

that the definition includes, for OCS facilities: “the lessee or the operator designated to act on behalf of the lessee in accordance with 30 CFR part 250.” One commenter sought clarification of the terms “owner or operator” and suggested adding “operational control is the ability to influence or control the physical or commercial activities pertaining to that facility for any period of time.”

We disagree with adding the suggested language of the first commenter because we have concluded that the person with operational control is the best person to implement these regulations and, therefore, should be responsible for implementation. The language proposed would include a lessee regardless of whether or not that lessee maintains such operational control. We also disagree with adding the suggested language of the second comment because it would be unnecessarily limiting.

Five commenters recommended changes to the definitions of “facility” and “OCS facility” in § 101.105 in order to clarify the applicability of parts 104, 105, and 106 to MODUs. Two commenters suggested adding language to the facility definition to specifically include MODUs that are not regulated under part 104, consistent with the definition of OCS facility. Another commenter stated that if we change the definition to include MODUs not regulated under part 104, then we also should add an explicit exemption for these MODUs from part 105. Three commenters suggested deleting the words “fixed or floating” and the words “including MODUs not subject to part 104 of this subchapter” in § 106.105 and adding a paragraph to read, “the requirements of this part do not apply to a vessel subject to part 104 of this subchapter.”

With regard to the definition of “facility” and the suggested additional language regarding MODUs, the definition clearly incorporates MODUs that are not covered under part 104 and MODUs that are sufficiently covered under parts 101 through 103 and 106. Therefore, we are not amending our definition of facility nor incorporating the suggested explicit exemption from part 105 because these MODUs are excluded. We have, however, amended 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 30 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.

We received four comments on the applicability of part 106 to certain OCS facilities. Three commenters stated that the operating conditions referenced in § 106.105 should remain as written. A fourth commenter stated that the size criteria used in § 106.105 contains no support; that the regulations are a duplication of existing informal security measures; that the regulations do not define “adequate level of security” and offer no support that scrutiny of personnel and cargo will, or has in the past, prevented terrorist attacks; that the rule imposes a huge paperwork and formal reporting burden; that training of employees to detect dangerous situations and devices on facilities located more than 100 miles from shore is unreasonable; that the security provided by the Declaration of Security is minimal; that there is no need for the OCS Facility Security Assessment; and that the OCS Facility Security Plan will offer no security from exterior threats.

As discussed in the temporary interim rule titled “Implementation of National Maritime Security Initiatives” (68 FR 39250), we determined the applicability of part 106 for those facilities that may be involved in a transportation security incident. In developing part 106 and the security measures in it, we deliberately reviewed and incorporated much of the pre-existing informal security measures to ensure standardization and minimize the burden to those in industry that have already voluntarily adopted standards. We have determined that the security measures in part 106 will reduce the likelihood of a transportation security incident by increasing the awareness of security threats to the OCS facility. We believe that the best means of deterring incidents is to reduce the vulnerabilities of the OCS facility to a security threat by ensuring that the

owner or operator of that OCS facility increases their vigilance, awareness, and control over the vessels and persons that interact with the OCS facility. The OCS Facility Security Assessment and Plan are not envisioned to be the sole means of deterrence against security incidents. All of the security plans of the National Maritime Security Initiatives work in conjunction to reduce the vulnerability of the Marine Transportation System from various types of attacks originating from air, land, and sea. We recognize that we impose a requirement for the submission of assessments and plans to ensure compliance. To reduce the overall paperwork burden, we allow a single plan to cover multiple OCS facilities.

After further review of § 106.105 and discussion with the Minerals Management Service (MMS), we have determined that there may be OCS facilities acting as “hubs” for oil transportation that do not meet the production characteristics that are regulated under this part. However, due to unique local conditions, specific intelligence information, or other identifiable and articulable risk factors, these “hub” facilities may be involved in a transportation security incident. Therefore, on a case-by-case basis, these “hub” facility operations will be reviewed and, if appropriate, a MARSEC Directive will be issued to address these circumstances.

One commenter asked how OCS facilities not directly regulated under part 106 would be regulated.

As indicated in § 103.100, all facilities located in waters subject to the jurisdiction of the U.S. are covered by part 103 and must comply with the requirements in the AMS Plan, as developed by the AMS Committee.

Six commenters requested that the Coast Guard establish, without delay, an AMS Committee for the OCS portion of the Gulf of Mexico as an essential step in moving the various Federal law enforcement agencies and industry toward a mutual understanding of the response to a transportation security incident on the OCS.

We intend to cover the OCS facilities in the Gulf of Mexico by a single, District-wide AMS Plan. The establishment of an AMS Committee for the OCS facilities in the Gulf of Mexico was discussed at recent Gulf Safety Committee and National Offshore Safety Advisory Committee (NOSAC) meetings. We intend to form an AMS Committee for this area in the near future. Additionally, owners and operators of OCS facilities are encouraged to participate on the AMS