

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Parts 120 and 128****[CGD 91-012]****RIN 2115-AD75****Security for Passenger Vessels and Passenger Terminals****AGENCY:** Coast Guard, DOT.**ACTION:** Interim Rule with request for comments.

SUMMARY: The Coast Guard is implementing an interim rule for the security of passenger vessels and passenger terminals. This rule is intended to deter, or mitigate the results of, terrorism and other unlawful acts against passenger vessels and passenger terminals. It should reduce the likelihood of such acts and should reduce the damage to property and injury to persons, if such acts occur.

DATES: This rule is effective on October 16, 1996. Comments must be received on or before September 16, 1996. The Director of the Federal Register approves as of October 16, 1996 the incorporation by reference of certain publications listed in the rule.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA, 3406) (CGD 91-012), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attn: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room 1312, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: CDR Dennis J. Haise, Office of Marine Safety, Security, and Environmental Protection (G-MOS-2), Room 1208, (202) 267-6451, between 7:00 a.m. and

3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-012) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard held 3 public meetings after a notice of proposed rulemaking (NPRM) entitled "Security for Passenger Vessels and Passenger Terminals" was published (See 59 FR 14290; March 25, 1994) and plans no further public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Regulatory Information

On March 25, 1994, the Coast Guard published (59 FR 14290) a notice of proposed rulemaking (NPRM) entitled "Security for Passenger Vessels and Passenger Terminals".

Background and Purpose

The vulnerability to terrorism of passenger vessels and associated passenger terminals has been a major national and international concern since the death of a U.S. citizen during the hijacking of the ACHILLE LAURO in 1985. To address this threat, the President signed into law the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399; 100 Stat. 889), Title IX of which constitutes the International Maritime and Port Security Act. That Act amended the Ports and Waterways Safety Act (33 U.S.C. 1221), and provided the Coast Guard authority to "carry out or require measures, including inspections, port

and harbor patrols, the establishment of security and safety zones, and the development of contingency plans and procedures, to prevent or respond to acts of terrorism" (§ 906).

The International Maritime Organization (IMO) adopted and published "Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships", also in 1986. Those measures, which are guidelines, apply to passenger ships engaged on international voyages of 24 hours or more and to the port facilities that serve them. The Coast Guard published a notice in the Federal Register listing these measures as "guidelines" and encouraging voluntary compliance (52 FR 11587; April 9, 1987).

Since that time, the Coast Guard has relied upon voluntary compliance with the IMO measures, and with its own guidelines based on the IMO measures, to ensure that passenger vessels and passenger terminals were prepared to prevent, and respond to, acts of terrorism. Coast Guard encouragement to implement these measures has brought about varying degrees of acceptance. Initially, the response was promising as many passenger vessels and associated passenger terminals operating in the U.S. began implementing them. However, the degree of implementation has been inconsistent. Progress toward total implementation has slowed significantly over the last 3 years. Some passenger vessels and passenger terminals still do not maintain and administer appropriate security measures. The Coast Guard has determined that voluntary compliance has not produced the industry-wide level of security necessary to ensure that acts of terrorism are deterred, or responded to, in the best possible manner.

Terrorism has not decreased. In fact, the Coast Guard has seen an increase in domestic terrorism along with a consistent, if not increasing, threat of international terrorism. For these reasons, the Secretary of the Department of Transportation (DOT) has asked all agencies of the Department to reassess their security procedures and standards. Consequently, the Coast Guard determined that implementing a rule to ensure that passenger vessels and passenger terminals are prepared to handle terrorist threats or actions was necessary.

The decision to move from an NPRM to this interim rule is based on the fact that domestic terrorism, as well as international terrorism, seems to be increasing. Passenger vessels and passenger terminals are vulnerable and,

therefore, must begin developing plans to reduce the risk of terrorism against them.

Discussion of Comments and Changes

The Coast Guard received 115 letters of comment and held 3 public meetings. Thirty-three comments, and several speakers at the public hearings, expressed their concern that the NPRM was too stringent and inflexible. Many also felt that the proposed requirements were over and above those recommended in the IMO measures that the Coast Guard had encouraged the industry to adopt. As a result of the many comments received, the Coast Guard has reconsidered its position on the scope of the rule and has decided to align the rule as closely as possible with the IMO measures by incorporating the requirements of Circular 443 of the IMO's Maritime Safety Committee (MSC) into the rule (See §§ 120.220 and 120.230; 128.220 and 128.230). The Coast Guard has determined that Circular 443 contains the basic elements necessary to develop a sound security program, and will give industry the flexibility that so many felt were missing from the NPRM.

Another issue consistently raised by the comments was the perception that the current threat does not merit the degree of security specified in the NPRM. The Coast Guard agrees with this general observation; however, it believes that the need for increased security continues. Although the threat level today may be low, the possibility remains that it may escalate at any time. National-security assessments over the past several years attest that terrorism continues throughout the world. The United States is not exempt from terrorism as evidenced by the bombing in 1995 at Oklahoma City. There is little question that the threat of terrorism from both domestic and international terrorists is, in fact, real.

