

*Description:* This rule requires every transfer agent to establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. The rule requires transfer agents to mark each cancelled securities certificate with the word “cancelled”; maintain a secure storage area for cancelled certificates; maintain a retrievable database of all cancelled, destroyed, or otherwise disposed of certificates; and have specific procedures for the destruction of cancelled certificates. Additionally, the Commission amended its lost and stolen securities rule and its transfer agent safekeeping rule to make it clear that these rules apply to unissued and cancelled certificates.

*Prior Commission Determination Under 5 U.S.C. 610:* A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with the adoption of Release No. 34–48931 (December 16, 2003). The Commission solicited comment on the Initial Regulatory Flexibility Analysis prepared in the proposing release, Release No. 34–43401 (October 2, 2000), but received no comment on that analysis. The Commission did receive comments related to small business, and considered those comments in the adopting release.

\* \* \* \* \*

*Title:* Compliance Programs of Investment Companies and Investment Advisers

*Citation:* 17 CFR 270.38a–1; 17 CFR 275.204–2; 17 CFR 275.206(4)–7

*Authority:* 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, 80b–1 *et seq.*, 80b–2(a)(11)(F), 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11

*Description:* The rules require each investment company and investment adviser registered with the Commission and each business development company to (i) adopt and implement written compliance policies and procedures, (ii) review those policies and procedures annually, and (iii) appoint a compliance officer to be responsible for administering the policies and procedures. The rules also impose a new recordkeeping requirement.

*Prior Commission Determination Under 5 U.S.C. 601:* A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act regarding rule 38a–1 under the Investment Company Act of 1940, new rule 206(4)–7 under the Investment Advisers Act, and

amendments to rule 204–2 under the Investment Advisers Act, and to Part 1, Schedule A, Item 2(a) of Form ADV in conjunction with the Commission’s adoption of Release No. IA–2204 (December 17, 2003). The Commission considered comments on the proposing release and on the Initial Regulatory Flexibility Analysis prepared in Release No. IC–25925 (Feb. 5, 2003) at that time.

\* \* \* \* \*

*Title:* Recordkeeping Requirements for Registered Transfer Agents

*Citation:* 17 CFR 240.240.17Ad–7

*Authority:* 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7202, 7241, 7262, and 7263, and 18 U.S.C. 1350.

*Description:* The Commission amended its rule concerning recordkeeping requirements for registered transfer agents. The amendments made it clear that registered transfer agents may use electronic, microfilm, and microfiche media as a substitute for hard copy records, including cancelled stock certificates, for purposes of complying with the Commission’s transfer agent recordkeeping rules and that a third party on behalf of a registered transfer agent may place into escrow the required software information.

*Prior Commission Determination Under 5 U.S.C. 610:* A Final Regulatory Flexibility Analysis was prepared in accordance with Section 604 of the Regulatory Flexibility Act in conjunction with Release No. 34–48949 (December 18, 2003). The Commission received comment letters in response to the Initial Regulatory Flexibility Analysis in the proposing release, Release No. 34–48036 (June 16, 2003), that did not address the issues presented in the proposing release.

By the Commission.

Dated: December 19, 2014.

**Brent J. Fields,**

*Secretary.*

[FR Doc. 2014–30265 Filed 12–24–14; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 101 and 105

[Docket No. USCG–2013–1087]

RIN 1625–AC15

#### Seafarers’ Access to Maritime Facilities

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking, notice of public meeting.

**SUMMARY:** The Coast Guard proposes to require each owner or operator of a facility regulated by the Coast Guard to implement a system that provides seafarers and other individuals with access between vessels moored at the facility and the facility gate, in a timely manner and at no cost to the seafarer or other individual. Generally, transiting through a facility is the only way that a seafarer or other individual can egress to shore beyond the facility to access basic shoreside businesses and services, and meet with family members and other personnel that do not hold a Transportation Worker Identification Credential. This proposed rule would help to ensure that no facility owner or operator denies or makes it impractical for seafarers or other individuals to transit through the facility, and would require them to document their access procedures in their Facility Security Plans. This proposed rule would implement section 811 of the Coast Guard Authorization Act of 2010.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before February 27, 2015 or reach the Docket Management Facility by that date. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before February 27, 2015.

The Coast Guard will hold a public meeting in Washington, DC to solicit comments on the proposals in this notice on January 23, 2015 from 9:00 a.m. to 12:00 p.m. The deadline to reserve a seat is January 16, 2015.

**ADDRESSES:** You may submit comments identified by docket number USCG–2013–1087 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue SE., Washington, DC 20590–0001.

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

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

*Collection of Information Comments*: If you have comments on the collection of information discussed in section VI.D. of this notice of proposed rulemaking (NPRM), you must also send comments to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget. To ensure that your comments to OIRA are received on time, the preferred methods are by email to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) (include the docket number and “Attention: Desk Officer for Coast Guard, DHS” in the subject line of the email) or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The public meeting will be held at the Department of Transportation Headquarters, Oklahoma Room, 1200 New Jersey Avenue SE., Washington, DC 20590; the building telephone number is 202–366–1035. The meeting is open to the public. Seating is limited, so please reserve a seat as soon as possible, but no later than January 16, 2015. To reserve a seat, please email [Mason.C.Wilcox@uscg.mil](mailto:Mason.C.Wilcox@uscg.mil) with the participant’s first and last name for all U.S. Citizens, and additionally official title, date of birth, country of citizenship, and passport number with expiration date for non-U.S. Citizens. To gain entrance to the Department of Transportation Headquarters building, all meeting participants must present government-issued photo identification (*i.e.*, state issued driver’s license). If a visitor does not have a photo ID, that person will not be permitted to enter the facility. All visitors and any items brought into the facility will be required to go through security screening each time they enter the building. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact LT Mason Wilcox at the telephone number or email address indicated under the **FOR FURTHER**

**INFORMATION CONTACT** section of this notice.

A live video feed of the meeting will be available upon request to LT Mason Wilcox at [Mason.C.Wilcox@uscg.mil](mailto:Mason.C.Wilcox@uscg.mil).

**FOR FURTHER INFORMATION CONTACT**: If you have questions on this proposed rule, call or email LT Mason Wilcox, Cargo and Facilities Division (CG–FAC–2), Coast Guard; telephone 202–372–1123, email [Mason.C.Wilcox@uscg.mil](mailto:Mason.C.Wilcox@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

#### **Table of Contents**

- I. Public Participation and Request for Comments
  - A. Submitting comments
  - B. Viewing comments and documents
  - C. Privacy Act
  - D. Public meeting
- II. Abbreviations
- III. Executive Summary
  - A. Purpose of the Regulatory Action
    - 1. Need for the Regulatory Action
    - 2. Legal Authority for the Regulatory Action
  - B. Summary of the Major Provisions of the Regulatory Action
  - C. Summary of Costs and Benefits
- IV. Background
- V. Discussion of Proposed Rule
  - A. 33 CFR 105.200(b)(9)
  - B. 33 CFR 105.237
  - C. 33 CFR 105.405
  - D. 33 CFR 101.112 (Federalism)
  - E. Public Comments
- VI. Regulatory Analyses
  - A. Regulatory Planning and Review
  - B. Small Entities
  - C. Assistance for Small Entities
  - D. Collection of Information
  - E. Federalism
  - F. Unfunded Mandates Reform Act
  - G. Taking of Private Property
  - H. Civil Justice Reform
  - I. Protection of Children
  - J. Indian Tribal Governments
  - K. Energy Effects
  - L. Technical Standards
  - M. Environment

#### **I. Public Participation and Request for Comments**

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

##### *A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–1087), indicate the specific section of this

document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and insert “USCG–2013–1087” in the “Search” box. Click on “Submit a Comment in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

##### *B. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> and insert “USCG–2013–1087” in the “Search” box. Click “Search.” Click the “Open Docket Folder” in the “Actions” column. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### *C. Privacy Act*

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

##### *D. Public Meeting*

We plan to hold a public meeting regarding the proposals in this NPRM. The meeting will be held on January 23, 2015 from 9:00 a.m. to 12:00 p.m. The meeting will be held at the location

indicated under the **ADDRESSES** section above. The deadline to reserve a seat is January 16, 2015. Information on reserving a seat for the meeting is provided under the **ADDRESSES** section above.

## II. Abbreviations

CBP United States Customs and Border Protection  
 CDC Certain Dangerous Cargoes  
 CGAA 2010 Coast Guard Authorization Act of 2010  
 CFR Code of Federal Regulations  
 COTP Captain of the Port  
 DoS Declaration of Security  
 DHS Department of Homeland Security  
 FR Federal Register  
 FSP Facility Security Plan  
 ISPS Code International Ship and Port Facility Security Code  
 MTSA Maritime Transportation Security Act of 2002  
 NMSAC National Maritime Security Advisory Committee  
 NPRM Notice of Proposed Rulemaking  
 RA Regulatory Analysis  
 SCI Seamen's Church Institute's Center for Seafarers' Rights  
 SME Subject Matter Expert  
 § Section symbol  
 TWIC Transportation Worker Identification Credential  
 U.S.C. United States Code

## III. Executive Summary

### A. Purpose of the Regulatory Action

Throughout the maritime sector, vessels arrive at Maritime Transportation Security Act of 2002 (MTSA)-regulated facilities for any number of commercial and other purposes.<sup>1</sup> Vessels are operated by seafarers, who are individuals assigned to work on a vessel and who may be at sea for days, weeks, or months as part of their employment on that vessel. Generally, transiting through a MTSA-regulated facility is the only way for seafarers to access the shore, and services, businesses, family members and friends, among other things, beyond the vessel and facility. Additionally, individuals providing services for seafarers or having another legitimate purpose for accessing the vessel, generally can only access a vessel moored at a MTSA-regulated facility by transiting through the facility.

