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SUBCHAPTER H—MARITIME SECURITY

PART 101—MARITIME SECURITY: GENERAL

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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.

EDITORIAL NOTE: Nomenclature changes to part 101 appear at 73 FR 35009, June 19, 2008.

SOURCE: USCG–2003–14792, 68 FR 39278, July 1, 2003.

Subpart A—General

§ 101.100 Purpose.

- (a) The purpose of this subchapter is:

(1) To implement portions of the maritime security regime required by the Maritime Transportation Security Act of 2002, as codified in 46 U.S.C. Chapter 701;

(2) To align, where appropriate, the requirements of domestic maritime security regulations with the international maritime security standards in the International Convention for the Safety of Life at Sea, 1974 (SOLAS Chapter XI-2) and the International Code for the Security of Ships and of Port Facilities, parts A and B, adopted on 12 December 2002; and

(3) To ensure security arrangements are as compatible as possible for vessels trading internationally.

(b) For those maritime elements of the national transportation system where international standards do not directly apply, the requirements in this subchapter emphasize cooperation and coordination with local port community stakeholders, and are based on existing domestic standards, as well as established industry security practices.

(c) The assessments and plans required by this subchapter are intended for use in implementing security measures at various MARSEC Levels. The specific security measures and their implementation are planning criteria based on a set of assumptions made during the development of the security assessment and plan. These assumptions may not exist during an actual transportation security incident.

[USCG–2003–14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60470, Oct. 22, 2003]

§ 101.105 Definitions.

Unless otherwise specified, as used in this subchapter:

Alternative Security Program means a third-party or industry organization developed standard that the Commandant has determined provides an equivalent level of security to that established by this subchapter.

Area Commander means the U.S. Coast Guard officer designated by the Commandant to command a Coast Guard Area as described in 33 CFR part 3.

Area Maritime Security (AMS) Assessment means an analysis that examines and evaluates the infrastructure and operations of a port taking into account possible threats, vulnerabilities, and existing protective measures, procedures and operations.

Area Maritime Security (AMS) Committee means the committee established pursuant to 46 U.S.C. 70112(a)(2)(A). This committee can be the Port Security Committee established pursuant to Navigation and Vessel Inspection Circular (NVIC) 09-02 change 2, available from the cognizant Captain of the Port (COTP) or at <http://www.uscg.mil/hq/g-m/nvic>.

Area Maritime Security (AMS) Plan means the plan developed pursuant to 46 U.S.C. 70103(b). This plan may be the Port Security plan developed pursuant to NVIC 09-02 provided it meets the requirements of part 103 of this subchapter.

Area of Responsibility (AOR) means a Coast Guard area, district, marine inspection zone or COTP zone described in 33 CFR part 3.

Audit means an evaluation of a security assessment or security plan performed by an owner or operator, the owner or operator's designee, or an approved third-party, intended to identify deficiencies, non-conformities and/or inadequacies that would render the assessment or plan insufficient.

Barge means a non-self-propelled vessel (46 CFR 24.10-1).

Barge fleeting facility means a commercial area, subject to permitting by the Army Corps of Engineers, as provided in 33 CFR part 322, part 330, or pursuant to a regional general permit the purpose of which is for the making up, breaking down, or staging of barge tows.

Breach of security means an incident that has not resulted in a transportation security incident, in which security measures have been circumvented, eluded, or violated.

Bulk or in bulk means a commodity that is loaded or carried on board a vessel without containers or labels, and that is received and handled without mark or count.

Bunkers means a vessel's fuel supply.

Captain of the Port (COTP) means the local officer exercising authority for

the COTP zones described in 33 CFR part 3. The COTP is the Federal Maritime Security Coordinator described in 46 U.S.C. 70103(a)(2)(G) and also the Port Facility Security Officer as described in the ISPS Code, part A.

Cargo means any goods, wares, or merchandise carried, or to be carried, for consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel, facility, or OCS facility, except dredge spoils.

Cargo vessel means a vessel that carries, or intends to carry, cargo as defined in this section.

Certain Dangerous Cargo (CDC) means the same as defined in 33 CFR 160.204.

Commandant means the Commandant of the U.S. Coast Guard.

