

and facilities and as we develop the National and AMS Plans.

One commenter stated that there should be a common template for AMS Plans for use at all Districts.

The regulations provide uniformity by requiring all AMS Plans to be submitted for review to the Coast Guard District Commander and for approval to the Coast Guard Area Commander.

Six commenters stated that part 105 should not apply to marinas that receive a small number of passenger vessels certificated to carry more than 150 passengers or to "mixed-use or special-use facilities which might accept or provide dock space to a single vessel" because the impact on local business in the facility could be substantial. Two commenters stated that private and public riverbanks should not be required to comply with part 105 because "there is no one to complete a Declaration of Security with, and no way to secure the area, before the vessel arrives." Two commenters stated that facilities that are "100 percent public access" should not be required to comply with part 105 because these types of facilities are "vitally important to the local economy, as well as to the host municipalities." This commenter also stated that vessels certificated to carry more than 150 passengers frequently embark guests at private, residential docks and small private marinas for special events such as weddings and anniversaries and may visit such a dock only once.

We agree that the applicability of part 105 to facilities that have minimal infrastructure but are capable of receiving passenger vessels is unclear. Therefore, in the final rule for part 101, we added a definition for a "public access facility" to mean a facility approved by the cognizant COTP with public access that is primarily used for purposes such as recreation or entertainment and not for receiving vessels subject to part 104. By definition, a public access facility has minimal infrastructure for servicing vessels subject to part 104 but may receive ferries and passenger vessels other than cruise ships, ferries certificated to carry vehicles, or passenger vessels subject to SOLAS. Minimal infrastructure would include, for example, bollards, docks, and ticket booths but would not include, for example, permanent structures that contain passenger waiting areas or concessions. We have not allowed public access facilities to be designated if they receive vessels such as cargo vessels because such cargo-handling operations require additional security measures that public access facilities

would not have. We amended part 105 to exclude these public access facilities, subject to COTP approval, from the requirements of part 105. We believe this construct does not reduce security because the facility owner or operator or entity with operational control over these types of public access facilities still has obligations for security that will be detailed in the AMS Plan, based on the AMS Assessment. Additionally, the Vessel Security Plan must address security measures for using the public access facility. This exemption does not affect existing COTP authority to require the implementation of additional security measures to deal with specific security concerns. We have also amended § 103.505, to add public access facilities to the list of elements that must be addressed within the AMS Plan.

Two commenters asked if the COTP would allow private port facilities access to the completed AMS Assessment or Plan, stating that a port plan could potentially contradict a private Facility Security Plan. One commenter stated that the AMS Plan should be "absolutely unequivocal about the lines of authority for preventative and response actions as well as law enforcement."

The development of the AMS Plan is a collaborative effort between Federal, State, Indian Tribal, and local agencies as well as individual facility owners and any other interested stakeholders. AMS Plans contain sensitive security information, and the COTP must ensure it is protected in accordance with 49 CFR part 1520. The Coast Guard will resolve potential conflicts between an individual Facility Security Plan and the AMS Plan during the Facility Security Plan approval process, which will ensure proper planning for preventative and response actions. To clarify that the entire AMS Plan is not necessarily sensitive security information, we are amending § 103.500(b) to allow only those portions of the AMS Plan that contain sensitive security information to be marked as such. This will allow certain non-sensitive security information portions of the AMS Plan to be widely distributed to maximize its communication and coordination with port stakeholders.

Ten commenters addressed the disclosure of security plan information. One commenter advocated making security plans public. One commenter was concerned that plans will be disclosed under the Freedom of Information Act (FOIA). One commenter requested that mariners and other employees, whose normal working

conditions are altered by a Vessel or Facility Security Plan, be granted access to sensitive security information contained in that plan on a need-to-know basis. One commenter stated that Company Security Officers and Facility Security Officers should have reasonable access to AMS Plan information on a need-to-know basis. One commenter stated that the Federal government must preempt State law in instances of sensitive security information because some State laws require full disclosure of public documents. Three commenters supported our conclusion that the MTSA and our regulations preempt any conflicting State requirements. Another commenter was particularly pleased to observe the strong position taken by the Coast Guard in support of Federal preemption of conflicting State and local security regimes. One commenter supported our decision to designate security assessments and plans as sensitive security information.

Portions of security plans are sensitive security information and must be protected in accordance with 49 CFR part 1520. Only those persons specified in 49 CFR part 1520 will be given access to security plans. In accordance with 49 CFR part 1520 and pursuant to 5 U.S.C. 552(b)(3), sensitive security information is generally exempt from disclosure under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public. However, §§ 104.220, 104.225, 105.210, 105.215, 106.215, and 106.220 of these rules state that vessel and facility personnel must have knowledge of relevant provisions of the security plan. Therefore, vessel and facility owners or operators will determine which provisions of the security plans are accessible to crewmembers and other personnel. Additionally, COTPs will determine what portions of the AMS Plan are accessible to Company or Facility Security Officers.

Information designated as sensitive security information is generally exempt under FOIA, and TSA has concluded that State disclosure laws that conflict with 49 CFR part 1520 are preempted by that regulation. 46 U.S.C. 70103(d) also provides that the information developed under this regulation is not required to be disclosed to the public.

Two commenters stated that our regulations suggest that information designated as sensitive security information is exempt from FOIA. One commenter suggested that all