

establishments are primarily hospitals. To the extent that patients with active tuberculosis may be treated in other health services facilities, such as those that may be affiliated with nursing homes, correctional facilities, or substance abuse treatment facilities, these may also be potentially affected by this action.

An estimated 6,500 establishments are potentially affected by this action. The employees who would be covered are those using respirators for protection against occupational exposure to TB. Unfortunately, there are no data showing exactly how many persons use respirators for the purpose of protecting against occupational exposure to tuberculosis. For the purposes of this analysis, OSHA is using a BLS estimate of the number of persons using filtering face piece respirators in the health care sector. This results in an estimate of 638,000 affected employees. Using this estimate overestimates the number of respirator users using respirators for occupational exposure to TB by including respirator users in unaffected sectors and by including employees using respirators for reasons other than occupational exposure to TB. However, the estimate may exclude some employees who should be using respirators for occupational exposure to TB and are not doing so.

An estimated 5,312 of the potentially affected establishments are small entities. Small entities were identified in accordance with the definitions established by the Small Business Administration, as specified in the Regulatory Flexibility Act. These small entities employ approximately 457,000 of the employees potentially affected by this action.

Benefits

The employees covered by this action are those using respirators for protection against potential occupational exposure to tuberculosis. The reduction in risk achieved through compliance with the requirements of this action will result in reductions in the numbers of infections, active disease cases, and fatalities occurring among the covered workers. Although the employees working in establishments covered by this action will be the primary beneficiaries of the increased protection provided by the standard, many other individuals will also benefit from the standard because tuberculosis is a communicable disease.

For the final respirator program standard, OSHA concluded based on the best available evidence that from 5 to 50 percent of employees would lack a proper fit without annual fit testing. OSHA further concluded that overall,

moving from full compliance with the old standard to full compliance with the new standard would reduce exposures by 27 percent on average across all employees covered by the respirator protection program. OSHA estimates that this action will have similar effects in reducing the number of infections, active disease cases, and fatalities occurring among the covered workers.

Technological Feasibility

In accordance with the provisions of the OSH Act, OSHA has reviewed the requirements of this action and has assessed their technological feasibility. As a result of this review, OSHA has determined that fulfilling the resulting requirements of this action is technologically feasible.

Compliance with the requirements of the action can be achieved with methods and measures that have already been developed and implemented in many establishments already under the respirator protection standard. As established in the final respiratory protection standard, the standard's provisions in the respirator program standard require only technology that is currently and readily available and widely in use. There is no barrier to applying these technologies in a health care setting. In fact, the requirements added by this action are already applicable to and have already been implemented in many of the affected health care establishments to the extent that any use of respirator protection is occurring for purposes other than protection from occupational exposure to tuberculosis.

Costs of Compliance

When OSHA promulgated its final respiratory protection standard in 1998, all potentially affected establishments and employees, including those in the health services industry and those using respirators only for protection from tuberculosis, were included in the analysis of the costs of compliance and potential impacts. This was done because of uncertainty as to the extent to which respirators were being used for protection against occupational exposure to tuberculosis. Thus, the conclusions and determinations regarding impacts and feasibility associated with the provisions of the standard for these establishments have already been established by the evidence in the record and other documents and decisions associated with the rulemaking. Nevertheless, the final economic analysis for this action analyzes the full economic impacts of this action alone. Using the estimate of the number of respirator users provided

by BLS, which probably overestimates the number of affected employees, the total annualized estimated costs for this action are \$11.7 million, as shown in Table 1. The largest component of the costs is comprised of the requirements associated with employee fit-testing and training (which OSHA assumes will be done at the same time), which account for about 92 percent of the total costs, or \$10.7 million. Costs associated with revising respirator programs and with the recordkeeping requirements have an estimated annualized cost of about \$1 million. Given these costs, this action is not an economically significant rule with respect to EO 12866.

TABLE 1.—COMPLIANCE COSTS ASSOCIATED WITH REVISED REQUIREMENTS FOR RESPIRATORY PROTECTION

| Type of cost | Annualized incremental costs |
|--------------------------------|------------------------------|
| Respirator Program | \$325,000 |
| Fit Testing And Training | 10,716,719 |
| Recordkeeping | 638,000 |
| Total | 11,679,719 |

Economic Feasibility

In order to assess the nature and magnitude of economic impacts, OSHA compares the estimated costs of compliance to industry revenues and profits. The estimated compliance costs represent less than 0.005 percent of the revenues of the affected establishments in the hospital sector. The estimated compliance costs also represent about 0.08 percent of profits among affected for-profit establishments. For these establishments, the costs of compliance with the OSHA action would also be economically feasible. The affected establishments face more significant increases in costs or reductions in revenues on a continuing basis, through changes in rent, labor costs, utility costs, and costs of other resources purchased, through changes in levels of donations and contributions provided, and through changes in government funding levels. Even if such costs cannot be passed on to consumers, changes in revenues or profits of this magnitude will not threaten the existence or competitive structure of an industry [the test for economic feasibility stated in *United Steelworkers of America v. Marshall*, 647 F.2d 1189, 1272 (D.C. Circuit 1980)].

Regulatory Flexibility Screening Analysis

OSHA also analyzed the potential economic impacts of this action on