

therefore, may have a naval architect or other qualified professional evaluate the structural integrity of the vessel in conducting the assessment. If, in evaluating the structural integrity of a vessel, the owner or operator determines that no security measures are available for perceived shortcomings in the ship's structural integrity, then the plan will not be required to contain any. We do not, at this time, anticipate using the Vessel Security Assessment as a basis for proposing amendments to SOLAS construction standards. With regard to approaching recreational boats, at higher MARSEC Levels, the owner or operator must implement appropriate security measures if the vessel is at risk from such a threat, such as changing operational schedule, using watercraft as a deterrence or coordinating with the facility for such use, or notifying the COTP or the NRC of a specific threat.

After further review of subpart C of parts 104, 105, and 106, we amended §§ 104.310, 105.310, and 106.310 to state that the security assessment must be reviewed and updated each time the security plan is revised and when the security plan is submitted for re-approval.

Subpart D—Vessel Security Plan (VSP)

This subpart describes the content, format, and processing for Vessel Security Plans.

Two commenters asked the Coast Guard to change the language in § 104.400(a) to delineate the responsibilities of towing vessels and facilities when dealing with unmanned vessels.

We are amending the definition of "owner or operator" in § 101.105 to clarify when "operational control" of unmanned vessels passes between vessels and facilities. No change was made to § 104.400(a) because the change to the definition of "owner or operator" addresses this concern.

One commenter suggested the Coast Guard change the definition of Vessel Security Plan to read verbatim from the MTSA.

Our definition of Vessel Security Plan is consistent with the MTSA, and we believe that it provides clarity on the purpose of the plan.

One commenter stated that Vessel Security Plans should contain a statement recognizing the authority of the Coast Guard to require security measures to deter a transportation security incident and acknowledging that the owner or operator will ensure, by contract or other approved means, the availability of the particular security measures when and if specifically

designated and required by the Coast Guard.

The MTSA provided the authority for us to require additional security; however, the Vessel Security Plan need not contain a statement recognizing the authority of the Coast Guard. Under § 104.240(b)(1), we state that the vessel owner or operator must ensure that whenever a higher MARSEC Level is set for the port in which the vessel is located or is about to enter, the vessel complies, without undue delay, with all measures specified in the Vessel Security Plan. Section 104.240(e) requires that, at MARSEC Level 3, the owner or operator must be able to implement additional security measures. The Vessel Security Plan need only describe how the owner or operator will meet the requirements in § 104.240; the statement "by contract or other approved means" is not required.

One commenter stated that as part of developing a Vessel Security Plan, the commenter would have to contract, in advance, with shore-based companies for security measures and anti-terrorism services.

Nothing in these regulations requires that vessel owners or operators contract for such services in advance. However, if an owner or operator of a vessel develops and has approved a Vessel Security Plan that states it will hire shore-based companies to provide certain security measures, then the vessel owner or operator must be prepared to demonstrate that the plan can be implemented as approved. It is the intent of these regulations that vessel owners or operators, in accordance with their Vessel Security Assessments, identify those resources they will need at the various MARSEC Levels to ensure that they can implement their Vessel Security Plans.

One commenter recommended that a "working language" provision be added to the regulation to ensure that the Vessel Security Plan is understood by the crew that is responsible for its implementation. One commenter recommended that the Coast Guard amend the requirements of part 104 to include a provision to encourage foreign vessels to carry a copy of their Vessel Security Plan written in English. This commenter believed that Coast Guard Port State Control officers may be delayed when they encounter a Vessel Security Plan written in a language other than English.

We agree that a plan written in a language other than English may cause a delay during a Port State Control examination. However, we believe that all vessel personnel must have knowledge of security-related measures

as specified in the Vessel Security Plan. We agree, therefore, that providing the Vessel Security Plan or sections of the Vessel Security Plan in the working language of the crew is good maritime practice. While we require that the Vessel Security Plan be submitted in English, we are amending § 104.400 to also encourage the owner or operator of a vessel to provide a translation in the working language of the crew to ensure that vessel personnel can perform their security duties. We are also amending § 104.410 to clarify that we require Vessel Security Plans to be submitted to the MSC in English. Additionally, to meet our international obligations we do not require that foreign vessels carry on board the vessel a copy of its Vessel Security Plan written in English. Part A of the ISPS Code permits Vessel Security Plans to be written in the working language or languages of the ship, so long as a translation of the plan is provided in English, Spanish, or French. As we stated in the preamble of the temporary interim rule (68 FR 39297) (part 101), a vessel may be delayed while translator services are acquired when a Port State Control officer is presented a Vessel Security Plan in a language that he or she does not understand. Although not required, it would help our Port State Control efforts if the plan were maintained in English as well.

One commenter recommended that the provisions for the MTSA, requiring Vessel Security Plans to be consistent with the National and AMS Plans, be waived until both of these plans exist.

We cannot waive a legislative requirement without express authority to do so. However, we do not anticipate that Vessel Security Plans or Facility Security Plans will need to be resubmitted or revised when the National and AMS Plans are developed. We view the regulatory requirements for Vessel Security Plans and Facility Security Plans to be the fundamental building blocks for these broader plans.

One commenter stated that an outline for Vessel Security Plans should be provided similar to the one in § 105.405 for Facility Security Plans.

We believe that the format for the Vessel Security Plans provided in § 104.405 is complete and differs little from the one provided in § 105.405.

Three commenters recommended that the regulations be amended to close "the gap" in the plan-approval process to address the period of time between December 29, 2003, and July 1, 2004. Another commenter suggested submitting the Facility Security Plan for review and approval for a new facility