

## Coast Guard, DHS

## § 128.120

(b) Heating equipment will not ignite combustible material;

(c) Each chimney and appliance has a spark arrestor if it uses solid fuel or is located where sparks may ignite combustible material; and

(d) All rubbish, debris, and waste go into appropriate receptacles.

[CGD 88-049, 60 FR 39796, Aug. 3, 1995, as amended by CGD 97-023, 62 FR 33363, June 19, 1997]

### PART 128—SECURITY OF PASSENGER TERMINALS

#### Subpart A—General

Sec.

128.100 Does this part apply to me?

128.110 Definitions.

128.120 Incorporation by reference.

#### Subpart B—Security Program

128.200 What must my Terminal Security Plan cover?

128.210 What are the responsibilities of my terminal security officer?

128.220 What must I do to report an unlawful act and related activity?

#### Subpart C—Plans and Procedures for Terminal Security

128.300 What is required to be in a Terminal Security Plan?

128.305 Who must submit a Terminal Security Plan?

128.307 What is the procedure for examination?

128.309 What do I do if I need to amend my Terminal Security Plan?

128.311 What is my right of appeal?

AUTHORITY: 33 U.S.C. 1231; 49 CFR 1.46.

SOURCE: CGD 91-012, 61 FR 37654, July 18, 1996, unless otherwise noted.

#### Subpart A—General

##### § 128.100 Does this part apply to me?

This part applies to all passenger terminals in the United States or its territories when being used for the assembling, processing, embarking, or disembarking of passengers or baggage for passenger vessels over 100 gross tons, carrying more than 12 passengers for hire; making a voyage lasting more than 24 hours, any part of which is on the high seas. It does not apply to terminals when serving ferries that hold

Coast Guard Certificates of Inspection endorsed for “Lakes, Bays, and Sounds”, and that transit international waters for only short periods of time, on frequent schedules.

##### § 128.110 Definitions.

The definitions in part 120 of this chapter apply to this part, except for the definition of *You*. As used in this part:

*You* means the owner or operator of a passenger terminal.

[CGD 91-012, 63 FR 53591, Oct. 6, 1998]

##### § 128.120 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the FEDERAL REGISTER and must make the material available to the public. All approved material may be inspected at the U.S. Coast Guard, (CG-521), 2100 2nd St., SW., Stop 7126, Washington, DC 20593-7126, and at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html). Copies may be obtained from IMO, 4 Albert Embankment, London SE1 7 SR.

(b) The materials approved for incorporation by reference in this part and the sections affected are:

##### INTERNATIONAL MARITIME ORGANIZATION (IMO)

4 Albert Embankment, London SE1 7SR

MSC Circular 443, Measures to Prevent Unlawful Acts Against Passengers and Crews on Board Ships September 26, 1986—128.220, 128.300

[CGD 91-012, 61 FR 37654, July 18, 1996, as amended by USCG-2002-12471, 67 FR 41332, June 18, 2002; 69 FR 18803, Apr. 9, 2004; USCG-2010-0351, 75 FR 36283, June 25, 2010]

**Subpart B—Security Program**

**§ 128.200 What must my Terminal Security Plan cover?**

(a) If this part applies to your passenger terminal, you must implement for that terminal a program that—

(1) Provides for the safety and security of persons and property in the terminal and aboard each passenger vessel subject to part 120 of this chapter moored at the terminal, against unlawful acts;

(2) Prevents or deters the carriage aboard any such vessel moored at the terminal of any prohibited weapon, incendiary, or explosive on or about any person or within his or her personal articles or baggage, and the carriage of any prohibited weapon, incendiary, or explosive in stowed baggage, cargo, or stores;

(3) Prevents or deters unauthorized access to any such vessel and to restricted areas in the terminal;

(4) Provides appropriate security measures for Security Levels I, II, and III that allow for increases in security when the Commandant or Captain of the Port (COTP) advises you that a threat of an unlawful act exists and may affect the terminal, a vessel, or any person aboard the vessel or terminal;

(5) Designates, by name, a security officer for the terminal;

(6) Provides for the evaluation of all security personnel of the terminal, before hiring, to determine suitability for employment; and

(7) Provides for coordination with vessel security while any passenger vessel subject to part 120 of this chapter is moored at the terminal.

(b) If this part applies to your passenger terminal, you must work with the operator of each passenger vessel subject to part 120 of this chapter, to provide security for the passengers, the terminal, and the vessel. You need not duplicate any provisions fulfilled by the vessel unless directed to by the COTP. When a provision is fulfilled by a vessel, the applicable section of the Terminal Security Plan required by § 128.300 must refer to that fact.

[CGD 91-012, 63 FR 53591, Oct. 6, 1998]

**§ 128.210 What are the responsibilities of my terminal security officer?**

(a) If this part applies to your passenger terminal, you must designate a security officer for the terminal.

(b) This officer must ensure that—

(1) An initial comprehensive security survey is conducted and updated;

(2) The Terminal Security Plan required by § 128.300 is implemented and maintained, and that amendments to correct its deficiencies and satisfy the security requirements of the terminal are proposed;

(3) Adequate training for personnel responsible for security is provided;

(4) Regular security inspections of the terminal are conducted;

(5) Vigilance is encouraged, as well as is general awareness of security, at the terminal;

(6) All occurrences or suspected occurrences of unlawful acts and related activities are reported under § 128.220 and records of the incident are maintained; and

(7) Coordination, for implementation of the Terminal Security Plan required by § 128.300, takes place with the vessel security officer of each vessel that embarks or disembarks passengers at the terminal.

