

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, and the Coast Guard will review these records during periodic inspections.

One commenter stated that it is appropriate for Federal, State, and local authorities to assume responsibility for terminal security, and that there must be a responsible party for the terminal at all times whether a vessel is there or not.

Section 105.200(a) states that the owner or operator of the facility must ensure that the facility operates in compliance with the requirements of this part. Therefore, the owner or operator is responsible for terminal security at all times whether or not a vessel is at the facility.

Five commenters stated that the requirement of § 105.200(b)(2), which compels Facility Security Officers to implement security measures in response to MARSEC Levels within 12 hours of notification would be problematic, especially for facilities with limited manpower, and during weekends, or nights.

We disagree with the commenters and believe that it is well within reason to expect that Facility Security Officers can implement the necessary security measures changes within 12 hours.

Two commenters recommended that the word "adequate" be deleted from § 105.200(b)(6) because the commenter believes that the owners' or operators' definition of "adequate" might not be the same as intended in the regulations.

The use of the word "adequate" throughout the regulations emphasizes that minimal coordination of security issues may not be sufficient and allows for differences in individual circumstances.

One commenter recommended that facility owners or operators should limit access to vessels moored at the facility to those individuals and organizations that conduct business with the vessel, contending that the word "visitor" may have too broad a connotation.

The regulations provide flexibility to define who can have access to a facility. The Facility Security Plan must contain

security measures for access control and can limit access to those individuals and organizations that conduct business with the vessel. We do specify that a facility must ensure coordination of shore leave for vessel personnel or crew change-out, as well as access through the facility for representatives of seafarers' welfare and labor organizations.

One commenter suggested adding a provision that would allow unimpeded access for passengers to board charterboats at facilities regulated under part 105, stating that the "extraordinary measures" required to ensure facility security could hamper public entrance to these facilities.

A facility owner or operator must coordinate access to the facility with vessel personnel under § 105.200(b)(7); however, that owner or operator is also required to implement security measures that include access control. We did not allow any group of vessel passengers or personnel unimpeded access to a facility regulated under this subchapter because it would undermine the purpose of access control. A facility owner or operator may impede passengers' access to charterboats if he or she perceives that these passengers pose a risk, are at risk, or if such passage is not in compliance with the facility's security plan.

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 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 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.

Three commenters stated that many of the requirements of § 104.265, security measures for access control, should not apply to unmanned vessels because there is no person on board the vessel at most times.

We disagree. The owner or operator must ensure the implementation of security measures to control access because unmanned barges directly regulated under this subchapter may be involved in a transportation security incident. As provided in § 104.215(a)(4), the Vessel Security Officer of an unmanned barge must coordinate with the Vessel Security Officer of any towing vessel and Facility Security Officer of any facility to ensure the implementation of security measures for the unmanned barge. We have amended § 105.200 to clarify the facility owner's or operator's responsibility for the implementation of security measures for