

spectator may enter the regulated area or pass directly through the regulated area as instructed by PATCOM. A vessel within the regulated area must operate at a safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) A person or vessel that desires to transit, moor, or anchor within the regulated area must first obtain authorization from the COTP Maryland-National Capital Region or PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(5) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event date and times.

(d) *Enforcement period.* This section will be enforced from 7 a.m. to 1 p.m. on June 1, 2019, and, if necessary due to inclement weather, from 7 a.m. to 1 p.m. on June 2, 2019.

Dated: March 27, 2019.

**Joseph B. Loring,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 105

[Docket No. USCG-2013-1087]

RIN 1625-AC15

#### Seafarers' Access to Maritime Facilities

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is issuing a final rule requiring each owner or operator of a maritime facility regulated by the Coast Guard to implement a system providing seafarers, pilots, and representatives of seamen's welfare and labor organizations access between vessels moored at the facility and the facility gate, in a timely manner and at no cost to the seafarer or other individuals. These access procedures must be documented in the Facility Security Plan for each facility, and

approved by the local Captain of the Port. This final rule, which implements a congressional mandate, ensures that no facility owner or operator denies or makes it impractical for seafarers or other individuals to transit through the facility.

**DATES:** This final rule is effective May 1, 2019.

**ADDRESSES:** You may view supplemental material identified by docket number USCG-2013-1087 using the Federal eRulemaking Portal at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For information about this document, call or email LCDR Myles J. Greenway, Cargo and Facilities Division (CG-FAC-2), Coast Guard; telephone 202-372-1168, email [Myles.J.Greenway@uscg.mil](mailto:Myles.J.Greenway@uscg.mil).

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#### I. Abbreviations

- ASP Alternate Security Program
- ATB Articulated tug barge
- BLS U.S. Bureau of Labor Statistics
- CBP U.S. Customs and Border Protection
- CFR Code of Federal Regulations
- CGAA Coast Guard Authorization Act of 2010
- COTP Captain of the Port
- DHS Department of Homeland Security
- DoS Declaration of Security
- FR Federal Register
- FRFA Final Regulatory Flexibility Analysis
- FSO Facility security officer
- FSP Facility security plan
- ISPS Code International Ship and Port Facility Security Code
- ITB Integrated tug barge
- MISLE Marine Information for Safety and Law Enforcement
- MTSA Maritime Transportation Security Act of 2002
- NAICS North American Industry Classification System
- NPRM Notice of proposed rulemaking
- OMB Office of Management and Budget
- RA Regulatory analysis
- § Section symbol
- SBA Small Business Administration
- SCI Seamen's Church Institute
- SME Subject matter expert

TWIC Transportation Worker Identification Credential  
U.S.C. United States Code

#### II. Basis and Purpose

Throughout the maritime sector, vessels arrive at facilities regulated by the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107-295, codified at 46 U.S.C. 70101 *et seq.*) for any number of commercial and other purposes. These vessels are operated by seafarers,<sup>1</sup> 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 the services, businesses, family members, and friends, among other things, beyond the vessel and the facility. Additionally, individuals providing services for seafarers, or having another legitimate purpose for accessing the vessel, can generally access a vessel moored at an MTSA-regulated facility only by transiting through the facility.

Section 811 of the Coast Guard Authorization Act of 2010 (CGAA) (Pub. L. 111-281, codified at 46 U.S.C. 70103 note) 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."

In addition, MTSA-regulated facilities must implement national maritime security initiatives, including the provision of security measures for access control. Coast Guard access-control regulations in title 33 of the Code of Federal Regulations (CFR), § 105.255, require MTSA-regulated facilities to control an individual's access to the facility and designate secure areas within the facility, unless the individual is either authorized to access that area or is escorted by someone who is authorized to access that area. Accordingly, facility owners and operators must consider the security implications of permitting seafarers and other individuals to transit through their facilities. Coast Guard regulations at 33 CFR 105.200(b)(9) require MTSA-regulated facilities to ensure coordination of shore leave for

<sup>1</sup> The terms "seafarer" and "seaman" are synonymous (as are their plural forms, "seafarers" and "seamen"), and are used interchangeably in this final rule.

these persons. Finally, the Coast Guard administers facility security plans under the authority of 46 U.S.C. 70103(c), which is delegated to the Coast Guard by DHS delegation number 0170.1 (II)(97)(b).

This regulatory action is necessary to help ensure that owners and operators of MTSA-regulated facilities provide seafarers and other covered individuals with the ability to transit through the facility in a timely manner, at no cost to the individuals. In addition, 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 covered individuals with a legitimate purpose for accessing the vessel. By statute, these individuals include representatives of seafarers' welfare and labor organizations, and pilots. Access by these statutorily authorized persons will be in accordance with the Facility Security Plan (FSP).

### III. Regulatory History

On December 29, 2014, the Coast Guard published a notice of proposed rulemaking (NPRM) to solicit comments on Seafarers' Access to Maritime Facilities (79 FR 77981). We proposed requiring each owner or operator of a MTSA-regulated facility to implement a system allowing seafarers and other individuals to have access between vessels moored at the facility and the facility gate. Under the proposal, access should be in a timely manner and at no cost to the seafarer or other individual.

In that NPRM, we also published a notice of public meeting to solicit additional public comments. The Coast Guard held this public meeting in Washington, DC, on January 23, 2015.

The initial comment period on the NPRM closed on February 27, 2015. On May 27, 2015, we reopened the public comment period for an additional 60 days (80 FR 30189), based on comments requesting an extension of the comment period and also to specifically seek input on our estimate of a 10.3-percent noncompliance rate for facilities with respect to providing seafarers' access. We stated that we would consider all public comments on the NPRM received during the reopened comment period.

The second comment period closed on July 27, 2015 (80 FR 32512). In total, the Coast Guard received comments from 163 commenters. The commenters represented private individuals, port authorities, pilots' associations, industry groups, professional mariner associations, seafarers' unions, seafarers' churches and centers, other mariner non-governmental organizations, the

World Shipping Council, and the Company of Master Mariners of Canada.

As a result of the public comments received on the NPRM, we made two changes to this final rule. First, we changed the types of individuals to which the rule applies, to mirror section 811 of the CGAA (Pub. L. 111–281, codified at 46 U.S.C. 70103 note), by deleting the proposed category of “other authorized individuals”. Second, we changed the regulations to address concerns raised by commenters about the need to modify their facility security plans (FSPs) to accommodate the no-cost mandate of the rule.

Additionally, we proposed to add § 101.112 on federalism, but a rule published in 2016 put identical language in place, so we have removed that amendatory instruction (see 81 FR 57652, 57708, effective date August 23, 2018).

### IV. Discussion of Comments and Changes

In this section, we organize the public comments we received into 18 categories. In each category, we feature a brief description of the comments and our responses to those comments.

#### (1) Transportation Worker Identification Credential Issues

This section discusses comments received on possible interaction between Transportation Worker Identification Credential (TWIC) requirements and the access requirements established by this final rule. As we explain in our responses that follow, this rule does not change existing TWIC requirements, and whether escorts are or are not required under TWIC rules does not affect the obligation to provide no-cost access to the seafarer. The facility has flexibility to decide how to comply with its TWIC requirements and the no-cost access requirements of this rule.

Several commenters noted that a TWIC should be sufficient identification for a mariner to have unescorted access to a facility.

While it may be possible on some facilities to design a system for unescorted access, the concern for secure areas of the facility remains paramount. To be granted unescorted access to the secure areas of a facility, the facility security regulations in 33 CFR 105.255 require a person to have a TWIC and to be authorized to access to the secure areas of a facility. A TWIC, by itself, does not satisfy the regulatory requirement and some facilities may opt for escorts to protect the secure areas of the facility. Other facilities may develop a system that does not require escorts.

Based upon the variety of scenarios under which a facility has the flexibility to decide how to comply with the TWIC and the no cost requirements of this rule, a facility has the option to use equipment and implement procedures that would allow unescorted access.

Congress requires MTSA-regulated facilities to grant access through the facility to seafarers at no cost to the seafarer. This rule does not change the requirement to escort or otherwise monitor the access of a person who is not authorized to have unescorted access to the facility.

A few commenters stated that seafarers may be precluded from taking taxis from the vessel to the facility gate because taxi drivers do not hold TWICs.

We recognize that the method of transfer between a vessel in port and the port facility gate may preclude certain options, such as taxis. It is also possible that taxi drivers could obtain TWICs and the Coast Guard is aware of several taxi companies that have drivers who have already obtained a TWIC. We are providing facility owners with the flexibility to implement a system to provide access that is tailored to each facility.

Other commenters expressed concern that the requirements for the seafarers' access program will duplicate existing TWIC escort requirements. They urged the Department of Homeland Security (DHS) to allow individual facilities under the Alternative Security Program (ASP) to add a seafarers' access system as an annex to their current FSP and to submit the annex to the Captain of the Port (COTP) for review and approval.

We concur with the comment. In lieu of amending the ASP and submitting the entire plan to the COTP for approval, the owner or operator of a facility covered under an ASP may submit an annex for each facility that explains how the facility will comply with the requirements of this final rule.

One commenter noted that the port of Port Everglades, Florida, is a restricted area inside a restricted area, and should not be accessed by any individual who does not possess a TWIC without a proper escort.

This final rule provides no-cost access for seafarers and other covered individuals to a port facility gate. Security of the facility or who has access to it should already be addressed by the FSP that was approved by the COTP for each port. Each port facility should ensure that its FSP is updated and approved to reflect the mandates of the law to provide no-cost access for seafarers and other covered individuals.

One commenter stated that “other authorized individuals” are generally

eligible to receive TWICs, but that this is not the case for non-U.S. seafarers. These seafarers should not be penalized for their inability to obtain TWICs, and, according to the commenter, they are treated as criminals because of their lack of visas. Fair treatment of non-U.S. mariners who are allowed access would help to ensure fair treatment of U.S. mariners abroad.

