

difficult for marine charter firms to determine how they must comply with the new regulations. One commenter asked for clarification on whether small passenger vessels under 46 CFR subchapter T were covered by 33 CFR part 104, stating that these vessels should not be included in the final rules. We received two comments specifically requesting that charterboat vessels less than 100 feet or less than 100 gross tons or that carry fewer than 150 passengers be exempt. The commenters also asked if a vessel were certificated, that an endorsement be made on the vessel's certificate of inspection to reflect the exemption. One commenter stated that the regulations should specify if commercial yachts greater than 100 gross register tons are included.

Small passenger vessels in commercial service regulated under 46 CFR subchapter T and uninspected passenger vessels regulated under 46 CFR subchapter C are not directly regulated in part 104, other than those vessels on international voyages. Therefore, these vessels do not require a specific waiver, exemption, or endorsement. These vessels will be covered, however, in Area Maritime Security (AMS) Assessments and Plans under part 103. Owners, operators, and others associated with these vessels, including charterers, are encouraged to participate—consistent with § 103.300(b) concerning the AMS Committee charter—in the development of the AMS Plan.

We received 64 comments concerned with the application of these security measures to ferries. The commenters did not want airport-like screening measures implemented on ferries, stating that such measures would cause travel delays, frustrating the mass transit aspect of ferry service. The commenters also stated that the security requirements will impose significant costs to the ferry owners, operators, and passengers.

These regulations do not mandate airport-like security measures for ferries; however, ferry owners or operators may have to heighten their existing security measures to ensure that our ports are secure. Ferry owners and operators can implement more stringent screening or access measures, but they can also include existing security measures in the required security plan. These measures will be fully reviewed and considered by the Coast Guard to ensure that they cover all aspects of security for periods of normal and reduced operations.

We understand that ferries often function as mass transit and we have

included special provisions for them. Even with these provisions, our cost analysis indicated that compliance with these final rules imposes significant costs to ferry owners and operators. To address this concern, the Department of Homeland Security (DHS) has developed a grant program to provide funding for security upgrades. Ferry terminal owners and operators can apply for these grants.

Nine commenters disagreed with the applicability criteria for towing vessels and barges, manned or unmanned, in the security requirements. Three commenters disagreed with including all towing vessels over 8 meters in length that tow hazardous barges. The commenters stated that security requirements are an undue burden on the harbor industry with little increase in real security. The third commenter recommended that we exempt barges over 10,000 barrels carrying grade D or lower products and towing vessels less than 2,000 horsepower operating exclusively in a harbor. This commenter stated that his vessels do not have the exposure of rotating crews and do not travel out of the port. A fourth commenter said that many towing vessels, not otherwise subject to these regulations, would be included just because they carry ammonium nitrate and no other Certain Dangerous Cargo (CDC) listed under 33 CFR 160.204.

We developed the vessel security requirements to address risks posed by those towing vessels engaged in the transportation of hazardous and dangerous cargoes. These towing vessels and their barges may be involved in a transportation security incident. We believe our focused approach to regulating towing vessels that transport barges with CDC and barges subject to 46 CFR subchapter D or O limits the burden on the towing industry, while increasing maritime security. Even in the case of limited operations, some cargoes are so dangerous that in order to minimize risk, we must regulate vessels carrying those cargoes. It should be noted that when defining what constitutes a CDC, we referenced § 160.204 to ensure consistency in Title 33. We are constantly reviewing and, when necessary, revising the CDC list based on additional threat and technological information. Changes to § 160.204 would affect the regulations in 33 CFR subchapter H because any changes to the CDC list would also affect the applicability of subchapter H. Any such changes would be the subject of a future rulemaking.

Three commenters stated that the Coast Guard needs to describe how it intends to apply these regulations to

fleeting and towing operations. The commenters asked how these regulations should be applied to a towing vessel that provides emergency assistance to a regulated barge. The commenters also asked that the Coast Guard describe how it intends to apply the regulations to towing vessels that do not tow regulated cargoes but assist other vessels through locks or narrow bridges. One commenter said that the Declaration of Security provisions in § 104.255(b)(2) should not apply to towing vessels that are providing such assistance.

We have clarified the applicability of part 104 so that some towing vessels, such as assist tugs, assist boats, helper boats, bow boats, harbor tugs, ship-docking tugs, and harbor boats, are not subject to the part because either the primary towing vessel or the facility will be subject to the regulations and will take such assist vessels into account in their security plan. We anticipate that these vessels will engage in operations such as docking, undocking, maneuvering, transiting bridges, transiting locks, pulling cuts through a lock, or assisting in an emergency such as a breakaway barge. This exemption is similar to those used in 46 CFR part 27. Owners or operators of towing vessels not directly regulated under part 104 are covered under parts 101 through 103 and, although there are no specific security measures for assistance towing vessels in these parts, the AMS Plan may call for measures that the assistance towing vessels must follow, or the COTP may require security measures to address specific security concerns. Nothing in these regulations alters any duty that a vessel may have to render assistance to those in distress.

One commenter recommended exempting barges carrying non-hazardous oilfield waste from part 104, stating that they pose little or no security risk and should not be subject to the Vessel Security Plan requirements.

Under § 104.105(a)(8), part 104 applies to all barges subject to 46 CFR subchapters D or O, regardless of their specific cargo. In our risk assessment, we found that vessels subject to subchapter D, including barges carrying non-hazardous oilfield waste, may be involved in a transportation security incident.

Two commenters asked for clarification on which security regulations would apply for self-propelled and non-self-propelled dredges.

If a dredge meets any of the specifications in § 104.105(a), then the