



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR parts 101, 104, 105, 120, and 128

[Docket No. USCG-2006-23846]

RIN 1625-AB30

Consolidated Cruise Ship Security Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to amend its regulations on cruise ship terminal security. The proposed regulations would provide detailed, flexible requirements for the screening of all baggage, personal items, and persons - including passengers, crew, and visitors - intended for carriage on a cruise ship. The proposed regulations would standardize security of cruise ship terminals and eliminate redundancies in the regulations that govern the security of cruise ship terminals.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments sent to the Office of Management and Budget

(OMB) on collection of information must reach OMB on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by docket number USCG-2006-23846 using any one of the following methods:

- (1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

- (2) Fax: 202-493-2251.

- (3) Mail: Docket Management Facility (M-30), U.S.

Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

- (4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

Collection of Information Comments: If you have comments on the collection of information discussed in section VI.D. of this Notice of Proposed Rulemaking (NPRM), you must also send comments to the Office of Information and Regulatory Affairs (OIRA), OMB. To ensure that your comments to OIRA are received on time, the preferred methods are by e-mail to

oira\_submission@omb.eop.gov (include the docket number and "Attention: Desk Officer for Coast Guard, DHS" in the subject line of the e-mail) or fax at 202-395-6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Commander Kevin McDonald, Inspections and Compliance Directorate, Office of Port and Facility Compliance, Cargo and Facilities Division (CG-FAC-2), Coast Guard; telephone 202-372-1168, e-mail Kevin.J.McDonald2@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

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## I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

### A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking , indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that

you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number USCG-2006-23846 in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

#### B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number USCG-2006-23846 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### C. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

#### D. Public meeting

We do not plan to hold a public meeting at this time. But you may submit a request for one to the docket using one of the methods specified under ADDRESSES. In your request, explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

## II. Abbreviations

APA	Administrative Procedure Act
CFR	Code of Federal Regulations
CLIA	Cruise Lines International Association
COTP	Captain of the Port
CVSSA	Cruise Vessel Security and Safety Act of 2010
DHS	Department of Homeland Security
DoS	Declaration of Security
EDS	Explosive Detection System
E.O.	Executive Order
FSO	Facility Security Officer
FSP	Facility Security Plan

FR	Federal Register
IMO	International Maritime Organization
ISPS	International Ship and Port Facility Security
ISSC	International Ship Security Certificate
MARSEC	Maritime Security
MISLE	Marine Information for Safety and Law Enforcement
MSC/Circ.	Maritime Safety Committee Circular
MTSA	Maritime Transportation Security Act
NAICS	North American Industry Classification System
NMSAC	National Maritime Security Advisory Committee
NPRM	Notice of Proposed Rulemaking
NVIC	Navigation and Vessel Inspection Circular
OCS	Outer Continental Shelf
OMB	Office of Management and Budget
OIRA	Office of Information and Regulatory Affairs
PAC	Policy Advisory Council
PWSA	Port and Waterways Safety Act
§	Section symbol
SSI	Sensitive Security Information
TSA	Transportation Security Administration
TSI	Transportation Security Incident
TSP	Terminal Screening Program
TWIC	Transportation Worker Identification Credential
U.S.C.	United States Code
VSP	Vessel Security Plan

### III. Basis and Purpose

The Coast Guard proposes to amend the maritime security regulations, found in title 33 of the Code of Federal Regulations (33 CFR) subchapter H (parts 101 through 105), to require terminal screening programs (TSPs) in existing facility security plans (FSP) at cruise ship terminals within the United States and its territories. This proposed rule would standardize screening activities for all persons, baggage, and personal effects at cruise ship terminals while also allowing an appropriate degree of flexibility that accommodates and is

consistent with different terminal sizes and operations. This flexible standardization ensures a consistent layer of security at terminals throughout the United States. This proposed rule builds upon existing facility security requirements in 33 CFR part 105, which implements the Maritime Transportation Security Act (MTSA), Pub. L. 107-295, 116 Stat. 2064 (November 25, 2002), codified at 46 U.S.C. Chapter 701. The Coast Guard consulted with the Transportation Security Administration (TSA) during the development of this proposed rule.

The Coast Guard also proposes to remove 33 CFR parts 120 and 128 because provisions in those parts requiring security officers and security plans or programs for cruise ships and cruise ship terminals would be redundant with the provisions in 33 CFR subchapter H. Section 120.220, concerning the reporting of unlawful acts, would also be removed because it is obsolete and existing law enforcement protocols require members of the Cruise Lines International Association (CLIA) to report incidents involving serious violations of U.S. law to the nearest Federal Bureau of Investigation field office as soon as possible. The Coast Guard will consider issuing additional regulations on this subject in a separate rulemaking pursuant to the Cruise Vessel Security and Safety Act of 2010 (CVSSA), Pub. L. 111-207 (July 27, 2010) (See RIN 1625-AB91).

This proposed rule does not address the screening of vessel stores, bunkers, or cargo. Similarly, it does not affect what items may be brought onto a cruise ship by the cruise ship operator, including items that passengers may check for secure storage with the cruise operator outside of their baggage or carry-ons. Requirements for security measures for the delivery of vessel stores, bunkers, and cargo exist and may be found in 33 CFR 104.275, 104.280, 105.265, and 105.270.

This proposed rule also does not include regulations that may be required pursuant to the CVSSA. Although this rule and the CVSSA are both concerned with cruise ship security generally, this rule consolidates and updates pre-boarding screening requirements while the CVSSA prescribes requirements in other areas, such as cruise ship design, providing information to passengers, maintaining medications and medical staff on board, crime reporting, crew access to passenger staterooms, and crime scene preservation training. Delaying promulgation of this proposed rule while the regulations required by the CVSSA are developed, for the sole purpose of publishing all of these regulations together, would unnecessarily deprive the public of the benefit of improved cruise ship screening regulations during that period.

#### IV. Background

##### A. Development of 33 CFR parts 120 and 128

Following the terrorist attack on the cruise ship ACHILLE LAURO, the International Maritime Organization (IMO) published Maritime Safety Committee Circular (MSC/Circ.) 443 on September 26, 1986, which directed contracting governments to develop measures to ensure the security of passengers and crews aboard cruise ships and at cruise ship terminals. MSC/Circ. 443 also strongly recommended that governments ensure the development, implementation, and maintenance of ship security plans and facility security plans. MSC/Circ. 443 is available in the docket of this rulemaking, and can be obtained by following the instructions in the "Viewing comments and documents" section of this preamble.

In recognition of IMO's guidance on the security of cruise ships and cruise ship terminals, the Coast Guard published regulations in 1996 for the security of large passenger vessels (i.e., cruise ships) in 33 CFR part 120, and the security of passenger terminals (i.e., cruise ship terminals) in 33 CFR part 128 (61 FR 37647, July 18, 1996). These regulations include requirements for large passenger vessels and passenger terminals to submit vessel security plans and terminal security plans, respectively. Navigation and Vessel Inspection Circular (NVIC) 4-02 provides guidance for complying with these regulations. The Coast Guard has posted NVIC 4-02 in the docket of this

rulemaking; see the "Viewing comments and documents" section of this preamble for more information.

B. Development of 33 CFR Subchapter H

In response to the terrorist attacks on September 11, 2001, Congress enacted MTSA to increase maritime security. In Section 101 of MTSA, Congress found that "[c]ruise ships visiting foreign destinations embark from at least 16 [U.S.] ports," and that "the cruise industry poses a special risk from a security perspective."<sup>1</sup>

In 2003, the Coast Guard implemented Section 102 of MTSA through a series of regulations for maritime security, located in 33 CFR subchapter H. These regulations require owners or operators of vessels, facilities, and Outer Continental Shelf (OCS) facilities to conduct security assessments of their respective vessels and facilities, create security plans specific to their needs, and submit the plans for Coast Guard approval by December 29, 2003. These plans must be updated at least every 5 years. The Coast Guard has required all affected vessels, facilities, and OCS facilities to operate in accordance with their plans since July 1, 2004.

Included in 33 CFR subchapter H are specific security requirements for owners or operators of cruise ships and cruise

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<sup>1</sup>46 U.S.C.A. 70101, note, secs. 101(5) and (9).

ship terminals in 33 CFR 104.295 and 105.290. The Coast Guard developed these requirements to further mitigate the elevated risk of cruise ship and cruise ship terminal involvement in a transportation security incident (TSI).

Among the requirements in §§ 104.295 and 105.290, owners or operators of cruise ships and cruise ship terminals must ensure that all persons, baggage, and personal effects are screened for dangerous substances and devices. The FSPs for the cruise ship terminals, approved under 33 CFR part 105, currently document the screening requirements in §§ 105.215, 105.255, and 105.290, such as qualifications and training of screening personnel, screening equipment, and the recognition of dangerous substances and devices. However, these FSPs do not include a separate section specifically addressing these screening requirements; rather FSPs address them throughout the document and in a general fashion.

This rulemaking would require cruise ship terminal FSPs to follow an organized format that includes more specific aspects of screening. In particular, the Coast Guard proposes to require owners and operators of U.S. cruise ship terminals to utilize a Prohibited Items List when conducting screening of all persons, baggage, and personal effects at the terminal. This list would reduce uncertainty in the industry and the public about what is prohibited and what is not, and would help cruise

ship facilities better implement the screening requirement in 33 CFR § 105.290(a).

The level of risk mitigated by the establishment of a Prohibited Items List for cruise ship terminals should align with the level of risk reduction required in MTSA. MTSA states that vessel security plans must "identify, and ensure ... the availability of security measures necessary to deter to the maximum extent practicable a transportation security incident or a substantial threat of such a security incident."

Consequently, the goal of the Prohibited Items List is not to completely eliminate all possible risks, as complete risk reduction is not the risk standard set forth in MTSA. MTSA is clear that maritime transportation security plans must be written to prevent TSIs (such as the loss of the vessel or other mass casualty scenarios).

While we recognize that cruise ship operators are also required to ensure screening for dangerous substances and devices under 33 CFR § 104.295(a), the Coast Guard is not proposing to require them to modify VSPs in a manner similar to cruise ship terminal FSPs, for reasons of cost-effectiveness and redundancy as described below. However, we do believe that the publication of the Prohibited Items List will provide helpful guidance to cruise ship operators in complying with 33 CFR § 104.295(a).

