

**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:** Final rule.

**SUMMARY:** The Coast Guard is issuing a final rule to eliminate outdated regulations that imposed unnecessary screening requirements on cruise ships and cruise ship terminals. This final rule replaces these outdated regulations with simpler, consolidated regulations that provide efficient and clear requirements for the screening of baggage, personal items, and persons on a cruise ship. This final rule will enhance the security of cruise ship terminals and allow terminal operators to use effective screening mechanisms with minimal impact to business operations.

**DATES:** This final rule is effective April 18, 2018.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2006–23846. To view public comments or documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email 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, email [Kevin.J.McDonald2@uscg.mil](mailto:Kevin.J.McDonald2@uscg.mil).

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**I. Abbreviations**

- AAPA American Association of Port Authorities
- CFR Code of Federal Regulations
- CLIA Cruise Lines International Association
- COTP Captain of the Port
- DoS Declaration of Security
- FSO Facility Security Officer
- FSP Facility Security Plan
- FR Federal Register
- MARSEC Maritime Security
- MISLE Marine Information for Safety and Law Enforcement
- MTSA Maritime Transportation Security Act of 2002
- NAICS North American Industry Classification System
- NPRM Notice of proposed rulemaking
- OMB Office of Management and Budget
- PIL Prohibited Items List
- QPL Qualified Product List
- § 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
- VSL Value of Statistical Life

**II. Executive Summary**

The Coast Guard is amending its regulations on cruise ship terminal security by simplifying and removing outdated regulations located in 33 CFR parts 120 and 128. These parts prescribe requirements for passenger vessels and passenger terminals to develop and implement vessel security plans and terminal security plans. However, the enactment of the Maritime Transportation Security Act of 2002 (MTSA) largely superseded the requirements located in 33 CFR parts 120 and 128 with the requirements in 33 CFR Subchapter H, parts 104 and 105. As a result, parts 120 and 128 are now used only for their terminal security plan implementation requirements.

The final rule will improve regulatory clarity and efficiency by replacing the

terminal screening procedures from parts 120 and 128 with updated terminal screening procedures laid out in the current MTSA regulations located in Subchapter H. The primary purpose of these changes is to provide more efficient and clear requirements for the screening of all baggage, personal items, and persons—including passengers, crew, and visitors—intended for carriage on a cruise ship, and enhance the security of cruise ship terminals, while minimizing disruptions to business operations. As a result, the changes will allow terminals an appropriate degree of clarity that accommodates and is consistent with their varying sizes and operations.

The final rule will also both clarify and simplify requirements to ensure all facilities maintain screening measures that meet a minimum standard. For example, while the terminal security plan requirements in part 128 merely required that owners or operators of a terminal facility “[p]rovide adequate security training to employees of the terminal,”<sup>1</sup> the new regulations both incorporate the existing MTSA training requirements located in section 105.210, as well as enumerate several terminal-specific items that clarify what knowledge base is needed to adequately ensure security.

Therefore, the final rule will establish clear, simplified, enforceable standards, consolidate the terminal security regulations in the Code of Federal Regulations, and ensure a consistent, minimum layer of security at cruise ship terminals throughout the United States with a minimal impact to business operations.

We estimate that this rule will affect 137 MTSA-regulated facilities, 131 cruise ships, and 23 cruise line companies. This rulemaking will have a one-time administrative cost for the development of a terminal screening program and for updating the FSP for the prohibited items list. We estimate the one-time cost for these updates to be about \$158,660 (undiscounted).

*A. Summary of NPRM*

In the notice of proposed rulemaking (NPRM) (79 FR 73255, December 10, 2014), the Coast Guard proposed several changes to existing regulations on the screening of persons and their baggage at cruise ship terminals. The discussion below summarizes the proposed requirements. A more detailed discussion of the requirements can be found in the NPRM.

First, we proposed that cruise ship terminals revise their Facility Security

<sup>1</sup> 33 CFR 128.300(b)(4).

Plans (FSPs) to include a consolidated section on terminal screening, called the terminal screening program (TSP). Additionally, we proposed several requirements for TSPs, as laid out in proposed subpart E of 33 CFR 105 (§§ 105.500 through 105.550), that would impose clearer requirements on how a screening program should operate.

The proposed specific requirements of the TSP were minimal. Many of the requirements in subpart E are already contained in a terminal's existing TSP, as mandated by existing 33 CFR part 128, although these items are discussed in greater detail in the new subpart E. Additionally, the proposed subpart E included some new training and qualification requirements for screeners (such as familiarity with relevant portions of the TSP and FSP), requirements for screeners to participate in drills, and requirements for how screening equipment should be used if the screener chose to use it. In our analysis of cruise ship TSPs, we estimated that most, if not all, cruise ship terminals would already comply with the vast majority of the requirements in subpart E, and that the costs of compliance with the proposed rule would be largely limited to revising cruise ship terminal FSPs to meet the format requirements of subpart E. See the preliminary regulatory analysis (available in the docket under "Supporting Documents" at USCG-2006-23846-0029) for a more detailed discussion of the costs of the proposed rule.

Second, the Coast Guard proposed that cruise ship operators also meet certain new requirements in proposed § 104.295. Specifically, we proposed that cruise ship owners or operators be required to ensure that screening is performed in accordance with the screener qualification (new § 105.530), screener training (new § 105.535), and screening equipment (new § 105.545) provisions of Subpart E regardless of whether the screening is performed by a cruise ship terminal. Existing § 104.295 makes cruise ship owners and operators responsible for ensuring pre-embarkation screening, but does not refer to Subpart E. We note that the screening equipment regulations proposed in § 105.545 did not require the use of additional screening equipment, but only to regulate the way certain equipment would be used and maintained if the screener chose to employ it.

Third, the Coast Guard proposed to develop a Prohibited Items List (PIL) similar but not identical to that used by the Transportation Security

Administration (TSA) at airports, which would define certain items that could not be brought on board a cruise ship by passengers on their persons or in checked luggage. Proposed § 105.515 required this PIL be posted at each screening location. In the NPRM, we explained that prohibiting the items listed on the PIL was not intended to be a new requirement, but an interpretation of the existing requirement, located in 33 CFR 104.295(a) and 105.290(a), that cruise ship and cruise ship terminal operators "[s]creen all persons, baggage, and personal effects for dangerous substances and devices." Considering that the definition of "dangerous substances and devices" in 33 CFR 101.105 means "any material, substance, or item that reasonably has the potential to cause a transportation security incident [TSI]", we proposed to publish the PIL as an interpretive document indicating which items the Coast Guard believes are "dangerous substances and devices" at all times, while other items may or may not be considered such at the FSO's discretion. We noted that cruise ship operators were free to prohibit additional items on their vessels if they believed they were dangerous, or for any other reason, and noted that most cruise lines already advertised lists of prohibited items that are extremely similar to, if not more extensive than, the proposed PIL.

Finally, the Coast Guard proposed 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. We also proposed removing section 120.220, concerning the reporting of unlawful acts, as 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.

### B. Overview of the Final Rule

The final rule amends the maritime security regulations, found in title 33 of the Code of Federal Regulations (33 CFR) subchapter H (parts 101 through 105), relating to TSPs in existing FSPs at cruise ship terminals within the United States and its territories. The final rule builds upon existing facility security requirements in 33 CFR part 105, which implements the Maritime Transportation Security Act of 2002 (MTSA), Public Law 107-295, 116 Stat. 2064 (November 25, 2002), codified at 46 U.S.C. Chapter 701.

We note that this rule only addresses screening procedures for persons boarding the vessel and their baggage. This 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. Requirements for security measures for the delivery of vessel stores, bunkers, and cargo exist and are found in 33 CFR 104.275, 104.280, 105.265, and 105.270.

This final rule also makes changes to the list of prohibited items proposed in the NPRM. The Coast Guard announces in this final rule the availability of the revised PIL in the regulatory docket for this rulemaking and on the Coast Guard's website at <https://homeport.uscg.mil>.

This rule does not include regulations that may be required pursuant to the Cruise Vessel Security and Safety Act of 2010 (CVSSA), Public Law 111-207 (July 27, 2010) (See RIN 1625-AB91) (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.

### C. Summary of Costs and Benefits

We expect minimal cost impacts to industry and the public from this rulemaking since it incorporates current industry practices. We estimate that this rule will affect 137 MTSA-regulated facilities, 131 cruise ships, and 23 cruise line companies. While this rulemaking streamlines and clarifies the existing requirements regarding passenger screening, there will be a one-time administrative cost for the development of a terminal screening program and for updating the FSP for the prohibited items list. We estimate the one-time cost for these updates to be about \$158,660 (undiscounted).

### III. Basis and Purpose and Regulatory History

The Ports and Waterways Safety Act (PWSA) (33 U.S.C. 1221 *et seq.*), authorizes the Secretary of the department in which the Coast Guard is operating to take certain actions to advance port, harbor, and coastal facility security. The Secretary is authorized under 33 U.S.C. 1231 to

promulgate regulations to implement 33 U.S.C. chapter 26, including 33 U.S.C. 1226. The Secretary has delegated this authority to the Commandant of the Coast Guard (DHS Delegation 0170.1(70) and (71)).