#### 1. Need for the Regulatory Action

This regulatory action is necessary to implement section 811 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281, codified at 46 U.S.C. 70103 note) (CGAA 2010), which requires facility owners and operators to ensure

shore access for seafarers and other individuals. Specifically, section 811 requires each MTSA-regulated facility to “provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen’s welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual.”

This regulatory action is necessary to help ensure that owners and operators of facilities regulated by the Coast Guard, under MTSA (Pub. L. 107–295, codified at 46 U.S.C. 70101 *et seq.*), provide seafarers assigned to vessels moored at the facility with the ability to board and depart vessels to access the shore through the facility in a timely manner and at no cost to the seafarer.

Additionally, this regulatory action is necessary to help ensure that facility owners and operators provide the same no-cost access between a vessel and facility gate to other individuals with a legitimate purpose for accessing the vessel. These individuals include: representatives of seafarers’ welfare and labor organizations; port workers organizations; port engineers or superintendents; classification society surveyors; ship’s agents; pilots; and other authorized personnel performing work for a vessel moored at the facility, in accordance with the Declaration of Security (DoS) or other arrangement between the vessel and facility.

This regulatory action applies to owners and operators of MTSA-regulated facilities, which are facilities required by MTSA to implement national maritime security initiatives. One of the required security features is the provision of security measures for access control. Coast Guard access-control regulations at 33 CFR 105.255 require MTSA-regulated facilities to control an individual’s access to the facility and designated secure areas within the facility unless that individual is either authorized to access that area or is escorted by someone who is authorized to access the area. Accordingly, facility owners and operators must consider the security implications of permitting seafarers and other individuals to transit through their facilities. Nonetheless, other Coast Guard regulations addressing MTSA-regulated facility security requirements at 33 CFR 105.200(b)(9) require such facilities to ensure coordination of shore leave for these persons.

#### 2. Legal Authority for the Regulatory Action

Section 811 of the CGAA 2010 requires each MTSA-regulated facility, in its Facility Security Plan (FSP), to

“provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen’s welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual.” The Secretary of Homeland Security (Secretary) is authorized under 46 U.S.C. 70124 to issue regulations necessary to implement 46 U.S.C. 70103. The Secretary delegated to the Commandant of the Coast Guard the authority to carry out the functions and exercise the authorities in 46 U.S.C. 70103 (DHS Delegation 0170.1(97)).

Additionally, the Secretary is authorized under 33 U.S.C. 1226 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)).

### B. Summary of the Major Provisions of the Regulatory Action

We propose to require each owner or operator of a MTSA-regulated facility to implement a system for providing seafarers and other individuals with access between vessels moored at the facility and the facility gate. Each owner or operator would be required to implement a system, within 1 year after publication of the final rule, that incorporates specific methods of providing access in a timely manner, at no cost to the individual, and in accordance with existing access control provisions in 33 CFR part 105. We also propose to require each owner or operator to ensure that the FSP includes a section describing the system for seafarers’ access.

This rule would not affect the authority of the U.S. Customs and Border Protection (CBP) to inspect and process individuals seeking entry to the U.S. For those seafarers and other individuals subject to CBP’s authority, this rule would apply to facility owners and operators only after such seafarers and other individuals have been inspected, processed, and admitted to the U.S. by CBP.

### C. Summary of Costs and Benefits

This rule would affect approximately 2,498 MTSA-regulated facilities. We estimate that the annualized cost at 7 percent would be \$2.8 million and the total 10-year cost would be \$19.9 million—also discounted at 7 percent. This rule would provide benefits to industry by ensuring that an annual average of 907 seafarers would be able

<sup>1</sup> For purposes of this rule, “MTSA-regulated facility” is described in 33 CFR 105.105, and is detailed more fully below in the Background section.

to obtain shore leave access through the facilities, reducing regulatory uncertainty, conforming to the intent of the International Ship and Port Facility Security Code (ISPS Code), ensuring the safety, health, and welfare of seafarers, and providing regulatory flexibility to accommodate facility sizes and functions. Facilities have options as to which method of access they would prefer to use.

#### IV. Background

Under MTSA, the Coast Guard is authorized to regulate maritime facilities. For purposes of MTSA, the term “facility” means “any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the United States.” 46 U.S.C. 70101(a)(2).

Existing Coast Guard regulations at 33 CFR part 105 implementing MTSA apply to certain facilities including: waterfront facilities handling dangerous cargoes;<sup>2</sup> waterfront facilities handling liquefied natural gas<sup>3</sup> and liquefied hazardous gas;<sup>4</sup> facilities transferring oil or hazardous materials<sup>5</sup> in bulk; facilities that receive vessels certificated to carry more than 150 passengers; facilities that receive vessels subject to the International Convention for the Safety of Life at Sea, 1974 (SOLAS), Chapter XI; facilities that receive foreign cargo vessels greater than 100 gross register tons; generally, facilities that receive U.S. cargo and miscellaneous vessels greater than 100 gross register tons; and barge fleeting facilities that receive barges carrying, in bulk, cargoes regulated under the Coast Guard’s regulations regarding tank vessels or certain dangerous cargoes (CDCs).<sup>6</sup> This rulemaking applies to the above-described facilities regulated by the Coast Guard pursuant to the authority granted in MTSA.

MTSA provides the Coast Guard with statutory authorities and mandates to advance the Coast Guard’s maritime security mission to detect, deter, disrupt, and respond to attacks and other disasters that might affect the United States, its territory, population, vessels, facilities, and critical maritime infrastructure. On July 1, 2003, the Coast Guard published a series of six temporary interim rules to promulgate maritime security requirements

mandated by MTSA. (See Implementation of National Maritime Security Initiatives, 68 FR 39240 (July 1, 2003).) One of the six interim rules specifically addressed security measures at maritime facilities. (See Facility Security, 68 FR 39315 (July 1, 2003)). The interim rule added part 105 “Maritime Security: Facilities” to subchapter H of Title 33 of the CFR. The interim rule required facility owners, operators, and security personnel to implement measures for controlling access to maritime facilities. In crafting the interim rule, we recognized both the need for facility access control measures, and the competing need for seafarers and other individuals to have the ability to board and depart vessels through the facilities. Thus, the interim rule included a requirement that each facility owner or operator “[e]nsure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for visitors of the vessel (including representatives of seafarers’ welfare and labor organizations), with vessel operators in advance of a vessel’s arrival[.]” (See 68 FR 39317).

On October 22, 2003, the Coast Guard published a final rule adopting, with changes, the July 1, 2003, interim rule on security measures at maritime facilities. (See Facility Security, 68 FR 60515 (Oct. 22, 2003)). Specifically, the final rule adopted the provision regarding coordination of shore leave, and also included an additional provision that permits facility owners or operators to “. . . refer to treaties of friendship, commerce, and navigation between the U.S. and other nations [when coordinating shore leave].” This new provision was added in response to public comments regarding the difficulty that some foreign seafarers have experienced when seeking shore leave. (See 68 FR 60520).

The regulatory text adopted in the October 22, 2003, final rule remains unchanged today, although it has been relocated to 33 CFR 105.200(b)(9). Section 105.200(b)(9) provides, in part, that each facility owner or operator is currently required to “[e]nsure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for visitors of the vessel (including representatives of seafarers’ welfare and labor organizations), with vessel operators in advance of a vessel’s arrival.”

This current regulatory requirement for shore leave is bolstered by international agreement. The United States is a signatory to the ISPS Code, which sets forth international ship and port security measures. Like the Coast

Guard’s implementation of MTSA that requires both secure facilities and shore leave, ISPS Code furthers facility security, but not at the expense of the seafarer. The preamble to ISPS Code (paragraph 11), ratified in December 2002, states: “Contracting Governments when approving ship and port FSPs should pay due cognizance to the fact that ship’s personnel live and work on the vessel and need shore leave and access to shore-based seafarer welfare facilities, including medical care.” In light of this international agreement, if the U.S. is known internationally for having facilities that do not provide shore leave access, other countries may consider denying shore leave access to U.S. seafarers while they are abroad.