## Current Status of 33 CFR Parts 120 and 128

The implementation of MTSA and 33 CFR subchapter H was one step in a larger effort to revise the requirements in 33 CFR parts 120 and 128. On January 8, 2004, the Coast Guard MTSA/International Ship and Port Facility Security (ISPS) Policy Advisory Council (PAC), whose members are all Coast Guard personnel, issued PAC Decision 04-03 to provide guidance on 33 CFR subchapter H. PAC Decision 04-03 states that "33 CFR parts 120 and 128 and NVIC 4-02 will remain in effect until July 1, 2004." Since that date, cruise ships and cruise ship terminals have operated in accordance with 33 CFR subchapter H, not 33 CFR part 120 or 128. This decision is available in the docket of this rulemaking, which can be accessed by following the instructions in the "Viewing comments and documents" section of this preamble, and on the Coast Guard Homeport website at <http://homeport.uscg.mil>.

## Development of Regulations by the Transportation Security Administration

In 2002, the TSA promulgated 49 CFR subchapter C, regarding the security of civil aviation after the September 11, 2001, terrorist attacks. Screening persons and property at airports is an integral element within these aviation security regulations. The TSA screening requirements for persons and property intending to board commercial aircraft include rigorous

standards for screening personnel training and qualifications, screening equipment, staffing of screening stations, and screening operations at airports. The TSA enforces a Prohibited Items List and the Permitted Items List nationwide, regardless of the airline used or airport visited within the United States.

To complement 49 CFR subchapter C, the TSA published and updates the Prohibited Items and Permitted Items Lists for air travel. The first version of the lists issued to implement 49 CFR 1540.111 appeared in the Federal Register on February 14, 2003 (68 FR 7444). The lists, and several subsequent updates, interpreted the meaning of the terms "weapons, explosives, and incendiaries" for purposes of 49 CFR 1540.111(a), and were published under authority in 5 U.S.C. 553(b) as interpretive rules without notice and comment. We drafted this proposed rule after reviewing TSA's aircraft screening requirements.

The Coast Guard's proposed Prohibited Items List is closely aligned with TSA's Prohibited Items List for aviation. The two lists are not exactly the same due to the distinctly different risk profiles of cruise ships and aircraft: (1) Aircraft can be used as a missile. A cruise ship, however, cannot be used as a missile and, at worst, can be grounded. (2) There are inherent limits on vulnerability reduction of prohibiting items that may already be on board the cruise ship (e.g., items such as steak knives or ice axes could be used to create a Transportation

Security Incident, but they are readily available to cruise ship passengers for recreational and other purposes and thus it would be ineffective to prohibit them upon boarding).

There are additional differences between cruise ships and aircraft which support the differences between the two Prohibited Items Lists: (1) The increased robustness of cruise ship design to resist an attack as compared to an aircraft and (2) The larger presence of security personnel on board cruise ships trained to combat a potential TSI.

#### Advisory Committee Participation

In addition to using the current TSA regulations as guidelines when drafting this proposal, we also drew upon the expertise of the National Maritime Security Advisory Committee (NMSAC). This committee is composed of representatives from a cross-section of maritime industries and port and waterway stakeholders including, but not limited to, shippers, carriers, port authorities, and facility operators. The NMSAC advises, consults with, and makes recommendations to the Secretary of Homeland Security via the Commandant of the Coast Guard on matters affecting maritime security.

We presented the NMSAC with the following questions relating to cruise ship and cruise ship terminal security screening measures, and asked for comments and recommendations. The NMSAC answered with industry-specific comments and

recommendations, and addressed other pertinent issues as well, including screener training and reporting unlawful acts at sea. We summarized their comments and provide our responses below. The task statement and the full NMSAC recommendations may be found in the docket for this rulemaking, which can be accessed by following the instructions in the "Viewing comments and documents" section of this preamble.

Prohibited Items List

1. Would a national standardized Prohibited Items List be useful?

Comment: NMSAC believes that publishing a list of Federally Prohibited Items will be beneficial to cruise ship operators and will serve to give guidance to passengers and potential passengers as to the items that may not be brought on board a cruise ship, as well as the items that may be brought aboard under controlled circumstances.

Response: We agree that an important use for a Federally Prohibited Items List is to advise passengers of items they cannot bring into a cruise ship terminal or onto a cruise ship.

Comment: NMSAC states that it must also be recognized by the Federal Government and all parties concerned that cruise ships differ from other types of passenger vessels, passenger vessel operations, and other transportation industries, especially air travel. This difference is a result of the size

and robust construction of the ship, crewing, and the presence of trained security crew onboard.

Response: We have adopted some screening measures from the airline industry because screening processes and technology have commonalities in both industries. However, the Coast Guard recognizes the difference between cruise ships and other transportation industries. We recognize that other types of passenger vehicles, such as aircraft, are primarily used for transportation from one point to another, and that passengers are usually on board for a relatively short duration. Cruise ships, on the other hand, may carry thousands of passengers for up to several weeks. Additionally, cruise ships have a very different set of vulnerabilities than aircraft due to their heavier nature and significant numbers of trained security personnel, which makes certain items that present a threat to aircraft low or no risk in the context of a cruise ship concerning the potential for a TSI. Therefore, we propose tailoring our screening regulations and establishing a Prohibited Items List for use by the cruise ship industry.

2. What entity is the most appropriate generator of such a list?

Comment: NMSAC believes and recommends that the Coast Guard is the correct agency to lead in the development and

publication of this listing; however, TSA should be consulted due to their expertise in screening systems.

Response: We agree with NMSAC that the Coast Guard should develop and maintain a dangerous substances and devices list. We have and will continue to work with TSA throughout this rulemaking and in the future to ensure the list is current and updated to address evolving threats as necessary.

3. What items should be on the list?

Comment: NMSAC recommends that a Federally Prohibited Items List should recognize multiple categories, including--

- Prohibited items;
- Items permitted with special controls; and
- Items permitted for medical use only.

Response: We anticipate publishing a list of dangerous substances and devices for screening persons, baggage, and personal items at cruise ship terminals in the United States and its territories. We would retain the ability to add to or modify the list as needed. However, we recognize the need to distinguish between items prohibited at all times from items that would be permitted under specified conditions onboard a particular vessel and as documented in the Vessel Security Plan, and thus would not propose to include in regulation specific instructions relating to items allowed conditionally. Instead,

control of such items that are dangerous in some situations or quantities would be left to the discretion of the cruise ship operators.

Comment: NMSAC states that cruise ship passengers as well as crew have access to their baggage and are regularly involved in activities and events associated with a lengthy vacation or special celebration. In contrast, passengers and crew aboard an aircraft do not have access to checked baggage. Because of the difference in access, some items, such as guns, are permitted to be carried in checked baggage onboard an aircraft, but such items would not be permitted onboard a cruise ship at all.

Response: We agree that a list of items prohibited on a cruise ship may be different from those prohibited on aircraft. The most obvious difference is that there will be no distinction between checked baggage or carry-on items, since passengers and crew will have access to their personal items once they are onboard.

Comment: Some items, such as a steak knife, which would be prohibited onboard a passenger aircraft, are not only available onboard a cruise ship but will also be delivered to a person's room with a meal. Other such items such as aerosols sold in the ships stores, and fire axes as part of the ships safety equipment, are also normally available onboard ship. Other items which are commonly permitted onboard a cruise ship may

include: a diver's spear gun or knife; a chef's personal cutlery; SCUBA tanks; firearm replicas and indoor pyrotechnics used for stage productions; compressed gas cylinders for personal use or ship repair; and tools needed for specialized ship repair or maintenance. All these are part of the everyday activities or life on board a ship that may be away from port for days at a time. This listing is certainly not exhaustive. Each of these items is important to the cruise experience and must be permitted onboard with proper controls over access and use.

Response: We agree that it would be unproductive to prohibit an item that can be purchased in a ship store or that is available from room service (e.g. a steak knife). However, cruise lines may choose to prohibit passengers from carrying knives or axes onboard without prior approval and under controlled procedures.

We also agree that when determining the items that will and will not be allowed onboard a cruise ship or into a cruise ship terminal, consideration must be given to those items that passengers would reasonably be expected to need in order to enjoy the cruise. Items including, but not limited to, dive knives, spear guns, and SCUBA tanks may fit into this category and, as suggested by NMSAC, may be acceptable if controlled by ship security personnel until the passengers need them.

Comment: Generally NMSAC believes that screening, and any list of prohibited and controlled items, should only apply to personal baggage and carry-on items, not to ship stores. Items that are part of ship stores and for the ship's operations and guest programs should not be considered to be subject to this listing. For example, gasoline may be carried as part of the ship's stores for use in ship carried jet skis.

Response: We agree with NMSAC's recommendations that, for the purposes of this rulemaking, the dangerous substances and devices list should not apply to ship stores. Ship stores are outside the scope of this rulemaking.

Comment: In the event a listed item is discovered on board, NMSAC recommends that the response be measured and based upon the nature of the item discovered and the actual threat that the item presents. Nor should it be considered as a listing of items which would automatically constitute a violation or breach of security if one of the items is discovered onboard.

NMSAC additionally recommends that a clear statement be included to the effect that the response to a non-detectable or controlled item discovered on board should be based upon the nature of the item and the actual threat presented and that discovery of such an item would not necessarily constitute a violation or breach of security.

Response: We agree that the appropriate response to the discovery of a prohibited item onboard should be measured, and based upon the nature of the item and the actual threat it presents. However, a listed prohibited item that has passed through security screening and is discovered onboard would constitute a breach of security as defined in 33 CFR 101.105, since a security measure has been circumvented, eluded, or violated.

Although a breach of security is a violation, the Coast Guard would not necessarily have to take enforcement action. The Coast Guard would examine each event based on the circumstances and details of the breach, the actual threat posed by the item or items, and remedial action taken after the breach is detected. The ultimate goal of the regulation is to provide security to cruise ship passengers, crews, the cruise ship, and the cruise ship terminal.

#### Screening Equipment

1. What is the possibility of standardizing screening methods, similar to the methods employed by TSA at airports?

Comment: NMSAC notes that the task statement from the Coast Guard states: "Some cruise ship terminals use metal detectors, x-ray systems, explosive detection systems, and/or canines for screening and that their use and operation is not uniform across the U.S." NMSAC questions the Coast Guard's

statement that only some cruise ship terminals contain appropriate detection equipment, and that the use of this equipment is not uniform across the United States. The Coast Guard regulatory requirements contained in 33 CFR parts 120 and 128 require both cruise ships and cruise ship passenger terminals to have in place effective security plans for three levels of security, which include requirements for screening of baggage, ship stores, carry-on items, and persons. These regulations and accompanying guidance implemented by approved plans would be expected to provide for this unity of purpose and application of performance standards contained in the regulations.