Company means any person or entity that owns any facility, vessel, or OCS facility subject to the requirements of this subchapter, or has assumed the responsibility for operation of any facility, vessel, or OCS facility subject to the requirements of this subchapter, including the duties and responsibilities imposed by this subchapter.

Company Security Officer (CSO) means the person designated by the Company as responsible for the security of the vessel or OCS facility, including implementation and maintenance of the vessel or OCS facility security plan, and for liaison with their respective vessel or facility security officer and the Coast Guard.

Contracting Government means any government of a nation that is a signatory to SOLAS, other than the U.S.

Cruise ship means any vessel over 100 gross register tons, carrying more than 12 passengers for hire which makes voyages lasting more than 24 hours, of which any part is on the high seas. Passengers from cruise ships are embarked or disembarked in the U.S. or its territories. Cruise ships do not include ferries that hold Coast Guard Certificates of Inspection endorsed for "Lakes, Bays, and Sounds", that transit international waters for only short periods of time on frequent schedules.

Dangerous goods and/or hazardous substances, for the purposes of this subchapter, means cargoes regulated by parts 126, 127, or 154 of this chapter.

Dangerous substances or devices means any material, substance, or item that reasonably has the potential to cause a transportation security incident.

Declaration of Security (DoS) means an agreement executed between the responsible Vessel and Facility Security Officer, or between Vessel Security Officers in the case of a vessel-to-vessel activity, that provides a means for ensuring that all shared security concerns are properly addressed and security will remain in place throughout the time a vessel is moored to the facility or for the duration of the vessel-to-vessel activity, respectively.

District Commander means the U.S. Coast Guard officer designated by the Commandant to command a Coast Guard District described in 33 CFR part 3.

Drill means a training event that tests at least one component of the AMS, vessel, or facility security plan and is used to maintain a high level of security readiness.

Escorting means ensuring that the escorted individual is continuously accompanied while within a secure area in a manner sufficient to observe whether the escorted individual is engaged in activities other than those for which escorted access was granted. This may be accomplished via having a side-by-side companion or monitoring, depending upon where the escorted individual will be granted access. Individuals without TWICs may not enter restricted areas without having an individual who holds a TWIC as a side-by-side companion, except as provided in §§ 104.267, 105.257, and 106.262 of this subchapter.

Exercise means a comprehensive training event that involves several of the functional elements of the AMS, vessel, or facility security plan and tests communications, coordination, resource availability, and response.

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

Facility Security Assessment (FSA) means an analysis that examines and

evaluates the infrastructure and operations of the facility taking into account possible threats, vulnerabilities, consequences, and existing protective measures, procedures and operations.

Facility Security Officer (FSO) means the person designated as responsible for the development, implementation, revision and maintenance of the facility security plan and for liaison with the COTP and Company and Vessel Security Officers.

Facility Security Plan (FSP) means the plan developed to ensure the application of security measures designed to protect the facility and its servicing vessels or those vessels interfacing with the facility, their cargoes, and persons on board at the respective MARSEC Levels.

Ferry means a vessel which is limited in its use to the carriage of deck passengers or vehicles or both, operates on a short run on a frequent schedule between two or more points over the most direct water route, other than in ocean or coastwise service.

Foreign vessel means a vessel of foreign registry or a vessel operated under the authority of a country, except the U.S., that is engaged in commerce.

General shipyard facility means—

(1) For operations on land, any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment, or rebuilding of any vessel, including graving docks, building ways, ship lifts, wharves, and pier cranes; the land necessary for any structures or appurtenances; and the equipment necessary for the performance of any function referred to in this definition; and

(2) For operations other than on land, any vessel, floating drydock, or barge used for, or a type that is usually used for, activities referred to in paragraph (1) of this definition.

Gross register tons (GRT) means the gross ton measurement of the vessel under 46 U.S.C. chapter 145, Regulatory Measurement. For a vessel measured under only 46 U.S.C. chapter 143, Convention Measurement, the vessel's gross tonnage, ITC is used to apply all thresholds expressed in terms of gross register tons.

Gross tonnage, ITC (GT ITC) means the gross tonnage measurement of the

vessel under 46 U.S.C. chapter 143, Convention Measurement. Under international conventions, this parameter may be referred to as “gross tonnage (GT).”

