

requested that we limit the reference to SOLAS in § 105.105(a)(3) to "SOLAS Chapter XI-2." Another commenter stated that it is not clear whether the words "greater than 100 gross registered tons" applied to SOLAS vessels as well as to vessels that are subject to 33 CFR subchapter I.

We agree that the general reference to SOLAS is broad and could encompass more vessels than necessary. We have amended the applicability reference to read "SOLAS Chapter XI" because subchapter H addresses those requirements in SOLAS Chapter XI. Also, we have amended § 105.105(a) to apply the term "greater than 100 gross registered tons" to facilities that receive vessels subject only to subchapter I. We did not include references to foreign or U.S. ownership in the applicability paragraphs because it is duplicative of the existing language.

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.

Five commenters addressed the applicability of the regulations with respect to facilities and the boundaries of the Coast Guard jurisdiction relative to that of other Federal agencies. Four commenters advocated a "firm line of demarcation" limiting the Coast Guard authority to the "dock," because as the rule is now written, a facility may still be left to wonder which Federal agency or department might have jurisdiction over it when it comes to facility security. One commenter suggested that the Coast Guard jurisdiction should not extend beyond "the first continuous access control boundary shore side of the designated waterfront facility."

Section 102 of the MTSA requires the Secretary of the Department in which the Coast Guard is operating to prescribe certain security requirements for facilities. The Secretary has delegated that authority to the Coast Guard. Therefore, the Coast Guard is not only authorized, but also required under the MTSA, to regulate beyond the "dock."

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.

Six commenters stated that the term "fleeting facility" in § 105.105(a)(4) is more general than the definition of a

"barge fleeting facility" in § 101.105. The commenters pointed out that temporary staging areas of barges, or those areas for the breaking and making of tows provided by the U.S. Army Corps of Engineers, are not included in the definition of "barge fleeting facility" because they are not "commercial fleeting areas." The commenters suggested that these areas be included in AMS Plans.

We agree with the commenters and are amending § 105.105(a)(4) to make it consistent with the definition stated in § 101.105 for "barge fleeting facility." This new language can be found in § 105.105(a)(6). With regards to barge fleeting areas that 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 the AMS Plan for the COTP zone in which the facility is located.

Three commenters disagreed with including all barge fleeting facilities that handle barges carrying hazardous material in the security requirements. The commenters stated that the security requirements are an undue burden on industry because the fleeting facilities are remote and routinely inaccessible by shore.

We developed the fleeting facility security requirements because these facilities may, if they fleet hazardous barges, be involved in a transportation security incident. Remoteness or inaccessibility of fleeting facilities will be factors to consider during the Facility Security Assessment and will be key in determining the security measures to be implemented.

One commenter noted that § 105.105(a)(4) does not apply to barges in a gas-free state, and suggested that we amend this paragraph to read, "whether loaded, unloaded, or gas-free."

Section 105.105(a)(4) applies to those barges that are actually loaded with cargoes regulated under 46 CFR subchapter D or O, not those that are gas-free. Barges that are gas-free are unlikely to be involved in a transportation security incident.

Three commenters recommended that we amend § 105.105(c)(3) to clarify the applicability of facilities that support the production, exploration, or development, of oil and natural gas.

We agree with the commenters that the exemptions in § 105.105(c)(3) are confusing and are amending this section for clarity.

Two commenters requested exemptions for "facilities that handle certain fertilizers," stating that they do not pose risks to human health or the