

to an OCS facility is contracted, whichever is greater. Two commenters recommended allowing ferry service operators and facility operators to enact pre-executed MARSEC Level 2 condition agreements rather than initiating a new Declaration of Security at every MARSEC Level change.

We disagree with these comments and believe that continuing Declaration of Security agreements between vessel and facility owners and operators should be periodically reviewed to respond to the frequent changes in operations, personnel, and other conditions. We believe that the Declaration of Security ensures essential security-related coordination and communication among vessels and facilities. Renewing a continuing Declaration of Security agreement requires only a brief interaction between vessel and facility owners and operators to review the essential elements of the agreement. Additionally, at a heightened MARSEC Level, that threat must be assessed and a new Declaration of Security must be completed. Less frequent review, such as during an annual or biannual review of the Vessel Security Plan, does not provide adequate oversight of the Declaration of Security agreement to ensure all parties are aware of their security responsibilities.

Five commenters requested that § 104.255(c) and (d) be amended so that a Declaration of Security need not be exchanged when conditions (e.g., adverse weather) would preclude the exchange of the Declaration of Security.

We are not amending § 104.255(c) and (d) because as stated in § 104.205(b), if in the professional judgment of the Master 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 deemed best under all circumstances. Therefore, if the Declaration of Security between a vessel and facility could not be safely exchanged, the Master would not need to exchange the Declaration of Security before the interface. However, under §§ 104.205(b)(1), (b)(2), and (b)(3), the Master would have to inform the nearest COTP of the delay in exchanging the Declaration of Security, meet alternative security measures considered commensurate with the prevailing MARSEC Level, and ensure that the COTP was satisfied with the ultimate resolution. In reviewing this provision, we realized that a similar provision to balance safety and security was not included in parts 105 or 106. We have amended these parts to give the owners

or operators of facilities the responsibility of resolving conflicts between safety and security.

Five commenters asked whether a company could have an agreement with a facility that outlines the responsibilities of all the company's vessels instead of a separate Declaration of Security for each vessel. The commenters stated that this would make the Declaration of Security more manageable for companies, vessels, and facilities that frequently interface with each other. One commenter raised a similar concern regarding barges and tugs conducting bunkering operations. One commenter suggested that Declarations of Security not be required when the vessels and "their docking facilities" share a common owner.

As stated in §§ 104.255(e), 105.245(e), and 106.250(e), at MARSEC Levels 1 and 2, owners or operators may establish continuing Declaration of Security procedures for vessels and facilities that frequently interface with each other. These sections do not preclude owners and operators from developing Declaration of Security procedures that could apply to vessels and facilities that frequently interface. However, as stated in §§ 104.255(c) and (d), 105.245(d), and 106.250(d), at MARSEC Level 3, all vessels and facilities required to comply with parts 104, 105, and 106 must enact a Declaration of Security agreement each time they interface. We believe that, even when under common ownership, vessels and facilities must coordinate security measures at higher MARSEC Levels and therefore should execute Declarations of Security. For MARSEC Level 1, only cruise ships and vessels carrying Certain Dangerous Cargoes (CDC) in bulk, and facilities that receive them, even when under common ownership, are required to complete a Declaration of Security each time they interface.

Two commenters did not support the restriction on the Facility Security Officer from being able to delegate authority to other security personnel in periods of MARSEC Levels 2 and 3. The commenters suggested that the Coast Guard use the same language in § 105.245(b), which allows the Facility Security Officer to delegate authority to a designated representative to sign and implement a Declaration of Security at MARSEC Levels 2 and 3.

Section 105.205 allows the Facility Security Officer to delegate security duties to other facility personnel. This delegation applies to the authority of the Facility Security Officer to sign and implement a Declaration of Security at MARSEC Levels 2 and 3. In order to

clarify the regulations, however, we have amended § 105.245(d) to include the language found in § 105.245(b), allowing the Facility Security Officer to delegate this authority. We have also made the same change in § 106.250(d).

Three commenters suggested that the regulation should require that the Vessel Security Officer and Facility Security Officer have verified—via e-mail, phone, or other suitable means prior to the vessel's arrival in the port—that the provisions of the Declaration of Security remain valid.

We disagree that there is a need to specify the means of communicating between the Vessel Security Officer and the Facility Security Officer about the provisions of the Declaration of Security. To maintain flexibility, the regulations neither preclude nor mandate a specific means to use when discussing a Declaration of Security.

Eight commenters stated that there is significant confusion regarding the requirements to complete Declarations of Security, especially when dealing with unmanned barges. One commenter asked if a Declaration of Security is required when an unmanned barge is "being dropped" at a facility or when "changing tows."

We agree with the commenter and are amending §§ 104.255(c) and (d) and 106.250(d) to clarify that unmanned barges are not required to complete a Declaration of Security at any MARSEC Level. This aligns these requirements with those of § 105.245(d). At MARSEC Levels 2 and 3, a Declaration of Security must be completed whenever a manned vessel that must comply with this part is moored to a facility or for the duration of any vessel-to-vessel interface.

Three commenters asked when the Coast Guard would communicate standards for U.S. flag vessels and facilities as to the timing and format of a Declaration of Security. One commenter requested information about how Declaration of Security requirements will be communicated to and coordinated with vessels that do not regularly call on U.S. ports and specific facilities.

As specified in § 101.505, the format of a Declaration of Security is described in SOLAS Chapter XI-2, Regulation 10, and the ISPS Code. The timing requirements for the Declaration of Security are specified in §§ 104.255 and 105.245. The format for a Declaration of Security can be found as an appendix to the ISPS Code. We agree that the format requirement was not clearly included in § 101.505(a) when we called out the incorporation by reference. Therefore,