On December 10, 2014, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Consolidated Cruise Ship Security Regulations” in the **Federal Register** (79 FR 73255). As described in more detail in the section of the NPRM entitled “Development of 33 CFR Subchapter H”, the purpose of this rule was to require cruise ship terminal Facility Security Plans (FSPs) to follow an organized format that includes more aspects of screening, and to develop a Prohibited Items List for use 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).

We provided an initial 3-month comment period for the proposed rule that was to close on March 10, 2015. However, on April 1, 2015, we published a Notice in the **Federal Register** (80 FR 17372) because we omitted from the docket the accompanying Regulatory Analysis. We reopened the comment period for a period of 60 days, until June 1, 2015 to allow commenters to read and comment on the detailed Regulatory Analysis if desired. We received 31 written submissions. Additionally, we held a public meeting at the Port Everglades Cruise Terminal in Hollywood, Florida on February 9, 2015, where 4 persons made oral statements.<sup>2</sup>

#### IV. Discussion of Comments and Changes

Comments generally fell into one of five overall categories, with the most prominent being questions related to requirements for small ports of call and the legal responsibilities of cruise ship terminals. We also received numerous comments related to screening requirements in the TSP, breaches of security, and the prohibited items list. In response to those comments, the Coast Guard has clarified and altered the final rule in a way that we believe will be less disruptive to the cruise ship experience, while still maintaining strong overall levels of security. In the subsections below, we summarize the

comments received and discuss our specific responses.

##### *A. Requirements for Cruise Ship Terminals vs. Ports of Call*

The Coast Guard received numerous comments regarding the imposition of screening requirements on ports of call. As described in the NPRM proposed definition, ports of call are interim destinations where cruise ship passengers disembark the ship for shore excursions. We note that some commenters used the term “port of call” to describe any interim destination by a cruise ship, while others seemed to limit the term to facilities where a cruise ship would be serviced by tenders in lieu of docking directly.<sup>3</sup> Unlike at cruise ship terminals, passengers do not generally carry much if any baggage at ports of call, leaving most belongings on the cruise ship. As far as security measures go, security screening is rarely carried out at ports of call, and cruise ships generally check passengers when they return to the cruise ship to ensure that they have not brought back prohibited items from their shore excursions. The security arrangements made between a cruise ship and a port of call are generally implemented through a Declaration of Security (DoS), which details the respective security arrangements between the parties.

While the NPRM proposals were not specifically targeted at ports of call, commenters were concerned that ports of call were included in the proposed definition of “cruise ship terminal[s]”, which was defined as “any portion of a facility that receives a cruise ship or its tenders to embark or disembark passengers or crew.” This definition, especially with the inclusion of the phrase “or its tenders,” meant that the scope of this rule would be vastly expanded beyond what is traditionally meant by a cruise ship facility, and would impose security screening requirements on owners and operators of ports of call that had previous delegated screening responsibilities to cruise ship operators.

The Coast Guard received a large number of comments from the operators

of ports of call questioning many aspects of the proposed regulations. Many of these facility operators were concerned that the proposed cruise ship terminal requirements were inappropriate for use at ports of call that do not receive cruise ships, and that implementing these requirements would have substantial costs far above and beyond the modest expenditures presented in the preliminary regulatory analysis. Furthermore, operators of these ports of call suggested that implementing the cruise ship terminal security procedures would be redundant, because passengers are already screened when they return to the cruise ship.

To generally summarize, commenters on this issue believed that the Coast Guard was proposing to require that all ports of call conduct screening of passengers for prohibited items at the facility before passengers could re-board cruise ships. This would run contrary to existing arrangements, where screening is done on board the ship by cruise vessel security personnel.<sup>4</sup> Such would also likely entail significant costs to many facility operators, who would have to build out facilities and hire personnel in order to conduct screening, which might be duplicative of screening conducted on the vessel. As an overall response, the Coast Guard notes that this interpretation was based on a misunderstanding of the proposal. We did not intend to imply that terminal screening requirements would be expanded to ports of call, and we did not intend that ports of call would have specific screening requirements imposed by this rule.

In response to these comments, the Coast Guard has made several changes that we hope improve the clarity of the regulatory text. We have updated the definitions of “cruise ship terminal” and “ports of call” to clearly delineate between the two, and have included a new section 105.292 to make clear the specific responsibilities on ports of call. We have also added a new paragraph (a)(2) to § 104.295 to remove confusion about screening requirements at ports of call, and to make clear that arrangements where screening is conducted onboard the vessel do not need to be duplicated at the facility. We believe that by making these changes, we have addressed the concerns raised by commenters on this issue.

Below, we address the specific comments received on this issue, as

<sup>3</sup> In the NPRM discussion, we stated “[d]uring visits at several cruise ship terminals, cruise ship embarkation ports, and ports of call, the Coast Guard witnessed various types of screening activities.” The discrete listings of “cruise ship terminals” and “ports of call” indicated that cruise ship terminals and ports of call were separate. In the next sentence, however, we stated, “[m]ost terminals use metal detectors and x-ray systems. . . and other terminals, normally ports of call, screen by hand,” thus seeming to indicate that ports of call are a subset of cruise ship terminals (79 FR 73259). This inadvertent inconsistency may have contributed to commenters’ misunderstanding the definition of ports of call.

<sup>4</sup> While we note that it would be legal for a screening to be conducted at the facility, rather than on the cruise ship, if specified in the DoS, we are not aware of any situations in which this is done.

<sup>2</sup> This meeting was announced in the **Federal Register** on January 21, 2015 (80 FR 2839).

well as the Coast Guard's responses to those issues. Given that many comments shared many themes as described above, we do not address each individual remark, but we do respond to specific comments and issues as they present nuance or unique questions on this topic.

The proposed rule was intended only to be applied to cruise ship terminals and not to ports of call. In the NPRM, we estimated the proposed rule would affect 23 cruise line companies, each of which maintains an FSP for each terminal that they use. Therefore, we stated the following: "[W]e 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." 79 FR 73266. The Preliminary Regulatory Analysis (available in the docket at USCG-2006-23846-0029), which accompanied the NPRM, provided an explanation of what facilities would be affected by the rule. As stated above, the Coast Guard estimated that 137 facilities would be affected by this rule (see the Regulatory Planning and Review section below), which was based on the number of MTSA-regulated waterfront facilities that receive cruise vessels according to the Coast Guard Marine Information for Safety and Law Enforcement (MISLE) database (as of February 2009).

However, based on the responses in comments, it appears that this analysis may not have been considered by commenters regarding potentially affected facilities due to the proposed definition of "cruise ship terminal." While the term "cruise ship terminal" is not explicitly defined under current regulations, if a cruise ship does not directly service a facility, but instead passengers are transported to and from the facility via small vessels known as tenders, then the Coast Guard does not consider the facility to be a "cruise ship terminal."<sup>5</sup> In the proposed rule, commenters noted that this class of facilities would be swept into the category of cruise ship terminals, thus making them subject to both the existing

and proposed requirements for cruise ship terminals under this rule.

A comment from the United States Virgin Islands (USVI) summed up this general concern, expressing strong concern that the proposed rule would eliminate the category of a "Port of Call" and force every destination at which a cruise ship calls to be considered a cruise ship terminal, "with requirements for an on-shore screening facility at every location where passengers embark or disembark, rather than allow the screening to be conducted as passengers board at and by the ship."<sup>6</sup> The commenter suggested that the proposed rule would require installation and operation of screening facilities on the docks or shore, which would be unnecessary due to the existing screening done as the passengers board the ship. The commenter also provided several descriptions of various small facilities that receive cruise ship tenders, describing how they could incur substantial costs if they were forced to construct costly screening operation centers. We believe that the changes made to the regulatory text address these concerns by making clear that these ports of call would not be subject to the requirements for cruise ship terminals.

