

month for comparable property or grazing privileges, or the estimated commercial value or replacement costs of the products or property.

(c) BIA will determine the value of the products or property illegally used or removed based upon a valuation of similar products or property.

**§ 161.714 How will BIA determine the costs associated with enforcement of the trespass?**

Costs of enforcement may include detection and all actions taken by us through prosecution and collection of damages. This includes field examination and survey, damage appraisal, investigation assistance and report preparation, witness expenses, demand letters, court costs, attorney fees, and other costs.

**§ 161.715 What will BIA do if a trespasser fails to pay penalties, damages and costs?**

This section applies if a trespasser fails to pay the assessed penalties, damages, and costs as directed. Unless otherwise provided by applicable Navajo Nation law, BIA will:

(a) Refuse to issue the permittee a permit for use, development, or occupancy of Navajo Partitioned Lands; and

(b) Forward the case for appropriate legal action.

**§ 161.716 How are the proceeds from trespass distributed?**

Unless otherwise provided by Navajo Nation law:

(a) BIA will treat any amounts recovered under § 161.712 as proceeds from the sale of agricultural property from the Navajo Partitioned Lands upon which the trespass occurred.

(b) Proceeds recovered under § 161.712 may be distributed to:

(1) Repair damages of the Navajo Partitioned Lands and property; or

(2) Reimburse the affected parties, including the permittee for loss due to the trespass, as negotiated and provided in the permit.

(c) Reimburse for costs associated with the enforcement.

(d) If any money is left over after the distribution of the proceeds described in paragraph (b) of this section, BIA will return it to the trespasser or, where the owner of the impounded property cannot be identified within 180 days, the net proceeds of the sale will be deposited into the appropriate Navajo Nation account or transferred to the Navajo Nation under applicable tribal law.

**§ 161.717 What happens if BIA does not collect enough money to satisfy the penalty?**

BIA will send written notice to the trespasser demanding immediate settlement and advising the trespasser that unless settlement is received within 5 business days from the date of receipt, BIA will forward the case for appropriate legal action. BIA may send a copy of the notice to the Navajo Nation, permittee, and any known lien holders.

**Subpart I—Concurrence/Appeals/Amendments**

**§ 161.800 How does the Navajo Nation to provide concurrence to BIA?**

(a) Actions taken by BIA under this part require concurrence of the Navajo Nation under the Settlement Act.

(b) For any action requiring the concurrence of the Resource Committee, the following procedures will apply:

(1) Unless a longer time is specified in a particular section, or unless BIA grants an extension of time, the Resources Committee will have 45 days to review and concur with the proposed action;

(2) If the Resources Committee concurs in writing with all or part of BIA proposed action, the action or a portion of it may be immediately implemented;

(3) If the Resources Committee does not concur with all or part of the proposed action within the time prescribed in paragraph (b)(1) of this section, BIA will submit to the Resources Committee a written declaration of non-concurrence. BIA will then notify the Resources Committee in writing of a formal hearing to be held not sooner than 30 days from the date of the non-concurrence declaration;

(4) The formal hearing on non-concurrence will permit the submission of written evidence and argument concerning the proposal. BIA will take minutes of the hearing. Following the hearing, BIA may amend, alter, or otherwise change the proposed action. If, following a hearing, BIA alters or amends portions of the proposed plan of action, BIA will submit the altered or amended portions of the plan to the Resources Committee for its concurrence; and

(5) If the Resources Committee fails or refuses to give its concurrence to the proposal, BIA may implement the proposal only after issuing a written order, based upon findings of fact, that the proposed action is necessary to protect the land under the Settlement Act and the Agricultural Act.

**§ 161.801 May decisions under this part be appealed?**

(a) Appeals of BIA decisions issued under this part may be taken in accordance with procedures set out in part 2 of this title.

(b) All appeals of decisions by the Grazing Committee and Resource Committee will be forwarded to the appropriate hearing body of the Navajo Nation.

**§ 161.802 How will the Navajo Nation recommend amendments to this part?**

The Resources Committee will have final authority on behalf of the Navajo Nation to approve amendments to the Navajo Partitioned Lands grazing provisions, upon the recommendation of the Grazing Committee and the Navajo-Hopi Land Commission, and the concurrence of BIA.

