



## MEMORANDUM

**To: Security Advisory Committee Members**

**Re: Frequently Asked Questions Regarding ISPS Code Compliance**

**Date: June 25, 2004**

Over the past few weeks, the Council has responded to many questions related to the implementation and enforcement of the International Ship and Port Facility Security (ISPS) Code and Maritime Transportation Security Act (MTSA) regulations, which takes effect on Thursday July 1, 2004. In the interest of sharing the answers to these questions with all Member companies, we have developed the following list of Frequently Asked Questions that are accompanied by answers based on the latest information available. Please feel free to contact Doug Schneider of the Council Staff at 202-589-0106 or [dschneider@worldshipping.org](mailto:dschneider@worldshipping.org) if you have questions.

### **1. Enforcement Date**

**A. Question:** Will the ISPS Code requirements, which take effect on July 1, apply to complete vessel voyages that commenced prior to July 1 date or to complete voyages that commence on or after July 1?

**Answer:** Unlike Customs' phase-in of the 24 Hour Rule requirements, which were applied to complete vessel voyages (for main-line vessels calling the US), the ISPS Code requirements take effect for all vessels subject to SOLAS and the Coast Guard's MTSA regulations on July 1, 2004. This means, for example, that vessels calling non-compliant foreign port facilities prior to July 1 may choose--but would not be required--to implement and document the Coast Guard's recommended additional security measures to facilitate entry to the United States. If the same foreign vessel then called at a non-compliant foreign port facility on July 1, the vessel would be expected to implement and document the recommended additional security measures to facilitate entry to the United States.

**B. Question:** Will the Coast Guard board all U.S. bound commercial vessels on or after July 1 to ensure compliance with the ISPS Code?

**Answer:** Yes. The Coast Guard has acquired and trained over 500 additional Port State Control Officers and has stated that the agency will board every U.S. bound commercial vessel at least once within a 12 month period to ensure the vessel is ISPS certified and operating in accordance with the Code. Vessels that are not ISPS certified will be denied entry. Vessels that have not properly implemented the ISPS Code requirements on the vessel may be denied entry, detained until the discrepancy is corrected, or expelled from the United States.

## **2. Pre-implementation Review Boardings**

**Question:** Will foreign vessels be subject to ISPS enforcement boardings before July 1, and if so, will those vessels be re-boarded after July 1?

**Answer:** Earlier this year, the Coast Guard commenced pre-implementation review boardings to assess compliance with ISPS and MTSA requirements for foreign vessels that indicated in their Notices of Arrival that they were ISPS compliant. If the Coast Guard determines during the boarding that the vessel is properly certified and operating in accordance with the ISPS Code prior to July 1, the vessel will not normally be re-boarded again to assess ISPS compliance unless new information warrants an additional boarding.

## **3. International Ship Security Certificates**

**A. Question:** Will the Coast Guard accept “Temporary ISSCs” or “Statements of Compliance” (SOCs) with the ISPS Code from Recognized Security Organizations (RSOs) in lieu of an ISSC?

**Answer:** No. The Coast Guard has announced that SOCs from flag administrations, RSOs or class societies and Temporary ISSCs will not be accepted. In a press release on this subject, the Coast Guard stated, “Vessels that only hold SOCs or temporary ISSCs will be denied entry, detained or expelled from port as appropriate.” (Information relating to the acceptance of “short-term” and “Interim” ISSCs is provided below.)

**B. Question:** Will the Coast Guard accept “short-term” ISSCs issued for less than the full five- year term?

**Answer:** Yes. The Coast Guard announced in a press release on June 25th that it would accept ISSCs issued for a period of less than the maximum ISSC term of five years. The Coast Guard stressed, however, that an ISSC issued for less than 5 years, must only be issued to vessels that demonstrate full compliance with the ISPS Code. The Coast Guard noted, "As per the ISPS Code (Part A, 19.3.1), ISSCs can be issued 'for a period specified by the administration, which shall not exceed five years'. These short-term ISSCs can only be issued if all of the requirements for issuance of a full-term ISSC have been met, and only for administrative reasons has the length of the period of validity been reduced from the five-year maximum."