Vulnerability has also been an important consideration in determining the need for this rule. In general, the cruise industry lacks identifiable security standards. Further, this industry is such that its operations are generally vulnerable to terrorist activities. The intent of this rule is to require passenger vessels and passenger terminals to evaluate their vulnerability, develop methods to reduce it, and establish plans to respond to increased threat. The promulgation of security standards will increase security, and should reduce vulnerability and the risk of a terrorist incident.

The Coast Guard understands, however, that the need for maximum security does not exist at all times and

has amended the rule to define levels of threat for which security plans must be developed. It has added three definitions to § 120.110, for *low*, *medium*, and *high threats*. A *low threat* is one when the possibility of an unlawful act against a vessel or terminal exists, and indications are that a general worldwide threat of terrorism exists. This is the threat level for which security measures must be maintained for an indefinite period of time; in other words, these are the normal, everyday security measures. A *medium threat* is one where the threat of an unlawful act against a vessel or terminal is possible, and where intelligence indicates that terrorist activities are likely within a specific area, against a class of vessel, or against a type of terminal. This threat level indicates that a particular segment of the industry is in jeopardy but that no specific target has been identified. A *high threat* is one where intelligence indicates that terrorist activities have targeted a specific vessel or terminal and that the threat of an unlawful act against a vessel or terminal is probable if not imminent. The Coast Guard envisions that *medium* and *high threats* would not last long and would focus on only a small portion of the industry at any one time.

Distribution and notification of threat levels will be the responsibility of the Coast Guard. The Commandant (G-MRO) will be responsible for ensuring that Captains of the Port (COTPs) advise passenger vessels and passenger terminals within their areas of responsibility of a higher or lower threat level. The vessel or terminal can and should increase its security whenever suspect activities are noted by their own personnel or other reliable sources such as the Federal Bureau of Investigations (FBI) or local law-enforcement authorities. Increases in threat level initiated by the vessel, terminal, or other sources shall be reported by the affected vessel or terminal to the local COTP as soon as practicable. With these amendments, the Coast Guard believes, the rule will allow owners and operators to continue to operate as they normally do; however, they will now have plans in place to increase security when advised by the Coast Guard or other competent authority.

Thirteen comments expressed concerns for the amount of equipment that would have to be purchased to comply with the proposed rule. With the incorporation of the MSC Circular 443 requirements into the rule, equipment is no longer specified or required. Owners or operators must use the annexes within the Circular to

determine how best to protect their passengers.

Eighteen comments addressed what was felt as the Coast Guard's lack of consideration for smaller ports, or those ports at which passengers disembark for only short periods of time. The Coast Guard disagrees. If a port does not embark or disembark a large number of people with a substantial amount of baggage, then the degree of security decreases. In some instances, the only security necessary may be the screening of carry-on items; this may best be handled by the vessel. The rule specifically states that the operator of the terminal need not duplicate any provisions fulfilled by the operator of the vessel, or vice versa, unless directed by the Commandant. Each terminal will have to develop a plan addressing normal operations as well as operations during higher threats. This plan will be based on the amount and type of activity occurring within that port. It will be examined by the cognizant COTP, who has a working relationship with the port. The COTP's evaluation of the plan will depend upon the location of the port and upon the ability of the owner or operator of the vessel or terminal to meet the measures required for all three threat levels.

Nine comments expressed concern that the rule would be pointless unless enforced equally worldwide. The Coast Guard does not have the authority to issue worldwide regulations and must work through IMO to help set international standards. The IMO measures for preventing acts against passenger vessels and passenger terminals were published to provide an international security standard. However, they are not mandatory, and, for that reason, the Coast Guard conducts periodic security assessments of foreign ports to determine compliance with them. The Coast Guard has the responsibility to request that the Department of Transportation ask the Department of State to issue an advisory warning against travel to a particular port if it determines that adequate security is not being provided.

Nine comments addressed the release of security plans on requests under the Freedom of Information Act (FOIA) (5 U.S.C. 552). All of the comments expressed the feeling that releasing these documents would seriously jeopardize the overall security of the vessel or terminal. The Coast Guard fully agrees with this feeling and has submitted a legislative proposal to specifically exempt these plans from requests under FOIA.

The State of Alaska asked that its ferries be exempt from this rule. Its basis

for this request is that these ferries make up part of the Alaska Marine Highway System, and are a vital link between Alaska and the lower 48 States. It advises that people often use the system out of necessity, not choice, and that voyages transit the high seas for only very short periods of time between the U.S. and Canada. The intent of the Coast Guard has never been to apply this rule to this type of vessel. For that reason, §§ 120.100 and 128.100 of the rule have been changed to exempt all ferries and terminals when servicing ferries.