Many commenters, including many represented by the Passenger Vessel Association (PVA), also urged the Coast Guard to reconsider whether facilities that only receive cruise ship tenders should be defined as "cruise ship terminals" and be made subject to the associated regulations in 33 CFR 105.290. The PVA offered several examples of small facilities that receive cruise ship tenders only that would be ill-suited to screen passengers for dangerous substances and devices on their premises. The PVA instead suggested that "[a] 'port of call' facility that simply receives cruise ship tenders, but not the cruise ship itself, should not be required to install and operate the screening equipment. That responsibility should lie with the cruise ship operator, and the rule should permit it to be performed at any location prior to boarding the cruise ship, not necessarily on the dock or pier."<sup>7</sup> <sup>8</sup>

Additional commenters raised PVA's concerns in the context of their specific situations. One commenter, a small seasonal company specializing in whale watch excursions, argued that "tender ports should not be considered 'cruise ship terminals,'" and that the current rules for tender ports provide effective security.<sup>9</sup> Noting that there is usually no building to store x-ray machines and other security apparatuses, the commenter states that the facility or ship generally provides simply a tent for passengers to stand under while checking IDs and bags. The commenter also noted that the cruise ships have x-ray machines and metal detectors at the boarding areas on board, thus indicating that imposing screening requirements on the facility would be both duplicative and expensive. Another commenter, from the city of Ketchikan, Alaska, suggested that there is no centralized location for screening in a facility that extends over a mile of downtown waterfront.<sup>10</sup>

Other commenters raised similar concerns, but did not limit themselves only to ports of call that serviced cruise ship tenders exclusively. The American Association of Port Authorities simply stated that many facilities that handle port of call visits from cruise ships have little or no infrastructure in place to conduct screenings, and that the rule must be rewritten so as to not impose significant economic burdens on those facilities.<sup>11</sup> The Cruise Line Agencies of Alaska stated that while there are only two cruise terminal facilities in the State, there are 25 ports of call, which have little or no accompanying shore-side terminal buildings.<sup>12</sup> This commenter noted that they currently conduct screening in coordination with the vessel moored at the facility in accordance with existing 33 CFR 105.290. The commenter argued that to "construct the type of facilities referenced" would cost between \$2 and \$3 million per facility, although they did not specify exactly what that would entail.<sup>13</sup> Another commenter, a port facility security officer in Alaska, echoed similar concerns, stating that at his port of call facility the docks are piers without structures on them, and that building such facilities would present an economic hardship.<sup>14</sup>

As indicated above, we have revised § 104.295 to make clear that arrangements where screening is

<sup>5</sup> We note that while there is no current definition of "cruise ship terminal," the existing definition of "passenger terminal," located in 33 CFR 120.110, is "any structure used for the assembling, processing, embarking, or disembarking of passengers or baggage for vessels subject to [part 120]. It includes piers, wharves, and similar structures to which a vessel may be secured; land and water under or in immediate proximity to these structures; buildings on or contiguous to these structures; and equipment and materials on or in these structures."

<sup>6</sup> United States Virgin Islands, Office of the Governor, comment, USCG-2006-23846-0022, p.2.

<sup>7</sup> Passenger Vessel Association comment, available in the docket at USCG-2006-23846-0025, p.3.

<sup>8</sup> We note that, contrary to the text of the comment, the proposed rule would not have required all cruise ship facilities to install and operate screening equipment, see proposed §§ 105.545 and 105.550.

<sup>9</sup> USCG-2006-23846-0016, p.1.

<sup>10</sup> USCG-2006-23846-0026.

<sup>11</sup> USCG-2006-23846-0013.

<sup>12</sup> USCG-2006-23846-0019.

<sup>13</sup> USCG-2006-23846-0019, p.2.

<sup>14</sup> USCG-2006-23846-0018.

conducted onboard the vessel do not need to be duplicated at the facility.<sup>15</sup> We note that with regard to the Alaskan ports of call referenced by these commenters, the facilities do not appear to be serviced by tenders, but the cruise ship docks at the facility. Thus, the mere retraction of the phrase “or its tenders” from the proposed definition of “cruise ship terminal” would not appear to alleviate their concerns. Thus, in the final rule text, while we are leaving the phrase “or its tenders” in the definition of cruise ship terminals, we have clarified in 104.295 that cruise ship terminal regulations do not apply to ports of call.

One commenter stated that proposed changes to the screening method in § 105.290(a) would impose significant costs on a small facility.<sup>16</sup> We believe that the commenter’s focus on the proposed language in § 105.290 is misplaced, and that this comment relates more appropriately to the proposed change in the definition of “cruise ship terminal.” Specifically, this commenter may not have been subject to any cruise ship terminal requirements previously (as it would have been considered a port of call), and had the proposed change been finalized, would have become subject to § 105.290—along with other cruise ship terminal requirements—as a result of the proposed change to the definition.

The specific change to § 105.290(a) proposed to add the phrase “in accordance with the requirements of subpart E of this part” to the existing requirement that facilities “Screen all persons, baggage, and personal effects for dangerous substances and devices.” The commenter stated that at Maritime Security (MARSEC) Level 1, they perform random checks on the docks, and that the new rule would require that 100% of all passengers and crew would have to be checked before entering the docks. The commenter stated that this new requirement would be both costly and redundant. The commenter also stated that “the new rule stipulates that 100% of all passengers and crew would be checked before putting a foot on our docks, before entering our facility [sic].”

We have several concerns with this comment. To begin, we note that both the existing and proposed regulatory text required that “all” persons be screened, so it appears that, if a facility was subject to the requirements of 33 CFR 105.290, random screenings would be a violation of both existing and

proposed regulations. The new regulations add no additional language that could be interpreted as requiring more passengers to be screened than under the existing language. The commenter also states that the rule would dramatically increase costs—and cites the cost of screening all of the passengers and crew as an increased cost of the proposed regulation. Again, both the existing and proposed regulations require that facilities subject to § 105.290 require screening of all passengers, so this rule is not imposing new costs. Finally, the commenter states that all passengers would need to be screened before entering the facility, but we note that neither § 105.290 nor the proposed rule would require this (no citation was given in the comment).

Several commenters were concerned about the definition of “cruise ship terminal” pertaining to screening locations. The commenters argued that the NPRM proposed several changes that, combined, could be construed to require the physical location of screening to be located only at certain points prior to boarding a cruise ship. Specifically, in § 104.295(a)(1) (“Additional Requirements—Cruise Ships”), we proposed to add the phrase “at the cruise ship terminal, or in the absence of a cruise ship terminal, immediately prior to embarking a cruise ship” to the requirement that the operator of a cruise ship ensure the screening of all persons, baggage, and personal effects for dangerous substances and devices.

The preamble discussion of § 104.295 did not discuss any requirements for the physical location of screening, and stated that it was only adding language requiring cruise ship owners or operators to ensure screening is performed in accordance with the updated screening requirements. The NPRM preamble also stated that the Coast Guard anticipated that they would continue to coordinate screening with the cruise ship terminals.

Notwithstanding the preamble discussion, several commenters expressed concern, related to the language in § 104.295(a)(1) and to the proposed definition of “cruise ship terminal,” that the changes in the proposed rule would force changes to the screening location that could increase costs, create duplication, and possibly harm security. One commenter stated that the requirement that passengers be screened at ports of call was duplicative, as they must also be screened upon boarding the cruise ship as specified in the ship’s VSP.<sup>17</sup> A

second commenter noted that the proposed language in § 104.295(a)(1), particularly the phrase “in the absence of a terminal,” conflicts with the new definition of “cruise ship terminal,” which would include any facility that receives cruise ships or their tenders.<sup>18</sup>

We agree with the overall assertion made by the commenters. Reading the proposed expansive definition of cruise ship terminal, along with the phrasing of § 104.295(a)(1) which, in the proposed text, would have required screening “at the cruise ship terminal, or in the absence of a terminal, immediately prior to embarking on a cruise ship”, would create duplicative screening requirements. We also agree that the proposed definition of “cruise ship terminal” would make the phrase “in the absence of a terminal” (in proposed § 104.295(a)(1)) a logical impossibility. Both of these items are addressed by the changes to the definition of cruise ship terminal and the changes to § 104.295(a)(1) in this final rule. As stated at the start of this section, the new definition of cruise ship terminal limits the definition to facilities to the point where the cruise vessel begins or ends its voyage, thus excluding ports of call, where security screening is conducted on the vessel (or at a facility, if detailed in a DoS) pursuant to the requirements in § 104.265(f)–(g), as detailed in its VSP. Similarly, the new text in § 104.295(a)(1) replaces the wording that would have required screening “at the cruise ship terminal, or in the absence of a terminal, immediately prior to embarking a cruise ship” with the phrase “prior to entering the sterile (or secure) portion of a cruise ship”. These changes allow the existing arrangement, where passengers returning to a cruise ship at a port of call, may be screened upon entering the vessel, to continue.

However, we disagree with an assertion by the second commenter that “docks” should not be considered “facilities.” This commenter stated that some cruise ships routinely use ports that simply have docks that are used for port calls, which should not be considered “terminals” or even “facilities”. The commenter also states that these ports do not have the room or infrastructure to support screening areas, but that the cruise ships visiting these ports do, and currently screen all passengers. We note that we would consider a dock where cruise ship passengers embark or disembark to be a “facility” based upon the definition of

<sup>15</sup> Or, in a hypothetical situation in which screening was performed at the facility, it would not need to be duplicated on the ship.

<sup>16</sup> USCG–2006–23846–0014, p.1–2.

<sup>17</sup> USCG–2006–23846–0014, p.2.

<sup>18</sup> USCG–2006–23846–0027, p.1.

“facility” in 33 CFR 101.105.<sup>19</sup> To be more specific regarding this particular dock, the Coast Guard would consider it a “port of call” based on the fact that cruise ships make a scheduled stop at this facility in the course of their voyage.

The Cruise Lines International Association (CLIA) expressed concern that the proposed rule’s requirement in § 104.295(a)(1), relating to the required screening location, was inappropriate for smaller terminals. CLIA noted that for many terminals, “screening is conducted onboard cruise ships in the absence of appropriate facilities at a terminal”, and noted that “some embarkation/disembarkation ports are not equipped to conduct screening prior to a passenger boarding.”<sup>20</sup> CLIA suggested several additions to the regulations that could increase the flexibility for cruise ship facilities in situations like this. One suggestion was to amend § 104.295 from “immediately prior to embarking a cruise ship” to “immediately prior to entering the sterile (or secure) portion of a cruise ship,” which would allow the mandated screening to take place on the vessel.

CLIA made two other suggestions related to part 105. The first was to add the phrase “where screening is performed at the cruise ship terminal” to the proposed requirement in § 105.500(a) (“Applicability”),<sup>21</sup> and the second suggestion was to amend § 105.550 (“Alternatives”) to allow for alternative screening locations in addition to alternative screening equipment. They stated that these changes to the regulations would allow cruise ship terminals to locate screening facilities where most appropriate, as well as have screening performed on the vessel if done in accordance with a DoS. However, we note that the requested changes to subpart E are rendered unnecessary by the changes to the definition of “cruise ship terminal” and the revision of the definition for “port of call,” along with the new text in §§ 104.295 and 105.292.

CLIA also expressed concern that the security-related familiarization for screeners, in § 105.535, may be a burden because the expectation that screeners

are aware of historic and current threats to the industry may be unrealistic, especially without an authoritative source pointing to those threats. In response to this, we note that the particular requirements in § 104.295, which would require the vessel to screen “in accordance with the qualification, training, and equipment requirements of §§ 105.530, 105.535, and 105.545,” would be unlikely to significantly impact training operations. The requirements referenced consist of basic training and qualification requirements, and § 105.545 only mandates that screening equipment, if used, must be used in accordance with general maintenance and signage requirements. With regard to familiarization, we would interpret it to mean familiarity with what items are prohibited, and common means in which they may be hidden on a person. We expect that all security screeners are given this training, which is why we have not considered it to be an added burden in this final rule.

Additionally, one commenter stated that the proposed regulations would go beyond the International Maritime Organization’s International Ship and Port Facility Security Code requirements,<sup>22</sup> and that foreign-flagged cruise ships are not required to comply with these additional vessel security regulations. The commenter argued that some cruise ships, particularly foreign-flagged ships, may not have the room or capability to screen at the levels described in the proposed rule. Thus, the commenter argued, the liability to perform the necessary screening would by default fall on the facility, with ports of call being affected far more than cruise ship terminals. We believe that by clarifying the particular responsibilities of ports of call in new § 105.292, in contrast to the requirements for cruise ship terminals, we have made clear that ports of call are free to continue screening operations in conjunction with vessels. As a result, these foreign-flagged cruise vessels will only be required to meet the limited requirements in §§ 105.530, 105.535, and 105.545 of subpart E, which we believe they already do. The same commenters pointed out that several provisions of the proposed rule, particularly the definition of “cruise ship terminal,” but also proposed 33 CFR 104.295, had the effect of regulatory changes that were not anticipated or desired by the Coast Guard. As stated in our preamble and economic analysis, the intent of this rulemaking action is to provide more

detailed regulatory requirements for cruise ship screening operations and the associated TSP than are currently provided in parts 120 and 128, as well as to include the requirements for a PIL in the regulations. We do not believe that commenters took issue with what was the original intent of the NPRM, but rather the unintended changes based on the wording of the proposed regulatory text.

In summary, based on the comments received, this final rule contains several changes from the proposed rule pertaining to requirements for cruise ship terminals and ports of call. The paragraphs below describes those changes in detail.

First, to alleviate the confusion expressed by many commenters, we are adding a definition of “cruise ship terminal” that reflects the common understanding of the difference between a “terminal” and a “port of call.” Cruise ship terminals are where passengers embark or disembark at the beginning and end of the voyage, while ports of call are intermediate stops during the voyage. The requirements of subpart E primarily apply to cruise ship terminals, while ports of call are simply subject to the existing requirements that the screening and other security arrangements be coordinated with the vessels. We are also modifying the definition of “port of call” by adding the phrase “or its tenders” to the existing definition, and adding a specific regulatory requirement (located in new § 105.292) to ensure cruise vessels screen all persons, baggage, and personal effects for dangerous substances and devices prior to entering the sterile (or secure) portion of a cruise ship. The primary change to the regulations with regard to ports of call, unchanged from the proposed rule, will be the requirement that the PIL be used and displayed during the screening process.

Additionally, we are amending the proposed language in § 104.295 to remove the screening location requirement from the regulations. We agree with commenters that this language would cause problems for facilities where screening is performed on a cruise ship, and it was not our intent to impose a requirement for a redundant screening procedure. Instead, we are incorporating in new § 104.295(a)(2) a version of the existing language from 33 CFR 120 which allowed the vessel owner or operator to work with the owner or operator of a port of call to ensure that all passengers were screened. We believe that the addition of this language will make clear that the existing arrangements

<sup>19</sup> Facility means any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the U.S. and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation.

<sup>20</sup> Cruise Lines International Association comment, USCG–2006–23846–0023, p.2.

<sup>21</sup> Thus, § 105.500(a) would read, “The owner or operator of a cruise ship terminal must comply with this subpart when receiving a cruise ship or tenders from cruise ships where screening is performed at the cruise ship terminal.”

<sup>22</sup> USCG–2006–28615–0019, p.2.

between ports of call and cruise ships, in which screening is conducted upon re-boarding the cruise ship, remains an acceptable means of compliance with this part.

We believe that these changes are responsive to the comments received above and better reflect the goals of the Coast Guard in this rulemaking. With these regulations in place, we are accomplishing three things. First, we are improving and standardizing screening procedures at cruise ship terminals, where the bulk of baggage is examined, to ensure that items that pose a risk of causing a TSI are prevented from being brought onto the vessel at those points. Second, we are clarifying through the use of the PIL which items must be prohibited, and ensuring that this information is disseminated to passengers and crew, not just at terminals, but also at ports of call and on vessels. Finally, we are clarifying the requirements for specific aspects of screening that Coast Guard believes are vital, including procedures, training, and reporting, as opposed to the more general requirements of the existing parts 120 and 128, to provide a minimum baseline requirement that ensures cruise ships remain a safe and secure environment.

#### *B. Legal Responsibility for Terminal Screening Program*

Generally, commenters were concerned that the rule could make cruise ship terminal owners responsible for terminal screening operations, and therefore liable for civil monetary penalties, even if those operations were conducted by an independent cruise ship terminal operator or by the cruise ship operator. Commenters stated that in many cases responsibilities for passenger screening were delegated from the cruise ship terminal to another party, often the cruise ship operator. Cruise ship terminal operators argued that the proposed regulations, if not clarified, could impose responsibility for security and screening on the owner or operator of the cruise ship terminal. One commenter, a Port Authority, noted that § 104.295(a)(1) holds the “owner or operator of the vessel” responsible for ensuring that the screening takes place. The commenter suggested that the Coast Guard include statements that the current system of assignment of screening responsibility is acceptable and may continue, and that the terminal owner or operator is not responsible for screening operations unless specifically noted in security plans.

The American Association of Port Authorities (AAPA) made several comments that related to the

responsibility for ensuring screening practices are carried out properly. They stated their concern that the proposed regulations, as written, “do not account for the transfer of responsibility for security [from the terminal operator to the cruise ship operator] on cruise days,” and that the language “would impose full responsibility for security and screening on the owner and operator of a cruise ship terminal.” The AAPA requested that the regulations be clarified or revised to impose the enhanced security obligations on the entity exercising security duties at the cruise ship terminal on cruise days, and that imposing obligations on the terminal owner who does not control security functions is redundant and would impose a significant financial burden.

Similarly, another commenter stated that the language in § 105.510, “Screening responsibilities of the owner or operator,” is not flexible enough. The commenter suggested that enough flexibility must be written into the final rule to allow terminal owners to enter into agreements with terminal operators that define responsibility for compliance with these requirements.

Several other commenters expressed concern regarding the perceived change in responsibility. One commenter argued that there were unintended consequences in transferring the responsibility for screening of passengers from the cruise lines, which are willing and capable, to smaller jurisdictions that are not equipped to do so. Another commenter stated that the proposed rule needs clarification on the transfer of responsibility for security and screening on cruise days, noting that the operator of the terminal may switch control on those days. One commenter, who operates a cruise facility in Miami, described such a mode of operation. Another operator of a cruise ship terminal requested that the regulation language allow terminal “owners” to enter into agreements with terminal “operators” that define responsibilities for compliance with the screening requirements.

While we do not believe that the language in the proposed regulation would have imposed additional responsibilities on terminal owners or operators, the Coast Guard nonetheless would like to respond to these concerns and clarify this in the final rule. In the NPRM, the Coast Guard did not discuss any intent to redistribute legal responsibility. Under both the existing regulations and the proposed regulatory text, the cruise ship terminal operator would be responsible for ensuring that terminal screening operations are

carried out in a proper manner. Under the existing regulatory text, one acceptable way for the owner or the operator of a cruise ship terminal to accomplish this is through coordination with the cruise ship operator and delegation of screening operations to that entity. The existing language in 33 CFR part 128, “Security of Passenger Terminals” (which also applies to cruise ship terminals), addresses this matter. Existing § 128.200(b) provides that “you” must work with the operator of each passenger vessel subject to 33 CFR part 120, to provide security for the passengers, the terminal, and the vessel. Those terminals need not duplicate any provisions fulfilled by the vessel unless directed to by the Captain of the Port. Additionally, when a provision is fulfilled by a vessel, the applicable section of the Terminal Security Plan must refer to that fact.