This comment is beyond the scope of this rulemaking, as this final rule concerns no-cost access through facilities, not unescorted access or the inability to obtain a TWIC. This rule does not change the requirement to escort or otherwise monitor the access of a person who is not authorized to have unescorted access to the facility.

*(2) Seafarer Safety Concerning Access to Port Facility Gates*

Many commenters noted that they have experienced unsafe conditions while attempting to gain facility access, and believe that safe transportation and pedestrian walkways must be mandated. Many commenters also complained that the current methods of allowing seafarers access are burdensome, expensive, or unsafe. Another commenter noted that they saw no reason to make special accommodations for seafarers if facility operators feel that safety and security is reduced if such seafarers are allowed on the facility.

Several commenters stated that this rule jeopardizes the ability of private port facilities to deny access to the docks out of safety concerns to mariners, and also noted the possibility that the free movement of mariners about the docks could impose an undue burden on dock operators and create an unsafe situation for mariners.

One commenter fully endorsed safe transit for mariners to and from the facility gate, and believed that such safe passage must be mandated.

The purpose of this final rule is to implement the Congressional requirement of no-cost access for seafarers and certain support organizations through MTSA-regulated facilities. The Coast Guard considered mandating specific infrastructure, such as pedestrian walkways, but determined that this could be unnecessary and costly in many facilities. Moreover, the no-cost access required by section 811 of the CGAA and this rulemaking does not diminish the requirement for facilities to comply with other laws and regulations, such as Occupational Safety and Health Administration (OSHA) requirements under 29 CFR. This final rule provides facility owners and operators with flexibility to ensure the safe passage of seafarers to and from the

facilities' gates through a variety of methods. It remains the responsibility of the facility owner or operator to ensure safety in accordance with the approved FSP on file. If conditions are unsafe or overly burdensome at certain facilities, mariners are encouraged to contact the local COTP to report such unsafe or overly burdensome conditions.

*(3) Cost Concerns Associated With the Requirement for "No Cost" Access to Port Facility Gates*

Many commenters were concerned with the cost of providing seafarers with no-cost access to facility gates. Some commenters said that the vessel owner or operator should bear the financial cost of providing access to facilities, while others said that the facility should bear the cost, and one commenter said the cost should not be borne by only one stakeholder. Several commenters proposed regulatory text placing the financial burden on one party or the other. Two commenters said the rule should be amended to clearly state that costs for providing access to facilities can be charged back to the vessel owner, because relieving vessel owners or operators from the financial burden of no-cost access goes beyond the intent of the CGAA.

The CGAA does not specify who should pay for no-cost access for seafarers. Ultimately, the Coast Guard determined that it is the facility's responsibility to provide the no cost service, as Coast Guard regulations already require each facility to have an approved FSP, which must now include a system for providing no-cost access to the facility for certain individuals. However, the Coast Guard declined to specifically prohibit charges to the vessel, and let parties decide the allocation of costs between facility and vessel. This rule provides flexibility to facilities on how to comply with the mandate and how to provide no-cost access for seafarers, as long as its solution does not result in a cost to seafarers.

Some commenters suggested that the rule should allow "reasonable fees" that can be passed on to the vessel owner to pay for seafarers' access. Many commenters noted that if facility owners are allowed to charge the vessel for seafarer access, the vessel owner will charge the mariner for access, and the intent of the law will be frustrated.

We are advising COTPs, through formal and informal communications with field units, to be on the lookout for this problem. Facilities that violate any provision of this rule are subject to enforcement by the COTP. Under 46 U.S.C. 70119 and 33 CFR 101.415(b),

any person who does not comply with the applicable requirements, including 33 CFR part 105, is liable to the U.S. for a civil penalty of not more than \$25,000 for each violation.<sup>2</sup>

Pursuant to the International Convention for Safety of Life at Sea (SOLAS) Chapter XI-2, the International Ship and Port Facility (ISPS) Code, the International Maritime Organization's "Reminder in Connection with Shore Leave and Access to Ships" MSC/1/Circ.1342, and the 2016 Amendments to the Convention on the Facilitation of International Maritime Traffic (FAL) Annex 1, there is an internationally recognized obligation to protect the interest of seafarer's shore leave, including shoreside access. As stated in Annex 1 of the FAL, "Crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for public health, public safety or public order. Shore leave shall be allowed in a manner which excludes discrimination such as on the grounds of nationality, race, colour, sex, religion, political opinion, or social origin and irrespective of the flag State of the ship on which they employed, engaged or work." If private actors thwart or hinder the ability of the United States to fulfill its international obligations, such as by imposing fees on crewmembers as a condition to shoreside access in the United States, any and all legal and diplomatic responses, to include notification to the vessel's flag-state, may be taken by the U.S. Government. Should the practice of the vessel owner charging the seamen for access prove to be an on-going issue for seamen, we will consider the possibility of amending the regulations, or even seeking new statutory authority, to deal with the matter.

*(4) The Proposed Rule Underestimated the Cost of Compliance for Facilities*

Several commenters stated that the Coast Guard's regulatory analysis underestimated the cost of compliance for facilities. One commenter stated that annual facility costs amount to \$75,000 annually and others stated the \$1,121 they reference in their comments is an underestimation and the actual costs will likely be higher than the costs we estimated in the proposed rule. One commenter also stated "the expansion of covered individuals will likely

<sup>2</sup>The statutory penalty amount is adjusted annually to keep pace with inflation: The current amount of this penalty is located in 33 CFR 27.3.

exceed \$1,121 per year”. Another commenter stated the annual expense could be \$50,000 as a result of the proposed rule. Another commenter presented a third-party cost estimate of \$185,000 for intra-terminal seafarer shuttle services for two of five facilities. Included in some comments is a reference to family members and who would bear the cost.

Based on these comments and information provided in these comments, we revised our regulatory analysis for the final rule by increasing the number of trips that a security guard may make. As a result, the costs for facilities that choose method 1 increased from about \$64,000 initially in the proposed rule, to about \$99,000 in this final rule. For facilities that choose method 2, costs increased from our estimate in the proposed rule of about \$52,000 initially to about \$77,000 initially in the final rule. Additionally, estimated annual recurring costs for method 1 increased from about \$36,000 in the proposed rule to about \$67,583 for the final rule. Annual recurring costs for method 2 increased from about \$24,000 in the proposed rule to about

\$45,000 in the final rule. Please see the supporting regulatory analysis for more detailed cost estimates.

Concerning the \$1,121 cost referenced by several commenters, apparently, commenters divided the estimated annualized cost of about \$2.8 million (with annual costs discounted over a 10-year period at a 7 percent discount rate) by the total number of MTSA-regulated facilities of 2,469. However, in the NPRM, we estimated the majority, 90% of the facilities, were already compliant and would not incur any additional costs as a result of this rule. By dividing the annualized cost by the total population of MTSA-regulated facilities the commenter has incorrectly estimated a lower cost per facility than the NPRM actually reported. The regulatory analysis only estimated the costs that noncompliant MTSA-regulated facilities would incur.

Additionally using the average cost per facility does not take into account the different methods with which a facility can choose to comply with this rule. The five different methods of compliance estimated in the regulatory analysis vary significantly in cost.

For example, in the NPRM, we estimated that 10 percent or 42 out of 420 facilities will choose method 1, which we estimate will cost a facility on average about \$99,143 in the initial year. However, for method 5 the NPRM estimated the initial year costs to be \$180. Therefore, it is more appropriate to evaluate the estimated costs for facilities based on the method chosen by a given facility.

Regarding the cost of “individuals covered” and the potential for security-related problems these individuals may pose. In response to public comments, the Coast Guard removed the terms “other authorized personnel” and “other authorized individuals” from paragraph (b) of § 105.237 (see section 4 below). We expect the removal of these terms in the final rule will reduce the number of authorized individuals who would have access to MTSA regulated facilities and would potentially result in lower costs to the facilities depending on which method of compliance the facility chooses.

Table 1 below provides the final rule’s estimated costs by method.

TABLE 1—AVERAGE ANNUAL COST PER METHOD OVER A 10-YEAR PERIOD OF ANALYSIS

Compliance method	Method 1	Method 2	Method 3	Method 4	Method 5
Weighted Average Annual Cost per Method .....	\$70,795	\$48,267	\$3,153	\$1,576	\$191

Regarding the cost for allowing family members, we have removed “family members” from paragraph (b) of § 105.237 of this rule and the supporting regulatory analysis does not include costs for these individuals.

*(5) The Proposed Rule Underestimated the Noncompliance Rate*

One commenter noted that the percentage of seafarers denied access to facilities is actually much higher than the 10 percent noted in the proposed rule (79 FR 77981). Several commenters also stated that we underestimated the number of seafarers calling on MTSA-regulated facilities in the proposed rule and the number of seafarers who would benefit from the proposed rule estimate is much higher.

We conducted an initial regulatory flexibility analysis and a regulatory impact analysis for this rule and offered these analyses for public comment. After receiving comments regarding the 10.3-percent noncompliance rate of facilities, and the costs associated with implementing the rule, we reopened the comment period, specifically asking for input on these figures. We received no further comments on these matters. In

2016, the Seamen’s Church Institute (SCI) released its annual survey and based on this survey, discussions with SCI, public comments, and facility population information, we calculated a new non-compliance rate of 17 percent (35 known noncompliant MSTA-regulated facilities in the 2016 SCI survey identified by the Coast Guard, out of 203 surveyed by SCI in its 2016 survey).

