

## **The Effect of Coast Guard Maritime Security Rules on EPA-Regulated Facilities**

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**ABSTRACT:** The U.S. Coast Guard (USCG) published final rules on October 22, 2003, to implement the security requirements of the Maritime Transportation Security Act of 2002. The rules include provisions addressing Area Maritime Security (ports), vessels, and facilities. The rules apply to some “complexes” with a combination of transportation-related and non-transportation-related components that are regulated by both EPA and the USCG, such as a marine transfer facility (under USCG jurisdiction) with aboveground storage tanks (under EPA jurisdiction). Prior to publication of the final rules, EPA raised several issues with the USCG on the universe of facilities covered by the rules. The preambles to the rules clarify the relationship between EPA requirements for oil spill prevention, preparedness, and response and USCG requirements for marine security. Although the two agencies have initiated steps to facilitate coordination of planning efforts and area exercises for spill response and security, much of the day-to-day work will be performed in the field by regional or district staff. This paper introduces approaches that EPA can take to continue coordination with USCG and to assist regulated facilities in complying with these new requirements.

### What are the USCG maritime security rules?

The Maritime Transportation Security Act was signed into law by the President on November 25, 2002. The Act required the USCG to conduct facility and vessel vulnerability assessments to identify those facilities and vessels at high risk of being involved in a transportation security incident. The Act also mandated that high-risk ports, facilities, and vessels have security plans approved by the USCG. On October 22, 2003, the USCG published a series of final rules that modified the set of temporary interim rules published in July. These rules promulgated the maritime security requirements mandated by the Act. See Exhibit 1 for additional information about the

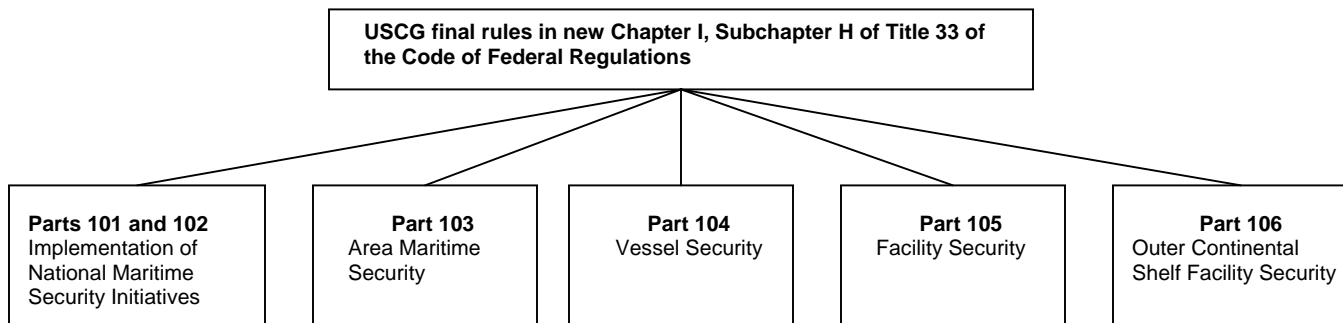
rule finalization and implementation timeline for facilities. Other deadlines apply for vessels.

**Exhibit 1. Key Dates in the Creation and Implementation of the USCG Rules**

<b>Date</b>	<b>Milestone</b>
July 1, 2003	Temporary Interim Rules published in <i>Federal Register</i>
July 9, 2003	EPA and USCG meeting held on interim rules and interagency coordination
July 16, 2003	Notice correcting typographical errors and omissions published
July 23, 2003	Public meeting held in Washington, DC
July 31, 2003	Public comment period closed
October 22, 2003	Final rules published
November 21, 2003	Effective date of Final Rule
December 31, 2003	Deadline for facilities to submit their security plans to the USCG for approval
July 1, 2004	Facilities must be operating under a security plan approved by the USCG

The maritime security rules are segmented into separate parts – Implementation of National Maritime Security Initiatives (33 CFR parts 101 and 102), Area Maritime Security (part 103), Vessel Security (part 104), Facility Security (part 105), Outer Continental Shelf (OCS) Facility Security (part 106), and Automatic Identification Systems (changes to parts 26, 161, 164, and 165). Exhibit 2 shows how the rules are codified in new CFR parts, not including the provisions on Automatic Identification Systems, which amended existing parts but did not involve a new CFR part.

