

whether employers currently use the APFs published in the 1987 NIOSH RDL or the ANSI Z88.2-1992 Respiratory Protection Standard, or implement the APFs proposed in this rulemaking. Therefore, the proposed use of APFs in the context of these two existing respirator-selection provisions does not require an additional paperwork-burden determination because OSHA already accounted for this burden under its existing Respiratory Protection Standard (see 63 FR 1152-1154; OMB Control Number 1218-0099).

Both OSHA's existing Respiratory Protection Standard and the proposed APF provisions require employers to use APFs as part of the respirator-selection process. This process includes obtaining information about the workplace exposure level to an airborne contaminant, identifying the exposure limit (e.g., permissible exposure limit) for the contaminant, using this information to calculate the required level of protection (i.e., the APF), and referring to an APF table to determine which respirator to select. Admittedly, this process involves the collection and use of information, but it does not require employers to inform others, either orally or in writing, about the process they use to select respirators for individual employees, or the outcomes of this process; by not requiring employers to communicate this information to others, OSHA removed this process from the ambit of the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). In the alternative, even if PRA-95 applies, the proposal involves the same information-collection and -use requirements with regard to APFs as the existing standard (see paragraphs (d)(1) and (d)(3)(i) of 29 CFR 1910.134, and the rationale for the existing APF requirements in the preamble to the final Respiratory Protection Standard, 63 FR 1163 and 1203-1204); accordingly, the paperwork burden imposed by the proposal would be equivalent to the burden already imposed under the existing standard.

Interested parties who want to comment on OSHA's determination that the proposed provisions contain no additional paperwork burden 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.

## Federalism

The Agency reviewed the proposed APF provisions 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 of national scope. The Executive Order allows federal agencies to preempt state law only with the expressed consent of Congress; in such cases, federal agencies must limit preemption of state law to the extent possible.

Under section 18 of the Occupational Safety and Health Act (the "Act" or "OSH Act"), Congress expressly provides OSHA with authority to preempt state occupational safety and health standards to the extent that the Agency promulgates a federal standard under section 6 of the Act. Accordingly, section 18 of the Act authorizes the Agency to preempt state promulgation and enforcement of requirements dealing with occupational safety and health issues covered by OSHA standards unless the state has an OSHA-approved occupational safety and health plan (i.e., is a state-plan state) [see *Gade v. National Solid Wastes Management Association*, 112 S. Ct. 2374 (1992)]. Therefore, with respect to states that do not have OSHA-approved plans, the Agency concludes that this proposal conforms to the preemption provisions of the Act. Additionally, section 18 of the Act prohibits states without approved plans from issuing citations for violations of OSHA standards; the Agency finds that the proposed rulemaking does not expand this limitation.

OSHA asserts that it has authority under Executive Order 13132 to propose APF requirements because the problems addressed by these requirements are national in scope. As noted in section VI ("Summary of the Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis") of this preamble, hundreds of thousands of employers must select appropriate respirators for millions of employees. These employees are exposed to many different types and levels of airborne contaminants found in general industry, construction, shipyard, longshoring, and marine terminal workplaces. Accordingly, the proposed requirements would provide employers in every state with critical information to use when selecting respirators to protect their

employees from the risks of exposure to airborne contaminants. However, while OSHA drafted the proposed APF and MUC requirements to protect employees in every state, section 18(c)(2) of the Act permits state-plan states to develop their own requirements to deal with any special workplace problems or conditions, provided these requirements are at least as effective as the final requirements that result from this proposal.

## State Plans

The 26 states and territories with their own OSHA-approved occupational safety and health plans must adopt comparable provisions within six months after the Agency publishes the final APF and MUC requirements. These states and territories are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey and New York have OSHA approved State Plans that apply to state and local government employees only. Until a state-plan state promulgates its own comparable provisions, Federal OSHA will provide the state with interim enforcement assistance, as appropriate.

## Unfunded Mandates

The Agency reviewed the proposed APF and MUC provisions according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. As discussed in section VI ("Summary of the Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis") of this preamble, OSHA estimates that compliance with this proposal would require private-sector employers to expend about \$4.5 million each year. However, while this proposal establishes a federal mandate in the private sector, it is not a significant regulatory action within the meaning of section 202 of the UMRA (2 U.S.C. 1532).

OSHA standards do not apply to state and local governments, except in states that have voluntarily elected to adopt an OSHA-approved state occupational safety and health plan. Consequently, the proposed provisions do not meet the definition of a "Federal intergovernmental mandate" [see section 421(5) of the UMRA (2 U.S.C. 658(5))]. Therefore, based on a review of the rulemaking record to date, the Agency believes that few, if any, of the affected employers are state, local, and tribal governments. Therefore, the