SCI in its 2015 report compiled data about shore access at facilities actually visited by port chaplains stating, “The data does not reflect the number of seafarers who were detained on ships in the terminals where chaplains and seafarers were denied access through the terminals. This report is based on restrictions actually observed by chaplains in their ship visits; accordingly, the number of seafarers being denied shore leave by terminal restrictions is probably under-reported.” The Coast Guard concedes that there is an underrepresentation of data based on chaplain access to facilities in the 2015 report; however, SCI made this statement in its 2015 report only and not in its subsequent 2016, 2017, and 2018 annual reports. Most ports visited

by chaplains in SCI’s 2016, 2017 and 2018 surveys allow unrestricted access to chaplains as stated in the reports. Moreover, their public comment indicates the noncompliance rate could be higher than the rate we extrapolated from their surveys in the NPRM.

Based on their comment we reached out to SCI and were able to specifically identify the noncompliant MTSA-regulated facilities in the 2016 SCI survey. This allowed us to narrow the scope of the analysis to only those facilities that would be affected by this rule and provided us with the best estimate of noncompliant MTSA-regulated facilities available. We were unable to separate out the MTSA-regulated facilities in SCI’s 2017 & 2018 report which is why we did not use the more recent surveys.

We acknowledge that the noncompliance rate could be different than our estimated 17 percent noncompliance rate used in this final rule, which we based on SCI’s 2016 survey. However, this is the best data we were able to obtain. Although several commenters provided information on specific ports, we were not able to estimate an overall

compliance rate based on the data they provided.

By using a 17 percent noncompliance rate from known non-compliant facilities only and applying it to the total number of estimated MTSA-regulated facilities of 2,469, we obtained the number of about 420 facilities (2,469 facilities  $\times$  0.17) that will be modifying operations, in addition to documenting the changes in their FSPs.

Regarding the number of seafarers who would benefit from the proposed rule. In the supporting regulatory analysis for the proposed rule, we stated that on average from 2006 to 2014, 907 seafarers were denied access due to terminal restrictions and that the proposed rule would ensure access to these seafarers. We obtained this figure using SCI's reports that they published in these years. In the supporting regulatory analysis for the final rule, we removed this number and present a noncompliance rate, which we apply to facilities and not to a quantified number of seafarers calling on MTSA-regulated facilities or the actual number of seafarers who would benefit from the proposed rule. In addition, we did not rely on another report, which references several databases, mentioned by one commenter because we could not use the data in the report to determine the number of seafarers being denied access at MTSA-regulated facilities.

One commenter said that if only 10 percent of facilities are not providing these services, the Coast Guard should focus solely on those facilities instead of changing the entire system. In addition, other commenters complained that this rule places too high a burden on facilities. For example, one commenter stated that the rule would result in extreme changes to its FSP.

The statute directs that "each" FSP "shall provide a system" for no-cost access to the facility. The Coast Guard does not have discretion to waive this requirement, or to apply it only to certain facilities. We expect all MTSA-regulated facilities to provide a system for no-cost access to the facility and update their FSPs to document their system of access. As a result, these facilities will incur operational costs and costs to modify their FSPs.

*(6) The Rule Should Explicitly Define the Individuals Who Are Allowed No-Cost Access for Seafarers to Port Facility Gates*

Several commenters discussed the question of who should be allowed no-cost access, as 33 CFR 105.237(b) proposed access for (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 DoS or other arrangement between the vessel and facility. One commenter believed that proposed § 105.237(b)(2) went beyond the intent of the CGAA by expanding the list to "other authorized personnel."

Several commenters asked the Coast Guard to define "other authorized individuals" in § 105.237(b)(4), saying that this catch-all category (1) was too broad in scope, (2) could jeopardize the safety and security of the facility, and (3) could become very costly for facilities to provide no-cost access to such a wide array of people. On the other hand, some commenters encouraged the Coast Guard to extend no-cost access to the maximum number of individuals, including those individuals not already enumerated in the proposed rule. For example, one commenter stated that the proposed "other authorized individuals" category should include ship service providers. Another commenter stated that pilots should be their own category of individuals covered by the seafarer's access requirements of this rule.

After consideration of the public comments, we agree that the rule should explicitly enumerate which persons or groups are provided no-cost access, and that the list proposed in the NPRM was more extensive than the requirements in Section 811 of the CGAA. As such, we are limiting the no-cost access requirement to the people and groups specifically required by the Act. We removed proposed paragraph (b)(4), the "other authorized individuals" category from the list of individuals in § 105.237(b), for whom no-cost access will be provided. We also removed the category of "other authorized personnel" in paragraph (b)(2), following pilots. In striking these additional categories of personnel, we are not prohibiting these individuals from accessing a facility or a vessel. That decision is based on the individual facility's FSP, which is approved by the COTP. Rather, by deleting these categories of personnel from the no-cost list, we are removing those types of personnel from the list of individuals for whom the facility must provide no-cost access. Finally, as previously stated, we also revised § 105.237(b)(2) of this final rule to solely reference pilots as an enumerated group to be provided no-cost access.

*(7) Foreign Ports Manage Seafarers' Access Better Than U.S. Ports*

Several commenters noted that many foreign ports have systems in place to enable seafarer access to shore resources. One commenter noted that the rule should ensure fair treatment of U.S. vessels and non-U.S. vessels, and it should ensure that all U.S. ports treat all vessels fairly and do not place restrictions on certain vessels.

We encourage facility owners and COTPs to consider successful access systems already in use—including those in foreign ports—when designing their own systems for seafarer access.

*(8) The Coast Guard Should Extend the Comment Period*

A few commenters asked that we extend the comment period or hold one or more public meetings for this rulemaking. One commenter noted that comments were not being posted in a timely manner, and one commenter believes that the comment period should be extended for 60 days to allow facilities to realistically study how they will be impacted.

The NPRM was published in the **Federal Register** on December 29, 2014, with a 60-day public comment. The Coast Guard held a public meeting on January 23, 2015. After requests for more time were received, we extended the comment period for an additional 60 days (by a document published in the **Federal Register** on May 27, 2015). We believe providing 4 months of public comment and holding a public meeting allowed ample opportunity for members of the public and industry to read the NPRM and reply with any comments.

During both public comment periods and the public meeting, we received 163 comments. These commenters included private individuals, port authorities, pilots associations, industry groups, professional mariner associations, seafarers' unions, seafarers' churches and centers, other mariner non-governmental organizations, the World Shipping Council, and the Company of Master Mariners of Canada. We did not exclude any comment that was submitted to the docket.

*(9) The Rule Further Restricts Seafarers Who Are Already Restricted by Existing Regulations That Do Not Help the Maritime Industry*

Two commenters noted that mariners deal with burdensome security requirements already, and the Coast Guard should not further restrict mariners with additional regulations and "red tape." One commenter argued that the burdensome security

requirements drive people away from the maritime industry.

The purpose of this rule is to enable seafarers to obtain no-cost access to port facilities. This rule imposes no increase in the regulatory burden on the seafarer.

*(10) The Proposed Rule Is Burdensome and Lacks Consistency or Enforcement*

Some commenters remarked that the proposed rule has burdensome procedures. Other commenters noted that the proposed rule has no means of consistency or enforcement, and that the Coast Guard has failed to enforce provisions set forth by the COTP.

We disagree. The rule provides facilities with a great deal of flexibility in complying with the statutory mandate to provide no-cost access for seafarers to the facilities' gates. This flexibility is manifested in both the method that a facility may employ to provide no-cost access and in the manner in which a facility can determine whether the no-cost access is timely. Facilities that violate any provision of this rule are subject to enforcement by the COTP. Under 46 U.S.C. 70119 and 33 CFR 101.415(b), any person who does not comply with the applicable requirements, including 33 CFR part 105, is liable to the U.S. for a civil penalty of not more than \$25,000 for each violation.

*(11) The Proposed Rule Is Unconstitutional*

One commenter said that the proposed rule is unconstitutional and directly conflicts with MTSA.

We disagree. While the commenter did not specifically cite the Takings Clause, the Coast Guard has interpreted the comment to invoke this provision of the Constitution (U.S. Constitution, Amendment V). Section 811 of the CGAA and proposed 33 CFR 105.237 require facilities to provide access that enables individuals to transit to and from a vessel moored at the facility and the facility gate, in a timely manner and at no cost to the seafarer. Through this rulemaking, the Coast Guard does not mandate the facility take any particular action that would permanently disrupt the operations at the facility or deny the facility owner all economic benefit of the property. Rather, individual facilities would have flexibility to implement these requirements in the manner best suited for the individual facility when a vessel is moored at the facility. Notwithstanding the flexibility provided by the proposed rule for facilities to tailor shore access requirements to the design and needs of the facility, the commenter did not present the Coast Guard with any data

or other information to support their claim that the proposed rule would constitute a taking (or regulatory taking) of the facility's property. In addition, the commenter did not provide data or other information to support their statement that the proposed rule directly conflicts with MTSA. As the Coast Guard stated in the NPRM preamble (79 FR 77981, 77983) and reiterates in this final rule, the Coast Guard is authorized to issue regulations governing access requirements to MTSA-regulated facilities.

*(12) The Proposed Rule Will Have a Positive Economic Impact on Communities*

One commenter predicted that this rule will have a positive economic impact on communities where secure maritime facilities are located.

Whether that is true or not, Congress has directed the Coast Guard to require the FSP to provide a system for seafarers to transit through the facility in a timely manner, at no cost to the individuals, and we have done that in this final rule.

*(13) The Proposed Rule Should Use the Same Language as the International Ship and Port Facility Security Code*

Several commenters requested that the rule use the same language as the International Ship and Port Facility Security Code (ISPS) Code. Specifically, the commenter recommended that we utilize language from the ISPS Code in the FSP to "facilitate" access to and from a vessel.

We believe that the final rule conforms to international conventions, specifically the ISPS Code. We have chosen to use the words "implementation of a system" in § 105.237 as that is a stronger imperative than "facilitate" and requires positive action on the part of the facility to devise and put in place a system in accordance with the mandate of Section 811 of the CGAA.