## Exhibit 2. USCG Final Rules Published October 22, 2003



### What is the relationship of the USCG rules to EPA-regulated facilities?

Under the Clean Water Act and the Oil Pollution Act of 1990, the Environmental Protection Agency (EPA) promulgates regulatory provisions for non-transportation-related facilities that handle, store, or transport oil. These rules include Spill Prevention Control and Countermeasure (SPCC) prevention requirements for oil facilities with more than 1320 gallons of aboveground storage capacity, and Facility Response Plan (FRP) requirements for larger facilities from which a spill may cause substantial harm to the environment. A facility must prepare an FRP if: (1) it transfers oil over water to or from vessels and has an oil storage capacity of 42,000 gallons or more, or (2) it has an oil storage capacity of one million gallons or more and meets at least one of four other facility characteristics related to proximity to sensitive environments or drinking water intakes, spill history, and lack of secondary containment. Many EPA-regulated facilities also are subject to part 105 of the USCG rules, such as facilities transferring oil or hazardous materials in bulk to or from a vessel (33 CFR part 154). For example, an oil storage facility that has a capacity of 42,000 gallons or more and transfers oil over water

to or from vessels may have to comply with EPA requirements for FRPs, in addition to USCG requirements for response planning and maritime security.

In the USCG's new rules, a "facility" is broadly defined to include a "structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the U.S. and used, operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or operation." Thus, certain EPA-regulated facilities that are located adjacent to U.S. waters, or on property adjoining a marine-transportation-related facility and under common ownership, may be covered by the requirements for facility security. Furthermore, under the statute, the USCG is required to regulate marine transportation security aspects of the entire facility, not just the oil transfer or "dock" area. In the preamble to the final rules, however, the USCG emphasizes that in cases of overlapping provisions for oil facilities regulated in both parts 105 and the SPCC and FRP rules, the requirements in the USCG and EPA rules do not supplant one another.

According to the cost assessment for part 105, the population affected by the rule is approximately 5,000 facilities, and most of the cost is attributed to facilities that are engaged in the transfer of petroleum and other hazardous bulk liquids. An EPA-regulated facility that is not subject to the USCG's Facility Security requirements in part 105, however, may have to follow the Area Maritime Security requirements in part 103, as described below.

*Complexes.* The preamble to part 105 of the interim rules indicates that the majority of facilities affected by the regulations are those engaged in the transfer of hazardous bulk liquids (petroleum, edible oils, and liquefied gases). Many of those facilities are likely to be "complexes," facilities with a combination of transportation-

related and non-transportation-related components, such as marine transfer facilities (under USCG jurisdiction) with aboveground storage tanks (under EPA jurisdiction). The EPA-regulated portion of a typical complex that stores petroleum or non-petroleum oil is subject to the SPCC Plan requirements of 40 CFR part 112 and the FRP requirements of 40 CFR 112.20 and 112.21.

Additionally, as previously noted, the definition of “facility” includes “any contiguous or adjacent property under common ownership or operation,” which would cover the EPA-regulated portion of a complex. Several commenters on the interim rules raised questions about this definition. For example, some commenters asked whether a facility without direct water access or one that receives refined products via pipeline from a dock facility is covered by part 105. The preamble to the final rule states that a facility “within an area that is a marine transportation related terminal or that receives vessels over 100 gross tons on international voyages” is regulated under § 105.105, and that “some adjacent facilities” are not regulated under § 105.105. The question of whether the EPA-regulated portion of a complex is covered under part 105 depends on whether that portion is considered “within an area that is a marine transportation related terminal,” or if it is considered an adjacent facility.

*Offshore Facilities.* EPA regulations cover onshore and offshore non-transportation-related facilities, including mobile offshore drilling units (MODUs). With respect to offshore facilities, however, EPA jurisdiction applies only to those located landward of the coast line, in other words to facilities in inland waters. The Department of the Interior has jurisdiction over most facilities located seaward of the coast line, including those on the outer continental shelf (OCS). Part 106 of the USCG rules applies to security at OCS facilities, including MODUs, but these provisions would not affect

mobile offshore drilling or workover rigs in EPA-regulated (inland) waters, based on the applicability description in § 106.105.

*Facilities adjacent to navigable waters.* The preamble to part 101 of the temporary interim rules describes the results of modeling, which identified the types of facilities that are at high risk of a maritime transportation security incident and the types that are at a lower risk. In § 105.105(a), those high-risk facility types (such as facilities subject to part 154) were listed as subject to the requirements of part 105, and in § 105.105(c), most of the lower-risk facility types (such as mobile facilities) were listed as exempted from part 105. Facilities that are “adjacent to the navigable water that handle/store cargo that is hazardous or a pollutant,” were identified in the preamble as a lower-risk facility type, but were not listed as exempted in § 105.105(c).

