

the International Convention for the Safety of Life at Sea, 1974, (SOLAS) Chapter XI-2 and the International Ship and Port Facility Security Code (ISPS Code).

### Discussion of Comments and Changes

Comments from each of the temporary interim rules and from the public meeting held on July 23, 2003, have been grouped by topic and addressed within the preambles to the applicable final rules. If a comment applied to more than one of the six rules, we discussed it in the preamble to each of the final rules that it concerned. For example, discussions of comments that requested clarification or changes to the Declaration of Security procedures are duplicated in the preambles to parts 104, 105, and 106. Several comments were submitted to a docket that included topics not addressed in that particular rule, but were addressed in one or more of the other rules. This was especially true for several comments submitted to the docket of part 101 (USCG-2003-14792). In such cases, we discussed the comments only in the preamble to each of the final rules that concerned the topic addressed.

#### *Subpart A—General*

This subpart contains provisions concerning applicability, waivers, and other subjects of a general nature applicable to part 104.

One commenter asked the Coast Guard 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 §§ 104.255 and 104.300 to use the term “vessel-to-vessel activity” in place of “vessel-to-vessel interface,” for consistency.

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 partially 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.

Two commenters asked that the Coast Guard enumerate the specific categories and thresholds of vessels that are required to comply with the regulations. One commenter stated that it would be helpful if the Coast Guard provided a chart showing what types of vessels are and are not required to comply.

We understand that the applicability of part 104 presumes that a vessel owner or operator is familiar with existing laws and regulations for vessels. We believe this cross-reference to existing law and regulation is the best way to ensure that § 104.105 is clear; therefore, we have not amended the applicability section to include a chart. We have created Small Business Compliance Guides, which may be useful to owners and operators trying to determine the applicability of part 104. These Guides may be found at the locations listed in the “Assistance for Small Entities” section of this final rule.

Two commenters requested that § 104.105(b) regarding applicability of parts 101 through 103 for vessels not covered by part 104 be deleted, stating that this language has the effect of making all vessels subject to part 104.

We do not believe that § 104.105(b) has the effect of making all vessels subject to part 104. Paragraph (b) is strictly informational and refers the owner or operator of a vessel not subject to part 104 to parts 101 and 103, to which the owner or operator is subject. A vessel is subject to part 104 only if it is listed in § 104.105(a).

Eleven commenters requested various amendments to § 104.105 regarding specific applicability requirements for vessels, stating that there is no “general” applicability of SOLAS, and that Chapter XI-2 should be referenced to narrow the applicability. Two commenters requested that references to foreign or U.S. owned non-self propelled vessels (barges) be included to clarify that applicability is limited to only those barges that carry hazardous or dangerous cargoes.

We agree that the general reference to SOLAS is broad and could encompass

more vessels than the applicability in SOLAS, Chapter XI-2. We have amended the reference to the applicability of SOLAS, Chapter XI because subchapter H also addresses those requirements in SOLAS, Chapter XI-1 as well as Chapter XI-2. We also amended § 104.105(a) to clarify that not all non-self-propelled vessels (barges) subject to 33 CFR subchapter I must comply with part 104. We have noted a similar issue with the applicability of part 104 to passenger vessels covered under 46 CFR subchapter K that have overnight accommodations for more than 49 passengers but are not certificated to carry more than 150 passengers. The intent of the applicability for part 104 was not to include these vessels; therefore, we have amended § 104.105(a) to clarify that vessels covered under 46 CFR subchapter K must meet the requirements only if they are certificated to carry more than 150 passengers. In § 104.105(a)(7), we added a clarification that part 104 only applies to vessels on international voyages that carry more than 12 passengers, including at least one passenger-for-hire. We did not include references to foreign or U.S. ownership in all of the applicability paragraphs because it is duplicative to the existing language.

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