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CG-FAC Policy Letter
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From: 
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To: Distribution

Subj: GUIDANCE FOR EVALUATING REQUESTS TO REDUCE A FACILITY'S
FOOTPRINT OR RE-DESIGNATE SECURE AREAS

Ref: (a) Navigation and Vessel Inspection Circular (NVIC) 03-07
(b) Title 33, U.S. Code of Federal Regulations (CFR) part 105 – Maritime Security:
Facilities
(c) Chemical Facility Anti-Terrorism Standards (CFATS), Title 6, Code of Federal
Regulations (CFR) § 27.110(b)

1. **Purpose.** This policy letter provides guidance to Coast Guard Captains of the Port (COTP) who receive requests to modify the footprint of a facility regulated under the Maritime Transportation Security Act (MTSA) or redesignate the secure areas within an MTSA facility. This policy letter provides clarification to ensure consistent application of policy between COTP zones.
2. **Background.** The MTSA regulations, published in 2003, require owners and operators of facilities subject to Title 33 CFR parts 126, 127, or 154 to comply with the requirements of Title 33 CFR part 105. Owners and operators reviewed the areas of their facilities to which MTSA would apply and devised the Facility Security Plan (FSP) for approval by the COTP. The FSP identified the facility's secure area(s), restricted area(s), secure and restricted area(s), and those areas to which security measures were not required. Title 33 CFR § 105.115(b) stipulates that facility owners and operators wishing to designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident (TSI) as their secure area(s) must do so by submitting an FSP amendment to their cognizant COTP, in accordance with 33 CFR § 105.415. At any point, owners and operators of MTSA regulated facilities may request to re-designate secure areas, as conditions on the facility may change. Owners and operators seeking to re-designate facility secure areas must conduct a Facility Security Assessment (FSA) and submit amendments to their FSP. These re-designations may result in a secure area being reduced in size or completely re-designated as a restricted area. These requests for re-designation must be reviewed, and approved or denied, by the COTP. Re-designation of secure areas is a process that is independent of the final rule entitled *Transportation Worker*

Identification Credential (TWIC) – Reader Requirements, commonly referred to as the “TWIC Reader Rule.”

The Coast Guard delayed the effective date for three categories of facilities affected by the final rule entitled *Transportation Worker Identification Credential (TWIC) – Reader Requirements*, originally published in the Federal Register on August 23, 2016. That delay was accomplished via a final rule entitled, “*TWIC – Reader Requirements; Delay of Effective Date*,” published in the [Federal Register](#), effective on May 8, 2020. This final rule delayed the implementation of TWIC readers for three years at facilities that handle certain dangerous cargoes (CDCs). TWIC readers are required for facilities that receive large passenger vessels (over 1000 passengers) and the *Pride of America*.

3. Discussion. MTSA is applicable within the bounds of the facility footprint specified in the FSP. Most FSPs contain a schematic defining the facility footprint, secure areas, and areas that are not designated as secure areas. A facility footprint is often determined by a fence or natural barrier such as a desert, water, or cliff. Some facilities have roads or highways that act as barriers. In the absence of natural barriers, some facilities may choose to add fencing around tank farms or further increase security by other means. 33 CFR § 105.115(b) allows facility owners and operators to designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a TSI as secure areas.
 - a. The first step in reviewing an FSP amendment is to ensure that the facility has completed a FSA. This requirement can be found in 33 CFR § 105.310(c). The FSA should evaluate the risk associated with the proposed changes within the facility footprint, and facility owners/operators must demonstrate that the proposed changes do not present a risk of a TSI.
 - b. If the facility requests a reduction of their MTSA footprint, the COTP should conduct a careful review to fully understand why the request was made. Facility owners/operators are allowed to exclude those areas within their facility footprint that would not have been required to be part of the original FSP, but were nonetheless included by owners/operators. These areas, which include examples of non-maritime transportation portions, may include but are not limited to refineries, chemical plants, factories, mills, power plants, smelting operations, recreational boat marinas, non-hazardous cargo storage areas (e.g., salt and sand piles), administrative workspaces, parking lots or public areas of passenger vessel facilities. In some cases, a facility may have a large section of undeveloped land, which does not include any operational areas. Examples of undeveloped land include swamps, wooded areas, or fields intended for future development, on which work has not yet begun. If the area targeted for removal from the MTSA footprint is developed/operational, then that portion of the facility must be evaluated to determine whether it is directly connected to maritime transportation. Areas that are directly connected to maritime transportation should be evaluated to determine whether the area presents a risk of a TSI. If, after reviewing the regulations and guidance, a COTP is unsure of whether an area is directly connected to maritime transportation, they should treat the area as if it is directly connected to maritime transportation.