Response: During visits at several cruise ship terminals, cruise ship embarkation ports, and ports of call, the Coast Guard witnessed various types of screening activities. Most terminals use metal detectors and x-ray systems. Some terminals use canines and other terminals, normally ports of call, screen by hand.

Cruise ships and cruise ship terminals have been subject to 33 CFR parts 120 and 128, and after July 1, 2004, to the International Ship and Port Facility Security Code and 33 CFR subchapter H. To minimize potential risk associated with cruise ships and cruise ship terminals, we propose implementing more

detailed regulations. We would retain the spirit of the performance-based standards in 33 CFR subchapter H.

2. Should standards be developed for the screening equipment used at U.S. cruise ship terminals and ports of call?

Comment: In seeking to ensure consistency throughout the United States regarding screening activities at cruise ship terminals, NMSAC notes that flexibility is an absolute necessity in the cruise ship industry. NMSAC agrees with performance standards for training or certification, and for minimum consistency of equipment. However, what equipment is employed and how it fits into an effective system for assuring security should remain flexible.

Response: We agree that flexibility is necessary, and note that consistency of screening equipment would mean consistency in the performance standards of equipment.

Comment: NMSAC recommends that specificity of performance standards or goals could be developed for detection equipment; to specify exactly which equipment should be used would be counterproductive to development of new technology. Standardization of application would also prevent the flexibility to meet varying operational requirements, varying threats that may be encountered by different size ships at different ports. Standardization would also prevent the

flexibility to meet varying operational requirements, and varying threats that may be encountered.

Response: We agree. The equipment would need to be adequate to meet specific performance standards. The Coast Guard intends to allow each owner or operator of a cruise ship facility to specify the type of screening equipment used to detect prohibited items.

Comment: NMSAC notes that the Department of Homeland Security (DHS) has established a Transportation Screening Capability Working Group. The focus of the group is to identify screening capabilities and needs. As such, the work of this group appears to be of interest to NMSAC particularly in regard to this current tasking and interface between the Working Group and NMSAC is recommended. At a minimum, DHS representatives should be invited to brief NMSAC with regards to the work, conclusions, and recommendations of the Working Group.

Response: We agree that it may be necessary to invite DHS representatives to discuss current screening initiatives.

Comment: NMSAC recommends that performance standards for detection equipment be developed in conjunction with the above mentioned Working Group, and that a listing of items to be detected by these screening systems be developed.

Response: We will continue to work with TSA and DHS representatives regarding equipment performance standards.

Comment: NMSAC also states that, while an item may be prohibited, this does not mean that technology exists for detecting such items during the screening process. Screening should not be expected for items that cannot be detected. NMSAC notes that a prohibited items listing should not be indiscriminately mistaken to be the exact listing of items that must be detected by current screening technology or screening personnel. They state that it is a well-known and established fact that 100 percent screening does not equate to 100 percent detection and a number of the items potentially listed are not detectable by current screening technology or processes.

Response: We recognize that requiring screening of all persons, baggage, and personal items does not realistically equate to 100 percent detection of prohibited items. Screening should ensure that there are no dangerous substances or devices present on cruise ships or in terminals. The Coast Guard would place items on a dangerous substances and devices list that we determine to pose a real danger to security. Detection measures should be employed to ensure, to the greatest practicable extent, that such dangers are not present. If a listed item is found onboard, the owners or operators of cruise ships or terminals should examine their screening processes to determine the reason they did not detect the item during the screening process. As part of this examination, owners or operators of

cruise ships and terminals should review security measures, such as qualification and training of screening personnel as well as the technology they use. It is not the intent of the proposed rule to expect or demand more than is possible or achievable given available technology. The goal should be continuous process improvement.

Comment: NMSAC is aware that current screening capabilities do not readily detect or identify certain items that may currently be prohibited onboard either an aircraft in carry-on baggage or otherwise or onboard ships. Accordingly, electronic screening should not include items that cannot be detected by current capabilities and other screening should not be required for these items unless the threat of introduction is so high (Maritime Security Level III) that alternate means of screening is necessary.

Response: We agree that the technology required to screen for certain prohibited items, especially nuclear, biological, and chemical agents, either does not exist or may be excessively expensive. We expect screening to be conducted at cruise ships and cruise ship terminals using several methods and technologies already employed for screening at airports, such as metal detectors and x-ray machines. Although a dangerous substances and devices list may include items for which screening technology does not exist, we expect the cruise ships' or

terminals' screening personnel to attempt to detect these materials using screening methods other than electronic equipment. For example, during an escalated Maritime Security (MARSEC) Level 2 or 3, we would require alternate means of screening that may include random hand searches or other methods appropriate to the threat. MARSEC Levels advise the maritime community and the public of the level of risk to the maritime elements of the national transportation system. There are only three MARSEC levels. MARSEC Level 1 is the level for which minimum appropriate security measures shall be maintained at all times. Under 33 CFR 101.200 (b), unless otherwise directed, each port, vessel, and facility must operate at MARSEC Level 1.

3. What standards should apply if canines were to be used to screen for the presence of explosives at U.S. cruise ship terminals?

Comment: NMSAC recommends that any need for and use of canines for screening should be clearly written into the security plan that is required by 33 CFR 105. Because each terminal operation, passenger ship, threat information, and security operation is different, a "one size fits all" regulation to meet the "when" and "how" of canine use will not work. Instead, this can be broken into three issues:

- a. When should canines be utilized for screening?
- b. How should canines be used for screening?

c. What should be the training and certification requirements for the canine and the handler?

With regards to item c. above, NMSAC acknowledges that cruise ship industry canine security representatives have been meeting with USCG and DHS officials to discuss appropriate regulatory requirements for the certification of both dog and handlers. NMSAC does not possess the expertise to overtake these discussions and therefore declines to offer recommendations in this regard. As the end users of canine screening or search capabilities, NMSAC members would be interested in receiving a briefing of this regulatory development project.

Response: We agree, and do not propose mandating the use of canines for normal screening operations. We do recognize the need to address required standards in the event that terminals or cruise ships voluntarily use canines to screen for explosives. The Coast Guard is engaged in separate, ongoing projects to address the use of canines at maritime facilities, including cruise ship and other passenger facilities.

C. Miscellaneous

1. Training of Screening Personnel.

Comment: NMSAC believes that the development of national standards for training screening personnel is appropriate. NMSAC recommends that such standards should be developed in

cooperation with the maritime industry and appropriate professional stake holders, and should address the basic knowledge, understanding, and proficiency to be demonstrated by candidates to receive certification. Given the difference in cruise ship operations, as well as the cruise ships themselves and the ports they visit, consideration should be given to different levels of certification.

Response: We agree that a need exists for national standards for training screening personnel, and that these standards should be developed in cooperation with the maritime industry and appropriate professional stake holders. The Coast Guard proposes adding a new § 105.535 to set forth training requirements of screeners, who must demonstrate knowledge, understanding, and proficiency in various security related areas as part of their security-related familiarization.

2. Unlawful Acts Reporting Requirement (33 CFR 120.220).

Comment: NMSAC recommends that the consolidation of 33 CFR 120 & 128 into 33 CFR Subchapter H be clarified so that unlawful acts involving felonies or other serious crime are promptly reported to the agency that has the proper jurisdiction for investigation and prosecution. A variety of governmental entities, both foreign and domestic, exercise law enforcement authority over each ship, depending upon where it is located, where it has come from and where it may be going to. Alleged

criminal acts involving U.S. citizens are already reported to the appropriate law enforcement agencies.

Response: Existing law enforcement protocols contain standards for the types of crimes that owners or operators of cruise ships must report as well as the form and the timeliness of that reporting. Under those protocols, members of the Cruise Lines International Association (CLIA) are already obligated to report incidents involving serious violations of U.S. law, which include but are not limited to homicide, suspicious death, assault with serious bodily injury, and sexual assaults to the nearest Federal Bureau of Investigation field office as soon as possible. The Coast Guard will consider issuing additional regulations on this subject in a separate rulemaking pursuant to the Cruise Vessel Security and Safety Act of 2010 (CVSSA.), Pub. L. 111-207 (July 27, 2010).

### 3. Definition of Cruise Ship

Comment: NMSAC stated that they have not defined "cruise ship".

Response: We will use the definition for cruise ship currently in 33 CFR 101.105.

## V. Discussion of Proposed Rule

In the paragraphs below, we explain the origins and rationale for the proposed changes in this NPRM. We organized

the discussion according to the section number in which each change would appear.

§ 101.105 Definitions

The Coast Guard proposes amending § 101.105 by adding new definitions for carry-on item, checked baggage, cruise ship terminal, cruise ship voyage, disembark, embark, explosive detection system (EDS), high seas, port of call, screener, and TSP.

§ 104.295 Additional requirements-cruise ships

Currently, the Coast Guard requires cruise ship owners or operators to ensure that screening is performed for all persons, baggage, and personal effects. This requirement is usually fulfilled in coordination with the U.S. cruise ship terminals, with which the cruise ships interface. We propose to add language in this section requiring cruise ship owners or operators to ensure screening is performed in accordance with proposed subpart E of part 105. Cruise ship owners or operators would continue to ensure that screening is performed, and we anticipate that they would continue to coordinate screening with the cruise ship terminals.

While cruise ship terminals would be required to incorporate the Prohibited Items List into their FSPs, we are not proposing to require cruise ship operators to include the list in their VSPs. We believe that such a proposal would be

redundant on two levels. First, passengers and screeners would be aware of the Prohibited Items List because it is already required to be available at all screening locations under 33 CFR 105.515(c). Second, nearly all cruise ships operate under an International Ship Security Certificate (ISSC), which details procedures for screening dangerous substances and devices. Additionally, 33 CFR 104.295(a) would require that when passengers embark at a point that is not at a terminal, cruise ship screeners must meet the training requirements of 33 CFR 105.535, which requires that they are familiar with the contents of the Prohibited Items List. For these reasons, we believe that the additional paperwork burden requiring the incorporation of the Prohibited Items List into the cruise ships' VSP would be unnecessary.

#### § 105.225 Facility record-keeping requirements

Within this section, we propose to add language referencing proposed § 105.535 for the safekeeping of screener training records. Currently, the Facility Security Officer (FSO) is responsible for recordkeeping. As proposed, the FSO's recordkeeping responsibilities would be extended to include screener training records. See the discussion of § 105.535 in this preamble for additional information on changes to that section.

