

*Subpart D—Area Maritime Security (AMS) Assessment*

This subpart directs the AMS Committee to ensure development of a risk-based AMS Assessment.

We received four comments regarding the use of third party companies to conduct security assessments. Two commenters asked if we will provide a list of acceptable assessment companies because of the concern that the vulnerability assessment could “fall into the wrong hands.” One commenter requested that the regulations define “appropriate skills” that a third party must have in order to aid in the development of security assessments. One commenter stated that the person or company conducting the assessment might not be reliable.

We will not be providing a list of acceptable assessment companies, nor will we define “appropriate skills.” It is the responsibility of the vessel or facility owner or operator to vet companies that assist them in their security assessments. In the temporary interim rule (68 FR 39254), we stated, “we reference ISPS Code, part B, paragraph 4.5, as a list of competencies all owners and operators should use to guide their decision on hiring a company to assist with meeting the regulations. We may provide further guidance on competencies for maritime security organizations, as necessary, but do not intend to list organizations, provide standards within the regulations, or certify organizations.” We require security assessments to be protected from unauthorized disclosures and will enforce this requirement, including using the penalties provision under § 101.415.

One commenter stated that any third party participating in developing the AMS Assessment should sign non-disclosure or secrecy agreements regarding any classified, sensitive security, commercially sensitive, or proprietary information developed, collected, or otherwise accessed during the preparation of the AMS Assessment.

If the AMS Committee or the Coast Guard chooses to use third parties in developing the AMS Assessment or the AMS Plan, those third parties must possess the same level of clearance as the material they are helping to develop, collect, or otherwise access. As required by § 103.300(b)(6), the charter under which the AMS Committee operates will establish rules for handling and protecting classified and sensitive security information. We intend to address third parties signing non-disclosure or secrecy agreements to

protect classified or sensitive security information in future guidance.

One commenter supported the development of a risk-based AMS Assessment but requested the addition of assessment requirements to specifically include: (1) Consideration of requiring Facility Security Plans and Vessel Security Plans for vessels that carry fewer than 150 passengers or facilities that serve these smaller operators, and (2) consideration of the public transit sector. The commenter stated that adding requirements to assess smaller operations would address a gap created because the current regulations exempt vessels and facilities that handle 150 passengers or fewer. Furthermore, the commenter stated that a critical look at the public transit sector (e.g., ferry vessels) was needed because implementing certain security measures could severely hurt this industry and could cause a security inequity with other public transportation modes. The commenter further suggested that the public transit sector should be allowed to come forward with security recommendations to satisfy the AMS Plan.

We agree that both the consideration of small vessel and facility operations as well as public transit must be included in the AMS Assessment. Section 103.405 was developed to cover these topics but did not go into detail. We believe the details of the AMS Assessment are best embodied in guidance. We intend to provide additional guidance in a revision to NVIC 9–02 (Guidelines for Port Security Committees, and Port Security Plans Required for U.S. Ports). We intend to update this guidance to incorporate several suggestions and address the consideration of security measures for vessels and facilities that are not directly regulated under parts 104 or 105 but, due to the specific nature of their port location or operation, may require additional security measures or requirements. Public transit issues and parity with other transportation modes is also a concern. The AMS Assessment is required to address transportation infrastructure, which includes all ferry operations, as well as train or other modes affecting the area maritime community.

One commenter stated that the AMS Assessment should include consideration of manufacturers and users of hazardous material.

Section 103.405 lists the elements that must be taken into consideration in developing the AMS Assessment. These elements are broadly defined and could include manufacturers and users of hazardous materials if they may be

involved in a transportation security incident.

Four commenters requested that the Company and the Facility Security Officers be given access to the “vulnerability assessment” done by the COTP to facilitate the development of the Facility Security Plan and ensure that the Facility Security Plan does not conflict with the AMS Plan.

The AMS Assessments directed by the Coast Guard are broader in scope than the required Facility Security Assessments. The AMS Assessment is used in the development of the AMS Plan, and it is a collaborative effort between Federal, State, Indian Tribal, and local agencies as well as vessel and facility owners and other interested stakeholders. The AMS Assessments are sensitive security information. Access to these assessments, therefore, is limited under 49 CFR part 1520 to those persons with a legitimate need-to-know (e.g., Facility Security Officers who need to align Facility Security Plans with the AMS Plan may be deemed to have need to know sensitive security information). In addition, potential conflicts between security plans and the AMS Plan will be identified during the Facility Security Plan approval process.

*Subpart E—Area Maritime Security (AMS) Plan*

This subpart concerns the elements of the AMS Plan, requirements on exercising the AMS Plan, and recordkeeping requirements.

One commenter supported the creation of an AMS Plan and believes it provides details of operational and physical measures that must be in place at all MARSEC Levels rather than blanket security rules that do not appropriately apply to the public transit sector (e.g., ferry vessels).

We believe the AMS Plan is an excellent tool to coordinate and communicate security measures throughout the port community. The AMS Plan takes into account unique port operations and their criticality to the community and tailors security measures to effectively continue essential port operations as MARSEC Levels increase.

One commenter asked that we ensure the interoperability of the various plans required in parts 101 through 106, stating that we must have a coordinated approach to the implementation of national maritime security requirements.

We agree with the commenter and intend to take the interoperability of security plans into account as we review and approve security plans for vessels