

the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This final rule contains no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The final rules are covered by two existing OMB-approved collections—1625-0100 [formerly 2115-0557] and 1625-0077 [formerly 2115-0622].

We did not receive comments regarding collection of information. You are not required to respond to a collection of information unless it displays a currently valid OMB control number. 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 the Coast Guard 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, the Coast Guard 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 final rule does have Federalism implications and a substantial direct effect on the States. This final rule requires those States that own or operate vessels or facilities that may be involved in a transportation security incident to conduct security 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 that conflict with the regulations in this final rule. This is because owners or operators of facilities and vessels that are subject to the requirements for conducting security 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 that 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 enumerated 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 final rule, 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; in other words, it would either actually conflict or would frustrate an overriding Federal need for uniformity.

Finally, it is important to note that the regulations implemented by this final rule 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 SOLAS 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 final rule. For these final rules, we met with the National Conference of State Legislatures (NCSL) Taskforce on Protecting Democracy on July 21, 2003, and presented briefings on the temporary interim rules to the NCSL's Transportation Committee on July 23, 2003. We also briefed several hundred State legislators at the American Legislative Exchange Council on August 1, 2003. We held a public meeting on July 23, 2003, with invitation letters to all State homeland security representatives. A few State representatives attended this meeting and submitted comments to a public docket prior to the close of the comment period. The State comments to the docket focused on a wide range of concerns including consistency with international requirements and the protection of sensitive security information.

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