

balance between implementing the MTSA's provisions for deterring transportation security incidents and preserving constitutional rights to privacy, travel, and association.

Four commenters asked for amendments to §§ 105.255(c)(2) and 106.260(c)(2) to include coordination with aircraft identification systems, when practicable, in addition to coordination with vessel identification systems as a required access control measure.

We agree with the commenters, and have amended §§ 105.255(c)(2) and 106.260(c)(2) to reflect this clarification. Most facilities, including OCS facilities, are accessible by multiple forms of transportation; therefore, coordination with identification systems used by those forms of transportation should enhance security.

One commenter asked if the Coast Guard would issue guidelines on screening.

The Coast Guard intends to coordinate with the Transportation Security Administration (TSA) and the Bureau of Customs and Border Protection (CBP) in publishing guidance on screening to ensure that such guidance is consistent with intermodal policies and standards of TSA, and the standards and programs of CBP for the screening of international passengers and cargo. Additionally, TSA is developing a list of items prohibited from being carried on board passenger vessels.

One commenter asked if there is a difference between the terms "screening" and "inspection" as used in § 104.265(e)(2), requiring conspicuously posted signs.

In 33 CFR subchapter H, the terms "screening" and "inspection" fully reflect the types of examinations that may be conducted under §§ 104.265, 105.255, and 106.260. Therefore, both terms are included to maximize clarity.

We received 10 comments regarding signage and posting of signs. Ten commenters stated that posting new signs required in § 104.265(e)(2) aboard unmanned barges to describe security measures in place is unnecessary because existing signs indicate that visitors are not permitted aboard. One commenter stated that the requirements in § 105.255(e)(2) regarding signage are too prescriptive and believed that facilities should be allowed to post signs as they deem necessary and not attract additional attention.

We disagree with the comment and believe that signs, appropriately posted, serve as a deterrent against unauthorized entry and provide awareness for facility security

personnel. Although signage is primarily aimed at manned vessels, we extended this to all vessels because all vessels may on occasion be boarded by persons whose entry would subject them to possible screening. If existing signs accomplish this, the owner or operator is in compliance with the regulation.

We received two comments on vehicle searches. One commenter stated that vehicle screenings prior to boarding vessels "are not warranted." One commenter suggested that the government is responsible for vehicle inspections and searches.

We disagree. Vehicles may be used to cause a transportation security incident. Therefore the screening of vehicles is warranted, and we have required the owner or operator to ensure this is done.

We received comments from other Federal agencies requesting that government-owned vehicles on official business be exempt from screening or inspection. We have amended section 105.255(e)(1) and (f)(7) accordingly. This does not exempt government personnel from presenting identification credentials, on demand, for entry onto vessels or facilities.

One commenter requested that owners or operators of small private facilities be exempt from the requirement to screen baggage, under § 105.255, because they do not deal with passengers.

Section 105.255(e)(1) states that owners or operators must screen baggage at the rate specified in the facility's approved security plan. Because Facility Security Plans are tailored to the specific facility, it is possible that an approved plan could have very different baggage-screening provisions from a larger facility that serves multiple vessels. It is also possible that an approved plan could have provisions for coordinating baggage screening with vessels. However, we consider baggage screening an imperative security provision and have not exempted it in this final rule.

Eight commenters suggested that access control aboard OCS facilities only be required when an unscheduled vessel is forced to discharge passengers for emergency reasons, and that the provisions of § 105.255 and § 106.260 be the responsibility of the shoreside facility and the vessel owner. The commenter stated that the need to duplicate the process at the facility is wasteful. The commenters asked for amendments to § 105.255 and § 106.260 in order to make clear that security controls should be established shoreside.

The Coast Guard believes that access control must be established to ensure that the people on board any vessel or facility are identified and permitted to be there. We recognize that access control and personal identification checks at both the shoreside and OCS facility could be duplicative, and did not intend to require this duplication, unless needed. Our regulations provide the flexibility to integrate shoreside screening into OCS facility security measures. We note, however, that the OCS facility owner or operator retains ultimate responsibility for ensuring that access control measures are implemented. This means that, where integrated shoreside screening is implemented, the OCS facility owner or operator should have a means to verify that the shoreside screening is being done in accordance with the Facility Security Plan and these regulations. Even if integrated shoreside screening is arranged, the Facility Security Plan must also contain access control provisions for vessels or other types of transportation conveyances that do not regularly call on the OCS facility or might not use the designated shoreside screening process.

One commenter asked for clarification on whether fencing was required and the dates by which the construction of the fences should be accomplished, stating that fences could make normal business operations difficult.

The Coast Guard does not mandate fencing to prevent unauthorized access. Section 105.255 gives facility owners and operators the flexibility to implement those security measures that meet the specific performance standards for access control. Facilities must submit their security plan for approval by the Coast Guard on or before December 31, 2003, and must be operating under a plan approved by the Coast Guard by July 1, 2004. If a facility owner or operator intends to make physical improvements, such as installing fencing, but has not done so, this can be addressed in the Facility Security Plan. However, until improvements have been made, equivalent security measures must be explained in the Facility Security Plan and implemented.

In reviewing sections dealing with access control requirements, we noted an omission in text and are amending § 104.265(b) to include a verb in the sentence for clarity. We are also mirroring this clarification in §§ 105.255(b) and 106.260(b).

Nine commenters were concerned about the designation of restricted areas. Six commenters requested that the Coast Guard clarify the wording in