

dredge is regulated under part 104. For example, if a dredge's operations include towing a tank barge alongside for bunkers, the dredge must meet the requirements in part 104. If a dredge does not meet any of the specifications in § 104.105(a), then the dredge is covered by the requirements of parts 101 through 103 and, although there are no specific security measures for dredges in these parts, the AMS Plan may call for measures that the dredge must follow, or the COTP may require security measures to address specific security concerns.

Two commenters requested that we broaden the applicability of our vessel security regulations. One commenter stated that the applicability of our vessel security regulations should be broadened to include fishing, recreational, and other vessels less than 100 gross tons. One commenter stated that the regulations should be broadened to include uninspected vessels greater than 100 gross tons.

Our applicability for the security regulations in 33 CFR subchapter H is for all vessels; however, part 104 directly regulates those vessels we have determined may be involved in a transportation security incident. Fishing, recreational, and other vessels less than 100 gross tons are covered by parts 101 through 103 and, although there are no specific security measures for these vessels in these parts, the AMS Plan may set forth measures that will be implemented at the various Maritime Security (MARSEC) Levels that may apply to them.

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 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.

After further review of § 104.110, we recognized that vessels in lay-up status were not addressed. Therefore, we have amended § 104.110 to exempt those that are laid-up, dismantled, or out of commission. This change is consistent with the exemption in part 105 for facilities that receive such vessels.

One commenter stated that the requirements in part 104 are far more prescriptive and onerous than the Coast Guard's guidance previously issued in National Vessel Inspection Circular (NVIC) 10-02, Security Guidelines for Vessels.

The Coast Guard issued NVIC 10-02 before the MTSA became effective. The MTSA required us to develop regulations for maritime security. We developed these regulations, including part 104, to align with SOLAS and the ISPS Code, not previously issued NVICs.

Two commenters asked for clarification on applicability for government vessels. One commenter stated that there should be some form of regulation that covers security on government vessels. One commenter opposed exempting government vessels from part 104 if the vessel is leased to a private organization for commercial purposes.

The MTSA exempts certain government-owned vessels from the requirement to prepare and submit Vessel Security Plans. However, if a government-owned vessel engages in commercial service or carries even a single passenger for hire, these vessels are subject to these regulations. For those certain government-owned vessels exempt from security plans by the MTSA, the COTP will continue to work to ensure that security measures appropriate for these vessels' operations are addressed in a manner similar to our current oversight of safety measures.

Two commenters asked whether the submission requirement for Vessel

Security Plans applies to foreign flag vessels.

As outlined in § 104.115(c), foreign flag vessels carrying a valid ISSC do not have to submit a Vessel Security Plan to the Coast Guard. Owners and operators of foreign flag vessels not required to comply with SOLAS must either submit their plans to the Coast Guard for approval, or comply with an Alternative Security Program implemented by their flag administration that has been approved by the Coast Guard. Additionally, we are amending § 104.140(b) to clarify that vessels subject to SOLAS may not use an Alternative Security Program.

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 ISPS Code, part A, section 16.5, by using the AMS Plan to satisfy our international obligations to communicate to IMO, as required by 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.

Two commenters asked for specific exemptions for specific vessels from these final rules.

This request is beyond the scope of these final rules. If part 104 applies to a vessel, the vessel owner or operator may request a waiver under the provisions of § 104.130; however, the only exemptions to part 104 are found in § 104.110. Questions on applicability for specific vessels should be directed to the local COTP.

Twelve commenters questioned our compliance dates. One commenter stated that because the June 2004 compliance date might not be easily achieved, the Coast Guard should consider a "phased in" approach to implementation. Four commenters asked us to verify our compliance date expectations and asked if a facility can "gain relief" from these deadlines for good reasons.