#### § 105.290 Additional requirements - cruise ship terminals

We propose to amend § 105.290 by revising paragraph (b) and adding language to paragraph (a) referencing proposed subpart E. The Coast Guard would require owners or operators of cruise ship terminals to conduct screening in accordance with subpart E, and identification requirements would be clarified.

#### § 105.405 Format and content of the Facility Security Plan (FSP)

The Coast Guard proposes amending § 105.405 by adding new paragraph (a) (21). This new paragraph would require that owners or operators of cruise ship terminals ensure that the FSPs include a TSP that is submitted to the Coast Guard for approval. See the discussion of § 105.505 in this preamble for additional information on the TSP. The Coast Guard is also reserving paragraphs (a) (19) and (a) (20) as it is considering proposing additional amendments to § 105.405 in separate rulemakings.

#### Subpart E - Facility Security: Cruise Ship Terminals

The Coast Guard proposes to add a new subpart to part 105 specifically related to the screening of all persons, baggage, and carry-on items performed at cruise ship terminals. This new subpart would be titled Facility Security: Cruise Ship Terminals. Below, we discuss the proposed sections to be included in this subpart.

#### § 105.500 General

This proposed section encompasses the applicability, purpose, and compliance dates for subpart E. First, subpart E would apply to cruise ship terminals only. For this NPRM, we consider any U.S. facility that receives cruise ships as they are defined in 33 CFR 101.105, or tenders from cruise ships, to embark or disembark passengers or crew as being cruise ship terminals. These include facilities where the majority of passengers embark with checked baggage, as well as facilities where passengers may visit for a limited time and then re-board the cruise ship. As described previously in the discussion of proposed changes in §104.295 of this preamble, the Coast Guard would require cruise ship owners or operators to coordinate screening operations with the terminal owners or operators.

The purpose of subpart E is, as stated above, to ensure security at cruise ship terminals. Specifically, subpart E is included in this proposed rule to give terminal owners or operators more detailed requirements to assist development of their screening regimes. However, based on our analysis of current cruise ship terminal screening procedures, we do not believe that these requirements would necessitate operational changes at any existing cruise ship terminal at this time. Instead, the existence of the regulation would set a screening "floor," as well as provide certainty as to the minimum requirements.

Finally, the Coast Guard proposes to require cruise ship terminal owners or operators to submit their TSPs to the Coast Guard for approval no later than 180 days after publication of the final rule. Subsequently, the terminal owners or operators would have to operate in accordance with their TSPs 1 year after publication of the final rule.

§ 105.505 Terminal Screening Program (TSP)

This section would detail the requirements of the TSP. The Coast Guard would require the TSP to be included as part of the FSP, and to document the screening process for all persons, baggage, and personal items from the time that the person or baggage first enters the cruise ship terminal until the person or baggage arrives aboard a cruise ship moored at the facility.

We acknowledge that FSPs currently approved by the Coast Guard address screening procedures within the section for access control. However, the TSP, as part of the FSP, would provide a more detailed description of the screening process at cruise ship terminals. Also, as part of the FSP, audits and amendments to the TSP would fall under current requirements in §105.415. A list of specific topics the TSP would address is included in §105.505(c). These topics include qualifications and training of persons conducting screening, screening methods and equipment used at the terminal, and procedures employed when a dangerous substance or device is detected during screening operations.

In developing the requirements for TSPs, we drew upon the current requirements for FSPs and the requirements contained in 49 CFR § 1544.103 for security programs developed by air carriers and commercial operators that conduct screening at airports. TSA regulations in 49 CFR 1544.103 were useful in the development of this NPRM because those regulations apply to commercial, non-governmental entities conducting screening. Nevertheless, we understand that wholesale adoption of the TSA regulations would not be appropriate for cruise ship terminals because of differences between the operations of the airline and cruise ship industries.

§ 105.510 Responsibilities of the owner or operator

The Coast Guard proposes adding a new § 105.510, detailing the cruise ship terminal owners' or operators' responsibilities regarding screening of all persons, baggage, and personal items at the terminal. The requirements in this section are in addition to the responsibilities described in 33 CFR 105.200. This proposed section would ensure that cruise ship terminal owners or operators develop and perform several aspects of the screening process, such as the following--

- Developing and implementing the TSP;
- Documenting screening responsibilities in the Declaration of Security (DoS);

- Enforcing the Prohibited Items List; and
- Establishing procedures for reporting, handling, and controlling prohibited items.<sup>2</sup>

The owner or operator ultimately retains responsibility for the security of the cruise ship terminal. By ensuring that screening is performed according to these proposed regulations, the owner or operator would ensure an essential component of overall security is in place for both the cruise ship and the terminal.

#### § 105.515 Prohibited Items List

The Coast Guard proposes to require owners and operators of U.S. cruise ship terminals to utilize a Prohibited Items List when conducting screening of all persons, baggage, and personal effects at the terminal. The Coast Guard would also require cruise ship owners or operators of cruise ship terminals to include a list of dangerous substances and devices in every DoS.

During development of proposed § 105.515, the Coast Guard reviewed the TSA list of prohibited and allowed items for aircraft travel, as discussed in the Background section of this preamble. We also took into account current industry practices,

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<sup>2</sup> We believe all terminal operators would currently meet the proposed standards.

including collaboration between cruise ship and terminal owners or operators to develop the List. Finally, we considered the input received from NMSAC, which is also discussed in the Background section of this preamble.

The Coast Guard recognizes that owners or operators of cruise ships and cruise ship terminals have a vested interest in prohibiting dangerous substances and devices on their property. In order to reduce uncertainty in the cruise line industry and the public about what is prohibited and what is not, and to better implement the screening requirements in 33 CFR 104.295(a) and 105.290(a), the Coast Guard proposes to issue and maintain a list of prohibited items that are always considered to be dangerous substances and devices, as defined in 33 CFR 101.105. The Coast Guard would prohibit these dangerous substances and devices for security reasons. Accordingly, passengers and crew would be prohibited from bringing onboard a cruise ship items on the Prohibited Items List at any time through a cruise ship terminal regulated under 33 CFR part 105. If an item from the Coast Guard's Prohibited Items List is discovered after passing through the screening location at the cruise ship or terminal, the owner or operator would be required to report a breach of security. The Coast Guard also recognizes that some items on the list are necessary to accommodate normal cruise ship operations. For this reason, the prohibited items list would

not apply to cargo and vessel stores. We also note that the Prohibited Items List does not necessarily encompass all "dangerous substances and devices," and that cruise ship and terminal operators can prohibit passengers from bringing on board any other items or substances they deem a threat to safety.

#### Interpretative Rules

Under 5 U.S.C. 553(b)(A), the notice and comment rulemaking requirements of the Administrative Procedure Act (APA) do not apply to interpretative rules. The preamble to this proposed rule contains a proposed version of the Prohibited Items List. Although the Coast Guard does not waive its claim that this list is exempt from APA notice and comment requirements, we are soliciting comments at this time on the content of the proposed list because the Coast Guard is aware of the unique challenges inherent to security screening in the cruise industry context. Whereas airline screening can be conducted with the understanding that airline travel is undertaken for only a relatively short period of time and with a focused mission, cruise travel can be for much longer periods of time and with travelers participating in varying activities. Additionally, there is no distinction in cruise travel between checked baggage or carry-on items, since passengers and crew will have access to their personal items once they are onboard.

Interpretive rules are "issued by an agency to advise the public of the agency's construction of the statutes and the rules which it administers." *Attorney General's Manual on the Administrative Procedure Act* at 30 n.3. In other words, an interpretive rule describes, clarifies, and reminds the public of a statutory standard or pre-existing rule. Courts have upheld a general standard to determine if a rule is interpretative. *American Mining Congress v. Mine Safety and Health Admin.*, 995 F.2d 1106 (D.C. Cir. 1993). The Prohibited Items List meets this standard.

To determine if a rule is interpretive, as opposed to legislative, the rule must meet four criteria. *Id.* at 1112. First, in the absence of the interpretive rule there must be adequate legislative or regulatory basis for enforcement action. Second, an interpretative rule must not be published in the Code of Federal Regulations. Third, the agency cannot evoke its general grant of authority when promulgating an interpretative rule. Fourth, the interpretive rule must not effectively amend a prior legislative rule.

The development of the Prohibited Items List meets the four-part *American Mining* standard for an interpretive rule. First, the Coast Guard has existing regulatory authority to require screening for dangerous substances or devices under 33 CFR §§ 104.295 and 105.290, which mandate that the owner or

operator of a cruise ship and facility ensure that all passengers and baggage are screened for such material. The existing definition of "dangerous substances and devices," which means "any material, substance, or item that reasonably has the potential to cause a transportation security incident," already provides an adequate basis for enforcement action on its own, without further explication (these regulations were promulgated as a legislative rule under authority of the Ports and Waterways Safety Act (PWSA) and the Maritime Transportation Safety Act (MTSA) (see 33 U.S.C. 1221 and 46 U.S.C. 1221)). Second, the final list will not be incorporated into the Code of Federal Regulations. While we are publishing a draft version of the list in the Federal Register as part of the preamble to this proposed regulation to allow for comment because of the unique challenges faced when screening cruise line passengers, the list is not part of the proposed regulatory text will not appear in the Code of Federal Regulations upon publication of the Final Rule. Third, the Coast Guard has not invoked its general legislative authority when promulgating the list. The authority for this interpretive rule is the authority for the Coast Guard to interpret its own regulations in 33 CFR §§ 101.105, 104.295, and 105.290. Fourth, the rule does not effectively amend a prior legislative rule. Instead, the prohibited items list is only a partial explication of the phrase "dangerous substances

and devices," as defined in 33 CFR 101.105. What the Prohibited Items List adds is a list of substances and items that the Coast Guard believes, under all circumstances, have the potential to cause a TSI. The Prohibited Items List would not be a substitute for the regulatory definition in section 101.105, as other substances and devices could have the potential to cause a TSI under specific circumstances, and would be addressed in the TSPs of the specific vessels or facilities at issue.