*(14) The Coast Guard Should Consider the Impact of the Proposed Rule on Existing ASPs and FSPs*

One commenter noted that they use the Coast Guard-approved ASP, "Industry Standard for Passenger Vessels and Small Passenger Vessels and their Facilities," and requested that the proposed rule be amended so that there will be no need to amend their ASP to conform to the seafarer access rule until the regularly-scheduled renewal period occurs.

Another commenter believed that developing a new access system would be time-consuming and impossible to complete by the deadline. This

commenter suggested that a 10-month submission window for an amended FSP would be reasonable, but that the implementation deadline should be extended to possibly a year after receipt of the updated plan's approval. Two other commenters also said the implementation date should be extended. In contrast, another commenter stated that the compliance deadline should be moved forward to 6 months (instead of 1 year) because people should already be complying.

Each facility operating under a Coast Guard-approved ASP must include seafarer access as directed by the ASP itself. This may be in the form of an annex or appendix explaining how the facility will comply with this rule. This document must be submitted to and approved by the cognizant COTP in the location of the facility submitting the annex.

The Coast Guard believes there are various means by which a facility may accomplish this mandate depending on the facility design, equipment, procedures and location. The Coast Guard has worked with the Seamen's Church and with individual facilities to discuss many options for complying with this Congressional mandate and has provided flexibility within this rule for facility owners and operators to comply with its TWIC requirements and the no-cost access requirements of this rule.

However, in light of the comments on timing we have extended the date that each facility owner or operator must implement a system to 14 months after publication of this final rule. This additional time allows more time for the COTP to work with each facility in the event of deficiencies in the plan.

*(15) Coordination Between Seamen's Missions and the Coast Guard*

One commenter questioned whether a partnership between the Coast Guard and seamen's missions is possible for port control.

We agree that coordination is possible, and currently exists at several facilities. Information from seamen's missions facilitates port control. Since the rule enhances the well-being of seafarers by providing no-cost access from the vessel moored at the facility to the facility's gate, we are hopeful that the rule will further our relationship with seamen's missions.

*(16) The Coast Guard Should Publish Guidance That Includes Explanatory Language Found in the Preamble of the Proposed Rule*

One commenter was concerned that the explanatory language in the NPRM

will be absent from the actual CFR, perhaps leaving an undesirable opening in interpretation of the rule. The commenter stated that explicit language is desirable and necessary in implementing the rule. Several commenters recommended that the Coast Guard publish a Navigation and Vessel Inspection Circular to accompany the final rule to reflect the basic explanatory language as written in the preamble to the proposed rule.

While we have not included all the explanatory text from the preamble in the regulatory text itself, we rely on the broader explanation in the preamble to provide the support and basis for the regulatory text. The Coast Guard does not believe a NVIC is necessary at this time.

*(17) The Coast Guard Should Not Invalidate Shore Passes After 29 Days*

One commenter took issue with a regulation that invalidates shore passes after 29 days. The commenter stated that this regulation makes it difficult for crewmembers who have been at sea for long periods to gain access to shore, even if they possess approved U.S. visas. The commenter said that crewmembers were recently detained on board a vessel for 2 months; they held valid U.S. visas but expired shore passes, and U.S. Customs and Border Protection (CBP) in both New Orleans and Galveston would not help them gain shore access or return them to their home countries.

The commenter was in favor of the proposed rule in that it will assist seafarers transiting between vessels and the terminal gates. The comment about the invalidation of shore passes after 29 days, however, does not pertain to a Coast Guard regulation, but to a statutory requirement imposed by section 252 of the Immigration and Nationality Act (8 U.S.C. 1282), which is administered by CBP. The Coast Guard's regulation is concerned with providing no-cost access to facility gates for seafarers. Customs clearance is beyond the scope of this regulation and a change to the validity period of shore passes is beyond our legal authority. Therefore, no changes were made to the final rule in response to this comment.

*(18) Implementing the Rule With Regard to the Use of Taxi Companies, Hybrid Access Methods, Brown Water Vessels, Tug and Tows, and Integrated Tug Barge (ITB) and Articulated Tug Barge (ATB) Crews*

One commenter who favored the proposed rule had questions regarding facility baseline performance evaluations: How will facilities be rated

on use of taxi companies that meet facility requirements? Will "hybrid" methods of access be acceptable to COTPs? What is the status of brown water vessels, tugs and tows, and ITB and ATB crews? The commenter was also concerned with taxi company availability, the availability of reasonably priced alternatives to taxis, and the location near commercial infrastructure and shopping centers.

This rule requires the COTP to approve the method of seafarer access that a facility intends to provide. As such, the COTP will examine the methods of access proposed by a facility in light of that facility's FSP to determine if they meet the requirements of both this rule and the FSP.

We are unclear as to what the commenter means by "hybrid" methods of access. If the commenter is referring to the rule's allowance for a facility to choose between different methods of seafarer access, all such methods will be reviewed by the COTP for approval. We are also unclear as to what the commenter means by the "status of brown water vessels, tugs and tows, and ITB and ATB crews." If the commenter is referring to whether or not such vessels, tugs and tows, and ITB and ATB crews are subject to the requirements of this rule, the rule applies to covered facilities that may be used by such vessels and crew. In short, the rule ensures that facilities do not charge seafarers for access to their gates, irrespective of the type of vessel and crew docked there.

Regarding the commenter's concern about taxi availability, reasonably priced alternatives to taxis, and the location near commercial infrastructure and shopping centers, these are conditions that each facility will need to evaluate to determine which modes of access make financial sense for that facility while meeting the statutory mandate. The rule provides the flexibility to allow facility owners and operators to design a system of access that makes sense to them. Incorporation of the system of access in the approved FSP allows for the necessary oversight by the local COTP.

*(19) Timeliness of Seafarer Access to Port Facility Gates*

Many commenters noted that a seafarer's definition of "timely access" may vary from a facility's definition of "timely access."

We believe that the issue of "timely access" is best managed by the COTP. Because of the many different types of facilities and FSPs, the local COTP is in the best position to evaluate concerns

and address complaints of facilities providing untimely access.

One commenter stated that "timely access" should be agreed on by both the facility operator and the COTP.

This rule states that facility owners and operators are responsible for implementing a system that provides access for seafarers between vessels moored at the facility and the facility gate, in a timely manner and at no-cost to the seafarer. Every facility is different, which makes "timely access" impossible to prescribe. Ultimately, the COTP will decide whether the proposed timely access is adequate.

One commenter expressed concern with seafarers having timely access to port facility gates, especially for seafarers who are in port for short periods of time.

We agree. This is an important component in ensuring that port facilities comply with the mandates of this rule. In § 105.237(c), we include factors that a facility, subject to review by the COTP, must consider in allowing seafarers no-cost access to the facility's gate, in a timely fashion.

One commenter stated that the length of stay for a vessel is irrelevant in determining whether or not a seafarer's access to the facility gate is timely.

We disagree. While facilities have great flexibility under this rule in providing timely access between the vessel and the facility gate, some parameters are necessary to meet the requirements of Section 811 of the CGAA. We use length of time in port as a metric for the COTP to determine whether or not a wait time to and from the facility gate is reasonable.

One commenter stated that the Coast Guard needs to define "reasonable time" in the regulatory text more specifically. The commenter asks if the Government will take into consideration the size of the group when it comes to "reasonable time."

A second commenter understands that it is impossible to develop a one-size-fits-all definition of "timely access," and that it is impractical for facilities to provide for every potential combination of factors in their security plans. This commenter requested that the Coast Guard clarify how the COTP will determine "timely access" on a case-by-case basis.

Another commenter stated that a modest 10-minute delay waiting for transportation during half their visits equals more than 3,443 hours of lost time. Additionally, the commenter noted that waiting on transportation potentially makes a service provider's day dangerously long, putting them and others at risk. The commenter offered

the following additional factors that a facility must consider when establishing timely access without unreasonable delay: (1) The expected number of ship service personnel who will be visiting a ship; (2) the costs of transportation relative to delay time costs incurred by ship service providers; and (3) the costs of transportation relative to safety impacts to service providers.

One commenter noted that the proposed rule appropriately explains factors to consider and to document in FSPs to provide timely access without reasonable delay.

We appreciate the additional factors supplied by commenters, and believe that § 105.237(c) already covers most, if not all, of these factors. We provide the COTP with the authority to review these points to ensure that the facility is providing timely access to seafarers. These factors in § 105.237(c) provide a framework for the COTP to decide, on a case-by-case basis, whether or not the facility is complying with the mandates of this regulation. Covered individuals may contact the local COTP or representatives of seafarers' welfare and labor organizations with any facility access concerns.

*(20) The Coast Guard Should Reconsider Where It Intends To Place the Seafarers' No-Cost Access Requirements in the CFR*

One commenter asked why the new section in 33 CFR part 105 is placed between §§ 105.235 and 105.240. This commenter suggested that the new section be placed in § 105.257, entitled "Security Measures for Newly Hired Employees," as § 105.257 does not merit its own standalone section and has caused confusion among facilities.

While we appreciate this commenter's suggestions, we are implementing section 811 of the CGAA, and changes to 33 CFR 105.257 are outside the scope of this rule. We will consider whether a future rulemaking should update, change, or improve regulations at 33 CFR 105.257.

*(21) The Proposed Rule Should Clarify "Shore Leave" and "Access" To Reduce the Risk of Seafarers' Noncompliance With CBP or Union Rules*

One commenter supporting the rule stated that "shore leave" and "access" should be clarified to reduce the risk of noncompliance with CBP or union rules.

We believe these terms do not need defining in this rulemaking, as the rule specifically defines the kinds of access that is required. In addition, this rule is concerned with providing no-cost shore access for certain individuals and does not concern shore leave or other terms that may raise customs and immigration issues. Irrespective of this rule's mandates and requirements, seafarers are still required to comply with all CBP rules when arriving in and departing from the United States.

**V. Regulatory Analyses**

We developed this final rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes or Executive orders.