[FR Doc. 03-28320 Filed 11-6-03; 4:32 pm]

BILLING CODE 4310-W7-P

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Parts 1910, 1915, and 1926**

[Docket No. H049C]

RIN 1218-AA05

**Assigned Protection Factors**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Proposed rule; notice of hearing.

**SUMMARY:** OSHA is convening an informal public hearing to receive testimony and documentary evidence on Assigned Protection Factors.

**DATES:** *Informal public hearing.* The Agency will hold the informal public hearing in Washington, DC beginning January 28, 2004. The hearing will commence at 10 a.m. on the first day, and at 9 a.m. on the second and subsequent days, which will be scheduled, if necessary.

*Notice of Intention to Appear to provide testimony at the informal public hearing.* Parties who intend to present testimony at the informal public hearing must notify OSHA in writing of their intention to do so no later than December 12, 2003. (Parties who submitted a Notice of Intention to Appear in response to the Notice of Proposed Rulemaking (NPRM) need not submit another notice.)

*Hearing testimony and documentary evidence.* Parties who are requesting more than 10 minutes to present their testimony or who will be submitting

documentary evidence at the hearing, must provide the Agency with copies of their full testimony and all documentary evidence they plan to present by January 12, 2004. (Parties who provided their full testimony and documentary evidence in response to the NPRM do not have to resubmit these materials.)

**ADDRESSES:** *Informal public hearing.*

The informal public hearing will be held in Washington, DC, in the Auditorium on the plaza level of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

*Notice of Intention to Appear at the hearing.* Notices of Intention to Appear at the informal public hearing should be submitted in triplicate (3 copies) to the Docket Office, Docket No. H049C, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. These notices also may be faxed to the Docket Office at (202) 693-1648, or submitted electronically at <http://ecomments.osha.gov>. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

*Hearing testimony and documentary evidence.* Testimony and documentary evidence must be submitted in triplicate (3 copies) to the Docket Office at the above address. Testimony and documentary evidence totaling 10 or fewer pages may be faxed to the Docket Office at 202-693-1647. Materials such as studies or journal articles may not be attached to faxed testimony or documentary evidence; instead, three copies of this material must be mailed to the Docket Office at the above address. Such material must identify clearly the name of the individual who is testifying, date, docket number, and subject so that OSHA can attach it to the appropriate faxed documents.

**FOR FURTHER INFORMATION CONTACT:** For general information and press inquiries, contact Ms. Layne Lathram, Office of Communications, Room N-3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693-1999). For technical inquiries, contact Mr. John Steelnack, Office of Biological Hazards, Room N-3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693-2289; fax: (202) 693-1678). For hearing information, contact Ms. Veneta Chatmon, Office of Communications, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693-1999). For additional copies of this **Federal Register** notice, contact the Office of

Publications, Room N-3103, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693-1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's homepage at <http://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:** OSHA published the final, revised Respiratory Protection Standard, 29 CFR 1910.134, on January 8, 1998 (63 FR 1152). However, in the final standard, the Agency reserved the sections related to assigned protection factors (APFs) and maximum use concentrations (MUCs) pending further rulemaking (see 63 FR 1182 and 1203). On June 6, 2003, OSHA published an NPRM to revise its existing Respiratory Protection Standard to add definitions and specific requirements for APFs and MUCs (68 FR 34036). The proposed revisions also would supersede the respirator-selection provisions of existing substance-specific standards with the new APFs (except the APFs for the 1,3-Butadiene Standard).

During the comment period on the NPRM, which OSHA extended to October 2, 2003 (68 FR 53311), a number of commenters (Exs. 12-2, 12-4, 12-8, 12-10, 12-11, 12-12, 13-1, 13-2, 13-3, 13-4, 13-5) requested an informal public hearing. OSHA is granting this request.

The Agency is placing the Notices of Intention to Appear, hearing testimony, and documentary evidence in the rulemaking docket, which will be available for inspection and copying at the OSHA Docket Office.

**Public Participation Comments and Hearings**

OSHA encourages members of the public to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearing. Accordingly, the Agency invites interested parties having knowledge of, or experience with, the issues raised in the NPRM to participate in this process, and welcomes any pertinent data that will provide the Agency with the best available evidence to use in developing the final rule. This section describes the procedures the public must use to schedule an opportunity to deliver oral testimony and to provide documentary evidence at the informal public hearing.

