

measures under existing COTP authority. With regard to facilities that receive only vessels in "lay up" or for repairs, we amended the regulations to define, using the definition of a general shipyard facility from 46 CFR 298.2, and exempt general shipyard facilities from the requirements of part 105 unless the facility is subject to 33 CFR parts 126, 127, or 154 or provides any other service beyond those services defined in § 101.105 to any vessel subject to part 104. In a similar manner, in part 105, we are also exempting facilities that receive vessels certificated to carry more than 150 passengers if those vessels do not carry passengers while at the facility nor embark or disembark passengers from the facility. We exempted facilities that receive vessels for lay-up, dismantling, or placing out of commission to be consistent with the other changes we have discussed above. The facilities listed in the amended § 105.105 as exceptions and § 105.110 as exemptions will be covered by the AMS Plan, and we intend to issue further guidance on addressing these facilities in the AMS Plan. Finally, while not in "plain language" format, we have attempted to make these regulations as clear as possible. We have created Small Business Compliance Guides, which should help facility owners and operators determine if their facilities are subject to these regulations. These Guides are available where listed in the "Assistance for Small Entities" section of this final rule.

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.

The MTSA requires full compliance with these regulations 1 year after the publication of the temporary interim rules, which were published on July 1, 2003. Therefore, a "phased in approach" will not be used. While compliance dates are mandatory, a vessel or facility owner or operator could "gain relief" from making physical improvements, such as installing equipment or fencing, by addressing the intended improvements in the Vessel or Facility Security Plan and explaining the equivalent security measures that will be put into place until improvements have been made.

After further review of the rules, we are amending the dates of compliance in § 105.115(a) and (b), § 105.120

introductory text, and § 105.410(a) to align with the MTSA and the International Ship and Port Facility Security Code (ISPS Code) compliance dates. For example, we are changing the deadline in § 105.115(a) for submitting a Facility Security Plan from December 29, 2003, to December 31, 2003.

One commenter requested that we clarify § 105.125, Noncompliance, to "focus on only those areas of noncompliance that are the core building blocks of the facility security program" stating that the section requires a "self-report [of] every minor glitch in implementation."

We did not intend for § 105.125 to require self-reporting for minor deviations from these regulations if they are corrected immediately. We have clarified §§ 104.125, 105.125, and 106.120 to make it clear that owners or operators are required to request permission from the Coast Guard to continue operations when temporarily unable to comply with the regulations.

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.

We received seven comments regarding waivers, equivalencies, and alternatives. Three commenters appreciated the flexibility of the Coast Guard in extending the opportunity to apply for a waiver or propose an equivalent security measure to satisfy a specific requirement. Four commenters requested detailed information regarding the factors the Coast Guard will focus on when evaluating applications for waivers, equivalencies, and alternatives.

The Coast Guard believes that equivalencies and waivers provide flexibility for vessel owners and operators with unique operations. Sections 104.130, 105.130, and 106.125 state that vessel or facility owners or operators requesting waivers for any requirement of part 104, 105, or 106 must include justification for why the specific requirement is unnecessary for that particular owner's or operator's vessel or facility or its operating conditions. Section 101.120 addresses Alternative Security Programs and § 101.130 provides for equivalents to security measures. We intend to issue guidance that will provide more detailed information about the application procedures and requirements for waivers, equivalencies, and the Alternative Security Program.

After further review of parts 101 and 104–106, we have amended §§ 101.120(b)(3), 104.120(a)(3), 105.120(c), and 106.115(c) to clarify that a vessel or facility that is participating in the Alternative Security Program must complete a vessel or facility specific security assessment report in accordance with the Alternative Security Program, and it must be readily available.

One commenter stated that facilities should be permitted to use equivalent security measures because facilities vary greatly in their design and security risk profile.

We agree and have provided facilities the opportunity to apply for approval of equivalent security measures in § 105.135.

#### *Subpart B—Facility Security Requirements*

This subpart describes the responsibilities of the facility owner or operator and personnel relative to facility security. It includes requirements for training, drills, recordkeeping, and Declarations of Security. It identifies specific security measures, such as those for access control, cargo handling, monitoring, and particular types of facilities.

Two commenters suggested that the Coast Guard should not regulate security measures but should establish security guidelines based on facility type, in essence creating a matrix with "risk-levels" and identified suggested measures for facility security.

We cannot establish only guidelines because the MTSA and SOLAS require us to issue regulations. We have provided performance-based, rather than prescriptive, requirements in these regulations to give owners or operators flexibility in developing security plans