

recommended that instead of using the word “continuously” in § 105.275, the Coast Guard revise the definition of monitor to mean a “systematic process for providing surveillance for a facility.” One commenter stated that the continuous monitoring requirements in § 106.275 place a significant burden on the owners and operators of OCS facilities because increased staff levels would be necessary to keep watch not only in the facility, but also in the surrounding area.

We did not amend the language in §§ 104.245(b) 105.235(b), or 106.240(b) because the sections require that communications systems and procedures must allow for “effective and continuous communications.” This means that vessel owners or operators must always be able to communicate, not that they must always be communicating. Similarly, §§ 104.285, 105.275, and 106.275, as a general requirement, require vessel and facility owners or operators to have the capability to “continuously monitor.” This means that vessel and facility owners or operators must always be able to monitor. We have amended §§ 104.285(b)(4) and 106.275(b)(4) to use the word “continuously” instead of “continually” to be consistent with § 105.275(b)(1). This general requirement is further refined in §§ 104.285, 105.275, and 106.275, in that the Vessel and Facility Security Plans must detail the measures sufficient to meet the monitoring requirements at the three MARSEC Levels.

One commenter asked how the Coast Guard defines “critical vessel-to-facility interface operations” that need to be maintained during transportation security incidents.

Section 104.290(a) requires vessel owners or operators to ensure that the Vessel Security Officer and vessel security personnel can respond to threats and breaches of security and maintain “critical vessel and vessel-to-facility interface operations,” while paragraph (e) of that section requires non-critical operations to be secured in order to focus response on critical operations. The Coast Guard does not define the critical operations that need to be maintained during security incidents, because these will vary depending on a vessel’s physical and operational characteristics, but requires each vessel to provide its own definition as part of its Vessel Security Plan. Section 104.305(d) requires that they discuss and evaluate in the Vessel Security Assessment report key vessel measures and operations, including operations involving other vessels or facilities.

Two commenters supported the exemption from this part for those facilities that have designated public access areas. One commenter suggested that ferries be exempted from screening unaccompanied baggage. One commenter recommended that we explicitly exempt public access areas from MARSEC Level 2 and 3 passenger screening and identification requirements.

We do not intend to exempt unaccompanied baggage from screening since we believe that it is absolutely necessary to screen unaccompanied baggage. We have amended the regulations to clarify the requirements for passenger vessels, ferries, and public access areas in § 105.285 and to exempt public access areas from the MARSEC Level 2 and 3 passenger screening and identification requirements in § 105.110.

One commenter asked us to define the term “CDC facility” used in § 105.295, and recommended that the section should apply only when CDC is actually present on a facility.

A CDC facility is a “facility” that handles “certain dangerous cargo (CDC).” Both of these terms are defined in § 101.105. We disagree that § 105.295 should apply only when CDC is actually present on a facility, because the measures required by the section must be taken in advance so that they can be implemented when CDC is present. It should be noted that when defining what constitutes a CDC, we referenced § 160.204 to ensure consistency in Title 33. We are constantly reviewing and, when necessary, revising the CDC list based on additional threat and technological information. Changes to § 160.204 would affect the regulations in 33 CFR subchapter H because any changes to the CDC list would also affect the applicability of subchapter H. Any such change would be the subject of a future rulemaking.

Six commenters inquired whether § 105.295(b)(2) requires personnel to be present or if electronic equipment, such as cameras or monitors watched by personnel, may be used to satisfy the requirement.

Cameras or monitors watched by personnel could be used to meet the requirements of § 105.275, Security measures for monitoring, for MARSEC Level 1. However, the intent of § 105.295(b)(2), Additional requirements—Certain Dangerous Cargo (CDC) facilities, is to provide a higher level of security at MARSEC Level 2 or 3 for facilities handling CDCs. Guards and patrols provide a visible deterrent which we believe is an appropriate higher standard of security for CDC facilities because of the risk they pose

if involved in a transportation security incident. To clarify, we are amending § 105.295(b)(2) by removing the words “guard or” to eliminate any ambiguity as to the need for a physical presence at a facility that handles CDC during MARSEC Levels 2 and 3. The intent of these regulations is to provide a higher level of security for these facilities.

Five commenters stated that the additional requirements for barges in fleeting facilities (as stated in § 105.296) should only apply to CDC barges at MARSEC Level 1.

We disagree that the additional requirements for barges in fleeting facilities should only apply to CDC barges at MARSEC Level 1. In order to protect the facilities and barges, the requirements applying to barges carrying CDC should also apply to those carrying cargoes subject to subchapters D or O at MARSEC Level 1.

Nine commenters stated that barges with CDC, subject to 46 CFR subchapters D or O, should be segregated “as appropriate,” or based on the results of a security assessment, because segregation of tank barges can be impractical when trying to assemble or break down a mixed tow and may only create a more attractive target for would-be terrorists.

We recognize that facility owners and operators need flexibility in storing and handling barges and have modified § 105.296 by removing the requirement to segregate barges carrying CDC or cargoes subject to 46 CFR subchapters D or O. Instead, we have required barges carrying these cargoes to be kept within a restricted area. This will allow facility owners and operators to store other barges within the restricted area. The regulations do not prohibit or require that the assembly or break down of tows occur within the restricted area. The security measures that will be applied while assembling or breaking tows must be addressed in the Facility Security Plan. We have also amended, for clarity, the requirements of part 105 so that it only applies to those barges that carry cargo regulated under 46 CFR subchapters D or O in bulk by amending §§ 105.105 and 105.296.

Six commenters asked us to clarify whether § 105.296 requires one towing vessel per 100 barges that carry CDC.

As written, § 105.296 requires one towing vessel per 100 barges, which means any type of barge, irrespective of cargo. It should be noted that this requirement conforms to the existing 1-to-100 tug/barge ratio that already exists in 33 CFR part 165 during high water conditions.

Two commenters stated that most barge fleeting facilities are difficult to