

MTSA/ISPS POLICY ADVISORY COUNCIL

May 6, 2004

Issue/Discussion/Decision Certain Dangerous Cargo Facilities 20-04

FINAL

Issue: What is a CDC facility?

Discussion: Certain Dangerous Cargoes (CDC's) are defined in 33 CFR 160.204, and the preamble to the Final Rule states that facilities that handle such CDC's are considered CDC Facilities. The Final Rule preamble also notes the Coast Guard disagrees "that 105.295 should only apply when CDC is actually present on a facility, because the measures required by the section must be taken in advance so that they can be implemented when CDC is present." The Final Rule preamble does not define what the word handles means, and the purpose of this paper is to decide how to interpret this term.

Decision: In order for a facility to be classified as a CDC Facility, a vessel-to-facility interface must occur, or be capable of occurring, and involve the transfer of CDC's in bulk. Facilities designated as CDC facilities would need to comply with the regulations contained in 33 CFR 105.295. A facility that is required to complete a Security Plan but that is not designated as a CDC Facility must develop security procedures for the safeguarding of the CDC while it is present on the facility. The following scenarios are examples of how this might be accomplished:

Scenario A: Facilities that receive vessels and engage in vessel-to-facility interfaces that involves the transfer of bulk Certain Dangerous Cargoes from the vessels that they receive.

Scenario A Decision: Facilities would be designated as Certain Dangerous Cargo (CDC) Facilities and would be required to comply with 33 CFR 105.295.

Scenario B: Facilities that receive vessels and engage in vessel-to-facility interfaces that involves the transfer of packaged Certain Dangerous Cargoes from the vessels that they receive.

Scenario B Decision: Facilities would not be required to comply with 33 CFR 105.295. The Facility Security Plan for these facilities must address the fact that they handle such cargoes and the provisions that the facilities have to secure such cargoes.

Scenario C: Facilities that receive vessels that carry CDC's in bulk but the transfer of CDC's does not occur between the vessels and the facility.

Scenario C Decision: Facilities would not be required to comply with 33 CFR 105.295. Under 33 CFR 105.245(b), prior to the arrival of a vessel to the facility, the Facility Security Officer and the Vessel Security Officer, or their designated representatives, would be required to coordinate security needs and agree upon the contents of a DoS. The vessel and facility representatives would then need to sign and implement this DoS. As part of the Security that the two agree upon, provisions should be implemented to safeguard the CDC onboard the vessel.

Scenario D: Facilities, already subject to 33 CFR Part 105, receiving Certain Dangerous Cargoes from entities other than vessels, such as rail cars and tanker trucks.

Scenario D Decision: Facilities would not be required to comply with 33 CFR 105.295. The Facility Security Plan for these facilities must address the fact that they handle such cargoes and the provisions that the facilities have to secure such cargoes. At a minimum, these facilities would need to designate the areas where CDC's are present as restricted areas.

Scenario E: Facilities, already subject to 33 CFR Part 105, through which train cars travel carrying CDC's. These CDC's are not received at the facility, but the train cars might be present for extended periods of time.

Scenario E Decision: Facilities would not be required to comply with 33 CFR 105.295. The facility should be aware of the movement of such cargoes and have included this in their Facility Security Plans. At a minimum, the facility should incorporate the checking of railcars during security rounds on the facility.