



## **International Cruise Victims Association, Inc.**

July 11, 2013

Maritime Administration, Department of Transportation - Proposed New Policy; Model Training Course,  
Comments on behalf of the International Cruise Victims Association

The International Cruise Victims Association (ICV) is a non-profit organization made up of former victims or their family members of cruise ship related incidents which have resulted in injury or loss of life. The ICV has a world-wide following of cruise ship victims and/or concerned individuals or groups who have organized themselves to lobby or petition government, legislative bodies, maritime organizations as well as the cruise lines themselves to promote the safety and security of passengers and crew. The ICV advocates stricter enforcement of the reporting of criminal incidents on cruise ships, the prompt and professional response of criminal and suspicious incidents affecting passenger safety, the prompt care and compassion of victims, and the ultimate prosecution of guilty parties for criminal acts committed on cruise ships.

In July 2010, President Barrack Obama signed into law, the 2010 Cruise Vessel Security and Safety Act (CVSSA) which provides among other requirements, certain provisions to strengthen the reporting mechanism of criminal incidents on cruise ships and the prompt and professional investigation of criminal incidents.

The Maritime Administration's (MarAd) has announced a new policy to certify cruise vessel security and safety training providers. MarAd has invited public comment on this new proposed policy.

The ICV would like to take this opportunity to comment on the provisions and add its critique of the proposed training course with the goal of incorporating these recommendation in the final version of the Model Training Course.

The proposed revision has indicated that since July 27, 2011, passenger vessels have been required to certify to the USCG that they have at least one crewmember on board that is properly trained on prevention, detection, evidence preservation, and reporting requirements of criminal activities in the international maritime environment before entering a United States port on a voyage or voyage segment on which a United States citizen is a passenger.

MarAd, the USMMA, and the FBI worked together on a security training program which would instruct and then certify, prospective training providers for the cruise industry to satisfy the requirement that each cruise vessel has at least one "certified crewmember" knowledgeable in the required aspects of crime prevention, crime scene response, evidence collection and reporting requirements.

IVC members with experience and training in cruise line security organization and administration have reviewed the proposal and make the following observations:

## **VOLUNTARY PROGRAM**

Overall, the ICV views the guidelines, implementation, and requirements of Model Training Program as a very comprehensive certification program which will satisfy the CVSSA training requirement. Significant thought and guidance was included to clear up some of the ambiguities of the interim training course.

However, if ICV understands the proposal under its current format, regardless of the content and structure, the biggest and most essential critique of the program is that ***it is still, voluntary.***

Under the current proposal, ***“MarAd is planning to implement this training certification program on a voluntary basis”*** to “help assure the general public that passenger vessel security and safety personnel have received proper training consistent with the model standards developed by USCG in coordination with MarAd, the USMMA, and the FBI.”

ICV questions the validity of a purely voluntary program to provide and deliver this crucial and vital component of the CVSSA. Aside from the specific implementation issues ICV sees many potential problems and conflicts with a voluntary program aimed at providing the cruise lines and their ships with a qualified crewmember.

While each individual cruise line may for sake of argument, adhere to the Model Training Program as a means to provide a certified crewmember, the program ***under its current design still equates to a “best practice”*** model rather than a strict requirement to in fact, provide a standardized training format for certification.

In the opinion of the ICV, voluntary participation does not guarantee that every cruise line has, or will adopt the same requirements. There are numerous reasons why the cruise line might “opt out” of such a program, including cost, time, red-tape, etc. Additionally, the cruise lines have been meeting this requirement currently under the interim guidelines. If given a choice to use this “best practice,” some in the industry might reason that they are currently meeting the requirement just fine under the existing model thus, ICV asks what significance does the MarAd see in a strictly voluntary program for implementation?

ICV firmly believes that in order for this program to successful and to add true value for the purpose for which it was designed, **the Model Training Course and its provisions for certification need to be mandatory** and applicable to the cruise industry as a whole.

If the program for certifying instructors is not mandatory, it essentially becomes a “paper drill” which in the opinion of the ICV, most of the industry will simply opt out.

## **COURSE CONTENT, TIME ALLOTMENT AND COURSE DELIVERY**

ICV would like to comment again on the original course content proposal. ICV does not believe that the current amount of time allotted to crime scene preservation and evidence collection is adequate to properly equip the crewmember who responds to a cruise vessel crime scene.

Unlike a policeman whose full time job encompasses crime scene investigation, evidence collection, witness interview and suspect interrogation, etc., crime scene investigation is a collateral duty for fleet security officers whose main duty is to set the appropriate MARSEC security levels throughout the ship and to interface with his port security officer counterpart per the ISPS Code. He also ensures that the ship's Declaration of Security (DOS) is in order in accordance with the prevailing MARSEC levels. Thus, the fleet security officer's first and foremost duty is with the physical protection of the ship. Crime prevention and crime scene investigation are secondary and collateral duties are not part of the fleet security officer's duties according to any provision of the ISPS Code.