[CGD 91-012, 63 FR 53592, Oct. 6, 1998]

**§ 128.220 What must I do to report an unlawful act and related activity?**

(a) Either you or the terminal security officer must report each breach of security, unlawful act, or threat of an unlawful act against the terminal, a passenger vessel subject to part 120 of this chapter destined for or moored at that terminal, or any person aboard the terminal or vessel, to the COTP, to the local office of the Federal Bureau of Investigation (FBI), and to the local police agency having jurisdiction over the terminal.

(b) Either you or the terminal security officer must file a written report of the incident using the form “Report on an Unlawful Act,” contained in IMO MSC Circular 443, as soon as possible, to the local COTP.

[CGD 91-012, 63 FR 53592, Oct. 6, 1998]

### Subpart C—Plans and Procedures for Terminal Security

#### § 128.300 What is required to be in a Terminal Security Plan?

(a) If your passenger terminal is subject to this part, you must develop and maintain, in writing, for that terminal, an appropriate Terminal Security Plan that articulates the program required by § 128.200.

(b) The Terminal Security Plan must be developed and maintained under the guidance in IMO MSC Circular 443 and must address the security of passengers aboard passenger vessels subject to part 120 of this chapter, of members of crews of such vessels, and of employees of the terminal, by establishing security measures to take for Security Levels I, II, and III, to—

(1) Deter unauthorized access to the terminal and its restricted areas and to any passenger vessel moored at the terminal;

(2) Deter the introduction of prohibited weapons, incendiaries, and explosives into the terminal and its restricted areas and onto any passenger vessel moored at the terminal;

(3) Encourage vigilance, as well as general awareness of security, at the terminal;

(4) Provide adequate security training to employees of the terminal;

(5) Coordinate responsibilities for security with the operator of each vessel that embarks or disembarks passengers at the terminal; and

(6) Provide information to employees of the terminal and to law-enforcement personnel, in case of an incident affecting security.

(c) You must amend the Terminal Security Plan to address any known deficiencies.

(d) You must restrict the distribution, disclosure, and availability of information contained in the Terminal Security Plan to those persons with an operational need to know.

[CGD 91-012, 63 FR 53592, Oct. 6, 1998]

#### § 128.305 Who must submit a Terminal Security Plan?

(a) The owner or operator of the vessel must submit a Terminal Security Plan whenever—

(1) There is an agreement with you that the owner or operator of the vessel will submit the Plan;

(2) The owner or operator of the vessel has exclusive use of the pier and terminal building immediately adjacent to the pier and has complete control of that area;

(3) There is no terminal; or

(4) Passengers embark or disembark but no baggage or stores are loaded or offloaded.

(b) In the situations described in paragraphs (a)(3) and (4) of this section, the owner or operator of the vessel may, with the permission of the cognizant COTP, use an annex to the vessel's security plan instead of a Terminal Security Plan.

(c) You must submit a Terminal Security Plan whenever—

(1) There is an agreement with the owner or operator of the vessel that you will submit the Plan;

(2) No security agreement exists; or

(3)(i) At least one vessel other than a passenger vessel uses the terminal;

(ii) More than one passenger vessel line uses the terminal; or

(iii) The terminal loads or offloads baggage or stores.

[CGD 91-012, 63 FR 53592, Oct. 6, 1998]

#### § 128.307 What is the procedure for examination?

(a) Unless a plan for your passenger terminal will be submitted by an entity other than yourself under § 128.305 or § 120.303 of this chapter, you must submit two copies of each Terminal Security Plan required by § 128.300 to the COTP for examination at least 60 days before transferring passengers to or from a vessel subject to part 120 of this chapter.

(b) If the COTP finds that the Terminal Security Plan meets the requirements of § 128.300, he or she will return a copy to you marked "Examined by the Coast Guard."

(c) If the COTP finds that the Terminal Security Plan does not meet the requirements of § 128.300, he or she will return the Plan with an explanation of why it does not meet them.

(d) No terminal subject to this part may transfer passengers to or from a passenger vessel subject to part 120 of this chapter, unless it holds either a

## § 128.309

Terminal Security Plan that we have examined or a letter from the COTP stating that we are currently reviewing the Plan and that normal operations may continue until the COTP has determined whether the Plan meets the requirements of § 128.300.

[CGD 91-012, 63 FR 53592, Oct. 6, 1998]

### **§ 128.309 What do I do if I need to amend my Terminal Security Plan?**

(a) If your passenger terminal is subject to this part, you must amend your Terminal Security Plan when directed by the COTP, and may amend it on your own initiative.

(b) You must submit each proposed amendment to the Terminal Security Plan you initiate to the COTP for review at least 30 days before the amendment is to take effect, unless he or she allows a shorter period. The COTP will examine the amendment and respond according to § 128.307.

(c) The COTP may direct you to amend your Terminal Security Plan if he or she determines that implementation of the Plan is not providing effective security. Except in an emergency,

## 33 CFR Ch. I (7-1-12 Edition)

he or she will issue you a written notice of matters to address and will allow you at least 60 days to submit proposed amendments.

(d) If there is an emergency or other circumstance that makes the procedures in paragraph (c) of this section impracticable, the COTP may give you an order to implement increases in security immediately. The order will incorporate a statement of the reasons for it.

[CGD 91-012, 63 FR 53593, Oct. 6, 1998]

### **§ 128.311 What is my right of appeal?**

Any person directly affected by a decision or action taken by the COTP under this part, may appeal that action or decision to the cognizant District Commander according to the procedures in 46 CFR 1.03-15; the District Commander's decision on appeal may be further appealed to the Commandant according to the procedures in 46 CFR 1.03-25.

[CGD 91-012, 61 FR 37654, July 18, 1996. Redesignated by CGD 91-012, 63 FR 53592, Oct. 6, 1998]