

Subpart C—Vessel Security Assessment (VSA)

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Subpart D—Vessel Security Plan (VSP)

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Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.

Subpart A—General**§ 104.100 Definitions.**

Except as specifically stated in this subpart, the definitions in part 101 of this subchapter apply to this part.

§ 104.105 Applicability.

(a) This part applies to the owner or operator of any:

(1) Mobile Offshore Drilling Unit (MODU), cargo, or passenger vessel subject to the International Convention for Safety of Life at Sea, 1974, (SOLAS);

(2) Foreign commercial vessel greater than 100 gross register tons not subject to SOLAS;

(3) Commercial vessel greater than 100 gross register tons subject to 46 CFR subchapter I, except commercial fishing vessels inspected under 46 CFR part 105;

(4) Vessel subject to 46 CFR subchapter L;

(5) Passenger vessel subject to 46 CFR subchapters H or K;

(6) Other passenger vessel carrying more than 12 passengers that is engaged on an international voyage;

(7) Barge subject to 46 CFR subchapters D or O;

(8) Barge subject to 46 CFR subchapter I that carries Certain Dangerous Cargoes in bulk, or that is engaged on an international voyage;

(9) Tankship subject to 46 CFR subchapters D or O; and

(10) Towing vessel greater than 8 meters in registered length that is engaged in towing a barge or barges subject to this part.

(b) An owner or operator of any vessel not covered in paragraph (a) of this section is subject to parts 101 through 103 of this subchapter.

(c) Foreign vessels that have on board a valid International Ship Security Certificate (ISSC) that attests to the vessel's compliance with SOLAS Chapter XI–2 and the ISPS Code, part A (Incorporated by reference, see § 101.115 of this chapter), and having

taken into account the relevant provisions in the ISPS Code, part B, will be deemed to be in compliance with this part, except for §§ 104.240, 104.255, 104.292, and 104.295 as appropriate.

(d) Except pursuant to international treaty, convention, or agreement to which the U.S. is a party, this part does not apply to any foreign vessel that is not destined for, or departing from, a port or place subject to the jurisdiction of the U.S. and that is in:

(1) Innocent passage through the territorial sea of the U.S.; or

(2) Transit through the navigable waters of the U.S. that form a part of an international strait.

§ 104.110 Exemptions.

This part does not apply to warships, naval auxiliaries or other vessels owned or operated by a government and used only on government non-commercial service.

§ 104.115 Compliance dates.

(a) On or before December 29, 2003, each vessel owner or operator must submit to the Commanding Officer, Marine Safety Center for each vessel the Vessel Security Plan described in subpart D of this part for review and approval.

(b) On or before June 30, 2004, each vessel must be operating in compliance with this part.

(c) On or before July 1, 2004, foreign vessels must carry on board a valid International Ship Security Certificate that certifies that the verifications required by Section 19.1 of part A of the ISPS Code (Incorporated by reference, see § 101.115 of this chapter) have been completed, that the vessel meets the applicable requirements of SOLAS Chapter XI–2 (Incorporated by reference, see § 101.115 of this chapter) and the ISPS Code, part A, and that the vessel is provided with an approved security plan.

§ 104.120 Compliance documentation.

(a) Each vessel owner or operator subject to this part must ensure, no later than 1 July 2004, that copies of the following documents are carried on board the vessel and are made available to the Coast Guard upon request:

(1) The approved Vessel Security Plan (VSP) and any approved revisions or amendments thereto, and a letter of approval from the Commanding Officer, Marine Safety Center (MSC);

(2) The VSP submitted for approval and a current acknowledgement letter from the Commanding Officer, MSC, stating that the Coast Guard is currently reviewing the VSP submitted for approval, and that the vessel may

continue to operate so long as the vessel remains in compliance with the submitted plan;

(3) For vessels operating under a Coast Guard-approved Alternative Security Program as provided in § 104.140, a copy of the Alternative Security Program the vessel is using and a letter signed by the vessel owner or operator, stating which Alternative Security Program the vessel is using and certifying that the vessel is in full compliance with that program; or

(4) For foreign vessels, a valid International Ship Security Certificate that attests to the vessel's compliance with SOLAS Chapter XI–2 and the ISPS Code, part A (Incorporated by reference, see § 101.115 of this subchapter), and having taken into account the relevant provisions in the ISPS Code, part B.

(b) Each owner or operator of an unmanned vessel subject to this part must maintain the documentation described in paragraphs (a)(1), (2), or (3) of this section. The letter required by each of those paragraphs must be carried on board the vessel. The plan or program required by each of those paragraphs must not be carried on board the vessel, but must be maintained in a secure location. During scheduled inspections, the plan or program must be made available to the Coast Guard upon request.

§ 104.125 Noncompliance.

When a vessel is not in compliance with the requirements of this part, the vessel owner or operator must notify the cognizant COTP and request a waiver to continue operations.

§ 104.130 Waivers.

Any vessel owner or operator may apply for a waiver of any requirement of this part that the owner or operator considers unnecessary in light of the nature or operating conditions of the vessel. A request for a waiver must be submitted in writing with justification to the Commandant (G–MP) at 2100 Second St., SW., Washington, DC 20593. The Commandant (G–MP) may require the vessel owner or operator to provide additional data for determining the validity of the requested waiver. The Commandant (G–MP) may grant, in writing, a waiver with or without conditions only if the waiver will not reduce the overall security of the vessel, its passengers, its crew, or its cargo, or facilities or ports that the vessel may visit.

§ 104.135 Equivalents.

For any measure required by this part, the vessel owner or operator may