

Transportation (DOT) or operating administration's drug and alcohol testing regulations. It is clear that the Coast Guard is not subject to the provisions of the Omnibus Transportation Employee Testing Act (OTETA) of 1991 (Pub. L. 102-143), although it does apply to other DOT modes. OTETA does not apply to Coast Guard required alcohol testing of employees in the regulated maritime industry.

The provisions of 49 CFR part 40, the DOT's drug testing requirements, apply to Coast Guard required drug testing. The provisions in 49 CFR part 40 that relate to alcohol testing, including use of the DOT Alcohol Testing Form, however, do not apply to Coast Guard required alcohol testing.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is, however, considered "significant" under the regulatory policies and procedures of the DOT (February 26, 1979 (44 FR 11040)). A separate draft Regulatory Analysis is available in the docket as indicated under **ADDRESSES**. A summary of the analysis follows.

This proposed rulemaking would affect more than 183,400 commercial vessels. However, of those, approximately 2,600 vessels are already required to carry alcohol breath-testing devices. Since these vessels carry alcohol-testing devices on board, these marine employers can meet the statutory alcohol-testing timeframe requirement without additional cost. Thus, the number of vessels affected by the proposed requirement for the first time would be approximately 180,800.

Section 2303a of Title 46, U.S. Code, requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of an SMI. This proposal would establish a

requirement for all marine employers to have alcohol-testing devices readily available for use to meet the requirements for alcohol testing following an SMI.

This proposed rule would require that alcohol testing be conducted within two hours of the incident, whereas the current regulation does not specify a time frame for testing. This proposal would help to ensure compliance with the alcohol testing requirements after a SMI.

The cost of this proposal is estimated by assuming that, of the available ASDs, 90 percent of vessels would choose the least costly option of purchasing disposable saliva alcohol testing devices, while only 10 percent of vessels would choose a breath ASD. The lowest price breath ASD is more than twice as expensive as the most expensive saliva ASD. We also assume that no vessels would choose an EBT device because of its much higher initial purchase cost and ongoing maintenance and training costs.

The draft Regulatory Analysis shows a \$97 median price for the purchase of saliva ASDs and a \$393 median price for a breath ASD. Using those median prices, this proposed rule would have an estimated total cost to industry of approximately \$144 million throughout the 10-year analysis period. In the first year, affected vessels would incur approximately \$40 million. For subsequent years, the average annual cost is approximately \$18 million. The draft Regulatory Analysis available in the docket as indicated under **ADDRESSES** further compares the costs of EBT devices versus ASDs as alternatives.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This proposed rule could impact about 3,500 small entities, based on the determination made by the Small Business Administration (SBA) in the North American Industry Classification System (NAICS codes 4831, 4832, 4872, 48831, 48832, and 48833). The SBA defines small entities either by revenue size or by employee size for all NAICS sectors. Depending on the NAICS sectors, firms with revenues less than \$5 million and firms with less than 500 employees are defined as Small Entities. For the NAICS sectors and sub-sectors that apply to this analysis, SBA defined NAICS sectors 4831 (Deep Sea, Coastal, and Great Lakes water transportation) and 4832 (Inland Water Transportation) by employee size and the rest by revenue size. Those sectors defined by revenue size are: Scenic and Sightseeing Transportation (water), Port and Harbor Operations, Marine Cargo Handling, and Navigational Services to Shipping.

To determine the impact of the cost of this rule on these companies, we made the following assumptions:

- We assumed if a firm's revenues are less than \$500,000, or it employs less than 20 employees, then it owns 5 vessels; and
- We assumed if a firm's revenues are in the range of \$500,000 to \$5 million, or it employs between 20 to 500 employees, then it owns 10 vessels.

With these assumptions, we calculated the cost impact of selecting saliva versus breath ASDs. As shown in Table below, costs will be a very small percentage of revenues for almost all companies.

The initial cost burden of alcohol breath-testing devices for some firms owning 5 vessels is 6.12 percent. It is reasonable to assume that under these circumstances the companies in question would choose to use disposable saliva ASDs or the next lowest priced breath ASDs, which would be a much lower cost to them.

COST BURDEN AS A PERCENTAGE OF ANNUAL REVENUES FOR SMALL ENTITIES

For a Company that owns:	Using saliva ASDs		Using breath ASDs	
	Initial	Recurring annual	Initial	Recurring annual
5 vessels:				
Cost	\$925	\$750	\$2,840	\$525.
Impact (Cost/Avg. Revenue)	0.01% to 1.99%	0.01% to 1.62%	0.04% to 6.12%	0.01% to 1.13%.
10 vessels:				
Cost	\$1,850	\$1,500	\$5,680	\$1,050.
Impact (Cost/Avg. Revenue)	0.002% to 0.41%	0.001% to 0.33%	0.01% to 1.25%	0.001 to 0.23%.