Hazardous materials means hazardous materials subject to regulation under 46 CFR parts 148, 150, 151, 153, or 154, or 49 CFR parts 171 through 180.

Infrastructure means facilities, structures, systems, assets, or services so vital to the port and its economy that their disruption, incapacity, or destruction would have a debilitating impact on defense, security, the environment, long-term economic prosperity, public health or safety of the port.

International voyage means a voyage between a country to which SOLAS applies and a port outside that country. A country, as used in this definition, includes every territory for the internal relations of which a contracting government to the convention is responsible or for which the United Nations is the administering authority. For the U.S., the term “territory” includes the Commonwealth of Puerto Rico, all possessions of the United States, and all lands held by the U.S. under a protectorate or mandate. For the purposes of this subchapter, vessels solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd meridian, are considered on an “international voyage” when on a voyage between a U.S. port and a Canadian port.

ISPS Code means the International Ship and Port Facility Security Code, as incorporated into SOLAS.

Maritime Security (MARSEC) Directive means an instruction issued by the Commandant, or his/her delegate, mandating specific security measures for vessels and facilities that may be involved in a transportation security incident.

Maritime Security (MARSEC) Level means the level set to reflect the prevailing threat environment to the marine elements of the national transportation system, including ports, vessels, facilities, and critical assets and infrastructure located on or adjacent to wa-

ters subject to the jurisdiction of the U.S.

MARSEC Level 1 means the level for which minimum appropriate protective security measures shall be maintained at all times.

MARSEC Level 2 means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a transportation security incident.

MARSEC Level 3 means the level for which further specific protective security measures shall be maintained for a limited period of time when a transportation security incident is probable or imminent, although it may not be possible to identify the specific target.

Master means the holder of a valid merchant mariner credential or license that authorizes the individual to serve as a Master, operator, or person in charge of the rated vessel. For the purposes of this subchapter, Master also includes the Person in Charge of a MODU, and the operator of an uninspected towing vessel.

Merchant mariner credential or MMC means the credential issued by the Coast Guard under 46 CFR part 10. It combines the individual merchant mariner’s document, license, and certificate of registry enumerated in 46 U.S.C. subtitle II part E as well as the STCW endorsement into a single credential that serves as the mariner’s qualification document, certificate of identification, and certificate of service.

OCS Facility means any artificial island, installation, or other complex of one or more structures permanently or temporarily attached to the subsoil or seabed of the OCS, erected for the purpose of exploring for, developing or producing oil, natural gas or mineral resources. This definition includes all mobile offshore drilling units (MODUs) not covered under part 104 of this subchapter, when attached to the subsoil or seabed of offshore locations, but does not include deepwater ports, as defined by 33 U.S.C. 1502, or pipelines.

Operator, Uninspected Towing Vessel means an individual who holds a merchant mariner credential or license described in 46 CFR 15.805(a)(5) or 46 CFR 15.810(d).

Owner or operator means any person or entity that owns, or maintains operational control over, any facility, vessel, or OCS facility subject to this subchapter. This includes a towing vessel that has operational control of an unmanned vessel when the unmanned vessel is attached to the towing vessel and a facility that has operational control of an unmanned vessel when the unmanned vessel is not attached to a towing vessel and is moored to the facility; attachment begins with the securing of the first mooring line and ends with the casting-off of the last mooring line.

Passenger vessel means—

(1) On an international voyage, a vessel carrying more than 12 passengers, including at least one passenger-for-hire; and

(2) On other than an international voyage:

(i) A vessel of at least 100 gross register tons carrying more than 12 passengers, including at least one passenger-for-hire;

(ii) A vessel of less than 100 gross register tons carrying more than 6 passengers, including at least one passenger-for-hire;

(iii) A vessel that is chartered and carrying more than 12 passengers;

(iv) A submersible vessel that is carrying at least one passenger-for-hire; or

(v) A wing-in-ground craft, regardless of tonnage, that is carrying at least one passenger-for-hire.

Passenger-for-hire means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Personal Identification Number (PIN) means a personally selected number stored electronically on the individual's TWIC.

