

The MTSA requires full compliance with these regulations 1 year after the publication of the temporary interim rules, which were published on July 1, 2003. Therefore, a "phased in approach" will not be used. While compliance dates are mandatory, a vessel or facility owner or operator could "gain relief" from making physical improvements, such as installing equipment or fencing, by addressing the intended improvements in the Vessel or Facility Security Plan and explaining the equivalent security measures that will be put into place until improvements have been made.

In order to clarify compliance dates for the rule, we are amending the dates of compliance in § 104.115(a) and (b), § 104.120(a), § 104.297(c), and § 104.410(a) to align with the MTSA and the ISPS Code compliance dates.

Seven commenters observed that the deadline for submitting Vessel Security Assessments and Vessel Security Plans for foreign vessels to the Coast Guard is 6 months sooner than the deadline in SOLAS. Three commenters asked that § 104.115(a) be revised for clarification of the submission requirements for owners and operators of foreign flag vessels.

Foreign flag vessels need not submit their Vessel Security Assessments or Vessel Security Plans to the Coast Guard for review or approval. We have revised §§ 104.115, 104.120(a)(4), and 104.410(a), to clarify that owners and operators of foreign flag vessels that meet the applicable requirements of SOLAS Chapter XI will not have to submit their assessments or plans to the Coast Guard for review or approval. These amendments also clarify that foreign vessels, which may not be subject to or operating under SOLAS, may meet these requirements through either submission to the Coast Guard or their own flag administration. Flag administrations may apply the new international security requirements to vessels other than those required to comply with SOLAS, consistent with paragraph 4.46 of part B of the ISPS Code and Resolution 7 from IMO's Diplomatic Conference on Maritime Security. Furthermore, some flag administrations not party to SOLAS may decide to apply SOLAS Chapter XI and the ISPS Code requirements to their vessels trading with the U.S. In these latter two cases—where foreign vessels not subject to SOLAS may nevertheless be required by the flag administration to comply with the requirements of SOLAS Chapter XI and the ISPS Code—the Coast Guard intends to work with the flag administration if they propose initiatives such as an Alternative

Security Program. This will likely be done through bilateral or multilateral arrangements. When no approved Alternative Security Program or bilateral arrangement exists, foreign flag vessels not subject to SOLAS covered by 33 CFR part 104 must submit their Vessel Security Assessments and Vessel Security Plans to the Coast Guard for review and approval.

Three commenters stated they were concerned that any U.S. flag vessel on an international voyage after July 1, 2004, without a proper ISSC, and possessing only a letter from the Marine Safety Center stating that its "Vessel Security Plan was under review" would be detained by foreign Port State Control Authorities. The commenter further suggested that we establish a priority system to complete the plan reviews of those vessels engaging on international voyages first.

We recognize the position a U.S. flag vessel may be in if it does not have an approved Vessel Security Plan and ISSC issued to it by July 1, 2004. Vessel Security Plans must be submitted to the Coast Guard by December 31, 2003. We plan to complete the review and approval of the Vessel Security Plans as soon as possible to allow the owners or operators enough time to request an inspection, at least 30 days prior to the desired inspection date, from the Officer in Charge, Marine Inspection at the port where the vessel will be inspected to verify compliance. Following verification of compliance the Coast Guard will issue an ISSC as appropriate before the July 1, 2004, entry into force date. We urge vessel owners and operators to work closely with the Coast Guard since the MTSA mandates that no vessel subject to this part may operate in waters subject to the jurisdiction of the U.S. after July 1, 2004, without an approved Vessel Security Plan.

We received three comments on Recognized Security Organizations (RSOs). One commenter believed that any question of "underperformance" on the part of an RSO should be taken up with the flag state that has made the designation and should not, in the first instance, be sufficient justification for the application of control measures on a vessel that has been certified by the RSO in question. Another commenter recommended that the Coast Guard maximize national consistency and transparency with regard to the factors that are evaluated in the targeting matrix. One commenter supported the Coast Guard's plan to use Port State Control to ensure that Vessel Security Assessments, Plans, and ISSCs approved by designated RSOs comply

with the requirements of SOLAS and the ISPS Code.

In conducting Port State Control, the Coast Guard will consider the "underperformance" of an RSO. However, a vessel's or foreign port facility's history of compliance will also be important factors in determining what actions are deemed appropriate by the Coast Guard to ensure that maritime security is preserved.

Seven commenters requested that reference to the ISPS Code, part B, be removed from § 104.105(c) because according to IMO guidance, part B must be considered when a vessel's ISSC is issued; therefore, the commenters believe our requirement is unnecessary. One commenter requested that we state what type of attestation is acceptable to demonstrate that an ISSC has taken into account the relevant provisions of part B.

We have amended §§ 104.105(c) and 104.120 to clarify that we are not requiring separate documentation for application of the ISPS Code, part B. Foreign flag vessels required to comply with SOLAS Chapter XI-2 and the ISPS Code are required only to have on board a valid ISSC issued in accordance with section 19 of part A of the ISPS Code. This includes ensuring that the Vessel Security Plan meets the requirements in SOLAS Chapter XI-2 and the ISPS Code, part A, having taken into account the relevant provisions of part B. The form of the ISSC is contained in Appendix 1 of the ISPS Code, part A. There is no separate requirement in our regulations to document compliance with part B, although we do encourage flag administrations and RSOs to provide such documentation to assist our Port State Control efforts and reduce the potential for vessel delays. Although optional, this documentation could be in the form of a letter retained on board the vessel, signed by an authorized representative of the flag administration or RSO that clearly states that the Vessel Security Plan applies the relevant provisions of part B. We intend to use part B as one of the tools to assess a foreign vessel's compliance with SOLAS Chapter XI-2 and the ISPS Code, part A. We amended § 104.400(b) to be consistent with changes made above to clearly state that owners and operators of foreign flag vessels do not need to submit Vessel Security Plans if they have on board a valid ISSC.

Eleven commenters addressed the reference to the ISPS Code, part B, in the regulations. Three commenters asked whether the Coast Guard would accept an ISSC as evidence that a vessel was in compliance with the relevant provisions in the ISPS Code, part B.