Due to rapidly-developing threat analysis and security considerations, the Coast Guard requires the flexibility to revise the Prohibited Items List quickly to protect the public from security threats that can change rapidly. In order to keep the list current without the delays often associated with notice and comment rulemakings, the Coast Guard proposes to publish the list separately as an interpretive rule in the Federal Register, and to issue updates in the same manner. In proposing this approach, the Coast Guard took note of TSA's use of interpretive rules to promulgate and update its list of prohibited items (67 FR 8340, February 22, 2002; 68 FR 7444, February 14, 2003; 70 FR 9877, March 1, 2005; 70 FR 51679, August 31, 2005; and, 70 FR 72930, December 8, 2005). Additionally, the Coast Guard would endeavor to obtain NMSAC input and afford ship and facility owners a reasonable amount of advance notice before making an update effective unless an immediate change is necessary for

imminent public safety and/or national security reasons.

Finally, we reiterate that the Prohibited Items List would only prohibit passengers from carrying items in baggage or on their persons; it does not prohibit these items from being brought onboard by cruise ship operators on their behalf.

The Coast Guard is soliciting public comments on the content of the proposed Prohibited Items List shown below due to the unique challenges inherent to security screening in the cruise industry context. Additionally, we invite public comments on the use of interpretive rules to issue and update the list.

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Proposed Prohibited Items List for Cruise Ship Terminals

Passengers and persons other than passengers are prohibited from bringing the following items onboard cruise ships through terminal screening operations regulated under 33 CFR part 105.

Weapons, including

- Hand Guns (including BB guns, pellet guns, compressed air guns and starter pistols, as well as ammunition and gunpowder)
- Rifles/shotguns (including BB guns, pellet guns, compressed air guns and starter pistols, as well as ammunition and gunpowder)
- Stun guns or other shocking devices (e.g. Taser®, cattle

prod)

- Realistic replicas and/or parts of guns and firearms

Explosives, including

- Blasting caps
- Dynamite
- Fireworks or pyrotechnics
- Flares in any form
- Hand grenades
- Plastic explosives
- Explosive devices
- Realistic replicas of explosives

Incendiaries, including

- Aerosols (including spray paint but excluding items for personal care or toiletries in limited quantities)
- Gasoline or other such fuels or accelerants
- Gas torches
- Lighter fluids (except in liquefied gas (e.g. Bic<sup>®</sup>-type) or absorbed liquid (e.g. Zippo<sup>®</sup>-type) lighters in quantities appropriate for personal use)
- Turpentine
- Paint thinner
- Realistic replicas of incendiaries

Disabling Chemicals and Other Dangerous Items, including

- Chlorine
- Liquid bleach
- Tear gas and other self defense sprays

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The Prohibited Items List does not contain all possible items that may be prohibited from being brought on a cruise ship by passengers. The Coast Guard and the cruise ship terminal reserve the right to confiscate (and destroy) any articles that in our discretion are considered dangerous or pose a risk to the safety and security of the ship, or our guests, and no compensation will be provided.

§ 105.525 Terminal Screening Operations

Section 105.525 would specify how cruise ship terminal owners or operators must screen persons, personal effects, and baggage and where the screening must take place. Additionally, this new section would provide staffing requirements for screening operations. During development of this proposed section, the Coast Guard identified several components of existing screening process requirements that should be preserved throughout all U.S. cruise ship terminals. The proposed regulations are primarily performance-based, but specific procedures must take place to ensure the security of persons,

their personal effects, and baggage.

Section 105.525 specifies requirements for screening passengers, persons other than passengers, checked baggage, and unaccompanied baggage. As proposed, the screening of passengers and persons other than passengers (such as crew members, vendors, or contractors) may take place at the same screening location, or at separate screening locations, which is current industry practice. The Coast Guard would require application of the same standards for screening locations, regardless of who is being screened. Adequate staffing, checking personal identification, and re-screening are all addressed in this subparagraph.

If a cruise ship terminal checks baggage, screening or security personnel would be required to control the baggage throughout the screening process. If a terminal accepts unaccompanied baggage, then the cruise ship's Vessel Security Officer would need to provide written consent. Screening or security personnel would then treat the unaccompanied baggage as checked baggage.

The Coast Guard would require terminal owners or operators to document additional screening methods in an approved TSP. Further, the Captain of the Port (COTP) may direct additional screening methods that are appropriate for each terminal.

§ 105.530 Qualifications of Screeners

The Coast Guard proposes adding § 105.530 to address basic qualifications for cruise ship terminal screeners. While the Coast Guard researched TSA's regulations during the development of this section, specifically 49 CFR 1544.405, which describes qualifications for new screeners when commercial carriers and aircraft operators provide screening, we are proposing screening requirements that are less rigorous than those for airline screeners, for the reasons described below.

As mentioned in the discussion of § 105.505 in this preamble, TSA's aviation regulations provide a solid foundation for screening standards, but they are not wholly appropriate for cruise ship terminals. For example, while the Aviation Transportation Security Act (ATSA) requires a high school diploma, MTSA contains no such requirement.

The Coast Guard would require the screener to have, as a prerequisite, a combination of education and experience that the Facility Security Officer deems appropriate for the position. Additionally, the screener must be able to use all the screening equipment and methods appropriate for the position. Taken together with the requirements in 33 CFR 105.210, these qualifications would help to ensure that screeners have the ability to perform their duties.

#### § 105.535 Training Requirements of Screeners

Screeners at cruise ship terminals currently receive training in accordance with § 105.210, as well as facility-specific familiarization. The Coast Guard proposes to add requirements for certain topics to be covered during the facility-specific familiarization. This training would ensure that the screeners are instructed in the screening process used at the cruise ship terminal where they would be working. These topics would include--

- Historic and current threats against the cruise ship industry;
- Relevant portions of the approved TSP and FSP;
- The purpose and content of the approved Prohibited Items List;
- Specific instruction on the screening equipment and methods used at the terminal;
- Specific response procedures when a dangerous substance or device is detected at the terminal;
- Additional screening methods performed at increased MARSEC Levels; and
- Any additional topics specified in the terminal's approved TSP.

§ 105.540 Screener Participation in Drills and Exercises

Section 105.220 currently requires security drills and

exercises. In proposed § 105.540, the Coast Guard would require screening personnel to participate in drills and exercises performed at the cruise ship terminal. The drills and exercises would be excellent opportunities not only for testing the terminal's FSP, including the TSP, but also would refresh the screeners' training.

#### § 105.545 Screening Equipment

This section would address operation and maintenance of x-ray, explosives detection, and metal detection equipment used to screen all persons, baggage, and personal effects at U.S. cruise ship terminals. Again, the Coast Guard researched TSA's standards for screening performed by air carriers and commercial operators in 49 CFR part 1544. Specifically, TSA's regulations address the use of metal detectors, x-ray systems, and explosives detection systems in 49 CFR 1544.209, 1544.211, and 1544.213. Most cruise ship terminals use these systems already. Therefore, we used 49 CFR part 1544 as a guide for the proposed regulation, with the understanding that the maritime environment of a cruise ship terminal is inherently different from the environment of an airport.

The proposed requirements are performance-based. The Coast Guard would not require the use of specific equipment or screening methods. However, if metal detection, explosive detection, or x-ray equipment is used at a cruise ship terminal,

then safety and performance standards similar to the standards for equipment at airports would be required. Further, such screening equipment would be documented in the terminal's TSP.

Of particular note is the proposed signage requirement if x-ray equipment is used at the terminal. Similar to airports, people bring film and photographic equipment to cruise ship terminals on a regular basis. Since x-ray systems may have an effect on film and photographic equipment, we propose to add this signage requirement to ensure that persons being screened receive adequate notice.

#### § 105.550 Alternative Screening

The Coast Guard proposes to add a section concerning alternative screening methods including procedures for passengers and crew with disabilities or medical conditions precluding certain screening methods. If a cruise ship terminal owner or operator chooses to employ screening methods other than x-ray, metal detection, or explosives detection equipment, then each method must be described in detail within the TSP. The Coast Guard intends this proposed section to allow cruise ship terminal owners or operators flexibility in their screening methods. We believe this would be helpful as new technologies develop. It would allow flexibility at terminals with space constraints, or if terminal owners or operators use a contingency screening method when a piece of equipment fails.

Alternative screening methods may take many forms. For example, terminal owners or operators may use canine explosives detection or manually search baggage and personal effects.

33 CFR parts 120 and 128

In July 2004, when vessels and facilities subject to 33 CFR parts 120 and 128 became subject to 33 CFR parts 101, 103, 104 and 105, the Coast Guard placed specific requirements pertaining to cruise ships and cruise ship terminals in 33 CFR 104.295 and 105.290, respectively. While parts 120 and 128 use slightly different terms than parts 104 and 105, the concept of ensuring that maritime entities have security plans is the same. Therefore, this NPRM proposes removing regulations in parts 120 and 128 that require security officers and security plans similar to those required in parts 104 and 105. Additionally, the procedures in § 120.200 for reporting unlawful acts have been superseded by recent amendments to title 46, United States Code, chapter 35. For these reasons, the Coast Guard proposes to remove all of 33 CFR part 120.

Finally, the Coast Guard also proposes to remove 33 CFR part 128 in its entirety. Not only would the sections requiring security plans and security officers be removed, we would also remove § 128.220, which requires the reporting of unlawful acts. We believe that the removal of this requirement will not

diminish security at cruise ship terminals because other laws and regulations sufficiently cover the requirement in § 128.220.

## VI. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarized our analysis based on 13 of these statutes or executive orders.

### A. Regulatory Planning and Review

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has been designated a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the NPRM has been reviewed by the Office of Management and Budget. A full Regulatory Analysis (RA) is available in the docket where indicated under the "Public

Participation and Request for Comments" section of this preamble. A summary of the RA follows:

The following table summarizes the affected population, costs, and benefits of this proposed rule. A summary of costs and benefits by provision are provided later in this section.

Table 1: Summary of Affected Population, Costs and Benefits

Category	Estimate
Affected population	137 MTSA-regulated facilities;
	23 cruise line companies.
Development of TSP	\$145,471
Updating FSP	\$9,092
Total Cost*	\$154,563
Qualitative Benefits	
Terminal Screening Program	Greater clarity and efficiency due to removal of redundancy in regulations.
	The TSP improves industry accountability and provide for a more systematic approach to monitor facility procedures.
Prohibited Items List	Details those items that are prohibited from all cruise terminals and vessels.
	Provides a safer environment by prohibiting potentially dangerous items across the entire industry.

\* Value is undiscounted. We expect the costs of this rulemaking are borne in the first year of implementation. See discussion below for more details.

