

alcohol from 0.10 to 0.08 in State *per se* laws will result in fewer alcohol-related traffic crashes and fatalities. Specifically, the preliminary regulatory evaluation cites a review performed by a CDC-sponsored independent task force, to support the conclusion that 0.08 BAC laws may reduce alcohol-related fatalities by 7 percent each year. This 7 percent reduction could annually prevent 616 fatalities, over 13,800 non-fatal injuries, and over 50,000 damaged vehicles involved in over 30,000 property-damage only (PDO) crashes. See Preliminary Regulatory Evaluation, *supra*, at 23.

B. Costs

The regulatory evaluation concludes that the impact of 0.08 BAC laws will depend on drinking drivers' perceptions that they are more likely to be caught over the limit, and thereby reduce the amount they drink before driving. To successfully accomplish this goal, States will develop public information campaigns, both at the time of legislative debate to inform the public of the need for the law and later during enforcement and prosecution of the law to help achieve compliance. Typically, States will use unpaid media exposure, such as news stories and public service messages, however, some States will implement public information campaigns that involve paying for airtime on radio and television and/or advertising space in print media and billboards. Both approaches would require the time of State and local workers, especially in the State Highway Safety Office, to develop and manage these public information programs.

To mitigate costs incurred in educating the public, States may use Federal highway safety grant funds to pay for the development of public information programs and for airtime and print advertising space. In addition, NHTSA provides sample press release kits to aid communities in publicizing new programs through newspapers, TV and radio.

Aside from advertising costs, the preliminary regulatory evaluation expects that the costs for implementing this proposed rule will be minimal and consist of changes that States make as a matter of course when amending a State law (e.g., updating driver handbooks and forms).

C. Conclusion

The preliminary regulatory evaluation notes that it is difficult to measure the effects of 0.08 BAC laws. This difficulty arises because impaired-driving laws are often passed concurrently or within the

same year. In addition, the degree of the law's enforcement, and especially the publicity surrounding that enforcement, can vary significantly and such variability can influence the law's effectiveness. Nonetheless, the preliminary regulatory evaluation concludes that 616 lives (are being/ could be) saved each year by the adoption of 0.08 BAC laws.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We hereby certify that the rule proposed in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. As a sanction program, this rule will have different consequences depending on whether the States enact and enforce a conforming 0.08 BAC law or whether they choose to accept the sanction for not enacting and enforcing a conforming law.

In States that have passed 0.08 BAC laws, consumption of beer has dropped 3.5 percent on average. By contrast, consumption of wine and spirits do not correlate with the number of drinking drivers in fatal crashes. Thus, if a State passes a 0.08 law, all businesses, large and small, that sell and serve beer are likely to experience a small reduction in sales. However, most businesses sell other products, such as food or other beverages. Therefore, the overall impact on those businesses would be significantly less than 3.5 percent. For some businesses, such as beer distributors (where a small business is defined as 100 employees or less), the decline may approach the 3.5 percent range. See Preliminary Regulatory Evaluation, *supra*, at 21.

States that do not enact and enforce conforming 0.08 BAC laws will lose Federal-aid highway funds. This loss may impact highway construction firms, where a small business is defined as \$28.5 million in annual gross income. The precise number of small businesses that may be affected cannot be determined, since it is assumed that any impact is just as likely to impact businesses of any size. In addition, the penalty affects only Federal highway funds, which make up, on average in the 17 States affected, only 16 percent of all State highway expenditures.

Accordingly, even if the sanction was imposed at the highest rate of 8 percent, the maximum reductions in highway expenditures in the relevant States

would be within a range of only 0.77 percent (in Massachusetts) to 3.62 percent (in Montana). Further, most of these businesses do not rely totally on highway construction contracts for their revenue. Based on these considerations, the preliminary regulatory evaluation finds that this action would not result in a significant impact on the small businesses involved. See Preliminary Regulatory Evaluation, *supra*, at 21.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

National Environmental Policy Act

The agencies have analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that it would not have any significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits and other effects of rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not require an assessment under this law. The costs to States to enact and make effective conforming 0.08 BAC laws will not result in annual expenditures that exceed the \$100 million threshold. Moreover, States that enact 0.08 BAC laws will avoid the loss of millions of dollars in Federal-aid highway funds.

Executive Order 13132 (Federalism)

Executive Order 13132 requires the agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, the agency may not issue a regulation with