

defined in terms of a physical distance from the shore and the terms “on, in or under” and “waters subject to the jurisdiction of the U.S.” be clarified. Two commenters understand the definition of “facility” to possibly including overhead power cables, underwater pipe crossings, conveyors, communications conduits crossing under or over the water, or a riverbank. One commenter asked for a blanket exemption for electric and gas utilities. One commenter suggested rewriting the applicability of “facilities” in plain language or, alternatively, providing an accompanying guidance document to help owner and operators determine whether their facilities are subject to these regulations. One commenter asked us to clarify which facilities might “qualify” for future regulation and asked us to undertake a comprehensive review of security program gaps and overlaps, in coordination with DHS. One commenter stated that a facility that receives only vessels in “lay up” or for repairs should not be required to comply with part 105.

We recognize that the definition of “facility” in § 101.105 is broad, and we purposefully used this definition to be consistent with existing U.S. statutes regarding maritime security. A facility within an area that is a marine transportation related terminal or that receives vessels over 100 gross tons on international voyages is regulated under § 105.105. All other facilities in an area not directly regulated under § 105.105, such as some adjacent facilities and utility companies, are covered under parts 101 through 103. If the COTP determines that a facility with no direct water access may pose a risk to the area, the facility owner or operator may be required to implement security measures under existing COTP authority. With regard to facilities that receive only vessels in “lay up” or for repairs, we amended the regulations to define, using the definition of a general shipyard facility from 46 CFR 298.2, and exempt general shipyard facilities from the requirements of part 105 unless the facility is subject to 33 CFR parts 126, 127, or 154 or provides any other service beyond those services defined in § 101.105 to any vessel subject to part 104. In a similar manner, in part 105, we are also exempting facilities that receive vessels certificated to carry more than 150 passengers if those vessels do not carry passengers while at the facility nor embark or disembark passengers from the facility. We exempted facilities that receive vessels for lay-up, dismantling, or placing out of commission to be consistent with the other changes we

have discussed above. The facilities listed in the amended §§ 105.105 and 105.110 will be covered by the AMS Plan, and we intend to issue further guidance on addressing these facilities in the AMS Plan. Finally, while not in “plain language” format, we have attempted to make these regulations as clear as possible. We have created Small Business Compliance Guides, which should help facility owners and operators determine if their facilities are subject to these regulations. These Guides are available where listed in the “Assistance for Small Entities” section of this final rule.

Five commenters recommended changes to the definitions of “facility” and “OCS facility” in § 101.105 in order to clarify the applicability of parts 104, 105, and 106 to Mobile Offshore Drilling Units (MODUs). Two commenters suggested adding language to the facility definition to specifically include MODUs that are not regulated under part 104, consistent with the definition of OCS facility. Another commenter stated that if we change the definition to include MODUs not regulated under part 104, then we also should add an explicit exemption for these MODUs from part 105. Three commenters suggested deleting the words “fixed or floating” and the words “including MODUs not subject to part 104 of this subchapter” in § 106.105 and adding a paragraph to read “the requirements of this part do not apply to a vessel subject to part 104 of this subchapter.”

With regard to the definition of “facility” and the suggested additional language regarding MODUs, the definition clearly incorporates MODUs that are not covered under part 104 and MODUs are sufficiently covered under parts 101 through 103 and 106. Therefore, we are not amending our definition of facility nor incorporating the suggested explicit exemption from part 105 because these MODUs are excluded. We have, however, amended the applicability section of part 104 (§ 104.105) so that foreign flag, non-self propelled MODUs that meet the threshold characteristics set for OCS facilities are regulated by 33 CFR part 106, rather than 33 CFR part 104. We have done so because MODUs act and function more like OCS facilities, have limited interface activities with foreign and U.S. ports, and their personnel undergo a higher level of scrutiny to obtain visas to work on the Outer Continental Shelf. These amendments to § 104.105 required us to add a definition for “cargo vessel” in § 101.105. With these changes, we believe the existing definitions of “facility” and “OCS facility” in § 101.105 are sufficient to

conclusively identify those entities that are subject to parts 104, 105, and 106. In addition, the definition of “OCS facility,” as written, ensures that these entities will be subject to relevant elements of an OCS Area Maritime Security Plan. We believe the language in § 106.105, read in concert with the amended § 104.105(a)(1), and the existing definitions in part 101, is sufficient to preclude MODUs that are in compliance with part 104 from being subject to part 106.

Two commenters stated that our definition of “international voyage” includes voyages made by vessels that solely navigate the Great Lakes and St. Lawrence River. The commenter contended that SOLAS specifically exempts vessels that navigate in this area from all the requirements of SOLAS.

We are aware that vessels on the Great Lakes and St. Lawrence Seaway, which are otherwise exempted from SOLAS, are required to comply with our regulations. We have amended the definition of “international voyage” in § 101.105 to make this clear. We do not believe that we can require lesser security measures for certain geographic areas, such as the Great Lakes and the St. Lawrence Seaway, and still maintain comparable levels of security throughout the maritime domain. In addition, while SOLAS does not typically apply to the Great Lakes and St. Lawrence Seaway, it allows contracting governments to determine appropriate applicability for their national security. For the U.S., the MTSA does not exempt geographic areas from maritime security requirements. If vessel owners or operators believe that any vessel security requirements are unnecessary due to their operating environment, they may apply for a waiver under the procedures allowed in § 104.130. Additionally, vessel owners or operators may submit for approval an Alternative Security Program to apply to vessels that operate solely on the Great Lakes and St. Lawrence Seaway.

Two commenters proposed language to clarify the definition of “OCS facility” to make clear that the term includes MODUs when attached to the subsoil or seabed for the exploration, development, or production of oil or natural gas. One commenter suggested that this additional language would “provide clarification regarding the applicability of” part 106.

The purpose of the broad definition of “OCS facility” in § 101.105 is to incorporate all such facilities so that the OCS facilities that are not regulated under part 106 will be regulated under