

assist in covering the costs incurred by the operators to satisfy the requirements of the rules. Two commenters stated that compliance with all security requirements should be extended to 2008, or until sufficient monies are allocated by the Congress to cover cost. One commenter stated that the regulations should grant enough flexibility to COTPs to consider a facility's limited resources and cost-effectiveness ratio of implementation when they review the security plan for approval. Three commenters asked how these rules recognize and assist very small ports and small businesses.

We appreciate that the cost of implementing these regulations could have significant impacts on annual revenues for some vessel or facility owners and operators. Pursuant to Section 102 of the MTSA, DOT is required to develop a grant program. DHS is working with DOT on the grant program. At this point, we do not know if Congress will appropriate funds to continue this program and allow for grants on a continuing annual basis. We cannot alter the compliance dates of these regulations because they are mandated by the MTSA and aligned to meet the entry into force date of SOLAS Chapter XI and the ISPS Code. We recognize the difficulty small facilities may have in meeting our security requirements and, therefore, we have developed flexible measures and performance-based standards to allow owners or operators to implement cost-effective security measures. We have made the requirements as flexible as possible and have analyzed the risk to ensure that applicability is focused on those vessels and facilities that may be involved in a transportation security incident.

Two commenters addressed the burdens involved in moving from MARSEC Level 1 to MARSEC Level 2. One commenter 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 DHS to ensure 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; however, it is only one of several MARSEC Level 2 security enhancements listed in § 105.255(f), which is not an exclusive list.

Three commenters stated that security measures required under MARSEC Level 3 would pose an unfair economic burden upon an owner or operator and could create an "industry" for additional security measures.

The security measures required under MARSEC Level 3 are designed to address the increased threat of a probable or imminent transportation security incident. At this highest level of threat, the maritime industry is vulnerable to a transportation security incident and can be exposed to significant economic losses. Were a maritime transportation security incident to occur, the nation could experience devastating losses, including significant loss of life, serious environmental damage, and severe economic shocks. While we can reasonably expect MARSEC Level 3 to increase the direct costs to businesses attributable to increased personnel or modified operations, we believe the indirect costs to society of the "ripple effects" associated with a transportation security incident would greatly outweigh the direct costs to the maritime industry. Additionally, we expect this highest level of threat to occur infrequently.

Five commenters stated that our cost estimates understate the cost for international ships calling on U.S. ports. Three commenters noted that the same parameters used to develop the costs for the U.S. SOLAS vessels should be extrapolated and applied to international ships, adjusted for the

time these ships spend in waters subject to the jurisdiction of the U.S. One commenter asked us to explain why only 70 foreign flag vessels were included in our analysis of the cost of the temporary interim rule.

We disagree with the commenters' assertion that our estimate understates the cost for international ships calling on U.S. ports. We developed our estimate assuming that foreign flag vessels subject to SOLAS would be required by their flag state, as signatories to SOLAS, to implement SOLAS and the ISPS Code. The flag administrations of foreign flag SOLAS vessels will account, therefore, for the costs of complying with SOLAS and the ISPS Code. Our analysis accounts for the costs of the final rule to U.S. flag vessels subject to SOLAS. Additionally, we estimate costs for the approximately 70 foreign flag vessels that are not subject to SOLAS that would not need to comply with either SOLAS or the ISPS Code. These vessels must comply with the requirements in 33 CFR part 104 if they wish to continue operating in U.S. ports after July 1, 2004, and we therefore estimate the costs to these vessels.

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 are available in the dockets for both the temporary interim rules and the final rules, and they account for companies as whole business entities, not individual vessels or facilities.

One commenter was concerned that the entire list of ships that are directly regulated under part 104 have been designated as "high risk" for a transportation security incident. The commenter noted that no account appears to have been taken of the different types of vessels or specific threats and warnings.

We explained in detail in the temporary interim rule (68 FR 39244-6) (part 101) how we used the National Risk Assessment Tool (N-RAT) to determine risks associated with specific