**C. Question:** Will the Coast Guard accept "Interim" ISSCs?

**Answer:** Yes, the Coast Guard will accept interim ISSCs, and outlines its policy in this regard in Enclosure 3, Section C of NVIC 06-03 (Change 1):

*"3. Verify ISSC. Verify the ISSC is on board and valid. The Port State Control Officer (PSCO) should verify the ISSC is on board the vessel, is properly endorsed by the flag administration or RSO, and is valid. If the ship has an interim ISSC, confirm that the reason for interim certification is in agreement with one of the valid reasons specified in Section 19.4.1 of the ISPS Code, Part A and that the conditions for interim certification outlined in Sections 19.4.2 - 19.4.6 of ISPS Code, Part A, are satisfied."*

Interim ISSCs are typically issued for new vessels, re-flagged vessels, and/or vessels re-entering service. The detailed additional guidelines for issuance of an Interim ISSC are listed in ISPS Part A, Section 19.4.2.

**D. Question:** Will the Coast Guard accept facsimile copies of ISSCs?

**Answer:** No. Coast Guard policy is that ships calling the United States need to have the original ISSC, which is valid and properly endorsed by the flag administration or RSO, on board the vessel.

#### **4. Questions Related to Non-Compliant Foreign Port Facilities**

**A. Question:** How and when will the maritime industry know which port facilities are ISPS compliant and which are not?

**Answer:** In accordance with the ISPS Code and SOLAS amendments, all IMO contracting governments are required to provide to IMO, by July 1, a list of all ISPS compliant port facilities. The IMO will then make these lists available to all

other IMO contracting governments and to the public via the IMO website. It remains unclear how long it will take the IMO to perform these tasks.

The US Coast Guard has indicated that it will then use the IMO “white list” of compliant port facilities list to create a “black list” of all non-ISPS compliant ports/port facilities worldwide. This list would then be circulated to the maritime industry via a Port Security Advisory. The Council will forward this Advisory to Member companies when it becomes available.

Foreign vessels calling these non-compliant port facilities prior to calling the US would need to implement the four additional security measures, discussed in the Council's June 8th memo, described in question 5 below, to facilitate entry to the US.

**B. Question:** How will port facilities in non-IMO/non-SOLAS countries, such as Taiwan, be addressed?

**Answer:** The U.S. government has requested that all non-IMO/non-SOLAS countries that wish to trade with the United States fully implement the applicable requirements of ISPS Code Part A, taking into account the relevant provisions of Part B of the Code, and report compliance to the Coast Guard by July 1. The Coast Guard will deem countries that fail to report ISPS compliance to the Coast Guard by July 1 to be non-compliant. Foreign vessels seeking entry to the U.S. after calling a non-compliant country should implement the additional security actions described in question 5 below.

**C. Question:** How will cargo transhipped through a non-compliant foreign port facility or carried aboard a non-ISPS certified (or non-SOLAS) feeder vessel be handled?

**Answer:** The Coast Guard and Customs have indicated that they will not be factoring the ISPS compliance of transshipment ports and feeder vessels into their security risk assessments for U.S. destination vessels and cargo.

## **5. Facilitating Entry to the United States for ISPS Compliant Vessels**

**A. Question:** What should an ISPS compliant foreign vessel do to facilitate entry to the United States after calling at a non-compliant foreign port facility?

**Answer:** As outlined in Appendix B to Enclosure 4 of the Coast Guard Navigation and Vessel Inspection Circular (NVIC) 06-03, Change 1, the Coast Guard recommends that vessels implement the following security measures

when calling at a non-compliant port facility in order to facilitate entry to the United States:

- a) Set a higher MARSEC level (for the ship)
- b) Execute a Declaration of Security (with the non-compliant facility)
- c) Log all security actions in the ship's logs; and
- d) Report the actions taken, either within the Notice of Arrival (NOA) or directly to the cognizant Captain of the Port (COTP) for the US port of arrival.