Five comments stated that the applicability of proposed §§ 120.100 and 128.100 was not clear and that confusion exists whether a covered vessel must be on the high seas for 24 hours during a voyage or whether the entire voyage must be 24 hours with part of that voyage being on the high seas. The sections apply to those vessels making voyages of more than 24 hours, any part of which is on the high seas; they do not dictate that the vessel needs to be on the high seas for 24 hours. They have been changed to more clearly define the applicability of the rule relative to voyages on the high seas.

Nine comments addressed the definition of *operator* in proposed § 120.110. Some comments stated that the definition was overly broad and that they were concerned that it could be construed to include port authorities and general terminal operators. The salient phrase in the definition was—and still is—“maintains operational control over a passenger vessel or passenger terminal.” Providing pier space does not, in and of itself, constitute operational control. The contract negotiated between the terminal and the vessel is a key indicator of operational control. For a terminal, the definition of *operator* must be coupled with the definition of *passenger terminal*, which emphasizes the use of the terminal for the assembling, processing, embarking, or disembarking of passengers or baggage. The Coast Guard considers the definition of *operator*, as written, clear and not in need of change.

Eight comments addressed restricted areas described in proposed § 120.210. The comments urged that too many locations were specified and that extensive installation of equipment would be necessary to comply with the rule. The incorporation of MSC Circular 443 eliminated this concern and allows owners or operators to use the guidance in the annexes of the Circular to determine which areas they intend to designate as “restricted.”

Five comments addressed the responsibilities of the security officer in

proposed §§ 120.220(b) and 128.220(b), and the requirement for that officer to do all the items mentioned. The Coast Guard did not intend for that officer to personally do all items specified: it is perfectly acceptable to use the services of other security professionals to accomplish these tasks. However, that officer should have a working knowledge of security procedures to ensure that the jobs are properly accomplished. To more clearly express this point, the rule has been reorganized and these requirements have been moved to §§ 120.120 and 128.120.

Six comments addressed proposed §§ 120.240 and 128.240, coordination with terminal and vessel security, respectively. The major concern was that the Coast Guard did not designate specific responsibilities for the vessel and the terminal. The intent of these sections was to develop a relationship between the owner or operator of the vessel and the owner or operator of the terminal by requiring consultations about security between them. Of course each vessel and each terminal will have differences in capabilities. Coordination between the two will take these into consideration. Further, the cost of security may be reduced as duplication of effort will be avoided. Cooperation and coordination between the vessel and the terminal should prove beneficial to each. The Coast Guard has removed the specific sections imposing the requirement of coordination between the vessel and the terminal; however, the requirement still exists within §§ 120.200(b) and 128.200(b) of the interim rule.

Four comments addressed plans and their distribution in proposed §§ 120.300 and 128.300. These comments urged that the plans be available only to those with the operational need to know. The Coast Guard agrees, and has amended these sections.

Six comments addressed the survey contents required by proposed §§ 120.310 and 128.310. The comments focused on the amount of information required and the potential size of the document. Annex 1 of MSC Circular 443, which now contains the guidance for security surveys, is not as stringent or specific as the guidance anticipated by the NPRM. These surveys are the most critical part of plan development. Each owner or operator should make them as thorough as possible.

Seven comments addressed the requirements for identification in proposed §§ 120.350 and 128.350. These requirements, too, have been removed by the incorporation of MSC Circular 443; Annex 2 to the Circular must now

be used for guidance concerning identification.

Sixteen comments addressed the screening of baggage, stores, and cargo under proposed §§ 120.360 and 128.360. They dealt primarily with the amount of time it will take to screen all the baggage, stores, and cargo. The comments stated that all the screening would cause undue delays in boardings and departures of vessels. Some suggested that the process itself was a waste of time. Others supported it, and offered alternatives to help speed it. These sections, too, have been removed from this interim rule. This now directs owners and operators to use the guidance in Annex 2 of MSC Circular 443. The amount of screening to be done should be determined with reference to the three threat levels defined by this rule.

Nine comments addressed the lighting requirements in proposed § 120.410. They concerned primarily the impracticability of the lighting distance specified. This section has been removed. For guidance on security lighting, owners and operators must now turn to Annex 2 of MSC Circular 443.

Twenty comments addressed the requirement for barriers in proposed § 128.435. Most expressed the concern that fences with barbed wire were not aesthetically pleasing, were impracticable in some areas, and would detract from the cruising experience. This section has been removed. For guidance on barriers, owners and operators must now turn to Annex 2 of MSC Circular 443. Permanent barriers are no longer required; however, barriers must still achieve the purpose proclaimed in the Circular.

Beyond those changes made in response to comments on the NPRM, the Coast Guard also has made the following changes on its own initiative.

Proposed §§ 120.200 and 128.200 have been amended to more clearly define requirements for planning based on threat. In particular, §§ 120.200 and 128.200 as published today introduce planning based on three levels of threat.

