

§§ 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 asked us to provide alternatives, including the use of locks, to the restricted-access control measures specified in § 105.260(d).

The measures specified in § 105.260(d) do not constitute an exclusive list; however, in § 105.260(d)(2) we specifically provide for the use of measures to secure access points that are not in active use, and this could include the use of locks.

One commenter stated that his facility could not implement the requirements of § 105.260(e)(4) regarding restricting parking adjacent to vessels because the facility does not own the area where those vehicles are parked. The commenter also stated that the facility does not own the area where vessels are unloaded.

Designating the area of the facility that is adjacent to a vessel a restricted area is of importance because vehicles may be used to cause a transportation security incident. Section 105.260(b)(1) requires, as appropriate, that areas adjacent to a vessel be designated as a restricted area. Section 105.260(e)(4) further emphasizes the importance of limiting parking near a vessel during heightened threat. The specific security measures implemented at the facility will be based on the Facility Security Assessment and Facility Security Plan, which expressly account for the facility's specific operations and the vessels it receives. Under certain circumstances, as documented in the facility security assessment report, it may be appropriate to park a properly screened vehicle alongside a vessel. However, in other circumstances it may

be inappropriate based on the type of cargo and vessel involved and the current MARSEC Level. One way for a facility operator to restrict parking near the vessel is to coordinate arrangements with the neighboring facility owner so the area can be controlled. The Coast Guard will take into account issues concerning the individual responsibilities and jurisdiction of operators and the owners when reviewing the Facility Security Plan.

Two commenters suggested that § 105.265, "Security Measures for Handling Cargo" should state that it is applicable only to facilities that receive vessels that handle cargo.

We agree that only facilities that receive vessels that handle cargo should comply with § 105.265. Facilities that receive vessels that do not handle cargo do not have to comply with § 105.265.

One commenter stated that the language in § 105.265(c) does not define the term "active." The commenter wanted to know if the Coast Guard has developed an internal interpretation as to what is meant by "active" access points and whether it is appropriate to assume that the facility has the discretion of identifying those access points.

Access points to the facility that can be used for entering or exiting a facility should be blocked during heightened security levels. Any access point to a facility that can be used for entering or exiting a facility is considered an active access point.

Three commenters asked for editorial revisions in § 105.265(a). One commenter asked us to revise § 105.265(a)(2), which requires facilities to "prevent cargo that is not meant for carriage from being accepted and stored." The commenter stated that the section, as written, would preclude facilities from engaging in some legitimate activities such as warehousing or temporary storage. One commenter suggested adding the word "unidentified" before the word "cargo" in § 105.265(a)(6) because some facilities only store goods and do not transport them. One commenter asked why the term "location" is used twice in § 105.265(a)(9).

We agree with the commenter that many waterfront facilities may be used for warehousing or temporary storage of goods, etc., that are not intended for carriage in maritime commerce. We have amended § 105.265(a)(2) to make it clear that facility owners or operators can store items that will not be shipped in maritime commerce if they do so knowingly. We have not added the word "unidentified" in this amendment because only identified items can be

stored. We have reviewed and agree that the use of the word "location" twice in § 105.265(a)(9) is redundant. We have amended this section to remove the redundancy.

One commenter asked us to confirm its inference that § 105.265(a)(6) allows for the legitimate accumulation of cargo for a yet to be determined vessel, or for operational reasons by either the vessel or facility operator.

We agree with the commenter's interpretation. Facility owners or operators may accept cargo that does not have a confirmed date for loading, if they determine that it is appropriate to do so under the circumstances.

Three commenters requested clarification on the restrictions of cargo entering a facility. Two commenters asked us to clarify the requirements in § 105.265(a)(6) so that its restriction on entry of cargo to a facility would only apply to break-bulk and packaged cargo shipments, and would exclude bulk-liquid facilities. One commenter asked us to exempt bulk cargo facilities from the requirements of § 105.265.

We disagree with the commenters. The intent of this regulation is to ensure that only those cargoes that have a legitimate reason for being at the facility are allowed entry. By excluding certain cargoes, as suggested by the commenters, the intent of the regulation would be weakened, and we do not see an improvement in security derived from the suggestion.

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 after they arrive 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 and 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