

§ 105.105 Applicability.

(a) The requirements in this part apply to the owner or operator of any U.S.:

(1) Facility subject to 33 CFR parts 126, 127, or 154;

(2) Facility that receives vessels certificated to carry more than 150 passengers;

(3) Facility that receives vessels subject to the International Convention for Safety of Life at Sea, 1974, or that are commercial vessels subject to subchapter I of title 46, Code of Federal Regulations, greater than 100 gross register tons on international voyages, including vessels solely navigating the Great Lakes; or

(4) Fleeting facility that receives barges carrying, in bulk, cargoes regulated by subchapters D and O of chapter I, title 46, Code of Federal Regulations or Certain Dangerous Cargoes.

(b) An owner or operator of any facility not covered in paragraph (a) of this section is subject to parts 101 through 103 of this subchapter.

(c) This part does not apply to the owner or operator of the following U.S. facilities:

(1) A facility owned and operated by the U.S. that is used primarily for military purposes.

(2) An oil and natural gas production, exploration, or development facility regulated by 33 CFR parts 126 or 154 if:

(i) The facility is engaged solely in the exploration, development, or production of oil and natural gas; and

(ii) The facility does not meet or exceed the operating conditions in § 106.105 of this subchapter;

(3) A facility that supports the production, exploration, or development of oil and natural gas regulated by 33 CFR parts 126 or 154 if:

(i) The facility is engaged solely in the support of exploration, development, or production of oil and natural gas; and

(ii) The facility transports or stores quantities of hazardous materials that do not meet and exceed those specified in 49 CFR 172.800(b)(1) through (6); or

(iii) The facility stores less than 42,000 gallons of cargo regulated by 33 CFR part 154;

(4) A mobile facility regulated by 33 CFR part 154; or

(5) An isolated facility that receives materials regulated by 33 CFR parts 126 or 154 by vessel due to the lack of road access to the facility and does not distribute the material through secondary marine transfers.

§ 105.106 Public access areas.

(a) A facility serving ferries and passenger vessels certificated to carry

more than 150 passengers, other than cruise vessels, may designate an area within the facility as a public access area.

(b) A public access area is a defined space within a facility that is open to all persons and provides access through the facility from public thoroughfares to the vessel.

§ 105.110 Exemptions.

(a) An owner or operator of any barge fleeting facility subject to this part is exempt from complying with § 105.265, Security measures for handling cargo; and § 105.270, Security measures for delivery of vessel stores and bunkers.

(b) A public access area designated under § 105.106 is exempt from the requirements for screening and identification of persons in § 105.255(c), (e)(1), and (e)(3).

§ 105.115 Compliance dates.

(a) On or before December 29, 2003, each facility owner or operator must submit to the cognizant COTP for each facility a Facility Security Plan (FSP) described in subpart D of this part for review and approval.

(b) On or before June 30, 2004, each facility owner or operator must be operating in compliance with this part.

§ 105.120 Compliance documentation.

Each facility owner or operator subject to this part must ensure, no later than July 1, 2004, that copies of the following documentation are available at the facility and are made available to the Coast Guard upon request:

(a) The approved Facility Security Plan (FSP), as well as any approved revisions or amendments thereto, and a letter of approval from the COTP dated within the last 5 years;

(b) The FSP submitted for approval and an acknowledgement letter from the COTP stating that the Coast Guard is currently reviewing the FSP submitted for approval, and that the facility may continue to operate so long as the facility remains in compliance with the submitted FSP; or

(c) For facilities operating under a Coast Guard-approved Alternative Security Program as provided in § 105.140, a copy of the Alternative Security Program the facility is using and a letter signed by the facility owner or operator, stating which Alternative Security Program the facility is using and certifying that the facility is in full compliance with that program.

§ 105.125 Noncompliance.

When a facility is not in compliance with the requirements of this part, the facility owner or operator must notify

the cognizant COTP and request a waiver to continue operations.

§ 105.130 Waivers.

Any facility owner or operator may apply for a waiver of any requirement of this part that the facility owner or operator considers unnecessary in light of the nature or operating conditions of the facility, prior to operating. A request for a waiver must be submitted in writing with justification to the Commandant (G-MP) at 2100 Second St., SW., Washington, DC 20593. The Commandant (G-MP) may require the facility owner or operator to provide data for use in determining the validity of the requested waiver. The Commandant (G-MP) may grant, in writing, a waiver with or without conditions only if the waiver will not reduce the overall security of the facility, its employees, visiting vessels, or ports. The Commandant (G-MP) may grant a waiver with or without written conditions only if the waiver will not reduce the overall security of the facility, its employees, visiting vessels, or port.

§ 105.135 Equivalents.

For any measure required by this part, the facility owner or operator may propose an equivalent as provided in § 101.130 of this subchapter.

§ 105.140 Alternative Security Program.

(a) A facility owner or operator may use an Alternative Security Program approved under § 101.120 of this subchapter if:

(1) The Alternative Security Program is appropriate to that facility;

(2) The Alternative Security Program is implemented in its entirety.

(b) A facility owner or operator using an Alternative Security Program approved under § 101.120 of this subchapter must complete and submit to the cognizant COTP a Facility Vulnerability and Security Measures Summary (Form CG-6025) in appendix A to part 105—Facility Vulnerability and Security (CG-6025).

§ 105.145 Maritime Security (MARSEC) Directive.

Each facility owner or operator subject to this part must comply with any instructions contained in a MARSEC Directive issued under § 101.405 of this subchapter.

§ 105.150 Right to appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal as described in § 101.420 of this subchapter.