

MTSA POLICY ADVISORY COUNCIL

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Applying MTSA Regulations to Facilities Having Periods of Variable Risk 05-03 CH 1

FINAL

Issue: Some facilities are not continuously engaged in activities that are regulated by part 105 of Title 33 of the Code of Federal Regulations (33 CFR 105). Although the products handled and stored by some facilities are not regulated, the fact that these products are delivered or shipped out via SOLAS or foreign flagged vessels causes these facilities to fall within the applicability standards of the Maritime Transportation Security Act (MTSA).

Is it permissible for facility owners/operators to make specific provisions in their approved facility security plan that allows for a temporary reduction or near suspension of security measures when the facility is not engaged in Maritime Transportation Security Act (MTSA) regulated activities and no threat or risk of a Transportation Security Incident (TSI) exists?

References:

- 33 CFR 101.105 – Definitions, *Transportation Security Incident (TSI)*
- 33 CFR 101.105 – Definitions, *Dangerous goods and/or hazardous substances*
- 33 CFR 105.105(a)(3), (a)(4) and (a)(5) – Applicability
- PAC 53-05 – Towing Vessels Moving Regulated Barges Not Carrying CDCs
- NVIC 03-03, CH-2 – Guidelines for Regulations Mandated by MTSA for Facilities
- Maritime Security Risk Analysis Model (MSRAM)

Discussion: Since the implementation of MTSA in July 2004, the Coast Guard has consistently recognized that during periods of normal operations, sometimes significant in length, MTSA regulated vessels and facilities do not always present a threat/risk of a TSI.

The intent of this discussion is to re-emphasize that effective, risk-based security vulnerability assessments and appropriately crafted security plans are expected to take into account periods of operations during which, in the context of a nexus with the maritime environment, the risk of a TSI is significantly diminished or eliminated.

Security plans are expected to ensure that security resources and vulnerability mitigating measures are applied to their greatest advantage when the threat of a TSI does exist. To do otherwise wastefully misdirects industry and Coast Guard compliance resources away from where they are intended and weakens their overall deterrent effect.

Policy: The goal of MTSA is the risk-based mitigation of a TSI. Prevention of a TSI is provided for in regulation and achieved as a result of security assessments and approved security plans that apply, to their fullest advantage, vulnerability mitigating security measures at all times during which a threat/risk of a TSI is present.

When not engaged in regulated activities, facility owners/operators may make provisions in their Facility Security Plan (FSP) for the reduction or near suspension of security measures for the period when there is no threat/risk of a TSI. When, based on an in-depth security assessment, the facility is anticipating activities that present vulnerabilities for a TSI, their FSP must detail how the full suite of security measures will be reestablished, including any measures designed to mitigate vulnerabilities that may be the result of the reduction or suspension of security measures when the threat/risk of a TSI is not present.

Currently, the MTSA regulation does not facilitate turning an FSP off and on. Again, the CG recognizes that every facility is not at risk for a TSI at all times. Even when security measures are greatly reduced due to a lower level of risk, the facility is still regulated (their FSP is not "turned off").

MTSA regulated vessel and facility owners and operators are encouraged to periodically revisit and re-assess their risk-based security assessments and to revise their security plans whenever needed.