

and mask donning on measured respirator fit." *Applied Occupational and Environmental Hygiene*, vol. 14 (no. 12), pages 827–837, 1999. (See Ex. 2.)

(2) Crutchfield, C.D., W.F. Peate, and D.W. Kautz. "A faster, more rigorous protocol for fit testing emergency response respirators." *Semiconductor Safety Association Journal*,¹ vol. 13 (no. 4), pages 23–29, 1999. (See Ex. 3.)

Copies of these references are available from the OSHA's Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 693–2350 or facsimile (202) 693–1648.

IV. Procedural Determinations

A. Legal Considerations

Employers covered by this proposal already must comply with the fit testing requirements specified in paragraph (f) of OSHA's Respiratory Protection Standard at 29 CFR 1910.134. Accordingly, these provisions currently are protecting their employees from the significant risk that results from poorly fitting respirators. For this proposal, the Agency preliminarily determined that the new CNP fit testing protocol provides employees with protection that is comparable to the protection afforded to them by the existing fit testing provisions. In this regard, the proposal is not expected to replace existing fit testing protocols, but instead would be an alternative to them. Therefore, OSHA preliminarily finds that the proposal would not directly increase or decrease the protection afforded to employees, nor would it increase employers' compliance burdens. As demonstrated in the following section, the proposal may reduce employers' compliance burdens by decreasing the time required for fit testing respirators for employee use.

B. Preliminary Economic Analysis and Regulatory Flexibility Certification

The proposal is not a significant rulemaking under Executive Order 12866, or a "major rule" under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501) or Section 801 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601). The proposal would impose no additional costs on any private or public sector entity, and does not meet any of the criteria for a significant or major rule specified by the Executive Order or relevant statutes.

The proposal offers employers an additional option to fit test their

employees for respirator use. In addition to the existing CNP protocol, which would continue to be an option, the Agency would add the CNP REDON protocol as a supplemental option. According to a recent NIOSH–BLS survey of respirator use, approximately 25,000 establishments currently use the existing CNP fit testing protocol out of some 282,000 establishments requiring respirator use (Ex. 6–3, Docket H–049C). Employers would have a choice between the existing protocol consisting of eight exercises, including one redonning of the respirator, or the new protocol, which involves three exercises and two redonnings of the respirator. By providing regulatory flexibility to these employers, the proposal may reduce their costs in terms of decreasing fit testing time. In this regard, OSHA assumes that the proposed CNP REDON protocol would be adopted by some employers who use the existing CNP protocol, as well as some employers who are purchasing new or replacement equipment for administering fit tests; these employers would adopt the proposed protocol because it consists of fewer exercises than the existing CNP and ambient aerosol protocols, thereby decreasing the time and cost required for fit testing. However, the Agency believes that the proposed protocol is unlikely to be adopted by employers who currently use the ambient aerosol protocols because of the equipment and training investment they have already made to administer these protocols. Finally, the Agency proposes to include the screen tracing in the existing and proposed CNP fit testing protocols as a visual warning device to detect non-compliance with the breath hold procedure. OSHA concludes that this proposal would add no additional cost burden to employers because, as noted earlier, the manufacturer already provides this capability on the CNP test equipment. Therefore, the Agency preliminarily concludes that this proposed rulemaking would impose no additional costs on these employers. Consequently, the proposal requires no Preliminary Economic Analysis. Furthermore, because the proposal imposes no costs on employers, OSHA certifies that it would not have a significant impact on a substantial number of small businesses. Accordingly, the Agency need not prepare an Initial Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

After thoroughly analyzing the proposed fit testing provisions in terms of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.* and 5 CFR part

1320), OSHA believes that these provisions would not add to the existing collection-of-information (*i.e.*, paperwork) requirements regarding fit testing employees for respirator use. The paperwork requirement specified in paragraph (m)(2) of the existing Respiratory Protection Standard at 29 CFR 1910.134 specifies that employers must document and maintain the following information on quantitative fit tests administered to employees: The name or identification of the employee tested; the type of fit test performed; the specific make, model, style, and size of respirator tested; the date of the test; and the strip chart recording or other recording of the test results. The employer must maintain this record until the next fit test is administered. However, this paperwork requirement would remain the same whether employers currently use the other fit testing protocols already listed in Part I of Appendix A of the Respiratory Protection Standard, or implement the proposed fit testing protocol instead. Therefore, use of the proposed fit testing protocol in the context of the existing fit testing protocols does not require an additional paperwork burden determination because OSHA already accounted for this burden during the final rulemaking for the Respiratory Protection Standard (*see* 63 FR 1152–1154; OMB Control Number 1218–0099).

Interested parties who wish to comment on OSHA's determination that the proposed fit testing protocol contains no additional paperwork requirements compared to the existing paperwork requirements must send their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency also encourages commenters to submit their comments on this paperwork determination to OSHA along with their other comments on the proposed rule.

D. Federalism

The Agency reviewed the proposal according to the most recent Executive Order on Federalism (Executive Order 13132, 64 FR 43225, August 10, 1999). This Executive Order requires that Federal agencies, to the extent possible, refrain from limiting state policy options, consult with states before taking actions that restrict their policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. The Executive Order allows Federal agencies to preempt state law

¹ Now the *Semiconductor Environmental Safety and Health Association Journal*.