Per reference (c), the Chemical Facility Anti-Terrorism Standards (CFATS) regulations do not apply to facilities regulated pursuant to MTSA. Facilities whose MTSA footprint is reduced may, as a result of that reduction, have areas subject to CFATS regulations. Specifically, the CFATS regulations may apply to chemical storage areas when those areas are placed outside of the facility's MTSA footprint. The facility owner/operator would then investigate to see if those chemicals are listed at the threshold amount in Appendix A (Chemicals of Interest) of the CFATS regulations. If so, such chemical storage would be subject to approval pursuant to the CFATS regulations. Both sets of regulations (MTSA and CFATS) would not exist within the same facility footprint. When a COTP approves the reduction of a MTSA footprint resulting in CDCs falling outside of the MTSA footprint, the COTP shall inform the facility owner/operator of its potential coverage under the CFATS regulations and direct the facility owner/operator to alert the local CFATS Chemical Security Inspector of the approved change in the facility's MTSA footprint. The COTP shall also inform the regional CFATS Chief of Chemical Security (CCS) of the change in the facility's MTSA footprint and its potential for now being subject to CFATS. CFATS CCS contact information can be found on the FAC-2 Portal site. No FSP amendment request should be approved that results in an area containing CDC's having no regulatory oversight.

- c. 33 CFR § 105.115(b) allows facility owners or operators to designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a TSI as secure areas. A secure area is defined, in relevant part, in 33 CFR § 101.105 as "the area on board a vessel or at a facility or outer continental shelf facility over which the owner/operator has implemented security measures for access control in accordance with a Coast Guard approved security plan." 33 CFR § 105.255(a)(4) stipulates that facility owners or operators must ensure implementation of security measures to prevent unescorted individuals from entering an area of the facility that is designated as a secure area, unless those individuals hold a duly issued TWIC and are authorized to be in the area. When re-designation is authorized by the cognizant COTP, all security measures in the approved FSP still apply, but TWICs are not required for unescorted access in areas that are not designated as secure areas. If the facility requests a reduction of their secure area, the COTP should conduct a careful review to fully understand why the request was made. If the area targeted for removal contains a maritime transportation portion of the facility, the request should be denied or returned for revision. If, after reviewing the regulations and guidance, a COTP is unsure of whether an area contains a maritime transportation portion, then they should treat the area as if it does contain a maritime transportation portion. If the area targeted for removal does not contain a maritime transportation portion of the facility, then the next step is to identify any restricted areas within that section of the facility.

In accordance with reference (a), restricted areas may fall outside of a facility's secure area. Restricted areas mean the infrastructures or locations identified in an area, vessel, or facility security assessment or by the operator that require limited access and a higher degree of security protection. The entire facility may be designated as a restricted area, as long as the entire facility is provided the appropriate level of security. Restricted areas inside a facility's secure area require a TWIC for unescorted access. Non-TWIC holders must be side-by-side escorted at a ratio identified in reference (a). Some facilities may have restricted areas outside of the designated secure area. For example, the facility may

have a generator in a locked building outside of the facility's secure area. This building may be designated a restricted area, but not a secure area, to which non-TWIC holders may have unescorted access. In these cases, the restricted areas must continue to meet the requirements found in 33 CFR 105.260. After confirming the security measures for restricted areas, the next step is to evaluate whether the area targeted for removal presents a risk of a TSI.

