

Program approved under this section is valid for 5 years from the date of its approval.

(f) The Commandant (G-MP) will examine each submission for compliance with this part, and either:

(1) Approve it and specify any conditions of approval, returning to the submitter a letter stating its acceptance and any conditions;

(2) Return it for revision, returning a copy to the submitter with brief descriptions of the required revisions; or

(3) Disapprove it, returning a copy to the submitter with a brief statement of the reasons for disapproval.

■ 8. Add the text to § 101.125 to read as follows:

**§ 101.125 Approved Alternative Security Programs.**

The following have been approved, by the Commandant (G-MP), as Alternative Security Programs, which may be used by vessel or facility owners or operators to meet the provisions of parts 104, 105, or 106 of this subchapter, as applicable:

(a) American Gaming Association Alternative Security Program, dated September 11, 2003.

(b) American Waterways Operators Alternative Security Program for Tugboats, and Towboats and Barges, dated September 24, 2003.

(c) Passenger Vessel Association Industry Standards for Security of Passenger Vessels and Small Passenger Vessels, dated September 17, 2003.

**§ 101.205 [Amended]**

■ 9. In § 101.205, in table 101.205, remove the words “Elevated: Blue” and “Guarded: Yellow.”, and add, in their place, the words “Guarded: Blue” and “Elevated: Yellow” respectively.

**§ 101.300 [Amended]**

■ 10. In § 101.300—

■ a. In paragraph (a), remove the words “a Maritime Security Directive issued under section 101.405 of this part” and add, in their place, the words “an electronic means, if available”; and

■ b. In paragraphs (c)(1) and (c)(2), remove the word “confirm” and add, in its place, the words “ensure confirmation”.

**§ 101.405 [Amended]**

■ 11. In § 101.405(a)(2), remove the words “require the owner or operator to prove that they have a ‘need to know’ the information in the MARSEC Directive and that they are a ‘covered person,’ as those terms are defined in 49 CFR part 1520” and add, in their place, the words “require owners or operators to prove that they are a person required by 49 CFR 1520.5(a) to restrict disclosure of and

access to sensitive security information, and that under 49 CFR 1520.5(b), they have a need to know sensitive security information”.

**§ 101.410 [Amended]**

■ 12. In § 101.410(b)(8), remove the words “For U.S. vessels, suspension or revocation of security plan approval”, and add, in their place, the words “Suspension or revocation of a security plan approved by the U.S.”.

■ 13. In § 101.420, revise paragraph (b) to read as follows:

**§ 101.420 Right to appeal.**

\* \* \* \* \*

(b) Any person directly affected by a decision or action taken by a District Commander, whether made under this subchapter generally or pursuant to paragraph (a) of this section, with the exception of those decisions made under § 101.410 of this subpart, may appeal that decision or action to the Commandant (G-MP), according to the procedures in 46 CFR 1.03-15. Appeals of District Commander decisions or actions made under § 101.410 of this subpart should be made to the Commandant (G-MOC), according to the procedures in 46 CFR 1.03-15.

\* \* \* \* \*

■ 14. In § 101.505(b), at the end of the paragraph, add a sentence to read as follows:

**§ 101.505 Declaration of Security (DoS).**

\* \* \* \* \*

(b) \* \* \* A DoS must, at a minimum, include the information found in the ISPS Code, part B, appendix 1 (Incorporated by reference, see § 101.115).

\* \* \* \* \*

**§ 101.510 [Amended]**

■ 15. In § 101.510, in the introductory text—

■ a. Remove the word “risk” and add, in its place, the word “security”; and

■ b. After the words “These tools”, add the word “may”.

■ 16. In § 101.515 add paragraph (c) to read as follows:

**§ 101.515 Personal identification.**

\* \* \* \* \*

(c) Vessel, facility, and OCS facility owners and operators must permit law enforcement officials, in the performance of their official duties, who present proper identification in accordance with this section to enter or board that vessel, facility, or OCS facility at any time, without delay or obstruction. Law enforcement officials, upon entering or boarding a vessel,

facility, or OCS facility, will, as soon as practicable, explain their mission to the Master, owner, or operator, or their designated agent.

**PART 102—MARITIME SECURITY: NATIONAL MARITIME TRANSPORTATION SECURITY [RESERVED]**

■ 17. Revise the heading to part 102 to read as shown above.

Dated: October 8, 2003.

**Thomas H. Collins,**

*Admiral, Coast Guard, Commandant.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 103**

[USCG-2003-14733]

RIN 1625-AA42

**Area Maritime Security**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with changes, the temporary interim rule published on July 1, 2003, that establishes U.S. Coast Guard Captains of the Ports as Federal Maritime Security Coordinators, and establishes requirements for Area Maritime Security Plans and Area Maritime Security Committees. This rule is one in a series of final rules on maritime security published in today’s **Federal Register**. To best understand this final rule, first read the final rule titled “Implementation of National Maritime Security Initiatives” (USCG-2003-14792), published elsewhere in today’s **Federal Register**.

**DATES:** This final rule is effective November 21, 2003. On July 1, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this final rule.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2003-14733 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this

docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this final rule, call Lieutenant Commander Richard Teubner (G-MPS-2), U.S. Coast Guard by telephone 202-267-4129 or by electronic mail

[rteubner@comdt.uscg.mil](mailto:rteubner@comdt.uscg.mil). If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202-366-0271.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled "Area Maritime Security" in the **Federal Register** (68 FR 39284). This temporary interim rule was one of a series of temporary interim rules on maritime security published in the July 1, 2003, issue of the **Federal Register**. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41914).

We received a total of 438 letters in response to the six temporary interim rules by July 31, 2003. The majority of these letters contained multiple comments, some of which applied to the docket to which the letter was submitted, and some of which applied to a different docket. For example, we received several letters in the docket for the temporary interim rule titled "Implementation of National Maritime Security Initiatives" that contained comments in that temporary interim rule, plus comments on the "Vessel Security" temporary interim rule. We have addressed individual comments in the preamble to the appropriate final rule. Additionally, we had several commenters submit the same letter to all six dockets. We counted these duplicate submissions as only one letter, and we addressed each comment within that letter in the preamble to the appropriate final rule. Because of statutorily imposed time constraints for publishing these regulations, we were unable to consider comments received after the period for receipt of comments closed on July 31, 2003.

A public meeting was held in Washington, DC, on July 23, 2003, and approximately 500 people attended. Comments from the public meeting are also included in the "Discussion of Comments and Changes" section of this preamble.

In order to focus on the changes made to the regulatory text since the

temporary interim rule was published, we have adopted the temporary interim rule and set out, in this final rule, only the changes made to the temporary interim rule. To view a copy of the complete regulatory text with the changes shown in this final rule, see <http://www.uscg.mil/hq/g-m/mp/index.htm>.

**Background and Purpose**

A summary of the Coast Guard's regulatory initiatives for maritime security can be found under the "Background and Purpose" section in the preamble to the final rule titled "Implementation of National Maritime Security Initiatives" (USCG-2003-14792), published elsewhere in this issue of the **Federal Register**.