As previously discussed, this proposed rule would amend regulations on cruise ship terminal security. The proposed regulations would provide flexible requirements for the screening of persons intending to board a cruise ship, as well as their baggage and personal effects. In this rulemaking, we propose to issue and maintain a minimum requirement of Prohibited Items List of dangerous substances or devices (i.e. firearms & ammunition, flammable liquids and explosives,

dangerous chemicals etc...), which are based on similar items currently prohibited by industry. We anticipate that the prohibited item list described in the preamble would be cost neutral to the industry. However, the Coast Guard is requesting public comment on this issue if anyone believes that this requirement would create a new economic burden to industry.

We also propose to eliminate redundancies in the regulations that govern the security of cruise ship terminals.

The proposed rule would allow owners and operators of cruise ships and cruise ship terminals the flexibility of choosing their own screening methods and equipment and establish security measures tailored to their own operations. This proposed rule would incorporate current industry practices and performance standards.

We found several provisions of the rulemaking to have no additional impact based on information from Coast Guard and industry security experts and site visits to cruise terminals. A summary of key provisions with and without additional costs follow.

Key provisions without additional costs (current industry practice under existing MTSA regulations):

- §105 Subpart E Screening equipment standards;
  - o 33 CFR § 105.255 (a) and § 128.200 (a)(1) and § 128 (a)(2) currently require screening for dangerous

substances or devices. As such, industry already screens baggage and persons.

- §105.530 Qualifications of screeners; and,
  - 33 CFR § 105.210 details qualifications for facility personnel with security duties, which includes operation of security equipment and systems, and methods of physical screening of persons, personal affects, baggage, cargo and vessel stores.
- §105.535 Training of screeners.
  - 33 CFR § 105.210 details qualifications for facility personnel with security duties, which includes operation of security equipment and systems, and methods of physical screening of persons, personal affects, baggage, cargo and vessel stores. Records for all training under § 105.210 are required to be kept per § 105.225 (b) (1)

The purpose of including these requirements in the proposed regulatory action is to consolidate requirements for screeners in one place of the CFR and eliminate redundancies in cruise ship security regulations by eliminating the requirements in parts 120 and 128. We do not believe that these new items would add any additional costs, for the reasons described below.

We note that several of the requirements in § 105.535 are already implicitly required by the general security training

requirements in § 105.210. Specifically, §§ 105.535(b), (c), and (g), requiring that screening personnel be familiar with specific portions of the TSP, are already encompassed by the general requirement in 105.210(k), which requires security personnel to be familiar with relevant portions of the FSP). Also, § 105.535(f), which requires that screeners be familiar with additional screening requirements at increased MARSEC levels, is implicitly contained in the existing requirement in § 105.210(m).

Other items in § 105.535 are not expected to increase costs because we believe they are already performed by screening personnel. We believe that all screening personnel are currently trained in the specific screening methods and equipment used at the terminal (item (d)), and the terminal-specific response procedures when a dangerous item is found (item (e)). Furthermore, we believe it is a reasonable assumption that terminal screening personnel are familiar with item (a) - historic and current threats against the cruise ship industry. However, we do request comments on whether cruise ship personnel are familiar with this latter matter, and whether cruise ship operators or terminal operators would incur any additional costs as a result of these proposed requirements.

We estimate the proposed rule would affect 23 cruise line companies. Each cruise line maintains an FSP for each terminal

that they utilize. Based on information from the Coast Guard *Marine Information for Safety and Law Enforcement* (MISLE) database, we estimate that the proposed rule would require that FSPs at 137 MTSA-regulated facilities be updated. The proposed rule would require these facilities to add TSP chapters to their existing FSPs. This rule would also require owners and operators of cruise ship terminals to add a Prohibited Items List to current FSPs. The following table provides a breakdown of additional costs by requirement.

Table 2: Summary of First-Year Costs by Requirement

Requirement	Costs (Undiscounted; rounded)	Description
Terminal Screening Program (TSP)	\$145,471	Cost to create and add the TSP chapter to the FSPs
Update the FSP	\$9,092	Cost to update the Prohibited Items List in FSPs
Total	\$154,563	First-year undiscounted costs

We estimate the cost of this rule to industry to be about \$154,563 in the first year. We expect the total costs of this rulemaking to be borne in the first year of implementation. Under MTSA, FSPs are required to undergo an annual audit, and it is during that audit that any revisions to the Prohibited Items

List would be incorporated into the FSP.<sup>3</sup> As such, we do not anticipate any recurring annual cost as a result of this proposal, as the annual cost to update the FSP is not expected to change due to the inclusion of the TSP and Prohibited Items List.

Benefits

The benefits of the rulemaking include codification of guidelines for qualifications for screeners, more transparent and consistent reporting of screening procedures across cruise lines, improved industry accountability regarding security procedures, and greater clarity and efficiency due to the removal of redundant regulations. We do not have data to estimate monetized benefits of this rulemaking. We present qualitative benefits and a break even analysis in the Regulatory Analysis available in the docket to demonstrate that we expect the benefits of the rulemaking to justify its costs.

There are several qualitative benefits that can be attributed to the provisions in this proposal. Table 3 provides a brief summary of benefits of key provisions.

Table 3: Benefits of Key Provisions

Key Provision	Benefit
Terminal Screening Program	<ul style="list-style-type: none"><li>• Greater clarity and efficiency due to removal of redundancy in regulations.</li></ul>

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<sup>3</sup> 33 CFR § 105.415 for FSP

	<ul style="list-style-type: none"> <li>• The TSP improves industry accountability and provide for a more systematic approach to monitor facility procedures.</li> </ul>
Prohibited Items List	<ul style="list-style-type: none"> <li>• Details those items that are prohibited from all cruise terminals and vessels.</li> <li>• Provides a safer environment by prohibiting potentially dangerous items across the entire industry.</li> </ul>

Break Even Analysis

It is difficult to quantify the effectiveness of the provisions in this rulemaking and the related monetized benefits from averting or mitigating a TSI. Damages resulting from TSIs are a function of a variety of factors including, but not limited to, target type, terrorist attack mode, the number of fatalities and injuries, economic and environmental impacts, symbolic effects, and national security impacts.

For regulatory analyses, the Coast Guard uses a value of a statistical life (VSL) of \$9.1 million. A value of a statistical life of \$9.1 million is equivalent to a value of \$9.10 as a measure of the public's willingness to pay to reduce the risk of a fatality by one in a million, \$0.91 to reduce a one in 10 million risk, and \$0.091 to reduce a one in 100 million risk.<sup>4</sup> As 8.9 million passengers embark onto cruise ships in the U.S.

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<sup>4</sup> "Guidance on Treatment of the Economic Value of a Statistical Life in U.S.. Department of Transportation Analysis" see <http://www.dot.gov/regulations/economic-value-used-in-analysis> .

each year<sup>5</sup>, very small reductions in risk can result in a fairly large aggregate willingness to pay for that risk reduction. A VSL of \$9.1 million indicates that 8.9 million cruise ship passengers that embark from the U.S. would collectively be willing to pay approximately \$8.1 million to reduce the risk of a fatality by one in 10 million (8.90 million passenger X \$0.91). As the 8.9 million passengers estimate only includes the initial embarkation of a cruise and passengers often leave and return to the vessel during a cruise (passing through screening each time), the actual risk reduction to break even per screening may be lower. The annualized costs of the proposed rule are approximately \$20,000 at 7 percent; thus, the proposed rule would have to prevent one fatality every 405 years for the rule to reach a break-even point where costs equal benefits (\$9.1 million value of a statistical life/\$20,000 average annual cost of rule = 405).

The preliminary Regulatory Analysis in the docket provides additional details of the impacts of this rulemaking.

#### B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a

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<sup>5</sup> Source: Cruise Lines International Association, Inc. (CLIA), *2009 U.S. Economic Impact Study*, Table ES-2, Number of U.S. Embarkations. [http://www.cruising.org/sites/default/files/pressroom/2009EconomicStudies/EconStudy\\_Exec\\_Summary2009.pdf](http://www.cruising.org/sites/default/files/pressroom/2009EconomicStudies/EconStudy_Exec_Summary2009.pdf)

significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people.

We expect entities affected by the rule would be classified under the North American Industry Classification System (NAICS) code subsector 483-Water Transportation, which includes the following six-digit NAICS codes for cruise lines: 483112-Deep Sea Passenger transportation and 483114-Coastal and Great Lakes Passenger Transportation.

According to the Small Business Administration's (SBA) Table of Small Business Size Standards<sup>6</sup>, a U.S. company with these NAICS codes and employing equal to or fewer than 500 employees is a small business. Additionally, cruise lines may fall under the NAICS code 561510-Travel Agencies, which have a small business size standard of equal to or less than \$3,500,000 in annual revenue.

For this proposed rule, we reviewed recent company size and ownership data from the Coast Guard MISLE database, and public

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<sup>6</sup> Source: <http://www.sba.gov/size>. SBA has established a Table of Small Business Size Standards, which is matched to the North American Industry Classification System (NAICS) industries. A size standard, which is usually stated in number of employees or average annual receipts ("revenues"), represents the largest size that a business (including its subsidiaries and affiliates) may be to remain classified as a small business for SBA and Federal contracting programs.

business revenue and size data. We found that of the 23 entities that own or operate cruise ship terminals and would be affected by this proposed rulemaking, 11 are foreign entities. The remaining 12 entities exceed the SBA small business standards for small businesses.

We did not find any small not-for-profit organizations that are independently owned and operated and are not dominant in their fields. We did not find any small governmental jurisdictions with populations of fewer than 50,000 people. Based on this analysis, we found that this rulemaking, if promulgated, will not affect a substantial number of small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. § 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of U.S. small entities. If you think that a business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies as a small entity and how and to what degree this proposed rule will economically affect it.

### C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LCDR Kevin McDonald at the telephone number or e-mail address indicated under the FOR FURTHER INFORMATION CONTACT section of this notice. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to 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).

#### D. Collection of Information

This proposed rule would call for a collection of information 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 title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Under the provisions of the proposed rule, plan holders would submit amended security plans within 180 days of promulgation of the rule and update them annually. This requirement would be added to an existing collection with OMB control number 1625-0077.

**TITLE:** Security Plans for Ports, Vessels, Facilities, Outer Continental Shelf Facilities and Other Security-Related Requirements

**OMB Control Number:** 1625-0077

**SUMMARY OF THE COLLECTION OF INFORMATION:** Facilities that receive cruise ships would be required to update Facility Security Plans (FSPs) to contain additional information

regarding the screening process at cruise terminals. Also, all cruise ship terminals that currently have a Facility Security Plan (FSP), would need to update said plan to include the list of prohibited items as detailed in this proposed rule.

