

§ 101.100. However, to remain broad and consistent with the tone of the subchapter, we have rephrased the concept. In addition, we have made an editorial correction to § 101.100(a) to clarify that the “purpose” section applies to the entire subchapter.

The following discussion on § 101.105, Definitions, is detailed alphabetically to align, as much as possible, with the order of the terms listed in the section.

Two commenters recommended deleting the language in the definition of § 101.105 that explains that an AMS Committee can be a Port Security Committee established pursuant to NVIC 09–02, noting that this additional language is adequately covered by the regulations in part 103.

We agree that the additional language in the definition of AMS Committee is adequately explained in part 103, but we prefer to include this language for absolute clarity.

After reviewing the applicability of this subchapter to barge fleeting facilities, we determined that our reference to the Army Corps of Engineers permitting regulations in 33 CFR part 322 was not a complete representation of inland river permitting practices. Therefore, we have amended the definition of “barge fleeting facility” to clarify that these regulations apply to any barge fleeting facility permitted by the Army Corp of Engineers, whether under an individual permit, or a national or regional general permit. We believe that any barge fleeting area constitutes an obstacle under the definition of “structure” found in the Army Corps of Engineers regulations at 33 CFR 322.2.

One commenter asked us to define “breach of security” to clarify the intent of the regulations.

We agree with the commenter, and have added a definition for “breach of security” to § 101.105.

After reviewing the applicability of this subchapter to certain industrial vessels, we determined that vessels operating solely with dredge spoils may not be involved in a transportation security incident. Therefore, we amended the definition of “cargo” to clarify that dredge spoils are not considered cargo for purposes of part 104 of this chapter. This has the effect of removing certain dredges from coverage under part 104.

Eleven commenters requested that the Coast Guard clarify “Certain Dangerous Cargo” (CDC), stating that the rules should have one definition.

There is one definition for CDC that applies to all of the security regulations in subchapter H. Section 101.105

defines CDC as meaning “the same as defined in 33 CFR 160.203.” These comments revealed the need to correct the citation; the correct reference should be § 160.204, rather than § 160.203. We have amended § 101.105 accordingly. It should be noted that this change ensures consistency in Title 33. We are constantly reviewing and, when necessary, revising the CDC list based on additional threat and technological information. Changes to § 160.204 would affect the regulations in 33 CFR subchapter H because any changes to the CDC list would also affect the applicability of subchapter H. Any such changes would be the subject of a future rulemaking.

One commenter requested that the Company Security Officer be allowed to liaise with the Coast Guard at the District, Area, or Headquarters level rather than the local COTP.

We agree that effective communication may be established between the Company Security Officer and one or more COTPs and that for some companies, effective communications with the Coast Guard may be at the District, Area, or Headquarters level; therefore, we are amending the definition of “Company Security Officer” in § 101.105 to remove the specific reference to the COTP.

After further review of the regulations, we are adding the definition of “dangerous goods and/or hazardous substances” to clarify the use of that term within the regulations.

Three commenters asked for clarification on dangerous substances and devices. Two commenters stated that the definition of “Dangerous substances and devices” is too broad and could be construed to include illegal drugs, plants, “and even Cuban cigars.” The commenter noted, “normal screening methods (x-ray and explosive-sniffing canines or wands) will not detect ‘substances’ nor are they necessarily an item that will cause ‘damage or injury.’” The commenter recommended amending the definition of “Dangerous substances and devices” to: (1) Specify that such substances and devices included only those that have “the potential to cause a transportation security incident”; (2) add weapons, incendiaries, and explosives; and (3) specify that such substances and devices do not include drugs, alcohol, or “other chemical or biological items not normally associated with transportation security screening.” One commenter asked how to handle legal dangerous substances, such as fertilizer and gasoline.

We agree that the definition of dangerous substances and devices could

be subject to differing interpretations. We therefore revised and simplified this definition by relating it to the potential of the dangerous substance or device to cause a transportation security incident similar to the commenter’s recommendation. However, we disagree that we need to expressly exclude the items suggested because a transportation security incident is defined as a security incident resulting in a “significant” loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. We believe the definition of a transportation security incident is such that alcoholic beverages and drugs could not be interpreted as dangerous substances and devices as the term has been redefined. Such dangerous substances and devices would include, but not be limited to, explosives, incendiaries, and assault weapons.

One commenter asked to clarify the difference between “vessel-to-vessel activity,” as defined in § 101.105, and “vessel-to-vessel interface,” as used in part 104.

We find that the terms “vessel-to-vessel activity” and “vessel-to-vessel interface” are comparable and have chosen to use the term “vessel-to-vessel activity” to align these regulations with the ISPS Code. We have amended the definition of “Declaration of Security” in § 101.105 as well as §§ 104.105 and 104.255 to use the term “vessel-to-vessel activity” in place of “vessel-to-vessel interface,” for consistency.

We received 26 comments dealing with the definition of “facility.” One commenter asked whether a facility that is inside a port that handles cargo or containers, but does not have direct water access, is covered under the definition of facility. Another commenter recommended that the definition specify that facilities without water access and that do not receive vessels be exempt from the requirements. One commenter asked whether small facilities, located inland on a river, would be subject to part 105 if they receive vessels greater than 100 gross registered tons on international voyages. One commenter asked whether a company that receives refined products via pipeline from a dock facility that the company does not own qualifies as a regulated facility. One commenter asked whether part 105 applies to facilities at which vessels do not originate or terminate voyages. Two commenters stated that the word “adjacent” in the definition should be changed to read “immediately adjacent” to the “navigable waters.” One commenter suggested that, in the definition, the word “adjacent” be