**Discussion of Comments and Changes**

Comments from each of the temporary interim rules and from the public meeting held on July 23, 2003, have been grouped by topic and addressed within the preambles to the applicable final rules. If a comment applied to more than one of the six rules, we discussed it in the preamble to each of the final rules that it concerned. For example, discussions of comments that requested clarification or changes to the Declaration of Security procedures are duplicated in the preambles to parts 104, 105, and 106. Several comments were submitted to a docket that included topics not addressed in that particular rule, but were addressed in one or more of the other rules. This was especially true for several comments submitted to the docket of part 101 (USCG-2003-14792). In such cases, we discussed the comments only in the preamble to each of the final rules that concerned the topic addressed.

*Subpart A—General*

This subpart concerns applicability and applies the requirements for Area Maritime Security to all vessels and facilities located in, on, under, or adjacent to waters subject to the jurisdiction of the U.S.

One commenter asked who would be ensuring the integrity of security training and exercise programs.

Since the events of September 11, 2001, the Coast Guard has developed a directorate responsible for port, vessel, and facility security. This directorate oversees implementation and enforcement of the regulations found in parts 101 through 106. Additionally, owners and operators of vessels and facilities will be responsible for recordkeeping regarding training, drills, and exercises, and the Coast Guard will

review these records during periodic inspections.

Two commenters were concerned about the breadth of the regulations. One commenter asked that the regulations be broadened to allow for exemptions. One commenter stated that the applicability as described in § 101.110 is "much too general," stating that it can be interpreted as including a canoe tied up next to a floating dock in front of a private home. The commenter concluded that such a broad definition would generate "a large amount of confusion and discontent" among recreational boaters and waterfront homeowners.

Our applicability for the security regulations in 33 CFR chapter I, subchapter H, is for all vessels and facilities; however, parts 104, 105, and 106 directly regulate those vessels and facilities we have determined may be involved in transportation security incidents, which does not include canoes and private residences. For example, § 104.105(a) applies to commercial vessels; therefore, a recreational boater is not regulated under part 104. If a waterfront homeowner does not meet any of the specifications in § 105.105(a), the waterfront homeowner is not regulated under part 105. It should be noted that all waterfront areas and boaters are covered by parts 101 through 103 and, although there are no specific security measures for them in these parts, the AMS Plan may set forth measures that will be implemented at the various Maritime Security (MARSEC) Levels that may apply to them. Security zones and other measures to control vessel movement are some examples of AMS Plan actions that may affect a homeowner or a recreational boater. Additionally, the COTP may impose measures, when necessary, to prevent injury or damage or to address a specific security concern.

Six commenters stated that the term "fleeting facility" in § 105.105(a)(4) is more general than the definition of a "barge fleeting facility" in § 101.105. The commenters pointed out that temporary staging areas of barges, or those areas for the breaking and making of tows provided by the U.S. Army Corps of Engineers, are not included in the definition of "barge fleeting facility" because they are not "commercial fleeting areas." The commenters suggested that these areas be included in AMS Plans.

We agree with the commenters and are amending § 105.105(a)(4) to make it consistent with the definition stated in § 101.105 for "barge fleeting facility." With regards to barge fleeting areas that

are provided by the U.S. Army Corps of Engineers, in accordance with § 105.105(b), those facilities that are not subject to part 105 will be covered by parts 101 through 103 of this subchapter and will be included in AMS Plans.

We received comments from the Environmental Protection Agency regarding the effects of our regulations on EPA-regulated oil facilities. These comments focused primarily on the potential overlapping provisions of 33 CFR part 105 and 40 CFR part 112. Overlap exists in four major areas: Notification of security incidents, fencing and monitoring, evacuation procedures, and security assessments. In cases of overlapping provisions for oil facilities regulated both in parts 105 and 112, the requirements in our final rules and EPA rulemakings do not supplant one another. Additionally, an EPA-regulated facility need not amend the facility's Spill Prevention Control and Countermeasure Plan or Facility Response Plan, as we first stated in the temporary interim rule (68 FR 39251) (part 101). We will be working further with EPA in the implementation of these final rules to minimize the burden to the facilities while ensuring that these facilities are secure. It is our belief that response plans for EPA-regulated oil facilities will serve as an excellent foundation for security plans that may be required under our regulations.

EPA asked for clarification for facilities adjacent to the navigable waters that handle or store cargo that is hazardous or a pollutant but may not be marine transportation related facilities. These facilities are covered by parts 101 through 103 of subchapter H and, although there are no specific security measures for them in these parts, the AMS Plan may set forth measures that will be implemented at the various MARSEC Levels that may apply to them. The AMS Assessment may reveal that these EPA-regulated facilities may be involved in a transportation security incident and the COTP may direct these facilities, through orders issued under existing COTP authority, to implement security measures based on the facilities' operations and the MARSEC Level. We encourage owners and operators of these EPA-regulated facilities, as well as representatives from EPA, to participate in AMS Committee activities.

EPA asked for further clarification on drills and exercises requirements. As we stated in the temporary interim rule, non-security drills and exercises may be combined with security drills to minimize burden. Additionally, EPA-regulated facilities that conduct drills not related to security are encouraged to

communicate with the local COTP and coordinate their drills at the area level. It is our intention to give facilities and vessels in the port area as much notice as practicable prior to an AMS Plan exercise to reduce the burden to those entities. Again, we encourage owners and operators of these EPA-regulated facilities, and EPA, to participate in AMS Committee activities to maximize coordination and minimize burden.

EPA asked us to clarify the role of Area Contingency Plans with the requirements of our final rules. Our rules are intended to work in concert with Area Contingency Plans and do not preempt their requirements. We envision that many members of the Area Committees who are responsible for implementing Area Contingency Plans will also become members of the AMS Committee. This participation will help ensure that implementing an AMS Plan will not conflict with an Area Contingency Plan.

Finally, EPA asked for clarification on requirements for marine transportation related facilities that handle petroleum oil, non-petroleum oil, and edible oil. These facilities are directly regulated under § 105.105(a)(1) and must meet the requirements of part 105.

#### *Subpart B—Federal Maritime Security Coordinator (FMSC)*

This subpart designates the Coast Guard COTP as the Federal Maritime Security Coordinator and provides a description of the COTP's authority as Federal Maritime Security Coordinator to establish, convene, and direct the AMS Committee.

Three commenters recommended developing an International Maritime Organization (IMO) list of port facilities to help foreign shipowners identify U.S. facilities not in compliance with subchapter H. In a related comment, there was a request for the Coast Guard to maintain and publish a list of non-compliant facilities and ports because a COTP may impose one or more control and compliance measures on a domestic or foreign vessel that has called on a facility or port that is not in compliance.

We do not intend to publish a list of each individual facility that complies or does not comply with part 105. As discussed in the temporary interim rule (68 FR 39262) (part 101), our regulations align with the requirements of the International Ship and Port Facility Security (ISPS) Code, part A, section 16.5, by using the AMS Plan to satisfy our international obligations to communicate to IMO, as required by the International Convention for Safety of Life at Sea, 1974 (SOLAS) Chapter XI-2, regulation 13.3, the locations within

the U.S. that are covered by an approved port facility security plan. Any U.S. facility that receives vessels subject to SOLAS is required to comply with part 105.

#### *Subpart C—Area Maritime Security (AMS) Committee*

This subpart describes the composition and responsibilities of the AMS Committee.

