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United States Coast Guard

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NVIC 06-04

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 06-04

Subj: VOLUNTARY SCREENING GUIDANCE FOR OWNERS OR OPERATORS REGULATED UNDER PARTS 104, 105, AND 106 OF SUBCHAPTER H OF TITLE 33, CODE OF FEDERAL REGULATIONS

Ref: a. 33 CFR, Subchapter H
b. MARSEC Directives 104-1 thru 104-4, 105-1 thru 105-3, and 106-1

1. PURPOSE. The purpose of this guidance is to aid owners or operators in the development and execution of a screening regime to meet the requirements of Subchapter H of Title 33, Code of Federal Regulations (hereinafter Subchapter H), which requires certain owners or operators of vessels or facilities to conduct screening of persons, cargo, vehicles, or baggage prior to allowing access onto the facility or vessel. The guidance is not provided to regulate owners or operators in the development of a screening program, and owners or operators are not required to use this document in developing a screening program. This guidance is an overview of what owners or operators should consider when establishing a screening program. An owner or operator who implements this guidance will be in compliance with the access control provisions of Subchapter H, but this guidance is not exhaustive. An owner or operator may implement other equivalent methods as well. This guidance is not intended for vessels subject to 33 CFR part 120, and facilities subject to 33 CFR Part 128. Screening guidance for these vessels and facilities is found in Coast Guard NVIC 04-02. The passenger screening provisions of this guidance are not intended for vessel owners and operators that implement screening procedures in accordance with 33 CFR §104.292 (b), or facilities with public access areas (see paragraph 8(d)(4)).

2. ACTION.
   a. Commanding Officers of Marine Safety Offices, Captains of the Port (COTP) and the Commanding Officer Marine Safety Center should utilize the guidelines in this circular when examining security programs required by 33 CFR Parts 104, 105, and 106. The Coast Guard will distribute this circular, **without enclosure (1)**, by electronic means

DISTRIBUTION -SDL No. 140

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A																										
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only. It is available on the Worldwide Web at http://www.uscg.mil/hq/g-m/nvic/index.htm (**see paragraph b for directions to receive enclosure (1)**).

b. Enclosure (1) to this NVIC contains sensitive security information (SSI); therefore, it is not subject to public disclosure. If disclosed, the SSI could be used to subvert or exploit the security programs of vessels, facilities, or ports. SSI material requires appropriate handling in accordance with 49 CFR 1520 and NVIC 9-02, Change 1, section 3500. **Members of the maritime industry, members of federal, state, or local law enforcement, and other parties that can demonstrate a need to know may submit a request for enclosure (1), to the cognizant COTP, or Commandant (G-MPS).**

3. DIRECTIVES AFFECTED. None.

4. BACKGROUND. During the development of Subchapter H, the Coast Guard received many comments voicing concern regarding screening. In response, the Coast Guard stated its intent to coordinate with the Transportation Security Administration (TSA) and the Bureau of Customs and Border Protection and publish screening guidance. *See 68 FR 60511*, October 22, 2003. This Navigation and Vessel Inspection Circular constitutes that guidance. This guidance is a nonbinding overview of what owners or operators should consider when establishing a screening program. This is a living document and the Coast Guard may periodically update this guidance. In addition, TSA plans to issue guidance, tailored to vessels, that provides screening standards and designates prohibited items. Such guidance may supercede portions of this or subsequent versions of this guidance.

5. DISCUSSION.

a. **Equivalencies permitted**. The guidelines provide examples of criteria that will be considered by the Coast Guard during review and examination of security programs required by 33 CFR Parts 104, 105, and 106. In evaluating compliance with these guidelines, the Coast Guard may recognize equivalent standards or alternatives.

b. **Not a requirement.** The purpose of this document is not to regulate owners or operators in the development of a screening program, and owners or operators are not required to use this document in developing a screening program.

c. **Non-law enforcement**. We emphasize that the maritime security regulations do not require owners or operators to undertake law enforcement action, but rather to implement security measures consistent with their longstanding responsibility to ensure the security of their vessels and facilities, as specifically prescribed by 33 CFR 6.16-3 and 33 CFR 6.19-1. *See 68 FR 60496,* October 22, 2003. Therefore, nothing in this guidance should be construed as extending law enforcement authority to owners and operators.

d. **Non-exhaustive.** The examples provided in this guidance are not exhaustive but instead provide minimum standards owners or operators should consider when establishing a screening program pursuant to Subchapter H.

e. **Preemption**. As discussed in the preamble to the maritime security final rules, the Coast Guard may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statue. *68 FR 60468,* October 22, 2003. The Coast Guard determined that the federalism principles enumerated by the Supreme Court in *U.S. v. Locke, 529 U.S. 89 (2000)* regarding field preemption of certain State vessel and maritime facility security, safety, equipment, and operating requirements extends to the regulations required by Maritime Transportation Security Act (MTSA) of 2002. *Id.* If a State constitutional provision frustrates the implementation of any requirement in the MTSA regulations, then the State provision is preempted pursuant to Article 6, Section 2, of the U.S. Constitution. *See 68 FR 60511,* October 22, 2003.

f. **Supremacy of Subchapter H.** If a conflict appears to exist between this guidance and Subchapter H, owners or operators should adhere to the requirements of Subchapter H.

T. H. GILMOUR
ASSISTANT COMMANDANT FOR
MARINE SAFETY, SECURITY AND
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Enclosure (1): VOLUNTARY SCREENING GUIDANCE PROCEDURES FOR OWNERS OR OPERATORS REGULATED UNDER PARTS 104, 105, AND 106 OF SUBCHAPTER H OF TITLE 33, CODE OF FEDERAL REGULATIONS