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United States Government Accountability Office
Washington, DC 20548

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October 6, 2005

The Honorable Ted Stevens
Chairman
The Honorable Daniel K. Inouye
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Don Young
Chairman
The Honorable James L. Oberstar
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Maritime Administration: Maritime Security Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Maritime Administration (MARAD), entitled "Maritime Security Program" (RIN: 2133-AB62). We received the rule on September 23, 2005. It was published in the Federal Register as a final rule on September 22, 2005. 70 Fed. Reg. 55581.

The rule adopts and finalizes an interim final rule published on July 20, 2004 (69 Fed. Reg. 43328) and implements provisions of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003). The MSA 2003 authorizes the creation of a new Maritime Security Program that establishes a fleet of active, commercially viable, privately owned vessels to meet national defense and other security requirements to maintain a United States presence in international commercial shipping.

Enclosed is our assessment of MARAD's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that MARAD complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Patricia Dalton, Managing Director, Physical Infrastructure. Ms. Dalton can be reached at (202) 512-2834.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Daron Threet
Attorney-Advisor
Maritime Administration
Department of Transportation

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
MARITIME ADMINISTRATION
ENTITLED
"MARITIME SECURITY PROGRAM"
(RIN: 2133-AB62)

(i) Cost-benefit analysis

To support the operation of up to 60 U.S.-flag vessels in the foreign commerce of the United States, the Maritime Security Act of 2003 authorizes \$156 million annually for fiscal years 2006, 2007, and 2008; \$174 million annually for fiscal years 2009, 2010, and 2011; and \$186 million annually for fiscal years 2012, 2013, 2014, and 2015. Payments are subject to annual appropriations.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

Since the final rule was not preceded by a Notice of Proposed Rulemaking, the requirements of the Regulatory Flexibility Act do not apply. However, the Maritime Administrator has certified that the rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The final rule does not contain either an intergovernmental or private sector mandate, as defined in title II, of more than \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

Section 3533 of the MSA 2003 permitted MARAD to issue the interim final rule without soliciting comments. However, before the rule is issued as a final rule, MARAD did request comments on the interim final rule and received 15 sets of comments, which are discussed in the preamble to the final rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains an information collection that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

While OMB had previously approved the collection and assigned OMB No. 2133-0525, OMB has extended the expiration of its approval until January 31, 2008.

Statutory authorization for the rule

The final rule is promulgated under the authority found at Subtitle C, Maritime Security Fleet Program, Title XXXV of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (Pub. L. 108-136).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

MARAD has determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.