Proposed §§ 120.300 and 128.300 have been amended to require planning for low, medium, and high threats and to restrict distribution of the plan to only those persons with the operational need to know. The latter change will help reduce the risk of the plan's falling into the hands of a terrorist.

Proposed §§ 120.305 and 128.305 have been retitled and reworded, removing the requirement of a letter of adequacy of inserting procedures by which the Coast Guard will examine plans for compliance with this rule.

These changes will reduce the amount of time necessary to review plans for compliance with this rule and will reduce the amount of paperwork generated by and for the Coast Guard. Sections 120.300(a) and 128.300(a) require that an "appropriate" plan be developed and maintained. In this context, the examining authority, either the NMC or the COTP, will be reviewing plans to insure that security measures are commensurate with each threat level. The examining authorities will evaluate the circumstances unique to the vessel or terminal, and determine whether adequate security measures for the three threat levels are addressed. Factors to be considered will include such things as security guards, screening of baggage and stores, barriers, and personnel access control.

Proposed § 120.307 has been amended by removing the requirement for Commandant's approval of amendments to plans and by inserting procedures under which the Coast Guard will examine the amendments for compliance with this rule. Again, time for review and paperwork will be reduced because of this amendment.

Proposed § 128.307 has been amended by removing the requirement for COTPs' approval of amendments to plans and by inserting procedures under which the Coast Guard will examine the amendments to ensure compliance with this rule. This amendment will speed review of documents by the Coast Guard and will eliminate paperwork.

Proposed §§ 120.220 and 128.220 have been redesignated as §§ 120.210 and 128.210, respectively.

Proposed § 120.250 has been redesignated as § 120.220.

Proposed § 128.250 has been redesignated as § 128.220.

Proposed §§ 128.210; 120.240 and 128.240; 120.370 and 128.370; 120.420 and 128.420; 120.430 and 128.430; and 120.440 and 128.440 have given way to the guidance contained in the annexes to MSC Circular 443.

Sections 120.309 and 128.309 have been added to provide the right to appeal the action or decision of the NMC or the COTP.

Incorporation by Reference

The following material would be incorporated by reference in §§ 120.220, 120.300, 128.220 and 128.300:

International Maritime Organization (IMO), MSC Circular 443, "Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships" dated September 26, 1986. Copies of the material are available for inspection where indicated under **ADDRESSES**. Copies of the material are available from

the source listed in §§ 120.120 and 128.120.

The Coast Guard has submitted this material to the Director of the Federal Register for approval of the incorporation by reference.

Assessment

This proposal is a significant regulatory action under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget under that Order. It requires an assessment of potential cost and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). An Assessment has been prepared and is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Assessment follows.

The Coast Guard anticipates that approximately 120 passenger vessels and 53 passenger terminals would be affected. Of the vessels, approximately 117 are cruise vessels, each carrying in excess of 100 passengers and operating out of U.S. ports. Of the terminals, all serve these cruise vessels. There may be up to 40 more vessels and 20 more terminals that would be subject to this rule only on occasion. There are approximately 4 million passengers a year that would be subject to, and benefit from, the proposed security measures.

The Coast Guard estimates initial implementing costs at \$546,368. It estimates annual operating costs at \$28,000. If the number of passengers remains constant at approximately 4 million per year, the additional cost to consumers will be negligible.

The potential exists for the loss of many lives and significant property damage from a single act of terrorism against a passenger vessel. The principal benefit gained by this action will be a higher level of preparedness and the ability to better respond to such an act. Additionally, these measures will act as a deterrent to terrorist actions. Although it is difficult to calculate the number of deaths and injuries, and dollar value of property damage, lawsuits, and lost business that this action will prevent, the Coast Guard asserts that the benefits will far outweigh the costs of this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently

owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under § 3 of the Small Business Act (15 U.S.C. 632).

This rule will have a minimal impact on small entities, but most passenger vessels making voyages on the high seas of 24 hours or more, and most terminals associated with them, are neither owned nor operated by small entities. Security requirements for small vessels and terminals will be less complex and less expensive to implement than for large vessels and terminals. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this rule will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this rule will economically affect your business.

Paperwork Reduction Act of 1995

This interim rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The title, description, and respondent description of the information collections are shown below and an estimate of the annual recordkeeping and periodic reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Secretary for Passenger Vessels and Passenger Terminals.

Description: This interim rule implements security standards for passenger vessels and terminals. It requires a comprehensive security program that includes requirements for a security plan and the reporting of unlawful acts or related activities. These requirements are contained in §§ 120.220, 120.300, 120.307, 128.220, 128.300, and 128.307.

Need for Information: Protect the public from injury, prevent damage to property, and avoid economic losses.

Proposed use of Information: Regulatory compliance, program management, and program evaluation.

Description of Respondents: The owner of any covered vessel or terminal. These include: businesses or other for profit organizations, Federal, State and Local governments.