One commenter supported the creation of AMS Committees, stating that through the partnership between industry and the Coast Guard, the committees will develop a comprehensive plan for the security of the port.

Two commenters supported the creation of AMS Committees if they were composed of appropriately experienced representatives from a variety of sources in the port. One commenter stated that the AMS Committee allows for "port specific" appropriate risk mitigation as opposed to a blanket risk mitigation policy placed on the entire U.S. waterway system and will strengthen the AMS Plan with the "buy in" of the maritime community.

We agree with the commenters and believe that the AMS Committee is a vital link to ensuring the port community is involved in security and its implementation. The inclusive nature of the AMS Committee and the active involvement of a variety of port stakeholders, bringing their experience within the maritime community to the table, will enhance the success of the AMS Committee in drafting the AMS Plan.

One commenter stated that the AMS Committee should have the responsibility to identify Federal, State, Indian Tribal, and local government agencies and law enforcement entities with jurisdiction over port-related matters.

We believe the responsibilities of Federal, State, Indian Tribal, and local government agencies and law enforcement entities with jurisdiction over port security related matters should be addressed in the AMS Plan and, therefore, have amended § 103.505.

Six commenters requested that the Coast Guard establish, without delay, an AMS Committee for the Outer Continental Shelf (OCS) portion of the Gulf of Mexico as an essential step in moving the various Federal law enforcement agencies and industry toward a mutual understanding of the response to a transportation security incident on the Outer Continental Shelf.

We intend to cover OCS facilities in the Gulf of Mexico by a single, District-

wide plan. The establishment of an AMS Committee for the OCS facilities in the Gulf of Mexico was discussed at recent Gulf Safety Committee and National Offshore Safety Advisory Committee (NOSAC) meetings. We intend to form an AMS Committee for this area in the near future. Additionally, owners and operators of OCS facilities are encouraged to participate on the AMS Committee of the COTP zone that is most relevant to their operations.

We received nine comments dealing with the protection of information shared with the AMS Committee. One commenter recommended that threat and risk assessments be kept at the government level so that this type of information would not be available to the public. Five commenters suggested that security plans or proprietary information regarding facilities or vessels be classified as confidential and not be shared with the AMS Committee. Four commenters requested that uniform guidance be provided to the AMS Committee on the handling of sensitive security information.

Section 103.300 provides that each AMS Committee will operate under a written charter that, among other items, details the rules for handling and protecting classified, sensitive security, commercially sensitive, and proprietary information. Threat and risk assessments developed by the AMS Committee will be embodied in written reports that will be designated sensitive security information and hence will not be available to the public.

Three commenters stated that the regulations do not indicate that the AMS Committee will function in a manner consistent with the procedures of Navigation and Vessel Inspection Circular (NVIC) 09-02, Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports. Two commenters stated that the regulations did not specify the identity of the "chartering entity" for the AMS Committee.

Section 101.105 states that the port security committee established under NVIC 09-02 may be the AMS Committee. The requirements for AMS Committees described in part 103 are consistent with NVIC 09-02. Therefore, AMS Committees will function in a manner consistent with the procedures of NVIC 09-02, unless the Committee agrees in its charter to a different arrangement. The AMS Committee is chartered under the direction of the COTP.

We received nine comments on AMS Committee participation. Three commenters urged the Coast Guard to

include the recreational boating community in all decisions that could limit recreational boaters' access to the water, stating that the future health of the community depends on reasonable access to the nation's waterways. Two commenters requested that private industry facility operators be allowed to fully participate in the AMS Committee. One commenter requested that utility representatives be allowed to fully participate in the AMS Committee. One commenter requested that government agencies that have roles in maritime and cargo security be involved in the AMS Committee. One commenter requested that representatives from the charterboat industry be included as AMS Committee members.

We encourage members of all affected communities, including small businesses, utilities, government officials, charterboats, and recreational boating, to become involved in maritime security through their local AMS Committees. Where appropriate, AMS Committees should include representatives from associations that represent all of these communities. Additionally, to ensure consistency across modes of transportation and with other Federal security programs, the Coast Guard intends to invite officials nominated by other Federal agencies, including the Transportation Security Administration (TSA), the Bureau of Customs and Border Protection and the Maritime Administration to participate in, and to appoint them as members of, the AMS Committees.

Eight commenters suggested that the criteria for AMS Committee membership or participation in a leadership position be revised. Currently, § 103.305(a) requires "at least 5 years of experience related to maritime or port security operations." Four commenters suggested that membership not be limited only to security-related experience. One commenter recommended that the seven AMS Committee members "must be selected from" the seven areas listed in § 103.305.

We aligned § 103.305 with the requirements for the AMS Committee found in the Maritime Transportation Security Act of 2002 (MTSA), which specifically requires a minimum of 7 members with at least 5 years of practical experience in maritime security operations and provides that the members "may be selected" from the seven areas listed. We have, however, amended § 103.305 in order to clarify that, while 7 members of the AMS Committee must have at least 5 years of experience related to maritime or port security operations, the AMS

Committee may be composed of more than 7 members. We are also adding labor to the list of areas from which AMS Committee members should be selected. These changes increase participation in the AMS Committee, which we believe will be beneficial to the operation of the AMS Committee.

One commenter recommended that AMS Committees consider information access "up the chain of command" for "strong and viable seaport security."

The COTP is the Federal Maritime Security Coordinator, and will be involved with the AMS Committee. The COTP is responsible for disseminating information to the port stakeholders and "up the chain of command." Additionally, owners or operators of vessels and facilities subject to parts 104, 105, and 106 are required to report all suspicious activities and breaches of security to the National Response Center (NRC); other owners and operators are encouraged to do so. Finally, non-compliance with security plans and the reporting requirements in them must be reported to the Coast Guard.

One commenter asked how, in accordance with § 104.240(d), the COTP will communicate permission to a vessel to enter the port if the vessel cannot implement its Vessel Security Plan.

The COTP can use a number of means to communicate to a vessel permission or denial to enter the port, such as issuing a COTP order denying entry or establishing conditions upon which the vessel may enter the port. Presently, communications to a vessel occur before port entry regarding required construction, safety, and equipment regulations. These communications occur through agents by satellite phone, fax, email, cellular phone, or radio communications.

One commenter stated that, because vessel and facility owners or operators may be required under Federal law to obtain the services of security guards and armed guards, there should be minimum standards guiding the qualifications, certification, and performance of those guards. The commenter also suggested that the AMS Committee evaluate local armed security service providers and develop a list of qualified providers.

As we stated in the temporary interim rule (68 FR 39255) (part 101), we intend to work with State homeland security representatives to encourage the review of all standards related to armed personnel. While we have not required each AMS Committee to develop lists of qualified security personnel providers, each AMS Committee may undertake this task.

*Subpart D—Area Maritime Security (AMS) Assessment*

This subpart directs the AMS Committee to ensure development of a risk-based AMS Assessment.

We received four comments regarding the use of third party companies to conduct security assessments. Two commenters asked if we will provide a list of acceptable assessment companies because of the concern that the vulnerability assessment could “fall into the wrong hands.” One commenter requested that the regulations define “appropriate skills” that a third party must have in order to aid in the development of security assessments. One commenter stated that the person or company conducting the assessment might not be reliable.