The Coast Guard understands that, currently, approximately 90 percent of MTSA-regulated facility owners and operators comply with the current shore leave requirements in 33 CFR 105.200(b)(9) and provide seafarers and other individuals access between the vessel and the facility gate.<sup>7</sup> However, we have received complaints that some facility owners and operators are still denying seafarers and other individuals any access between the vessel and facility gate despite 33 CFR 105.200(b)(9) because of how some facility owners and operators implement or interpret that requirement. The apparent rationale for denying such access is that 33 CFR 105.200(b)(9) only requires coordination of shore leave if there is actual shore leave to coordinate, and there is no shore leave to coordinate if access to shore is denied altogether. We have received other complaints that some facilities comply with 33 CFR 105.200(b)(9) by permitting access to and from vessels, but make shore access impractical for seafarers and other individuals by placing extreme limitations on escort availability or by charging exorbitant fees. For example, we have received complaints of wait-times up to 3-hours for TWIC-holding facility personnel or taxi drivers to arrive and escort seafarers through a facility. The seafarers seeking access are often TWIC-holders themselves, and there is only a short distance between the vessel and the facility gate, the span of which is visible to security guards at the gate. Nonetheless, some facilities have prohibited TWIC-holding seafarers from walking between the vessel and facility gate. We have received other complaints of facilities charging \$400–\$500 (in addition to requiring the vessel agent to independently hire its own

<sup>2</sup> “Dangerous cargoes” are defined at 33 CFR 126.3.

<sup>3</sup> “Liquefied natural gas” is defined at 33 CFR 127.005.

<sup>4</sup> “Liquefied hazardous gas” is defined at 33 CFR 127.005.

<sup>5</sup> “Hazardous materials” are defined at 33 CFR 154.105.

<sup>6</sup> “CDCs” are defined at 33 CFR 160.204.

<sup>7</sup> Based on the Seamen’s Church Institute’s (SCI) Center for Seafarers’ Rights surveys from 2006 to 2014.

TWIC-holding escorts) before allowing seafarers ashore. We have also received complaints of facilities completely denying seafarers the ability to disembark a vessel to go ashore.

To address these complaints, the Coast Guard issued guidance in October 2008 (ALCOAST 529/08) and October 2009 (ALCOAST 575/09), advising Coast Guard Captains of the Port (COTPs) to encourage facility owners and operators to remedy inadequate access issues. Subsequent to those efforts, we also conducted a joint evaluation of seafarers' access issues with CBP, culminating in additional Coast Guard guidance instructing COTPs to compile lists of facilities identified as deficient with respect to seafarers' access. In January 2010, the COTPs had reviewed 62 percent of all FSPs and reported that 4 percent lacked adequate seafarers' access provisions.

While the Coast Guard was addressing these complaints, Congress mandated seafarers' access in section 811 of the CGAA 2010. This mandate requires each FSP to "provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual." The National Maritime Security Advisory Committee (NMSAC) also considered section 811 in a working group that met on March 22 and May 3, 2011, resulting in a resolution containing recommended definitions for the statutory terms "system," "timely," and "no cost to the individual." The NMSAC resolution provided the Coast Guard with useful conceptual information. Although the Coast Guard did not adopt the exact text of the NMSAC definitions in this NPRM, the proposals in this NPRM are consistent with the NMSAC recommendations. The NMSAC resolution is available for viewing in the public docket for this rulemaking.

This proposed rule would implement section 811 by amending current regulations to comply with statutory requirements for each facility owner or operator to provide seafarers associated with a vessel moored at the facility, and other individuals, access between the vessel and facility gate in a timely manner and at no cost to the seafarer or other individual.

This rule would not affect the authority of CBP to inspect and process individuals seeking entry to the U.S. For those seafarers and other individuals subject to CBP's authority, this rule would apply to facility owners and operators only after such seafarers and other individuals have been inspected,

processed, and admitted to the U.S. by CBP.

## V. Discussion of Proposed Rule

The following discussion explains the proposed changes to 33 CFR part 105 that would implement section 811. In addition to the proposed changes discussed below, we propose several minor technical amendments to 33 CFR 105.200 that would clarify acronyms and improve readability, but are not intended to make any substantive changes. Finally, we propose a provision on the Federalism issues associated with the Coast Guard's maritime security regulations in 33 CFR part 105.

### A. 33 CFR 105.200(b)(9)

We propose to amend 33 CFR 105.200(b)(9), which contains the existing seafarers' access requirements. This amendment would require each facility owner or operator to coordinate shore leave in accordance with new specific requirements implementing section 811 set forth in 33 CFR 105.237. This cross-reference to the proposed specific requirements for seafarers' access would remove any possible ambiguity in, or opportunity for misinterpretation of, the existing seafarers' access requirements in 33 CFR 105.200(b)(9).

We also propose to replace the current parenthetical explanation of the term "visitors" in § 105.200(b)(9) with a reference to the proposed list of "individuals covered" in proposed § 105.237. Currently, paragraph (b)(9) requires access through a facility for shore leave for vessel personnel, crew change-out, and "visitors to the vessel (including representatives of seafarers' welfare and labor organizations)." Because section 811 also specifies individuals that must be provided access through a facility, we propose to incorporate in 33 CFR 105.237(b) the individuals covered under the existing seafarers' access requirement in current 33 CFR 105.200(b)(9) with the new proposed list of individuals covered under section 811.

### B. 33 CFR 105.237

We propose to add this new section, implementing section 811, which would require each facility owner or operator to implement a system for providing access to and from vessels moored at the facility and the facility gate.

#### 33 CFR 105.237(a)

Proposed paragraph (a) would set forth the general requirements for a system of seafarers' access, which incorporates the language of section

811. Each owner or operator would be required to implement a system that incorporates specific methods of providing access in a timely manner, at no cost to the individual, and in accordance with the provisions in 33 CFR part 105.

Part 105 sets forth facility security requirements, and facility owners and operators would have to provide seafarers' access within these facility security requirement parameters. The proposed rule would provide facility owners and operators flexibility to implement a system to provide seafarers' access that is tailored to each facility. We propose to require implementation of the system within 1 year after publication of the final rule to provide facility owners and operators time to tailor a system specific to the facility.

#### 33 CFR 105.237(b)

Section 811 lists the individuals to whom Congress intended facility owners and operators provide access through their facilities. Specifically, section 811 requires "[e]ach Facility Security Plan . . . to provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen's welfare and labor organizations to board and depart the vessel through the facility. . . ." Additionally, current 33 CFR 105.200(b)(9) requires access through a facility for shore leave for vessel personnel, crew change-out, and "visitors to the vessel (including representatives of seafarers' welfare and labor organizations)." Because these two lists overlap, and both identify the individuals to whom facility owners or operators must provide access to and from vessels, we propose to provide one list of individuals covered by seafarers' access requirements.

Proposed paragraph (b), "Individuals covered", would list individuals covered by seafarers' access requirements. The proposed paragraph (b) lists:

- Seafarers assigned to a vessel moored at the facility;
- vessel pilots and other authorized personnel performing work for a vessel moored at a facility (to cover individuals that are not considered seafarers or pilots);
- representatives of seafarers' welfare and labor organizations; and
- other authorized individuals, in accordance with a DoS or other arrangement between the vessel and facility, to cover visitors to a vessel other than representatives of seafarers' welfare and labor organizations.

The categories of “other authorized personnel” and “other authorized individuals” would be broad categories to cover individuals such as port workers organizations, port engineers and superintendents, technicians, port agents, new crew (not yet technically assigned to the vessel), marine insurance writers, cargo surveyors, and family members of the seafarers and other vessel personnel. We propose the provision covering any other authorized individuals in order to provide flexibility that would enable the vessel and facility owners and operators to work directly with each other regarding individuals authorized to transit between the vessel and facility gate.

*33 CFR 105.237(c)*

Section 811 requires facility owners or operators to provide seafarers’ access in a “timely” manner. Due to the wide variety of facility types, sizes, and the nature of their operations, this rulemaking does not propose a single regulatory definition of “timely” access that would apply to all facilities. Instead, we propose under paragraph (c) to require each facility owner or operator to provide access without unreasonable delay, subject to review by the COTP. Proposed paragraph (c) also lists factors the facility owners or operators would have to consider when determining what “timely access without unreasonable delay” means for each vessel moored at its facility. The COTP would review each FSP to ensure that the facility owner or operator has appropriately considered the enumerated factors. The enumerated factors in proposed paragraph (c) relate to the amount of time that is reasonable for individuals to wait for access through the facility and the methods that the facility owner or operator would use for providing such access. The factors are:

- The length of time a vessel is scheduled to remain in port. For example, if a ship is in port for 6 hours, the COTP could determine that a 2-hour wait for access each way would be unreasonable. If the ship is in port for 2 weeks, the COTP could determine that a 2-hour wait for access is reasonable.
- The distance of egress/ingress between the vessel and facility gate. This distance can influence the appropriate method(s) of providing timely access between vessel and facility gate (e.g., van, taxi, pedestrian walkway, escort, etc.). For example, if the distance between the vessel and facility gate is less than the average city block, the COTP could determine that it is unreasonable to require individuals to

wait for a taxi instead of using a pedestrian walkway.

- The vessel’s watch schedules. A vessel’s watch schedule is relevant to providing timely access because a vessel crew’s operations are based on various watch-hour rotations to ensure the safety and security of the vessel. The facility owner or operator would be required to take the vessel’s watch schedule into account in development of an access plan that ensures vessel crews have access to shore leave during the time they are not on watch.

- A facility’s safety and security procedures required by law. These are relevant to providing timely access because they can determine the appropriate method(s) of providing timely access between a vessel and facility gate. For example, a pedestrian walkway might not be appropriate at a large container facility with extensive heavy equipment operations if the walkway would put pedestrians in the pathway of those operations, causing safety concerns for both pedestrians and operations. Similarly, the security footprint of a facility that handles CDCs might also preclude the use of pedestrian walkways as a method for providing access between a vessel and the facility gate due to the hazardous nature of the environment for pedestrians and any security concerns for the cargo.

