

including through the penalties provision, § 101.415.

We received three comments regarding the use of RSOs. Two commenters asked whether an RSO could complete a Vessel Security Assessment. One commenter stated that there is a good deal of confusion concerning the fact that an RSO may audit a Vessel Security Assessment and a Vessel Security Plan but cannot actually perform the assessment.

The Coast Guard is not designating any RSOs and will be approving and verifying implementation of all Vessel Security Plans. As provided in § 104.300(c), third parties may be used in any aspect of the Vessel Security Assessment if they have the appropriate skills and if the Company Security Officer reviews and accepts their work. The regulations do not prohibit any third party, including entities that have RSO status abroad, from performing an assessment or audit. However, the regulations prohibit a third party or any person responsible for implementing any security measures in the Vessel Security Plan from performing required audits. It should be noted that the ISPS Code prohibits an RSO that is involved in developing a Vessel Security Plan from reviewing or approving, on behalf of an Administration, the Vessel Security Plan.

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 operators 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, the Coast Guard will identify potential conflicts between security plans and the AMS Plan during the Facility Security Plan approval process.

One commenter asked whether persons who have already completed the "ISPS—Company Security Officers

Course" can be considered competent to carry out a shipboard assessment.

The owner or operator of a vessel may rely upon third parties to conduct the Vessel Security Assessment. Section 104.300(d) lists the areas in which anyone involved in a Vessel Security Assessment must have knowledge. While we have not examined the "ISPS—Company Security Officers Course" to determine whether it provides adequate training in the areas listed in § 104.300(d), an owner or operator may make that determination on their own in light of the regulatory and international competency requirements.

One commenter asked for clarification of the terms "self assessments," "security assessments," "risk/threat assessments," and "on-scene surveys."

Risk/threat assessments and self assessments are not specifically defined in the regulations, but refer to the general practices of assessing where a vessel or facility is at risk. The assessments required in parts 104 through 106 must take into account threats, consequences, and vulnerabilities; therefore, they are most appropriately titled "security assessments." This title also aligns with the ISPS Code. To clarify that §§ 101.510 and 105.205 address security assessments required by subchapter H, we have amended these sections to change the term "risk" to the more accurate term "security." "On-scene surveys" are explained in the security assessment requirements of parts 104, 105, and 106. As explained in § 104.305(b), for example, the purpose of an on-scene survey is to "verify or collect information" required to compile background information and "consists of an actual survey that examines and evaluates existing vessel protective measures, procedures, and operations." An on-scene survey is part of a security assessment.

Three commenters asked how a company should assess the "worse-case scenario" regarding barges and their cargo.

There are various methods of conducting a security assessment, several of which we outlined in § 101.510. These assessment tools, the assessment requirements themselves as discussed in §§ 104.305, 105.305, and 106.305, and other assessment tools that have been developed by industry should enable owners or operators to evaluate the vulnerability and potential consequences of a transportation security incident involving the barge or the cargo it carries.

Two commenters asserted that the requirement in § 104.305(b) for an on-

scene survey to be complete and plan submitted 60 days in advance of the vessel's operation is not reasonable because the vessel's crew and equipment may not yet be on board or installed.

We recognize the requirements of § 104.305(b) may pose challenges for owners and operators that intend to put their vessels into service after July 1, 2004. We believe the elements of a Vessel Security Assessment, as listed in § 104.305(a), can be addressed before the vessel comes into full operation. The purpose of part 104 is to ensure that an effective Vessel Security Plan is implemented before interfacing with facilities or other vessels. It would be imprudent to allow vessels to enter into service without Vessel Security Plans in place. Therefore, we have not amended this requirement and will only allow vessels to operate upon verification of the implementation of an approved Vessel Security Plan.

Three commenters requested that the Coast Guard amend preamble language to clarify which personnel may conduct a Vessel Security Assessment, stating that we were not clear in the temporary interim rule (68 FR 39240) (part 101).

As provided in § 104.210(a)(4), the Company Security Officer may delegate duties required in part 104, including conducting Vessel Security Assessments. The Company Security Officer remains responsible for the performance of all security-related duties, even when delegated. Under § 104.300(c), third parties may work on a Vessel Security Assessment so long as the Company Security Officer reviews and accepts their work.

One commenter noted that § 104.305(d)(2) requires that the Vessel Security Assessment report address, among other things, the structural integrity of the vessel, and that the implications of this requirement is that we will have non-naval architects commenting on the structural integrity of vessels built under existing rules and regulations. The commenter does not believe that there are counter-measures available for perceived shortcomings in the ship's construction standards and also asks if the Coast Guard anticipates using Vessel Security Assessments as a basis for proposals to amend SOLAS construction standards. Two commenters noted that, although required to assess their vulnerability of approaching recreational boats that may pose harm, vessels are not equipped to react to such a threat.

The provisions of § 104.305(d)(2) align with the ISPS Code, part B. The owner or operator is responsible for the Vessel Security Assessment and,