

requirements that may be waived because listing these requirements could be interpreted as the only requirements that could be eligible for a waiver.

Two commenters stated that the Master should be added as a party, in addition to the owner or operator, to comply with MARSEC Directives.

We believe that the ultimate responsibility for ensuring compliance with 33 CFR part 104 and MARSEC Directives belongs to the owner or operator. The Master is always accountable to the owner or operator as an employee, and is responsible for the safety and security of the vessel.

One commenter questioned the need of long-range tracking for foreign vessels. The commenter also stated that only flag states should have the right to track their vessels worldwide and that port states should have only the capability to track vessels that have indicated an intention to enter port.

We have not addressed long-range tracking in this final rule because it is beyond the scope of this regulation.

Subpart B—Vessel Security Requirements

This subpart describes the responsibilities of the vessel owner, operator, and personnel relative to vessel security. It includes requirements for training, drills, recordkeeping, and Declarations of Security. It identifies specific security measures, such as those for access control, cargo handling, monitoring, and particular classes of vessels.

Two commenters suggested that the Coast Guard should not regulate security measures but should establish security guidelines based on facility type, in essence creating a matrix with “risk-levels” and suggested measures for facility security.

We cannot establish only guidelines because the MTSA and SOLAS require us to issue regulations. We have provided performance-based, rather than prescriptive, requirements in these regulations to give owners or operators flexibility in developing security plans tailored to vessels’ or facilities’ unique operations.

One commenter asked who would be ensuring the integrity of security training and exercise programs.

Since the events of September 11, 2001, the Coast Guard has developed a directorate responsible for port, vessel, and facility security. This directorate oversees implementation and enforcement of the regulations found in parts 101 through 106. Additionally, owners and operators of vessels and facilities will be responsible for recordkeeping regarding training, drills,

and exercises. The Coast Guard intends to review these records during periodic inspections.

We received two comments on the requirements in § 104.200 regarding vessel owners and operators, stating that the provisions in this section are overly burdensome and difficult to implement.

We recognize that the provisions of § 104.200 may be challenging for some vessel owners and operators to implement. We have drafted this section to allow for maximum flexibility while ensuring that we address those vessels and operations that may be involved in a transportation security incident. Effective communication and coordination procedures for company employees, vessel crew, and others with whom they interact are necessary elements of maritime security. We believe that the maritime community, in large measure, already practices these procedures in their current operations. The intent of this section is to clarify those areas of maritime security that we believe every vessel owner and operator must consider as part of their operations.

Three commenters asked what security measures would be appropriate when taking barges from line boats to harbor boats to a barge fleeting area.

We understand that there are many diverse operations involved in the movement of tugs and barges, especially along rivers. In a towing vessel’s Vessel Security Assessment, these operations and multiple barge interface activities must be evaluated. Those operations that make a barge-tug interface vulnerable to a transportation security incident must be mitigated through security measures detailed in the Vessel Security Plan for both the barge and the towing vessel. Some Alternative Security Programs tailored to tug and barge activities are being developed and may be useful in meeting these security requirements.

Nineteen commenters were concerned about the rights of seafarers at facilities. One commenter stated that the direct and specific references to shore leave in the regulations conform exactly with his position and the widespread belief that shore leave is a fundamental right of a seaman. One commenter stated that coordinating mariner shore leave with facility operators is important and should be retained, stating that shore leave for ships’ crews exists as a fundamental seafarers’ right that can be denied only in compelling circumstances. The commenter also stated that chaplains should continue to have access to vessels, especially during periods of heightened security. Four commenters requested that the

regulations require facilities to allow vessel personnel access to the facilities for shore leave, or other purposes, stating that shore leave is a basic human right and should not be left to the discretion of the terminal owner or operator. One commenter stated that seafarers are being denied shore leave as they cannot apply for visas in a timely manner and that seafarers who meet all legal requirements should be permitted to move to and from the vessel through the facility, subject to reasonable requirements in the Facility Security Plan. One commenter stated that it is the responsibility of the government to determine appropriate measures for seafarers to disembark. One commenter encouraged the government to expedite the issuance of visas for shore leave.

We agree that coordinating mariner shore leave and chaplains’ access to vessels with facility operators is important and should be retained. Sections 104.200(b)(6) and 105.200(b)(7) require owners or operators of vessels and facilities to coordinate shore leave for vessel personnel in advance of a vessel’s arrival. We have not mandated, however, that facilities allow access for shore leave because during periods of heightened security shore leave may not be in the best interest of the vessel personnel, the facility, or the public. Mandating such access could also infringe on private property rights; however, we strongly encourage facility owners and operators to maximize opportunities for mariner shore leave and access to the vessel through the facility by seafarer welfare organizations. The Coast Guard does not issue, nor can it expedite the issuing of, visas. Additionally, visas are a matter of immigration law and are beyond the scope of these rules. Finally, it should also be noted that the government has treaties of friendship, commerce, and navigation with several nations. These treaties provide that seafarers shall be allowed ashore by public authorities when they and the vessel on which they arrive in port meet the applicable requirements or conditions for entry. We have amended §§ 104.200(b) and 105.200(b) to include language that treaties of friendship, commerce, and navigation should be taken into account when coordinating access between facility and vessel owners and operators.

After reviewing § 104.205, we made non-substantive editorial changes to clarify that Masters contact the Coast Guard via the National Response Center (NRC).

Two commenters requested that we add a provision that fully addresses the “qualified individual” portion of the