- Any other factors specific to the vessel or facility that could affect access to and from the vessel. There may be other factors specific to the vessel or facility that could be relevant to providing timely access, such as bunkering and stores operations that may limit movement throughout the facility for safety. The COTP would review these other factors included in the FSP and how the facility considers them in determining how to provide shore access in a timely manner.

Defining timely access without unreasonable delay through the application of factors would provide flexibility to account for a diverse regulated population of maritime facilities. This approach would also provide appropriate COTP oversight to verify that “timeliness” is reasonable in each case.

*33 CFR 105.237(d)*

Proposed paragraph (d) of 33 CFR 105.237 would require each facility owner or operator to provide seafarers’ access using one or more specific methods. The owner or operator would be required to either choose one of the listed methods or combine multiple methods to create an appropriate system for that facility. Whichever method they

choose, facility owners or operators would ultimately be responsible for ensuring that all individuals covered by the regulations are provided timely access between the vessel and the facility gate.

In order to provide timely access, facility owners and operators would choose their own method of providing that access. They could choose a method listed in proposed paragraph (d) or they could choose any other method, provided that the COTP approves it. The methods listed in proposed paragraph (d) are:

- On-call or regularly scheduled escorts.<sup>8</sup> On-call escorting would require the facility to provide a means of communication, such as a phone number or other means of communication that seafarers could call to arrange access, and the facility would dispatch one or more escorts upon request. Regularly scheduled escorts could operate on a set schedule or at specific times pre-arranged between facility and vessel personnel based on the vessel’s crew watch changes. Facility owners and operators would be permitted to choose the option(s) most suitable to their specific business operations so long as they are sufficiently timely.

- Taxi services to provide escorted access through the facility. If a facility chose to permit access between the vessel and the facility gate only via taxi, regardless of whether the seafarer required a taxi beyond the facility gate, then that taxi fare would be considered a cost that the owner or operator imposes on the seafarer as a surcharge or tax on shore access. The owner or operator would be required to either pay that cost or provide an alternative method of timely, no-cost access through the facility for seafarers and other individuals. When the seafarer uses the taxi for travel to destinations beyond the facility boundaries (i.e., not solely for transit between the vessel and the facility gate), the seafarer would be responsible for paying the standard, local taxi fare to their destination, including the portion of transit between the vessel and facility gate, provided that there is no additional surcharge for transiting the facility.

- Seafarers’ welfare organizations to facilitate the access, such as acting as escorts. The Coast Guard understands some seafarers’ welfare organizations currently provide this service at facilities, and we do not want to disrupt

<sup>8</sup> If access is provided through secure areas of the facility, the Transportation Worker Identification Credential (TWIC) requirements in 33 CFR 101.514 would apply.

existing arrangements successfully providing shore access.

- Monitored pedestrian routes between the vessel and facility gate. Monitored pedestrian routes could include side-by-side escorting or other monitoring sufficient to observe whether the escorted individual is engaged in activities other than those for which escorted access has been granted. (See 33 CFR 101.105 “Escorting”). The Coast Guard notes that NVIC 03–07 provides guidance on monitoring protocols.

Section 811 places the requirement to provide access on the facility owner or operator. Accordingly, facility owners and operators would not be permitted to rely solely on third parties, such as taxi services or seafarers’ welfare organizations, to provide access between the vessel and facility gate. Taxi services may not always be available to provide timely access to all of the seafarers at a given facility. Similarly, the seafarers’ welfare organizations are philanthropic organizations that voluntarily provide important services to seafarers, and may or may not have the resources to provide timely access to all of the seafarers at a facility. Owners and operators relying on one or more third parties as their primary method of providing the required access would also be required to include a back-up method of providing timely, no-cost access provisions in their FSPs.

Facility owners and operators could also choose to develop their own method(s) for providing access between the vessel and facility gate, apart from the listed methods. In all cases, the method(s) included in the FSP would be subject to COTP review and approval.

### 33 CFR 105.237(e)

Section 811 specifically requires facility owners or operators to provide seafarers’ access at no cost to the individual. We propose to codify that requirement in 33 CFR 105.237(e). The Coast Guard has received complaints indicating that some facility owners and operators currently provide access through their facilities, but only do so by allowing taxis to shuttle seafarers between the vessel and the facility gates for a specific fee. Such an arrangement would not meet the requirement in Section 811 or in proposed § 105.237(e) to provide access at no cost.

### 33 CFR 105.237(f)

Section 811 specifically requires that approved FSPs must provide a system for seafarers’ access. We propose to require facility owners or operators to describe the seafarers’ access systems in

their FSPs. In the FSP, owners or operators would be required to document the: (1) Location of transit areas used for providing seafarers’ access; (2) duties, and number of facility personnel assigned to each duty, associated with providing seafarers’ access; (3) methods of escorting and/or monitoring individuals transiting through the facility; (4) agreements or arrangements between the facility and private parties, nonprofit organizations, or other parties to facilitate seafarers’ access; and (5) maximum length of time an individual would wait for seafarers’ access.

Documenting this information in the FSP would ensure that the facility’s system for seafarers’ access is described in sufficient detail for facility personnel to implement and for Coast Guard personnel, specifically COTPs, to confirm regulatory compliance. In accordance with 33 CFR 105.410 (for facilities submitting an initial FSP) or 33 CFR 105.415 (for facilities amending an existing approved FSP), which already require that all FSP updates be submitted for COTP approval at least 60 days before any operational change, we propose requiring facilities to update their FSPs and submit them for COTP review a minimum of 60 days before implementing any operational changes that would be necessitated by this rule. Because we propose requiring implementation of the system within 1 year after publication of the final rule under proposed § 105.237(a), all FSP updates would need to be submitted no later than 10 months after the publication of the final rule.

### C. 33 CFR 105.405

We propose updating 33 CFR 105.405, which dictates the format and content of the FSP, to add the proposed requirement that an FSP include a section on the facility’s system for seafarers’ access.

### D. 33 CFR 101.112 (Federalism)

A Presidential Memorandum, dated May 20, 2009, entitled “Preemption,”<sup>9</sup> requires an agency to codify a preemption provision in its regulations if the agency intends to preempt State law. We propose to add a new section 33 CFR 101.112, which would provide a statement regarding the preemption principles that apply to 33 CFR part 105.

We believe the field-preemption Federalism principles articulated in *United States v. Locke* and *Intertanko v. Locke*<sup>10</sup> apply to 33 CFR part 105, at

<sup>9</sup> 74 FR 24693.

<sup>10</sup> 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).

least insofar as a State or local law or regulation applicable to MTSA-regulated facilities for the purpose of their protection would conflict with a Federal regulation (*i.e.*, it would either actually conflict or would frustrate an overriding Federal need for uniformity).

### E. Public Comments

We invite the public to comment on any part of this proposed rule and the assumptions and estimates used in the “Preliminary Regulatory Analysis (RA) and Initial Regulatory Flexibility Analysis,” which is available in the public docket for this rulemaking. Specifically, we request comments on the following:

1. We request comments on whether 1 year is an appropriate timeframe to implement the system that would be required under this proposed rule.

2. In formulating the proposed 33 CFR 105.237(b) “Individuals covered”, we sought to include the individuals to whom facility owners or operators should be required to provide timely, no-cost access through their facilities based on the language of section 811 and the existing seafarers’ access requirements in 33 CFR 105.200(b)(9). We request comments on whether this proposal provides an appropriately inclusive list of individuals who should be allowed to access a vessel, or whether the list is too broad or too narrow.

3. As stated above in this preamble, instead of proposing a single regulatory definition of “timely access” that would apply to all facilities, we propose factors for facility owners and operators to consider (and document in the FSP) so that they provide “timely access” without unreasonable delay. We request comments on whether this approach provides the necessary flexibility for a diverse regulated population, while also providing COTP oversight to ensure that “timely access” is reasonable in each case.

4. We request comments on whether the proposed 33 CFR 105.237(d) provides an appropriately inclusive list of methods for providing seafarers’ access, or whether there any other methods that should be on the list.

5. We request comments on our estimate, discussed below under Section VI. Regulatory Analyses, that there is a 10.3 percent non-compliance rate of MTSA-regulated facilities with respect to providing seafarers’ access.

6. We request comments on our cost estimates, discussed below under Section VI. Regulatory Analyses, for FSP amendments and changes to facility operations to implement the proposed rule’s provisions.

7. We request comments on the regulatory alternatives to implementing section 811 discussed below under Section VI. Regulatory Analyses.

**VI. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders. Details regarding the regulatory analyses are located in the preliminary Regulatory Analysis (RA), which can be found by following the directions in paragraph I.B. above.

*A. Regulatory Planning and Review*

Executive Orders 13563 (“Improving Regulation and Regulatory Review”) and 12866 (“Regulatory Planning and 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. The economic impact of this rulemaking is not economically significant (*i.e.*, the rulemaking has an annual effect on the economy of \$100 million or more a year).

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The rule has not been reviewed by the Office of Management and Budget. Nonetheless, we developed an analysis of the costs and benefits of the proposed rule to ascertain its probably impacts on industry. We consider all estimates and analysis in this RA to be preliminary and subject to change in consideration of public comments.