- d. When reviewing a proposed amendment to a facility's MTSA footprint, or a proposed amendment to a facility's secure area, it is critical to accurately determine whether the area in question poses a risk of a TSI. The answer to this question should be provided in the FSA that is submitted with the proposed FSP amendment. The facility should be able to demonstrate either that the area in question does not pose a risk of a TSI, or that the risk of a TSI can be mitigated to an acceptable level. It is important to remember that while risk generally cannot be eliminated, it can be reduced. The only way to eliminate all risk within a facility is to halt every operation, but this is not a realistic approach to facility security. Rather, the facility should have appropriate security measures to reduce the vulnerabilities. This means that owners and operators must carefully assess what infrastructure is located within their facility, what action can be taken to harm that infrastructure, and what the consequences are if the action is successful. Then the facility can demonstrate how their security measures prevent or reduce the risk of such actions occurring, or how other measures are in place to mitigate the consequences.
 - e. In accordance with 33 CFR 105.255(a)(4), individuals seeking unescorted access to a secure area on a Risk Group A facility must pass electronic TWIC inspection. The portions of a facility that will require electronic TWIC inspections can only be evaluated after the boundaries of that facility's MTSA footprint area and the boundaries of its secure areas are clearly established. If a facility owner/operator feels a TWIC Reader is unnecessary at a particular secure area, they may apply for a **waiver** in accordance with 33 CFR § 105.130. If the area is no longer a secure area, a TWIC Reader will not be required and a waiver will not be necessary.
4. **Action.** A facility owner/operator seeking to change their facility's MTSA footprint, requesting to change their facility's secure areas, or seeking to modify the portions of the facility that will require electronic TWIC inspections, must submit a FSP amendment to the cognizant COTP, pursuant to a FSA in accordance with 33 CFR § 105.310(c) and 33 CFR § 105.415. COTPs will analyze the potential for the excluded portions to reasonably be at risk of being involved in a TSI. Determining whether to approve these FSP amendment requests is a 3-step process:

Step 1: Does the facility have a non-maritime transportation related portion?

If the answer is "yes," proceed. If the answer is "no," deny the request. The facility owner/operator may **appeal** that decision in accordance with 33 CFR § 101.420. Reference (a) limits the opportunity for FSP amendments to re-designate secure areas with a non-maritime transportation component. Reference (a) indicates that areas specifically used to stage cargo for loading to a vessel or to receive cargo upon discharge from a vessel are directly connected to maritime transportation. Therefore, the Coast Guard will generally not consider such areas eligible for reduction or exclusion from a secure area. Tank farms that are isolated by

natural or man-made barriers such as distance, bodies of water or roads could be excluded from the TWIC secure area if the COTP determines that the risk of a TSI is diminished due to these factors, as long as these tank farms are not directly related to a maritime transportation function.

Step 2: Is the area to be excluded non-maritime transportation related?

If the answer to this question is “no” (i.e. if it is SOLELY maritime transportation related), then go no further and deny the request. The facility owner/operator may **appeal** that decision in accordance with 33 CFR § 101.420. If the answer to that question is "yes" (i.e. if it is SOLELY non-maritime transportation related), or if the answer is "yes and no" (i.e. if it is both maritime and non-maritime transportation related—using the example of a coal pile supplied by a vessel but used by the power plant contained in reference (a)—then go to the next step. Other examples of non-maritime transportation related portions of a facility can be found above in the Discussion section.

Step 3: Is the area to be excluded at risk of being involved in a TSI?

The answer to this question will always be specific to each facility. Each facility owner/operator is required to conduct a FSA, and the COTP shall exercise his/her professional judgment regarding the potential for a TSI upon the maritime related portion of the facility.

