

Ten commenters addressed the disclosure of security plan information. One commenter advocated making security plans public. One commenter was concerned that plans will be disclosed under FOIA. One commenter requested that mariners and other employees, whose normal working conditions are altered by a Vessel or Facility Security Plan, be granted access to sensitive security information contained in that plan on a need-to-know basis. One commenter stated that Company Security Officers and Facility Security Officers should have reasonable access to AMS Plan information on a need-to-know basis. One commenter stated that the Federal government must preempt State law in instances of sensitive security information because some State laws require full disclosure of public documents. Three commenters supported our conclusion that the MTSA and our regulations preempt any conflicting State requirements. Another commenter was particularly pleased to observe the strong position taken by the Coast Guard in support of Federal preemption of conflicting State and local security regimes. One commenter supported our decision to designate security assessments and plans as sensitive security information.

Portions of security plans are sensitive security information and must be protected in accordance with 49 CFR part 1520. Only those persons specified in 49 CFR part 1520 will be given access to security plans. In accordance with 49 CFR part 1520 and pursuant to 5 U.S.C. 552(b)(3), sensitive security information is generally exempt from disclosure under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public. However, §§ 104.220, 104.225, 105.210, 105.215, 106.215, and 106.220 of these rules state that vessel and facility personnel must have knowledge of relevant provisions of the security plan. Therefore, vessel and facility owners or operators will determine which provisions of the security plans are accessible to crewmembers and other personnel. Additionally, COTPs will determine what portions of the AMS Plan are accessible to Company or Facility Security Officers.

One commenter stated that there is a "real cost" to implementing security measures, and it is significant. The commenter stated that there is a disparity between Federal funding dedicated to air transportation and

maritime transportation and that the Federal government should fund maritime security at a level commensurate with the relative security risk assigned to the maritime transportation mode. Further, the commenter stated that, in 2002, some State-owned ferries carried as many passengers as one of the State's busiest international airports and provided unique mass transit services; therefore, the commenter supported the Alternative Security Program provisions of the temporary interim rule to enable a tailored approach to security.

The viability of a ferry system to provide mass transit to a large population is undeniable and easily rivals other transportation modes. We developed the Alternative Security Program to encompass operations such as ferry systems. We recognize the concern about the Federal funding disparity between the maritime transportation mode and other modes; however, this disparity is beyond the scope of this rule.

One commenter stated that while he appreciated the urgency of developing and implementing maritime security plans, the State would find it difficult to complete them based on budget cycles and building permit requirements. At the briefings discussed above, several NCSL representatives also voiced concerns over the short implementation period. In contrast, other NCSL representatives were concerned that security requirements were not being implemented soon enough.

The implementation timeline of these final rules follows the mandates of the MTSA and aligns with international implementation requirements. While budget-cycle and permit considerations are beyond the scope of this rule, the flexibility of these performance-based regulations should enable the majority of owners and operators to implement the requirements using operational controls, rather than more costly physical improvement alternatives.

Other concerns raised by the NCSL at the briefings mentioned above included questions on how the Coast Guard will enforce security standards on foreign flag vessels and how multinational crewmember credentials will be checked.

We are using the same cooperative arrangement that we have used with success in the safety realm by accepting SOLAS certificates documenting flag-state approval of foreign SOLAS Vessel Security Plans that comply with the comprehensive requirements of the ISPS Code. The consistency of the international and domestic security

regimes, to the extent possible, was always a central part of the negotiations for the MTSA and the ISPS Code. In the MTSA, Congress explicitly found that "it is in the best interests of the U.S. to implement new international instruments that establish" a maritime security system. We agree and will exercise Port State Control to ensure that foreign vessels have approved plans and have implemented adequate security standards on which these rules are based. If vessels do not meet our security requirements, the Coast Guard may prevent those vessels from entering the U.S. or take other necessary measures that may result in vessel delays or detentions. The Coast Guard will not hesitate to exercise this authority in appropriate cases. We discuss the ongoing initiatives of ILO and the requirements under the MTSA to develop seafarers' identification criteria in the temporary interim rule titled "Implementation of National maritime Security Initiatives" (68 FR 39264) (part 101). We will continue to work with other agencies to coordinate seafarer access and credentialing issues. These final rules will also ensure that vessel and facility owners and operators take an active role in deterring unauthorized access.

One commenter, as well as participants of the NCSL, noted that some State constitutions afford greater privacy protections than the U.S. Constitution and that, because State officers may conduct vehicle screenings, State constitutions will govern the legality of the screening. The commenter also noted that the regulations provide little guidance on the scope of vehicle screening required under the regulations.

The MTSA and this final rule are consistent with the liberties provided by the U.S. Constitution. If a State constitutional provision frustrates the implementation of any requirement in the final rule, then the provision is preempted pursuant to Article 6, Section 2, of the U.S. Constitution. The Coast Guard intends to coordinate with TSA and BCBP in publishing guidance on screening.

#### **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 Indian Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. This final rule is exempted from assessing the effects of