

# TWIC/MTSA POLICY ADVISORY COUNCIL

January 7, 2008

Policy

**Redefining Secure Areas and Acceptable Access Control**

01-08

**Issue (01-08)** – If certain mixed-use Maritime Transportation Security Act (MTSA) regulated facilities are permitted to redefine their secure area for TWIC purposes, what guidelines should Coast Guard Captains of the Port (COTP) and regulated facilities use to assist in their redesignation decisions? What measures will be expected/accepted by the Coast Guard for access control to these newly defined secure areas?

**Background** – Title 33, U.S. Code of Federal Regulations, § 105.115 (33CFR105.115) permits owners/operators of certain facilities to redefine their secure areas for TWIC applicability purposes. The Coast Guard's Navigation and Vessel Inspection Circular (NVIC) 03-07 further describes the Coast Guard's interpretation of that regulation. The NVIC permitted owners/operators of facilities with significant non-maritime related portions to exclude those non-maritime portions from the requirement for persons needing unescorted access to possess a TWIC. That provision in the NVIC has spawned questions on how much of the previously included facility area can be excluded through redesignation. Further, there has been confusion regarding the application of the redesignation option, which may lead to inconsistency between COTP zones. In some cases all MTSA regulated facilities may be incorrectly accorded the redesignation option, not just those with significant non-maritime related portions. In others, those that may be eligible may not be accorded this option. This would not be in line with the regulation, nor with the Coast Guard's intention in issuing the regulation.

Once redesignation is authorized, 33 CFR 105.255(a)(4) stipulates that the facility owner or operator must ensure implementation of security measures to prevent an unescorted individual from entering an area of the facility that is designated as a secure area, unless the individual holds a duly issued TWIC, and is authorized to be in the area. Enclosure (3) to NVIC 03-07, page 28, section 3.4.a(4) further states that the redefined area must have sufficient access control measures such as fencing, gates, monitoring, etc., in order to deter and restrict unauthorized persons from gaining access to the secure area.

**Discussion** – 33 CFR 105.115(c) states “Facility owners or operators wishing to designate only those portions of their facility that are directly connected to maritime transportation, or are at risk of being involved in a transportation security incident as their secure area(s), must do so by submitting an amendment to their Facility Security Plan to their cognizant COTP.” Determining whether to approve these amendment requests is essentially a 3-step process.

**Step 1: Does the facility have a significant non-maritime transportation related portion?**

If the answer is yes, proceed. If the answer is “no”, deny the request.

First, NVIC 03-07 enclosure (3) section 3.3.j.(2) limits the opportunity for amendments to redefine the secure areas to “those facilities with a significant non-maritime transportation component”. It goes further to state, “Amendments to redefine the secure area for other facilities and for vessels *will not be considered*” (emphasis added). 3.4.a.(2) provides explanations of typical non-maritime transportation components. They include:

- Refineries
- Chemical plants
- Factories
- Mills
- Power plants
- Smelting operations
- Recreational boat marinas
- Public areas of Passenger Vessel Facilities(Not mentioned specifically in NVIC 03-07 but added for clarity)

**Step 2: Is the area to be excluded non-maritime transportation related?**

If the answer to that question is no (i.e. if it is SOLELY maritime transportation related), then you go no further and you deny the request.

If the answer to that question is "yes" (i.e. if it is SOLELY non-maritime transportation related), then you go no further and you approve the request.

If the answer is "yes and no" (i.e. if it is both maritime and non-maritime transportation related -- using the NVIC example of a coal

pile supplied by a vessel but used by the power plant), then you go to the next step:

### **Step 3: Is the area to be excluded at risk of a TSI?**

The answer to this portion will always be facility specific and require the facility owner/operator and the COTP to exercise his/her professional judgment regarding the potential for a transportation security incident upon the maritime related portion of the facility.

33 CFR Part 6.01-4<sup>1</sup> provides a narrow designation of a waterfront facility that certain owner/operators may find appealing, as it would leave much of the MTSA regulated facility outside of this definition of “waterfront facility”, and thus able to be excluded from the secure area. This however, would exclude from the secure area many portions of the facility at risk of a transportation security incident (TSI), and therefore not an acceptable alternative. The potential for a TSI is the critical component of the extent of redesignation question if you are dealing with a portion of the facility that serves both maritime and non-maritime related functions. Part of this determination lies in the location of the area to be excluded with respect to the waterfront, i.e. its proximity to the waterway and the hazards of the cargo being stored. The aforementioned factors should be analyzed concurrently and the risk of a TSI given the highest priority.

