

**Comments of the
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**Before the
Department of Homeland Security**

**In the Matter of
Advance Notice of Rulemaking
Chemical Facility Anti-Terrorism Standards
6 CFR Part 27; Proposed Rule
Docket: DHS-2006-0073 / RIN 1601-AA41**

February 6, 2007

Our organization, the International Organization of Masters, Mates & Pilots (MM&P), represents licensed deck officers on U.S.-flag commercial vessels sailing offshore, on the inland waterways and on civilian-crewed ships in the government fleet; state licensed pilots; marine engineers; unlicensed seafarers; and maritime industry shore side clerical and service workers. MM&P is the marine affiliate of the International Longshoremen's Association (ILA), AFL-CIO.

Because we represent crew members of vessels that frequently call at maritime facilities incorporated within chemical facilities covered by the proposed rules, we have an interest in chemical facility rules that take into account an appropriate interface between the security regimes of vessels, port facilities and chemical facilities. We have reviewed the proposed rules for chemical facility anti-terrorism standards and would like to submit the following comments for consideration in the rulemaking process:

In its introductory comment, the Department recognizes that through the US Coast Guard's Maritime Security regulations, it has already addressed security at certain maritime-related chemical facilities. Under proposed §27.105 Applicability, it is stated that "*(b) This part does not apply to facilities regulated pursuant to the Maritime Transportation Security Act of 2002.*" The Maritime Transportation Security Act of 2002 (MTSA) and the Maritime Security Regulations promulgated under the MTSA cover both facilities and vessels. Each is required to have a security assessment, an approved

security plan and designated facility and vessel security officers responsible for implementation of the plans and liaison and coordination between facility security and vessel security. Because only the word “*facilities*” is used, the proposed language does not make it clear that when moored at a chemical facility, a vessel operating under a US Coast Guard approved security plan is also excluded from the application of the proposed rule. We would suggest that the language be amended to read :“(b) *This part does not apply to facilities and vessels regulated pursuant to the Maritime Transportation Security Act of 2002*”.

The Maritime Security Regulations include provisions that there be liaison and communications between port facility security officers and vessel security officers to address coordination and responsibility for security issues. Those issues include the need to facilitate access through the terminal for crew shore leave, crew change, visitors to the ship, technical service personnel, ship’s stores, etc. When the port facilities and vessels operating under the USCG Maritime Security Regulations are enclosed within a chemical facility operating under a different set of DHS rules, there may be conflicts between the different security plans. We would suggest that the DHS chemical facility rules recognize that such conflicts will exist and address the issue of harmonizing the possible conflicting rules and security plans.

Compared to what is permitted under the USCG Maritime Security Regulations, the proposed chemical facility rules give a great deal more discretion to the facility to determine the type of background checks and access control procedures. That discretion may result in access control procedures and identity documentation procedures that vary considerably between different facilities. The workforce at fixed site chemical facilities is local in nature and the security procedures developed for local conditions will lack the standardized national uniformity needed for the mobile workforce that exists in the shipboard maritime industry. It would be impossible for maritime transportation workers to meet the unique local requirements that may be put in place at each individual chemical facility under the proposed DHS rules.

Chemical facilities that incorporate a port facility should be considered primarily a maritime facility covered under the USCG Maritime Security Regulations. This approach would bring the entire site under one set of regulations and eliminate potential problems with conflicting regulations and security procedures. If any portion of the combined maritime/chemical facility is to be excluded from the provisions of the Maritime Security Regulations, exclusion should be permitted only with the approval of the USCG Captain of the Port, and the chemical facility security plan should take into account an appropriate interface between the maritime and chemical sides of the facility to ensure that maritime activities and access to vessels are not impeded by the chemical facility security plan. The USCG Captain of the Port should retain continuing jurisdiction and oversight over the combined maritime/chemical facility and their security plans.

In cases in which there is an interface between port facility and vessel security plans, the DHS rules should call for designation of a chemical facility security officer to coordinate the implementation of security measures and the execution of a Document of Security, when appropriate, to resolve conflicts and delineate areas of responsibility. Where there is a difference in the access control provisions in the chemical facility security plan, the port facility and vessel security plan access control provisions should be controlling and applied by the chemical facility to maritime-related activities requiring

access through the chemical facility to reach the port facility or vessel. DHS should clearly state in the regulations that approval of any chemical facility security plan will be withheld if the plan does not provide procedures for facilitating shore leave for ship's personnel or personnel changes, as well as access of visitors to the ship including representatives of seafarers welfare and labor organizations as required under the Maritime Security Regulations.

We have a concern over §27.410 granting the chemical facility immunity from actions by third parties to enforce any provisions of the rules. This may act as an open invitation to chemical facilities to disregard provisions in the rules or in security plans that are meant to protect maritime activities from unduly burdensome or improper application of security procedures. Where damages are incurred by maritime related businesses or mariners as a result of improper action of chemical facilities under color of enforcing their security plans, the injured parties should not be denied the normal recourse of the US legal system.

Conclusion

We are concerned that a separate chemical facility security regime surrounding a maritime facility will, in addition to port facility and ship security regimes, impose a third barrier of access control on maritime activities. Current access control proposals under consideration or already covering the maritime sector are sufficiently onerous to cause us to question whether there is an appropriate balance between security, the efficient flow of commerce vital to the economy and the human rights of mariners. In the adoption of chemical facility security rules, there is a need to carefully consider the impact of yet another set of security hurdles on ships and crews.

We agree with the proposed rule's risk based tiered system of determining the degree of security required at a facility. We feel this is a sensible approach for determining the level of security required in any security plan. This leads to better decisions as to allocation of resources and common sense solutions to security. This methodology is absent from the Maritime Security Regulations implemented by the US Coast Guard. In our view, DHS should direct the US Coast Guard to undertake a review of their regulations and establish a similar system of risk based security procedures, rather than the one size fits all access control procedures utilizing card readers and voluminous recordkeeping requirements currently under consideration for all port facilities and ships that do not take into account their specific operating circumstances.