Frequency of Response: Once for each covered vessel and terminal; then, on occasion of amendment to plan. Reporting of unlawful acts or related activities is also required when they occur.

Estimated Annual Burden: 1,649 hours. This figure is the total annual burden hours for the estimated 120 covered vessels and the 53 covered terminals. It includes the hours necessary for initial plan development and annual maintenance, and the time necessary to develop reports of unlawful acts, and is amortized over a 25-year period.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Coast Guard has submitted a copy of this interim rule to OMB for its review of these information collection requirements.

In addition, the Coast Guard solicits public comment on the information collection requirements in order to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Individuals and organizations may submit comments on the information collection requirements by September 16, 1996, and should direct them to the Executive Secretary, Marine Safety Council (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., rm 10235, 725 17th St. NW., Washington, DC 20503, Attention: Desk Officer for DOT.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB Control number. The Coast Guard will publish a notice in the Federal Register prior to the effective date of this interim rule of OMB's decisions to approve, modify or disapprove the information collection requirements.

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rulemaking and concluded that, under paragraph 2.B.2.e.(34) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rulemaking implements statutory authority of the Coast Guard in maritime safety. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects

33 CFR Part 120

Security, Passenger vessels, Incorporation by reference, Reporting and recordkeeping requirements.

33 CFR Part 128

Security, Waterfront facilities, Incorporation by reference, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend Chapter I of title 33, Code of Federal Regulations, as follows:

1. Subchapter K, consisting of part 120, is added to read as follows:

SUBCHAPTER K—SECURITY OF VESSELS

PART 120—SECURITY OF PASSENGER VESSELS

Subpart A—General

Sec.

- 120.100 Applicability.
- 120.110 Definitions.
- 120.120 Incorporation by reference.

Subpart B—Security Program

- 120.200 General.
- 120.210 Vessel security officer.
- 120.220 Reporting of unlawful acts and related activities.

Subpart C—Plans and Procedures for Vessel Security.

- 120.300 Plan: General.
- 120.305 Plan: Procedure for examination.
- 120.307 Plan: Amendment.
- 120.309 Right of Appeal.

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

Subpart A—General

§ 120.100 Applicability.

This part applies to all passenger vessels over 100 gross tons, carrying

more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the United States or its territories. It does not apply to ferries that hold Coast Guard Certificates of Inspection endorsed for "Lakes, Bays, and Sounds", and that transit international waters for only short periods of time, on frequent schedules.

§ 120.110 Definitions.

As used in this part:

Captain of the Port (COTP) means the Coast Guard officer designated by the Commandant to command a Captain of the Port Zone as described in Part 3 of this chapter, or an authorized representative.

Commandant means the Commandant of the U.S. Coast Guard, or an authorized representative.

High seas means all waters that are neither territorial seas nor internal waters of the United States or of any foreign country as defined in Part 2, Subpart 2.05, of this chapter.

High threat means that the threat of an unlawful act against a vessel or terminal is probable or imminent and that intelligence indicates that terrorists have chosen specific targets.

Low threat means that the threat of an unlawful act against a vessel or terminal is, though possible, not likely.

Medium threat means that the threat of an unlawful act against a vessel or terminal is possible and that intelligence indicates that terrorists are likely to be active within a specific area, or against a type of vessel or terminal.

Operator means the person, company, or governmental agency, or the representative of a company or governmental agency, that maintains operational control over a passenger vessel or passenger terminal.

Passenger terminal means any structure used for the assembling, processing, embarking, or disembarking of passengers or baggage for vessels subject to this part. 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.

Unlawful act means an act that is a felony under U.S. federal law, under the laws of the States where the vessel is located, or under the laws of the country in which the vessel is registered.

Voyage means the passenger vessel'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 are disembarked and terminate their voyage.

§ 120.120 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and must make the material available to the public. All approved material may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC, and at the U.S. Coast Guard, (G-MES), 2100 Second Street SW., Washington, DC. Copies may be obtained from IMO, 4 Albert Embankment, London SE1 7SR.

(b) The materials approved for incorporation by reference in this part and the sections affected are:

International Maritime Organization (IMO)

4 Albert Embankment, London SE1 7SR
MSC Circular 443, Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships
September 26, 1986—120.220, 120.300

Subpart B—Security Program

§ 120.200 General.

(a) Each operator of a vessel to which this part applies shall for each such of its vessels implement a program that—

(1) Provides for the safety and security of persons and property traveling aboard the vessel against unlawful acts;

(2) Prevents or deters the carriage aboard the vessel of any prohibited weapon, incendiary, or explosive, on or about any person or within his or her personal articles or baggage, and the carriage of any prohibited weapon, incendiary, or explosive, in stowed baggage, cargo, or stores;

(3) Prevents or deters unauthorized access to the vessel and to restricted areas aboard the vessel;

(4) Provides means to meet the requirements for low, medium, and high threats, through increased security measures to be implemented on advice by the Commandant or COTP of an increased threat to the vessel or persons on the vessel;

(5) Designates, by name, a security officer for the vessel;

(6) Ensures that all members of the crew are adequately trained to perform their duties relative to security; and

(7) Provides for coordination with terminal security while in port.