We will not be providing a list of acceptable assessment companies, nor will we define “appropriate skills.” It is the responsibility of the vessel or facility owner or operator to vet companies that assist them in their security assessments. In the temporary interim rule (68 FR 39254), we stated, “we reference ISPS Code, part B, paragraph 4.5, as a list of competencies all owners and operators should use to guide their decision on hiring a company to assist with meeting the regulations. We may provide further guidance on competencies for maritime security organizations, as necessary, but do not intend to list organizations, provide standards within the regulations, or certify organizations.” We require security assessments to be protected from unauthorized disclosures and will enforce this requirement, including using the penalties provision under § 101.415.

One commenter stated that any third party participating in developing the AMS Assessment should sign non-disclosure or secrecy agreements regarding any classified, sensitive security, commercially sensitive, or proprietary information developed, collected, or otherwise accessed during the preparation of the AMS Assessment.

If the AMS Committee or the Coast Guard chooses to use third parties in developing the AMS Assessment or the AMS Plan, those third parties must possess the same level of clearance as the material they are helping to develop, collect, or otherwise access. As required by § 103.300(b)(6), the charter under which the AMS Committee operates will establish rules for handling and protecting classified and sensitive security information. We intend to address third parties signing non-disclosure or secrecy agreements to

protect classified or sensitive security information in future guidance.

One commenter supported the development of a risk-based AMS Assessment but requested the addition of assessment requirements to specifically include: (1) Consideration of requiring Facility Security Plans and Vessel Security Plans for vessels that carry fewer than 150 passengers or facilities that serve these smaller operators, and (2) consideration of the public transit sector. The commenter stated that adding requirements to assess smaller operations would address a gap created because the current regulations exempt vessels and facilities that handle 150 passengers or fewer. Furthermore, the commenter stated that a critical look at the public transit sector (*e.g.*, ferry vessels) was needed because implementing certain security measures could severely hurt this industry and could cause a security inequity with other public transportation modes. The commenter further suggested that the public transit sector should be allowed to come forward with security recommendations to satisfy the AMS Plan.

We agree that both the consideration of small vessel and facility operations as well as public transit must be included in the AMS Assessment. Section 103.405 was developed to cover these topics but did not go into detail. We believe the details of the AMS Assessment are best embodied in guidance. We intend to provide additional guidance in a revision to NVIC 9–02 (Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports). We intend to update this guidance to incorporate several suggestions and address the consideration of security measures for vessels and facilities that are not directly regulated under parts 104 or 105 but, due to the specific nature of their port location or operation, may require additional security measures or requirements. Public transit issues and parity with other transportation modes is also a concern. The AMS Assessment is required to address transportation infrastructure, which includes all ferry operations, as well as train or other modes affecting the area maritime community.

One commenter stated that the AMS Assessment should include consideration of manufacturers and users of hazardous material.

Section 103.405 lists the elements that must be taken into consideration in developing the AMS Assessment. These elements are broadly defined and could include manufacturers and users of hazardous materials if they may be

involved in a transportation security incident.

Four commenters requested that the Company and the Facility Security Officers be given access to the “vulnerability assessment” done by the COTP to facilitate the development of the Facility Security Plan and ensure that the Facility Security Plan does not conflict with the AMS Plan.

The AMS Assessments directed by the Coast Guard are broader in scope than the required Facility Security Assessments. The AMS Assessment is used in the development of the AMS Plan, and it is a collaborative effort between Federal, State, Indian Tribal, and local agencies as well as vessel and facility owners and other interested stakeholders. The AMS Assessments are sensitive security information. Access to these assessments, therefore, is limited under 49 CFR part 1520 to those persons with a legitimate need-to-know (*e.g.*, Facility Security Officers who need to align Facility Security Plans with the AMS Plan may be deemed to have need to know sensitive security information). In addition, potential conflicts between security plans and the AMS Plan will be identified during the Facility Security Plan approval process.

*Subpart E—Area Maritime Security (AMS) Plan*

This subpart concerns the elements of the AMS Plan, requirements on exercising the AMS Plan, and recordkeeping requirements.

One commenter supported the creation of an AMS Plan and believes it provides details of operational and physical measures that must be in place at all MARSEC Levels rather than blanket security rules that do not appropriately apply to the public transit sector (*e.g.*, ferry vessels).

We believe the AMS Plan is an excellent tool to coordinate and communicate security measures throughout the port community. The AMS Plan takes into account unique port operations and their criticality to the community and tailors security measures to effectively continue essential port operations as MARSEC Levels increase.

One commenter asked that we ensure the interoperability of the various plans required in parts 101 through 106, stating that we must have a coordinated approach to the implementation of national maritime security requirements.

We agree with the commenter and intend to take the interoperability of security plans into account as we review and approve security plans for vessels

and facilities and as we develop the National and AMS Plans.

One commenter stated that there should be a common template for AMS Plans for use at all Districts.

The regulations provide uniformity by requiring all AMS Plans to be submitted for review to the Coast Guard District Commander and for approval to the Coast Guard Area Commander.

Six commenters stated that part 105 should not apply to marinas that receive a small number of passenger vessels certificated to carry more than 150 passengers or to "mixed-use or special-use facilities which might accept or provide dock space to a single vessel" because the impact on local business in the facility could be substantial. Two commenters stated that private and public riverbanks should not be required to comply with part 105 because "there is no one to complete a Declaration of Security with, and no way to secure the area, before the vessel arrives." Two commenters stated that facilities that are "100 percent public access" should not be required to comply with part 105 because these types of facilities are "vital to the local economy, as well as to the host municipalities." This commenter also stated that vessels certificated to carry more than 150 passengers frequently embark guests at private, residential docks and small private marinas for special events such as weddings and anniversaries and may visit such a dock only once.

We agree that the applicability of part 105 to facilities that have minimal infrastructure but are capable of receiving passenger vessels is unclear. Therefore, in the final rule for part 101, we added a definition for a "public access facility" to mean a facility approved by the cognizant COTP with public access that is primarily used for purposes such as recreation or entertainment and not for receiving vessels subject to part 104. By definition, a public access facility has minimal infrastructure for servicing vessels subject to part 104 but may receive ferries and passenger vessels other than cruise ships, ferries certificated to carry vehicles, or passenger vessels subject to SOLAS. Minimal infrastructure would include, for example, bollards, docks, and ticket booths but would not include, for example, permanent structures that contain passenger waiting areas or concessions. We have not allowed public access facilities to be designated if they receive vessels such as cargo vessels because such cargo-handling operations require additional security measures that public access facilities

would not have. We amended part 105 to exclude these public access facilities, subject to COTP approval, from the requirements of part 105. We believe this construct does not reduce security because the facility owner or operator or entity with operational control over these types of public access facilities still has obligations for security that will be detailed in the AMS Plan, based on the AMS Assessment. Additionally, the Vessel Security Plan must address security measures for using the public access facility. This exemption does not affect existing COTP authority to require the implementation of additional security measures to deal with specific security concerns. We have also amended § 103.505, to add public access facilities to the list of elements that must be addressed within the AMS Plan.