Public access facility means a facility—

(1) That is used by the public primarily for purposes such as recreation, entertainment, retail, or tourism, and not for receiving vessels subject to part 104;

(2) That has minimal infrastructure for servicing vessels subject to part 104 of this chapter; and

(3) That receives only:

(i) Vessels not subject to part 104 of this chapter, or

(ii) Passenger vessels, except:

(A) Ferries certificated to carry vehicles;

(B) Cruise ships; or

(C) Passenger vessels subject to SOLAS Chapter XI-1 or SOLAS Chapter XI-2.

Recurring unescorted access means authorization to enter a vessel on a continual basis after an initial personal identity and credential verification.

Registered length means the registered length as defined in 46 CFR part 69.

Restricted areas mean the infrastructures or locations identified in an area, vessel, or facility security assessment or by the operator that require limited access and a higher degree of security protection. The entire facility may be designated the restricted area, as long as the entire facility is provided the appropriate level of security.

Review and approval means the process whereby Coast Guard officials evaluate a plan or proposal to determine if it complies with this subchapter and/or provides an equivalent level of security.

Screening means a reasonable examination of persons, cargo, vehicles, or baggage for the protection of the vessel, its passengers and crew. The purpose of the screening is to secure the vital government interest of protecting vessels, harbors, and waterfront facilities from destruction, loss, or injury from sabotage or other causes of similar nature. Such screening is intended to ensure that dangerous substances and devices, or other items that pose a real danger of violence or a threat to security are not present.

Secure area means the area on board a vessel or at a facility or outer continental shelf facility over which the owner/operator has implemented security measures for access control in accordance with a Coast Guard approved security plan. It does not include passenger access areas, employee access areas, or public access areas, as those terms are defined in §§104.106, 104.107, and 105.106, respectively, of this subchapter. Vessels operating under the waivers provided for at 46 U.S.C. 8103(b)(3)(A) or (B) have no secure

areas. Facilities subject to part 105 of this subchapter located in the Commonwealth of the Northern Mariana Islands and American Samoa have no secure areas. Facilities subject to part 105 of this subchapter may, with approval of the Coast Guard, designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure areas.

Security sweep means a walkthrough to visually inspect unrestricted areas to identify unattended packages, briefcases, or luggage and determine that all restricted areas are secure.

Security system means a device or multiple devices designed, installed and operated to monitor, detect, observe or communicate about activity that may pose a security threat in a location or locations on a vessel or facility.

Sensitive security information (SSI) means information within the scope of 49 CFR part 1520.

SOLAS means the International Convention for the Safety of Life at Sea Convention, 1974, as amended.

Survey means an on-scene examination and evaluation of the physical characteristics of a vessel or facility, and its security systems, processes, procedures, and personnel.

Transportation security incident (TSI) means a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

TWIC means a valid, non-revoked transportation worker identification credential, as defined and explained in 49 CFR part 1572.

TWIC Program means those procedures and systems that a vessel, facility, or outer continental shelf facility (OCS) must implement in order to assess and validate TWICs when maintaining access control.

Unaccompanied baggage means any baggage, including personal effects, that is not being brought on board on behalf of a person who is boarding the vessel.

Unescorted access means having the authority to enter and move about a secure area without escort.

Vessel-to-facility interface means the interaction that occurs when a vessel is directly and immediately affected by actions involving the movement of persons, cargo, vessel stores, or the provisions of facility services to or from the vessel.

Vessel-to-port interface means the interaction that occurs when a vessel is directly and immediately affected by actions involving the movement of persons, cargo, vessel stores, or the provisions of port services to or from the vessel.

Vessel Security Assessment (VSA) means an analysis that examines and evaluates the vessel and its operations taking into account possible threats, vulnerabilities, consequences, and existing protective measures, procedures and operations.

Vessel Security Plan (VSP) means the plan developed to ensure the application of security measures designed to protect the vessel and the facility that the vessel is servicing or interacting with, the vessel's cargoes, and persons on board at the respective MARSEC Levels.

Vessel Security Officer (VSO) means the person onboard the vessel, accountable to the Master, designated by the Company as responsible for security of the vessel, including implementation and maintenance of the Vessel Security Plan, and for liaison with the Facility Security Officer and the vessel's Company Security Officer.

