



August 6, 2003

CIRCULAR NO. 13/03

TO MEMBERS OF THE ASSOCIATION

Dear Member:

UNITED STATES MARITIME SECURITY INITIATIVES

Reference is made to Circular No. 9/03 of May 20, 2003 against the background of which this current bulletin should be read. As foreshadowed in that Circular, which provided a general overview of the new ISPS Code, the US Coast Guard has now published (as of July 1, 2003) interim regulations providing for security measures for certain US flag and foreign flag vessels calling at US ports.

The new regulations require certain vessel owners or operators to designate security officers for vessels, to perform security assessments, develop security plans, and implement security measures and procedures in order to reduce the risk, and to mitigate the consequences, of an act which might threaten the security of the crew, the vessel, the port facility or the general public.

As a result of the events of September 11, 2001, the maritime security regulations are one of six interim rules creating national initiatives on:

- (1) Area Maritime Security
- (2) Vessel Security
- (3) Facility Security
- (4) Outer Continental Shelf Security
- (5) Automatic Identification Systems
- (6) Implementation of National Maritime Security Initiatives.

This rulemaking combines international requirements and existing U.S. domestic policy and is published as part of a new subchapter of the Maritime Transportation Security Act of 2002 (MTSA).

For each interim rule, the requirements of the MTSA broadly conform with the security requirements contained in the SOLAS amendments and the International Ship and Port Facility Security (ISPS) Code. The main features of the Coast Guard's maritime security regulations, which can be found at pages 39292 through 39315 of the July 1, 2003 Federal Register, Volume 68, No. 126, are discussed below.

US Flag Vessels

The new regulations primarily concern US flag vessels and require operators of such vessels to conduct security assessments and develop Vessel Security Plans (VSPs) for submission to the US Coast Guard by December 29, 2003.

Each vessel must operate in accordance with, and pursuant to, its VSP by June 30, 2004, and must carry onboard the approved VSP and the US Coast Guard's letter approving such VSP. The Coast Guard will issue International Ship Security Certificates (ISSC) for US flag vessels trading internationally.

Tugs and Barges

The rules make specific reference to tugs, barges and facilities for such vessels. Responsibility for barge security lies not only with the barge owner or operator, but also with the towing vessel, fleeting facility and the facility where a barge is moored.

Accordingly, security plans for vessels and facilities which interface with unmanned vessels (i.e., barges) must include additional provisions to address the risk of such vessels received or handled by them. Security plans must include procedures for interfacing with these other vessels and facilities, including the transfer of custody of the barge to the next facility or towing vessel.

Company Security Officer/Vessel Security Officer

The regulations require that each vessel owner or operator appoint a Company Security Officer (CSO) for their fleet of vessels or for each individual vessel owned or operated by that company. The CSO must have general knowledge of issues such as company security organization, relevant international laws, domestic regulations, current security threats and patterns, and the conduct of audits, inspections and control procedures.

A Vessel Security Officer (VSO) is also required by the interim rule. It is the VSO's responsibility to implement the VSP and ensure that the vessel's crew is adequately trained in regard to vessel security and to periodically audit and update the vessel's security assessment and vessel security plan.

The Vessel Security Plan (VSP)

The interim rule requires each vessel owner or operator to develop an effective VSP incorporating detailed preparedness, prevention and response activities for each maritime security level. These maritime security levels include:

- (1) security measures for access control
- (2) security measures for restricted areas
- (3) security measures for handling cargo
- (4) security measures for delivery of vessel stores and bunkers
- (5) security measures for monitoring.

The VSP is prepared in response to the Vessel Security Assessment (VSA) performed by the vessel operator/owner. The VSA identifies and evaluates in writing existing security measures, key vessel operations, the likelihood of possible threats to key vessel operations, and weaknesses.

One VSP may apply to more than one vessel to the extent that those vessels share physical characteristics and operations. The VSP must be written in English and, if it is not, a vessel's entry into a US port may be delayed until the document is translated. The VSP is thereafter submitted to the Coast Guard Marine Safety Center for review and approval.

Foreign Flag Vessels

Foreign flag vessels calling at US ports will be expected to carry a valid International Ship Security Certificate (ISSC) and have security plans fully implemented. The relevant provisions of the ISPS Code, part B, will be taken into account by port state control officers to determine if the security plan is fully implemented as required by the interim rules.

The flag administration may also choose to provide a document or endorsement to the ISSC to verify that the security plan was based upon full compliance with the relevant provisions of the ISPS Code, part B, to assist the Coast Guard port state control officers.

Foreign flag vessels required to comply with SOLAS are not required to submit their VSPs to the Coast Guard for approval. Pursuant to SOLAS and the ISPS Code, these plans are required to be approved by the flag administration or Recognized Security Organization (RSO).

Approval can only be granted by the flag administration or RSO after verification that the VSP meets the requirements of SOLAS and the ISPS Code, part A, taking into account the ISPS Code, part B. The US Coast Guard will closely scrutinize a flag administration's designation of RSOs to ensure that such organizations fully meet the competencies and requirements of the ISPS Code.

Vessels with ISSCs issued by RSOs that are not properly designated, or that do not meet the requisite qualifications, will be subject to strict control measures, including possible expulsion from, or denial of entry to, a US port.

There are certain cases, however, where foreign vessels will be required to submit the VSP to the Coast Guard for approval. Generally, these fall into three categories:

- (1) a commercial vessel meeting the applicability standards of the regulations from a state which is not a signatory to SOLAS;
- (2) Canadian commercial vessels operating solely on the Great Lakes which are (a) greater than 100 gross register tons or (b) carry more than 12 passengers; and
- (3) other foreign commercial vessels meeting the applicability standards of this part but below 500 gross tons (ITC) and above 100 gross register tons.

Notice of Arrival Requirements

The US Coast Guard's interim rule has also modified the Notice of Arrival regulation insofar as it requires vessels to submit additional security-related information prior to a vessel's entry into a US port.

Most of this information will be required only after the new SOLAS amendments and the ISPS Code take effect in July 2004. However, after January 1, 2004, if a foreign vessel already possesses an International Ship Security Certificate and an approved VSP, the Coast Guard will require it to provide some basic information about the ISSC and declare if it is implementing the VSP.

Recommendations to Members

The starting point for Members operating US flag vessels is to designate qualified personnel to act as CSOs and VSOs, to select appropriately qualified providers of maritime security services to assist them in conducting Ship Security Assessments, and to develop and implement VRPs so as to ensure full preparedness when inspected by port state control.

Foreign flag Members are urged to ensure that full compliance with the requirements of the ISPS Code has been achieved and to understand that the potential exists for US Coast Guard involvement should its suspicion be aroused that a flag state is too lenient in regard to its compliance with ISPS Code and/or its attitude toward RSOs.

It should also be noted that the Coast Guard has received numerous comments regarding the interim rule since its promulgation and it is preparing to issue final regulations in November 2003. It is quite possible that the final regulations will differ from the interim rules. Certain members of the US House of Representatives have objected to the current regulations because they delegate approval of ship security plans of foreign flag vessels to their respective flag administrations or RSOs.

Revision of the interim rule has been suggested so as to require that the flag administration and the US Coast Guard approve such ship security plans. The Coast Guard is reluctant to revise the rules in this regard and, as a result, is emphasizing its strong port state control activity and the stringent standards it will enforce during vessel inspections.

Accordingly, Members should be prepared to encounter an aggressive port state control response in addition, possibly, to an element of unpredictability when vessels call at US ports and are asked to demonstrate compliance with these new security measures.

Yours faithfully,

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Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB