

announced by a later notice in the **Federal Register**.

#### Regulatory Information

We did not publish a notice of proposed rulemaking for this rulemaking and are making this rule effective upon publication. Section 102(d)(1) of the Maritime Transportation Security Act of 2002 (MTSA, Pub. L. 107-295, 116 STAT. 2064) requires the publication of an interim rule as soon as practicable without regard to the provisions of chapter 5 of title 5, U.S. Code (Administrative Procedure Act). The Coast Guard finds that harmonization of U.S. regulations with maritime security measures adopted by the International Maritime Organization (IMO) in December 2002, and the need to institute measures for the protection of U.S. maritime security as soon as practicable, furnish good cause for this interim rule to take effect immediately under both the Administrative Procedure Act and section 808 of the Congressional Review Act.

#### Background and Purpose

A summary of the Coast Guard's regulatory initiatives for maritime security can be found under the *Background and Purpose* section in the preamble to the interim rule titled "Implementation of National Maritime Security Initiatives" (USCG-2003-14792) published elsewhere in today's **Federal Register**.

#### Discussion of Comments Addressing Vessel Issues in the Notice of Meeting

For a discussion of comments on vessels at the public meetings and in the docket, see the interim rule titled "Implementation of National Maritime Security Initiatives" (USCG-2003-14792) published elsewhere in today's **Federal Register**.

#### Discussion of Interim Rule

This interim rule regulates the owners or operators of certain classes of vessels, in order to provide greater security to these vessels and to other vessels or ports with which a vessel interfaces. The interim rule adds part 104, Vessel Security, to the new subchapter H, Maritime Security of Title 33 of the Code of Federal Regulation. A general description of the process used in developing subchapter H and its component parts appears in the interim rule titled "Implementation of National Maritime Security Initiatives" (USCG-2003-14792).

The MTSA and the International Ship and Port Facility Security (ISPS) Code use different terms to define similar, if not identical, persons or things. These

differing terms sometimes match up with the terms used in subchapter H, but sometimes they do not. For a table of the terms used in subchapter H and their related terms in the MTSA and the ISPS Code, see the *Discussion of Interim Rule* section in the preamble for the interim rule titled "Implementation of National Maritime Security Initiatives" (USCG-2003-14792), published elsewhere in today's **Federal Register**.

The purpose of this rulemaking is to require certain vessels to perform security assessments, develop security plans, and implement security measures and procedures in order to reduce the risk of and to mitigate the results of an act that threatens the security of the crew, the vessel, or the public. This rulemaking combines international requirements and existing domestic policy and is published as a part of a new subchapter on maritime security. The MTSA mandates vessels that are required to conduct security assessments and develop security plans to submit their vessel security plan within 6 months of the publication of this interim rule. It also mandates that the vessels shall be in compliance with their approved security plan within 12 months of the publication of this interim rule. However, consistent with customary international law, the requirements in part 104 do not apply to vessels engaged in innocent passage through the territorial sea of the U.S. or in transit passage through the navigable waters of the U.S. that form part of an international strait.

Part 104 consists of four Subparts: Subpart A (General), subpart B (Vessel Security Requirements), subpart C (Vessel Security Assessment), and subpart D (Vessel Security Plan). Where appropriate, the requirements discussed in part 104 are consistent with requirements in the ISPS Code, and include the requirements discussed below.

#### Compliance

U.S. flag vessel compliance with this part will be verified during inspections by the Coast Guard as provided in 46 CFR part 2. 46 CFR subchapters D, H, I, K, L, and T will be amended to require that a certificate of inspection be based on the condition that the vessel meets the requirements of 33 CFR subchapter H and specifically this part.

Foreign vessels that have on board a valid International Ship Security Certificate that attests to the vessel's compliance with International Convention for Safety of Life at Sea, 1974, (SOLAS) and the ISPS Code, part A, and the relevant provisions in the ISPS Code, part B, of will be deemed in

compliance with this part, except for those sections otherwise specified. Foreign vessel compliance will be verified during Port State Control verification exams.

The interim rule also affects the Notice of Arrival rule in part 160 of title 33, U.S. Code. These changes provide the Coast Guard with additional information essential to our exercise of Port State Control functions and to our imposition of control and compliance measures on foreign vessels bound for a port or place in the U.S., consistent with MTSA and with SOLAS regulation XI-2/9. A foreign vessel already covered by the Notice of Arrival rule will have to provide information about its International Ship Security Certificate and its implementation of an approved security plan.

As required by SOLAS Chapter XI-2 Regulation 3 and the ISPS Code, part A, section 5, the Coast Guard has published additional requirements for vessels calling in the U.S. in §§ 104.240 and 104.255 of 33 CFR 104. These sections provide the U.S. requirements for setting and communicating changes in Maritime Security Level, completing Declarations of Security, and additional instructions for all vessels when Maritime Security Level 3 is set.

#### Waivers

The waiver section details procedures for requesting a waiver for the benefit of vessel owners or operators who find specific requirements of the rulemaking to be unnecessary.

#### Equivalents

The equivalents section details procedures for requesting an equivalency for specific requirements of the rulemaking. Equivalents are intended to allow vessel owners or operators to provide an alternative provision or arrangement that provides the same level of security as a specific requirement contained within this part.

#### Alternative Security Program

This part makes provision to allow owners or operators of vessels on domestic voyages only to implement an Alternative Security Program that has been reviewed and accepted by the Commandant (G-MP), to meet the requirements of this part. Alternative Security Programs must be comprehensive and based on a security assessment to demonstrate it meets the intent of each section of this part. Owners or operators are required to implement an appropriate Alternative Security Program in its entirety to be deemed in compliance with this part.