

AMERICAN SHIPBUILDING

ASSOCIATION

600 PENNSYLVANIA AVF., SE
SUITE 305
WASHINGTON DC 20003
TEL 202.544.8170
FAX 202.544.8252
WWW.AMERICANSHIPBUILDING.COM

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Mr. Dominic Mancini
Office of Information and Regulatory Affairs
17th Street and Pennsylvania Avenue, N.W.
Washington DC 20503

VIA FAX: 202-395-6974

RE: Unduly Burdensome Regulatory Requirements

Dear Mr. Mancini:

On behalf of the shipbuilding industry, the American Shipbuilding Association respectfully requests that your Office review the attached background paper and direct that the regulations found at 33 CFR 104 and 105 be revised to provide that shipyards whose facilities and vessels are already subject to approved DOD security plans be exempted from the redundant, conflicting, and burdensome requirements as set out in 33 CFR 101 through 106. In short, the regulatory requirements that the ASA shipyards must comply with in order to build ships for the U. S. Navy far exceed those established by the Coast Guard, and should serve as a basis to exempt from Coast Guard regulatory compliance those shipyards that are held to a higher security standard imposed by the Navy than that established by the Coast Guard.

Thank you for your consideration of this request. Should you need additional information, please contact Frank Losey in my office (202-544-9614).

Sincerely,



Cynthia L. Brown
President

Redundant and Burdensome Coast Guard Security Plan Regulation

ISSUE: Should private shipyards that are required to comply with the ultra stringent DOD regulatory security plans be required to comply with redundant, conflicting and burdensome Coast Guard regulatory requirements?

DISCUSSION: Recently adopted U. S. Coast Guard regulations at 33 CFR Part 104, "Maritime Security: Vessels" and Part 105, "Maritime Security: Facilities" implement the Maritime Transportation Security Act. The intent of the Act is to ensure enhanced security of port facilities, port areas, and oceangoing vessels. Part 105 requires facilities, broadly defined as "any structure or facility of any kind located in, on, under, or adjacent to any waters subject to the jurisdiction of the U.S. and used , operated, or maintained by a public or private entity, including any contiguous or adjoining property under common ownership or protection," to operate under an approved Facility Security Plan, "to ensure the application of security measures designed to protect the facility and its servicing vessels or those vessels interfacing with the facility, their cargoes, and persons on board at the respective MARSEC [Maritime Security] Levels." [See 33 CFR 101.105] Part 104 has similar requirements for owners or operators of vessels.

The Coast Guard rules (Parts 104 and 105) contain a number of exemptions to the applicability of the requirement for a Coast Guard Security Plan. Facilities and vessels owned or operated by the U.S. used primarily for military purposes, and some shipyards, are among those exempt from the requirements. However, if a shipyard facility is subject to Coast Guard regulations on handling explosives or dangerous cargoes, handling liquefied natural gas or hazardous gas, or transferring oil or hazardous substances (including bilge water) in bulk, or provides service to vessels subject to Part 104, the shipyard is not exempt from the Coast Guard's new regulation. In addition, some shipyards may own barges, tugs, or floating dry docks also subject to the new regulation. [See 33 CFR 105.105 and 105.110]

The result of the "carve out" language under the applicability regulation described above is that most of the larger U. S. shipyards are now subject to the Coast Guard security requirements under the Maritime Transportation Security Act, even though most of those same shipyards perform almost all of their work for the U. S. Navy and have been subject to U. S. Navy security requirements for many years. ASA shipyards in particular must have U. S. Navy (DOD) security plans in place that are approved by and regulated by the Navy. Further, the shipyards performing work on nuclear vessels must qualify under even more stringent security rules of the Naval Nuclear Propulsion Program. Similar existing programs apply to facilities doing work for the Department of Energy or other Department of Defense agencies.

The requirements for the new Coast Guard Security Plans are elaborate; however, they are minimal compared to the requirements of a DOD approved security plan. Shipyards that operate under approved U. S. Navy security plans should not be subjected to duplicative (and in some cases contradictory) requirements under the Coast Guard's regulation. It is clear from the Coast Guard's exclusion of military vessels and facilities that the adequacy of DOD security planning is recognized. However, the same security measures employed at privately owned DOD contractors are subject to filing and maintaining Coast Guard plans. Because the Coast Guard requires the Plans to be filed under its regulations to be in the format and form it has outlined, shipyards are not being allowed to simply provide copies of current DoD security plans to demonstrate adequacy. Further, in some instances, the security measures required by DOD are classified and therefore not releasable to the Coast Guard under the terms of the DOD rules. The result is not only a burdensome duplication of effort for the shipyards, but can mean confusing and conflicting plans are on file for the same facility. In addition, the Coast Guard's resources are being unnecessarily expended to review plans and inspect facilities already well protected under DOD (Navy) supervision.

RECOMMENDATION: The regulations at 33 CFR 104 and 105 should be revised to provide that shipyards whose facilities and vessels are already subject to approved DOD security plans should be exempted from the requirements of 33 CFR 101 through 106.