

is unnecessarily burdensome and should be deleted.

We recognize that screening for dangerous substances and devices is a complex and technically difficult task to implement. We have amended §§ 104.275 and 105.265 to clarify that cargo checks should be focused on the cargo, containers, or other cargo transport units arriving at or on the facility or vessel to detect evidence of tampering or to prevent cargo that is not meant for carriage from being accepted and stored at the facility without the knowing consent of the facility owner or operator. Screening of vehicles remains a requirement under these regulations; however, checking cargo containers may be limited to external examinations to detect signs of tampering, including checking of the integrity of seals. The issue of cargo screening will be addressed by TSA, BCBP, and other appropriate agencies through programs such as the Customs-Trade Partnership Against Terrorism (C-TPAT), the Container Security Initiative (CSI), performance standards developed under section 111 of the MTSA, and the Secure Systems of Transportation (SST) under 46 U.S.C. 70116. The requirement to ensure the coordination of security measures with the shipper or other party aligns with the ISPS Code. It is intended that provisions be coordinated when there are regular or repeated cargo operations with the same shipper. This facilitates security between the shipper and the facility, therefore, we have made this type of coordination mandatory. We have, however, amended §§ 104.275(a)(5) and 105.265(a)(8) to clarify that this coordination is only required for frequent shippers. The requirements in § 105.265(a)(9) may be challenging to implement, but the requirements are consistent with the ISPS Code, part B. We believe that a continuous inventory of goods is important to the security of facilities, especially for those that handle dangerous goods or hazardous substances and may be involved in a transportation security incident.

Ten commenters were concerned about health and occupational safety during inspection of cargo spaces. Five commenters raised this concern in connection with tank barges under § 104.275(b) and (c) vessel security measures for handling cargo. Two other commenters raised the concern under the facility cargo handling requirements in § 105.265(b)(1) and (b)(4).

Under § 104.275, we provide flexibility in how cargo spaces must be checked. This allows owners and operators to take safety into account in devising cargo check procedures. To

emphasize safety during cargo operations, we have amended §§ 104.275(b)(1) and 105.265(b)(1) to reflect that a check on cargo and cargo spaces should be done unless it is unsafe to do so. We did not amend § 104.275(b)(4) in a similar manner because if the check of seals or other methods used to prevent tampering is unsafe for vessel personnel to conduct, they should liaise with the facility to ensure this is done.

One commenter requested changes in the MARSEC Level 2 cargo handling provisions of § 105.265(c). The commenter stated that the container segregation provisions of paragraph (c)(5) are impractical, and that the provision in paragraph (c)(7) for limiting the number of locations where dangerous goods or hazardous substances are stored would merely create easier targets for terrorists.

We agree that the requirement in § 105.265(c)(5) could be impractical for the majority of cargo operations; however, it should be noted that this section lists various methods to use in order to meet MARSEC Level 2. It was neither an exhaustive list nor a mandated one. To list an alternative cargo handling option, we have changed § 105.265(c)(5) by removing the requirement for cargo segregation and replacing it with the option to coordinate cargo shipments with regular shippers as was mentioned in § 105.265(a). This change now aligns the facility cargo handling security measures with those found in § 104.275 for vessels, as appropriate. We did not amend § 105.265(c)(7) because we believe there may be circumstances when the requirement is desirable because it facilitates other security measures such as monitoring and access control.

Two commenters stated that fleeting facilities should not be exempt from the requirements for security measures for delivery of vessel stores and bunkers because at some fleeting areas, stores are put on board vessels, surveyors collect samples, and equipment repairs are completed.

We believe that certain activities, such as provisions being put on board vessels, surveyors collecting samples, and equipment repairs done at the fleeting facility, occur so infrequently that they would be adequately covered by the security measures of the involved vessels or barges. Those fleeting facilities where these activities routinely occur should take those activities into consideration in their Facility Security Assessments.

One commenter stated that, as detailed in § 105.270, the facility's

responsibilities for the security of vessel stores are excessive. The commenter said that anything beyond validating the vendor's identity and the stores order should be the government's responsibility.

We disagree with the commenter. A facility is a vital link in the transfer of vessel stores from vendor to vessel. Our requirements focus on the safety and integrity of stores brought into the facility and on preserving stores from tampering while they are at the facility, and therefore help protect both the facility and those whom it serves.

Two commenters stated that the facility's responsibilities for the security of vessel stores as detailed in § 105.270 are less restrictive than security measures for handling cargo. The commenter recommended combining the security requirements for stores and bunkers with those requirements for handling cargo. One commenter stated that the delivery of vessel stores and bunkers are usually coordinated with the ship's agent and not the facility, and therefore the facility owner or operator should not be required to ensure that security measures are implemented.

We disagree with the commenters. We allow for the owner or operator to enact scalable measures that can provide for different levels of security. The owner or operator may enact more stringent measures for stores and bunkers to match those for handling cargo if desired. However, procedures for vessel stores and bunkers are appreciably different than procedures for most other cargo handling and usually involve different personnel; therefore, we have retained the language in § 105.270. Further, we believe that the facility owner or operator has the responsibility for providing appropriate security measures for all deliveries on the facility.

We received ten comments questioning our use of the words "continuous" or "continuously" in the regulations. Four commenters requested that we amend language in § 104.245(b) by replacing the word "continuous" with the word "continual," stating that "continuous" implies that there must be constant and uninterrupted communications. One commenter requested that we amend language in § 104.285(a)(1) by replacing the word "continuously" with the word "continually," stating that "continuously" implies that there must be constant and uninterrupted application of the security measure. One commenter requested that we amend language in § 106.275 to replace the word "continuously" with the word "frequently." One commenter