

105 should be clarified to state that the facility owner is the entity responsible for implementing and ensuring compliance with the facility security requirements and facility operators should be requested to address activities that are otherwise under their control, and noted that the facility operator lacked the jurisdiction to implement security measures for the entire facility.

The regulations require the owner or operator of a facility to submit a Facility Security Plan. If the facility is comprised of independent operators, then each operator is required to submit a Facility Security Plan unless the owner submits a plan that encompasses the operations of each operator. The submission of the security plan should be coordinated between the owner and operators. The Coast Guard will take into account issues concerning the individual responsibilities and jurisdiction of operators and owners when reviewing the security plan.

One commenter requested that the "Facility Vulnerability and Security Measures Summary" (form CG-6025) be available in electronic format and that electronic submission be available.

We agree, and have placed the form on our Port Security Directorate Web site: <http://www.uscg.mil/hq/g-m/mp/index.htm>. We are not, at this time, able to accept these forms electronically because we do not have a site capable of receiving sensitive security information. We are working on this issue, however, and hope to have this capability in the future.

We received three comments regarding access by individuals to and from vessels moored at a facility. Two commenters recommended the language in § 105.405(a)(6) be modified by adding: "including procedures for personnel access through the facility to and from the ship" to the end of the existing verbiage. One commenter recommended that facility owners or operators should limit access to vessels moored at the facility to those individuals and organizations that conduct business with the vessel, contending that the word "visitors" may be too broad.

The intent of the wording in § 105.405(a)(10) was to encompass the concept of "including procedures for personnel access through the facility to and from the ship." However, the regulations provide flexibility to allow the facility to limit access to those visitors that have official business with the vessel.

Three commenters recommended that this rule 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 "within six months of the facility owner's 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 the various dates before July 1, 2004, and after this date.

One commenter stated that § 105.410 regarding the Facility Security Plan approval process does not address what would occur if the COTP fails to approve or disapprove a plan in a timely manner and recommended that the rule include language stating that a timely submitted plan that is not approved by the COTP within 24 months be deemed to have interim approval.

As stated in § 105.120(b), if the plan has not been reviewed prior to July 1, 2004, the facility owner or operator will receive an acknowledgement letter from the COTP stating that the COTP has received the Facility Security Plan for review and approval. The facility may continue to operate so long as it remains in compliance with the submitted Facility Security Plan. We do not agree with the commenter that after 24 months, the facility should have interim approval by default.

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.

One commenter recommended that the COTP not be required to approve Facility Security Plans; rather, the COTP should "spot-check" facilities to see if they adhere to their plans' procedures.

We disagree. The ISPS Code requires contracting governments to approve facility security plans for facilities within their jurisdiction. Approval of a Facility Security Plan by the COTP ensures that the facility's plan aligns with the requirements of the ISPS Code, the MTSA, and these final rules. Compliance by the facility with the terms of its approved plan will be the subject of periodic Coast Guard inspection.

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.

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