Section 811 of the CGAA 2010 requires each MTSA-regulated facility, in its FSP, to “provide a system for seamen assigned to a vessel at that facility, pilots, and representatives of seamen’s welfare and labor organizations to board and depart the vessel through the facility in a timely manner at no cost to the individual.” The CGAA 2010 builds on the requirements set forth under 33 CFR 105.200(b)(9), which stipulates that each facility owner or operator is currently required to “[e]nsure coordination of shore leave. . . .” We propose to require each owner or operator of a MTSA-regulated facility to implement a system for providing seafarers and other individuals with access between vessels moored at the facility and the facility gate. Each owner or operator would be required to implement a system within 1 year after publication of the final rule that incorporates specific methods of

providing access in a timely manner, at no cost to the individual, and in accordance with existing access control provisions in 33 CFR part 105. We also propose to require each owner or operator to ensure that the FSP includes a section describing the system for seafarers’ access. This proposed rule proposes six methods of providing access as acceptable means of implementing a system of access. They are as follows:

- (1) Regularly scheduled escort between the vessel and the facility gate that conforms to the vessel’s watch schedule as agreed upon between the vessel and facility;
- (2) An on-call escort between the vessel and the facility gate;
- (3) Arrangements with taxi services;
- (4) Arrangements with seafarers’ welfare organizations to facilitate the access;
- (5) Monitored pedestrian access routes between the vessel and facility gate; or
- (6) A method, other than those described above, approved by the COTP.

If a MTSA-regulated facility provides a method of access via third party (*e.g.*, taxi service, seafarers’ welfare organization, etc.), they would need to have a “back-up” method so as to ensure access is provided in a timely manner, provided it is approved by the COTP.

Table 1 provides a summary of the affected population, costs, and benefits to this proposed rule.

**TABLE 1—SUMMARY OF AFFECTED POPULATION, COSTS, AND BENEFITS**

Category	Notice of proposed rulemaking
Applicability .....	Owners or operators of a facility regulated by the Coast Guard are required to implement a system that provides seafarers and other individuals with access between the shore and vessels moored at the facility.
Affected population .....	2,498 MTSA-regulated Facilities. Seafarers and other covered individuals that would receive access under the proposed rule.
Total Cost to Industry and Government* (7% discount rate).	10-year: \$19.9 million. Annualized: \$2.8 million.
Benefits .....	Provides access through facilities for an average of 907 seafarers and other covered individuals that were otherwise denied access annually. Reduces regulatory uncertainty by harmonizing regulations with Sec. 811 of Pub. L. 111–281. Conforms with the intent of the ISPS Code. Ensures the safety, health, and welfare of seafarers.

\* Please refer to the preliminary RA in the docket for details.

A summary of the RA follows:

**Affected Population**

The effect of the proposed rule would be to require facilities regulated by MTSA to implement a system of access for seafarers and other individuals, and to document that system in their FSPs. Many facilities already have a system that would likely satisfy this proposed

rule, but they would still need to update their FSPs to document that system. Other facilities would have to both implement a system and update their FSPs to document it.

Based on information about MTSA-regulated facilities captured in the Coast Guard’s internal database, the Marine Inspection, Safety and Law Enforcement (MISLE), there are 2,498 facilities

affected by this rulemaking. We anticipate that all (2,498 facilities) would need to modify their FSPs within 10 months<sup>11</sup> of publication of the final

<sup>11</sup> As explained above in the discussion of proposed § 105.237(f), the deadline to implement operational changes resulting from this rule would be one year after the final rule is published. Since Coast Guard regulations already require FSP amendments to be submitted for Coast Guard approval no later than 60 days before implementing

rule to document their system of providing access for seafarers and other individuals. Any needed changes in subsequent years would be accomplished under existing updates to FSPs or occurs as facilities changes ownership.<sup>12</sup>

In addition to documenting a system of access in their FSPs, some facilities may need to modify operations to implement that system. Based on a 2011 survey conducted by the Seamen’s

Church Institute’s (SCI) Center for Seafarers’ Rights and discussions with the SCI, we estimate that 10.3 percent of the facilities would need to update their existing systems of access to conform to the standards of this rulemaking.<sup>13</sup> We used the 10.3 percent as our estimated non-compliance rate. At this rate, 257 out of the total 2,498 facilities affected by this rulemaking would need to develop and implement a system of

access through the facility for seafarers and other individuals and document it in their FSPs.

Costs

There are two main types of costs: administrative and operational. Table 2 provides the outline of the proposed regulations and the effects that these changes will have on the affected population.

TABLE 2—COST MATRIX

Section(s) and Descriptions		Population	Costs and Benefits
§ 101.112	Adds Federalism language ..	All facilities .....	No cost because it deals with the interaction between the federal government and states.
§ 105.200(b)(1)–(6)	Rewords language to clarify by adding the word “personnel” and removing the words “within that structure“.. Spells out acronyms. .... Rewords language to clarify ..	All facilities .....	No cost because it clarifies parameter of security personnel It clarifies the acronyms It is a grammatical change only.
§ 105.200(b)(9)	Replaces the word, “coordination” with “implementation of a system, in accordance with § 105.237 of this subpart, coordinating“. Refers to § 105.237(b)(4).	All facilities .....	Cost to implement a system of access for seafarers and covered individuals going through a facility.
§ 105.200(b)(14)	Adds reference to § 105.255(c).	All facilities .....	No cost. Narrows reference from entire section to paragraph (c).
§ 105.237(a)–(d)	(a) Facilities must have procedures in place to allow access through the facility. (b) Provides list of seafarers and covered individuals. (c) Timing of access is dependent on COTP. (d) Outlines methods of access. (d)(3) Individual cost is limited to local taxi fare.	Non-conforming facilities ..... All seafarers and covered individuals that would receive access under this rule.	Cost for non-conforming facilities to implement a system of access for seafarers and covered individuals going through a facility.
§ 105.237(e)	Stipulates no cost to the individual.	All facilities .....	Cost may be passed onto the vessel.
§ 105.237(f)	Stipulates that a system of access must be documented in the FSP.	All facilities .....	Paperwork cost to add description in the FSP.
§ 105.405(a)(9)	Specifies the location in the FSP where facilities must outline escorting procedures.	All facilities .....	Paperwork cost to add description in the FSP.

All MTSA-regulated facilities are expected to incur administrative costs and would need to update their FSPs to document their system of access. While

all MTSA-regulated facilities describe a system of access, the description may not contain all of the proposed elements. Thus, we determined that all

facilities’ FSPs would undergo modification to incorporate a description of seafarers’ access.

operational changes, the deadline for submitting FSP amendments resulting from this rule would be 10 months after publication of the final rule.

<sup>12</sup> The number of FSPs have been decreasing from 2004 to 2014. Therefore, we did not cost out changes to ownership.

<sup>13</sup> Based on the 2011 SCI report 26 ports were surveyed. From those 26 ports, 17 terminals would not conform to the requirement of this proposed rule (pg. 3–4). Upon further investigation by USCG, the Seamen’s Church Institute stated that in 2011, they reviewed 165 terminals. The non-compliance

rate is 17 terminals out compliance + 165 terminals surveyed = 10.3 percent non-compliance rate.

2,498 Population \* ((\$63.40 wage<sup>14</sup> \* 6 hours<sup>15</sup>) + \$6.07 stationery<sup>16</sup>) = \$965,402

We estimate that 257 facilities (10.3 percent of 2,498 facilities) would be expected to incur operational costs and would also need to modify their systems of access to conform to their modified FSPs. The proposed rule provides six methods for providing access: (1) Regularly scheduled shuttle service, (2) on-call service, (3) taxi service, (4) arrangements with the seafarers' welfare organizations, (5) monitoring of pedestrian routes, or (6) any other system, provided that the method is approved by the COTP. This proposed rule would require a "back-up" method of access if a facility chooses a method that relies on a third party. The back-up method would be how the facility ensures access if the third party fails to provide access. For the purposes of this RA, we assume that facilities would

have a "back-up" system in place if using the seafarers' welfare organization. We did not assume a back-up method for the other since methods 1, 2, or 5 does not deal with third parties, and because we assume that facilities would have a sufficient number of taxis available for method 3. For the purposes of this RA, we focus on the first five methods as primary methods of access, because facilities would choose the sixth option only if it had higher value (e.g., lower costs) than one of the first five.

Based on information from Coast Guard internal subject matter experts (SMEs) and the costs associated with implementing the various methods, we expect that a small percentage of facilities are large enough, or carry out dangerous or hazardous operations, to warrant the purchase of a van. Some facilities would opt to use taxi service, as it provides flexibility to the facility as a relatively cheaper alternative. Some

would choose to use a seafarers' welfare organization (Method 4) to provide transit, but due to these organizations' limited resources, facilities would not be able to solely depend on a seafarers' welfare organization to provide escort. We assume that most facilities would choose monitoring (Method 5) since the majority of them are small<sup>17</sup> enough that existing security guards and/or monitoring equipment in place would be sufficient. However, if facilities choose this method, we anticipate 1 hour of training annually to review security protocol in the event that a seafarer leaves the designated passageway.

