

One commenter stated that the prohibitions regarding vessel personnel screening by other vessel personnel should apply at all MARSEC Levels.

The intent of § 104.265(e)(9) is to require the owner or operator of a vessel to ensure that crewmembers do not engage in screening other crewmembers. We have amended the paragraph for clarity.

Sixteen commenters voiced concern that the regulations may require that security personnel and crewmembers be armed. Six commenters suggested § 104.265(e)(15) be amended to read: "Response to the presence of unauthorized persons on board," stating that the current regulatory text implies that security personnel must be armed, which poses unacceptable risks to the vessel and its crew. Five commenters suggested revising §§ 104.290(a)(1) and (2) unless it is meant that crewmembers be armed as first responders during an attack. Three commenters stated that facility employee responsibilities should "not include meeting force with force." Three commenters suggested that we amend § 104.290(a)(1) to revise "Prohibiting" to read "Deter to the best of their ability" and § 104.290(a)(2) to revise "Deny" to read "Denying access to the best of their ability."

The regulatory language in § 104.265(e)(15) does not require that vessel personnel be armed in order to repel unauthorized personnel onboard, although it is an option. The requirement to respond to unauthorized personnel onboard a vessel does not necessarily require security personnel to repel unauthorized boarders, but rather to have in place measures that will detect and deter persons from gaining unauthorized access to the vessel or facility. If unauthorized access is attempted or gained at a vessel or facility, then the Vessel Security Plan or Facility Security Plan must describe the security measures to address such an incident, including measures for contacting the appropriate authorities and preventing the unauthorized boarder from gaining access to restricted areas. We are not requiring the owner or operator to put any personnel in "harm's way," (*i.e.*, by mandating using deadly force to confront deadly force). We have not changed § 104.290 as suggested by the commenter because we believe these suggested changes would erode the level of security to be achieved by the regulations. Owners and operators may find guidance in the IMO's Circular titled "Piracy and Armed Robbery, Guidance to shipowners and ship operators, shipmasters and crews on preventing and suppressing acts of piracy and armed robbery against

ships," MSC/Cir.623/Rev.3, to be a useful reference in this regard. We are amending § 104.265(b) to include a verb in the sentence for clarity. We are also mirroring this clarification in §§ 105.255(b) and 106.260(b).

Nine commenters were concerned about the designation of restricted areas. Six commenters requested that the Coast Guard clarify the wording in §§ 104.270(b) and 105.260(b) that states "Restricted areas must include, as appropriate:" because it is contradictory to impose a requirement with the word "must," while offering the flexibility by stating "as appropriate." One commenter stated that the provision that allows owners or operators to designate their entire facility as a restricted area could result in areas being designated as restricted without any legitimate security reason.

We believe that the current wording of §§ 104.270(b), 105.260(b), and 106.265(b) is acceptable. While the word "must" requires owners or operators to designate restricted areas, the word "appropriate" allows flexibility for owners or operators to restrict areas that are significant to their operations. The regulations provide for the entire facility to be designated as a restricted area, whereby a facility owner or operator would then be required to provide appropriate security measures to prevent unauthorized access into the entire facility.

One commenter stated that a "ventilation and air-conditioning system" as stated in § 104.270(b)(3) cannot be marked as a restricted area, and requested it be changed to read "ventilation and air-conditioning system control spaces."

Section 104.270(b)(3) aligns with the wording of the ISPS Code. The term "spaces" modifies the terms "ventilation and air-conditioning system" in the requirement. The intent of this requirement in the ISPS Code development was to align with various other control space definitions such as those found in SOLAS, Chapter II-2. Therefore, we have not revised the text in § 104.270 but intend to address control spaces and restricted area designations in plan review guidance.

One commenter stated that it is impractical and unsafe to lock all access ways to vessel crew accommodations, which are restricted areas, noting that the more doors that are locked in "normal passageways" the less safe the vessel becomes.

Section 104.270(d) provides a non-exhaustive list of security measures that an owner or operator may use to prevent unauthorized access to restricted areas. Only one of these measures is locking or

securing access points to restricted areas. Other methods include monitoring, using guards, or using automatic intrusion detection. The owner or operator may also use other measures to prevent unauthorized access. Finally, we recognize the potential competition between maximizing safety and maximizing security and in § 104.205(b), state, that "If * * * a conflict between any safety and security requirements applicable to the vessel arises during its operations, the Master may give precedence to measures intended to maintain the safety of the vessel, and take such temporary security measures as seem best under all circumstances." However, this provision does not circumvent overall security of vessels because the section also requires, in § 104.205(b)(3), that the owner or operator ensure the conflict is permanently resolved to the satisfaction of the Coast Guard.

Fourteen commenters stated that the requirements in § 104.275 regarding cargo handling are overly burdensome and difficult to implement. One commenter suggested that the regulations ensure that empty containers be opened and inspected. Three commenters stated it is not possible for a vessel owner or operator to ensure that cargo is not tampered with prior to being loaded, to identify cargo being brought on board, or to check cargo for dangerous substances. One commenter stated that imports should be screened at the loading port, not once they were in the U.S. and that the U.S. focus should be on knowing with whom vessel owners and operators are doing business. One commenter urged that the final rule clarify whether coordinating security measures with the shipper or other responsible party is mandatory. One commenter stated that checking cargo for dangerous substances or devices is a governmental function. Three commenters stated that the requirement in § 105.265(a)(9) to maintain a continuous inventory of all dangerous goods and hazardous substances passing through the facility is unnecessarily burdensome and should be deleted.

We recognize that screening for dangerous substances and devices is a complex and technically difficult task to implement. We have amended §§ 104.275 and 105.265 to clarify that cargo checks should be focused on the cargo, containers, or other cargo transport units arriving at or on the facility or vessel to detect evidence of tampering or to prevent cargo that is not meant for carriage from being accepted and stored at the facility without the knowing consent of the facility owner or