

Six comments were received concerning the requirement that facilities communicate changes in MARSEC Levels to vessels. Four commenters requested that OCS facilities only notify those vessels subject to part 104 of a change in MARSEC Level, instead of notifying all vessels conducting operations with the OCS facility, vessels moored to a facility, or scheduled to arrive within 96 hours.

We disagree with the commenter. Although vessels not covered under part 104 may not be likely to be involved in a transportation security incident, they may interface with facilities that are likely to be involved in a transportation security incident. Therefore, the Coast Guard requires facilities to transmit the necessary information on MARSEC Levels to all vessels they interface with regardless of whether the vessels have their own Vessel Security Plan to ensure that security at the facilities is not compromised.

We received 15 comments on the facility owner's or operator's responsibility to communicate changes in MARSEC Levels to vessels bound for the facility. Nine commenters noted that it would be difficult and impractical for facilities to notify vessels 96 hours prior to arrival of changes in MARSEC Levels because some vessels and facilities do not have a means to provide secure communications. Three commenters stated that facilities should not be responsible for notifying vessels that have not arrived at the facility of MARSEC Level changes. In contrast, one commenter suggested that the Coast Guard amend § 101.300(a) to include a provision for facilities to notify vessels of MARSEC Level changes within 96 hours, much like that which is currently found in § 105.230(b)(1).

The intent of the regulations was to give vessel owners or operators the maximum amount of time possible to ensure the higher MARSEC Level is implemented on the vessel prior to interfacing with a facility. This ensures that the facility's security at the higher MARSEC Level is not compromised when the vessel arrives. Therefore, while it may be difficult to contact a vessel in advance of its arrival, it is imperative for the security of the facility and the vessel. Additionally, communications between the facility and the vessel do not need to be secure, as MARSEC Levels are not classified information. We have not amended § 101.300(a), as the commenter suggested, because this section is intended to regulate communication at the port level, whereas § 105.230(b)(1) is

intended to regulate communication at the individual facilities within the port.

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.

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.

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: deterring 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.

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 agree that the owners and operators of barge fleet facilities have control of unmanned vessels that are moored at their facilities. As such, it is the responsibility of the facility owner or operator to ensure that the COTP is notified when compliance with a higher MARSEC Level has been implemented at the facility, including on the unmanned vessels moored at the facility.

Two commenters stated that § 105.235(b) requires an effective means of communications be in place and documented in the facility plan. One of the commenters asked if it was acceptable to communicate with the vessel through the person in charge.

Section 105.235(b) provides enough flexibility that it may be appropriate to list the person in charge, as defined in 33 CFR part 155, as a means of communication in the Facility Security Plan, provided it meets with the approval of the cognizant COTP.

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 each other. The Coast Guard does have communication responsibilities, as found in § 101.300. It is imperative, however, that vessels and facilities effectively communicate with each other in order to coordinate the implementation of security measures. Thus, we have placed this requirement on the owner or operator, not the Coast Guard. The Coast Guard will be inspecting facilities and vessels to ensure this communication is accomplished.

We received 14 comments about the length of the effective period of a continuing Declaration of Security for each MARSEC Level. Five commenters stated that there is little need to renew a Declaration of Security every 90 days and that it should instead be part of an annual review of the Vessel Security Plan. Three commenters stated that the effective period of MARSEC Level 1 should not exceed 180 days while the effective period for MARSEC Level 2 should not exceed 90 days. One commenter noted that a vessel may execute a continuing Declaration of Security and assumed that this means that a Declaration of Security for a regular operating public transit system is good for the duration of the service route. Three commenters recommended that the effective period for a Declaration of Security be either 90 days or the term for which a vessel's service