

## § 104.120

## 33 CFR Ch. I (7-1-08 Edition)

Port Facility Security (ISPS) Code (Incorporated by reference, see §101.115 of this subchapter) have been completed. This includes ensuring 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, having taken into account the relevant provisions of the ISPS Code, part B, and that the vessel is provided with an approved security plan.

(2) Vessels not subject to SOLAS Chapter XI-1 or Chapter XI-2, may comply with this part through an Alternative Security Program or a bilateral arrangement approved by the Coast Guard. If not complying with an approved Alternative Security Program or bilateral arrangement, these vessels must meet the requirements of paragraph (b) of this section.

(c) Persons required to obtain a TWIC under this part may enroll beginning after the date set by the Coast Guard in a Notice to be published in the FEDERAL REGISTER. This notice will be directed to all facilities and vessels within a specific COTP zone.

(d) By April 15, 2009, vessel owners or operators subject to paragraph (b) of this section and not excluded by §104.105(d) of this part must be operating in accordance with the TWIC provisions found within this part.

[USCG-2003-14749, 68 FR 60513, Oct. 22, 2003, as amended by USCG-2004-18057, 69 FR 34925, June 23, 2004; USCG-2004-19963, 70 FR 74669, Dec. 16, 2005; USCG-2006-25150, 71 FR 39208, July 12, 2006; USCG-2006-24196, 72 FR 3579, Jan. 25, 2007; 73 FR 25565, May 7, 2008]

### § 104.120 Compliance documentation.

(a) Each vessel owner or operator subject to this part must ensure, on or before July 1, 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, including a vessel specific security assessment report generated under the Alternative Security Program, as specified in §101.120(b)(3) of this subchapter, 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, subject to the International Convention for Safety of Life at Sea, 1974, (SOLAS), Chapter XI-1 or Chapter XI-2, 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 subchapter) and is issued in accordance with the ISPS Code, part A, section 19. As stated in Section 9.4 of the ISPS Code, part A requires that, in order for the ISSC to be issued, the provisions of part B of the ISPS Code need to be taken into account.

(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.

(c) Each vessel owner or operator who designates a passenger or employee access area (as those terms are defined in §§104.106 and 104.107 of this part) on their vessel must keep on board the vessel with their approved VSP a clear, visual representation (such as a vessel schematic) of where those designated areas fall. This need not be submitted to the Coast Guard for approval until incorporated into

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the VSP at the next VSP submittal (either renewal or amendment), but must be made available to the Coast Guard upon request.

[USCG–2003–14749, 68 FR 39302, July 1, 2003, as amended at 68 FR 60513, Oct. 22, 2003; USCG–2004–18057, 69 FR 34925, June 23, 2004; USCG–2006–24196, 72 FR 3579, Jan. 25, 2007]

### § 104.125 Noncompliance.

When a vessel must temporarily deviate from the requirements of this part, the vessel owner or operator must notify the cognizant COTP, and either suspend operations or request and receive permission from the COTP to continue operating.

[USCG–2003–14749, 68 FR 60513, Oct. 22, 2003]

### § 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 (CG-54) at 2100 Second St., SW., Washington, DC 20593. The Commandant (CG-54) may require the vessel owner or operator to provide additional data for determining the validity of the requested waiver. The Commandant (CG-54) 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.

[USCG–2003–14749, 68 FR 39302, July 1, 2003, as amended by USCG–2008–0179, 73 FR 35009, June 19, 2008]

### § 104.135 Equivalentents.

For any measure required by this part, the vessel owner or operator may propose an equivalent as provided in § 101.130 of this subchapter.

### § 104.140 Alternative Security Programs.

A vessel owner or operator may use an Alternative Security Program as approved under § 101.120 of this subchapter if:

(a) The Alternative Security Program is appropriate to that class of vessel;

(b) The vessel is not subject to the International Convention for Safety of Life at Sea, 1974; and

(c) The Alternative Security Program is implemented in its entirety.

[USCG–2003–14749, 68 FR 39302, July 1, 2003, as amended at 68 FR 60513, Oct. 22, 2003]

### § 104.145 Maritime Security (MARSEC) Directive.

Each vessel owner or operator subject to this part must comply with any instructions contained in a MARSEC Directive issued under § 101.405 of this subchapter.

### § 104.150 Right to appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal as described in § 101.420 of this subchapter.

## Subpart B—Vessel Security Requirements

### § 104.200 Owner or operator.

(a) Each vessel owner or operator must ensure that the vessel operates in compliance with the requirements of this part.

(b) For each vessel, the vessel owner or operator must:

(1) Define the security organizational structure for each vessel and provide all personnel exercising security duties or responsibilities within that structure with the support needed to fulfill security obligations;

(2) Designate, in writing, by name or title, a Company Security Officer (CSO), a Vessel Security Officer (VSO) for each vessel, and identify how those officers can be contacted at any time;

(3) Ensure personnel receive training, drills, and exercises enabling them to perform their assigned security duties;

(4) Inform vessel personnel of their responsibility to apply for and maintain a TWIC, including the deadlines and methods for such applications, and of their obligation to inform TSA of any event that would render them ineligible for a TWIC, or which would invalidate their existing TWIC;