

Haight's Memo

July 2003

Foreign Compliance with U.S. Maritime Security Requirements

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The U.S. Maritime Transportation Security Act (MTSA) imposes various maritime security requirements on foreign vessels operating in waters subject to the jurisdiction of the United States. Maritime security regulations promulgated by the U.S. Coast Guard implement some (but not all) of the MTSA requirements and impose some additional requirements. This paper will attempt to guide owners and operators of foreign (i.e., non-U.S.) ships on how to comply with these various requirements. This is not an easy task, as there are specific requirements in the MTSA that are not addressed in the maritime security regulations. In other words, Congress has imposed various requirements on the owners and operators of ships navigating waters of the United States and the U.S. Coast Guard has not provided any guidance on how to comply with those legislative mandates. For those situations, we have attempted to provide some suggestions, based on our long experience with Congress, the U.S. Coast Guard, and maritime regulation in general.

It is presumed that the regulated community, which includes all foreign commercial ships greater than 100 gross register tons intending to operate in waters subject to the jurisdiction of the United States will comply with the International Ship and Port Facility Security (ISPS) Code adopted as part of the 2002 amendments to the International Convention on the Safety of Life at Sea (SOLAS Convention). For those foreign ships not subject to the SOLAS Convention, such as commercial ships of less than 500 gross register tons and Canadian ships operat-

ing exclusively on the Great Lakes and the River St. Lawrence, this assumption may be somewhat in error. For those particular ships to operate in waters subject to the jurisdiction of the United States, they will effectively be required to comply with the ISPS Code by means of compliance with U.S. requirements.

Foreign ships seeking to operate in waters subject to the jurisdiction of the United States will have to undertake their ship security assessments earlier than might be required under the ISPS Code. Likewise, they will have to prepare their ship security plan not later than 29 December 2003 (rather than 1 July 2004, as provided in the ISPS Code).

These ships will be required to develop a U.S. Appendix to their ship security plan, as the U.S. requirements exceed the ISPS Code requirements. The ship security plan, including the U.S. Appendix and the ship security assessment, will have to be submitted to the U.S. Coast Guard not later than 29 December 2003. The ship must be operating in compliance with its ship security plan (including the U.S. Appendix) not later than 1 July 2004, when it is navigating in U.S. waters.

The U.S. Appendix will have to contain the following provisions, which are in addition to the ISPS Code requirements:

There are also differences between the implementation dates of the SOLAS Convention and the U.S. maritime security regulations for carriage of AIS equipment.

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Specific recommendations for navigating through these confused seas follow.

Commence ship security assessment and ship security plan process immediately

Because the U.S. deadlines for submittal of these documents is six months sooner than the international deadline, you must start the process immediately, if you have not yet done so. Even if you have begun the process, you must adjust your timeline so that it is complete and ready for submittal to the U.S. Coast Guard on or before 29 December 2003.

Prepare a U.S. Appendix to the ship security plan

The U.S. Appendix to the international ship security plan must contain the following elements, which are in addition to the international requirements:

- Identification of the Qualified Individual with authority to implement the ship security plan.
- Explanation of how the ship security plan is consistent with the national and area maritime transportation security plans.
- Identification of security measures available under contract or other means approved by the U.S. Coast Guard, necessary to deter to the maximum extent practicable a transportation security incident or substantial threat of such a security incident.
- Provisions for a comprehensive response to a transportation security incident, including notifying and coordinating with local, state, and federal authorities (including the Director of the Federal Emergency Management Agency), securing the ship, and evacuating persons on the ship.
- A copy of the ship security assessment.

Recommendations on how to deal with the five elements of the U.S. Appendix follow:

Qualified Individual

The maritime security regulations promulgated by the U.S. Coast Guard on July 1, 2003, indicate that the Coast Guard considers the term 'Qualified Individual' to be equivalent to 'ship security officer'. The regulations also provide that vessel security plans should include 24-hour contact information for the company security officer and the ship security officer. It is recommended that the U.S. Appendix to the ISPS Code security plan include 24-hour contact information for the company security officer and the ship security officer and also contain a statement indicating that these two officials, along with the master, have authority to implement the ship security plan, including the U.S. Appendix.

Consistency with National and Area Plans

The national and area maritime transportation security plans are currently under development. It is recommended that, until those plans are promulgated, the U.S. Appendix to the ISPS Code security plan include a provision to the following effect:

A subsequent iteration of this ship security plan will be made consistent with the U.S. national and area maritime transportation security plans after those plans have been promulgated. In the meantime, this ship will be operated consistent with applicable maritime transportation security requirements promulgated by the U.S. Coast Guard at the national or area (e.g., Captain of the Port) level.

Identification of Security Measures

The U.S. Coast Guard has not identified any specific security measures (other than those to be implemented by the company and the ship, under the ISPS Code), that should be included in the U.S. version of the ship security plan. Rather, the Coast Guard has broad authority under the MTSA and elsewhere to mandate additional specific security measures to meet identi-

fied threats. It is therefore recommended that the U.S. Appendix to the ISPS Code security plan include a provision to the following effect:

The master, the vessel security officer, and the company security officer each have authority to implement additional security measures that may be directed by the U.S. Coast Guard. As necessary, these additional security measures may be implemented by means of contract or other means approved by the U.S. Coast Guard.

Transportation Security Incident Response

Maritime transportation security plans are to include provision for a comprehensive response to an emergency, including notifying and coordinating with local, state, and federal authorities (including the Director of the Federal Emergency Management Agency - FEMA), securing the vessel or facility, and evacuating vessel or facility personnel. It is recommended that the U.S. Appendix to the ISPS Code security plan include the following:

- A notification section (resembling the notification section found in vessel response plans – VRPs or shipboard oil pollution emergency plans - SOPEPs), but including names and telephone numbers of local, state, and federal government emergency response agencies and specifically including FEMA. It should be noted that the main telephone number for FEMA is (202) 566-1600. It is suggested that this telephone number be included in the notification section.
- A provision for securing the ship, addressing issues such as securing power and water; terminating cargo-handling operations; bunkering, and loading of stores; and doubling up of lines and other means of enhancing the ability of the ship to remain at its current location.

- A provision for evacuating all persons on the ship, including means for assembling in a safe location and accounting for all persons.

Ship Security Assessment

The ISPS Code requires owners and operators of ships subject to the SOLAS Convention to conduct a ship security assessment, in accordance with published guidelines, prior to development of the ship security plan. The ISPS Code treats the ship security assessment as an internal company document. On the other hand, the maritime security regulations promulgated by the U.S. Coast Guard mandate that owners and operators of ships requiring U.S.-approved vessel security plans include a copy of the ship security assessment with the ship security plan when it is submitted for USCG review.

AIS

The SOLAS Convention, as amended, has a timeline for carriage of automatic identification system (AIS) equipment, depending on the type vessel and its size. The MTSA has a similar, but not identical, timeline. The maritime security regulations generally follow the SOLAS approach, but have special compliance dates for vessels transiting various vessel traffic service (VTS) areas. As most vessels engaged in international trade must be capable of entering all major ports, it is recommended that AIS be installed not later than 1 July 2004, unless an earlier installation date is mandated by SOLAS based on the ship's type and size.

If you have questions regarding the above information or other matters related to maritime security please contact Brian Starer at 212-513-3433 (bstare@hkllaw.com) or Dennis Bryant at 202-828-1865 (dbryant@hkllaw.com).

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.