The preamble to the final rule clarifies that these facilities are not subject to specific security measures under part 105, but are subject to Area Maritime Security (AMS) provisions in part 103. The AMS Plan may set forth measures that apply to these EPA-regulated facilities, and the USCG Captain of the Port may direct the facilities to implement security measures if they could be involved in a transportation security incident. The USCG encourages owners and operators of these EPA-regulated facilities, as well as EPA representatives, to participate in Area Maritime Security Committee activities.

*Area Maritime Security.* Under OPA 90, EPA Regional On-Scene Coordinators (OSCs) head Area Committees in inland areas and USCG OSCs head Area Committees in coastal areas. The Area Committees develop Area Contingency Plans as elements of a comprehensive oil and hazardous substance spill response system. These Area Contingency Plans also address some security/terrorism concerns by involving law

enforcement as well as emergency response organizations. At EPA's request, the USCG has clarified in the preamble to the maritime security rules that implementation of security planning will not conflict with area contingency planning. EPA and the USCG are exploring ways in which the two types of area plans may be integrated.

If an EPA-regulated facility is covered by part 105, what does compliance entail?

Under the final rules, the owner or operator of a facility subject to part 105 requirements will have to conduct a Facility Security Assessment, develop a Facility Security Plan, and implement certain security measures and procedures. To comply with the regulations, facility owners and operators must:

- Designate a Facility Security Officer, who will have security duties to fulfill.
- Ensure that a Facility Security Assessment is conducted and a report prepared.
- Develop and submit for approval a Facility Security Plan, which will be valid for five years from the date of approval but must be audited annually by the Facility Security Officer. (The submission deadline was December 31, 2003, for facilities currently in operation.)
- Operate the facility in accordance with the approved plan.
- Regularly conduct security drills and exercises. Owners and operators must conduct an exercise at least once each calendar year, with no longer than 18 months between exercises, and at least one drill every 3 months. These security exercises may be part of a cooperative exercise program or may be combined with other required exercises.

- Implement any additional security measures required by changes in Maritime Security (MARSEC) Level, which reflects the prevailing threat environment to the marine elements of the national transportation system.
- Report all security breaches and security incidents.
- Coordinate shore leave for vessel personnel or crew change-out, and coordinate visitor access through the facility to the vessel (including representatives of seafarers' welfare and labor organizations) in advance of a vessel's arrival.

Part 105 provides flexibility by including provisions on obtaining waivers, requesting an equivalency, and implementing an Alternative Security Program as a way to comply with the requirements.

#### How are EPA and the USCG coordinating their respective regulatory programs?

Upon reviewing the USCG interim rules, EPA expressed concerns about possible overlaps with EPA's prevention and preparedness regulations. Specifically, although 33 CFR part 105 provides for facility security planning and 40 CFR part 112 (hereafter referred to as part 105 and part 112) is about oil spill prevention and response planning, there are several overlapping provisions. Such overlap is not surprising. Part 105 requires each facility owner or operator to develop a Facility Security Plan that incorporates detailed preparedness, prevention, and response activities. Among the qualifications of the Facility Security Officer is that he or she must have knowledge of facility operations, emergency preparedness, response, and contingency planning. Part 112 requires prevention planning for oil discharges of all types, whether the cause is accidental, a natural hazard (such as an earthquake or lightning), or deliberate (such as



vandalism or terrorism). EPA's FRP requirements address responses to worst case discharges from facilities such as refineries, tank farms, or terminals. Such discharges can damage the facility, disrupt waterborne commerce, and cause substantial economic or environmental damage, which are consequences that security measures try to prevent. Specific provisions that may overlap in the two sets of requirements include the following:

*Notification.* Under part 112, the Emergency Response Action Plan portion of the FRP must include an emergency phone list, with contact information for the National Response Center, facility response personnel, fire and police departments, etc. Under part 105, transportation security incidents are reported to the National Response Center and to emergency responders. Systems must allow communication with authorities with security responsibilities, including the police, security control, or an Emergency Operations Center.

*Fencing and monitoring.* In part 112, the FRP must describe facility security, as appropriate, including enclosures such as fencing, guards and their duties, and lighting. The SPCC Plan provisions specify that lighting should be adequate to prevent discharges caused by vandalism and that oil storage areas must be fully fenced with entrance gates locked or guarded when the facility is unattended. In part 105, the Facility Security Plan must describe how cargo storage areas have security measures to prevent unauthorized access and are continuously monitored through a combination of lighting, security guards, and other methods.

