

we have indicated, in only the vessel and facility security interim rules found elsewhere in today's **Federal Register**, that they are among the additional measures that owners or operators may consider implementing, specifically at heightened security levels, and COTPs may impose, when deemed necessary to ensure maritime security in certain situations. The standards for private armed security guards are a matter of State and local law, as are the legal parameters for use of force. There are also differing standards that apply to armed private waterborne security in some States and local jurisdictions. Even though the interim rules do not address standards for private security guards in subchapter H, considering this a matter of State and local law and private contract between the owners and operators of vessels and facilities and the security company, we intend to work with State homeland security representatives to encourage the review of all standards related to armed personnel and the services that they provide to the maritime community.

4. *Procedures for Accepting Alternatives and Equivalencies.* The Notice of Meeting discussed that the SOLAS amendments to Chapter XI-2, Regulation 11 and 12 along with ISPS Code, part B, paragraphs 4.26 and 4.27, allow us to permit alternatives and equivalencies to the security requirements for U.S. flag vessels if they are at least as effective as the mandates and are reported to IMO. This provision is relevant to those vessels operating on international voyages and certificated by the U.S. The issue of industry standards was raised to cover domestic requirements, and is separate from the alternative and equivalencies provisions in SOLAS. The Coast Guard indicated its intent in the Notice of Meeting to make alternative and equivalency determinations at the national level and requested comment on the provisions of alternatives and equivalencies, as well as the process to submit a proposal to us for consideration (suggesting a process similar to 46 CFR 30.15 or 70.15).

Many commenters suggested that alternatives and equivalency determinations were needed to ensure compliance, yet allow for the unique international operations within some regions or in specific industries. Many commenters also supported the idea of a "master plan" for their vessel fleet or facilities that would eliminate some work and still effectively capture the security measures for the individual vessels or facilities covered. Some also asked if an appeals process would be included so a higher authority could

reconsider equivalency and alternative determinations. A few commenters requested that this provision be delegated to the local level rather than be done at Coast Guard Headquarters to account for unique regional operations. Many commenters also stated that the submission process, as it exists for safety (46 CFR 70.15) or subchapter W, is adequate as long as it is timely.

We have included the alternatives and equivalency provisions in this interim rule to provide vessel and facility owners and operators the flexibility to request them. However, they will only be approved if they are determined to be equivalent to the security requirements in subchapter H and 33 CFR parts 120 and 128, if applicable. The provisions of submission and the appeal process are also included in the regulations presented in this interim rule. Because the equivalency and alternative determinations are obligations under SOLAS and the ISPS Code, the Coast Guard is placing the decision to accept equivalents and alternatives at the Commandant level, at this time. This will ensure consistency and retain control over the U.S. flag administration obligation. As always, State, local and regional expertise will be used when reviewing alternatives and equivalencies, as appropriate for the proposals.

5. *Procedures for Accepting Industry Standards.* In addition to the equivalencies and alternative provisions discussed above, we discussed in the Notice of Meeting that, for those vessels that are currently not required to meet SOLAS, industry standards could be accepted as an equivalent or alternative. We sought comment on the concept of accepting industry standards and asked whether an independent audit could also be used in conjunction with this system. We also requested comment on the intent to review these standards at the national level and provide a submission process similar to that found at 46 CFR 50.20-30.

An overwhelming number of commenters strongly supported this proposal and voiced endorsements for various industry standards, both for vessels and facilities, which are either published and in use or currently under development. Some commenters recommended that industry standards for assessments already exist that could be determined equivalent to the assessment requirements proposed in the Notice of Meeting and should be considered. Many commenters indicated they intend to submit their standards for approval and will also seek approval for plans or assessments already conducted to meet State

requirements. Several commenters also stated that an independent audit should not be required if the vessel is already inspected by the Coast Guard. Many commenters also requested that the industry standards or alternatives be approved at the local or regional level rather than at the Commandant level. Additionally, some commenters expressed the desire to have the industry standards reflect lower security measures requirements that would not be equivalent to those discussed in the Notice of Meeting.

We have considered the acceptance of industry standards to be a key element of implementing the requirements of the MTS. The public meeting response to our questions on this issue indicates that the industry is willing to tailor security standards to their industries' needs and work with us to implement them. The issue of equivalency is fundamental to implementing an effective system of maritime security. Therefore, equivalency is a requirement for the acceptance of industry standards in the regulations presented in this interim rule. When a security assessment is conducted on a vessel or facility operation, the resultant security measures that can logically mitigate and meet the security risks are tailored to the situation. Thus, an industry standard for the small passenger industry will be different from the industry standard for chemical ships, simply based on the difference in their respective vulnerabilities and the associated consequence of a transportation security incident. To accommodate this wide diversity of industry standards and substantiate their equivalency to the requirements in subchapter H, the review and approval of industry standards will remain at the Commandant level. However, we intend to coordinate review of industry proposals with the local and regional levels, if appropriate. In addition, standards already developed to meet State requirements or other industry concerns may be submitted for an equivalency review and subsequently approved under the requirements of this section, if found appropriate. In the requirements of this interim rule, we have titled this industry standard concept, "Alternative Security Programs," because it is a broader term that implies a program or system that is more inclusive, *i.e.*, an industry association or a company could submit these requests for consideration.

6. *Declaration of Security (DoS).* The ISPS Code (part A, section 5) requires Contracting Governments to determine when a DoS is required for vessels and facilities conducting vessel-to-port or