

are provided by the U.S. Army Corps of Engineers, in accordance with § 105.105(b), those facilities that are not subject to part 105 will be covered by parts 101 through 103 of this subchapter and will be included in AMS Plans.

We received comments from the Environmental Protection Agency 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 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.

Subpart B—Federal Maritime Security Coordinator (FMSC)

This subpart designates the Coast Guard COTP as the Federal Maritime Security Coordinator and provides a description of the COTP's authority as Federal Maritime Security Coordinator to establish, convene, and direct the AMS Committee.

Three commenters recommended developing an International Maritime Organization (IMO) list of port facilities to help foreign shipowners identify U.S. facilities not in compliance with subchapter H. In a related comment, there was a request for the Coast Guard to maintain and publish a list of non-compliant facilities and ports because a COTP may impose one or more control and compliance measures on a domestic or foreign vessel that has called on a facility or port that is not in compliance.

We do not intend to publish a list of each individual facility that complies or does not comply with part 105. As discussed in the temporary interim rule (68 FR 39262) (part 101), our regulations align with the requirements of the International Ship and Port Facility Security (ISPS) Code, part A, section 16.5, by using the AMS Plan to satisfy our international obligations to communicate to IMO, as required by the International Convention for Safety of Life at Sea, 1974 (SOLAS) Chapter XI-2, regulation 13.3, the locations within

the U.S. that are covered by an approved port facility security plan. Any U.S. facility that receives vessels subject to SOLAS is required to comply with part 105.

Subpart C—Area Maritime Security (AMS) Committee

This subpart describes the composition and responsibilities of the AMS Committee.

One commenter supported the creation of AMS Committees, stating that through the partnership between industry and the Coast Guard, the committees will develop a comprehensive plan for the security of the port.

Two commenters supported the creation of AMS Committees if they were composed of appropriately experienced representatives from a variety of sources in the port. One commenter stated that the AMS Committee allows for "port specific" appropriate risk mitigation as opposed to a blanket risk mitigation policy placed on the entire U.S. waterway system and will strengthen the AMS Plan with the "buy in" of the maritime community.

We agree with the commenters and believe that the AMS Committee is a vital link to ensuring the port community is involved in security and its implementation. The inclusive nature of the AMS Committee and the active involvement of a variety of port stakeholders, bringing their experience within the maritime community to the table, will enhance the success of the AMS Committee in drafting the AMS Plan.

One commenter stated that the AMS Committee should have the responsibility to identify Federal, State, Indian Tribal, and local government agencies and law enforcement entities with jurisdiction over port-related matters.

We believe the responsibilities of Federal, State, Indian Tribal, and local government agencies and law enforcement entities with jurisdiction over port security related matters should be addressed in the AMS Plan and, therefore, have amended § 103.505.

Six commenters requested that the Coast Guard establish, without delay, an AMS Committee for the Outer Continental Shelf (OCS) portion of the Gulf of Mexico as an essential step in moving the various Federal law enforcement agencies and industry toward a mutual understanding of the response to a transportation security incident on the Outer Continental Shelf.

We intend to cover OCS facilities in the Gulf of Mexico by a single, District-