Table 3 provides the number of affected facilities and the per-facility cost to modify operations to include a system of access and to document it in their FSPs. Costs are broken down into initial cost to affected populations and then annually recurring costs.<sup>18</sup>

TABLE 3—PER-FACILITY ADMINISTRATIVE AND OPERATIONAL COSTS  
[By method]

Cost description	Population	Initial cost	Annual recurring cost
Cost Per Facility (FSP Documentation) .....	2,498	386	0
Cost Per Facility Operations:			
Method 1: Regularly Scheduled Shuttle .....	26	63,759	35,655
Method 2: On-call Service .....	51	52,154	24,050
Method 3: Taxi .....	51	7,619	3,208
Methods 4: Seafarers' Welfare Organization .....	26	3,208	1,203
Method 5: Monitoring of Pedestrian Routes .....	103	181	181
Method 6: Alternate means of access, approved by the COTP .....	N/A	N/A	N/A

Table 4 provides the key unit costs for the methods. Please refer to the standalone RA for the calculations of the costs by method.

TABLE 4—KEY INPUTS FOR METHODS 1–5

Key input	Cost	Source
Security guard wage .....	\$19.41 .....	<a href="http://www.bls.gov/oes/2012/may/oes339032.htm">http://www.bls.gov/oes/2012/may/oes339032.htm</a> .
Cargo and Freight Agents Wage.	\$30.18 .....	<a href="http://www.bls.gov/oes/2012/may/oes435011.htm">http://www.bls.gov/oes/2012/may/oes435011.htm</a> .
Managers .....	\$63.35 .....	<a href="http://www.bls.gov/oes/2012/may/oes113071.htm">http://www.bls.gov/oes/2012/may/oes113071.htm</a> .
Secretaries .....	\$35.81 .....	<a href="http://www.bls.gov/oes/2012/may/oes436011.htm">http://www.bls.gov/oes/2012/may/oes436011.htm</a> .
Van .....	ranges from \$25,060 to \$35,620.	<a href="http://www.ford.com/commercial-trucks/e-serieswagon/models/">http://www.ford.com/commercial-trucks/e-serieswagon/models/</a> . <a href="http://www.toyota.com/sienna/trims-prices.html">http://www.toyota.com/sienna/trims-prices.html</a> . <a href="http://www.gm.com/vehicles/browseByType.html#/?price=120000&amp;brand=all&amp;type=van&amp;appState=list">http://www.gm.com/vehicles/browseByType.html#/?price=120000&amp;brand=all&amp;type=van&amp;appState=list</a> .
Cost of Gas .....	\$4.04 .....	<a href="http://fuelgaugereport.aaa.com/?redirectto=http://fuelgaugereport.opisnet.com/index.asp">http://fuelgaugereport.aaa.com/?redirectto=http://fuelgaugereport.opisnet.com/index.asp</a> .
Average Miles per Gallon ....	13 .....	<a href="http://www.fueleconomy.gov/feg/byclass/Vans_Passenger_Type2012.shtml">http://www.fueleconomy.gov/feg/byclass/Vans_Passenger_Type2012.shtml</a> .
Driving Speed .....	ranges from 15 mph to 30 mph.	<a href="http://www.panynj.gov/port/pdf/highway-speed-limits-2008.pdf">http://www.panynj.gov/port/pdf/highway-speed-limits-2008.pdf</a> . <a href="http://www.massport.com/port-of-boston/Conley%20Terminal/TerminalProcess.aspx">http://www.massport.com/port-of-boston/Conley%20Terminal/TerminalProcess.aspx</a> . <a href="http://www.fmtcargo.com/terminal_guides/fmt_guide_burns_harbor.pdf">http://www.fmtcargo.com/terminal_guides/fmt_guide_burns_harbor.pdf</a> . <a href="http://www.fmtcargo.com/terminal_guides/fmt_guide_cleveland.pdf">http://www.fmtcargo.com/terminal_guides/fmt_guide_cleveland.pdf</a> .

<sup>14</sup> See Chapter 3.1 of the standalone RA for information regarding wages.

<sup>15</sup> In COI 1627–007, we estimate that it takes 100 hours to create a new FSP made up of 18 sections. We estimate that it would take 6 hours (100 hours

+ 18 sections = 5.55 hours) to create a new section in the FSP.

<sup>16</sup> Executive Administrative Assistant hourly wage \$34.81 \* 0.1667 hours + \$0.10 paper = \$6.07. See chapter 3.1 of the standalone RA for information regarding wages.

<sup>17</sup> Based on information from Coast Guard facility inspectors nationwide due to the fact that MISLE and other Coast Guard databases do not capture the physical sizes of these facilities.

<sup>18</sup> Please refer to table 5 for 10-year breakdown in total cost.

TABLE 4—KEY INPUTS FOR METHODS 1–5—Continued

Key input	Cost	Source
Driving Time .....	0.33 hours .....	<a href="http://www.fmtcargo.com/terminal_guides/fmt_guide_port_manatee.pdf">http://www.fmtcargo.com/terminal_guides/fmt_guide_port_manatee.pdf</a> <a href="http://www.fmtcargo.com/terminal_guides/fmt_guide_lake_charles.pdf">http://www.fmtcargo.com/terminal_guides/fmt_guide_lake_charles.pdf</a> <a href="http://www.fmtcargo.com/terminal_guides/fmt_guide_milwaukee.pdf">http://www.fmtcargo.com/terminal_guides/fmt_guide_milwaukee.pdf</a> SME.
TWIC .....	\$401.00 .....	<a href="http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm#twic_process">http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm#twic_process</a> .
Taxi Driver Wage .....	\$17.92 .....	<a href="http://www.bls.gov/oes/2012/may/oes533041.htm">http://www.bls.gov/oes/2012/may/oes533041.htm</a> .
Miles to an enrollment Center.	100 miles .....	STCW.
Average Commute Speed ...	28.87 .....	<a href="http://nhts.ornl.gov/2009/pub/stt.pdf">http://nhts.ornl.gov/2009/pub/stt.pdf</a> .
Mileage Reimbursement Rate.	\$0.56 .....	<a href="http://www.gsa.gov/portal/content/100715">http://www.gsa.gov/portal/content/100715</a> .

Table 5 provides the total costs over 10 years, to include the initial cost and annually recurring costs.

TABLE 5—SUMMARY OF INDUSTRY COSTS 10-YEAR, 7 AND 3 PERCENT DISCOUNT RATES

	Undiscounted cost	Annualized 7% discount cost	Annualized 3% discount cost
Year 1 .....	\$5,773,631	\$5,395,917	\$5,605,467
Year 2 .....	2,367,130	2,067,543	2,231,247
Year 3 .....	2,367,130	1,932,283	2,166,259
Year 4 .....	2,367,130	1,805,872	2,103,164
Year 5 .....	2,367,130	1,687,731	2,041,907
Year 6 .....	2,367,130	1,577,319	1,982,434
Year 7 .....	2,367,130	1,474,130	1,924,693
Year 8 .....	2,367,130	1,377,691	1,868,634
Year 9 .....	2,367,130	1,287,562	1,814,208
Year 10 .....	2,367,130	1,203,329	1,761,367
Total .....	27,077,801	19,809,376	23,499,382
Annualized .....	.....	2,820,410	2,754,844

Based on information from the SMEs, we estimate that it would take between 15 and 30 minutes for an E–4, E–5, or E–6 to review the updated FSP. We

calculate the one-time cost to review all FSPs to be as follows: 2,498 FSPs \* \$48.33 wage rate/hour \* 0.5 hours = \$60,364

Table 6 provides the 10-year cost to both the government and industry.

TABLE 6—SUMMARY OF INDUSTRY AND GOVERNMENT COSTS 10-YEAR, 7 AND 3 PERCENT DISCOUNT RATES

	Undiscounted cost	Annualized 7% discount cost	Annualized 3% discount cost
Year 1 .....	\$5,833,995	\$5,452,332	\$5,664,073
Year 2 .....	2,367,130	2,067,543	2,231,247
Year 3 .....	2,367,130	1,932,283	2,166,259
Year 4 .....	2,367,130	1,805,872	2,103,164
Year 5 .....	2,367,130	1,687,731	2,041,907
Year 6 .....	2,367,130	1,577,319	1,982,434
Year 7 .....	2,367,130	1,474,130	1,924,693
Year 8 .....	2,367,130	1,377,691	1,868,634
Year 9 .....	2,367,130	1,287,562	1,814,208
Year 10 .....	2,367,130	1,203,329	1,761,367
Total .....	27,138,165	19,865,791	23,557,987
Annualized .....	.....	2,828,442	2,761,715

For more details, please refer to the cost chapter of the preliminary RA in the docket.

Benefits

The primary benefit to this rule is to provide individuals, with a legitimate purpose, access to or egress from the

vessel to the facility gate. The Center for Seafarers' Rights organization, reports on the number of seafarers that are denied access through the terminal. Based on the SCI's surveys from 2006 to

2014, there was an average of 907 seafarers that were denied shore leave access due to terminal restrictions. While it was reported that there were denials of access to other individuals with a legitimate purpose, we do not have the numbers of facilities that do not provide access nor do we have the numbers of other individuals denied access. The benefit to this rule is that seafarers and other authorized individuals that would otherwise be denied access due to terminal restrictions would be able to obtain shore leave access.

Providing seafarers' access ensures the safety, health, and welfare of

seafarers. Generally, transiting through a MTSA-facility is the only way for seafarers to access the shore, visit doctors, obtain prescriptions, visit businesses, visit family members and friends, among other things, beyond the facility.

