such an apodictic diagnosis.

5. The requirement in (F)(4)(a)(1)(a) of a physician's written opinion as the exclusive means of determining nonwork-relatedness of a STS is, in our opinion, inappropriate. As stated in Definition 3 of AIHA's "Position Paper on a Recommended Criterion for Recording Occupational Hearing Loss on the OSHA From 200," this determination can be made by either an audiologist or a physician, since it is based equally as much on workplace noise exposure conditions, integrity of hearing protector use, configuration of audiometric results during years of noise exposure, audiometer calibration conditions, acoustical environment of the testing area, etc., as on the otologic condition of the employee. Often, industrial audiologists are in a better position to determine the effects of these conditions than the employee's physician, particularly if the physician is not a specialist in occupational medicine or is not familiar with the specific workplace conditions in question.

Thank you for your consideration of these issues. We would be happy to meet with you at any time to provide further information if it is needed.

Sincerely,
James D. Banach, President
National Hearing Conservation Association

February 6, 1991

Dear Mr. Banach:

Thank you for your letter of December 14, 1990, regarding the recording of hearing loss on OSHA Form 200.

Your letter stated that you believe the Occupational Safety and Health Administration (OSHA) should issue a clearly-defined criterion for recording occupational hearing loss at the earliest possible time. Your contacts with various OSHA Regional Offices have resulted in differing responses concerning enforcement of the level at which hearing loss must be recorded. You recently became aware that OSHA issued a draft document on March 23, 1990, that provided guidelines for enforcing the recording of occupational hearing loss on OSHA Form 200. You related that you have some concerns about specific items in the draft document. You also commented that it would be useful to employers and hearing conservation professionals alike if consistency in enforcement policy could be established.

We agree that a clearly defined criterion for recording occupational hearing loss is needed and that consistency in enforcement policy is essential. We are preparing a final field directive that will serve these purposes. We will take your comments into consideration during this process. As soon as the directive is finalized, we will provide you with a copy.

We appreciate your comments on this important issue.

Sincerely,
Gerald Scannell
Assistant Secretary

MARS, INC. URGES OSHA TO APPROACH STS RECORDABILITY THROUGH RULEMAKING

Mars, Inc. of MacLean, Virginia has written to OSHA to request that recordability of STS be pursued through a rulemaking process instead of a compliance directive. They cite the complicated medical and legal issues involved in the decision of when hearing loss rises to the level of "illness" and the difficulty in determining the cause of hearing loss, and state that there is precedent for rulemaking based on historical regulatory practice and enforcement.

The recordkeeping requirements (OSH Act, 29 USC 657 (C)(3)) establish the nature of harm addressed by the OSH Act, and require that only those conditions rising to the level of "material impairment" be recorded as illnesses or injuries. The Act does not require or give OSHA authority to require that *abnormal* conditions be recorded.

In a case supporting this position, an OSHA Review Commission ruling involving AMOCO CHEMICAL (12 OSHC 1849, OSHD 27,621 [Review Commission 1986] is cited. The case challenged whether abnormal pulmonary function tests should be reported on the Form 200. It was ruled that the employer need record only *diagnosed* occupationally-related diseases. Although a physician had determined that the pulmonary tests were abnormal, no medical diagnosis of asbestosis was made. The Review Commission rejected OSHA's position that "conditions" (i.e. abnormal test results) were recordable and ruled that a medical diagnosis of an illness was required before the illness need be recorded. Based on this, Mars argues that STS is recordable only if 1) there is a noiseinduced hearing loss and 2) it is diagnosed as an occupationally-related illness. Further backing for this stance is taken from OSHA's own Hearing Conservation Program Manual for Federal Agencies (OSHA 3089, p. 137 [1989] which states

> "The pure-tone, air conduction hearing tests described above are used only for monitoring purposes in which identification of threshold shift is the primary function. *These tests cannot be used in determining the cause of the shift* (emphasis in original).

A second thrust of Mars' argument is

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