NEED FOR INFORMATION: The information is necessary to show evidence that cruise lines are consistently providing a minimum acceptable screening process when boarding passengers. The information would improve existing and future FSPs for cruise terminals, since they currently do not separate this important information.

PROPOSED USE OF INFORMATION: The Coast Guard would use this information to ensure that facilities are taking the proper security precautions when loading cruise ships.

DESCRIPTION OF THE RESPONDENTS: The respondents are FSP holders that receive cruise ships.

NUMBER OF RESPONDENTS: The adjusted number of respondents is 13,825 for vessels, 3,270 for facilities, and 56 for Outer Continental Shelf (OCS) facilities. Of these 3,270 facilities, 137 that receive cruise ships would be required to modify their existing FSPs to account for the TSP chapter.

FREQUENCY OF RESPONSE: Cruise lines would only need to write a TSP chapter once before inserting it into the associated FSP. This would be required during the first 6 months after publication of the final rule.

BURDEN OF RESPONSE: The estimated burden for cruise lines per TSP chapter would be approximately 16 hours. The estimated burden to update the FSP would be 1 hour.

ESTIMATE OF TOTAL ANNUAL BURDEN: The estimated first-year burden for cruise lines is 16 hours per TSP chapter. Since there are currently 137 FSPs, the total burden on facilities would be 2,192 hours (137 TSPs x 16 hours per TSP) in the first year. For the 137 facilities, the total burden would be 137 hours (137 FSPs x 1 hour per VSP). The current burden listed in this collection of information is 1,108,043. The new burden, as a result of this proposed rulemaking, is 1,110,392 (1,108,043 + 2,192 + 137) in the first year only. All subsequent year burdens will be considered part of the annual review process for FSPs.

As required by the Paperwork Reduction Act of 1995 (44 USC 3507(d)), we have submitted a copy of this proposed rule to the OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden

of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under ADDRESSES, by the date under DATES.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the Federal Register of OMB's decision to approve, modify, or disapprove the proposed collection.

#### E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect 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. We have analyzed this proposed rule under that Order and have determined that it has implications for federalism. A summary of the impact of federalism in this rule follows.

This NPRM builds on the existing port security requirements found in 33 CFR part 105 by establishing detailed, flexible requirements for the screening of persons, baggage, and personal items intended for boarding a cruise ship. It also establishes

terminal screening requirements for owners and operators of cruise ship terminals, some of which are State entities.

As implemented by the Coast Guard, the MTSA-established federal security requirements for regulated maritime facilities, including the terminal facilities serving the cruise ship industry, which are proposed for amendment by this Notice. These regulations were, in many cases, preemptive of State requirements. Where State requirements might conflict with the provisions of a federally approved security plan, they had the effect of impeding important federal purposes, including achieving uniformity. However, the Coast Guard also recognizes that States have an interest in these proposals to the extent they impose requirements on State-operated terminals or individual States may wish to develop stricter regulations for the federally regulated maritime facilities in their ports, so long as necessary security and the above-described principles of federalism are not compromised. Sections 4 and 6 of Executive Order 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected state and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Therefore, we invite affected state and local governments and their

representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this notice. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard's consultation with State and local officials that submit comments to this proposed rule, (2) a summary of the nature of any concerns raised by state or local governments and the Coast Guard's position thereon, and (3) a statement of the extent to which the concerns of State and local officials have been met.

#### F. 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 tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive

Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed 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.

I. Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it

is not a "significant energy action" under that order. Though it is a "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 USC 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not add any voluntary consensus standards. Due to the nature of cruise ship security operations, performance-based standards allow an appropriate degree of flexibility that accommodates and is consistent with

different terminal sizes and operations. This proposed rule would standardize screening activities for all persons, baggage, and personal effects at cruise ship terminals to ensure a consistent layer of security at terminals throughout the United States. Additionally, the Coast Guard consulted with the Transportation Security Administration (TSA) during the development of this proposed rule.

We propose to use performance-based requirements in this rule. The Coast Guard reserves the right to require voluntary consensus standards at a later date, via a notice of availability or in conjunction with a subsequent rulemaking published in the Federal Register. If you disagree, please send a comment to the docket using one of the methods under ADDRESSES. In your comment, explain why you disagree with our analysis and/or identify voluntary consensus standards that might apply.

#### M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the

human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule involves requirements for the screening of persons, baggage, and personal items intended for boarding a cruise ship and falls under paragraphs 34(a), regulations which are editorial or procedural; 34(c), regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel; and 34(d), regulations concerning the documentation, admeasurement, inspection, and equipment of vessels, of the Coast Guard's NEPA Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D, and paragraph 6(b) of the Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions (67 FR 48243, July 23, 2002). We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 120

Passenger vessels, Reporting and recordkeeping requirements, Security measures, Terrorism.

33 CFR Part 128

Harbors, Reporting and recordkeeping requirements, Security measures, Terrorism.

For the reasons listed in the preamble, the Coast Guard proposes to amend 33 CFR parts 101, 104, 105, 120, and 128 as follows:

PART 101--MARITIME SECURITY: GENERAL

1. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05-1, 6.04-11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 101.105 [Amended]

2. In § 101.105--

b. Add, in alphabetical order, definitions for the terms "Carry-on item", "Checked baggage", "Cruise ship terminal",

"Cruise ship voyage", "Disembark", "Embark", "Explosive detection system (EDS)", "High seas", "Port of call", "Screener", and "Terminal screening program (TSP)" to read as follows:

§ 101.105 Definitions.

\* \* \* \* \*

Carry-on item means an individual's accessible property, including any personal effects that the individual intends to carry onto a vessel or facility subject to this subchapter and is therefore subject to screening.

\* \* \* \* \*

Checked baggage means an individual's personal property tendered by or on behalf of a passenger and accepted by a facility or vessel owner or operator. This baggage is accessible to the individual after boarding the vessel.

\* \* \* \* \*

Cruise ship terminal means any portion of a facility that receives a cruise ship or its tenders to embark or disembark passengers or crew.

Cruise ship voyage means a cruise ship's entire course of travel, from the first port at which the vessel embarks passengers until its return to that port or another port where the majority of the passengers disembark and terminate their voyage. A cruise ship voyage may include one or more ports of

call.

\* \* \* \* \*

Disembark means any time that the crew or passengers leave the ship.

\* \* \* \* \*

Embark means any time that crew or passengers board the ship, including re-boarding at ports of call.

\* \* \* \* \*

Explosives Detection System (EDS) means any system, including canines, automated device, or combination of devices that have the ability to detect explosive material.

\* \* \* \* \*

High seas means the waters defined in § 2.32(d) of this chapter.

\* \* \* \* \*

Port of call means a U.S. port where a cruise ship makes a scheduled or unscheduled stop in the course of its voyage and passengers are allowed to embark and disembark the vessel.

\* \* \* \* \*

Screeener means an individual who is trained and authorized to screen or inspect persons, baggage (including carry-on items), personal effects, and vehicles for the presence of dangerous substances and devices, and other items listed in the vessel or facility security plan.

\* \* \* \* \*

Terminal Screening Program (TSP) means a written program developed for a cruise ship terminal that documents methods used to screen persons, baggage, and carry-on items for the presence of dangerous substances and devices to ensure compliance with this part.

\* \* \* \* \*

PART 104--MARITIME SECURITY: VESSELS

3. The authority citation for part 104 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

4. In § 104.295, revise paragraph (a)(1) to read as follows:

§ 104.295 Additional requirements--cruise ships.

(a) \* \* \*

(1) Screen all persons, baggage, and personal effects for dangerous substances and devices at the cruise ship terminal or, in the absence of a terminal, immediately prior to embarking a cruise ship, in accordance with the qualification, training, and equipment requirements of §§ 105.530, 105.535, and 105.545 of this chapter.

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PART 105--MARITIME SECURITY: FACILITIES

5. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

6. In § 105.225, revise paragraph (b) (1) to read as follows:

§ 105.225 Facility recordkeeping requirements.

\* \* \* \* \*

(b) \* \* \*

(1) Training. For training under §§ 105.210 and 105.535, the date of each session, duration of session, a description of the training, and a list of attendees;

\* \* \* \* \*

7. In § 105.290, revise paragraphs (a) and (b) to read as follows:

§ 105.290 Additional requirements - cruise ship terminals.

\* \* \* \* \*

(a) Screen all persons, baggage, and personal effects for dangerous substances and devices in accordance with the requirements in subpart E of this part;

(b) Check the identification of all persons seeking to enter the facility in accordance with §§ 101.514, 101.515, and

105.255 of this subchapter. Persons holding a Transportation Worker Identification Credential (TWIC) must be checked as set forth in this part. For persons not holding a TWIC, this check includes confirming the individual's validity for boarding by examining passenger tickets, boarding passes, government identification or visitor badges, or work orders;

\* \* \* \* \*

8. In § 105.405, revise paragraph (a) (17) and (a) (18), reserve paragraphs (a) (19) and (a) (20), and add paragraph (a) (21) to read as follows:

§ 105.405 Format and content of the Facility Security Plan (FSP).

(a) \* \* \*

(17) Facility Security Assessment (FSA) report;

(18) Facility Vulnerability and Security Measures Summary (Form CG-6025) in Appendix A to part 105; and,

(19) Reserved

(20) Reserved

(21) If applicable, cruise ship Terminal Screening Program (TSP) in accordance with subpart E of this part.

9. Add new subpart E to part 105 to read as follows:

SUBPART E

Facility Security: Cruise Ship Terminals

Sec.

- 105.500 General.
- 105.505 Terminal Screening Program (TSP).
- 105.510 Screening responsibilities of the owner or operator.
- 105.515 Prohibited Items List.
- 105.525 Terminal screening operations.
- 105.530 Qualifications of screeners.
- 105.535 Training requirements of screeners.
- 105.540 Screener participation in drills and exercises.
- 105.545 Screening equipment.
- 105.550 Alternate screening.

Subpart E-Facility Security: Cruise Ship Terminals

§ 105.500 General.

(a) Applicability. The owner or operator of a cruise ship terminal must comply with this subpart when receiving a cruise ship or tenders from cruise ships.

(b) Purpose. This subpart establishes cruise ship terminal screening programs within the Facility Security Plans (FSPs) to ensure that prohibited items are not present within the secure areas that have been designated for screened persons, baggage, and personal effects, and are not brought onto cruise ships interfacing with the terminal.

(c) Compliance dates. (1) No later than 180 days after the effective date of the final rule, cruise ship terminal

owners or operators must submit, for each terminal, a Terminal Screening Program (TSP) that conforms with the requirements in § 105.505 of this subpart to the cognizant COTP for review and approval.

