

unattended or unmanned vessels while moored at a facility.

Four commenters stated that any future interim rules should not apply to certain waterfront areas, such as seafarers' welfare centers and clubs, and that these areas should not be considered facilities subject to the regulations under part 105.

Seafarers' welfare centers and clubs are not specifically regulated under part 105 unless these facilities are contained within a marine transportation-related facility. Any future rulemakings regarding these types of centers or clubs would be subject to notice and comment.

One commenter requested that we amend § 105.200(b)(9) to clarify that owners or operators must report "transportation" security incidents because the word "transportation" is missing.

We agree with the commenter and have amended the section accordingly. This language is now found in § 105.200(b)(10).

Five commenters supported the Coast Guard in not specifically defining training methods. Another commenter agrees with the Coast Guard's position that the owner or operator may certify that the personnel with security responsibilities are capable of performing the required functions based upon the competencies listed in the regulations. Two commenters stated that formal security training for Facility Security Officers and personnel with security related duties become mandatory as soon as possible. One commenter stated that they were concerned with the lack of formal training for Facility Security Officers.

As we explained in the temporary interim rule (68 FR 39263) (part 101), there are no approved courses for facility personnel and, therefore, we intend to allow Facility Security Officers to certify that personnel holding a security position have received the training required to fulfill their security duties. Section 109 of the MTSA required the Secretary of Transportation to develop standards and curricula for the education, training, and certification of maritime security personnel, including Facility Security Officers. The Secretary delegated that authority to the Maritime Administration (MARAD). MARAD has developed model training standards and curricula for maritime security personnel, including Facility Security Officers. In addition, MARAD intends to develop course approval and certification requirements in the near future.

Three commenters stated that it would be difficult for smaller companies to meet the qualification requirements for Facility Security Officers that are set out in § 105.205.

We recognize that some companies will find it harder than others to locate individuals who are qualified to serve as Facility Security Officers. We believe there is flexibility in the structure of our requirements, and therefore these requirements are able to take this into account. We allow Facility Security Officers to have general knowledge, which they may acquire through training or through equivalent job experience. Formal training is not a prerequisite in the designation of a Facility Security Officer. We also allow an individual to serve as a Facility Security Officer on a collateral-duty basis, to serve as the Facility Security Officer for multiple facilities, and to delegate duties, all of which make it easier for companies to identify and designate qualified Facility Security Officers.

Fifteen commenters asked that the Coast Guard re-examine the requirement that if a Facility Security Officer serves more than one facility, those facilities must be no further than 50 miles apart. The commenters argued that companies with multiple facilities should be able to assign Facility Security Officer delegations, regardless of distance between facilities, especially since this section allows the Facility Security Officer to delegate security duties to other personnel, so long as he or she retains final responsibility for these duties. Four of these commenters did not support the limitation on Facility Security Officers from serving facilities in different COTP zones, even if the facilities are within 50 miles of each other. One commenter stated that many facilities that are not co-located may be managed as multiple site complexes using shared operational and administrative resources, and that, as such, they should have one Facility Security Officer assigned to them regardless of the distance between them.

We believe these commenters misinterpreted § 105.205(a)(2). There is no requirement that the Facility Security Officer must be situated within any particular distance of the facilities for which he or she serves. Section 105.205(a)(2) pertains to the maximum distance between the individual facilities that can be served by a single Facility Security Officer. We determined that a distance of 50 miles between facilities within a single COTP zone was appropriate for several reasons. During our initial public meetings we received comments from many small facility

operators who have numerous similarly designed, equipped and operated facilities in proximity to each other. They believed that a single Facility Security Officer could adequately meet the responsibilities set out in § 105.205(c) in situations like this. The 50-mile distance requirement was determined because facilities sharing a similar design, equipment, and operations would often share other similar characteristics such as geography, infrastructure, proximity to population centers, and common emergency response and crisis management authorities. In addition to the 50-mile limit, we require all single Facility-Security-Officer-served-facilities to be within a single COTP zone because the COTP is the Facility Security Plan approving authority, and the COTP, as Federal Maritime Security Coordinator, is the Federal official charged with communicating the MARSEC Levels to the Facility Security Officer. We have not specified where the designated Facility Security Officer must be in proximity to the facilities he or she serves. However, it is our opinion that in order to effectively carry out the duties and responsibilities specified in § 105.205(c), the Facility Security Officer should be able to easily make on-site facility visits of sufficient frequency and scope so as to be able to effectively monitor compliance with the requirements established in 33 CFR part 105.

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 106.210(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.