

section's security and administrative responsibilities at a single level.

We disagree with the recommendation to substitute the Company Security Officer for the Vessel Security Officer in § 104.235(b)(8) because that section generally places recordkeeping requirements on the Vessel Security Officer. However, we have amended the section to allow either the Vessel Security Officer or the Company Security Officer to certify the annual audit letter because this will align better with § 104.415(b), which allows either the Company Security Officer or Vessel Security Officer to ensure the performance of the annual audit.

Three commenters stated that the record of the annual audit of the Vessel Security Plan should be certified and kept by the Company Security Officer for barges and towing vessels, not the Vessel Security Officer.

In § 104.235(b)(8), we require an annual audit letter to be kept by the Vessel Security Officer. The annual audit certifies that the Vessel Security Plan continues to meet the applicable requirements of this part. Therefore, it is appropriate that the Vessel Security Officer keep the annual audit letter with the Vessel Security Plan.

One commenter asked if foreign vessels must have the Vessel Security Assessment on board.

If the vessel is issued an ISSC by its flag state attesting to its compliance with the ISPS Code, we will not require the vessel to have a Vessel Security Assessment on board. We will ensure that the vessel is implementing an effective Vessel Security Plan, which must address identified vulnerabilities, through an aggressive Port State Control program.

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 means to communicate changes in MARSEC Levels, from a timing standpoint, are via e-mail, 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 and

facility owners or operators, or their designees, by various means. 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.

Two commenters requested that § 104.240(a) and (b)(1) be amended to specify that vessels must implement appropriate security measures before interfacing with facilities that are not located in a port.

We agree that the vessel owner or operator, once notified of a change in MARSEC Level, must implement appropriate security measures before interfacing with a facility that is not located in a port area. Facilities covered under part 105 will be within a port; facilities located on the Outer Continental Shelf, however, may not be included in a port. These OCS facilities should have similar security provisions to ports to ensure security. Therefore, we are amending § 104.240 to ensure that the vessel owner or operator is required to implement appropriate security measures in accordance with its Vessel Security Plan prior to interfacing with an OCS facility.

One commenter said that only manned vessels are capable of calling to verify attainment of increased MARSEC Levels and recommended that the Facility Security Officer be required to report attainment for unmanned barges moored at the facility. One commenter asked for clarification of § 104.240(b)(2) because facility and barge fleets have control of unmanned vessels moored at their facilities.

We disagree with the commenter. The regulations allow for a Vessel Security Officer to be a company representative for unmanned vessels, who may be designated by the owner or operator to report on the attainment of increased MARSEC Levels to the appropriate COTP, as specified in § 104.240. Any vessel, manned or unmanned, must be under the cognizance of a Vessel Security Officer or a Company Security Officer to ensure security measures are properly implemented.

Seven commenters stated that although facility or vessel personnel need to understand the current

MARSEC Level and have a heightened state of awareness, in most cases, the specifics of the threat should not be disclosed.

It is necessary for the vessel or facility personnel to know about threats to the vessel or facility because this helps to focus their attention on specific attempts or types of threats to the vessel or facility. To balance this need with sensitive security concerns, §§ 104.240(c) and 105.230(c) give the owners or operators discretion in deciding how much specific information needs to be disclosed to facility or vessel personnel.

One commenter stated that the requirement in § 104.240(c) to brief all vessel personnel of identified threats at MARSEC Level 2 is unattainable and pointed out that implementing MARSEC Level 2 does not require an identified threat.

The intent of the requirement is to disclose as much information as is available and appropriate to vessel personnel to mitigate risk even if a threat is not identified. If there is no identified threat, the Vessel Security Officer is still required to brief all vessel personnel, emphasizing reporting procedures and the need for increased vigilance.

One commenter stated that requirements in § 104.240 regarding MARSEC Level 3 requirements for towing or moving vessels, waterborne security patrols, armed security personnel, and screening vessels for dangerous substances and devices should be applicable to cruise and other oceangoing vessels, but not to ferries.

We disagree that ferries should be exempt from the requirements of § 104.240. Our risk assessment showed that vessels with frequent schedules carrying over 150 passengers may be involved in a transportation security incident. When a transportation security incident is probable or imminent, therefore, § 104.240(e) allows the Coast Guard to require vessels, including ferries, to arrange for waterborne security patrols, armed security personnel, and vessel screening, as appropriate, to mitigate threat. The Coast Guard, in accordance with the AMS Plan, MARSEC Directive, or other COTP order, will communicate additional security measures deemed necessary.

Thirty-three commenters stated that the public lacks either the authority or the expertise for implementing the security measures for MARSEC Level 3, which include armed patrols, waterborne security, and underwater screening.