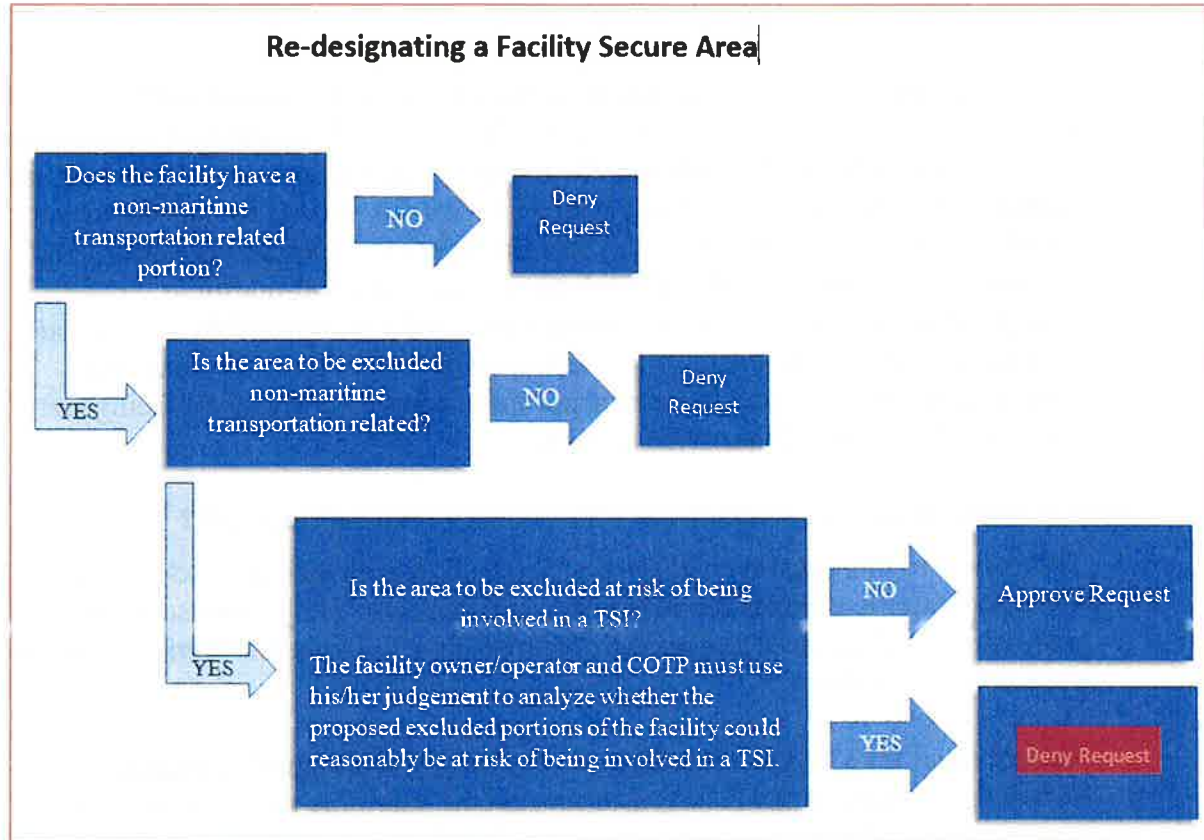
The potential for a TSI is a key factor in evaluating re-designation requests related to a portion of the facility that serves both maritime and non-maritime transportation related functions. This analysis will be informed by the location of the area to be excluded with respect to the waterfront, i.e. its proximity to the waterway and the hazards of the cargo(s) being stored. The aforementioned factors should be analyzed and the risk of a TSI given the highest priority.

The explanation regarding TSI component thresholds shall be considered in the COTP analysis. Per 33 CFR § 101.105, a TSI is a security incident resulting in:

- a significant loss of life,
- environmental damage,
- transportation system disruption, or
- economic disruption in a particular area.

