

H. Review of the Proposed Standard by the Advisory Committee for Construction Safety and Health (ACCSH)

This proposal would revise Part I.C of Appendix A of OSHA's current Respiratory Protection Standard (29 CFR 1910.134) by including the CNP REDON protocol with the three fit testing protocols already approved by the Agency, and would also make several technical revisions to the approved CNP protocol. Accordingly, this proposal would revise the fit testing requirements specified by the Respiratory Protection Standard for the construction industry (see 29 CFR 1926.103).

OSHA's regulation governing the Advisory Committee on Construction Safety and Health (ACCSH) at 29 CFR 1912.3 requires the Agency to consult with the ACCSH whenever the Agency proposes a rulemaking that involves the occupational safety and health of construction employees. OSHA met with the ACCSH and described the CNP proposed rule at the ACCSH meeting on December 5, 2002. The ACCSH members had no questions or comments on this proposal at this meeting. Subsequently, OSHA distributed the proposed CNP rule to the ACCSH membership for their review prior to their next regular meeting on May 22, 2003. OSHA staff discussed the CNP proposal and answered questions from the ACCSH members during their meeting on May 22, 2003. The ACCSH then recommended that OSHA proceed with publishing the proposal.

I. Public Participation

The Agency requests members of the public to submit written comments and other information concerning this proposal. These comments may include objections to the proposal, as well as comments that endorse or support the proposed amendment set forth in this notice. OSHA welcomes such comments and information so that the record of this rulemaking will represent a balanced public response on the issues involved. (See the sections above titled **DATES** and **ADDRESSES** for information on submitting these comments and information to the Agency.) Submissions received within the specified comment period will become part of the record, and will be available for public inspection and copying in the OSHA Docket Office.

J. List of Subjects in 29 CFR Part 1910

Hazardous substances; Health; Occupational safety and health; Quantitative fit testing; Respirators; Respirator selection.

K. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency issues the proposed amendment under the following authorities: Sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 107, Contract Work Hours and Safety Standards Act. (Construction Safety Act; 40 U.S.C. 333); Section 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 5–2002 (67 FR 65008); and 29 CFR part 1911.

Signed at Washington, DC on May 28, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

V. Proposed Amendment to Standard

For the reasons stated in the preamble, the Agency proposes to amend 29 CFR part 1910 as follows:

PART 1910—[AMENDED]

Subpart I—[Amended]

1. Revise the authority citation for subpart I of part 1910 to read as follows:

Authority: Sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Section 107, Contract Work Hours and Safety Standards Act (the Construction Safety Act; 40 U.S.C. 333); Section 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); and Secretary of Labor's Order Nos. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable.

Sections 29 CFR 1910.132, 1910.134, and 1910.138 also issued under 29 CFR part 1911.

Sections 29 CFR 1910.133, 1910.135, and 1910.136 also issued under 29 CFR part 1911 and 5 U.S.C. 553.

2. Appendix A to § 1910.134 is amended as follows in Part I:

A. In Section A, revise the introductory text of paragraph 14(a);

B. In Section C, paragraph 4, 8th sentence, remove the name “Dynatech Nevada” and add, in its place, “Occupational Health Dynamics of Birmingham, Alabama.”

C. In Section C, paragraphs 4(a)(2) and (5) are revised.

D. In Section C, paragraph 4(c)(1) is revised.

E. In Section C, paragraph 5 is added at the end of Part I.

The revised and added text reads as follows:

§ 1910.134 Respiratory protection.

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Appendix A to § 1910.134: Fit Testing Procedures (Mandatory)

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Part I. OSHA—Accepted Fit Testing Protocols

A. Fit Testing Procedures—General Requirements

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14. Test Exercises. (a) Employers shall perform the following test exercises for all fit testing methods prescribed in this appendix, except for the CNP quantitative fit testing protocol and the CNP REDON quantitative fit testing protocol. For these two protocols, employers shall ensure that the test subjects (*i.e.*, employees) perform the exercise procedure specified in Part I.C.4(b) of this appendix for the CNP quantitative fit testing protocol, or the exercise procedure described in Part I.C.5(b) of this appendix for the CNP REDON quantitative fit testing protocol. For the remaining fit testing methods, employers shall ensure that the test exercises are performed in the appropriate test environment in the following manner:

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C. * * *

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(a) * * *

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(2) The CNP system default selected for test pressure shall be set at –15.0 mm (–0.58 inches) of water, and the modeled inspiratory flow rate shall be 53.8 liters per minute for performing fit tests.

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(5) The test subject shall be trained to hold his/her breath for at least 10 seconds.

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(c) * * *

(1) The test instrument shall have an effective audio warning device, or a visual warning device in the form of a screen tracing, that indicates when the test subject fails to hold his/her breath during the test. The test shall be terminated if the test subject fails to hold his/her breath during the test. The test subject then may be refitted and retested.

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5. Controlled negative pressure (CNP) REDON quantitative fit testing protocol.

(a) When administering this protocol to test subjects, employers shall comply with the requirements specified in paragraphs (a) and (c) of Part I.C.4 of this appendix (Controlled negative pressure (CNP) quantitative fit testing protocol), except they may use the test exercises described below in paragraph (b) of this protocol instead of the test exercises specified in paragraph (b) of Part I.C.4 of this appendix.

(b) Employers shall ensure that each test subject being fit tested using this protocol follows the exercise and measurement procedures, including the order of administration, described below in Table A–1 of this appendix.