

documentation submitted under this rule be done pursuant to the Homeland Security Act of 2002, to afford a more legally definite protection against disclosure.

“Sensitive security information” is a designation mandated by regulations promulgated by TSA and may be found in 49 CFR part 1520. These regulations state that information designated as sensitive security information may not be shared with the general public. FOIA exempts from its mandatory release provisions those items that other laws forbid from public release. Thus, security assessments, security assessment reports, and security plans, which should be designated as sensitive security information, are all exempt from release under FOIA.

Four commenters urged us to conduct background checks on potential members of AMS Committees because the information contained in the AMS Plans might be “secret.” Two commenters urged us to designate security assessments, Vessel Security Plans, Facility Security Plans, and information contained in the AMS Plans as “secret,” and require secret clearance for AMS Committee members.

We do not believe that a security designation above sensitive security information is needed for this material. However, § 103.300(b)(6) requires AMS Committee charters to include rules for handling and processing classified material. Access to the AMS Plan will be limited to those on the AMS Committee who have agreed to protect the material in a manner appropriate to its security sensitivity and have a need to know the material. Guidance on sensitive security information and its use will be issued to assist AMS Committee members, consistent with 49 CFR part 1520. For material that is designated at a level higher than sensitive security information, the Coast Guard will screen AMS Committee members for appropriate clearances and take precautions appropriate to the material’s sensitivity. Individuals and Federal, State, Indian Tribal, and local agencies outside those with transportation oversight authority will not be allowed to view plans or assessments of vessels and facilities unless circumstances provide a need to view them. As stated in the “Vessel Security” temporary interim rule (68 FR 39297), certain portions of each Vessel Security Plan and Vessel Security Assessment must be made accessible to authorities; however, those portions not required to be disclosed are protected with the sensitive security information designation and need-to-know criteria. Owners and operators of vessels and

facilities may also request a determination of a higher designation than sensitive security information for their plans. The Commandant or the COTP, whoever is responsible for reviewing the security plan, will retain the designation authority. In all cases, the material, if retained by a Federal agency, must be safeguarded to the appropriate designation.

We received 28 comments regarding communication of changes in the MARSEC Levels. Most commenters were concerned about the Coast Guard’s capability to communicate timely changes in MARSEC Levels to facilities and vessels. Some stressed the importance of MARSEC Level information reaching each port area in the COTP’s zone and the entire maritime industry. Some stated that local Broadcast Notice to Mariners and MARSEC Directives are flawed methods of communication and stated that the only acceptable ways to communicate changes in MARSEC Levels, from a timing standpoint, are via email, phone, or fax as established by each COTP.

MARSEC Level changes are generally issued at the Commandant level and each Marine Safety Office (MSO) will be able to disseminate them to vessel or facility owners and operators, or their designees, by various ways. Communication of MARSEC Levels will be done in the most expeditious means available, given the characteristics of the port and its operations. These means will be outlined in the AMS Plan and exercised to ensure vessel and facility owners and operators, or their designees, are able to quickly communicate with us and vice-versa. Because MARSEC Directives will not be as expeditiously communicated as other COTP Orders and are not meant to communicate changes in MARSEC Levels, we have amended § 101.300 to remove the reference to MARSEC Directives.

We received four comments on the subject of AMS Plan exercises. One commenter agreed with our inclusion of tabletop exercises as a cost-effective means of exercising the security plan. Two commenters supported a maritime security field training exercise in each area covered by an AMS Plan but requested that the frequency be every 3 years rather than annually. These commenters stated that the annual requirement for an AMS Plan exercise placed an undue burden on the maritime sector because it is already conducting vessel and facility exercises. One commenter stated that the Coast Guard must be aware that the AMS exercise requirements may be overly burdensome to some vessels, as they

could potentially be required to participate in several AMS exercises per year.

We believe that exercising the AMS Plan annually is essential to ensure that it can be effectively implemented, stakeholders with security responsibilities are proficient in their responsibilities, and any deficiencies in the AMS Plan can be identified and corrected in a timely manner. In addition, the AMS Plan exercise frequency must also meet the international requirement for an annual exercise found in the ISPS Code, part B, regulation 18.6. However, we realize that an AMS Plan annual exercise requirement is in addition to the annual exercise requirements for Vessel and Facility Security Plans. We also recognize that many of the entities affected by § 103.515 are also subject to, or regularly participate in, other emergency response or crisis management exercises. We are mindful of the potential burdens imposed on the regulated community, and other port stakeholders by the number of safety, security and response exercises required by various regulations, and believe that the objectives for AMS Plan exercises can often be met through effective consolidation of exercises. Further, we acknowledge that several vessels may be offered the opportunity to participate in several AMS Plan exercises per year. Participation in these AMS Plan exercises will be subject to the specific details of the AMS Plan as developed by the AMS Committee on which those vessel owners or operators may participate. While vessel owners and operators will be encouraged to participate in AMS Plan exercises and may be requested to deviate from normal operations to minimize interference with the AMS Plan exercise, they will not be required to participate. In addition, we anticipate that COTPs will give ample notice of AMS Plan exercises to allow vessel owners and operators to plan appropriately and to minimize the impact on the maritime community.

Section 103.515(c) allows the cognizant District Commander to authorize AMS Plan exercise credit for actual increases in the MARSEC Level and implementation of security measures during periods of critical port operations or special marine events. However, upon further review, we have decided to revise § 103.515(c) to provide an additional option to participate in another port exercise that contains elements of the AMS Plan but is not a stand-alone AMS Plan exercise. This annual exercise credit is only given if approved by the Area Commander to