(b) Each operator of a vessel to which this part applies shall work with the operator of each terminal at which the vessel embarks or disembarks passengers, to provide security for the passengers and the vessel. The vessel, however, need not duplicate any provisions fulfilled by the terminal unless directed by the Commandant. When a provision is fulfilled by the terminal, that fact shall be referenced in the applicable section of the Vessel Security Plan required by § 120.300.

§ 120.210 Vessel security officer.

(a) Each operator of a vessel to which this part applies shall designate a security officer for the vessel.

(b) This officer shall ensure that—

(1) An initial comprehensive security survey is conducted and updated;

(2) The plan required by § 120.300 is implemented and maintained, and that amendments to correct its deficiencies and satisfy the security requirements for the vessel are proposed;

(3) Adequate training for members of the crew responsible for security is provided;

(4) Regular security inspections of the vessel are conducted;

(5) Vigilance, as well as general awareness of security aboard the vessel, is encouraged;

(6) All occurrences or suspected occurrences of unlawful acts and related activities are reported in accordance with § 120.220; and

(7) Coordination, for implementation of the plan required by § 120.300, takes place with the terminal security officer at each terminal at which the vessel embarks or disembarks passengers.

§ 120.220 Reporting of unlawful acts and related activities.

(a) Either the operator of the vessel or the vessel security officer shall report each breach of security, unlawful act, or threat of an unlawful act against the vessel or persons aboard it that occurs in a place subject to the jurisdiction of the United States, both to the COTP and to the local office of the Federal Bureau of Investigation (FBI). Also, the operator of each U.S.-flag vessel shall report each such incident that occurs in a place outside the jurisdiction of the United States to the hotline of the Response Center of the Department of Transportation at 1-800-424-0201, or, from within metropolitan Washington D.C., at (202) 267-3675.

(b) Either the operator of the vessel or the vessel security officer shall file a written report of the incident, using the form "Report on an Unlawful Act",

contained in IMO MSC Circular 443, which the operator or the officer shall forward as soon as possible to Commandant (G-MRO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001. Notification of an incident may be initially filed by fax. Original copies should be sent by mail in conjunction with faxing the report to the Commandant (G-MRO), fax numbers are (202) 267-4085/4065.

Subpart C—Plans and Procedures for Vessel Security

§ 120.300 Plan: General.

(a) Each operator of a vessel subject to this part shall for each such vessel develop and maintain, in writing, an appropriate Vessel Security Plan that—

(1) Is unique to the vessel;

(2) Articulates the program required by § 120.200; and

(3) Includes an appendix, for each port in which the vessel embarks or disembarks passengers, that contains port-specific security information.

(b) The Plan must be developed and maintained in accordance with the guidance in IMO MSC Circular 443, and must address security for periods of low, medium, and high threats, to—

(1) Deter unauthorized access to the vessel and its restricted areas;

(2) Deter the introduction of prohibited weapons, incendiaries, or explosives aboard the vessel;

(3) Encourage vigilance, as well as general awareness of security, aboard the vessel;

(4) Provide adequate training to members of the crew for security aboard the vessel;

(5) Coordinate responsibilities for security with the operator of each terminal at which the vessel embarks or disembarks passengers; and

(6) Provide information to members of the crew and to law-enforcement personnel, in case of an incident affecting security.

(c) The operator shall amend the Plan to address any known deficiencies.

(d) The operator shall restrict the distribution, disclosure, and availability of information contained in the plan to those persons with an operational need to know.

§ 120.305 Plan: Procedure for examination.

(a) Each operator of a passenger vessel subject to this part shall submit two copies of the Vessel Security Plan required by § 120.300 to the Director, National Maritime Center (NMC), 4200 Wilson Blvd., Suite 510, Arlington, VA 22203, for examination before October 16, 1996, or at least 60 days before

embarking passengers on a voyage described in § 120.100, whichever is later.

(b) If the Director of the NMC finds that the Vessel Security Plan meets the requirements of § 120.300, the Director shall return a copy to the owner or operator marked "Examined by the Coast Guard".

(c) If the Director of the NMC finds that the Plan does not meet the requirements of § 120.300, the Director shall return the plan with an explanation of why it does not meet the requirements.

(d) No vessel subject to this part may embark or disembark passengers in the United States after November 16, 1996, unless it holds either a Vessel Security Plan that has been examined by the Coast Guard or a letter from the Director of the NMC stating that the Plan is currently under review by the Coast Guard and that normal operations may continue until the Coast Guard has determined whether the Plan meets the requirements of § 120.300.

