

parts 101 through 103. The proposed additional language would not add clarity to part 106 because the applicability in § 106.105 states that the section applies only to those MODUs that are operating for the purposes of engaging in the exploration, development, or production of oil, natural gas, or mineral resources.

Two commenters asked the Coast Guard to change the language in § 104.400(a) to delineate the responsibilities of towing vessels and facilities when dealing with unmanned vessels.

We are amending the definition of "owner or operator" in § 101.105 to clarify when "operational control" of unmanned vessels passes between vessels and facilities. No change was made to § 104.400(a) because the change to the definition of "owner or operator" addresses this concern.

Two commenters suggested amending the definition of "owner or operator" so that the definition includes, for OCS facilities: "the lessee or the operator designated to act on behalf of the lessee in accordance with 30 CFR part 250." One commenter sought clarification of the terms "owner or operator" and suggested adding "operational control is the ability to influence or control the physical or commercial activities pertaining to that facility for any period of time."

We disagree with adding the suggested language of the first commenter because we have concluded that the owner and the person with operational control are in the best position to implement these regulations and, therefore, should be responsible for implementation. The language proposed would include a lessee regardless of whether or not that lessee maintains such operational control. We also disagree with adding the suggested language of the second comment because it does not provide for security activities in addition to the physical or commercial activities.

After further review of the definition for passenger vessel, we determined that a clarification was needed with respect to vessels on international voyages. In the temporary interim rule we unintentionally included all vessels carrying more than 12 passengers because we did not specify that a vessel on an international voyage would be deemed a passenger vessel only if it carried a passenger-for-hire. We have amended the definition to clarify that when a vessel is on an international voyage carrying more than 12 passengers, a vessel is considered a passenger vessel only if one of those passengers is a passenger-for-hire. We

have made a conforming amendment to § 104.105.

Three commenters requested that the Coast Guard clarify the term "persons" to exclude crewmembers.

We do not provide a specific definition for the term "persons" in these rules. It was our intent for the word "persons" to include crewmembers.

We received five comments regarding the use of the word "port" in the regulations. Four commenters requested that we amend many sections of parts 101 and 103 to remove the word "port" from the regulatory text, stating that parts 101 and 103 are not necessarily applicable to just ports, but to an area as a whole. One commenter recommended that we include definitions for "Seaport," "Port Authority," "Port Director," and "Seaport Security Assessment/Plan," stating that a seaport can act as its own legal entity and enforce its own laws and regulations.

As described in the temporary interim rule in part 101, Table 4 (68 FR 39266–39267), "area maritime," "port," and "port facility" are comparable, and we do not believe the recommended editorial changes add significant value or clarity. In addition, adding definitions incorporating "seaport," as suggested, is less inclusive than what is addressed in the MTSA. Furthermore, this concept does not align with the ISPS Code. We are not, therefore, amending parts 101 or 103.

Six commenters stated that part 105 should not apply to marinas that receive a small number of passenger vessels certificated to carry more than 150 passengers or to "mixed-use or special-use facilities which might accept or provide dock space to a single vessel" because the impact on local business in the facility could be substantial. Two commenters stated that private and public riverbanks should not be required to comply with part 105 because "there is no one to complete a Declaration of Security with, and no way to secure the area, before the vessel arrives." Two commenters stated that facilities that are "100 percent public access" should not be required to comply with part 105 because these types of facilities are "vitaly important to the local economy, as well as to the host municipalities." This commenter also stated that vessels certificated to carry more than 150 passengers frequently embark guests at private, residential docks and small private marinas for special events such as weddings and anniversaries and may visit such a dock only once.

We agree that the applicability of part 105 to facilities that have minimal infrastructure, but are capable of receiving passenger vessels, is unclear. Therefore, we added a definition in part 101 for a "public access facility" to mean a facility approved by the cognizant COTP with public access that is primarily used for purposes such as recreation or entertainment and not for receiving vessels subject to part 104. By definition, a public access facility has minimal infrastructure for servicing vessels subject to part 104 but may receive ferries and passenger vessels other than cruise ships, ferries certificated to carry vehicles, or passenger vessels subject to SOLAS. Minimal infrastructure would include, for example, bollards, docks, and ticket booths, but would not include, for example, permanent structures that contain passenger waiting areas or concessions. We have not allowed public access facilities to be designated if they receive vessels such as cargo vessels because such cargo-handling operations require additional security measures that public access facilities would not have. We amended part 105 to exclude these public access facilities, subject to COTP approval, from the requirements of part 105. We believe this construct does not reduce security because the facility owner or operator or entity with operational control over these types of public access facilities still has obligations for security that will be detailed in the AMS Plan, based on the AMS Assessment. Additionally, Vessel Security Plans must address security measures for using the public access facility. This exemption does not affect existing COTP authority to require the implementation of additional security measures to deal with specific security concerns. We have also amended § 103.505, to add public access facilities to the list of elements that must be addressed within the AMS Plan.

One commenter noted that in the definition of "transportation security incident," there should be a clear definition of the specific event or events the Coast Guard is trying to avoid or prevent, stating that for some of these events, industry already has good mitigation strategies in place that might avoid the need to add additional security measures.

The event that the Coast Guard is trying to avoid or prevent is a transportation security incident, which is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. As indicated in the