

comments ranged from State Boating Law Administrators concerns about recreational boating impacts and security for smaller marinas to State security representatives voicing concern about alignment with their State maritime security requirements. We also presented the SOLAS Amendments and ISPS Code, parts A and B, in the public notice and requested comments from the State homeland security advisors at a National Governors Association meeting on March 14, 2003. We encourage States to send in comments specifically on this Federalism analysis.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. This rule is exempted from assessing the effects of the regulatory action as required by the Act because it is necessary for the national security of the U.S. (2 U.S.C. 1503(5)).

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. While this rule is an economically significant rule, it does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial disproportionate effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We would appreciate any comments, however, if you disagree with this conclusion.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order. Although it is a “significant regulatory action” under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, the Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

This rule has a positive effect on the supply, distribution, and use of energy. The rule provides for security assessments, plans, procedures, and standards, which will prove beneficial for the supply, distribution, and use of energy at increased levels of maritime security.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(a), (34)(c), (34)(d), and (34)(e) of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES** or **SUPPLEMENTARY INFORMATION**.

This final rule concerns security assessments, plans, training, security positions, and organizations along with vessel equipment requirements that will contribute to a higher level of marine safety and security for U.S. ports. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES** or **SUPPLEMENTARY INFORMATION**.

This rulemaking will not significantly impact the coastal zone. Further, the rulemaking and the execution of this rule will be done in conjunction with appropriate State coastal authorities. The Coast Guard will, therefore, comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits federal agencies from engaging in any standards or related activities

that create unnecessary obstacles to the foreign commerce of the U.S. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The Act also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. We have assessed the potential effect of this regulation, and have determined that it would likely create obstacles to the foreign commerce of the U.S.. However, because these regulations are being put in place in order to further a legitimate domestic objective, namely to increase the security of the U.S., any obstacles created by the regulation are not considered unnecessary obstacles.

List of Subjects

33 CFR Part 101

Facilities, Harbors, Incorporation by reference, Maritime security, Ports, Security assessments, Security plans, Reporting and recordkeeping requirements, Vessels, Waterways.

33 CFR Part 102

Maritime security.

■ For the reasons discussed in the preamble, the Coast Guard is adding subchapter H consisting of part 101 and reserved part 102 to 33 CFR chapter I to read as follows:

SUBCHAPTER H—MARITIME SECURITY

PART 101—GENERAL PROVISIONS

Subpart A—General

Sec.

- 101.100 Purpose.
- 101.105 Definitions.
- 101.110 Applicability.
- 101.115 Incorporation by reference.
- 101.120 Alternatives.
- 101.125 Approved Alternative Security Programs. [Reserved]
- 101.130 Equivalent security measures.

Subpart B—Maritime Security (MARSEC) Levels

- 101.200 MARSEC Levels.
- 101.205 Department of Homeland Security alignment.

Subpart C—Communication (Port-Facility-Vessel)

- 101.300 Preparedness communications.
- 101.305 Reporting.
- 101.310 Additional communication devices.

Subpart D—Control Measures for Security

- 101.400 Enforcement.
- 101.405 Maritime Security (MARSEC) Directives.
- 101.410 Control and Compliance Measures.
- 101.415 Penalties.
- 101.420 Right to appeal.