

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 regulations and control of vessels for security purposes. It would be inconsistent with the federalism principles stated in Executive Order 13132 to construe the MTSA as not preempting State regulations that conflict with these regulations. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they move from state to state.

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 the regulatory action as required by the Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)).

We did not receive comments regarding the Unfunded Mandates Reform Act.

Taking of Private Property

This final 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. We did not receive comments regarding the taking of private property.

Civil Justice Reform

This final 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. We did not receive comments regarding Civil Justice Reform.

Protection of Children

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

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order