*A. Regulatory Planning and Review*

Executive Orders 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess the costs and benefits of available regulatory

alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 ("Reducing Regulation and Controlling Regulatory Costs"), directs agencies to reduce regulation and control regulatory costs and provides that "for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process."

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. Because this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB's Memorandum titled "Guidance Implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs'" (April 5, 2017).

Table 2 shows the impacts of the final rule by category. A final Regulatory Assessment is available in the docket, and a summary follows.

We estimate the total cost to industry and the Government to be about \$53.9 million over a 10-year period of analysis using a 7 percent discount rate. We estimate the annualized cost to be about \$7.7 million using a 7 percent discount rate. See Table 2.

TABLE 2—SUMMARY OF THE IMPACTS OF THE FINAL RULE

Category	Summary
Applicability .....	Owners or operators of MTSA facilities regulated by the Coast Guard are required to implement a system that provides seafarers with access between the shore and vessels moored at the facility.
Affected population .....	2,469 MTSA-regulated facilities will update FSPs, an additional 420 MTSA-regulated facilities will update FSPs and facility operations.
Total costs to industry and Government (7% discount rate).	10-Year: \$53.9 million. Annualized: \$7.7 million.
Unquantified benefits .....	Provides seafarers and covered individuals timely access between a vessel and a MTSA-regulated-facility gate. Enhances the safety, health, and welfare of seafarers, and the overall quality of life by allowing seafarers access to fundamental human services. Conforms to the intent of the ISPS Code and IMO's FAL Convention. Reduces regulatory uncertainty by harmonizing the Coast Guard's regulations with Sec. 811 of Public Law 111-281.

**Affected Population**

The Marine Information for Safety and Law Enforcement (MISLE) system is the Coast Guard's internal database that

contains MTSA-regulated facility population data. According to MISLE information reviewed in January 2017, there were 2,469 MTSA-regulated

facilities in 2016. This number is consistent with facility population data for the previous 5 years as well; the population number remains around



2,500 +/- 40 facilities. We anticipate that all 2,469 facilities will update their FSPs with the system of seafarer access description within 10 months of publication of the final rule. The total implementation time is 14 months, with Coast Guard COTPs having 4 months to approve the plans for implementation. Any changes in the following years of analysis will be accomplished under existing updates to FSPs; therefore, we account for no marginal change in opportunity cost beyond the first year of analysis.

Additionally, some facilities will need to modify existing operations to implement a system of seafarer access. In this analysis, we refer to this group of facilities as the noncompliant facilities. In the NPRM, we estimated the rate of noncompliant facilities at 10.3 percent (of the 2,469 total facilities). We estimated this rate using the SCI's Center for Seafarer's Rights annual survey from the year 2011. We received five individual public comments out of 163 commenters who suggested the non-compliance rate was higher than 10.3 percent; however, an alternative compliance rate was not supplied in any of the public comments. We used facility information mentioned in public comments, specifically SCI's 2016 report, to calculate the new non-compliance rate of 17 percent (please see the Coast Guard's explanation of the use of this rate in the comment response section of this preamble), which we based on known noncompliant MTSA-regulated facilities divided by the number of MTSA facilities surveyed by SCI (35/203). Also, SCI's surveys are more comprehensive than any data on seafarer access the Coast Guard can obtain. As noted in the Regulatory History section of this preamble, we reopened the public comment period for an additional 60 days (80 FR 30189), specifically seeking input on our estimate of a 10.3 percent noncompliance rate for facilities with respect to providing seafarers' access.

We received no new information as a result of the reopened comment period. For the final rule's regulatory impact analysis, we strictly used data from SCI's 2016 survey. With this survey and through discussion with the SCI, we calculated a noncompliance rate of 17 percent for the final rule. At this rate, 420 (0.17 x 2,469, rounded) out of the total 2,469 facilities affected by this rule will need to develop and implement a system of seafarer access in addition to updating the FSP. We also calculated operational costs for these 420 facilities.

**Costs**

There are two cost components in this final rule—administrative and operational. Prior to the publication of this rule, all MTSA-regulated facilities described a system of access in the FSP. These descriptions, however, may not contain all the necessary details required by this final rule. Therefore, we calculated these administrative costs for the entire affected population. The total cost of this provision includes 6 hours of labor at the executive wage rate, 10 minutes of labor at the administrative assistant wage rate, plus 10 cents for stationery:

$2,469 \text{ population} \times [(6 \text{ hours}^3 \times \$67.59 \text{ wage rate}^4) + (0.17 \text{ hours} \times \$40.09 \text{ wage rate}) + \$0.10 \text{ stationery}] = \$1,018,352$ . The 420 facilities implementing new seafarer access operations will choose from the six compliance options provided in section 105.237(d), as listed below:

- (1) Method 1—Regularly scheduled shuttle service;
- (2) Method 2—On-call shuttle service;
- (3) Method 3—Taxi service;
- (4) Method 4—Arrangements with the seafarers' welfare organizations;
- (5) Method 5—Monitoring of pedestrian routes; or
- (6) Method 6—Any other system approved by the COTP.

Any facility implementing a third-party operated system of access, such as Method 4, will need to designate a

supplemental method of access in case the third-party organization is unavailable or fails to provide access to seafarers at any time. For the purposes of this analysis, we assume such facilities will partner with taxi services to provide this supplemental access. We do not include supplemental methods of access costs for facilities complying with Method 3, which will also provide access via a third party (taxi drivers), because we assume (and calculate costs for) a sufficient number of taxis. We also do not calculate costs for any facilities complying with this rule through Method 6. We assume facilities would choose the sixth option only if that option had a lower cost than the first five options.

Based on information provided by Coast Guard subject matter experts (SMEs) in the Office of Port and Facility Compliance and on information from Coast Guard inspectors nationwide, we expect that a small percentage of facilities are sufficiently large or dangerous enough to warrant the purchase of a passenger van used solely to provide a regularly scheduled or on-call gate access service to seafarers.<sup>5</sup> A taxi service, alternatively, provides a flexible and relatively cheap alternative. Some facilities would choose to partner with a seafarers' welfare organization to provide transit, a presumably cost-free option, where available, coupled with a taxi service. Based on discussions with several SMEs with knowledge of port and facility access, most facilities would choose pedestrian monitoring. Due to current MTSA regulations most facilities are already equipped with security guards and monitoring. If facilities choose this method we anticipate an additional 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 costs based on chosen requirement.

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

	Population	Initial cost	Annual recurring cost, years 2–5, 7–10	Annual recurring cost, year 6	Total 10-year undiscounted
Cost Per Facility (FSP Documentation) .....	2,469	\$412	\$0	\$0	\$412

<sup>3</sup> In the collection of information (OMB control number 1625–0077), 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>4</sup> See Chapter 3.1 of the standalone RA for information regarding wages.

<sup>5</sup> Our MISLE database does not capture the physical size of MTSA-regulated facilities.

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

	Population	Initial cost	Annual recurring cost, years 2–5, 7–10	Annual recurring cost, year 6	Total 10-year undiscounted
<b>Cost Per Facility Operations</b>					
Method 1: 24-hour Shuttle Service .....	42	99,143	67,583	68,138	707,945
Method 2: On-call Shuttle Service .....	84	76,615	45,055	45,611	482,666
Method 3: Taxi .....	84	5,897	2,848	2,848	31,529
Method 4: Seafarers' Welfare Organization .....	42	2,948	1,424	1,424	15,764
Method 5: Monitoring of Pedestrian Routes .....	168	191	191	191	1,910

Table 4 provides the key costs for the methods and an explanation of changes from the NPRM to the final rule.

TABLE 4—KEY COST INPUTS<sup>6</sup>

Input	Final rule	NPRM	Reason for change	Source
MTSA facility noncompliance rate.	17% .....	10.3% .....	Updated with information from 2016 SCI report.	<a href="http://seamenschurch.org/sites/default/files/sci-shore-leave-survey-2016.pdf">http://seamenschurch.org/sites/default/files/sci-shore-leave-survey-2016.pdf</a> .
Security guard wage .....	\$20.58 .....	\$19.41 .....	Updated to 2016 wage rates	<a href="http://www.bls.gov/oes/2016/may/oes339032.htm">http://www.bls.gov/oes/2016/may/oes339032.htm</a> .
Cargo and freight agents wage	\$30.63 .....	\$30.81 .....	Updated to 2016 wage rates	<a href="http://www.bls.gov/oes/2016/may/oes435011.htm">http://www.bls.gov/oes/2016/may/oes435011.htm</a> .
Managers .....	\$67.59 .....	\$63.35 .....	Updated to 2016 wage rates	<a href="http://www.bls.gov/oes/2016/may/oes113071.htm">http://www.bls.gov/oes/2016/may/oes113071.htm</a> .
Administrative assistants .....	\$40.09 .....	\$35.81 .....	Updated to 2016 wage rates	<a href="http://www.bls.gov/oes/2016/may/oes436011.htm">http://www.bls.gov/oes/2016/may/oes436011.htm</a> .
Passenger van .....	\$28,995 to \$33,800.	\$28,995 to \$33,800.	Updated with current information.	<a href="http://www.chevrolet.com/express/passenger-van">http://www.chevrolet.com/express/passenger-van</a> . <a href="https://www.ford.com/trucks/transit-passenger-van-wagon/">https://www.ford.com/trucks/transit-passenger-van-wagon/</a> . <a href="https://www.gmfleet.com/chevrolet/express-passenger-van.html">https://www.gmfleet.com/chevrolet/express-passenger-van.html</a> . <a href="https://www.chrysler.com/pacifica.html#app-compare">https://www.chrysler.com/pacifica.html#app-compare</a> . <a href="http://www.nissancommercialvehicles.com/nv-passenger?dcp=psn.58700002307877422&amp;gclid=CPm5ttfug9QCFYFJgQodlkoMmA&amp;gclid=ds&amp;dclid=CPOS89fug9QCFcplkwQodGnoAJw">http://www.nissancommercialvehicles.com/nv-passenger?dcp=psn.58700002307877422&amp;gclid=CPm5ttfug9QCFYFJgQodlkoMmA&amp;gclid=ds&amp;dclid=CPOS89fug9QCFcplkwQodGnoAJw</a> .
Cost of gas .....	\$2.25 .....	\$4.04 .....	Updated with current information.	<a href="https://www.eia.gov/dnav/pet/PET_PRI_GND_DCUS_NUS_A.htm">https://www.eia.gov/dnav/pet/PET_PRI_GND_DCUS_NUS_A.htm</a> .
Average miles per gallon, passenger van.	13.4 .....	13 .....	Updated with current information.	<a href="http://www.fueleconomy.gov/feg/byclass/Vans_Passenger_Type2016.shtml">http://www.fueleconomy.gov/feg/byclass/Vans_Passenger_Type2016.shtml</a> .
Driving speed .....	10 mph to 30 mph	15 mph to 30 mph	Updated with current information.	<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.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> . <a href="http://www.fmtcargo.com/terminal_guides/fmt_guide_port_mantee.pdf">http://www.fmtcargo.com/terminal_guides/fmt_guide_port_mantee.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> .
Driving time, 1 lap .....	0.33 hours .....	0.33 hours .....	No change .....	