Key to the determination on whether proposed re-designations of secure areas are appropriate is the understanding of what is meant by TSI components and all associated risks factors. Once the parameters of those components are understood, the facility owner/operator and COTP can use his/her professional judgment to analyze whether proposed excluded portions of the facility could reasonably be at risk of being involved in a TSI. If the proposed excluded portion(s) of the facility cannot be reasonably understood to be at risk of being involved in a TSI, the re-designation should be approved. If those portions of a facility are at risk of being involved in a TSI, the COTP should reject the facility owner/operator's submission or ask for a revised re-designation request.

The following flowchart provides further guidance regarding re-designation of a facility secure area.



An FSP amendment must be evaluated to determine the risk of a TSI.

For the portion of the facility that is targeted for re-designation the following question should be asked:

Does the area present a risk of a TSI?

The answer to this question should be contained in the FSA. In other words, based on the area's proposed security measures, could an individual gain access, with the necessary substances/devices/vehicles/equipment to take one action that could cause a TSI?

Important: Risk management principles acknowledge that while risk generally cannot be eliminated, it can be reduced. The questions below are not designed to establish that there is no possible way a TSI can occur, but rather to identify if there are appropriate security measures to reduce vulnerabilities. Additional items to consider when addressing this question:

- In general, this evaluation should consider a single action, not multiple consecutive actions. For example, opening a valve, shutting down equipment, detonating an explosive device, or ramming with a vehicle. In general, this should not consider two or more actions. For example, puncturing a storage tank and then also breaching secondary containment.

- What could an individual bring into the area undetected? For example, could someone drive through a gate with a stolen TWIC and bring in an explosive device? Or does the gate have robust TWIC checks and a method to detect explosives? Could someone walk into the area with a saw? Or are there measures to detect a saw?
- What infrastructure is located in the area, and what can be done to that infrastructure? For example, is there a building containing the facility's computer server, outside of which power can be switched off? Or is the building's power supply locked? Is there an unprotected valve to release all contents of a storage tank? Or is there a method of remotely shutting the valve from another location?
- If the action was successfully executed, what would be the impacts? Fire? Vapors? Explosion? Pollution? Power loss? Damage? Would there be over 150 deaths/injuries?
- Would there be environmental impacts to a navigable waterway? For example, would the action release enough pollutant to exceed secondary containment? Or would the release be contained? Is release close to the waterway? Or far? Is there a canal, ditch or other clear path to the waterway?
- Would there be a transportation system disruption? For example, would the action disrupt a single mode of transportation? Or are there alternatives/redundancies? Would the action disrupt a single major pipeline, bridge, waterway entrance? Or are their other pathways for the same purpose?
- Would the action negatively impact national defense? For example, is the area used to stage items for a military outload? Is the facility producing a product that is a key military component?

Methodology for access control remains unchanged. Owners/operators may utilize fencing, gates, Closed-Circuit Television (CCTV), roving patrols, and any other recognized access control measure or any combination of measures that accomplish the performance based standard, i.e. preventing unescorted access to secure areas by non-TWIC holders or unauthorized TWIC holders. In determining the appropriate level of access control to the re-designated secure areas of MTSA-regulated facilities, the FSA should be reviewed to make sure all access control provisions properly address the vulnerabilities and risks identified.

If a facility owner or operator does not agree with a COTP decision, he/she may **appeal** that decision in accordance with 33 CFR § 101.420.

5. Directives Affected.

- a) Policy Advisory Council (PAC) Document 01-08 is hereby cancelled.
 - b) CG-FAC Policy Letter 18-04 is hereby cancelled.
 - c) Currently, Change 1 to reference (a) is being drafted for publication.
6. Disclaimer. While the guidance contained in this document may assist industry, the public, Coast Guard, and other federal and state regulators in applying statutory and regulatory requirements, this guidance is not a substitute for applicable legal requirements nor is it a

regulation itself. It is not intended to nor does it impose legally binding requirements on any party outside the Coast Guard.

7. Changes. This policy letter will be posted on the web at www.homeport.uscg.mil. Changes to this policy will be issued as necessary. Questions concerning this policy should be directed to U.S. Coast Guard Office of Port and Facility Compliance (CG-FAC) at CG-FAC@uscg.mil.

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