

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 insignificant failures in the Facility Security Plan discovered during exercises should not result in the need to resubmit a Facility Security Plan.

We believe that any failure of the Facility Security Plan during an exercise is a significant failure and, therefore, should be corrected. Section 105.415 provides that the COTP may determine that an amendment to a Facility Security Plan is required to maintain the facility's security.

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.

One commenter believed that § 105.415 does not provide enough flexibility in performing the annual audits of Facility Security Plans.

We disagree that the requirements of § 105.415 are not flexible enough with respect to auditing, insofar as it provides an exception to the

requirements when they are "impractical due to the size and nature of the company or the facility personnel."

Additional Changes

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: §§ 105.105(c)(1), 105.106(a), 105.205(c)(3), 105.275(a)(1), and 105.400(b). 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 Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of Department of Homeland Security. A "Cost Assessment and Final Regulatory Flexibility Analysis" is available in the docket as indicated under **ADDRESSES**. A summary of comments on the assessment, our responses, and a summary of the assessment follow.

Two commenters addressed the burdens involved in moving from MARSEC Level 1 to MARSEC Level 2. One strongly urged the Coast Guard to be cautious whenever contemplating raising the MARSEC Level because the commenter claimed that we estimated the cost to the maritime industry of increasing the MARSEC Level from 1 to 2 will be \$31 million per day. The other commenter expressed doubt that a facility's security would be substantially increased by hiring local security personnel "as required" at MARSEC Level 2.

We agree that each MARSEC Level elevation may have serious economic impacts on the maritime industry. We make MARSEC Level changes in conjunction with Department of Homeland Security to ensure that the maritime sector has deterrent measures in place commensurate with the nature of the threat to it and our nation. The financial burden to the maritime sector is one of many factors that we consider when balancing security measure requirements with economic impacts. Furthermore, we disagree with the first commenter's statement of our cost assessment to the maritime industry for an increase in MARSEC Level 1 to MARSEC Level 2. In the Cost

Assessment and Initial Regulatory Flexibility Act analyses for the temporary interim rules, we estimated that the daily cost of elevating the MARSEC Level from 1 to 2 is \$16 million. We also disagree with the second commenter's inference that hiring local security personnel to guard a facility is required at MARSEC Level 2. Section 105.255 lists "assigning additional personnel to guard access points" as one of the enhanced security measures that a facility may take at MARSEC Level 2, but this can be done by reassigning the facility's own staff rather than by hiring local security personnel. Moreover it is only one of several MARSEC Level 2 security enhancements listed in § 105.255(f), which is not an exclusive list.

One commenter suggested taking into greater account the risk factors of the facility and vessel as a whole, rather than simply relying on one factor, such as the capacity of a vessel as well as the cost-benefit of facility security to all of the business entities that make up a facility.

The Coast Guard considered an extensive list of risk factors when developing these regulations including, but not limited to, vessel and facility type, the nature of the commerce in which the entity is engaged, potential trade routes, accessibility of facilities, gross tonnage, and passenger capacity. Our Cost Assessments and Regulatory Flexibility Act Analyses for both the temporary interim rules and the final rules are available in the docket, and they account for companies as whole business entities, not individual vessels or facilities.

One commenter stated that the Coast Guard should consider the impact of security regulations on facilities that face international competition.

The Coast Guard has determined that these regulations will impose significant costs on regulated facilities, and has considered the consequences of that cost. We assessed the financial impact to small businesses in the Initial and Final Cost Assessments and Regulatory Flexibility Analyses, which are found in the dockets for these rules. We were unable to specifically determine, however, which facilities face international competition.

Three commenters stated that the cost-benefit assessment in the temporary interim rule (68 FR 39276) (part 101) is questionable. One commenter noted that we did not use the most recent industry data. Two commenters stated that cost estimates might be close to accurate but that the benefits were based on assumptions that are difficult to measure.