Another benefit to this rule is that it conforms to international conventions, specifically the International Ship and Port Facility Security Code. In light of this international agreement, if the U.S. is known internationally for having facilities that do not provide shore leave access, other countries may consider denying shore leave access to U.S. seafarers while they are abroad.

Additionally, individuals providing services for seafarers or having another legitimate purpose for accessing the vessel, such as representatives of seafarers' welfare and labor organizations, port workers organizations, port engineers or superintendents, generally can only access vessels moored at MTSA-regulated facilities by transiting through the facility.

Finally, this rule reduces regulatory uncertainty by harmonizing the Coast Guard's regulations with section 811 of the CGAA (Pub. L. 111-281).

The benefits to this rulemaking are described in Table 7.

TABLE 7—SUMMARY OF BENEFITS

Implications	Definitions
Seafarers' Access .....	From 2006 to 2014, there were an average 907 reported seafarers that were denied access due to terminal restrictions. This ensures that these seafarers would be allowed access. Ensures the safety, health, and welfare of seafarers.
International Conventions .....	Conforms with the intent of the ISPS Code.
Regulatory Uncertainty .....	Reduces regulatory uncertainty by harmonizing the Coast Guard's regulations with Sec. 811 of Pub. L. 111-281.

Alternatives

We propose several ways to ensure seafarers' access: the proposed alternative (which is the chosen alternative), and four other alternatives.

*Proposed Alternative:*

The proposed alternative is to amend Coast Guard regulations to require MTSA-regulated facilities to implement a system of seafarers' access and to amend their FSPs to document that system. This alternative was chosen because it provides regulatory flexibility at the least cost option that would comply with the intent of the statute.

*Other Considered Alternatives:*

*Alternative 1—No change to regulations.* Instead of amending the current regulations, COTPs would deny approval of FSPs that do not adequately address shore leave procedures in their security plans. While this approach may address some deficiencies at some facilities, we reject this alternative because it would not provide clear and consistent regulatory standards for facilities to implement and COTPs to enforce. Additionally, the current regulation in 33 CFR 105.200(b)(9) does not explicitly require facility owners and operators to provide timely, no cost access to seafarers, or to include seafarers' access provisions in their security plans. Section 811 makes these issues mandatory, necessitating an update to our regulations.

*Alternative 2—Require a section of the Declaration of Security (DoS) between the facility and the vessel to*

*include the facility's seafarers' access procedures.* We rejected this alternative due to the heavy burden it would place on the industry (see Chapters 1.3 and 5.2 of the preliminary RA for more details on the cost of this alternative). Additionally, this alternative would not specifically target facilities with existing seafarers' access issues, and would require a DoS between many facilities and vessels that would not otherwise be required to have one.

*Alternative 3—Require facilities to implement specific and prescriptive procedures for seafarers' access and to include these procedures in their FSPs.* This alternative would not allow facilities any flexibility or choice in the method of access appropriate for their facility and operations. One example of a prescriptive measure would be to require that all facilities provide shuttle service for all seafarers, 24-hours a day. Although this would solve the issues associated with seafarers' access, we do not support this alternative due to the heavy burden it would place on industry, resulting from prescribed major procedural and operational changes required for all facilities and higher costs associated with implementing such prescriptive regulations.

*Alternative 4—Publish guidance to industry clarifying that 33 CFR 105.200(b)(9) affirmatively requires facility owners/operators to provide shore leave and visitor access.* We do not support this approach, because this

approach has already been implemented, but has not completely solved the problems with seafarers' access at some facilities. Some remaining facilities still deny seafarers' access altogether or make shore access impractical based on a misinterpretation of our existing regulations (*i.e.*, they contend that since 33 CFR 105.200(b)(9) only requires coordination of shore leave if there is actual shore leave to coordinate, and there is no shore leave to coordinate if access to shore is denied altogether). Though this alternative has been implemented, we have continued to receive complaints that some facilities grant seafarers' access to and from vessels, but make it impractical by placing extreme limitations on escort availability or charging exorbitant fees.

Additionally, the current regulation in 33 CFR 105.200(b)(9) does not require facility owners and operators to provide timely, no cost access to seafarers, or to include seafarers' access provisions in their FSPs. Section 811 makes these issues mandatory, necessitating an update to our regulations to avoid regulatory uncertainty.

*B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000 people.

An Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble.

Based on available data, we identified 1,393 owners of the 2,498 facilities affected by this proposed rule. Of the 1,393 owners, we researched a sample of 304 owners to determine the size and revenue characteristics of the population. Based on the sample

population of 304 owners, we estimate that approximately 77 percent are small entities, as defined by the Small Business Administration (SBA) or other applicable size standards. Facility owners are entities that could be businesses, non-profit organizations, or government agencies. For more details, please refer to the Initial Regulatory Flexibility Analysis chapter in the preliminary RA, available in the docket. Because we have no way to determine which facilities (and, therefore, which entities) would need to implement a system of access, we performed two analyses. The first assesses the impact on small entities for the FSP documentation only. The second

estimates the impact from a combined FSP documentation and implementation.

Assuming all small entities only have to document a system of access in their FSP, this proposed rule would have an impact on small entities of less than 1 percent of revenues for all small entities.

For facilities that have to modify operations and document the new system of access in their FSP, 68 percent would have an impact of 1 percent or less, 26 percent would have an impacts of greater than 1 percent to 10 percent, and 6 percent would have a revenue impact of greater than 10 percent. Table 8 provides the breakdown of impacts.

TABLE 8—REVENUE IMPACT ON SMALL ENTITIES

Revenue impact	Initial implementation cost	Annual recurring costs
<b>FSP Only Cost</b>		
Cost to Modify FSP .....	\$386	.....
0% < Impact <= 1% .....	100%	.....
<b>FSP Plus Access Implementation</b>		
Per facility cost (weighted average) .....	\$18,724	\$9,210
0% < Impact <= 1% .....	66%	82%
1% < Impact <= 3% .....	23%	8%
3% < Impact <= 5% .....	1%	4%
5% < Impact <= 10% .....	4%	3%
Above 10% .....	6%	3%

**C. Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LT Mason Wilcox, Cargo and Facilities Division (CG–FAC–2), Coast Guard; telephone 202–372–1123, email [Mason.C.Wilcox@uscg.mil](mailto:Mason.C.Wilcox@uscg.mil). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The

Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**D. Collection of Information**

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, 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 proposed rule, the affected facilities and vessels would be required to update their FSPs to include provisions of seafarers’

access. This requirement would be added to an existing approved collection covered by Office of Management and Budget (OMB) control number 1625–0077.

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

*OMB Control Number:* 1625–0077.

*Summary of the Collection of Information:* This proposed rule would modify an existing collection of information, in proposed §§ 105.200 through 105.405, for owners and operators of certain MTSA-regulated facilities. MTSA-regulated facilities would need to include a description of seafarers’ access in their FSPs. These requirements would require a one-time change in previously approved OMB Collection 1625–0077.

*Proposed Use of Information:* The Coast Guard would use this information to determine whether a facility is providing adequate seafarers’ access provisions between the vessel and the facility gate.

*Description of the Respondents:* The respondents are owners and operators of

MTSA-regulated facilities regulated by the Coast Guard under 33 CFR Chapter I, subchapter H.

*Number of Respondents:* The adjusted number of respondents is 10,158 for vessels, 5,234 for facilities, and 56 for Outer Continental Shelf facilities. Of these 5,234 facilities, 2,498 would be required to modify their existing FSPs.

*Frequency of Response:* There will be a one-time response for all 2,498 respondents. The FSP would need to be updated within 10 months after publication of the final rule.

*Burden of Response:* This includes a one-time, 14,988-hour burden. The burden resulting from this NPRM is 6 hours per respondent.

*Estimate of Total Annual Burden:* The estimated implementation period burden for facilities is 6 hours per FSP amendment. Since 2,498 facilities would be required to modify their existing FSPs, the total burden would be 14,988 hours = (2,498 facilities \* 6 hours).

The current burden listed in this collection of information is 1,108,043 hours. The new burden, as a result of this proposed rulemaking, would be 1,123,031 hours (1,108,043 + 14,988).

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we will submit a copy of this proposed rule to the OMB for review of the collection of information.

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

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

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the Coast Guard could enforce the collection of information requirements in this proposed rule, OMB would need to approve the Coast Guard's request to collect this information.

#### *E. Federalism*

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the

relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule and have determined that it is consistent with the fundamental Federalism principles and preemption requirements described in Executive Order 13132.

This proposed rule would update existing regulations in 33 CFR part 105 by requiring each owner or operator of a facility regulated by the Coast Guard to implement a system that provides seafarers and other individuals with access through the facility. Additionally, this proposed rule would add requirements to amend security plans in order to ensure compliance.

It is well-settled that States may not regulate in categories reserved for regulation by the Coast Guard. (See the decision of the Supreme Court in the consolidated cases of *United States v. Locke* and *Intertanko v. Locke*, 529 U.S. 89, 120 S. Ct. 1135 (March 6, 2000)). The Coast Guard believes the Federalism principles articulated in *Locke* apply to the regulations promulgated under the authority of MTSA. States and local governments are foreclosed from regulating within the fields covered by regulations found in 33 CFR parts 101, 103, 104, and 106. However, with regard to regulations found in 33 CFR part 105, State maritime facility regulations are not preempted so long as these State laws or regulations are more stringent than what is required by 33 CFR part 105 and no actual conflict or frustration of an overriding need for national uniformity exists.

