

facility owner or operator written notice and request that the OCS facility owner or operator propose amendments addressing any matters specified in the notice. The OCS facility owner or operator will have at least 60 days to submit its proposed amendments. Until amendments are approved, the OCS facility owner or operator shall ensure temporary security measures are implemented to the satisfaction of the cognizant District Commander.

(2) Proposed amendments must be sent to the cognizant District Commander. If initiated by the OCS facility owner or operator, the proposed amendment must be submitted at least 30 days before the amendment is to take effect unless the cognizant District Commander allows a shorter period. The cognizant District Commander will approve or disapprove the proposed amendment in accordance with §106.410 of this subpart.

(3) Nothing in this section should be construed as limiting the OCS facility owner or operator from the timely implementation of such additional security measures not enumerated in the approved FSP as necessary to address exigent security situations. In such cases, the owner or operator must notify the cognizant District Commander by the most rapid means practicable as to the nature of the additional measures, the circumstances that prompted these additional measures, and the period of time these additional measures are expected to be in place.

(4) If the owner or operator has changed, the Facility Security Officer (FSO) must amend the Facility Security Plan (FSP) to include the name and contact information of the new OCS facility owner(s) or operator(s) and submit the affected portion of the FSP for review and approval in accordance with §106.410 of this subpart.

(b) *Audits.* (1) The FSO must ensure an audit of the FSP is performed annually, beginning no later than one year from the initial date of approval and attach a letter to the FSP certifying that the FSP meets the applicable requirements of this part.

(2) If there is a change in ownership or operations of the OCS facility, or if there have been modifications to the OCS facility, the FSP must be audited

including but not limited to physical structure, emergency response procedures, security measures, or operations.

(3) Auditing the FSP as a result of modifications to the OCS facility may be limited to those sections of the FSP affected by the OCS facility modifications.

(4) Unless impracticable due to the size and nature of the company or the OCS facility, personnel conducting internal audits of the security measures specified in the FSP or evaluating its implementation must:

(i) Have knowledge of methods of conducting audits and inspections, and control and monitoring techniques;

(ii) Not have regularly assigned security duties; and

(iii) Be independent of any security measures being audited.

(5) If the results of an audit require an amendment of either the Facility Security Assessment (FSA) or FSP, the FSO must submit, in accordance with §106.410 of this subpart, the amendments to the cognizant District Commander for review and approval no later than 30 days after completion of the audit and a letter certifying that the amended FSP meets the applicable requirements of this part.

[USCG–2003–14759, 68 FR 39345, July 1, 2003, as amended at 68 FR 60559, Oct. 22, 2003]

PART 107—NATIONAL VESSEL AND FACILITY CONTROL MEASURES AND LIMITED ACCESS AREAS

Subpart A [Reserved]

Subpart B—Unauthorized Entry Into Cuban Territorial Waters

Sec.	
107.200	Definitions.
107.205	Purpose and delegation.
107.210	Applicability.
107.215	Regulations.
107.220	Permits.
107.225	Appeals.
107.230	Enforcement.
107.240	Continuation.

AUTHORITY: 50 U.S.C. 191, 192, 194, 195; 14 U.S.C. 141; Presidential Proclamation 6867, 61 FR 8843, 3 CFR, 1996 Comp., p. 8; Presidential Proclamation 7757, 69 FR 9515 (March 1, 2004); Secretary of Homeland Security Order 2004–

001; Department of Homeland Security Delegation No. 0170.1; and 33 CFR 1.05-1.

SOURCE: Order 2004-001, 69 FR 41372, July 8, 2004, unless otherwise noted.

Subpart A [Reserved]

Subpart B—Unauthorized Entry Into Cuban Territorial Waters

§ 107.200 Definitions.

Unless otherwise specified, as used in this subpart:

Auxiliary vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water attached to, or embarked in, another vessel to which this subpart applies.

Cuban territorial waters means the territorial sea and internal waters of Cuba determined in accordance with international law.

Owner, agent, master, officer, or person in charge means the persons or entities that maintain operational control over any vessel subject to the requirements of this subpart.

U.S. territorial waters has the same meaning as provided in 50 U.S.C. 195.

Vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, including auxiliary vessels.

Vessel of the United States means—

(1) A vessel documented under chapter 121 of title 46 or a vessel numbered as provided in chapter 123 of that title;

(2) A vessel owned in whole or part by—

(i) The United States or a territory, commonwealth, or possession of the United States;

(ii) A State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(iv) A corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other legal entity, created and authorized to own vessels under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality

of a foreign nation in accordance with article 5 of the 1958 Convention on the High Seas and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States authorized to enforce applicable provisions of United States law;

(3) A vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation;

(4) A vessel without nationality as defined in 46 U.S.C. Appendix 1903(c)(2)–(3); or

(5) A vessel assimilated to a vessel without nationality, in accordance with paragraph (2) of article 6 of the 1958 Convention on the High Seas.

§ 107.205 Purpose and delegation.

The purpose of this subpart is to implement Presidential Proclamation 7757, and Secretary of Homeland Security Order 2004-001. All powers and authorities granted to officers of the Coast Guard by this subpart may be delegated to other officers and agents of the Coast Guard unless otherwise prohibited by law.

§ 107.210 Applicability.

(a) This subpart applies to:

(1) Vessels of the United States less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels, that depart U.S. territorial waters and thereafter enter Cuban territorial waters, regardless of whether such entry is made after an intervening entry into, passage through, or departure from any other foreign territory or territorial waters;

(2) Vessels of the United States less than 100 meters (328 feet) in length (and all associated auxiliary vessels) and the owners, agents, masters, officers, persons in charge, and members of the crew of such vessels that are located at or get underway from a berth, pier,