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February 1, 2007

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

The Honorable Bennie G. Thompson
Chairman
The Honorable Peter T. King
Ranking Minority Member
Committee on Homeland Security
House of Representatives

Subject: *Department of Homeland Security, Transportation Security Administration, U.S. Coast Guard: Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License*

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 Homeland Security, Transportation Security Administration, and the U.S. Coast Guard (the agencies) entitled "Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License" (RIN: 1652-AA41). We received the rule on January 3, 2007. It was published in the Federal Register as a "final rule; request for comments" on January 25, 2007. 72 Fed. Reg. 3492.

The final rule implements the Maritime Transportation Security Act of 2002 and the Security and Accountability for Every Port Act of 2006. These statutes require credentialed merchant mariners and workers with unescorted access to secure areas of vessels and facilities to undergo a security threat assessment and receive a biometric credential known as a Transportation Worker Identification Credential.

Enclosed is our assessment of the agencies' 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 the agencies 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 Norman Rabkin, Managing Director, Homeland Security and Justice. Mr. Rabkin can be reached at (202) 512-8777.

signed

Kathleen E. Wannisky
Managing Associate General Counsel

Enclosure

cc: Deputy Chief Counsel, Regulations
Transportation Security Administration
Department of Homeland Security

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY,
TRANSPORTATION SECURITY ADMINISTRATION,
U.S. COAST GUARD
ENTITLED
"TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC)
IMPLEMENTATION IN THE MARITIME SECTOR; HAZARDOUS MATERIALS
ENDORSEMENT FOR A COMMERCIAL DRIVER'S LICENSE"
(RIN: 1652-AA41)

(i) Cost-benefit analysis

A cost-benefit analysis was conducted and the agencies believe that the 10-year cost of the rule, discounted at 7 percent, would range from \$694.3 million to \$3.2 billion with the variance attributable to the uncertainty surrounding opportunity cost estimates and escorting cost estimates.

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

The agencies prepared an Initial Regulatory Flexibility Analyses and a Final Regulatory Flexibility Analysis (FRFA) in conjunction with the proposed and final rules, respectively, which comply with the requirements of the Act. In the FRFA, the changes made to the requirements in the proposed rule to lessen the economic impact on small entities are discussed.

(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 contains an unfunded mandate, as defined in title II, on the private sector of more than \$100 million in any one year. The regulatory impact analysis conducted by the agencies complies with the requirements of the Act.

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

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

The final rule was issued using the notice and comment procedures found at 5 U.S.C. 553. On May 22, 2006, the agencies published a joint Notice of Proposed Rulemaking in the Federal Register. 71 Fed. Reg. 29396. In addition to receiving 1,770 comments, the agencies held four public meetings on the proposal. The comments 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. The agencies estimate the annual burden to be 514,200 hours and the total annual fee for respondents to be between \$14,283,855 and \$20,632,235.

Statutory authorization for the rule

The final rule is promulgated pursuant to the authority found in the Maritime Transportation Security Act (Pub. L. 107-295, Nov. 25, 2002) and the Security and Accountability for Every Port Act of 2006 (Pub. L. 109-347, Oct. 13, 2006).

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)

The final rule has federalism implications under the order. The rule preempts state law regarding regulating mariners and prevents states from requiring security plans. However, the agencies will not require state and local officials, including law enforcement officials, to obtain a Transportation Worker Identification Credential.