

MTSA by allowing a Company Security Officer, Vessel Security Officer, Master, or other individual to serve as the qualified individual.

The MTSA does not require a company to designate a person as a "qualified individual." Our requirements for the Company Security Officer, Vessel Security Officer, and the Master embody the MTSA requirement that the security plan identify who has full authority to implement security actions within a company.

One commenter stated that the responsibilities of a Company Security Officer in § 104.210 are too burdensome, too prescriptive, and outside the "realm" of what is associated with normal maritime operations.

It is not outside the realm of normal maritime operations for a company to consider security and the company's role in minimizing risk. We recognize that the provisions of § 104.210 may be challenging to implement for some Company Security Officers. We drafted this section to maximize the flexibility of Company Security Officers by allowing them to delegate responsibilities so long as the security of the company's operations is not compromised. The intent of this section is to outline those responsibilities that we believe are necessary for all Company Security Officers to effectively implement the security measures contained in Vessel Security Plans.

Seven commenters requested clarification on the roles of Company Security Officers and Vessel Security Officers. One commenter asked if they may be the same individual, or if the Coast Guard intended to have a minimum of two security officers within each company. Two commenters requested that we amend § 104.215 to allow the Vessel Security Officer to be a member of the crew or a "regular complement of the vessel," stating that this would provide additional flexibility in assigning Vessel Security Officer responsibilities to others in the vessel's industrial complement and would not require a specific notation of the Vessel Security Officer on the vessel's Certificate of Inspection.

Sections 104.210(a)(3) and 104.215(a)(1) do not preclude an owner or operator of a company that owns vessels from appointing the same individual as both the Company Security Officer and Vessel Security Officer. The Company Security Officer may also be the Vessel Security Officer, provided he or she is able to perform the duties and responsibilities required of both positions. Generally, this provision is for vessels operating on restricted routes in a single COTP zone and for

unmanned vessels. Under § 104.215(a)(2), however, the Vessel Security Officer for manned vessels must be the Master or a member of the crew. While we are making amendments to § 104.215 to clarify security responsibilities for unmanned vessels, we are not amending this section to explicitly identify the personnel that can be designated as crew because we intended the term "crew" to be sufficiently broad and include those persons that constitute the "regular complement of the vessel." A vessel's Certificate of Inspection is issued under Title 46 of the Code of Federal Regulations and delineates crew as the vessels' complement for the safe operation and navigation of the vessel. While 33 CFR chapter I, subchapter H focuses on security, the broader interpretation of "crew" includes individuals and crew necessary for the safe operation and navigation of the vessel as well as those "persons in addition to the crew." Thus, a Certificate of Inspection need not be amended to include a reference to the Vessel Security Officer.

Nine commenters requested formal alternatives to Facility Security Officers, Company Security Officers, and Vessel Security Officers much like the requirements of the Oil Pollution Act of 1990, which allow for alternate qualified individuals. Parts 104, 105, and 106 provide flexibility for a Company, Vessel, or Facility Security Officer to assign security duties to other vessel or facility personnel under §§ 104.210(a)(4), 104.215(a)(5), 105.205(a)(3), and 106.310(a)(3). An owner or operator is also allowed to designate more than one Company, Vessel, or Facility Security Officer. Because Company, Vessel, or Facility Security Officer responsibilities are key to security implementation, vessel and facility owners and operators are encouraged to assign an alternate Company, Vessel, or Facility Security Officer to coordinate vessel or facility security in the absence of the primary Company, Vessel, or Facility Security Officer.

One commenter stated that allowing the Vessel Security Officer and Facility Security Officer to perform collateral non-security duties is not an adequate response to risk.

Security responsibilities for the Company, Vessel, and Facility Security Officers in parts 104, 105, and 106 may be assigned to a dedicated individual if the owners or operators believe that the responsibilities and duties are best served by a person with no other duties.

Two commenters requested amending § 104.210 regarding the duties of the

Company Security Officer to include explicit consideration of vessel-to-vessel activities.

The responsibilities in § 104.210 are in addition to requirements specified elsewhere in part 104. Security duties relating to vessel-to-vessel activities are not specifically assigned to either the Company Security Officer or the Vessel Security Officer. Vessel-to-vessel activities are addressed in § 104.250(a), where the vessel owner or operator must ensure that there are measures for interfacing with facilities and other vessels at all MARSEC Levels. This provides the owner or operator of the vessel the flexibility to determine the most appropriate personnel to handle vessel-to-vessel security concerns for their specific operations.

One commenter stated that it is unreasonable and unenforceable to require the Company Security Officer of a foreign company, not headquartered in the U.S., to be knowledgeable of U.S. domestic regulations. Similarly, one commenter stated that it is unreasonable and unenforceable for us to require the Facility Security Officer to be trained in relevant international laws, codes, and recommendations.

We disagree. Foreign flag vessels are required to comply with these regulations, including the Company Security Officer requirements. However, we do provide that those vessels required to comply with SOLAS and the ISPS Code will comply with these regulations by having on board an ISSC and a Vessel Security Plan that meets the requirements of SOLAS XI-2 and the ISPS Code, part A, taking into account the relevant provisions of the ISPS Code, part

B. Paragraph 13.1.3 of part B expressly states that the Company Security Officer, among other security personnel, should have knowledge of "relevant" government legislation and regulations, which clearly is not limited solely to those of the flag state. Therefore, the requirement in the regulations reflects the international standard. Furthermore, we do prescribe additional domestic security requirements for some foreign vessels, such as cruise ships. Therefore, as a practical matter, Company Security Officers must be knowledgeable of these regulations to adequately perform their duties.

One commenter requested that the Company Security Officer be allowed to liaise with the Coast Guard at the District, Area, or Headquarters level rather than the local COTP.

We agree that effective communication may be established between the Company Security Officer