

Public Hearings. Interested parties who intend to provide oral testimony at the informal public hearings must file a notice of intention to appear by using the procedures specified above in the sections titled **DATES** and **ADDRESSES**. This notice must provide the: Name, address, and telephone number of each individual who will provide testimony, and their preferred hearing location; capacity (*e.g.*, name of the establishment/organization the individual is representing; the individual's occupational title and position) in which each individual will testify; approximate amount of time required for each individual's testimony; specific issues each individual will address, including a brief statement of the position that the individual will take with respect to each of these issues; and any documentary evidence the individual will present, including a brief summary of the evidence.

OSHA emphasizes that the hearings are open to the public, and that interested parties are welcome to attend. However, only a party who files a proper notice of intention to appear may ask questions and participate fully in the proceedings. While a party who did not file a notice of intention to appear may be allowed to testify at the hearing if time permits, this determination is at the discretion of the presiding ALJ.

Hearing Testimony and Documentary Evidence. Any party requesting more than 10 minutes to testify at the informal public hearing, or who intends to submit documentary evidence at the hearing, must provide the complete text of the testimony and the documentary evidence as specified above in the sections titled **DATES** and **ADDRESSES**. The Agency will review each submission and determine if the information it contains warrants the amount of time requested. If OSHA believes the requested time is excessive, it will allocate an appropriate amount of time to the presentation, and will notify the participant of this action, and the reasons for the action, prior to the hearing. The Agency may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements; in such instances, OSHA may request the participant to return for questioning at a later time.

Certification of the Record and Final Determination After the Informal Public Hearing. Following the close of the hearing and post-hearing comment period, the presiding ALJ will certify the record to the Assistant Secretary of

Labor for Occupational Safety and Health; the record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. However, the ALJ does not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review the proposed APF provisions in light of all the evidence received as part of the record, and then will issue the final APF provisions based on the entire record.

List of Subjects in 29 CFR Parts 1910, 1915, and 1926

Assigned protection factors, Hazardous substances, Health, Occupational safety and health, Respirators, Respirator selection.

Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, directed the preparation of this notice. The Agency issues the proposed sections 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 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); section 41, the 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.

X. Proposed Amendments to Standards

OSHA proposes to amend 29 CFR parts 1910, 1915, and 1926 as follows:

PART 1910—[AMENDED]

Subpart I—[Amended]

1. The authority citation for subpart I of part 1910 is revised 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); and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 3–2000 (62 FR 50017).

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

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

2. Section 1910.134 is amended as follows:

a. The text of the definitions for “Assigned protection factor (APF)” and “Maximum use concentration (MUC)” is added to paragraph (b);

b. The text of paragraphs (d)(3)(i)(A) and (d)(3)(i)(B) is added; and

c. Paragraph (n) is revised.

The added and revised text read as follows:

§ 1910.134 Respiratory protection.

* * * * *

(b) * * *

Assigned protection factor (APF) means the workplace level of respiratory protection that a respirator or class of respirators is expected to provide to employees when the employer implements a continuing, effective respiratory protection program as specified by 29 CFR 1910.134.

* * * * *

Maximum use concentration (MUC) means the maximum atmospheric concentration of a hazardous substance from which an employee can be expected to be protected when wearing a respirator, and is determined by the assigned protection factor of the respirator or class of respirators and the exposure limit of the hazardous substance. The MUC usually can be determined mathematically by multiplying the assigned protection factor specified for a respirator by the permissible exposure limit, short term exposure limit, ceiling limit, peak limit, or any other exposure limit used for the hazardous substance.

* * * * *

(d) * * *

(3) * * *

(i) * * *

(A) *Assigned Protection Factors (APFs).* Employers must use the assigned protection factors listed in Table I to select a respirator that meets or exceeds the required level of employee protection. When using a combination respirator (*e.g.*, airline respirators with an air-purifying filter), employers must ensure that the assigned protection factor is appropriate to the mode of operation in which the respirator is being used.

Note to paragraph (d)(3)(i)(A): The assigned protection factors listed in Table I are effective only when the employer has a continuing, effective respiratory protection program as specified by 29 CFR 1910.134, including training, fit testing, maintenance and use requirements. These assigned protection factors do not apply to respirators used solely for escape.