

We disagree and believe that owners and operators have the authority to implement the identified security measures. For example, it is well settled under the law of every State that an employer may maintain private security guards or private security police to protect his or her property. The regulations do not require owners or operators to undertake law enforcement action, but rather to implement security measures consistent with their longstanding responsibility to ensure the security of their vessels and facilities, as specifically prescribed by 33 CFR 6.16-3 and 33 CFR 6.19-1, by: Detering transportation security incidents; detecting an actual or a threatened transportation security incident for reporting to appropriate authorities; and, as authorized by the relevant jurisdiction, defending themselves and others against attack. It is also important to note that the security measures identified by these commenters, while listed in §§ 104.240(e) and 105.230(e), are not exclusive and only relate to MARSEC Level 3 implementation. In many instances, the owner or operator may decide to implement these security measures through qualified contractors or third parties who can provide any expertise that is lacking within the owner's or operator's own organization and who also have the required authority.

Four commenters stated that enforcing security on U.S. waterways is an inherently governmental function, not the responsibility of the maritime industry; therefore, the commenters do not want the crewmembers of foreign flag vessels to perform waterside security.

The intent of these regulations is not to mandate the use of crewmembers to perform waterside security, although that is an option. Those vessel owners and operators choosing to implement waterside security to meet the requirement of § 104.265(f) to ensure access control through additional measures during MARSEC Level 2 and, to enhance the security of the vessel during MARSEC Level 3, may choose to enter into agreements with the facility owner or operator, private security firms, or other parties to enhance the security of the vessel.

We received two comments addressing the affects of MARSEC Level changes on the STCW and International Labor Organization (ILO) standards. One commenter asked for confirmation that implementing MARSEC Level 2 "automatically exempts vessels from the STCW and ILO work hour and rest requirements." One commenter stated

disappointment that the regulations did not address the need for increased manning at MARSEC Level 3 to ensure that personnel can perform additional duties and comply with STCW mandated rest periods.

Vessel owners and operators are not exempt from any existing work hour and rest requirements when implementing these security requirements at MARSEC Level 2 or 3. The Vessel Security Plan must address how the security measures will be implemented at each MARSEC Level. Manning concerns must be considered during the Vessel Security Plan development and addressed during the plan's implementation.

One commenter asked the Coast Guard to provide guidance for operations at MARSEC Level 3 for vessels arriving from international voyages on: notification procedures, specific organizations able to provide armed security guards, and organizations able to provide underwater monitoring.

The Notice of Arrival requirements are contained in 33 CFR part 160. We encourage vessel owners and operators to contact their shipping agents in the COTP zones in which they operate to obtain information on firms and organizations that provide security services.

One commenter asked how, in accordance with § 104.240(d), the COTP will communicate permission to a vessel to enter the port if the vessel cannot implement its Vessel Security Plan.

The COTP can use a number of means to communicate to a vessel permission or denial to enter the port, such as issuing a COTP order denying entry or establishing conditions upon which the vessel may enter the port. Presently, communications to a vessel occur before entry to the port regarding required construction, safety, and equipment regulations. These communications occur through agents by satellite phone, fax, email, cellular phone, or radio communications.

We received nine comments questioning our use of the words "continuous" or "continuously" in the regulations. Four commenters requested that we amend language in § 104.245(b) by replacing the word "continuous" with the word "continual," stating that "continuous" implies that there must be constant and uninterrupted communications. One commenter requested that we amend language in § 104.285(a)(1) by replacing the word "continuously" with the word "continually," stating that "continuously" implies that there must

be constant and uninterrupted application of the security measure. One commenter requested that we amend language in § 106.275 to replace the word "continuously" with the word "frequently." One commenter recommended that instead of using the word "continuously" in § 105.275, the Coast Guard revise the definition of monitor to mean a "systematic process for providing surveillance for a facility." One commenter stated that the continuous monitoring requirements in § 106.275 place a significant burden on the owners and operators of OCS facilities because increased staff levels would be necessary to keep watch not only in the facility, but also in the surrounding area.

We did not amend the language in §§ 104.245(b) 105.235(b), or 106.240(b) because the sections require that communications systems and procedures must allow for "effective and continuous communications." This means that vessel owners or operators must always be able to communicate, not that they must always be communicating. Similarly, §§ 104.285, 105.275, and 106.275, as a general requirement, require vessel and facility owners or operators to have the capability to "continuously monitor." This means that vessel and facility owners or operators must always be able to monitor. We have amended §§ 104.285(b)(4) and 106.275(b)(4) to use the word "continuously" instead of "continually" to be consistent with § 105.275(b)(1). This general requirement is further refined in §§ 104.285, 105.275, and 106.275, in that the Vessel and Facility Security Plans must detail the measures sufficient to meet the monitoring requirements at the three MARSEC Levels.

Three commenters disagreed with the requirement to have a security alert system on a river harbor towing vessel because it would serve no useful purpose.

We have not required a security alert system for towing vessels unless they are also subject to SOLAS. In § 101.310 we state that a security alert system may be a useful addition to certain operations and could be used to meet some of the communications requirements in subchapter H; however, we did not mandate its use for all vessels.

Two commenters suggested that the Coast Guard should be responsible for facilitating communications between vessels and facilities.

We believe that it is the Coast Guard's role to ensure that vessels and facilities have the proper procedures and equipment for communicating with