Vessel stores means—

(1) Materials that are on board a vessel for the upkeep, maintenance, safety, operation or navigation of the vessel; and

(2) Materials for the safety or comfort of the vessel's passengers or crew, including any provisions for the vessel's passengers or crew.

Vessel-to-vessel activity means any activity not related to a facility or port that involves the transfer of cargo, vessel stores, or persons from one vessel to another.

Waters subject to the jurisdiction of the U.S., for purposes of this subchapter, includes all waters described in section 2.36(a) of this chapter; the Exclusive Economic Zone, in respect to the living and non-living resources therein; and, in respect to facilities located on the

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Outer Continental Shelf of the U.S., the waters superjacent thereto.

[USCG–2003–14792, 68 FR 39278, July 1, 2003, as amended at 68 FR 60470, Oct. 22, 2003; USCG–2004–18057, 69 FR 34925, June 23, 2004; USCG–2006–24196, 72 FR 3577, Jan. 25, 2007; USCG–2006–24196, 72 FR 55048, Sept. 28, 2007; USCG–2008–0179, 73 FR 35009, June 19, 2008; USCG–2006–24196, 74 FR 13116, Mar. 26, 2009; USCG–2006–24371, 74 FR 11211, Mar. 16, 2009]

§ 101.110 Applicability.

Unless otherwise specified, this subchapter applies to vessels, structures, and facilities of any kind, located under, in, on, or adjacent to waters subject to the jurisdiction of the U.S.

§ 101.115 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the FEDERAL REGISTER and the material must be available to the public. All approved material is on file at the Office of the Coast Guard Port Security Directorate (CG-54), Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. All material is available from the sources indicated in paragraph (b) of this section.

(b) The materials approved for incorporation by reference in this subchapter are as follows:

INTERNATIONAL MARITIME ORGANIZATION (IMO)

Publication Section, 4 Albert Embankment, London SE1 7SR, United Kingdom.

Conference resolution 1, Adoption of amendments to the Annex to the International Convention for the Safety of Life at Sea, 1974, and amendments to Chapter XI of SOLAS 1974, adopted December 12, 2002, (SOLAS Chapter XI-1 or SOLAS Chapter XI-2).

101.120; 101.310;
101.410; 101.505;
104.105; 104.115;
104.120; 104.297;
104.400.

33 CFR Ch. I (7–1–09 Edition)

Conference resolution 2, Adoption of the International Code for the Security of Ships and of Port Facilities, parts A and B, adopted on December 12, 2002 (ISPS Code).

101.410; 101.505;
104.105; 104.115;
104.120; 104.297;
104.400.

[USCG–2003–14792, 68 FR 39278, July 1, 2003, as amended at 69 FR 18803, Apr. 9, 2004]

§ 101.120 Alternatives.

(a) *Alternative Security Agreements.* (1) The U.S. may conclude in writing, as provided in SOLAS Chapter XI-2, Regulation 11 (Incorporated by reference, see §101.115), a bilateral or multilateral agreements with other Contracting Governments to SOLAS on Alternative Security Arrangements covering short international voyages on fixed routes between facilities subject to the jurisdiction of the U.S. and facilities in the territories of those Contracting Governments.

(2) As further provided in SOLAS Chapter XI-2, Regulation 11, a vessel covered by such an agreement shall not conduct any vessel-to-vessel activity with any vessel not covered by the agreement.

(b) *Alternative Security Programs.* (1) Owners and operators of vessels and facilities required to have security plans under part 104, 105, or 106 of this subchapter, other than vessels that are subject to SOLAS Chapter XI, may meet an Alternative Security Program that has been reviewed and approved by the Commandant (CG-54) as meeting the requirements of part 104, 105, or 106, as applicable.

(2) Owners or operators must implement an approved Alternative Security Program in its entirety to be deemed in compliance with either part 104, 105, or 106.

(3) Owners or operators who have implemented an Alternative Security Program must send a letter to the appropriate plan approval authority under part 104, 105, or 106 of this subchapter identifying which Alternative Security Program they have implemented, identifying those vessels or facilities that will implement the Alternative Security Program, and attesting that they are in full compliance therewith. A copy of this letter shall be retained on board the vessel or kept at the facility to which it pertains along