(2) No later than 1 year after the effective date of the final rule, each cruise ship terminal owner or operator must operate in compliance with an approved TSP and this subpart. § 105.505 Terminal Screening Program (TSP).

(a) General requirements. The owner or operator of a cruise ship terminal must ensure a Terminal Screening Program (TSP) is developed, added to the Facility Security Plan (FSP), and implemented. The TSP must:

(1) Document all procedures that are employed to ensure all persons, baggage, and personal effects are screened at the cruise ship terminal prior to being allowed into a cruise ship terminal's secure areas or onto a cruise ship;

(2) Be written in English; and,

(3) Be approved by the Coast Guard as part of the FSP in accordance with subpart D of this part.

(b) Availability. Each cruise ship terminal Facility Security Officer must:

(1) Maintain the TSP in the same or similar location as the FSP as described in § 105.400(d) of this part;

- (2) Have an accessible, complete copy of the TSP at the cruise ship terminal;
  - (3) Have a copy of the TSP available for inspection upon request by the Coast Guard;
  - (4) Maintain the TSP as sensitive security information (SSI) and protect it in accordance with 49 CFR part 1520; and
  - (5) Make a copy of the current Prohibited Items List publicly available. The List and copies thereof are not SSI.
- (c) Content. The TSP must include the following:
- (1) A line diagram of the cruise ship terminal including:
    - (i) The physical boundaries of the terminal;
    - (ii) The location(s) where all persons intending to board a cruise ship, and all personal effects and baggage are screened; and,
    - (iii) The point(s) in the terminal beyond which no unscreened person may pass;
  - (2) The responsibilities of the owner or operator regarding the screening of persons, baggage, and personal effects;
  - (3) The procedure to obtain and maintain the Prohibited Items List;
  - (4) The procedures used to comply with the requirements of § 105.530 of this part regarding qualifications of screeners;

(5) The procedures used to comply with the requirements of § 105.535 of this part regarding training of screeners;

(6) The number of screeners needed at each location to ensure adequate screening;

(7) A description of the equipment used to comply with the requirements of § 105.525 of this part regarding the screening of individuals, their personal effects, and baggage, including screening at increased MARSEC Levels, and the procedures for use of that equipment;

(8) The operation, calibration, and maintenance of any and all screening equipment used in accordance with § 105.545 of this part;

(9) The procedures used to comply with the requirements of § 105.550 of this part regarding the use of alternative screening methods and/or equipment, including procedures for passengers and crew with disabilities or medical conditions precluding certain screening methods; and

(10) The procedures used when prohibited items are detected.

(d) As a part of the FSP, the requirements in §§ 105.410 and 105.415 of this part governing submission, approval, amendment, and audit of a TSP apply.

§ 105.510 Screening responsibilities of the owner or operator.

In addition to the requirements of §105.200 of this part, the owner or operator of a cruise ship terminal must ensure that:

(a) A Terminal Screening Program (TSP) is developed in accordance with this subpart, and submitted to and approved by the cognizant Captain of the Port (COTP), as part of the Facility Security Plan (FSP), in accordance with this part;

(b) Screening is conducted in accordance with this subpart and an approved TSP;

(c) Specific screening responsibilities are documented in a Declaration of Security (DoS) in accordance with §§ 104.255 and 105.245 of this subchapter;

(d) Procedures are established for reporting and handling prohibited items that are detected during the screening process;

(e) All personal screening is conducted in a uniform, courteous, and efficient manner respecting personal rights to the maximum extent practicable; and

(f) When the MARSEC Level is increased, additional screening measures are employed in accordance with an approved TSP.

§ 105.515 Prohibited Items List

(a) The Coast Guard will issue and maintain a Prohibited Items List consisting of dangerous substances and devices for purposes of §§ 105.290(a) of this chapter. The list specifies

those items that the Coast Guard prohibits all persons from bringing onboard any cruise ship through terminal screening operations regulated under 33 CFR part 105.

(b) Procedures for screening persons, baggage and personal effects must include use of the Prohibited Items List which will be provided to screening personnel by the cruise ship terminal owner or operator.

(c) The list must be present at each screening location during screening operations. Additionally, the list must be included as part of the Declaration of Security.

(d) Facility personnel must report the discovery of a prohibited item introduced by violating security measures at a cruise ship terminal as a breach of security in accordance with §101.305(b) of this subchapter.

§ 105.525 Terminal screening operations.

(a) Passengers and personal effects. (1) Each cruise ship terminal must have at least one location to screen passengers and carry-on items prior to allowing such passengers and carry-on items into secure areas of the terminal designated for screened persons and carry-on items.

(2) Screening locations must be adequately staffed and equipped to conduct screening operations in accordance with the approved Terminal Screening Program (TSP).

(3) Facility personnel must check personal identification prior to allowing a person to proceed to a screening location, in accordance with § 105.290(b) of this part, which sets forth additional requirements for cruise ship terminals at all Maritime Security levels.

(4) All screened passengers and their carry-on items must remain in secure areas of the terminal designated for screened persons and personal effects until boarding the cruise ship. Persons who leave a secure area must be re-screened.

(b) Persons other than passengers. Crew members, visitors, vendors, and other persons who are not passengers, and their personal effects, must be screened either at screening locations where passengers are screened or at another location that is adequately staffed and equipped in accordance with this subpart and is specifically designated in an approved TSP.

(c) Checked baggage. (1) A cruise ship terminal that accepts baggage must have at least one location designated for the screening of checked baggage.

(2) Screening personnel may only accept baggage from a person with--

- (i) A valid passenger ticket;
- (ii) Joining instructions;
- (iii) Work orders; or

(iv) Authorization from the terminal or vessel owner or operator to handle baggage;

(3) Screening personnel may only accept baggage in an area designated in an approved TSP and manned by terminal screening personnel; and,

(4) Screening or security personnel must constantly control the checked baggage, in a secure area, from the time it is accepted at the terminal until it is onboard the cruise ship.

(d) Unaccompanied baggage. (1) Facility personnel may accept unaccompanied baggage, as defined in §101.105 of this subchapter, only if the Vessel Security Officer provides prior written approval for the unaccompanied baggage.

(2) If facility personnel accept unaccompanied baggage at a cruise ship terminal, they must handle such baggage in accordance with paragraph (c) of this section.

§ 105.530 Qualifications of screeners.

In addition to the requirements for facility personnel with security duties contained in §105.210 of this part, screening personnel at cruise ship terminals must--

(a) Have a combination of education and experience that the Facility Security Officer (FSO) has determined to be sufficient for the individual to perform the duties of the position; and

(b) Be capable of using all screening methods and equipment needed to perform the duties of the position.

§ 105.535 Training requirements of screeners.

In addition to the requirements for facility personnel with security duties in §105.210 of this part, screening personnel at cruise ship terminals must demonstrate knowledge, understanding, and proficiency in the following areas as part of their security-related familiarization--

(a) Historic and current threats against the cruise ship industry;

(b) Relevant portions of the Terminal Screening Program (TSP) and Facility Security Plan;

(c) The purpose and contents of the cruise ship terminal Prohibited Items List;

(d) Specific instruction on screening methods and equipment used at the cruise ship terminal;

(e) Terminal-specific response procedures when a dangerous substance or device is detected;

(f) Additional screening requirements at increased Maritime Security Levels; and,

(g) Any additional topics specified in the facility's approved TSP.

§ 105.540 Screener participation in drills and exercises.

Screening personnel must participate in drills and exercises required under §105.220 of this part.

§ 105.545 Screening equipment.

The following screening equipment may be used, provided it is specifically documented in an approved Terminal Screening Program (TSP).

(a) Metal detection devices. (1) The owner or operator of a cruise ship terminal may use a metal detection device to screen persons, baggage, and personal effects.

(2) Metal detection devices used at any cruise ship terminal must be operated, calibrated, and maintained in accordance with manufacturer's instructions.

(b) X-ray systems. The owner or operator of a cruise ship terminal may use an x-ray system for the screening and inspection of personal effects and baggage if all of the following requirements are satisfied--

(1) The system meets the standards for cabinet x-ray systems used primarily for the inspection of baggage, found in 21 CFR 1020.40;

(2) Familiarization training for screeners, in accordance with §105.535 of this subpart, includes training in radiation safety and the efficient use of x-ray systems;

(3) The system must meet the imaging requirements found in 49 CFR 1544.211;

(4) The system must be operated, calibrated, and maintained in accordance with manufacturer's instructions;

(5) The x-ray system must fully comply with any defect notice or modification order issued for that system by the Food and Drug Administration (FDA), unless the FDA has advised that a defect or failure to comply does not create a significant risk of injury, including genetic injury, to any person;

(6) The owner or operator must ensure that a sign is posted in a conspicuous place at the screening location where x-ray systems are used to inspect personal effects and where screeners accept baggage. These signs must--

(i) Notify individuals that items are being screened by x-ray and advise them to remove all x-ray, scientific, and high-speed film from their personal effects and baggage before screening;

(ii) Advise individuals that they may request screening of their photographic equipment and film packages be done without exposure to an x-ray system; and

(iii) Advise individuals to remove all photographic film from their personal effects before screening, if the x-ray system exposes any personal effects or baggage to more than one milliroentgen during the screening.

(c) Explosives detection systems. The owner or operator of a cruise ship terminal may use an explosives detection system

to screen baggage and personal effects for the presence of explosives if it meets the following requirements:

(1) At locations where x-ray technology is used to inspect baggage or personal effects for explosives, the terminal owner or operator must post signs in accordance with paragraph (b) (6) of this section; and,

(2) All explosives detection equipment used at a cruise ship terminal must be operated, calibrated, and maintained in accordance with manufacturer's instructions.

§ 105.550 Alternative screening.

If the owner or operator of a U.S. cruise ship terminal chooses to screen using equipment or methods other than those described in § 105.545 of this subpart, the equipment and methods must be described in detail in an approved Terminal Screening Program.

PART 120--SECURITY OF PASSENGERS

Part 120 [Removed and Reserved]

10. Under the authority of 33 U.S.C. 1231, remove and reserve part 120.

PART 128 - SECURITY OF PASSENGER TERMINALS

Part 128 [Removed and Reserved]

11. Under the authority of 33 U.S.C. 1231, remove and reserve part 128.

Dated: November 24, 2014

Paul F. Zukunft  
Admiral, U.S. Coast Guard  
Commandant

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