§ 120.307 Plan: Amendment.

(a) The operator of a passenger vessel subject to this part may initiate amendments to the Vessel Security Plan on its own as well as when directed by the Director of the NMC.

(b) Each proposed amendment to the Plan, initiated by the operator, including changes to the appendices required by § 120.300(a)(3), must be submitted to the Director of the NMC for review at least 30 days before the proposed amendment is to take effect, unless a shorter period is allowed by the Director. The Director will examine the amendment and respond according to § 120.305.

(c) The Director of the NMC may direct the operator of a vessel subject to this part to amend its Plan if the Director determines that implementation of the Plan is not providing effective security. Except in an emergency, the Director will issue to the operator a written notice of matters to address and will allow the operator at least 60 days to submit proposed amendments.

(d) If there is an emergency or other circumstance that makes the procedures in paragraph (c) of this section impracticable, the COTP may give to the operator of a vessel subject to this part an order to implement increased security measures immediately. The order will incorporate a statement of the reasons for it.

§ 120.309 Right of appeal.

Any person directly affected by a decision or action taken by the Director

of the NMC under this part, may appeal that action or decision to the Chief, Marine Safety and Environmental Protection Directorate (Commandant (G-M)) according to the procedures in 46 CFR 1.03-15.

2. Part 128 is added to subchapter L to read as follows:

PART 128—SECURITY OF PASSENGER TERMINALS

Subpart A—General

Sec.

128.100 Applicability.

128.110 Definitions.

128.120 Incorporation by reference.

Subpart B—Security Program

Sec.

128.200 General.

128.210 Terminal security officer.

128.220 Reporting of unlawful acts and related activities.

Subpart C—Plans and Procedures for Terminal Security

Sec.

128.300 Plan: General.

128.305 Plan: Procedure for examination.

128.307 Plan: Amendment.

128.309 Right to Appeal.

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

Subpart A—General

§ 128.100 Applicability.

This part applies to all passenger terminals in the United States or its territories when being used for the assembling, processing, embarking, or disembarking of passengers or baggage for passenger vessels over 100 gross tons, carrying more than 12 passengers for hire; making a voyage lasting more than 24 hours, any part of which is on the high seas. It does not apply to terminals when serving ferries that hold Coast Guard Certificates of Inspection endorsed for "Lakes, Bays, and Sounds", and that transit international waters for only short periods of time, on frequent schedules.

§ 128.110 Definitions.

The definitions in part 120 of this chapter apply to this part.

§ 128.120 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register and must make the material available to the public. All approved material may be inspected at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700,

Washington, DC, and at the U.S. Coast Guard, (G-MES), 2100 Second Street SW., Washington, DC. Copies may be obtained from IMO, 4 Albert Embankment, London SE1 7 SR.

(b) The materials approved for incorporation by reference in this part and the sections affected are:

International Maritime Organization (IMO)

4 Albert Embankment, London SE1 7SR
MSC Circular 443, Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships September 26, 1986—128.220, 128.300

Subpart B—Security Program

§ 128.200 General.

(a) Each operator of a passenger terminal to which this part applies shall implement for each such terminal of which it is the operator a security program that—

(1) Provides for the safety and security of persons and property in the terminal and aboard each passenger vessel subject to Part 120 of this chapter moored at the terminal, against unlawful acts;

(2) Prevents or deters the carriage aboard any such vessel moored at the terminal of any prohibited weapon, incendiary, or explosive on or about any person or within his or her personal articles or baggage, and the carriage of any prohibited weapon, incendiary, or explosive in stowed baggage, or cargo, or stores;

(3) Prevents or deters unauthorized access to any such vessel and to restricted areas in the terminal;

(4) Provides means to meet the requirements for low, medium, and high threats, through increased security measures to be implemented on advice by the Commandant or Captain of the Port (COTP) of an increased threat to the terminal, the vessel, or persons on the terminal or vessel;

(5) Designates, by name, a security officer for the terminal;

(6) Provides for the evaluation of all security personnel of the terminal, before hiring, to determine suitability for employment; and

(7) Provides for coordination with vessel security while any passenger vessel subject to Part 120 of this chapter is moored at the terminal.

(b) Each operator of a passenger terminal shall work with the operator of each passenger vessel subject to part 120 of this chapter, to provide security for the passengers, the terminal, and the vessel. The terminal, however, need not duplicate any provisions fulfilled by the vessel. When a provision is fulfilled by

a vessel, that fact shall be referenced in the applicable section of the Terminal Security Plan required by § 128.300.

§ 128.210 Terminal security officer.

(a) Each operator of a passenger terminal shall designate a security officer for the terminal.