We emphasize that “you” is defined in § 128.110 as “the owner or operator of a passenger terminal.” We also note there is a reciprocal passage in § 120.200(b) pertaining to the legal responsibilities of passenger vessels.

Thus, the existing regulations place the requirements for the TSP on the owner or operator of a passenger terminal, and the proposed regulatory text referred to by the commenters (in §§ 105.500, 105.505, and 105.515) uses functionally identical language (“the owner or operator of a cruise ship terminal”). Based on the existing language in 33 CFR 128.200(b), the owner or operator of a terminal could meet its TSP requirements by having certain provisions fulfilled by a vessel, assuming the TSP referred to that fact. We believe the commenters’ concerns resulted from the removal of the sections, in parts 120 and 128, which explicitly stated that the responsibilities of vessels and terminals could be handled through cooperative means if specified in the respective security plans. In response to the comments received, we are incorporating that language into the text of parts 104 and 105 (see §§ 104.295(a)(2) and 105.292(a)), to acknowledge that the current system remains unchanged.

One commenter stated that the way the security screening process works at his port is that the facility signs a DoS agreement with the ship, and the DoS identifies who is responsible for security throughout the process. The commenter stated that “the facility people would usually agree to be responsible for the facilities [sic] security and the ship crew are responsible for their own ship.”<sup>23</sup> We

<sup>23</sup> USCG–2006–23846–0016, p.3.

acknowledge that such a system is still permissible under the final rule, and believe that incorporating the language contained in parts 120 and 128 into the text of parts 104 and 105 (specifically section 104.295(a)(2) and section 105.295(a)) clarifies this type of arrangement. Another commenter noted that several items from proposed subpart E (§ 105.505(c)(2) and (c)(6), and § 105.510(c)), appear to indicate that specific screening responsibilities can be delegated in the DoS, as is currently permitted. We note that this is correct.

The AAPA laid out several scenarios detailing how security responsibilities may be shared between the facility and cruise ship at different types of ports. We believe that all of them are addressed by the changes in this final rule.

In the first scenario, the cruise line leases the entire terminal facility from the port authority. The cruise line will have its own FSP for the leased terminal, and will have the legal responsibility to screen for dangerous substances and devices for the terminal and the vessel.

In the second scenario, the AAPA states that a port authority may operate the cruise ship terminal, and would itself handle the security of the facility. Both of these situations would be acceptable means of complying with §§ 104.295 and 105.290, assuming that the division of responsibilities was laid out in a DoS and detailed in the relevant security plans. We note that in the first scenario, as the facility owner, a terminal operator could be liable if security measures were not maintained, and if it was discovered that the terminal operator did not properly ensure compliance by working with a cruise ship operator as required in § 105.290(a). We note that language, adapted from § 128.200(b), has been added to subsection 105.290(a) to improve clarity.

In the third scenario, a port authority may outsource the operation and security for cruise operations to a third party, who would control the FSP. In this case, the AAPA argues that the port authority could be exposed to civil penalties under the proposed rule. We agree that in this scenario a port authority, as the owner of a cruise ship terminal, could be held responsible for inadequate security procedures if they did not properly ensure that the third party, given control of the terminal by the port authority, conducted screening operations pursuant to subpart E. In such a scenario, the third party, as the operator of a cruise ship terminal, could

also face penalties.<sup>24</sup> We believe that it is proper that both owners and operators be held to these standards to ensure that screening procedures are carried out properly.

In the fourth scenario, cruise ships conduct screening and maintain legal liability. Under the regulations specific to ports of call that we have added in § 105.292, which include the adapted language from existing § 128.200(b), ports of call could continue to rely on cruise ships to conduct screening. A port of call could be subject to legal liability if it did not complete a DoS and ensure that the cruise ship operator was conducting the required screening. We believe this is an appropriate incentive to ensure that screening is provided.

### *C. Screening Procedures and Requirements*

The Coast Guard received a number of comments relating to the specific screening requirements laid out in proposed subpart E. These comments contained questions related to the training and certification of screeners, the use of screening equipment, requirements in cases of breaches of security, and other items. In this section, we address the specific issues relating to the technical and operational aspects of the proposed screening requirements. While many comments addressed both technical questions as well as issues relating to the operational capacities of small ports of call, we note that the issue with ports of call has been addressed extensively in section A above.

In the NPRM, we laid out the specific proposed screening requirements in subpart E of part 105, “Facility Security: Cruise Ship Terminals.” This subpart contained a requirement to develop a TSP as part of the FSP, as well as detailing specific operational, training and qualification, and equipment requirements. We received numerous comments requesting clarification and amendments of these parts, which are addressed below.

One commenter asked questions relating to § 105.530, “Qualifications of Screeners,” in which the Coast Guard had proposed that screeners must have a combination of education and experience deemed sufficient by the Facility Security Officer (FSO) in order to perform the duties of the position, and that screeners are capable of using all methods and equipment needed to perform their duties. The commenter

<sup>24</sup> In deciding against whom to assess civil monetary penalties under MTTA, the Coast Guard attempts to assign the penalties to the party whose negligence or malfeasance caused the violation.

took issue with these requirements, and suggested that we require proof of certification to operate each type of screening equipment. The commenter suggested that such a system could be similar to that required in the Private Charter Standard Security Program, which is a particular privately-run program for security compliance.

While we have considered a more specific requirement, such as that used by the Private Charter Standard Security Program, we have decided to use a more general, and thus more flexible, standard for this rule. Because this rule does not impose specific equipment or methodologies for screening, writing certification requirements into regulation could severely restrict the options used at ports. Given the wide differences in the way cruise ship terminals are used, set up, and operated, we believe that giving the FSO the discretion and responsibility for determining which qualifications are necessary to adequately perform the required duties is the best course of action.

The commenter also questioned whether the training requirements for screeners, laid out in proposed § 105.535, would be demonstrated through self-certification or from a certified provider. The commenter suggested that, much as FSOs must have a certification pursuant to section 821 (“Port Security Training and Certification”) of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281, October 15, 2010), screeners should also be required to be certified by a provider rather than self-certify, arguing that self-certification fails to establish a minimum level of required training and competency.

We note that nothing in § 105.210 requires certification, either self-certification or third-party certification, and furthermore we note that the items in § 105.535 are facility-specific. As to whether third-party certification could be a viable alternative to the current method, we believe that it would be impractical for a certification provider to develop and provide certifications relating to facility-specific issues. We continue to believe that the familiarization requirements set forth in § 105.535 are best documented in the TSP, as set forth in § 105.505(c)(5) (the documentation requirement for procedures to comply with § 105.535 regarding training of screeners).

Several commenters also raised the issue of the discovery of prohibited items during the screening process. In § 105.515(d), we proposed the following text: “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.” The commenter argued that the discovery of prohibited items during the screening process must not be treated as a breach of security, but rather treated in accordance with local law enforcement practices, which may include such remedies as confiscation or disposal of the prohibited item. Only if the item is discovered in the secure area of the cruise ship terminal should it be treated as a breach of security pursuant to § 101.305(b). We agree with the commenter, and in fact this was our intention. Therefore, we are modifying the text of this section to clarify that fact by adding a sentence noting that a prohibited item discovered during security screening is not considered a breach of security.

Additionally, one commenter requested clarification that an occurrence of a reportable breach of security is not, in itself, a basis for a civil or criminal penalty under § 101.415 as a breach of security is distinct from a violation of the requirements applicable to cruise ship terminal owners and operators. We agree with this analysis, although we also note that reporting a breach of security does not negate a violation of the cruise ship terminal’s security requirements, if they were not properly carried out.

Another commenter also expressed confusion regarding the language in § 105.515(d). This commenter noted that some prohibited items, such as bleach, may be properly located in the ship’s stores, which is a secure area. They stated that this may be confusing for facility security personnel and Coast Guard officers, “especially if a facility is not designed with space for separate areas.”<sup>25</sup> We assume that this last phrase means that there is a single space for ship’s stores and screened passenger baggage. In such a case, we hope that the cruise ship operator is able to distinguish between items in the ship’s stores and items brought on board by passengers. If unable to, such an operator may wish to create separation between the two storage areas. As noted above, items contained in ship’s stores are not subject to the restrictions in this section, which only apply to items brought on board by passengers. If an item properly brought on board as part of the ship’s stores is “discovered” in a secure area, it would not constitute a breach of security. We note the proposed language makes this

distinction clear, as it reads “facility personnel must report the discovery of a prohibited item *introduced by violating security measures*” as a breach of security (emphasis added). Items brought on board by legal means, such as ship’s stores, do not fall under this category.

