

“within six months of the facility owner or operator’s intent of operating it.”

We agree that the regulations do not specify plan-submission lead time for vessels, facilities, and OCS facilities that come into operation after December 29, 2003, and before July 1, 2004. The owners or operators of such vessels, facilities, and OCS facilities are responsible for ensuring they have the necessary security plans submitted and approved by July 1, 2004, if they intend to operate. We have amended §§ 104.410, 105.410, and 106.410 to clarify the plan-submission requirements for before and after July 1, 2004.

One commenter suggested that the Coast Guard amend § 104.410(a) to read: “each vessel owner or operator, where required, must either” instead of “each vessel owner or operator must either.”

We disagree with the comment because we feel that the current language best conveys the intent of the regulation. We believe that it is clear that this part is applicable only to those owners or operators who are required to submit a security plan.

After further review of the “Submission and approval” requirements in §§ 101.120, 104.410, 105.410, and 106.410, we have amended the requirements to clarify that security plan submissions can be returned for revision during the approval process.

Thirty commenters commended the Coast Guard for providing an option for an Alternative Security Program as described in § 101.120(b) and urged the Coast Guard to approve these programs as soon as possible.

We believe the provisions in § 101.120(b) will provide greater flexibility and will help owners and operators meet the requirements of these rules. We will review Alternative Security Program submissions in a timely manner to determine if they comply with the security regulations for their particular segment. Additionally, we have amended §§ 104.410(a)(2), 105.410(a)(2), 106.410(a)(2), 105.115(a), and 106.110(a) to clarify the submission requirements for the Alternative Security Program.

We received 15 comments about the process of amending and updating the security plans. Five commenters requested that they be exempted from auditing whenever they make minimal changes to the security plans. Two commenters stated that it should not be necessary to conduct both an amendment review and a full audit of security plans upon a change in ownership or operational control. Three commenters requested a *de minimis* exemption to the requirement that

security plans be audited whenever there are modifications to the vessel or facility. Seven commenters stated that the rule should be revised to allow the immediate implementation of security measures without having to propose an amendment to the security plans at least 30 days before the change is to become effective. The commenters stated that there is something “conceptually wrong” with an owner or operator having to submit proposed amendments to security plans for approval when the amendments are deemed necessary to protect vessels or facilities.

The regulations require that upon a change in ownership of a vessel or facility, the security plan must be audited and include the name and contact information of the new owner or operator. This will enable the Coast Guard to have the most current contact information. Auditing the security plan is required to ensure that any changes in personnel or operations made by the new owner or operator do not conflict with the approved security plan. The regulations state that the security plan must be audited if there have been significant modifications to the vessel or facility, including, but not limited to, their physical structure, emergency response procedures, security measures, or operations. These all represent significant modifications. Therefore, we are not going to create an exception in the regulation. We recognize that the regulations requiring that proposed amendments to security plans be submitted for approval 30 days before implementation could be construed as an impediment to taking necessary security measures in a timely manner. The intent of this requirement is to ensure that amendments to the security plans are reviewed to ensure they are consistent with and supportable by the security assessments. It is not intended to be, nor should it be, interpreted as precluding the owner or operator from the timely implementation of additional security measures above and beyond those enumerated in the approved security plan to address exigent security situations. Accordingly we have amended §§ 104.415, 105.415, and 106.415 to add a clause that allows for the immediate implementation of additional security measures to address exigent security situations.

One commenter stated that vessel owners and operators should be allowed to amend Vessel Security Plans through annual letters to the Coast Guard, stating that Vessel Security Plans should be living documents that can be readily changed to reflect audit findings and lessons learned from drills and exercises. One commenter requested a

definition for the scope of a plan change that constitutes an amendment to a Vessel Security Plan.

We agree that the Vessel Security Plan is a living document that should be continuously updated to incorporate changes or lessons learned from drills and exercises, and the regulations currently allow for frequent audit and amendments. We believe, however, that any changes to Vessel Security Plans should be submitted to the Coast Guard as soon as practicable, which may require more than an annual letter. In addition, we require that vessel owners and operators submit changes to the Marine Safety Center for review 30 days before the change becomes effective to ensure changes are consistent with the regulations.

Five commenters asked about the need for independent auditors under §§ 104.415 and 105.415. Two commenters recommended that we amend § 105.415(b)(4)(ii) to read “not have regularly assigned duties for that facility” as this would allow flexibility for audits to be conducted by individuals with security-related duties as long as those duties are not at that facility.

We believe that independent auditors are one, but not the only, way to conduct audits of Facility Security Plans. In both §§ 104.415 and 105.415, paragraph (b)(4) lists three requirements for auditors that, for example, could be met by employees of the same owner or operator who do not work at the facility or on the vessel where the audit is being conducted. Additionally, paragraph (b)(4) states that all of these requirements do not need to be met if impracticable due to the facility’s size or the nature of the company.

Miscellaneous

Two commenters recommended that the regulations be amended to clarify the authority of the cognizant Officer in Charge of Marine Inspection to issue the ISSC to qualifying vessels.

To clarify this authority, we have added 46 CFR 2.01–25(a)(2)(viii).

After further review of this part we made several non-substantive editorial changes, such as adding plurals and fixing noun, verb, and subject agreements. These sections include: §§ 104.200(b)(14)(i), 104.215(a)(3), 104.265(b)(1) and (c)(5), 104.270(b)(5), 104.285(a)(1)(i), and 104.305(d)(3)(iv). In addition, the part heading in this part has been amended to align with all the part headings within this subchapter.

Regulatory Assessment

This final rule is a “significant regulatory action” under section 3(f) of