TABLE 4—KEY COST INPUTS<sup>6</sup>—Continued

Input	Final rule	NPRM	Reason for change	Source
TWIC .....	\$277.82 or \$268.04.	\$401.00 .....	Updated with current information; created two TWIC costs: one for security guards and one for taxi drivers, respectively.	<a href="https://www.tsa.gov/for-industry/twic">https://www.tsa.gov/for-industry/twic</a> .
Taxi driver Wage .....	\$18.55 .....	\$17.92 .....	Updated to 2016 wage rates	<a href="http://www.bls.gov/oes/2016/may/oes533041.htm">http://www.bls.gov/oes/2016/may/oes533041.htm</a> .
Miles to enrollment center .....	100 miles .....	100 miles .....	No change .....	
Average commute speed, mph	28.87 .....	28.87 .....	No change .....	

Table 5 presents the total discounted costs of the final rule to industry over a 10-year period of analysis.

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

Year	Undiscounted costs	Discounted costs	
		7%	3%
1 .....	\$12,269,354	\$11,466,686	\$11,911,994
2 .....	6,954,316	6,074,169	6,555,110
3 .....	6,954,316	5,676,793	6,364,184
4 .....	6,954,316	5,305,414	6,178,820
5 .....	6,954,316	4,958,331	5,998,854
6 .....	7,024,326	4,680,605	5,882,762
7 .....	6,954,316	4,330,798	5,654,495
8 .....	6,954,316	4,047,475	5,489,801
9 .....	6,954,316	3,782,687	5,329,904
10 .....	6,954,316	3,535,222	5,174,664
Total .....	74,928,208	53,858,180	64,540,588
Annualized .....		7,668,193	7,566,126

Note: Totals may not sum due to independent rounding.

The Government will incur costs as a result of modifications made to FSPs by MTSA-regulated facilities personnel in Years 1 and 2 because the Coast Guard must review and approve the modifications to the FSPs. As a result, MTSA-regulated facilities with FSPs will have 10 months to submit their plans to the respective Coast Guard sectors for review and the sectors will have 4 months to approve the plans for implementation. We then divide the

one-time government cost between Years 1 and 2 equally. Based on information from Coast Guard SMEs, we estimated 30 minutes for an E-4, E-5, or E-6 to review the modified FSP. Using the average hourly wage rate of the three ranks, we calculate the one-time cost to review all FSPs as follows:

$$2,469 \text{ FSPs} \times \$51.33 \text{ wage rate/hour}^7 \times 0.5 \text{ hours} = \$63,367$$

As explained above, we divided the estimated government cost of \$63,367

equally between Years 1 and 2, or \$31,683.50 in each year (Table 6 below takes into account rounding). Table 6 presents the total discounted costs to Government and industry over a 10-year period of analysis. We estimate an annualized cost of the final rule to industry and government to be about \$7.7 million using a 7 percent discount rate. See table 6.

TABLE 6—SUMMARY OF COSTS OF THE FINAL RULE TO GOVERNMENT AND INDUSTRY [7 and 3 percent discount rates]

Year	Undiscounted costs	Discounted costs	
		7%	3%
1 .....	\$12,301,038	\$11,496,297	\$11,942,755
2 .....	6,986,000	6,101,843	6,584,975
3 .....	6,954,316	5,676,793	6,364,184
4 .....	6,954,316	5,305,414	6,178,820
5 .....	6,954,316	4,958,331	5,998,854
6 .....	7,024,326	4,680,605	5,882,762

<sup>6</sup> We present the mean hourly wage rates as loaded wage rates in 2016 dollars using 2016 BLS Benefits multiplier: <http://www.bls.gov/ncs/lect/sp/ececrtn.pdf>. For more information on wages, see

Chapter 3 of the supporting regulatory analysis in the docket.

<sup>7</sup> From the Commandant Instruction 7310.1Q ([https://www.uscg.mil/directives/ci/7000-7999/CI\\_7310\\_1Q.pdf](https://www.uscg.mil/directives/ci/7000-7999/CI_7310_1Q.pdf)) for reimbursable rates, the hourly rates for E-4s, E-5s, and E-6s are \$44, \$52, and \$58, respectively. These rates result in an average \$51.33 per hour for reviewing the FSPs.

TABLE 6—SUMMARY OF COSTS OF THE FINAL RULE TO GOVERNMENT AND INDUSTRY—Continued  
[7 and 3 percent discount rates]

Year	Undiscounted costs	Discounted costs	
		7%	3%
7	6,954,316	4,330,798	5,654,495
8	6,954,316	4,047,475	5,489,801
9	6,954,316	3,782,687	5,329,904
10	6,954,316	3,535,222	5,174,664
Total	74,991,575	53,915,465	64,601,214
Annualized		7,676,349	7,573,233

Note: Totals may not sum due to independent rounding.

**Benefits**

The primary benefit of this final rule is to provide seafarers and covered individuals timely access between a

vessel and a MTSA-regulated facility gate. Other benefits of this final rule include enhancing the safety, health, and welfare of seafarers, which in turn improves the overall quality of life for

a seafarer. Lastly, the provisions of this rule align with international conventions and will reduce regulatory uncertainty. Table 7 presents a summary of the benefits of this final rule.

TABLE 7—SUMMARY OF BENEFITS OF THE FINAL RULE

Implications	Description of benefits
Seafarers' Access	Provides seafarers and covered individuals timely access between a vessel and a MTSA-regulated-facility gate. Enhances the safety, health, and welfare of seafarers, and the overall quality of life by allowing seafarers access to fundamental human services.
International Conventions	Conforms to the intent of the ISPS Code and IMO's FAL Convention.
Regulatory Uncertainty	Reduces regulatory uncertainty by harmonizing the Coast Guard's regulations with Sec. 811 of Public Law 111–281.

The primary benefit of this final rule is to provide seafarers and covered individuals with access between the vessel and the facility gate, thereby enhancing their quality of life. Although the Coast Guard does not collect data on the number of seafarers denied access to MTSA-regulated facilities, the SCI's Center for Seafarers' Rights issued a report in 2016 and found through a survey that 29 U.S. ports denied access through a terminal to about 18.4 percent of seafarers or about 200 (SCI mentioned about 81.6 percent did not have valid visas) seafarers who possibly had valid visas (as we explain in the supporting regulatory analysis, SCI presents in its report shore leave for mariners without valid visas and other reasons are given in its survey for the denial of shore leave; nevertheless, it is reasonable to assume that the remaining percentage of denials in the report contains some number of mariners with valid visas who were denied shore leave).

SCI recently issued reports in 2017 and 2018; the information in these reports is similar with the 2016 report with 22 and 23 ports surveyed, respectively. However, these reports, as with the 2015 and 2016 reports, did not specify which facilities were MTSA-regulated or not, so we assumed the

reports included facilities other than the MTSA-regulated facilities to which the final rule applies (the difference is, with the 2016 report, we were able to identify, at the time of this writing, which facilities were MTSA-regulated through correspondence with SCI in 2016).

As stated above, the 2016 report cites other reasons for access denial, such as CBP restrictions and vessel operations, which account for about 4 percent of denials; again, this also includes facilities that are not MTSA-regulated. This is important because access denials to seafarers without valid visas would not be counted as part of the noncompliance rate and are not part of the affected population. Only mariners with valid visas who were denied port access to MTSA-regulated facilities are the affected population of this final rule. Non MTSA-regulated facilities who denied port access to seafarers are not part of the applicable population of this final rule. Table ES–4 of the Final Regulatory Analysis and for this final rule lists the website where a copy of the 2016 SCI report may be viewed. Combined in one document, the Final Regulatory Analysis and the Final Regulatory Flexibility Analysis are available in the docket for review.

Generally, transiting through a MTSA-regulated facility is the only way for seafarers to access shore side businesses and amenities, and to engage in activities such as doctor visits (which includes obtaining prescriptions for medications), business visits, and family member and friend visits, among other things such as enjoying basic leisure time, that go beyond the confines of a vessel. This, in turn, will enhance seafarers' overall quality of life by allowing access to fundamental human services instead of being bound to a vessel while moored at a MTSA-regulated facility. This final rule provides seafarers and covered individuals access through MTSA-regulated facilities, and enhances the safety, health, and welfare of seafarers. This final rule also mandates that the system of access provide access for representatives of seafarers' welfare and labor organizations. Individuals and organizations, who generally can only access vessels moored at a MTSA-regulated facilities by transiting through the facility, will be able to provide services for seafarers on board a vessel. For example, this includes labor organizations, port workers organizations, and port engineers or superintendents. This also will enhance

the welfare and overall quality of life for a seafarer, who otherwise would not have access to shore side facilities while a vessel is moored at an MTSA-regulated facility.