Two commenters asked if the COTP would allow private port facilities access to the completed AMS Assessment or Plan, stating that a port plan could potentially contradict a private Facility Security Plan. One commenter stated that the AMS Plan should be "absolutely unequivocal about the lines of authority for preventative and response actions as well as law enforcement."

The development of the AMS Plan is a collaborative effort between Federal, State, Indian Tribal, and local agencies as well as individual facility owners and any other interested stakeholders. AMS Plans contain sensitive security information, and the COTP must ensure it is protected in accordance with 49 CFR part 1520. The Coast Guard will resolve potential conflicts between an individual Facility Security Plan and the AMS Plan during the Facility Security Plan approval process, which will ensure proper planning for preventative and response actions. To clarify that the entire AMS Plan is not necessarily sensitive security information, we are amending § 103.500(b) to allow only those portions of the AMS Plan that contain sensitive security information to be marked as such. This will allow certain non-sensitive security information portions of the AMS Plan to be widely distributed to maximize its communication and coordination with port stakeholders.

Ten commenters addressed the disclosure of security plan information. One commenter advocated making security plans public. One commenter was concerned that plans will be disclosed under the Freedom of Information Act (FOIA). One commenter requested that mariners and other employees, whose normal working

conditions are altered by a Vessel or Facility Security Plan, be granted access to sensitive security information contained in that plan on a need-to-know basis. One commenter stated that Company Security Officers and Facility Security Officers should have reasonable access to AMS Plan information on a need-to-know basis. One commenter stated that the Federal government must preempt State law in instances of sensitive security information because some State laws require full disclosure of public documents. Three commenters supported our conclusion that the MTSA and our regulations preempt any conflicting State requirements. Another commenter was particularly pleased to observe the strong position taken by the Coast Guard in support of Federal preemption of conflicting State and local security regimes. One commenter supported our decision to designate security assessments and plans as sensitive security information.

Portions of security plans are sensitive security information and must be protected in accordance with 49 CFR part 1520. Only those persons specified in 49 CFR part 1520 will be given access to security plans. In accordance with 49 CFR part 1520 and pursuant to 5 U.S.C. 552(b)(3), sensitive security information is generally exempt from disclosure under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public. However, §§ 104.220, 104.225, 105.210, 105.215, 106.215, and 106.220 of these rules state that vessel and facility personnel must have knowledge of relevant provisions of the security plan. Therefore, vessel and facility owners or operators will determine which provisions of the security plans are accessible to crewmembers and other personnel. Additionally, COTPs will determine what portions of the AMS Plan are accessible to Company or Facility Security Officers.

Information designated as sensitive security information is generally exempt under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public.

Two commenters stated that our regulations suggest that information designated as sensitive security information is exempt from FOIA. One commenter suggested that all

documentation submitted under this rule be done pursuant to the Homeland Security Act of 2002, to afford a more legally definite protection against disclosure.

“Sensitive security information” is a designation mandated by regulations promulgated by TSA and may be found in 49 CFR part 1520. These regulations state that information designated as sensitive security information may not be shared with the general public. FOIA exempts from its mandatory release provisions those items that other laws forbid from public release. Thus, security assessments, security assessment reports, and security plans, which should be designated as sensitive security information, are all exempt from release under FOIA.

Four commenters urged us to conduct background checks on potential members of AMS Committees because the information contained in the AMS Plans might be “secret.” Two commenters urged us to designate security assessments, Vessel Security Plans, Facility Security Plans, and information contained in the AMS Plans as “secret,” and require secret clearance for AMS Committee members.

We do not believe that a security designation above sensitive security information is needed for this material. However, § 103.300(b)(6) requires AMS Committee charters to include rules for handling and processing classified material. Access to the AMS Plan will be limited to those on the AMS Committee who have agreed to protect the material in a manner appropriate to its security sensitivity and have a need to know the material. Guidance on sensitive security information and its use will be issued to assist AMS Committee members, consistent with 49 CFR part 1520. For material that is designated at a level higher than sensitive security information, the Coast Guard will screen AMS Committee members for appropriate clearances and take precautions appropriate to the material’s sensitivity. Individuals and Federal, State, Indian Tribal, and local agencies outside those with transportation oversight authority will not be allowed to view plans or assessments of vessels and facilities unless circumstances provide a need to view them. As stated in the “Vessel Security” temporary interim rule (68 FR 39297), certain portions of each Vessel Security Plan and Vessel Security Assessment must be made accessible to authorities; however, those portions not required to be disclosed are protected with the sensitive security information designation and need-to-know criteria. Owners and operators of vessels and

facilities may also request a determination of a higher designation than sensitive security information for their plans. The Commandant or the COTP, whoever is responsible for reviewing the security plan, will retain the designation authority. In all cases, the material, if retained by a Federal agency, must be safeguarded to the appropriate designation.

We received 28 comments regarding communication of changes in the MARSEC Levels. Most commenters were concerned about the Coast Guard’s capability to communicate timely changes in MARSEC Levels to facilities and vessels. Some stressed the importance of MARSEC Level information reaching each port area in the COTP’s zone and the entire maritime industry. Some stated that local Broadcast Notice to Mariners and MARSEC Directives are flawed methods of communication and stated that the only acceptable ways to communicate changes in MARSEC Levels, from a timing standpoint, are via email, phone, or fax as established by each COTP.

MARSEC Level changes are generally issued at the Commandant level and each Marine Safety Office (MSO) will be able to disseminate them to vessel or facility owners and operators, or their designees, by various ways. Communication of MARSEC Levels will be done in the most expeditious means available, given the characteristics of the port and its operations. These means will be outlined in the AMS Plan and exercised to ensure vessel and facility owners and operators, or their designees, are able to quickly communicate with us and vice-versa. Because MARSEC Directives will not be as expeditiously communicated as other COTP Orders and are not meant to communicate changes in MARSEC Levels, we have amended § 101.300 to remove the reference to MARSEC Directives.

We received four comments on the subject of AMS Plan exercises. One commenter agreed with our inclusion of tabletop exercises as a cost-effective means of exercising the security plan. Two commenters supported a maritime security field training exercise in each area covered by an AMS Plan but requested that the frequency be every 3 years rather than annually. These commenters stated that the annual requirement for an AMS Plan exercise placed an undue burden on the maritime sector because it is already conducting vessel and facility exercises. One commenter stated that the Coast Guard must be aware that the AMS exercise requirements may be overly burdensome to some vessels, as they

could potentially be required to participate in several AMS exercises per year.

We believe that exercising the AMS Plan annually is essential to ensure that it can be effectively implemented, stakeholders with security responsibilities are proficient in their responsibilities, and any deficiencies in the AMS Plan can be identified and corrected in a timely manner. In addition, the AMS Plan exercise frequency must also meet the international requirement for an annual exercise found in the ISPS Code, part B, regulation 18.6. However, we realize that an AMS Plan annual exercise requirement is in addition to the annual exercise requirements for Vessel and Facility Security Plans. We also recognize that many of the entities affected by § 103.515 are also subject to, or regularly participate in, other emergency response or crisis management exercises. We are mindful of the potential burdens imposed on the regulated community, and other port stakeholders by the number of safety, security and response exercises required by various regulations, and believe that the objectives for AMS Plan exercises can often be met through effective consolidation of exercises. Further, we acknowledge that several vessels may be offered the opportunity to participate in several AMS Plan exercises per year. Participation in these AMS Plan exercises will be subject to the specific details of the AMS Plan as developed by the AMS Committee on which those vessel owners or operators may participate. While vessel owners and operators will be encouraged to participate in AMS Plan exercises and may be requested to deviate from normal operations to minimize interference with the AMS Plan exercise, they will not be required to participate. In addition, we anticipate that COTPs will give ample notice of AMS Plan exercises to allow vessel owners and operators to plan appropriately and to minimize the impact on the maritime community.

