

We are not amending the authority citation because the regulations in 46 CFR part 107 are not issued under the citations that the commenters propose to add. Additionally, these changes are beyond the scope of this final rule.

We received five comments regarding our implementation of the regulations. Three commenters strongly supported the implementation of the rules, stating that maritime entities should be regulated by a single law. One commenter supported the Coast Guard's implementation of the regulations as written, because of a security breach that occurred on a ferry within the past year. One commenter acknowledged and commended the Coast Guard for the positive way it responded to previously submitted comments.

Two commenters commended the Coast Guard for ensuring that the interim rules resembled, in large part, the requirements adopted in the SOLAS amendments and the ISPS Code.

We received 10 comments on the Coast Guard's interaction with other Federal agencies. Seven commenters pointed out the need for consistency and integration throughout the Department of Homeland Security (DHS) and other Federal agencies in matters affecting maritime security. Another commenter asked us to work with the Nuclear Regulatory Commission to develop consistent and compatible regulations. One commenter stated that the Coast Guard should develop a memorandum of understanding with the Bureau of Customs and Border Protection (BCBP) to clarify the roles of the two agencies.

We agree with the commenters regarding the need for consistency and integration throughout DHS and other Federal agencies. In developing our regulations, we worked closely with many other agencies of DHS (*e.g.*, the Transportation Security Administration (TSA), BCBP), the Department of Transportation (DOT) (*e.g.*, the Maritime Administration (MARAD), the Research and Special Programs Administration (RSPA)), the Environmental Protection Agency (EPA), the Department of Energy (DOE), and the Minerals Management Service (MMS), among others. These regulations reflect input from all the Federal agencies that have a responsibility in the development and implementation of homeland security regulations covering all modes of transportation. We intend to continue these close working relationships as additional issues come to light, and we will continue to define each of our roles to ensure coordination and avoid duplication. Coordination with State and local agencies will be addressed in

the plan developed by each AMS Committee, which is established by the cognizant COTP.

We received comments from EPA regarding the effects of our regulations on EPA-regulated oil facilities. These comments focused primarily on the potential overlapping provisions of 33 CFR part 105 and 40 CFR part 112. Overlap exists in four major areas: Notification of security incidents, fencing and monitoring, evacuation procedures, and security assessments. In cases of overlapping provisions for oil facilities regulated both in parts 105 and 112, the requirements in our final rules and EPA rulemakings do not supplant one another. Additionally, an EPA-regulated facility need not amend the facility's Spill Prevention Control and Countermeasure Plan or Facility Response Plan, as we first stated in the temporary interim rule (68 FR 39251) (part 101). We will be working further with EPA in the implementation of these final rules to minimize the burden to the facilities while ensuring that these facilities are secure. It is our belief that response plans for EPA-regulated oil facilities will serve as an excellent foundation for security plans that may be required under our regulations.

EPA asked for clarification for facilities adjacent to the navigable waters that handle or store cargo that is hazardous or a pollutant but may not be marine transportation related facilities. These facilities are covered by parts 101 through 103 of subchapter H and, although there are no specific security measures for them in these parts, the AMS Plan may set forth measures that will be implemented at the various Maritime Security (MARSEC) Levels that may apply to them. The AMS Assessment may reveal that these EPA-regulated facilities may be involved in a transportation security incident and the COTP may direct these facilities, through orders issued under existing COTP authority, to implement security measures based on the facilities' operations and the MARSEC Level. We encourage owners and operators of these EPA-regulated facilities, as well as representatives from EPA, to participate in AMS Committee activities.

EPA asked for further clarification on drills and exercises requirements. As we stated in the temporary interim rule, non-security drills and exercises may be combined with security drills to minimize burden. Additionally, EPA-regulated facilities that conduct drills not related to security are encouraged to communicate with the local COTP and coordinate their drills at the area level. It is our intention to give facilities and vessels in the port area as much notice

as practicable prior to an AMS Plan exercise to reduce the burden to those entities. Again, we encourage owners and operators of these EPA-regulated facilities, and EPA, to participate in AMS Committee activities to maximize coordination and minimize burden.

EPA asked us to clarify the role of Area Contingency Plans with the requirements of our final rules. Our rules are intended to work in concert with Area Contingency Plans and do not preempt their requirements. We envision that many members of the Area Committees who are responsible for implementing Area Contingency Plans will also become members of the AMS Committee. This participation will help ensure that implementing an AMS Plan will not conflict with an Area Contingency Plan.

Finally, EPA asked for clarification on requirements for marine transportation related facilities that handle petroleum oil, non-petroleum oil, and edible oil. These facilities are directly regulated under § 105.105(a)(1) and must meet the requirements of part 105.

One commenter emphasized the importance of working with State homeland security representatives to resolve any State and local issues or barriers that might interfere with providing appropriate security for the maritime industry.

We stated in the temporary interim rule (68 FR 39255) (part 101) that we consider standards for private security guards a matter of private contract and of State and local law. We believe that it is important to encourage the review of these standards, and therefore intend to work with State homeland security representatives to resolve any issues or barriers with regard to these State and local standards.

Two commenters requested that we add to § 101.100 a new paragraph that would read: "maritime security plans developed under these regulations and approved by the Coast Guard prepare vessel owners and operators, vessel crews, facility owners and operators, and facility personnel to deter to the maximum extent practicable maritime security incidents. The security measures identified in the plans provide deterrence and are not performance standards. The plans are approved on a set of assumptions regarding the security vulnerabilities recognized at the time of approval that may not be valid in an actual maritime security incident." The commenters stated that this paragraph would mirror the language of OPA 90 and clarify the intent of the subchapter.

We agree, in part, with the commenters and have amended