One commenter requested clarification that the screening processes are not required upon entrance to the cruise ship terminal, but rather that screening measures should be in place only when passengers attempt to gain access to a secure area of the terminal. Another commenter suggested that the Coast Guard would require screening processes be in place at the time a person or baggage enters the cruise ship terminal. The former interpretation is correct, and we believe the regulatory text is already clear on this point. Note that the only requirement regarding the location of screening is in § 105.525(a)(1), which reads, “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 the secure areas of the terminal designated for screened persons and carry-on items.” Similarly, the complementary requirement in § 104.295(a)(1) only requires that screening take place prior to entering the sterile or secure portion of the cruise ship.

One commenter stated that screening equipment that has been determined to meet the TSA’s Qualified Product List (QPL) would be appropriate for use under § 105.545, which sets basic standards for screening equipment. The commenter also suggested that products on the QPL could be optimized for the cruise ship industry. We agree that products on the QPL have undergone significant testing and refinement, but we disagree with the suggestion that we refer to the QPL directly because in this rule we are attempting to maintain as much flexibility as possible. Therefore, we have limited the requirements to compliance with 49 CFR 1544.211 (TSA requirements for use of X-ray systems), as well as FDA safety requirements.

#### *D. Prohibited Items List (PIL)*

Commenters raised a variety of concerns regarding the PIL, including the posting of the PIL, clarification of specific terms on the PIL, requests to add or delete items from the PIL, and application of the list to persons other than passengers. These concerns are addressed below.

One commenter suggested that there should be an exemption from the prohibition on dangerous substances and devices for crew members bringing

items necessary for the performance of their duties. These could include props, such as toy guns, if used in a performance, or other such items. We do not believe such an exemption for crew members is warranted. We are concerned that a crew member may breach security with a prohibited item under the false pretense that an item was needed for his or her official duties. We note that if certain items are needed on board, such as props for a show, they can be brought in as ship’s stores.

One commenter took issue with including the PIL in the FSP, but not the VSP. The commenter argued that by not including the PIL as a requirement in the VSP, there is inconsistency in the application of prohibited items. They also argued that including the PIL in the VSP would ensure application at foreign ports of call and allow for consistent communication regarding prohibited items. We disagree. Even if the cruise ship conducts the screening, they are still required to conduct it in accordance with the requirements in § 104.295, which prohibit the introduction of “dangerous substances and devices.” The PIL is a document that helps to clarify what those items are. Therefore, because vessel operators must screen for items on the PIL, it is not necessary to include the PIL in the VSP.

One commenter argued that the Coast Guard may not be the correct entity to generate the PIL, as the limitations placed on its resources make it inadequate to compile a modern list of dangerous substances. We disagree and note that the Coast Guard expends considerable resources in considering materials, scenarios, and techniques that could be used to cause security incidents. Finally, we note that members of the public are welcome to contact the Coast Guard at any time with suggestions for how the PIL can be improved.

One commenter requested more specificity for the PIL. Noting that the list includes such terms as “limited quantities” and “quantities appropriate for personal use,” the commenter suggested that those terms needed additional specificity in order to take the subjectivity out of screening for passengers and cruise terminal operators, as well as Coast Guard inspectors.

These terms were used in the PIL in two locations. We stated that aerosols are prohibited, but excluded “items for personal care or toiletries in limited quantities.” Similarly, we stated that lighter fluids are prohibited, but provided an exception for “liquefied gas (e.g. Bic®-type) or absorbed liquid (e.g.

<sup>25</sup> USCG–2006–23846–0019, p.3.

Zippo®-type) lighters in quantities appropriate for personal use.”

Upon consideration, and given the nature of the PIL, we believe that removing aerosols and lighter fluids from the PIL is appropriate. By removing these items from the PIL, we are not saying that lighter fluid and aerosols are not “dangerous substances” in any amount. Rather, we are giving the responsible security officials the discretion and responsibility for determining if allowing these items in “limited quantities” or “quantities appropriate for personal use” is the best course of action considering the particular nature of the vessel and duration of the cruise. If the security officer believes that a particular quantity of aerosols or lighter fluid constitutes a dangerous amount, then they should prohibit that item as they would any other dangerous substance or device in accordance with § 104.295 and § 105.290.

For similar reasons involving a lack of specificity, we are removing “realistic replicas” of guns and firearms. Again, we leave it to the judgment of a security officer as to whether a replica is realistic enough to constitute a threat.

One commenter argued that the PIL would not be particularly effective, and that “any current inspector is already looking for those items.” We agree with the idea that an inspector would likely be looking for the items listed on the PIL, and would like to use this opportunity to explain again the purpose of the PIL. Regulations already exist prohibiting “dangerous substances and devices” from being brought on board cruise ships, and screening procedures are already designed to search for them. The PIL is a Coast Guard interpretation of certain items that we believe are always “dangerous substances and devices,” and must be intercepted at screening. Publication of this list by the Coast Guard will reduce uncertainty in the industry and the public about what is prohibited and what is not, especially as many cruise lines maintain varying lists about what is prohibited, and will help cruise ship facilities better implement the screening requirement in 33 CFR 105.290(a). We fully expect cruise ship and terminal operators to use discretion in screening, and to prohibit other items that they consider dangerous, either based on the nature of the item, the quantity, or other characteristics. For that reason, the PIL is not intended to be a comprehensive list of all items prohibited on a cruise ship. Furthermore, we note that the PIL does not prohibit screening for other items that, while not necessarily dangerous from a security standpoint,

may be prohibited for other reasons, such as electrical appliances or alcoholic beverages.

The commenter also suggested that the posting of the PIL on docks, the incorporation into the FSP, and the use of the PIL in training would not be particularly onerous. We agree.

One commenter suggested that the proposed regulations do not address items that can be brought on board at a foreign port of call. We disagree, and note that a cruise ship must still comply with the regulations in § 104.295 before passengers enter the sterile (or secure) portion of a cruise ship. During that screening, which incorporates relevant portions of subpart E, items brought on board at the port of call will be subject to the requirements of this rule.

One commenter protested the inclusion of “self-defense sprays” on the PIL. The commenter made several arguments as to why such items should be permitted on vessels. First, the commenter noted that unlike an aircraft, on cruise ships there are medical facilities for treatment and open air areas on the ship in case of accidental release. In response, we note that the rationale for an item being included on the PIL is not that they may accidentally injure a passenger, but rather that they can be used to effect a TSI. Therefore we do not agree with the commenter on this point. Second, the comment suggested that bear spray is often used by passengers in Alaska for use on shore excursions, and argued that the restricted areas on the ship could protect critical operations in the event of a bear spray release. While we realize that this is possible, we note that a TSI may not necessarily involve breaching critical ship areas like the bridge or engine room, but could involve simply the injury or deaths of large numbers of passengers trapped in an enclosed area, which is one reason that cruise ships are protected more than other areas, such as buildings.

However, we note that there is a solution for the commenter’s need for passengers to possess items like bear spray. The PIL is a rule that relates to screening of passenger items, but does not affect items brought on board as vessel stores or provisions. In the bear spray example, passengers could relinquish their bear spray to vessel employees prior to boarding, who could store the sprays in a secure area of the vessel. The sprays could then be returned to the passengers prior to their shore excursions. In this way, the fact that the item is on the PIL does not fully exclude it from use. Such a system of having items stored in a secure area can be used if a passenger wishes to

transport or use on expeditions other items on the PIL, including firearms. We reiterate that this rule is simply designed to prohibit dangerous items from being accessible to passengers on the vessel, not to limit the activities of person on shore-side excursions.

Finally, the Coast Guard is modifying the language in § 105.515(a) so that it is phrased as a requirement on owners and operators of cruise ship terminals, rather than simply a policy statement that the Coast Guard will issue and maintain the PIL. We note that this has no substantive effect, but is simply a stylistic change, as owners and operators of cruise ship terminals are required by § 105.515(c) to display the PIL at screening locations and integrate the PIL into the DoS.

We have included a copy of the revised Prohibited Items List in the docket of this rulemaking, and we also note that it is available on the Coast Guard’s website at <https://homeport.uscg.mil>. As stated in the NPRM, if there are future revisions to the PIL, the Coast Guard will publish an interpretive rule in the **Federal Register** to alert the public of any such change. Additionally, the Coast Guard will, as stated in the NPRM, 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.

#### *E. Regulatory Impact Analysis and Regulatory Flexibility Analysis*

The Coast Guard received comments from one commenter on the Regulatory Analysis. The commenter stated that the cost analyses did not reflect the costs that would be incurred by existing facilities that receive cruise ship tenders if they would have to assume responsibility for screening. The commenter also noted that the Regulatory Flexibility Analysis for the NPRM did not include the costs for these facilities, which are likely owned by small businesses and governments.

In response to these and other similar comments, for the Final Rule, the Coast Guard modified two definitions in § 101.105 and amended the proposed language to remove the screening location requirement in § 104.295. These changes, discussed in detail in section A, above, clarify that existing facilities that receive cruise ship tenders may continue the current practice of coordinating screening and security arrangements with cruise vessels. The cost concerns expressed in the comments on the Regulatory Analysis are alleviated by the regulatory language

changes, the language in the Final Rule clarifies the current industry practice.

*F. Other Comments*

The Coast Guard received comments on a wide variety of other matters, only some of which directly related to the substance of the proposed rule. We address these comments briefly in this section.