*Hearing Arrangements*

Pursuant to section 6(b)(3) of the Occupational Safety and Health Act ("the Act"; 29 U.S.C. 655), members of the public must have an opportunity at

the informal public hearing to provide oral testimony concerning the issues raised in the NPRM. An administrative law judge (ALJ) will preside over the hearing, and will resolve any procedural matters relating to the hearing on the first day.

*Purpose of the Hearing*

The legislative history of Section 6 of the Act, as well as the Agency's regulation governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of the hearing is an ALJ, and questions by interested parties are allowed on pertinent issues, the hearing is informal and legislative in purpose. Therefore, the hearing provides interested parties with an opportunity to make effective and expeditious oral presentations in the absence of procedural restraints that could impede or protract the rulemaking process. The hearing is not an adjudicative proceeding subject to the technical rules of evidence; instead, it is an informal administrative proceeding convened for the purpose of gathering and clarifying information. The regulations that govern the hearing, and the pre-hearing guidelines issued for the hearing, will ensure that participants are treated fairly and have due process; this approach will facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedures, and participation will be decided in favor of developing a complete record.

*Conduct of the Hearing*

Conduct of the hearing will conform to the provisions of 29 CFR part 1911 ("Rules of Procedure for Promulgating, Modifying, or Revoking Occupational Safety and Health Standards"). Although the ALJ who presides over the hearing makes no decision or recommendation on the merits of the NPRM or the final rule, the ALJ has the responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner. To ensure that interested parties receive a full and fair informal hearing, the ALJ has the authority and power to: Regulate the course of the proceedings; dispose of procedural requests, objections, and similar matters; confine the presentations to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questions. At the close of the hearing, the ALJ will

establish a post-hearing comment period for parties who participated in the hearing. During the first part of this period, the participants may submit additional data and information to OSHA, and during the second part of this period, they may submit briefs, arguments, and summations.

*Notice of Intention To Appear To Provide Testimony at the Informal Public Hearings*

Hearing participants must file a Notice of Intention to Appear that provides the following information: The name, address, and telephone number of each individual who will provide testimony; the capacity (e.g., name of the establishment/organization the individual is representing; the individual's occupational title and position) in which the individual will testify; approximate amount of time requested for the individual's testimony; specific issues the individual will address, including a brief description 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, while the hearing is open to the public and interested parties are welcome to attend, only a party who files a proper Notice of Intention to Appear may ask questions and participate fully in the hearing. A party who did not file a Notice of Intention to Appear may be allowed to testify at the hearing if time permits, but this determination is at the discretion of the presiding ALJ.

*Hearing Testimony and Documentary Evidence*

The Agency will review each submission and determine if the information it contains warrants the amount of time requested. OSHA then will allocate an appropriate amount of time to each presentation, and will notify the participants of the time allotted to their presentations. Prior to the hearing, the Agency will notify the participant if the allotted time is less than the requested time, and will provide the reasons for this action. OSHA may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements. The Agency may also request a participant to return for questions 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 ALJ

will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health. This record will consist of all of the written comments, oral testimony, documentary evidence, and other material received during the hearing. Following certification of the record, OSHA will review the proposed provisions in light of all the evidence received as part of the record, and then will issue the final determinations based on the entire record.

**Authority**

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 document. It is issued under Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5-2002 (67 FR 65008), and 29 CFR part 1911.

Signed at Washington, DC on November 6, 2003.

**John L. Henshaw,**

*Assistant Secretary of Labor.*

[FR Doc. 03-28357 Filed 11-10-03; 8:45 am]

**BILLING CODE 4510-26-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[COTP San Francisco Bay 03-002]**

**RIN 1625-AA00**

**Security Zones; San Francisco Bay, California**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish moving and fixed security zones extending 100 yards around and under all High Interest Vessels (HIVs) located in the San Francisco Bay and Delta ports, California. These security zones are necessary security measures and are intended to protect the public and ports from potential subversive acts. Entry into these security zones would be prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

**DATES:** Comments and related material must reach the Coast Guard on or before January 12, 2004.

**ADDRESSES:** You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard

Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebberts, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-3073.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Francisco Bay 03-002), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

**Background and Purpose**

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and Iraq have made it prudent to U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing