



Billing Code 4910-81-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Parts 251, 252, 276, 280, 281, 282, and 283

[Docket No. MARAD 2012-0004]

RIN 2133-AB80

Retrospective Review under E.O. 13563: Shipping – Removal of Obsolete Regulations

AGENCY: Department of Transportation, Maritime Administration.

ACTION: Final rule.

SUMMARY: In accordance with Executive Order 13563, “Improving Regulation and Regulatory Review,” the Maritime Administration (MarAd) is evaluating the continued validity of its rules and determining whether they effectively address current issues. As part of this review, MarAd has decided to remove parts of its regulations. The Maritime Security Act of 1996, established the Maritime Security Program, which replaced the Operating-Differential Subsidy (ODS) Program. Therefore, the regulations pertaining to the ODS Program and the Construction-Differential (CDS) Program are no longer in use. In addition, the disuse of regulations pertaining to the CDS program, have rendered these regulations obsolete. This rulemaking, deleting these obsolete regulations, will have no substantive effect on the regulated public.

DATES: This final rule is effective on [Insert date of publication in the FEDERAL REGISTER].

ADDRESSES: This final rule is available for inspection and copying between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays, at the Docket Clerk, U.S. DOT

Dockets, W12-140, Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, D.C. 20590-0001. An electronic version of this document is available on the World Wide Web at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: T. Mitchell Hudson, Jr., Division of Legislation and Regulations, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue, S.E., Room W24-220, Washington, D.C. 20590-0001; telephone: (202) 366-9373.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2011, President Obama issued Executive Order 13563, which outlined a plan to improve regulation and regulatory review (76 FR 3821, 1/21/11). Executive Order 13563 reaffirms and builds upon governing principles of contemporary regulatory review, including Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, 10/4/1993), by requiring Federal agencies to design cost-effective, evidence-based regulations that are compatible with economic growth, job creation, and competitiveness. The President's plan recognizes that these principles should not only guide the Federal government's approach to new regulations, but to existing ones as well. To that end, Executive Order 13563 requires agencies to review existing significant rules to determine if they are outmoded, ineffective, insufficient, or excessively burdensome.

Accordingly, the Maritime Administration (MarAd) is deleting regulations 46 CFR Parts 251, 252, 276, 280, 281, 282, and 283. The regulations related to the ODS Program are no longer needed because they have been superseded by the Maritime Security Program established in the

Maritime Security Act of 1996, P.L. 104-239. Section 3 of the Maritime Security Act of 1996 prohibits the Secretary of Transportation from entering into any new ODS contracts.

Additionally, all previously awarded ODS contracts have expired and no further payments will be made. Therefore, the existing regulations do not serve any useful purpose.

The regulations governing the CDS Program are being deleted because the program has not been funded for approximately thirty years and, as a practical matter of disuse, the existing regulations are outdated. If funds were to be appropriated for CDS in the future, contracts will be awarded under new regulations or under existing or modified policies and procedures for awarding grants.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review) and Department of Transportation (DOT) Regulatory Policies and Procedures; Pub. L. 104-121.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), supplemented by E.O.13563 (76 FR 3821, January 18, 2011) and DOT policies and procedures, MarAd must determine whether a regulatory action is “significant,” and therefore subject to OMB review and the requirements of the E.O. The Order defines “significant regulatory action” as one likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities.
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

MarAd has determined that this final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule will not result in an annual effect on the economy of \$100 million or more. It also is not considered a major rule for purposes of Congressional review under Pub. L. 104-121. This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking are so minimal that no further analysis is necessary.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. § 553) provides an exception to notice and comment procedures when they are unnecessary or contrary to the public interest. MarAd finds that under 5 U.S.C. § 553(b)(3)(B) good cause exists for not providing notice and comment since this final rule deletes regulations that no longer serve the public interest as a result of having been superseded or as a matter of disuse. Under 5 U.S.C. § 553(d)(3), MarAd finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

Executive Order 13132 (Federalism)

We analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. This rule has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MarAd did not consult with State and local officials because it was not necessary.

Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

MarAd does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

E.O. 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires MarAd to assess whether this rule would have a significant economic impact on a substantial number of small entities and to minimize any adverse impact. The Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule only deletes obsolete Parts in title 46 of the CFR, which have no substantive effect on the regulated public.

Environmental Assessment

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600-1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking has no environmental impact.

Executive Order 13211 (Energy Supply, Distribution, or Use)

MarAd has determined that the proposed rule would not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required.

Executive Order 12630 (Taking of Private Property)

This rule would 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.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. §§ 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$141.3 million or more (as adjusted for inflation) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

46 CFR Part 251

Application for Subsidies and Other Direct Financial Aid.

46 CFR Part 252

Operating-Differential Subsidy for Bulk Cargo Vessels Engaged in World-Wide Services.

46 CFR Part 276

Construction-Differential Subsidy Repayment

46 CFR Part 280

Limitations on the Award and Payment of Operating-Differential Subsidy for Liner Operators.

46 CFR Part 281

Information and Procedure Required under Liner Operating-Differential Subsidy Agreements.

46 CFR Part 282

Operating-Differential Subsidy for Liner Vessels Engaged in Essential Services in the Foreign Commerce of the United States.

46 CFR Part 283

Dividend Policy for Operators Receiving Operating-Differential Subsidy.

For the reasons set forth in the preamble, and under the authority of the Merchant Marine Act of 1936, codified at 46 USC Chapter 501, MarAd amends 46 CFR Chapter II, Subchapter C by removing parts 251, 252, 276, 280, 281, 282, and 283. All contracts for Operating-Differential Subsidy, not previously closed out, are hereby terminated, and no further payments shall be owing or payable. Parts 251, 252, 276, 280, 281 and 283, of title 46, CFR, are removed and reserved for future use by MarAd.

Part 251—[REMOVED]

Part 252—[REMOVED]

Part 276—[REMOVED]

Part 280—[REMOVED]

Part 281—[REMOVED]

Part 282—[REMOVED]

Part 283—[REMOVED]

Dated: January 27, 2012

By Order of the Maritime Administrator and Maritime Subsidy Board

Julie Agarwal

Secretary, Maritime Administration

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