

February 6, 2004

Mr. Chris Nelson
Bon Secour Fisheries
17449 County Road 49 S
Bon Secour, Alabama 36511

RE: Facility Security Plan

Dear Chris:

In January you contacted the Mississippi-Alabama Sea Grant Consortium with questions about the Facility Security Plans required under the Maritime Transportation Security Act, Pub. L. No. 107-295, 116 Stat. 2064 (2002) (MTSA). Please be aware that this letter does not constitute formal legal advice, but rather the Sea Grant Legal Program's understanding of the statutes and regulations applicable to your situation.

I spoke and/or emailed with you, LaDon Swann, and Rick Wallace, and from what I gathered you are hoping that a generic plan could be developed that could be adapted by smaller facilities. Adapting a generic plan would relieve smaller facilities from having to develop individual plans from scratch, a potentially very expensive and time-consuming task, yet still enable them to meet the MTSA's important security goals.

Good news: the Coast Guard allows such generic plans, which it calls Alternative Security Programs (ASPs). A facility implementing an approved ASP need only submit to the Coast Guard (1) a letter specifying which ASP it is using, and (2) Form CG-6025, a short checklist called the "Facility Vulnerability and Security Measures Summary." Clearly, this option is much less burdensome than developing a site-specific Facility Security Plan.

A trade association or industry group may develop an ASP for its members in good standing. ASPs are described in 33 C.F.R. § 101.120. Their use in place of Facility Security Plans is allowed by 33 C.F.R. §§ 105.120 and 105.140. (I am including copies of these regulations with this letter for your convenience.) The ASP must address all facility security requirements of 33 C.F.R. § 105 and must be approved by the Coast Guard. The Coast Guard has provided guidance on ASP development in Enclosure 5 of Navigation and Vessel Inspection Circular (NVIC) No. 03-03. The NVIC and all

enclosures may be viewed and downloaded at http://www.maritimedelriv.com/Port_Security/USCG/USCG_Port_Security.htm. I am also including a copy of Enclosure 5 with this letter. Although the Coast Guard's guidance documents refer to ASPs being developed by trade associations or industry groups, the regulations themselves do not appear to contain any language that would exclude the Mississippi-Alabama Sea Grant Consortium from participating in the development of an ASP. The Legal Program has no expertise in security planning, but we are willing to help in any way we can.

As we discussed on the phone last week, there are two other relief valves for Facility Security Plan requirements: waivers and equivalents. Waivers and equivalents are available only when a facility is submitting its own Facility Security Plan, and not when a facility is using an ASP. Upon request from a facility owner/operator, the Coast Guard may waive any facility security planning requirement that is unnecessary for that facility to meet the overall security requirements. Likewise, the Coast Guard may allow a facility to substitute equivalent security measures for any security measure required by the MTSA. The relevant regulations for waivers and equivalents are 33 C.F.R. §§ 101.130, 105.130, and 105.135. While waivers and equivalents are potentially useful for individual facilities that must develop their own specific Facility Security Plans, I believe the ASP is the mechanism you are looking for because it is a generic plan adaptable to multiple facilities.

I hope this letter answers your questions satisfactorily. If it does not, please let me know how I can provide more assistance. Thank you for bringing your question to the Mississippi-Alabama Sea Grant Legal Program.

Sincerely,

Josh Clemons
Research Counsel

Cc: Rick Wallace, Alabama Sea Grant Extension Program
LaDon Swann, MS-AL Sea Grant Consortium

Encl: 33 C.F.R. §§ 101.120, 105.120, 105.140
NVIC No. 03-03, Enclosure 5
Form CG-6025