

Description of the Respondents: This rule will affect owners, operators, and personnel operating in the U.S. Marine Transportation System. The respondents are regulated public and private stakeholders as detailed in the interim rules.

Number of Respondents: 16,607 total respondents for the interim rules.

Frequency of Response: Varies as specified in each interim rule. Security assessments and security plans are submitted for approval initially, and reviewed annually. After the first year, drills generally occur at various schedules. All frequencies are at the discretion of the COTP. Depending on the port or maritime area, there may be additional requirements and reporting frequencies.

Burden of Response: Varies per each type of regulated population in the interim rules.

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 1,811 hours. These interim rules are a program change that will increase the total annual burden. The new estimated total collection burden is indicated in the table below.

TABLE 9.—SUMMARY OF INITIAL AND ANNUAL BURDEN HOURS AND COSTS

	Burden (hours)	
	Initial	Annual
Port Security (AMS)	1,203,200	488,800
Vessel Security	135,269	11,700
Facility Security	528,240	608,187
OCS Facility Security	3,200	160
Subtotal	1,869,909	1,108,847
Pre 9/11 Security	* 3,549	3,549
Total	1,873,458	1,112,396

* As pre-9/11/01 security requirements are existing regulations, they are included in both initial and annual burden calculations. (Note burden revised from year 2000 Estimate).

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of the interim rules to the OMB for its review of the collection of information. Due to the circumstances surrounding this temporary rule, we asked for "emergency processing" of our request. We received OMB approval for these collections of information on June 16, 2003. They are valid until December 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is; whether it can help us perform our

functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. We received OMB approval for these collections of information on June 16, 2003. They are valid until December 31, 2003.

Federalism

Executive Order 13132 requires USCG 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 the Executive Order, USCG may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this interim rule does have Federalism implications or a substantial direct effect on the States. This rulemaking requires those States which own or operate vessels or facilities that may be involved in a transportation security incident to conduct vulnerability assessments of their vessels and facilities and to develop security plans for their protection. These plans must contain measures that will be implemented at each of the three MARSEC Levels, and must be reviewed and approved by the Coast Guard.

Additionally, the Coast Guard has reviewed the MTSA with a view to whether we may construe it as non-preemptive of State authority over the same subject matter. We have determined that it would be inconsistent with the federalism

principles stated in the Executive Order to construe the MTSA as not preempting State regulations which conflict with the regulations in this rulemaking. This is because owners or operators of facilities and vessels that are subject to the requirements for conducting vulnerability assessments, planning to secure their facilities and vessels against threats revealed by those assessments and complying with the standards, both performance and specific construction, design, equipment and operating requirements, must have one uniform, national standard which they must meet. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they moved from State to State. Therefore, we believe that the federalism principles enunciated by the Supreme Court in *U.S. v. Locke*, 529 U.S. 89 (2000) regarding field preemption of certain State vessel safety, equipment and operating requirements extends equally to this rulemaking, especially regarding the longstanding history of significant Coast Guard maritime security regulation and control of vessels for security purposes. But, the same considerations apply to facilities, at least insofar as a State law or regulation applicable to the same subject for the purpose of protecting the security of the facility would conflict with a federal regulation, *i.e.* it would either actually conflict or would frustrate an over-riding federal need for uniformity.

Finally, it is important to note that the regulations implemented by this rulemaking bear on national and international commerce where there is no constitutional presumption of concurrent State regulation. Many aspects of these regulations are based on the U.S. international treaty obligations regarding vessel and port facility security contained in the International Convention for the SOLAS, 1974 and the complementary ISPS Code. These international obligations reinforce the need for uniformity regarding maritime commerce.

Notwithstanding the foregoing preemption determinations and findings, the Coast Guard has consulted extensively with appropriate State officials, as well as private stakeholders during the development of this rule. Specifically, we have held seven public meetings across the country with invitation letters to all State homeland security representatives. Many State representatives attended these meetings and submitted comments to the public notice docket that we have considered for these interim rules. The State