Section 103.515(c) allows the cognizant District Commander to authorize AMS Plan exercise credit for actual increases in the MARSEC Level and implementation of security measures during periods of critical port operations or special marine events. However, upon further review, we have decided to revise § 103.515(c) to provide an additional option to participate in another port exercise that contains elements of the AMS Plan but is not a stand-alone AMS Plan exercise. This annual exercise credit is only given if approved by the Area Commander to



ensure that the appropriate elements of the AMS Plan are implemented. We have changed the approval level to the Area Commander, because the Area Commander is the approval authority for the AMS Plan, not the District Commander. However, we have kept the initial review at the District Commander level in order to highlight any regional resource issues. Once we obtain sufficient experience with AMS Plan implementation, we will review the annual requirement and, if warranted, may consider revising the exercise frequency. However, to remain in compliance with our international obligations, should we deem a change to this annual frequency to be appropriate in the future, we must propose the change internationally.

**Additional Changes**

In addition, the part heading in this part has been amended to align with all the part headings within this subchapter. We have also corrected the Table of Contents for the entry for § 103.410, which was missing the word “Assessment.”

**Regulatory Assessment**

This final rule is a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Homeland Security. A final assessment is available in the docket as indicated under **ADDRESSES**. We did not receive specific comments on the regulatory assessment for part 103. A discussion of general comments on the regulatory assessment for subchapter H can be found in the preamble of the final rule for part 101, under “Regulatory Assessment.”

**Cost Assessment**

This rule will affect stakeholders in 47 COTP zones containing 361 ports. The regulatory assessment and analysis documentation (*see* USCG–2003–14733) details estimated costs to public and private stakeholders and does not include costs to the Coast Guard.

Because the changes in this final rule do not affect the original cost estimates presented in the temporary interim rule (68 FR 39287) (part 103), the costs remain unchanged.

The total cost estimate of the rule, as it pertains to area maritime security, is present value \$477 million (2003–2012, 7 percent discount rate). The initial cost of the startup period (June 2003–December 2003) for establishing AMS Committees and creating AMS Plans is estimated to be \$120 million (non-discounted) for all areas. Following the startup period, the first year of implementation (2004), consisting of monthly AMS Committee meetings and AMS Plan exercises and drills for all areas, is estimated to be \$106 million (non-discounted). After the first year of implementation, the annual cost of quarterly AMS Committee meetings and AMS Plan exercises and drills for all areas is estimated to be \$46 million (non-discounted). The startup period cost associated with creating AMS Committees and AMS Plans for each area is the primary cost driver of the rule. Both the startup and implementation year period (2003–2004) combined is nearly half of the total 10-year present value cost estimate, making initial development, planning, and testing the primary costs of Area Maritime Security.

This rule will require all COTPs to establish security committees, plans, training drills, and exercises for their areas, with the participation of port stakeholders in their areas. The above costs to stakeholders will be paperwork, travel, and communication costs associated with participation in AMS Plan implementation.

We estimate 1,203,200 hours of paperwork and other associated planning activities during 2003, the initial period of security meetings and development. In 2004, the first year of implementation, we estimate the value will fall slightly to 1,090,400 hours of paperwork and other related information and communication activities related to monthly AMS Committee meetings. In subsequent years, we estimate the hours will fall to 488,800 hours annually associated with AMS Committee meetings, AMS Plan revisions, and information exercises and drills.

**Benefit Assessment**

This final rule is one of six final rules that implement national maritime security initiatives concerning general provisions, Area Maritime Security, vessels, facilities, Outer Continental Shelf (OCS) facilities, and the Automatic Identification System (AIS). The Coast Guard used the National Risk Assessment Tool (N–RAT) to assess benefits that would result from increased security for vessels, facilities, OCS facilities, and areas. The N–RAT considers threat, vulnerability, and consequences for several maritime entities in various security-related scenarios. For a more detailed discussion on the N–RAT and how we employed this tool, refer to “Applicability of National Maritime Security Initiatives” in the temporary interim rule titled “Implementation of National Maritime Security Initiatives” (68 FR 39243) (part 101). For this benefit assessment, the Coast Guard used a team to calculate a risk score for each entity and scenario before and after the implementation of required security measures. The difference in before and after scores indicated the benefit of the proposed action.

We recognized that the final rules are a “family” of rules that will reinforce and support one another in their implementation. We have ensured, however, that risk reduction that is credited in one rule is not also credited in another. For a more detailed discussion on the benefit assessment and how we addressed the potential to double-count the risk reduced, refer to “Benefit Assessment” in the temporary interim rule titled “Implementation of National Maritime Security Initiatives” (68 FR 39274) (part 101).

We determined annual risk points reduced for each of the six final rules using the N–RAT. The benefits are apportioned among the Vessel, Facility, OCS Facility, AMS, and AIS requirements. As shown in Table 1, the implementation of AMS security for the affected population reduces 135,202 risk points annually through 2012. The benefits attributable for part 101, General Provisions, were not considered separately since it is an overarching section for all the parts.

TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES

Maritime entity	Annual risk points reduced by rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Vessels .....	778,633	3,385	3,385	3,385	1,317



TABLE 1.—ANNUAL RISK POINTS REDUCED BY THE FINAL RULES—Continued

Maritime entity	Annual risk points reduced by rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS
Facilities .....	2,025	469,686	.....	2,025	.....
OCS facilities .....	41	.....	9,903	.....	.....
Port Areas .....	587	587	.....	129,792	105
Total .....	781,285	473,659	13,288	135,202	1,422

Once we determined the annual risk points reduced, we discounted these estimates to their present value (7 percent discount rate, 2003–2012) so that they could be compared to the costs. We presented the cost

effectiveness, or dollars per risk point reduced, in two ways: First, we compared the first-year cost and first-year benefit because the first-year cost is the highest in our assessment as companies develop security plans and

purchase equipment. Second, we compared the 10-year present value cost to the 10-year present value benefit. The results of our assessment are presented in Table 2.

TABLE 2.—FIRST-YEAR AND 10-YEAR PRESENT VALUE COST AND BENEFIT OF THE FINAL RULES.

Item	Final rule				
	Vessel security	Facility security	OCS facility security	AMS	AIS*
First-Year Cost (millions) .....	\$218	\$1,125	\$3	\$120	\$30
First-Year Benefit .....	781,285	473,659	13,288	135,202	1,422
First-Year Cost Effectiveness (\$/Risk Point Reduced) .....	279	2,375	205	890	21,224
10-Year Present Value Cost (millions) .....	1,368	5,399	37	477	26
10-Year Present Value Benefit .....	5,871,540	3,559,655	99,863	1,016,074	10,687
10-Year Present Value Cost Effectiveness (\$/Risk Point Reduced) .....	233	1,517	368	469	2,427

\* Cost less monetized safety benefit.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a 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 less than 50,000.

