

regarding maritime security, the Coast Guard has determined that the issuance of MARSEC Directives do not fall within the requirements of the Administrative Procedure Act by virtue of the military and foreign affairs exemption (5 U.S.C. 553(a)(1)). Furthermore, the basis for the MARSEC Directive would also constitute "good cause" within the meaning of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B) and (d)(3)) regarding notice and comment rulemaking and effective dates since it would be contrary to the public interest and impracticable to provide SSI relating to maritime security and methods of detection, deterrence, and response in a public forum.

Subpart D, section 101.410 lists examples of the types of control and compliance measures that a COTP may take on vessels and/or facilities within his/her AOR that are not in compliance with subchapter H. The lists of measures are not meant to be exhaustive. This section also notes that the COTP may impose one or more of these control and compliance measures on a vessel that is in compliance with subchapter H, if that vessel has called on a facility that is not in compliance, or if it has called on a port that does not maintain adequate security measures to ensure that the level of security achieved by subchapter H has not been compromised.

Section 101.415 outlines the penalty provisions that may be taken against persons for violating the provisions of this subchapter. Civil and criminal penalties may be imposed under 33 U.S.C. 1232 or 50 U.S.C. 192, as appropriate, for violations of control and compliance measures, including COTP orders and security zones. This simply restates the current law applicable under the Magnuson Act, 590 U.S.C. 191, implemented at 33 CFR part 6, and the Ports and Waterways Safety Act, 33 U.S.C. 1221 *et seq.*, implemented in part at 33 CFR parts 160 and 165. Pursuant to 46 U.S.C. 70117, civil penalties may also be assessed for non-compliance with any other requirement in this subchapter, including those imposed by a MARSEC Directive.

Finally, section 101.420 outlines the appeal rights available to persons directly affected by a decision or action taken by the COTP or the Commanding Officer of the Marine Safety Center.

Part 101—Subpart E—Other Provisions

Subpart E sets out the remaining regulations that apply to all of subchapter H that do not fit in any of the subparts discussed above. We have reserved the first section in this subpart

for procedures for authorizing a Recognized Security Organization (RSO). As noted above in the discussion of comments, the Coast Guard is authorized, under SOLAS, to delegate its assessment and plan approval authority to an RSO. The Coast Guard has decided to retain this authority for the time being. We may, however, delegate some (or all) of this authority to RSOs in the future. As a result, we are reserving this section for outlining the procedures an organization will need to follow in order to qualify as an RSO in the future.

Section 101.505 describes the purpose behind a Declaration of Security (DoS). A DoS is intended to clarify the specific security responsibilities of a vessel and a facility (or another vessel) with which it will be conducting some activity. It will be used to eliminate situations where confusion leads the vessel to believe that the facility (or other vessel) will take care of certain security measures, while the facility (or other vessel) believes that the vessel will take care of the same security measure. Parts 104 through 106 of subchapter H describe in detail the who, what, where, when and how of completing a DoS for their respective regulated entities. Additionally, to ensure that vessels and facilities coordinate security during special marine events such as festivals that draw large numbers of people to the waterfront or vessels that wish to enter port with a higher MARSEC Level than what has been set for the port, we have included a provision to ensure the COTP's ability to mandate a DoS.

Section 101.510 of subpart E lists the various assessment tools that may be used to meet the risk assessment requirements in parts 103 through 106 of this subchapter. This list is provided to ensure that security assessments done to meet these requirements are consistent with other modal assessments and are sufficient enough to enable the development of security plans. We have been working with other agencies to develop assessment tools that are sensitive to a diversity of transportation modes to ensure equity of security throughout the entire National transportation system. We anticipate that eventually one security assessment tool will be mandated for all transportation modes. In the interim, the list provided in Section 101.510 enables the maritime security provisions to advance until the national transportation security assessment mandate is complete. Even when a national transportation security assessment is in place, we intend to provide a "grandfather clause" to those security assessments done to meet the

maritime security requirements found elsewhere in today's **Federal Register**.

The Transportation Security Administration intends to publish a Notice of Proposed rulemaking with request for comment that promulgates rules in 49 CFR part 1574 to manage the access to and use of a user-friendly risk-based vulnerability assessment tool. This tool will be the result of inter-agency work, under the leadership of TSA thus far to establish a national transportation security assessment. It will be designed as a self-assessment tool for the owner or operator, and is one of the tools an owner or operator may use to meet the risk assessment requirements in parts 103, 104, 105 and 106 of subchapter H.

Section 101.515 of subpart E prescribes the minimum requirements for personal identification credentials for purposes of access control under this subchapter. As discussed in the *Discussion of Comments to Maritime Security Public Meetings* section above, these requirements are consistent with the Coast Guard's previous policy notice on maritime credentials acceptable under 33 CFR part 125.

Part 102—National Maritime Transportation Security Plan

Part 102 in subchapter H has been reserved for the National Maritime Transportation Security (NMTS) Plan that is required under 46 U.S.C. 70103a. At this time we are coordinating the implementation of the National Maritime Security Advisory Committee (NMSAC) as required in the MTSA (46 U.S.C. 70112a). While the development of this overarching plan and the establishment of the National Advisory Committee are key sustaining National Maritime Security initiatives, we do not feel their development is necessary prior to the implementation of these interim rule requirements. We believe the concepts found in the interim rules published in today's **Federal Register** represent the foundation of National Maritime Transportation Security and intend to incorporate them in the development of the NMTS plan. We will promulgate the NMTS plan and Advisory Committee charter and membership requirements under a separate notice and rulemaking in the future.

Additionally, the Aviation and Transportation Security Act (ATSA) assigns responsibility for managing the security of the nation's transportation modes to the Transportation Security Administration. In its role as the National Transportation System Security Manager, Transportation Security Administration intends to