Several commenters expressed dissatisfaction with the proposed rule in general, and argued that screening for dangerous substances and devices would be burdensome and/or ineffective. We note that screening of passengers and their baggage is already required, and this rule merely adds more detail to those requirements. As made clear in our regulatory analysis, we do not believe that the additional detail provided in this regulation will substantially alter the time and/or burden that this screening requires for either passengers or cruise ship terminal operators.

One commenter requested that there be exceptions to the items prohibited, such as a medical condition or special circumstances. We have addressed this issue above, and note that otherwise-prohibited items can be brought onto a ship via ship’s stores, and stored in a controlled environment for authorized use. The commenter also suggested that the Coast Guard should take into consideration the vast differences in size between cruise ships and aircraft, and allow cruise ships to formulate their own screening methods. We note that this rule relates to screening methods that were developed specifically for cruise ships, and is scalable for cruise ships that need to screen thousands of passengers in a short time.

One commenter argued that bringing guns on board a cruise ship would improve the personal safety of passengers, if one passenger were to be assaulted by another. We note that this rule is focused on the risks of a TSI, not personal safety, and the risks to all passengers caused by allowing uncontrolled firearms onto cruise ships are substantial. We note that the issue of personal safety with regard to firearms is outside the scope of this rule.

One commenter agreed with the Coast Guard that while wholesale adoption of TSA standards for X-ray and explosives

detective systems was not necessary, there were certain advantages to using machinery on the TSA’s QPL. These advantages included established system maturity, mature logistics and maintenance organizations, and certification programs. We agree that operators may find items that are certified to TSA standards useful, but they are not required. The commenter also noted that such machines can be used to scan vessel stores, although we note that screening of stores is outside the scope of this rulemaking.

One commenter recommended that the Coast Guard adopt a “turnkey approach” to security inspections of all sorts where a single company is tasked with providing equipment, personnel, training, and the security infrastructure necessary to meet specified requirements. While it is certainly within the scope of cruise ship terminal operators and cruise ship operators to work with a single company to meet all of the applicable requirements, it is by no means required. The security requirements finalized in this rule are designed to allow flexibility, especially given the varying configurations and operational models for cruise ships, terminals, and ports of call.

The Coast Guard received comments from one commenter on the Regulatory Analysis. The commenter stated that the cost analyses did not reflect the costs that would be incurred by existing facilities that receive cruise ship tenders if they would have to assume responsibility for screening. The commenter also noted that the Regulatory Flexibility Analysis for the NPRM did not include the costs to these facilities, which are likely owned by small businesses and governments.

In response to the comments, for the Final Rule, the Coast Guard has modified several definitions and amended the proposed language to remove the screening location requirement in § 104.295. These changes clarify that existing facilities that receive cruise ship tenders may continue the current practice of coordinating screening and security arrangements with cruise vessels. The cost concerns expressed in the comments on the Regulatory Analysis are alleviated by the regulatory language changes. Therefore, we are adopting as

final the regulatory assessment for the NPRM, with minor administrative edits to account for the revised text of the final rule. In addition, a full Regulatory Assessment (RA) is available in the docket.

**V. Regulatory Analyses**

We developed this final rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on these statutes and 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. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum “Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017). A regulatory analysis (RA) follows.

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

TABLE 1—SUMMARY OF AFFECTED POPULATION, COSTS IN 2016\$ AND BENEFITS

Category	Estimate
Affected population .....	137 MTSA-regulated facilities; 23 cruise line companies.
Development of TSP .....	\$156,397

TABLE 1—SUMMARY OF AFFECTED POPULATION, COSTS IN 2016\$ AND BENEFITS—Continued

Category	Estimate
Updating FSP .....	\$9,775
Total Cost * .....	\$166,171
Qualitative Benefits	
Terminal Screening Program .....	Greater clarity and efficiency due to removal of redundancy in regulations. The TSP improves industry accountability and provides 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 in unsecured areas of the cruise ship 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 final rule will amend regulations on cruise ship terminal security. The regulations will provide requirements for the screening of persons intending to board a cruise ship, as well as their baggage and personal effects. In this rulemaking, we intend to issue and maintain a

Prohibited Items List of dangerous substances or devices (e.g., firearms and ammunition, flammable liquids and explosives, dangerous chemicals). The PIL is based on similar items currently prohibited by industry, and is intended to be a minimum requirement; vessel owner and operators would be free to

prohibit items not listed on it. We anticipate that the PIL described in the preamble will be cost neutral to the industry. We also intend to eliminate redundancies in the regulations that govern the security of cruise ship terminals. Table 2 summarizes changes from the NPRM to the Final Rule.

TABLE 2—CHANGES FROM THE NPRM TO THE FINAL RULE

Section	NPRM	Final rule	Costs
Cruise ship terminal .....	Referred to as a point from which passengers or crew commence or terminate a voyage.	Referred to as a point for initial embarkation.	Clarification: No cost.
104.295(1): Screening .....	Required that screening should be done at the cruise ship terminal.	The requirement for the final rule, now state that screen should be done prior to entering the sterile (or secure) portion of a cruise ship.	Clarification: No Cost.
104.295(2): Screening .....	N/A .....	Vessel owner or operator may work with cruise ship terminal of port of call to meet the requirement of this section.	Current industry practice: No Cost.
105.292: Cruise ship ports of call ..	N/A .....	Owner or operator of cruise ship port of call must work with the operator of each cruise ship to minimize duplication of any provision fulfilled by the vessel.	Current industry practice: No Cost.
105.500(c)(2): General .....	Terminal owners and operators must comply with an approved TSP.	Both terminal and cruise ship owners and operators must comply with an approved TSP.	Clarification: No Cost.

This final rule will allow owners and operators of cruise ships and cruise ship terminals the choice of their own screening methods and equipment and establish security measures tailored to their own operations. This final rule will 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):

- 33 CFR part 105 Subpart E Screening equipment standards;
- § 105.255(a) and § 128.200(a)(1) and § 128(a)(2) currently require screening for dangerous substances and devices. In accordance with those regulations, industry already screens baggage and persons.

- § 105.530 Qualifications of screeners; and
  - § 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.
  - § 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 this 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 will 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 screening personnel are familiar with item (a)—historic and current threats against the cruise ship industry.

We estimate the final rule will affect 23 cruise line companies. Each cruise line maintains an FSP for each terminal that they utilize. Based on information from the Coast Guard MISLE database, we estimate that the final rule will require that FSPs at 137 MTSA-regulated facilities be updated. The final rule will require these facilities to add TSP chapters to their existing FSPs. This rule will 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 3—SUMMARY OF FIRST-YEAR COSTS BY REQUIREMENT

Requirement	Costs (undiscounted; rounded)	Description
Terminal Screening Program (TSP) .....	\$156,397	Cost to create and add the TSP chapter to the FSPs. Cost to update the Prohibited Items List in FSPs.
Update the FSP .....	9,775	
Total .....	166,171	First-year undiscounted costs.

We estimate the cost of this rule to industry to be about \$166,171 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 PIL will be incorporated into the FSP (33 CFR 105.415). We do not anticipate any recurring annual cost as a result of this rule, as the annual cost to update the

FSP is not expected to change due to the inclusion of the TSP and PIL.

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 rulemaking. Table 4 provides a brief summary of benefits of key provisions.

TABLE 4—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> <li>• The TSP improves industry accountability and provides for a more systematic approach to monitor facility procedures.</li> <li>• Details those items that are prohibited from unsecured areas in all cruise terminals and vessels.</li> <li>• Provides a safer environment by prohibiting potentially dangerous items across the entire industry.</li> </ul>
Prohibited Items List .....	

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 transportation security incident (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 \$9.6 million. A value of a statistical life of \$9.6 million is equivalent to a value of \$9.60 as a

measure of the public’s willingness to pay to reduce the risk of a fatality by one in a million, \$0.96 to reduce a one in 10 million risk, and \$0.096 to reduce a one in 100 million risk.<sup>26</sup> As 8.9

<sup>26</sup> “Guidance on Treatment of the Economic Value of a Statistical Life in U.S.,” Department of Transportation Analysis” <https://cms.dot.gov/sites/dot.gov/files/docs/2016%20Revised%20>

million passengers embark onto cruise ships in the U.S. each year,<sup>27</sup> very small reductions in risk can result in a fairly large aggregate willingness to pay for that risk reduction. A VSL of \$9.6 million indicates that 8.9 million cruise ship passengers that embark from the U.S. would collectively be willing to pay approximately \$8.544 million to reduce the risk of a fatality by one in 10 million (8.90 million passenger × \$0.96). 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 final rule are approximately \$22,111 at 7 percent; thus, the final rule would have to prevent one fatality every 434 years for the rule to reach a break-even point where costs equal benefits (\$9.6 million value of a statistical life/\$22,111 average annual cost of rule = 434).

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 rule will 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 fewer than 50,000 people. In the NPRM the Coast Guard certified that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard received no comments related to its discussion and analysis of impacts on small entities during the public comment period. We have received no additional information or data that will alter our determination, discussion and analysis of the NPRM.

We expect entities affected by the rule will 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 Table of Small Business Size Standards,<sup>28</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 \$20.5 million in annual revenue.