The stakeholders affected by this rule include a variety of businesses and governments. The COTP will designate approximately 200 stakeholders, per maritime area, to engage in security planning, meetings, and drills. Full participation by these stakeholders will be voluntary. We estimate the first-year cost, per stakeholder, to be \$12,800 (non-discounted). In subsequent years, the annual cost, per stakeholder (full participation in this rule), falls to \$4,940 (non-discounted).

The results from our assessment (copy available in the docket) suggest that the impact of this rule is not significant for port and maritime area authorities, owners, or operators because of the low average annual cost per stakeholder and

the voluntary nature of participating in this rule.

We estimated the majority of small entities have a less than 3 percent impact on revenue if they choose to fully participate in this rule. We anticipate the few remaining small entities that may have a greater than 3 percent impact on annual revenue will either opt out (not participate) or partially participate in the rule to the extent that the impact on revenue is not a burden.

There are other stakeholders affected by this rule in addition to port authorities, owners, and operators. The stakeholders could be any entity that the COTP invites to partially or fully participate. We anticipate the impact on other possible small entity stakeholders to be minimal because of the low average annual cost per stakeholder and the voluntary nature of participating in this rule.

Therefore, the Coast Guard certifies, under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

We did not receive comments regarding small entities. Additional information on small entity impacts is

available in the “Small Entities” section of the preamble for each final rule.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. We provided small entities with a name, phone number, and e-mail address to contact if they had questions concerning the provisions of the final rules or options for compliance.

We have placed Small Business Compliance Guides in the dockets for the Area Maritime, Vessel, and Facility Security and the AIS rules. These Compliance Guides will explain the applicability of the regulations, as well as the actions small businesses will be required to take in order to comply with each respective final rule. We have not created Compliance Guides for part 101 or for the OCS Facility Security final rule, as neither will affect a substantial number of small entities.

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).

### Collection of Information

This final rule contains no new collection of information requirements 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 final rules are covered by two existing OMB-approved collections—1625-0100 [formerly 2115-0557] and 1625-0077 [formerly 2115-0622].

We did not receive comments regarding collection of information. You are not required to respond to a collection of information unless it displays a currently valid OMB control number. We received OMB approval for these collections of information on June 16, 2003. They are valid until December 31, 2003.

### Federalism

Executive Order 13132 requires the Coast Guard to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects 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." Under the Executive Order, the Coast Guard may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

This action has been analyzed in accordance with the principles and criteria in the Executive Order, and it has been determined that this final rule does have Federalism implications and a substantial direct effect on the States. This final rule requires those States that own or operate vessels or facilities that may be involved in a transportation security incident to conduct security assessments of their vessels and facilities and to develop security plans

for their protection. These plans must contain measures that will be implemented at each of the three MARSEC Levels and must be reviewed and approved by the Coast Guard.

Additionally, the Coast Guard has reviewed the MTSA with a view to whether we may construe it as non-preemptive of State authority over the same subject matter. We have determined that it would be inconsistent with the federalism principles stated in the Executive Order to construe the MTSA as not preempting State regulations that conflict with the regulations in this final rule. This is because owners or operators of facilities and vessels that are subject to the requirements for conducting security assessments, planning to secure their facilities and vessels against threats revealed by those assessments, and complying with the standards, both performance and specific construction, design, equipment, and operating requirements—must have one uniform, national standard that they must meet. Vessels and shipping companies, particularly, would be confronted with an unreasonable burden if they had to comply with varying requirements as they moved from State to State. Therefore, we believe that the federalism principles enumerated by the Supreme Court in *U.S. v. Locke*, 529 U.S. 89 (2000) regarding field preemption of certain State vessel safety, equipment, and operating requirements extends equally to this final rule, especially regarding the longstanding history of significant Coast Guard maritime security regulation and control of vessels for security purposes. But, the same considerations apply to facilities, at least insofar as a State law or regulation applicable to the same subject for the purpose of protecting the security of the facility would conflict with a Federal regulation; in other words, it would either actually conflict or would frustrate an overriding Federal need for uniformity.

Finally, it is important to note that the regulations implemented by this final rule bear on national and international commerce where there is no constitutional presumption of concurrent State regulation. Many aspects of these regulations are based on the U.S. international treaty obligations regarding vessel and port facility security contained in SOLAS and the complementary ISPS Code. These international obligations reinforce the need for uniformity regarding maritime commerce.

Notwithstanding the foregoing preemption determinations and findings, the Coast Guard has consulted

extensively with appropriate State officials, as well as private stakeholders during the development of this final rule. For these final rules, we met with the National Conference of State Legislatures (NCSL) Taskforce on Protecting Democracy on July 21, 2003, and presented briefings on the temporary interim rules to the NCSL's Transportation Committee on July 23, 2003. We also briefed several hundred State legislators at the American Legislative Exchange Council on August 1, 2003. We held a public meeting on July 23, 2003, with invitation letters to all State homeland security representatives. A few State representatives attended this meeting and submitted comments to a public docket prior to the close of the comment period. The State comments to the docket focused on a wide range of concerns including consistency with international requirements and the protection of sensitive security information.

Other concerns raised by the NCSL at the briefings mentioned above included questions on how the Coast Guard will enforce security standards on foreign flag vessels and how multinational crewmember credentials will be checked.

We are using the same cooperative arrangement that we have used with success in the safety realm by accepting SOLAS certificates documenting flag-state approval of foreign SOLAS Vessel Security Plans that comply with the comprehensive requirements of the ISPS Code. The consistency of the international and domestic security regimes, to the extent possible, was always a central part of the negotiations for the MTSA and the ISPS Code. In the MTSA, Congress explicitly found that "it is in the best interests of the U.S. to implement new international instruments that establish" a maritime security system. We agree and will exercise Port State Control to ensure that foreign vessels have approved plans and have implemented adequate security standards on which these rules are based. If vessels do not meet our security requirements, the Coast Guard may prevent those vessels from entering the U.S. or take other necessary measures that may result in vessel delays or detentions. The Coast Guard will not hesitate to exercise this authority in appropriate cases. We discuss the ongoing initiatives of ILO and the requirements under the MTSA to develop seafarers' identification criteria in the temporary interim rule titled "Implementation of National maritime Security Initiatives" (68 FR 39264) (part 101). We will continue to

work with other agencies to coordinate seafarer access and credentialing issues. These final rules will also ensure that vessel and facility owners and operators take an active role in deterring unauthorized access.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Indian Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. This final rule is exempted from assessing the effects of the regulatory action as required by the Act because it is necessary for the national security of the United States (2 U.S.C. 1503(5)). We did not receive comments regarding the Unfunded Mandates Reform Act.

**Taking of Private Property**

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We did not receive comments regarding the taking of private property.

**Civil Justice Reform**

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive comments regarding Civil Justice Reform.

**Protection of Children**

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

**Indian Tribal Governments**

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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. We did not receive comments regarding Indian Tribal Governments.

**Energy Effects**

We have analyzed this final 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. Although 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.

This final rule has a positive effect on the supply, distribution, and use of energy. The final rule provides for security assessments, plans, procedures, and standards, which will prove beneficial for the supply, distribution, and use of energy at increased levels of maritime security. We did not receive comments regarding energy effects.