Per 33 CFR 101.105, a transportation security incident is a security incident resulting in a significant:

- loss of life,
- environmental damage,
- transportation system disruption, or
- economic disruption in a particular area

Key to the determination on whether proposed redesignations of secure area are appropriate is the understanding of what is meant by the TSI components. Once the parameters of those components are understood, the facility owner/operator and COTP can use his/her judgment to analyze whether proposed excluded portions of the facility could reasonably cause a TSI. If they can't, the redefinition should be approved. If those portions could cause a TSI, the COTP is right to reject the facility owner/operator's submission or ask for a differently defined secure area.

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<sup>1</sup> 33 CFR 6.01-4 defines a waterfront facility as “all piers, wharves, docks, or similar structures to which vessels may be secured and naval yards, stations, and installations, including ranges; areas of land, water, or land and water under and in immediate proximity to them; buildings on them or contiguous to them and equipment and materials on or in them”

In general, COTPs can use the expanded discussions of the TSI components (found in the MTSA temporary interim rules at 68 FR 39243 – 39250 July 1, 2003)<sup>2</sup>, to help establish redesignation boundaries. COTPs should be able to conclude whether the part of a facility that is proposed to be excluded contains bulk liquid cargo storage, oil or hazardous material that could pollute navigable waterways. COTPs should be able to assess the potential that a proposed to be excluded part of a facility has for experiencing over 150 deaths. While principally designed with passenger or port worker deaths in mind, consideration may need to be given to surrounding population areas.

Economic disruption and transportation system disruption are more difficult to consider, since the regulatory preamble didn't discuss them. In general, the facility's criticality to the area/region must be considered in analyzing the appropriateness of excluding portions of the facility for TWIC purposes. A COTP should evaluate things like another transportation mode's loading rack in the context of its area criticality. Would the loss of that distribution point remove the ability to move that cargo in the area, or are there other redundant capabilities in the area? Is there other transportation mode infrastructure proposed to be excluded that, if destroyed, would seriously impact regional rail transportation? Are there proposed to be excluded bridges over barge channels that would render that route unusable with no easy alternative route? Are there potential catastrophic explosive materials that are located in a newly excluded area that if detonated would result in channel/harbor closure for an extended period of time?

**Policy** - The intent of this provision is to allow owners/operators to exclude from the secure area those areas within their facility that would not have been required to be part of the original facility security plan, but were included by owners/operators for their own reasons (usually convenience, to avoid having to fence off an area of their property and institute a new access control location). Typically, these areas include refineries, chemical plants, factories, mills, power plants, smelting operations, or recreational boat marinas. As stated in NVIC 03-07, commercial docks, container yards, passenger terminals, and storage areas or tank farms that are specifically used to stage cargo for loading to a vessel or to receive cargo at its first point of rest upon discharge from a vessel (NVIC 03-07, Encl. 3.4.a) should be

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<sup>2</sup> 68 FR 39243 – 39250 July 1, 2003 can be found on <http://homeport.uscg.mil> under: missions – maritime security – TWIC – general information.

considered as having a maritime transportation nexus, and therefore are ineligible for exclusion from the secure area.

Owners or operators of facilities regulated under 33 CFR part 105 may choose to redefine their secure areas, but only where they have significant non-maritime related portions. The redefinition is limited to excluding from the secure area those portions of their facility with a non-transportation based function. This would mean that the TWIC provisions of part 105 no longer apply to those portions. Owners or operators may also choose to maintain their secure area as the entirety of the area defined in their original Facility Security Plan (FSP).

COTPs will adhere to the guidance in NVIC 03-07 regarding which facilities are eligible for redesignation of their secure areas for TWIC purposes. Area and district commanders will ensure consistency of application among COTP zones. For appropriate requests for redesignation (i.e. those pertaining to non-maritime security related portions of the facility), COTPs will analyze the potential for the excluded portions to cause a TSI. The explanation in the Discussion section above regarding TSI component thresholds will be considered in the COTP analysis.

Owners/operators of facilities are expected to meet the requirement to control access to those newly redesignated secure areas by the use of any measures that, alone or in combination, will prevent access by individuals not in possession of a TWIC or by TWIC holders who do not have an authorization for unescorted access.

Methodology for access control remains unchanged. Owners/operators might utilize fencing, gates, CCTV, roving patrols, any other recognized access control measure or any combination of measures that accomplished the performance based standard, i.e. *preventing* unescorted access to secure areas by non-TWIC holders or unauthorized TWIC holders. In determining the appropriate level of access control to the redefined secure areas of regulated facilities, the Facility Security Assessment (FSA) should be reviewed to make sure all access control provisions properly address the vulnerabilities and risks identified.