

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 (AMS) 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 Maritime Transportation Security Act of 2002 (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.

One commenter asked whether Canadian commercial vessels, greater than 100 gross register tons, operating solely on the Great Lakes will be required to submit their plans to the Coast Guard for approval.

Under § 104.105, all foreign vessels not carrying an approved International Ship Security Certificate (ISSC) intending to enter a port or place subject to jurisdiction of the U.S. are required to submit to the Coast Guard a Vessel Security Plan prepared in response to the Vessel Security Assessment, unless they implement an approved Alternative Security Program. This includes Canadian commercial vessels greater than 100 gross register tons, operating solely on the Great Lakes and calling on U.S. ports. We have amended § 104.105 to improve its clarity.

One commenter asked who is responsible for compliance with the security measures in the case of a short-term, bareboat charter in which the vessel has been leased for a period of time.

The regulations require the owner or operator of a vessel to submit a Vessel Security Plan. A true bareboat charterer, meeting the definition of " demise charterer " in 46 CFR 169.107, would be the owner or operator of the vessel for the purposes of this subchapter, and therefore, would be responsible for the Vessel Security Plan. If the vessel has other, independent operators, then each operator is required to submit a Vessel Security Plan unless the owner submits a plan that encompasses the operations of each operator. The submission of the security plan should be coordinated between the owner and the independent operators. The Coast Guard will take into account issues concerning the individual responsibilities of the operators and the owners when reviewing the security plan.

Two commenters suggested amending the regulatory threshold for passenger vessels. One commenter recommended that passenger vessels inspected under subchapter K and facilities that service subchapter K vessels, be required to comply with the security requirements only when the vessels have more than 149 passengers aboard. The commenter also stated that it is unreasonable for a subchapter K vessel that operates most of the time with fewer than 150 passengers to comply with the same requirements as a vessel that routinely operates with certificated passengers (e.g., 225 passengers). One commenter suggested that the number of passengers

be increased from 150 to 500 or, alternatively, that an exemption be added for those with fewer than 500 passengers.

We disagree with the idea of requiring security based solely on actual passenger count, rather than passenger certification level. It is imperative to maritime security that consistent security measures be in place to reduce the risk of a transportation security incident. For passenger vessels, and the facilities that serve passenger vessels, this threshold is the certification level of a passenger vessel rather than its operating level. Lowering security requirements for passenger vessels when they are not carrying their certificated passenger count allows for inconsistent and inadequate implementation of security measures, which can potentially increase risk. Moreover, owners and operators certificate their vessels at passenger thresholds and can re-certificate their vessels to reflect their business practices.

Two commenters urged the Coast Guard to exclude small passenger vessels subject to SOLAS that are also subject to 46 CFR subchapter T from these final rules, stating that our risk assessment for these vessels does not justify the regulatory requirements that apply to larger passenger vessels, and that the Coast Guard exempts vessels subject to subchapter T from some SOLAS provisions due to their size and small passenger capacity.

Our risk assessment showed that vessels making international voyages, including those subject to 46 CFR subchapter T, may be involved in a transportation security incident. While we have been able to grant waivers and equivalencies for some SOLAS safety-related requirements to some small passenger vessels on the basis of their size, passenger capacity, and where they operate, we believe that all vessels on international voyages should be subject to part 104 because of the higher security risks these vessels pose.

We received 14 comments on the applicability for small passenger vessels. Seven commenters supported our decision to treat small passenger vessels in a manner different than large passenger vessels, by not directly regulating small passenger vessels under part 104. Three commenters requested an exemption to the regulations for all uninspected small passenger vessels operating under 46 CFR subchapter C and all inspected small passenger vessels operating domestically under 46 CFR subchapter T. The commenters stated that the vague requirements and references in the regulations make it