*Evacuation.* Under part 112, as part of the Emergency Response Action Plan, the FRP requires detailed evacuation plans for the facility, including evacuation routes, transportation of injured persons to the nearest emergency medical facility, and

coordination with community evacuation plans. Under part 105, the owner or operator must ensure that security personnel are able to evacuate the facility in case of security threats.

*Assessment.* In addition to the Emergency Response Action Plan, the FRP required by EPA includes a detailed site plan diagram, hazard evaluation, and vulnerability assessment. The Facility Security Assessment required by the USCG includes the layout of the facility, response procedures for emergency conditions, threat assessment, and vulnerabilities. Although both sets of requirements include an assessment of vulnerabilities, they each have a different emphasis. The assessment in the FRP examines outcomes and potential effects of an oil spill incident, such as the shutdown of downstream water intakes, while the Facility Vulnerability and Security Measures Summary required by the USCG focuses on areas at the facility that may be vulnerable to a security threat, such as utility equipment and services vital to the operation of the facility.

The USCG's final rule preamble acknowledges this overlap but states that an EPA-regulated facility need not amend the facility's SPCC Plan or FRP. The USCG will be working further with EPA in the implementation of the final rules to minimize the burden to the facilities while ensuring that the facilities are secure. The USCG believes that "response plans for EPA-regulated oil facilities will serve as an excellent foundation for security plans that may be required" under the USCG regulations.

#### How can drills and exercises be coordinated?

Another area of potential overlap relates to drills and exercises. EPA's FRP provisions require drills and exercises, including evaluations, and logs and records must

be submitted to EPA as part of the FRP. The requirements may be met by following the National Preparedness for Response Exercise Program (PREP) guidelines, which provide for internal exercises, including notification drills and spill management team tabletop exercises, as well as external exercises, including government/industry area exercises. Under the authority of OPA 90, EPA periodically conducts announced and unannounced drills for facilities with FRPs. Under part 105 of the USCG's rules, the Facility Security Plan is tested by drills and exercises conducted by the facility, which help to identify security deficiencies, and records of such drills and exercises must be kept by the facility. Drills test the response to security incidents, such as notification of law enforcement authorities, and may be incorporated into daily operations. No drill time-length is prescribed in the rule. Exercises may be full-scale or tabletop, and may be part of a comprehensive port exercise described in part 103 on Area Maritime Security. Records must be available for inspection by the USCG upon request. The Interagency Schedule Coordinating Committee, which is used for PREP, can provide a useful mechanism for coordinating security exercises.

The preamble to part 105 provides that non-security drills and exercises may be combined with security drills to minimize burden. Additionally, EPA-regulated facilities that conduct drills not related to security are encouraged to communicate with the local Captain of the Port and to coordinate their drills at the area level. The USCG's intention is to give facilities and vessels in the port area as much notice as practicable prior to an AMS Plan exercise to reduce the burden to those entities.

How can EPA assist regulated facilities and Area Committees in complying with the USCG security rules?

EPA currently participates in several outreach efforts to help implement EPA regulations. EPA Headquarters develops materials for the Oil Program website at <http://www.epa.gov/oilspill> to promote a better understanding of the requirements of EPA's oil pollution prevention and response programs, and EPA Regions sponsor workshops and seminars for the regulated community, sometimes with Headquarters assistance. EPA Headquarters and Regions foster the education of stakeholders and increase communication among participants in the planning process, and they support training and exercise programs. SPCC and FRP inspectors help ensure that oil storage facilities are in compliance with the rule provisions, and these inspections give EPA representatives the opportunity to educate owners and operators about how to comply. These outreach efforts will enable EPA to ensure that owners and operators of EPA-regulated facilities are aware of the USCG security provisions, but requirements at individual facilities may depend on site-specific circumstances and future coordination between EPA and USCG facility inspectors.

With respect to Area Contingency Plans prepared by Area Committees, the preamble to part 101 of the USCG final rule emphasizes that the rule is intended to work in concert with Area Contingency Plans and does not preempt the Plans' requirements. The preamble states that the USCG envisions that many members of the Area Committees will become members of the Area Marine Safety Committee, and this participation has already begun. Such participation will help ensure that implementing an AMS Plan will not conflict with, and where possible may build upon, information in an Area Contingency Plan. In addition, the preamble to part 103 recognizes that port stakeholders participate in a number of safety, security, and response exercises required by various regulations, and the Coast Guard believes that the objectives for area maritime

security plan exercises can often be met through coordination of exercises. EPA believes that this coordination is essential for the EPA and USCG programs and will contribute to this effort. EPA will continue to work with the USCG and regulated facilities in the future to help implement these regulatory programs and new requirements.