**Environment**

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(a) and (34)(c) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This final rule concerns security assessments and the establishment of security committees and coordinators that will contribute to a higher level of marine safety and security for U.S. ports. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES** or **SUPPLEMENTARY INFORMATION**.

This final rule will not significantly impact the coastal zone. Further, the execution of this final rule will be done in conjunction with appropriate State coastal authorities. The Coast Guard will, therefore, comply with the requirements of the Coastal Zone Management Act while furthering its intent to protect the coastal zone.

**List of Subjects in 33 CFR Part 103**

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

■ Accordingly, the interim rule adding 33 CFR part 103, that was published at 68 FR 39284 on July 1, 2003, and

amended at 68 FR 41914 on July 16, 2003, is adopted as a final rule with the following changes:

**PART 103—MARITIME SECURITY: AREA MARITIME SECURITY**

■ 1. The authority citation for part 103 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. 70102, 70103, 70104, 70112; 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.

■ 2. Revise the heading to part 103 to read as shown above.

■ 3. In the Table of Contents, revise the entry for § 103.410 to read as follows:

**§ 103.410 Persons involved in the Area Maritime Security (AMS) Assessment.**

- 4. In § 103.305—
- a. Revise paragraph (a) introductory text and paragraph (a)(5), to read as set out below;
- b. Redesignate paragraph (b) as paragraph (c); and
- c. Add new paragraph (b) to read as follows:

**§ 103.305 Composition of an Area Maritime Security (AMS) Committee.**

(a) An AMS Committee will be composed of not less than seven members having an interest in the security of the area and who may be selected from—

\* \* \* \* \*

(5) Maritime industry, including labor;

\* \* \* \* \*

(b) At least seven of the members must each have 5 or more years of experience related to maritime or port security operations.

\* \* \* \* \*

**§ 103.500 [Amended]**

■ 5. In § 103.500(b), remove the words “AMS Plans are sensitive security information and must be” and add, in their place, the words “Portions of the AMS Plan may contain sensitive security information, and those portions must be marked as such and”.

- 6. In § 103.505—
- a. Redesignate paragraphs (s), (t), and (u) as paragraphs (t), (u), and (v), respectively;
- b. In newly redesignated paragraph (u), remove the word “and”;
- c. In newly redesignated paragraph (v), remove the period and add, in its place, the word “; and”;
- d. Add new paragraphs (s) and (w) to read as follows:

**§ 103.505 Elements of the Area Maritime Security (AMS) Plan.**

\* \* \* \* \*

(s) The jurisdiction of Federal, State, Indian Tribal, and local government agencies and law enforcement entities over area security related matters;

\* \* \* \* \*

(w) Identification of any facility otherwise subject to part 105 of this subchapter that the COTP has designated as a public access facility within the area, the security measures that must be implemented at the various MARSEC Levels, and who is responsible for implementing those measures.

■ 7. In § 103.515—

■ a. In paragraph (a), after the word “conduct”, add the words “or participate in”; and

■ b. Revise paragraph (c) to read as follows:

**§ 103.515 Exercises.**

\* \* \* \* \*

(c) Upon review by the cognizant District Commander, and approval by the cognizant Area Commander, the requirements of this section may be satisfied by—

(1) Participation of the COTP and appropriate AMS Committee members or other appropriate port stakeholders in an emergency response or crisis management exercise conducted by another governmental agency or private sector entity, provided that the exercise addresses components of the AMS Plan;

(2) An actual increase in MARSEC Level; or

(3) Implementation of enhanced security measures enumerated in the AMS Plan during periods of critical port operations or special marine events.

Dated: October 8, 2003.

**Thomas H. Collins,**

*Admiral, Coast Guard, Commandant.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Parts 104, 160, and 165**

**46 CFR Parts 2, 31, 71, 91, 115, 126, and 176**

[USCG-2003-14749]

RIN 1625-AA46

**Vessel Security**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule adopts, with changes, the temporary interim rule published on July 1, 2003, that provides

security measures for certain vessels calling on U.S. ports. It also requires the owners or operators of vessels to designate security officers for vessels, develop security plans based on security assessments and surveys, implement security measures specific to the vessel's operation, and comply with Maritime Security Levels. This rule is one in a series of final rules on maritime security in today's **Federal Register**. To best understand this rule, first read the final rule titled “Implementation of National Maritime Security Initiatives” (USCG-2003-14792), published elsewhere in today's **Federal Register**.

**DATES:** This final rule is effective November 19, 2003. On July 1, 2003, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this final rule.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2003-14749 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this final rule, call Lieutenant Commander Darnell Baldinelli (G-MPS), U.S. Coast Guard by telephone 202-267-4148 or by electronic mail [dbaldinelli@comdt.uscg.mil](mailto:dbaldinelli@comdt.uscg.mil). If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, at telephone 202-366-0271.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On July 1, 2003, we published a temporary interim rule with request for comments and notice of public meeting titled “Vessel Security” in the **Federal Register** (68 FR 39292). This temporary interim rule was one of a series of temporary interim rules on maritime security published in the July 1, 2003, issue of the **Federal Register**. On July 16, 2003, we published a document correcting typographical errors and omissions in that rule (68 FR 41915).

We received a total of 438 letters in response to the six temporary interim rules by July 31, 2003. The majority of these letters contained multiple comments, some of which applied to the

docket to which the letter was submitted, and some of which applied to a different docket. For example, we received several letters in the docket for the temporary interim rule titled “Implementation of National Maritime Security Initiatives” that contained comments in that temporary interim rule, plus comments on the “Vessel Security” temporary interim rule. We have addressed individual comments in the preamble to the appropriate final rule. Additionally, we had several commenters submit the same letter to all six dockets. We counted these duplicate submissions as only one letter, and we addressed each comment within that letter in the preamble for the appropriate final rule. Because of statutorily imposed time constraints for publishing these regulations, we were unable to consider comments received after the period for receipt of comments closed on July 31, 2003.

A public meeting was held in Washington, DC, on July 23, 2003, and approximately 500 people attended. Comments from the public meeting are also included in the “Discussion of Comments and Changes” section of this preamble.

In order to focus on the changes made to the regulatory text since the temporary interim rule was published, we have adopted the temporary interim rule and set out, in this final rule, only the changes made to the temporary interim rule. To view a copy of the complete regulatory text with the changes shown in this final rule, see <http://www.uscg.mil/hq/g-m/mp/index.htm>.

**Background and Purpose**

A summary of the Coast Guard's regulatory initiatives for maritime security can be found under the “Background and Purpose” section in the preamble to the final rule titled “Implementation of National Maritime Security Initiatives” (USCG-2003-14792), published elsewhere in this issue of the **Federal Register**.

**Impact on Existing Domestic Requirements**

33 CFR part 120, Security of Vessels, currently exists but applies only to cruise ships. Until July 2004, 33 CFR part 120 will remain in effect. Vessels that were required to comply with part 120 must now also meet the requirements of this part, including § 104.295, Additional requirements—cruise ships. The requirements in § 104.295 generally capture the existing requirements in part 120 that are specific for cruise ships and capture additional detail to the requirements of