Another benefit of this final rule is that it will conform to international conventions, which in turn benefits seafarers. The provisions of this final rule will align with the intent of the International Ship and Port Facility Security Code (ISPS), an amendment to the International Convention on the Safety of Life at Sea (SOLAS) (1974, 1988), Chapter XI-2 (Special Measures to Enhance Maritime Security), as entered into force under that chapter. An IMO resolution adopted the ISPS Code in December 2002 and another resolution included amendments to Chapter XI of SOLAS and added a new chapter, which is Chapter XI-2. IMO added amendments in 2016, which became effective January 1, 2018, to the Convention on Facilitation of International Maritime Traffic, 1965 as amended (FAL), which added a new provision to strengthen shore leave for seafarers, in Section 3 of the Annex, part G.

We believe this is a benefit to seafarers because if the U.S. does not adhere to these international conventions and denies shore leave to these individuals, other countries may engage in an act of reciprocity and deny shore leave to U.S. seafarers abroad. The preamble to ISPS (paragraph 11), ratified in December 2002, states: "Recognizing that the Convention on the Facilitation of Maritime Traffic, 1965, as amended, provides that foreign crew members shall be allowed ashore by the public authorities while the ship on which they arrive is in port, provided that the formalities on arrival of the ship have been fulfilled and the public authorities have no reason to refuse permission to come ashore for reasons of public health, public safety or public order, 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."

This rule will also reduce regulatory uncertainty by harmonizing regulations with Sec. 811 of Public Law 111-281. The benefit to seafarers is that they will be knowledgeable of the regulations as they relate to international conventions thereby reducing confusion and uncertainty among the population.

### Alternatives

Below, we summarize our chosen compliance option and four discussed

alternatives. Refer to Chapter 5 of the standalone RA, available in the docket where indicated under the **ADDRESSES** portion of this preamble, for more cost and descriptive information on the alternatives analyzed.

- *Preferred Alternative*

The preferred alternative is to amend Coast Guard regulations to require that MTSA-regulated facilities implement a system of seafarers' access and amend their FSPs to document this system. This alternative was chosen for this final rule because it provides regulatory flexibility and the least costly options that would comply with the intent of the statute.

- *Other Alternatives Considered*

*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. 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 free and timely access to seafarers. Alternative 1 does not meet the mandate set in the CGAA, nor would it address the existing access issues. The benefit of Alternative 1 is that there would be zero incremental cost.

*Alternative 2—Require a section of the DoS between the facility and the vessel to include the facility's seafarers' access procedures.* We reject this alternative due to the heavy burden it would place on industry. We do not support this alternative because it would not specifically target noncompliant facilities, but, instead, would require many facilities and vessels that would not need a DoS to have one, increasing the collection of information burden. The benefits of this alternative are the same as the preferred alternative—the facility would be required to work out a free and timely access plan with each arriving vessel and include this plan in the vessel's DoS.

*Alternative 3—Require facilities to implement specific and prescriptive procedures for seafarers' access and to include these procedures in their FSPs.* This alternative would require facilities to implement a prescribed space, infrastructure, or other specific resource as a system of seafarers' access. We reject this alternative because it would impose a stricter than necessary operational change on many facilities. For example, this alternative could

mandate that all facilities provide 24-hour shuttle service to seafarers. This would increase the total cost burden to industry, and many facilities do not require shuttle service for timely gate access. The benefits of this alternative are the same as the preferred alternative.

*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. Current regulations in 33 CFR 105.200(b)(9) do not require facility owners and operators to provide free and timely access to seafarers. Some facilities deny seafarers access altogether or make shore access impractical based on misinterpretations 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, if access to shore is denied altogether, there is no shore leave to coordinate). Further, public comments indicate that, while some facilities grant seafarers access to and from vessels, they make it impractical by placing extreme limitations on escort availability or charging exorbitant fees. Section 811 of the CGAA makes access 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 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 less than 50,000. Based on our analysis, we have no information or evidence to determine, which, or how many MTSA-regulated facilities will need to implement a system of access. Our estimated costs to small entities vary greatly depending upon whether a facility will only need to modify its FSP or whether it will have to modify its operations. We detail this analysis below:

A Final Regulatory Flexibility Analysis (FRFA) discussing the impact of this final rule on small entities is available in the docket where indicated under the **ADDRESSES** portion of the preamble. A summary of the FRFA follows.

(1) *A statement of the need for, and objectives of, the rule:*

Agencies take regulatory action to correct for market failure. This final rule will ensure that MTSA-regulated facilities do not deny access or make it impractical for seafarers to obtain shore access. The rationale given by some facilities for denying such access is based on a misinterpretation of existing Coast Guard regulations; namely, that 33 CFR 105.200(b)(9) only requires coordination of shore leave if there is actual shore leave to coordinate, and, if access to shore is denied altogether, there is no shore leave to coordinate. Some facilities provide shore access, but make it impractical for seafarers and other individuals by placing extreme limitations on escort availability or charging exorbitant fees. Furthermore, possible costs to implement a system of access should not be borne by those who need access, thereby providing a disincentive for the facilities to provide such access.

(2) A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the final rule as a result of such comments:

We received five public comments regarding the estimated per-company cost of implementing this rule. The commenters argued that the \$1,121 cost was too low. The Coast Guard addressed this comment in Part IV of this preamble.

(3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of SBA in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments:

The Coast Guard did not receive any comments from the SBA Office of Advocacy regarding the impact that this rule would have on small entities.

(4) A description and estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available:

This rule would affect primarily MTSA-regulated facilities, which would need to provide seafarers' access if they do not currently provide this service to seafarers. Based on MISLE data, we estimate that there are 1,347 owners or operators of 2,469 facilities. Of these 1,347 entities, we estimate that 69 percent of them are small businesses, as determined by the size standards (or threshold) of the SBA.<sup>8</sup> We determined this percentage by researching and compiling the employee size and revenue data for a random sample of 300 entities, of which 145 (included in this number are 8 governmental jurisdictions that we found to be small based on the RFA's definition) were found to be below the threshold for small entities, and 63 were assumed to be below the threshold due to lack of available information. In total, there are 208 (145 + 63) small entities for the purposes of this analysis.<sup>9</sup> To estimate the sizes of these entities, we used the

revenue or employee size of these entities from *referenceusagov.com* and *www.Manta.com* for businesses and the most current population information from the U.S. Census Bureau's website for government jurisdictions. Based on the information from this analysis, we found that—

- There are an estimated 1,347 entities that would be affected by the final rule;
- The sample size consists of 300 entities;
- There were 10 government entities above the threshold for being small, and 8 below the threshold, we found revenue information on all 8 governmental jurisdictions by reviewing their respective annual reports online and U.S. Census Bureau data for one of them;
- There were no nonprofit entities found in the data;
- There were 92 businesses considered above the threshold for being small, and 145 below the threshold; and
- Size information was not found for the remaining 63 entities, so they were considered small.

The SBA provides business size standards for all sectors, defined as the North American Industry Classification System (NAICS). We use these codes to assess the effect that this final rule will have on these sectors. Table 8 provides a list of the most prevalent NAICS codes and their description and size standards.

TABLE 8—BREAKDOWN OF INDUSTRIES BY NAICS CODES

NAICS	Industry	SBA size threshold	SBA size standard type
324110 .....	Petroleum Refineries .....	1,500	Employees.
488320 .....	Marine Cargo Handling .....	\$38.5	Revenue in millions.
221122 .....	Electric Power Distribution .....	1,000	Employees.
424720 .....	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals).	200	Employees.
325998 .....	All Other Miscellaneous Chemical Product and Preparation Manufacturing	500	Employees.
483212 .....	Inland Water Passenger Transportation .....	500	Employees.
336611 .....	Ship Building and Repairing .....	1,250	Employees.
423990 .....	Other Miscellaneous Durable Goods Merchant Wholesalers .....	100	Employees.
424690 .....	Other Chemical and Allied Products Merchant Wholesalers .....	150	Employees.
561510 .....	Travel Agencies .....	\$20.5	Revenue in millions.
713930 .....	Marinas .....	\$7.5	Revenue in millions.

**Revenue Impact on Entities**

To estimate how this final rule would affect entities that fall under the SBA and U.S. Census Bureau for small entities, we calculated the per-facility cost based on each method of access.

Facilities that only need to modify their FSP would only be affected by the one-time FSP cost. Those that need to modify operations would be affected by the FSP cost and the weighted average

of the transportation costs. Table 9 provides the range in per-facility costs.

<sup>8</sup> As indicated by either their revenue or personnel data for businesses.

<sup>9</sup> The sample size of 300 entities provides a confidence level at 95 percent and a confidence interval of 5.

TABLE 9—PER FACILITY COST BY MODE OF TRANSPORTATION

Cost description	Initial cost	Annual recurring cost, years 2–5, 7–10	Annual recurring cost, year 6 <sup>10</sup>
Cost Per Facility (FSP Documentation) .....	\$412	\$0	\$0
<b>Cost Per Facility, Operations</b>			
Method 1: Regularly scheduled escort .....	99,143	67,583	68,138
Method 2: On-call escort .....	76,615	45,055	45,611
Method 3: Taxi .....	5,897	2,848	2,848
Method 4: Seafarers' welfare organizations with supplemental taxis .....	2,948	1,424	1,424
Method 5: Visual/equipment monitoring .....	191	191	191

For facilities that will only need to document a system of access in the FSP, we estimate that this final rule will not have a significant impact on a substantial number of small entities; *i.e.*, the cost to modify the FSP, \$412, is less than 1 percent of annual revenue for all sampled small entities that were reviewed. For facilities that have to modify operations and document the new system of access in their FSPs, this final rule may have a significant impact on a substantial number of small entities. Because we have no way to determine which facilities (and, therefore, which entities) will need to implement a system of access, we performed two analyses.