(b) This officer shall ensure that—

- (1) An initial comprehensive security survey is conducted and updated;
- (2) The plan required by § 128.300 is implemented and maintained, and that amendments to correct its deficiencies and satisfy the security requirements of the terminal are proposed;
- (3) Adequate training for personnel responsible for security is provided;
- (4) Regular inspections of the terminal are conducted;
- (5) Vigilance, as well as general awareness of security at the terminal, is encouraged;
- (6) All occurrences or suspected occurrences of unlawful acts and related activities are reported in accordance with § 128.220 and that records of the incident are maintained; and
- (7) Coordination, for implementation of the plan required by § 128.300, takes place with the vessel security officer of each vessel that embarks or disembarks passengers at the terminal.

§ 128.220 Reporting of unlawful acts and related activities.

(a) Either the operator of the terminal or the operator's representative shall report each unlawful act, breach of security, or threat of an unlawful act against the terminal, a passenger vessel subject to Part 120 of this chapter destined for or moored at that terminal, or persons on the terminal or vessel, to the COTP, to the local office of the Federal Bureau of Investigation (FBI), and to the local police agency having jurisdiction over the terminal.

(b) Either the operator of the terminal or the operator's representative shall file a written report of the incident using the form "Report on an Unlawful Act", contained in IMO MSC Circular 443, as soon as possible to the local COTP.

Subpart C—Plans and Procedures for Terminal Security

§ 128.300 Plan: General.

(a) Each operator of a passenger terminal subject to this part shall develop and maintain, in writing, for each such terminal of which it is the operator, an appropriate Terminal Security Plan that articulates the program required by § 128.200.

(b) The Plan must be developed and maintained in accordance with the guidance in IMO MSC Circular 443 and must address the security of passengers, of members of crews of passenger vessels subject to Part 120 of this chapter, and of employees of the terminal, by establishing procedures, for periods of low, medium, and high threats, to—

- (1) Deter unauthorized access to the terminal and its restricted areas and to any passenger vessel moored at the terminal;
 - (2) Deter the introduction of prohibited weapons, incendiaries, and explosives into the terminal and its restricted areas and onto any passenger vessel moored at the terminal;
 - (3) Encourage vigilance, as well as general awareness of security, at the terminal;
 - (4) Provide adequate training to employees of the terminal for security at the terminal;
 - (5) Coordinate responsibilities for security with the operator of each vessel that embarks or disembarks passengers at the terminal; and
 - (6) Provide information to employees of the terminal and to law-enforcement personnel, in case of an incident affecting security.
- (c) The operator shall amend the Plan to address any known deficiencies.
- (d) The operator shall restrict the distribution, disclosure, and availability of information contained in the Plan to those persons with an operational need to know.

§ 128.305 Plan: Procedure for examination.

(a) Each operator of a passenger terminal subject to this part shall submit two copies of the Terminal Security Plan required by § 128.300 to the COTP for examination before October 16, 1996, or at least 60 days before transferring passengers to or from a vessel subject to Part 120 of this chapter, whichever is later.

(b) If the COTP finds that the Plan meets the requirements of § 128.300, the COTP shall return a copy to the owner or operator marked "Examined by the Coast Guard."

(c) If the COTP finds that the Plan does not meet the requirements of § 128.300, the COTP shall return the Plan with an explanation of why it does not meet the requirements.

(d) No terminal subject to this part shall transfer passengers to or from a passenger vessel subject to Part 120 of this chapter after November 16, 1996,

unless it holds either a Terminal Security Plan that has been examined by the Coast Guard or a letter from the COTP stating that the Plan is currently under review by the Coast Guard and that normal operations may continue until the COTP has determined whether the Plan meets the requirements of § 128.300.

§ 128.307 Plan: Amendment.

(a) The operator of a passenger terminal subject to this part may initiate amendments to the Terminal Security Plan on its own as well as when directed by the COTP.

(b) Each proposed amendment to the Plan initiated by the operator of a passenger terminal, including changes to the enclosures required by § 128.300(a), must be submitted to the COTP for review at least 30 days before the amendment is to take effect, unless a shorter period is allowed by the COTP. The COTP will examine the amendment and respond according to § 120.305.

(c) The COTP may direct the operator of a terminal subject to this part to amend its Plan if the COTP determines that implementation of the Plan is not providing effective security. Except in an emergency, the COTP will issue to the operator a written notice of matters to address and will allow the operator at least 60 days to submit proposed amendments.

(d) If there is an emergency or other circumstance that makes the procedures in paragraph (c) of this section impracticable, the COTP may give to the operator of a terminal subject to this part an order to implement increased security measures immediately. The order will incorporate a statement of the reasons for it.

§ 128.309 Right of Appeal.

Any person directly affected by a decision or action taken by the COTP under this part, may appeal that action or decision to the cognizant District Commander according to the procedures in 46 CFR 1.03–15; the District Commander's decision on appeal may be further appealed to the Commandant according to the procedures in 46 CFR 1.03–25.

Dated: July 10, 1996.

Robert E. Kramek,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 96–18115 Filed 7–17–96; 8:45 am]

BILLING CODE 4910–14–M