For this rule, we reviewed recent company size and ownership data from the Coast Guard MISLE database, and public business revenue and size data. We found that of the 23 entities that own or operate cruise ship will be affected by this rulemaking, 11 are foreign entities. All 23 entities exceed the Small Business Administration small business standards for small businesses along with the 137 MTSA facilities.

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 affirms its certification under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

#### C. 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 this rule so that they could better evaluate its effects on them and participate in the rulemaking. 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 rule calls 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 this final rule, plan holders will submit amended security plans within 180 days of promulgation of the rule and update them annually. This requirement will 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 will 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 FSP, will need to update said plan to include the list of prohibited items as detailed in this 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 will improve existing and future FSPs for cruise terminals, since they currently do not separate this important information.

*Proposed Use of Information:* The Coast Guard will 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 number of respondents is 10,158 for vessels, 5,234 for facilities, and 56 for Outer

<sup>27</sup> Source: Cruise Lines International Association, Inc. (CLIA), 2009 U.S. Economic Impact Study, Table ES–2, Number of U.S., Embarkations. . .

<sup>28</sup> Source: <http://www.cruising.org/about-the-industry/press-room/press-releases/pr/clia-releases-report-on-industry-s-2009-contributions>.

<sup>28</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.

Continental Shelf (OCS) facilities. Of these 5,234 facilities, 137 facilities that receive cruise ships that will be required to modify their existing FSPs to account for the TSP chapter.

*Frequency of Response:* Cruise lines will only need to write a TSP chapter once before inserting it into the associated FSP. This will 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 will be approximately 16 hours. The estimated burden to update the FSP will 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 will be 2,192 hours (137 TSPs × 16 hours per TSP) in the first year. For the 137 facilities, the total burden will be 137 hours (137 FSPs × 1 hour per FSP). The current burden for this collection of information is 1,125,171. The new burden, as a result of this rulemaking, is (1,125,171 + 2,192 + 137) or 1,127,500 hours 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 U.S.C. 3507(d)), we have submitted a copy of this final rule to the OMB for its review of the collection of information.

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 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 final rule builds on the existing port security requirements found in 33 CFR part 105 by establishing detailed 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, are amended by this final rule. 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 invited 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 the NPRM. In accordance with Executive Order 13132, the Coast Guard is providing 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 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.

The Coast Guard interacted with State and local governmental authorities primarily through the notice and comment procedure. The Coast Guard received comments from the following governmental entities: The Port Authority of New York and New Jersey, the City of Rockland, ME, the Massachusetts Port Authority, the U.S. Virgin Islands, Port Miami, and the Broward County Florida Port Everglades Department. The commenters addressed a range of issues of significance, which while addressed in more detail above in section IV, are summarized below.

Many port authorities were concerned regarding the issue of liability in the event of security breaches or failures to comply with applicable terminal screening regulations. Several port authorities described contractual relationships with cruise ship operators or third parties that assigned screening responsibility to those parties, and were concerned that the new regulations could hold them liable as terminal owners if the operating party failed to comply with regulations. This transfer of liability was not the intent of the rule, and the Coast Guard was responsive to these entities' request by adding language to sections 104.295 and 105.292 specifying that, if detailed in a DoS, terminal owners could meet their regulatory requirements by assigning screening responsibility to a cruise ship operator or other responsible party. We believe this change fully addresses this concern.

Other issues raised by local or State authorities concerned procedural requirements stemming from the identification of prohibited items discovered in secure areas. These issues, which were also raised by non-governmental entities, were addressed by including language in the text of the regulation at section 105.515(d) that more clearly laid out the steps to be taken in the event of a discovery of a prohibited item at various stages of the screening process.

Several governmental entities, most notably the U.S. Virgin Islands, were highly concerned about the expansion of the regulation to "ports of call." In response to these concerns, the Coast Guard clarified in section IV.A that the enhanced screening requirements applied only to terminals, which are a separate class of facilities. This clarifies that the smaller ports of call can continue to conduct screening requirements under their current systems.

Finally, we received a request from one large port authority to add more specific training and qualification criteria for cruise ship screeners. In the final rule, we declined to adopt this suggestion, because we believe that such a "one size fits all" approach would be impracticable and burdensome considering the wide range of cruise ship terminals and ports of call. We note that while not required, larger terminals are free to subject their screening personnel to more stringent training requirements than required by these regulations.

#### *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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### G. Taking of Private Property

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

#### J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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 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 because it is not a “significant regulatory action” under Executive Order 12866 and 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 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, 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 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 rule will 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 TSA during the development of this rule.

#### M. Environment

We have analyzed this 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 (42 U.S.C. 4321–4370f), and have determined that it is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble. This rule is categorically excluded under paragraphs 34(a), regulations which are editorial or procedural; 34(c), regulations concerning the training, qualifying, licensing, and disciplining or 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).

#### 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 amends 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.

■ 2. In § 101.105, add, in alphabetical order, definitions for the terms “carry-on item”, “checked baggage”, “cruise ship terminal”, “cruise ship voyage”, “disembark”, “embark”, “explosive detection system”, “high seas”, “port of call”, “screener”, and “terminal screening program or 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 for initial embarkation or final disembarkation.

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 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 or its tenders.

\* \* \* \* \*

Screeners 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 security plan (VSP) or facility security plan (FSP).

\* \* \* \* \*

Terminal screening program or 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 paragraphs (a)(1) and (2) to read as follows:

§ 104.295 Additional requirements—cruise ships.

(a) \* \* \*

(1) Screen all persons, baggage, and personal effects for dangerous substances and devices prior to entering the sterile or secure portion of a cruise ship in accordance with the qualification, training, and equipment requirements of §§ 105.530, 105.535, and 105.545 of this subchapter.

(2) The vessel owner or operator may work with the owner or operator of each cruise ship terminal or port of call at which that vessel embarks or disembarks passengers to meet the requirements of this section. The owner or operator of a cruise ship need not duplicate any provisions fulfilled by the cruise ship terminal or port of call. When a provision is fulfilled by the cruise ship terminal or port of call, the applicable section of the Vessel Security Plan must refer to that fact.

\* \* \* \* \*

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. The owner or operator of a cruise ship terminal need not duplicate any provisions fulfilled by the vessel. When a provision is fulfilled by a vessel, the applicable section of the terminal security program (TSP) must refer to that fact.

(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. Add § 105.292 to read as follows:

§ 105.292 Additional requirements—cruise ship ports of call.

(a) The owner or operator of a cruise ship port of call must work with the operator of each cruise ship subject to part 104 of this chapter to ensure that passengers are screened for dangerous substances and devices in accordance with the qualification, training, and equipment requirements of §§ 105.530, 105.535, and 105.545. The port of call need not duplicate any provisions fulfilled by the vessel. When a provision is fulfilled by a vessel, the applicable section of the TSP must refer to that fact.

(b) The owner or operator of a cruise ship port of call must display the Prohibited Items List at each screening location.

9. In § 105.405, revise paragraphs (a)(17) and (18), reserve paragraphs (a)(19) and (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)–(20) [Reserved]

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

\* \* \* \* \*

10. Add 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 (PIL). 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 Alternative 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 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 October 15, 2018, cruise ship terminal owners or operators must submit, for each terminal, a terminal screening program (TSP) that conforms with the requirements in § 105.505 to the cognizant COTP for review and approval.

(2) No later than April 18, 2019, 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 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 (FSO) must—

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

(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 (PIL) publicly available. The PIL and copies thereof are not SSI.

(c) *Content.* The TSP must include—

(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 PIL;

(4) The procedures used to comply with the requirements of § 105.530 regarding qualifications of screeners;

(5) The procedures used to comply with the requirements of § 105.535 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 regarding the screening of individuals, their personal effects, and baggage, including screening at increased Maritime Security (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;

(9) The procedures used to comply with the requirements of § 105.550 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 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, the owner or operator of a cruise ship terminal must ensure that—

(a) A 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 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 (Maritime Security) level is increased, additional screening measures are employed in accordance with an approved TSP.

### § 105.515 Prohibited Items List (PIL).

(a) The owner or operator of a cruise ship terminal must obtain from the Coast Guard and maintain a Prohibited Items List (PIL) consisting of dangerous substances and devices for purposes of § 105.290(a). 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 PIL 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 DoS.

(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. A prohibited item discovered during security screening is not considered to be a breach of security, and should be treated in accordance with local law enforcement practices.

### § 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 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), which sets forth additional requirements for cruise ship terminals at all MARSEC 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 (VSO) 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, screening personnel at cruise ship terminals must—

(a) Have a combination of education and experience that the 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, 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 TSP and FSP;

(c) The purpose and contents of the cruise ship terminal PIL;

(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 MARSEC 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.

#### § 105.545 Screening equipment.

The following screening equipment may be used, provided it is specifically documented in an approved 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, 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.

(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, the equipment and methods must be described in detail in an approved TSP.

#### PART 120—[REMOVED AND RESERVED]

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

#### PART 128—[REMOVED AND RESERVED]

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

Dated: March 8, 2018.

**Jennifer F. Williams,**

*Captain, U.S. Coast Guard, Director of Inspections and Compliance.*

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