We have revenue information for 145 of the estimated 208 small entities including 8 small governmental jurisdictions (these revenue data include taxes and other revenues as reported in the jurisdictions' annual reports, which is publicly available information, in addition to data from the U.S. Census Bureau for one of them).

Three NAICS codes represent these 8 governmental jurisdictions with two governmental jurisdictions having a NAICS code of 921110 (Executive Offices), three of them having a NAICS code of 921120 (Legislative Bodies), and the remaining three having a NAICS code of 926120 (Regulation and Administration of Transportation Programs).

Using this revenue information, we determined that the cost of both modifying operations and documenting the new system of access in the FSP is: (1) Less than 1 percent of annual revenue for 66 percent of affected facilities; (2) between 1 and 3 percent of annual revenue for 14 percent of facilities; (3) between 3 and 5 percent of annual revenue for 5 percent of facilities; and (4) greater than 5 percent of annual revenue for 15 percent of facilities. Seven of the 8 governmental jurisdictions fell into the less than 1 percent impact category and the eighth jurisdiction fell into the greater than 5 percent impact category. Table 10 displays this data, as well as the impacts of annual recurring costs.

TABLE 10—ESTIMATED REVENUE IMPACT OF THE FINAL RULE, WEIGHTED AVERAGE COST

Revenue impact	Initial implementation cost	Annual recurring costs, years 2–5, 7–10	Annual recurring costs, year 6
<b>FSP Only Cost</b>			
Cost to Modify FSP .....	\$412	\$0	\$0
0% < Impact <= 1% .....	100%	.....	.....
<b>FSP Plus Access Implementation</b>			
Per facility cost (weighted average) .....	\$27,200	\$16,558	\$16,724
0% < Impact <= 1% .....	66%	73%	73
1% < Impact <= 3% .....	14%	11%	11
3% < Impact <= 5% .....	5%	6%	6
5% < Impact <= 10% .....	10%	7%	7
Above 10% .....	5%	3%	3

Additionally, we calculated the estimated revenue impacts of this final rule based on the average annual cost per compliance method over the 10-year period of analysis. Table 11 displays the results of this analysis. The average annual costs of Methods 3, 4, and 5 are

less than 1 percent of annual revenue for 100 percent of the identified small businesses. Method 1 has the highest average annual cost per facility. This cost is less than 1 percent of annual revenue for about 50 percent of the identified small entities, and above 10

percent of annual revenue for 18 percent of the identified small entities.

<sup>10</sup> Year 6 has a slightly higher average cost because those complying with Method 1 and

Method 2 will need to renew TWIC cards for security guards.

TABLE 11—ESTIMATED REVENUE IMPACT OF FINAL RULE, AVERAGE ANNUAL COST PER METHOD

Compliance method	Method 1	Method 2	Method 3	Method 4	Method 5
Weighted Average Annual Cost .....	\$70,795	\$48,267	\$3,153	\$1,576	\$191
<b>Cost Per Facility, Operations</b>					
0% < Impact <= 1% .....	50%	54%	100%	100%	100%
1% < Impact <= 3% .....	19%	17%	0%	0%	0
3% < Impact <= 5% .....	9%	6%	0%	0%	0
5% < Impact <= 10% .....	5%	7%	0%	0%	0
Above 10% .....	18%	13%	0%	0%	0

(5) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

This final rule adds information to an existing collection of information. We anticipate that all MTSA-regulated facilities will need to add additional security information to their FSPs, for a total cost of \$412 per facility. These FSPs will be updated by the Facility Security Officer (FSO). The FSO will need to know the security protocol regarding each facility and describe the information required in this rule in order to comply with the recordkeeping requirement of this rule. We anticipate that this recordkeeping requirement will not have a significant impact on any small entities, i.e., the \$412 recordkeeping cost is less than 1 percent of revenue for all sampled small entities.

(6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected:

We considered other alternatives in this final rule. Those alternatives include no regulatory changes, requiring changes to the DoS rather than to the FSP, and outlining more prescriptive measures. We rejected each alternative, because making no regulatory changes would not fulfill our mandate, changing the DoS would not specifically target noncompliant facilities, and making more prescriptive measures would not provide as much regulatory flexibility.

In addition, public comments suggested that requiring escorting for a

list of individuals would pose security problems and become too costly to implement. This rule narrows the list of acceptable individuals to seafarers, pilots, and welfare organizations, reducing the scope of individuals who will be allowed to be escorted through the facility to those people and groups specifically required by the Act.

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.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, we offer to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

*D. Collection of Information*

This rule calls for a collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. As defined in 5 CFR 1320.3(c), “collection of information” comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions,

searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection. Under the provisions of this final rule, the affected facilities and vessels are required to update their FSPs to include provisions for seafarers’ access. This requirement would amend an existing collection of information by increasing the number of instances requiring information to be collected under 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 final rule modifies an existing collection of information for facility owners and operators of MTSA-regulated facilities. MTSA-regulated facilities are required to include a description of a system for seafarer access in their FSPs. This rule requires a one-time change in previously approved OMB Collection 1625–0077.

*Final Use of Information:* The Coast Guard will use this information to determine whether a facility is providing adequate seafarer access and complying with the provisions of the final rule.

*Description of the Respondents:* The respondents are owners of MTSA-regulated facilities regulated by the Coast Guard under 33 CFR chapter I, subchapter H.

*Number of Respondents:* We estimate that 2,469 MTSA-regulated facilities with FSPs will be required to modify their existing FSP.

*Frequency of Response:* There will be a one-time response for all 2,469 respondents. The FSP would need to be updated within 10 months of the publication of the final rule.

*Burden of Response:* The burden resulting from this final rule is 6 hours per respondent in the initial year.

*Estimate of Total Annual Burden:* The estimated implementation period burden for facilities is 6 hours per FSP amendment. Since there are 2,469 MTSA facilities that are required to



modify their existing FSP, with the inclusion of administrative time of about 420 hours, the total burden is 15,234 hours [(2,469 facilities × 6 hours) + (2,469 facilities × 0.17 administrative hours)]. The current burden listed in this collection of information is 1,108,043. The new burden, as a result of this final rulemaking, is 1,123,277 (1,108,043 + 15,234).

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this final rule to OMB for its review of the collection of information. You are not required to respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the final collection.

#### *E. Federalism*

A rule has implications for federalism under Executive Order 13132 ("Federalism") if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under Executive Order 13132 and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis follows.

This 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 covered individuals with access through the facility at no cost to the seafarer. Additionally, this rule requires facilities to amend facility 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 (2000)). The Coast Guard believes the federalism principles articulated in *Locke* apply to the regulations promulgated under the authority of the Maritime Transportation Security Act. 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. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

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

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

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630 ("Governmental Actions and Interference with Constitutionally Protected Property Rights").

#### *H. Civil Justice Reform*

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

#### *I. Protection of Children*

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

#### *J. Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"), because it 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 rule under Executive Order 13211 ("Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use"). We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### *L. Technical Standards*

The National Technology Transfer and Advancement Act, codified as a note to 15 U.S.C. 272, directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### *M. Environment*

We have analyzed this 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 (42 U.S.C. 4321–4370f), and have concluded 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 final Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated in the **ADDRESSES** section of this preamble. This final rule involves providing access for seafarers to maritime facilities. Therefore, this rule is categorically excluded under paragraph L54 and paragraph L56 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. Paragraph L54 pertains to regulations which are editorial or procedural. Paragraph L56 pertains to regulations concerning the training, qualifying, licensing, and disciplining of maritime personnel.

#### **List of Subjects in 33 CFR Part 105**

Maritime security, Reporting and recordkeeping requirements, Security measures.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 105 as follows:

### 33 CFR—Navigation and Navigable Waters

#### PART 105—MARITIME SECURITY: FACILITIES

■ 1. The authority citation for part 105 is revised to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; Sec. 811, Pub. L. 111–281, 124 Stat. 2905; 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]

■ 2. Amend § 105.200 as follows:

■ a. In paragraph (b)(1), remove the words “security organizational structure” and add in their place the words “organizational structure of the security personnel” and remove the words “within that structure”;

■ b. In paragraph (b)(4), remove the text “an FSP” and add in its place the text “a Facility Security Plan (FSP)”;

■ c. In paragraph (b)(6) introductory text, 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”;

■ e. In paragraph (b)(6)(ii), remove the word “should” and add in its place the words “in the event that”;

■ f. In paragraph (b)(6)(iii), 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)(9), remove the text “coordination of” and add in its place the text “implementation of a system, in accordance with § 105.237,

coordinating” and remove the text “(including representatives of seafarers’ welfare and labor organizations)” and add in its place the text “, as described in § 105.237(b)(3)”;

■ h. In paragraph (b)(14), remove the text “TSA” and add in its place the text “Transportation Security Administration (TSA)”.

■ 3. 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 June 1, 2020 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) Seafarers assigned to a vessel at that facility;

(2) Pilots; and

(3) Representatives of seafarers’ welfare and labor organizations.

(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 or other transportation services, ensuring that any costs for providing the access described in this section, above the service’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 or other transportation services as the only method for providing the access described in this section, the facility is responsible to pay any 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 (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 February 3, 2020, 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 § 105.410 or § 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).

■ 4. Amend § 105.405 as follows:

■ a. In paragraph (a)(18), remove the text “part 105; and,” and add in its place “this part;”;

■ b. In paragraph (a)(21), remove the period at the end of the paragraph and add in its place “; and”;

■ c. Add paragraph (a)(22).

The addition reads as follows:

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

(a) \* \* \*

(22) System for seafarers’ access.

\* \* \* \* \*

Dated: March 27, 2019.

**Jennifer F. Williams,**

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

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