

temporary interim rule (68 FR 39272) (part 101), we acknowledged that “many companies already have spent a substantial amount of money and resources to improve and upgrade security.” These improvements will be taken into account in their Vessel or Facility Security Assessments and subsequent security plan development.

One commenter suggested that the definition of “unaccompanied baggage” be revised to include baggage for which there is no accompanying passenger or crewmember. The commenter also noted that, if read literally, the definition in § 101.105 would include all passenger baggage already “checked,” and therefore separated from its owner. The suggested definition was the following: “baggage that was to be carried on board the ship when no passenger or crewmember was traveling on the same voyage or portion of that voyage.”

We agree that “unaccompanied baggage” should include baggage for which there is not an accompanying passenger or crewmember. With regard to “checked” baggage, our definition aligns with the ISPS Code, part B. “Checked” baggage at the point of inspection or screening should be with a crewmember or other person and therefore remains accompanied. After inspection or screening, the baggage will be controlled until it is loaded on the vessel. We have amended the definition of “unaccompanied baggage” to reflect the above and clarified the reference to an “other person.”

One commenter asked us not to change the definition of “vessel stores” as published in the temporary interim rule.

The definition of “vessel stores” remains the same as published in the temporary interim rule (68 FR 39281) (part 101).

We received 11 comments relating to the use of the terms “vessel-to-facility interface,” “vessel-to-port interface,” and “vessel-to-vessel activity.” Seven commenters requested that the Coast Guard be consistent in its use of “vessel-to-vessel interface” in § 101.105 and use the word “cargo” instead of the phrase “goods or provisions.” One commenter asked us to modify the definition of a “vessel-to-vessel activity” to include the transfer of a container to or from a manned or unmanned vessel. One commenter noted that it should be made clear that the term “vessel-to-facility interface” refers to when the vessel is at the facility or arriving at the facility.

We agree with the commenters. We have amended the definitions for “vessel-to-facility interface,” “vessel-to-port interface,” and “vessel-to-vessel

activity” in § 101.105 to use the words “cargo” and “vessel stores” instead of the word “goods” to be clearer for the intended activities. The term “vessel-to-facility interface” clearly states that the vessel is either at, or arriving at, the facility, and therefore, we did not amend the definition further.

Five commenters requested that we amend the definition of “waters subject to the jurisdiction of the United States” to simply refer to the definition of that term in 33 CFR 2.38, stating that doing so would be less confusing. Four commenters asked us to clarify the term “superadjacent” used in the same definition.

The definition suggested by the commenter would exclude application of these regulations to the Exclusive Economic Zone (EEZ) and waters superjacent to the OCS. We believe that including the EEZ and the waters superjacent to the OCS is crucial to implementing the comprehensive security regime intended by the MTSA. It is also consistent with the Coast Guard’s anti-terrorism authorities in 33 U.S.C. 1226. However, we agree the definition is somewhat confusing and needs clarification. In the temporary interim rules, we defined “waters subject to the jurisdiction of the United States” to include, in addition to the EEZ and the waters superjacent to the Outer Continental Shelf, the “navigable waters” as defined in 46 U.S.C. 2101(17a). Navigable waters in this context, by reference to Presidential Proclamation No. 5928, extend to the full breadth of the territorial sea that is 12 nautical miles wide, adjacent to the coast of the United States, and seaward of the territorial sea baseline. We believe the better approach is to amend our recent recodification of jurisdictional terms in 33 CFR part 2 to reflect that, consistent with the temporary interim rules, the 12 nautical mile territorial sea applies not only to statutes under subtitle II of title 46 but also statutes under subtitle VI of title 46 (section 102 of the MTSA). Doing so simplifies the definition of “waters subject to the jurisdiction of the United States” for purposes of the regulations by permitting reference, in part, to an existing regulatory definition. The amended definition of “waters subject to the jurisdiction of the United States” reflects this change.

Five commenters disagree with applying the same regulations to all segments of the maritime industry, stating that it is not practical. One of these commenters suggested that the regulations exempt entities, such as nuclear facilities covered under 10 CFR

part 73 and 49 CFR part 172, because they are already regulated.

We developed these regulations to be tailored to diverse industries within the maritime community through various provisions, such as the Alternative Security Program. If a nuclear facility is involved in the activities regulated under part 105, then the facility must comply with that part. However, we have made multiple provisions within the regulations so entities that are already covered by other requirements for security should be able to coordinate their compliance with these rules and others they already have implemented.

Two commenters were concerned about the breadth of the regulations. One commenter asked that the regulations be broadened to allow for exemptions. One commenter stated that the applicability as described in § 101.110 is “much too general,” stating that it can be interpreted as including a canoe tied up next to a floating dock in front of a private home. The commenter concluded that such a broad definition would generate “a large amount of confusion and discontent” among recreational boaters and waterfront homeowners.

Our applicability for the security regulations in 33 CFR chapter I, subchapter H, is for all vessels and facilities; however, parts 104, 105, and 106 directly regulate those vessels and facilities we have determined may be involved in transportation security incidents, which does not include canoes and private residences. For example, § 104.105(a) applies to commercial vessels; therefore, a recreational boater is not regulated under part 104. If a waterfront homeowner does not meet any of the specifications in § 105.105(a), the waterfront homeowner is not regulated under part 105. It should be noted that all waterfront areas and boaters are covered by parts 101 through 103 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 MARSEC Levels that may apply to them. Security zones and other measures to control vessel movement are some examples of AMS Plan actions that may affect a homeowner or a recreational boater. Additionally, the COTP may impose measures, when necessary, to prevent injury or damage or to address specific security concerns.

Five commenters addressed the applicability of the regulations with respect to facilities and the boundaries of the Coast Guard jurisdiction relative to that of other Federal agencies. Four commenters advocated a “firm line of