Although an onboard security officer may be recruited for his past military or law enforcement experience, and may trained in the art of criminal investigation using the lessons supplied by the cruise lines, the officer still has no authority in any official criminal investigation and that ultimately, in strictly law enforcement terms, does not lead to impartialness when trying to determine a suspect's alleged guilt or innocence.

This collateral duty for fleet security officers places him or her in a position in some cases, of being called to testify in court proceedings against his or her employer if and when the evidence he or she collected at the alleged crime scene on the cruise ship is allowed to be introduced into a court of law. This is even more crucial if the prosecution can prove that the alleged crime (on the ship) took place as a result of the cruise ship, or cruise line's negligence, lapse of security oversight, or incompetent adherence to the standards which led to, or contributed to the criminal incident.

On the other hand, since the fleet security officer is presumably the first to collect evidence and/or interview witnesses and suspects, the defense for the accused (suspect) will undoubtedly try to impeach the evidence collected by the fleet security officer and/or his or her security training in crime scene investigation.

In short, ***cruise ship security personnel cannot help but act as agents of the government when assigned the duties of collecting evidence and interviewing witnesses, suspects, and victims on the cruise ship.***

While it is agreed that cruise ship security personnel are not agents of the government, in a real sense, the prosecution of a crime still depends on their trained and swift actions.

ICV is deeply concerned first and foremost with the 8 hour time allotment for this training course in its entirety. Our research indicates that similar courses for those undergoing training in criminal investigations such as is taught at the Federal Law Enforcement Training Center (FLETC) in Glynco, GA for investigators with the USSS, ATF, DSS, NCIS, etc., are of a length and duration of 8 hours a day for 16 weeks! Even with the understanding that some of the courses taught in that program include subjects such as firearms, constitutional law, and surveillance that are not applicable under the CVSSA guidelines,

the bulk of their instruction is crime scene investigations utilizing crime scene simulations, mock-ups, role-playing culminating in a practical test which demonstrates core skills and knowledge of the subject matter, as well as a structured written test. It is unlikely that a thorough and comprehensive training course, covering all the issues as required by the law, could be sufficiently taught in a mere 8 hour time frame with even less time devoted to crime scene preservation and evidence collection. (3 hours).

Under the heading of course delivery, we are again concerned with the fact that the course could actually be taught on-line or via distance learning.

How would it be guaranteed that the person who is supposed to take the course actually receives the training? Given that many times (if not most instances) when on-line training is mandated, students tend to rush through the course in less than the required or suggested time in an effort to just complete the course. The concern then becomes that even less time will be spent on the training than the already insufficient 8 hour time allotment. Additionally, because the course is being taught online, the student has no way to interact with an instructor when points or questions on the course are raised. This further diminishes the overall intent of the course and limits the student, who may be thoroughly unfamiliar with the course content and subject matter.

Ideally, the students should attend a formal place of instruction where the instructor can take advantage of a large group of participants who may share various insights and experiences as well as questions. The formal place of instruction should also be a place where investigative techniques and learning aides are available such as the Federal Law Enforcement Training Center in Glynco, Georgia, the FBI Academy in Quantico, Virginia or a large sheriff's or police academy.

## **COURSE OBSERVATIONS / COMMENTS**

### **Application For MarAd Certification:**

In the application process, MarAd asks for the incorporation of the training service provider (the "provider").

Presumably, only instructors from a company e.g., maritime security can submit for certification of its providers. Does the prospective training provider have to be part of an incorporated company, e.g., llc, plc., or can they be an independent "consultant?" It is conceivable that these instructors will be contracted by the company to perform this service. Presumably, there are no restrictions on the type of company / business that desires to become a service provider? It will be based solely on the SME of the instructor(s) who are submitted under the application process.

MarAd asks the service providers to provide list of instructors with a description of their experience, background, and qualifications that demonstrate that they have the subject matter expertise.

What criteria is MarAd using to evaluate the SME of the prospective trainers/instructors? Will that criteria be provided for review/comment?

Will MarAd make available for the cruise lines and public a summary or description of the training providers SME credentials?

MarAd asks the cruise lines to provide the names, positions, and backgrounds of shore side and shipboard staff that will evaluate, review, and monitor any element of the CVSSA course.

ICV recommends that a similar SME qualification statement be included not that they personnel are assigned in a security or safety position or role on shore or at sea. For example, a Corporate Safety Officer may not be in the best position to evaluate on security issues or the CVSSA, likewise, the background of many shore and sea staff should be evaluated for security experience not just that they hold the position and title of corporate security officer or ship security officer.