Depending on the results of specific foreign port assessments completed under the Coast Guard's International Port Security Program, the agency may also publish Port Security Advisories detailing additional security actions that vessels should take when calling specific non-compliant and/or high-risk foreign port facilities identified in such Port Security Advisories.

**B. Question:** When and where should a vessel implement the recommended security measures discussed in NVIC 06-03?

**Answer:** The Coast Guard actions discussed in the agency's Navigation and Vessel Inspection Circular 06-03 are recommended when ISPS compliant foreign vessels call any port facility that is not ISPS compliant and thereafter wish to seek entry to the United States.

## **6. Maritime Security (MARSEC) Level**

**Question:** One of the Coast Guard's four recommended security measures that vessels should take when calling non-compliant foreign port facilities is to increase the ship's MARSEC level. What MARSEC level should the ship set?

**Answer:** The Coast Guard suggests that the vessel increase its MARSEC level above the level that it had set prior to entering the non-compliant port. Because ships will normally be operating at MARSEC level 1, the Coast Guard's recommendation would indicate raising the level to MARSEC 2 or higher when calling a non-compliant foreign port facility. Individual Port Security Advisories may specify the exact MARSEC level for vessels to set when calling specific non-compliant ports.

## **7. Declaration of Security**

**Question:** What is a Declaration of Security and how would a ship sign one with a non-compliant foreign port facility?

**Answer:** A Declaration of Security (DOS) is a signed agreement between a ship and a port facility that delineates which party is responsible for specific security measures. DOS's can be initiated at the request of the vessel or the facility and should be signed immediately upon arrival of the vessel. (In order not to delay cargo handling, the details of the DOS may be worked out in advance of the vessel's arrival by radio, and then signed upon arrival by the Ship Security Officer and Facility Security Officer.)

In cases where a non-compliant foreign port facility declines to enter into a DOS despite the vessel's request, it is recommended that the vessel document this situation and report it to the Coast Guard in the NOA and/or upon arrival to the United States. The guidelines for the signing of DOS's can be found in Section 5 of the ISPS Code (Parts A and B) and a model DOS may be found in the Appendix to Part B of the Code.

## **8. Reporting Security Actions to the Coast Guard**

**Question:** How does the vessel report security actions taken in a non-compliant foreign port to the Coast Guard, as recommended in the answer to Question 5 above?

**Answer:** The Coast Guard indicated that it would expect the security actions taken by the vessel while calling at a non-compliant foreign port facility to be reported in the Notice of Arrival (NOA) filing which is submitted to the Coast Guard 96 hours prior to arrival to the first US port. Actions taken may also be reported directly to the cognizant COTP (presumably via the Coast Guard Port State Control Officer) upon arrival. In the interest of notifying the Coast Guard as early as possible prior to arrival to the U.S. so as to enable the agency to make an early port state enforcement determination, reporting security actions taken via the NOA would seem to be the best approach.

## **9. Access to the Ship Security Plan**

**Question:** When would the Coast Guard or other officers duly authorized by another Contracting Government be authorized to review the Ship Security Plan?

**Answer:** In accordance with ISPS Code Part A (Section 9.9) and Part B (Section 9.7.4), Ship Security Plans are not subject to inspection by officers duly authorized by another Contracting Government except in circumstances where the officer has clear grounds to believe that the ship is not in compliance with SOLAS Chapter XI-2 or Part A of the ISPS Code. In such cases, limited access to the specific sections of the plan relating to the non-compliance is allowed with the consent of the Contracting Government or master of the ship concerned.

Member companies are also reminded that Section 9.7 of Part A of the ISPS Code requires vessels to protect their Ship Security Plans from unauthorized access or disclosure. Furthermore, vessels must ensure their Ship Security Plans are safeguarded in accordance with applicable national requirements established by the ship's Contracting Government.