While it is well settled that State law or regulations will be preempted where Congress intended Coast Guard regulations to have preemptive effect, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under Executive Order 13132, please contact the person listed in the **FOR FURTHER INFORMATION** section of this preamble.

#### *F. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions

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

#### *G. Taking of Private Property*

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

#### *H. Civil Justice Reform*

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### *I. Protection of Children*

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

#### *J. Indian Tribal Governments*

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

#### *K. Energy Effects*

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order. Though it is a "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### L. Technical Standards

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

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble. This rule is likely to be categorically excluded under section 2.B.2, figure 2-1, paragraph (34)(a) and (c) of the Instruction and 6(a) of the final agency policy published at 67 FR 48243 on July 23, 2002. This rule involves regulations which are editorial or procedural, regulations concerning training, qualifying, licensing, and disciplining of maritime personnel and regulations concerning vessel operation safety standards. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

### List of Subjects

#### 33 CFR Part 101

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

#### 33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, Security measures.

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

#### 33 CFR—Navigation and Navigable Waters

##### 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. Add § 101.112 to read as follows:

##### § 101.112 Federalism.

(a) [RESERVED]

(b) The regulations in 33 CFR part 105 have preemptive effect over State or local regulations insofar as a State or local law or regulation applicable to the facilities covered by part 105 would conflict with the regulations in part 105, either by actually conflicting or frustrating an overriding Federal need for uniformity.

##### PART 105—MARITIME SECURITY: FACILITIES

■ 3. 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.

##### § 105.200 [Amended]

■ 4. Amend § 105.200 as follows:

■ a. In paragraph (b)(1), after the words "Define the", remove the words "security organizational structure" and add, in their place, the words "organizational structure of the security personnel"; and after the word "responsibilities", remove the words "within that structure";

■ b. In paragraph (b)(4), remove the words "an FSP" and add, in their place, the words "a Facility Security Plan (FSP)";

■ c. In paragraph (b)(6), remove the acronym "TWIC" and add, in its place, the words "Transportation Worker Identification Credential (TWIC)";

■ d. In paragraph (b)(6)(i), after the words "FSP are permitted to", add the words "serve as an", and at the end of the sentence, remove the symbol ";", and add, in its place, the symbol " .";

■ e. In paragraph (b)(6)(ii), after the words "or other authorized individual," remove the word "should" and add, in its place, the words "in the event that", and at the end of the sentence, remove the symbol and word "; and", and add, in its place, the symbol " .";

■ f. In paragraph (b)(6)(iii), after the word "employees", remove the symbol " ."; remove the word "what", and add, in its place, the word "which"; and after the words "are secure areas and", add the words "which are";

■ g. In paragraph (b)(8), after the abbreviation "(DoS)", add the symbol " .";

■ h. In paragraph (b)(9), after the word "Ensure", remove the words "coordination of", and add, in their place, the words "implementation of a system, in accordance with § 105.237 of this subpart, coordinating"; and after the words "for visitors to the vessel", remove the words "(including representatives of seafarers' welfare and labor organizations)" and add, in their place, the words "as described in § 105.237(b)(4) of this subpart"

■ i. In paragraph (b)(14), after the words "and of their obligation to inform", remove the acronym "TSA" and add, in its place, the words "Transportation Security Administration (TSA)"; and

■ j. In paragraph (b)(15), after the words "protocols consistent with", remove the words "section 105.255(c)" and add, in their place, the words "paragraph (c) of § 105.255".

■ 5. Add § 105.237 to read as follows:

##### § 105.237 System for seafarers' access.

(a) *Access Required.* Each facility owner or operator must implement a system by (365 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE) for providing access through the facility that enables individuals to transit to and from a vessel moored at the facility and the facility gate in accordance with the requirements in this section. The system must provide timely access as described in paragraph (c) of this section and incorporate the access methods described in paragraph (d) of this section at no cost to the individuals covered. The system must comply with the Transportation Worker Identification Credential (TWIC) provisions in this part.

(b) *Individuals Covered.* The individuals to whom the facility owner or operator must provide the access described in this section include—

(1) The seafarers assigned to a vessel moored at the facility;

(2) The pilots and other authorized personnel performing work for a vessel moored at the facility;

(3) Representatives of seafarers' welfare and labor organizations; and

(4) Other authorized individuals in accordance with the Declaration of Security (DoS) or other arrangement between the vessel and facility.

(c) *Timely Access.* The facility owner or operator must provide the access described in this section without unreasonable delay, subject to review by the Captain of the Port (COTP). The facility owner or operator must consider the following when establishing timely access without unreasonable delay:

(1) Length of time the vessel is in port.

(2) Distance of egress/ingress between the vessel and facility gate.

(3) The vessel watch schedules.

(4) The facility's safety and security procedures as required by law.

(5) Any other factors specific to the vessel or facility that could affect access to and from the vessel.

(d) *Access Methods.* The facility owner or operator must ensure that the access described in this section is provided through one or more of the following methods:

(1) Regularly scheduled escort between the vessel and the facility gate that conforms to the vessel's watch schedule as agreed upon between the vessel and facility.

(2) An on-call escort between the vessel and the facility gate.

(3) Arrangements with taxi services, ensuring that any costs for providing the access described in this section, above the taxi's standard fees charged to any customer, are not charged to the individual to whom such access is provided. If a facility provides arrangements with taxi services as the only method for providing the access described in this section, the facility is responsible to pay the taxi fees for transit within the facility.

(4) Arrangements with seafarers' welfare organizations to facilitate the access described in this section.

(5) Monitored pedestrian access routes between the vessel and facility gate.

(6) A method, other than those in paragraphs (d)(1) through (d)(5) of this section, approved by the COTP.

(7) If an access method relies on a third party, a back-up access method that will be used if the third-party is unable to or does not provide the required access in any instance. An owner or operator must ensure that the access required in paragraph (a) of this section is actually provided in all instances.

(e) *No cost to individuals.* The facility owner or operator must provide the access described in this section at no cost to the individual to whom such access is provided.

(f) *Described in the Facility Security Plan (FSP).* On or before [INSERT DATE 10 MONTHS AFTER PUBLICATION OF THE FINAL RULE], the facility owner or operator must document the facility's system for providing the access described in this section in the approved FSP in accordance with 33 CFR 105.410 or 33 CFR 105.415. The description of the facility's system must include—

(1) Location of transit area(s) used for providing the access described in this section;

(2) Duties and number of facility personnel assigned to each duty associated with providing the access described in this section;

(3) Methods of escorting and/or monitoring individuals transiting through the facility;

(4) Agreements or arrangements between the facility and private parties, nonprofit organizations, or other parties, to facilitate the access described in this section; and

(5) Maximum length of time an individual would wait for the access described in this section, based on the provided access method(s).

■ 6. Amend § 105.405 as follows:

■ a. In paragraph (a), at the end of the first sentence, remove the text “(a)”;

■ b. Redesignate paragraphs (a)(9) through (a)(18) as (a)(10) through (a)(19);

■ c. In newly designated paragraphs (a)(18) and (a)(19), at the beginning of the paragraphs, add the word “The” before the word “Facility”; and

■ d. Add new paragraph (a)(9) as follows:

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

(a) \* \* \*

(9) System for seafarers' access;

\* \* \* \* \*

Dated: December 17, 2014.

**J.C. Burton,**

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

[FR Doc. 2014-30013 Filed 12-24-14; 8:45 am]

**BILLING CODE 9110-04-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2014-0399; FRL-9920-67-Region 7]**

**Approval and Promulgation of Implementation Plans; State of Missouri; St. Louis Inspection and Maintenance Program**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) proposes to approve State Implementation Plan (SIP) revisions submitted by the State of Missouri relating to the Inspection and Maintenance (I/M) Program. On August 16, 2007, and December 7, 2007, the Missouri Department of Natural Resources (MDNR) requested to amend the SIP to replace the St. Louis centralized transient I/M240 vehicle test program Gateway Clean Air Program (GCAP) and associated state rule with a de-centralized, OBD only vehicle I/M program called, the Gateway Vehicle Inspection Program (GVIP), and a new I/M rule reflecting these changes. In this action, EPA is also proposing approval of three additional SIP revisions submitted by Missouri related to the state's I/M program including minor clarification edits to the new I/M rule, exemptions for specially constructed vehicles or “kit-cars,” exemptions for Plugin Hybrid Electric Vehicles (PHEV), and rescission of Missouri State Highway Patrol rules from the Missouri SIP.

These revisions to Missouri's SIP do not have an adverse effect on air quality as demonstrated in the technical support document which is a part of this docket. EPA's approval of these SIP revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Comments must be received on or before January 28, 2015.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R07-OAR-2014-0399, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email:* [brown.steven@epa.gov](mailto:brown.steven@epa.gov)

3. *Mail or Hand Delivery or Courier:* Steven Brown, Environmental Protection Agency, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219.

*Instructions:* Direct your comments to Docket ID No. EPA-R07-OAR-2014-0399. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web