

Three commenters commended the Coast Guard for accepting an ISSC as *prima facie* evidence that the ship's flag administration has completed its obligation. One of these commenters also urged the Coast Guard to continue in its effort to ensure that domestic regulations "mesh" with the ISPS code.

As stated in § 104.120(a)(4), the ISSC will be considered evidence that the vessel complies with the ISPS Code, part A, and has taken into account the relevant provisions of part B.

Two commenters suggested that we add sample text to part 104 that would provide guidance to flag-state administrations on how to document foreign flag vessel compliance with the relevant provisions of the ISPS Code.

We disagree with the commenters. The Coast Guard cannot dictate to a foreign flag state administration the format of documentation to use to demonstrate compliance with the ISPS Code.

Several commenters had questions or comments regarding relationship between the regulations and the ISPS Code. Three commenters asked us to specify the procedures or dates, under our rules, with which foreign vessels must comply and that are different from SOLAS or ISPS Code requirements. Three commenters stated that it is inappropriate for the temporary interim rule to refer to the provisions of the ISPS Code, part B, as "requirements." One commenter stated that the acceptance of a foreign vessel's ISSC presumes responsibility and compliance by a regime that is designed to avoid responsibility and compliance and imparts a multi-lateral interpretation on a unilateral Congressional intent. The commenter went further to state that permitting flag administrations to follow their own compliance methods may lead to corruption due to fraudulent, criminal, and terrorist-related activity.

We are using the same cooperative arrangement that we have used with success in the safety realm by accepting SOLAS certificates documenting flag-state approval of foreign SOLAS Vessel Security Plans that comply with the comprehensive requirements of the ISPS Code. The consistency of the international and domestic security regimes, to the extent possible, was always a central part of the negotiations for the MTSA and the ISPS Code. In the MTSA, the Congress explicitly found that "it is in the best interests of the U.S. to implement new international instruments that establish" a maritime security system. We wholeheartedly agree and will exercise Port State Control to ensure that foreign flag vessels have approved plans and have,

in fact, implemented adequate security standards. Port State Control will not be delegated to anyone. If vessels do not meet our security requirements, we have the power to prevent those vessels from entering the U.S., and we will not hesitate to use that power in appropriate cases. The Port State Control measures will include tracking the performance of all owners, operators, flag administrations, RSOs, charterers, and port facilities. Noncompliance will subject the vessel to a range of control and compliance measures, which could include denial of entry into port or significant delay. A vessel's or foreign port facility's history of compliance, or lack thereof, or security incidents involving a vessel or port facility will be important factors in determining what actions are deemed appropriate by the Coast Guard to ensure that maritime security is preserved. The Coast Guard's current Port State Control program has been highly effective in ensuring compliance with SOLAS safety requirements, and we believe that the incorporation of the ISPS Code requirements into this program is the most efficient and effective means to carry out our Port State Control responsibilities, enhance our ability to identify substandard vessels, ensure the security of our ports, and meet the Congressional intent of the MTSA.

After further review of parts 101 and 104 through 106, we have also amended §§ 101.120(b)(3), 104.120(a)(3), 105.120(c), and 106.115(c) to clarify that a vessel or facility that is participating in the Alternative Security Program must complete a vessel or facility specific security assessment report in accordance with the Alternative Security Program, and it must be readily available.

Three commenters asked that the Coast Guard clarify the meaning of "scheduled inspection" as indicated in § 104.120(b). One commenter suggested that Vessel Security Plans and related security documentation should be inspected at the annual Coast Guard documentation inspection and not at a separate inspection.

The Coast Guard conducts scheduled inspections during which time the Coast Guard requests and reviews documentation on board the vessel. In § 104.120(b), we require that the Vessel Security Plan and related security documentation be made available upon request to the Coast Guard during a scheduled inspection. A scheduled inspection is an inspection such as for the issuance of a Certificate of Inspection or an annual re-inspection for endorsement on a Certificate of Inspection. For uninspected vessels, we

intend to check compliance with these regulations at a frequency that is similar to those existing uninspected vessel safety programs and in conjunction with other boardings.

One commenter requested that we clarify § 105.125, "Noncompliance," to "focus on only those areas of noncompliance that are the core building blocks of the facility security program" stating that the section requires a "self-report [of] every minor glitch in implementation."

We did not intend for § 105.125 to require self-reporting for minor deviations from these regulations if they are corrected immediately. We have clarified §§ 104.125, 105.125, and 106.120 to make it clear that owners or operators are required to request permission from the Coast Guard to continue operations when temporarily unable to comply with the regulations.

We received seven comments regarding waivers, equivalencies, and alternatives. Three commenters appreciated the flexibility of the Coast Guard in extending the opportunity to apply for a waiver or propose an equivalent security measure to satisfy a specific requirement. Four commenters requested detailed information regarding the factors the Coast Guard will focus on when evaluating applications for waivers, equivalencies, and alternatives.

The Coast Guard believes that equivalencies and waivers provide flexibility for vessel owners and operators with unique operations. Sections 104.130, 105.130, and 106.125 state that vessel or facility owners or operators requesting waivers for any requirement of part 104, 105, or 106 must include justification for why the specific requirement is unnecessary for that particular owner's or operator's vessel or facility or its operating conditions. Section 101.120 addresses Alternative Security Programs and § 101.130 provides for equivalents to security measures. We intend to issue guidance that will provide more detailed information about the application procedures and requirements for waivers, equivalencies, and the Alternative Security Program.

Two commenters asked us to amend § 104.130 regarding waivers for vessels in order to explicitly address "vessel-to-vessel interfaces."

Any vessel owner or operator may apply for a waiver of any requirement of part 104, including the vessel-to-vessel activity provisions, that the owner or operator considers unnecessary in light of the nature of the operating conditions of the vessel. We are not adding any explicit references to particular