### **Course Completion Certification**

MarAd has indicated that the certified CVSSA Training Provider must first verify the identity of all students (whether live training or E-learning) who have completed a certified security training course and issue consecutively numbered certificates to students who successfully complete the approved course.

MarAd should have a controlled certificate that is one standard so everyone recognizes it and accepts it. recommend that MarAd develop the Course Completion Certificate(s) and issue (with serial # etc.) the certified course provider. The Certificate is issued by the training provider on behalf of the MarAd.

While MarAd has spelled out precisely what the course completion certificate should contain, and what type of foils it should use, it makes better sense to standardize the course completion certificate as being issued by the MarAd and not the individual service providers. This is for several reasons, 1) it makes clear to the auditors that the certificate is an “authentic” official certificate (which can only be provided to the service provider upon certification) 2) it reduces confusion on the part of the participants and the cruise lines when a certified crewmember transfers and supplies his new employer (cruise line) with his / her course completion certificate from an unknown provider. 3) standardizes the implementation of the certification program under the MarAd as one identifiable training program, even though it has been administered by numerous certified training providers.

### **Implementation and Administration**

MarAd has indicated that Training Provider Certification will be issued to the applicant only after the voluntary agreement has been entered into. MarAd will thereafter publish the certified training providers name and contact information on its website.

Is the website a public website? Can the public view the contents and see who MarAd has certified?

## **Training Provider Compliance**

MarAd has indicated that it will ensure compliance utilizing two methods-1. Audits performed by private accredited auditors on a scheduled basis and 2. Random audits performed by agency personnel.

Please specify the schedule for compliance audits on a regular basis? Annually, Semiannually, bi-annually etc.?

This is understood that independent auditors who are “accredited,” will perform the compliance review and/or be done by “agency” personnel. What does accredited mean and does this refer to contractors, other auditors or companies? The independent auditors should not be affiliated with the companies or organizations who are providing the training, nor should they be affiliated with the cruise industry other than to have audited the cruise lines e.g., BUREAU VERITAS. What are the specific requirements for MarAd to employ an independent third party? This would imply a entirely separate set of qualifications for independent auditors. Please clarify that the audits, whether they are independent or by “agency” personnel are at the Corporation’s expense, i.e., the cruise line.

Please clarify who the agency personnel are? Are these members from the USCG, MarAd, and/or the FBI?

Finally, compliance audits are very important in the certification process. Random audits are extremely useful in uncovering areas for immediate improvement and also in identifying potential fraud. For example, an auditor should be able to Q&A students/crewmembers who were certified as having completed the training. If it is evident that even though the student “passed” the course, and the student cannot answer or demonstrate proficiency in the concepts, there is reason to investigate the teaching methods, e.g., e-learning, in-class, etc. the test/exam, the instructor’s grading criteria etc.

## **Certification Expiration**

MarAd has indicated that course approvals and certification are effective for a period of five years or until the approval and certification is suspended or withdrawn.

It is conceivable that a provider’s certification may have to be withdrawn for the reasons indicated above. What actions or issues would provoke the certification to be withdrawn? Is this also done by MarAd? It is presumed that the compliance audit procedures would uncover actions or deficiencies leading to suspension.

## **Revocation and Appeal Process**

Training providers can appeal disapproval, revocation, or suspension of the certificate by appealing to the Maritime Administrator.

If a service provider’s certification is suspended or revoked, are they allowed after a certain amount of time to reapply or are they barred permanently? If made, is there a waiting period for reinstatement or

permanent? ICV would argue the point that the provider should disbar the provider from being able to apply again for certification.

### **SPECIFIC ISSUES FOR COMMENT**

MarAd is requesting public comment on the following issues:

Whether foreign based training providers will be faced with legal barriers or other special challenges in submitting a complete application or complying with program requirements; and

Whether the proposed process raises specific legal or practical issues for the program participant or the cruise line passenger.

The requirements themselves come from the CVSSA which is public law. If a passenger who has become the victim of crime on a ship where the security officer fails to investigate or collect evidence properly in accordance with the “standards” taught by the service provider, can the passenger (who may have suffered because of the negligent action) seek action against the cruise line (for hiring and employing an incompetently trained) security officer, or sue the security service provider who (in good faith according to the model security course) trained the security guard?

The cruise line cannot pass the responsibility here. They are ones that hired the service provider (to train their personnel). The service provider should not held liable for a security officer who, after being trained, performs these duties incompetently or negligently.

Since this is a requirement of the CVSSA, and not an IMO or other international requirement, it would make sense to exclude foreign based security service providers e.g., SECURITAS from satisfying this inherent U.S. regulation.

Additionally, it is conceivable that in comparison to a U.S. based service provider, a foreign company might incur additional costs for on-site training and/or ELearning course and encounter problems associated with payment methods, not to mention verifying / vetting the foreign based company for certification.