

MTSA Regulations found at 33 CFR Subchapter H

PACD #39-04 AUG 5, 2004---POLICY ADVISORY COUNCIL FAQ

Q. Is exercising the communications link to the Company Security Officer (CSO) part of the Coast Guard's standard Port State Control (PSC) examination? If the Coast Guard's Port State Control Officer (PSCO) requires the Ship's Security Officer (SSO) to contact the CSO, what is the expected performance standard? What is the impact if the CSO cannot be contacted? What is our authority to exercise that portion of the SSP?

Ans. **Exercising the communications link between the ship and the SSO is not a standard element of security inspections.** As discussed in NVIC 06-03 Change 1, the performance standard we have established relates to the ability of the SSO to demonstrate his or her knowledge of the name and means of contacting the CSO and the availability of the equipment needed to do this. However, if the PSCO has clear grounds that the SSO has no means to contact the CSO or does not know how to contact the CSO, the PSCO may expand this portion of the examination and require the SSO to contact the CSO.

As further explained in this paper, the CSO may not have to be immediately available, and if he/she were required to be immediately available, this might not be possible due to cell phone coverage restrictions or the challenges of being separated by several time zones. In addition, the vessel could encounter communication problems that make secondary notifications necessary. Therefore, while the PSCO can require the SSO to contact the CSO, this should only be required on a very infrequent basis, only when the results of the exam has revealed deficiencies leading to an expanded exam in accordance with NVIC 06-03 Change 1, and only when the parameters described in this paper have been met.

It is important to note that whenever the PSCO feels that the vessel or crew do not comply with a particular standard, it is the duty of the PSCO to expand that portion of the examination to thoroughly evaluate the vessel and/or crew's compliance. If the PSCO finds several areas of concern onboard a vessel, the PSCO may expand the examination in order to confirm the vessel and crew comply with all applicable standards. Likewise, if no deficiencies have been noted during the exam, PSCOs should not expand into the area of actually having the SSO contact the CSO.

Neither the MTSA regulations or the ISPS Code contain a specific time standard for the availability of the company security officer, nor has the Coast Guard issued guidance on this issue. The availability of the CSO is based on a number of issues, and must be determined on a case by case basis.

(a) Shipping is a global industry, and the CSO may be thousands of miles and multiple time zones away. The CSO may not have a cellular telephone, and if the CSO does, the CSO may be in a location that does

not have cellular coverage. In reality, no one may be "immediately" available at all times due to meetings, sleep, travel, etc.

(b) The requirements in the regulations for the CSO do not directly relate to the need to be available for immediate response. As discussed in the preamble of the Interim Rule, the most important duties of the Company Security Officer include ensuring that: a Vessel Security Assessment is conducted; a Vessel Security Plan is developed, approved, maintained, and implemented; the Vessel Security Plan is modified when necessary; vessel security activities are audited as appropriate; problems identified by audits or inspections are addressed in a timely fashion; adequate security training is provided; and communication and cooperation between the vessel and facilities. Of these duties, one (ensuring problems identified by audits or inspections are addressed in a timely fashion) has a time element, and it is not an immediate requirement, it is timely.

(c) The availability of the CSO may be modified by provisions written into the approved VSP. For example, the VSP may place the responsibility for notifying government agencies of a security incident on the CSO. If so, the CSO must be readily available to make this notification or to provide training. If the PSCO finds in the course of the PSC examination that the CSO has responsibilities for response, then a more immediate response to a test call may be necessary if the exam is actually expanded.

When a PSCO expands the examination, tests the communication link between the vessel and the CSO, and is unable to contact the CSO, the PSCO must evaluate this deficiency before determining whether to detain the vessel or initiate some other control. As discussed above, the location and difference in time zones must be considered, as well as the duties of the CSO. The performance of the crew and state of security equipment must also be considered. If the crew did not know the name or means of contacting the CSO until prodded by the PSCO, and took an inordinate amount of time to attempt to call the CSO, it compounds the issue. If the CSO is responsible for initiating a response to an onboard emergency and could not be reached, this provides further evidence of a significant failure of the security program onboard the vessel.

However, if all other aspects of the examination indicate the vessel is in compliance with its security program, first, the examination should not be expanded and second, the inability of the vessel to contact the CSO should not normally be cause to detain the vessel or restrict its ability to handle cargo. The failure may result in some other sanction such as a letter of warning or civil penalty.

The Coast Guard has broad authority to perform port state control examinations in both domestic statutes and regulations and international conventions. For example, SOLAS Chapter XI-2, Regulation 9 provides the port state the authority to conduct an examination on a vessel in its port and to expand the

examination when there are clear grounds that a vessel that must comply with SOLAS Chapter XI-2 or the ISPS Code does not comply. As described above, the USCG may expand an examination as necessary in order to thoroughly evaluate the vessel and/or crew's compliance. The expanded examination is not an audit. It is a spot-check to see if the basic components of the VSP are present and that the Master and crew have a basic understanding of the VSP and their responsibilities.

Note: For further guidance, a facility owner/operator should contact their local Captain of the Port (COTP/FMSC).