

TWIC/MTSA POLICY ADVISORY COUNCIL

November 21, 2007

Policy

TWIC & Law Enforcement Officials & Other Regulatory Agencies

01-07

Issue (01-07) – 33 CFR 101.514 refers to “law enforcement officials” as not being required to obtain a TWIC to access secure areas of regulated vessels or facilities. Further guidance as to who qualifies as a “law enforcement official” for the purposes of TWIC requirements is required. Additionally, fire department officials routinely access facilities as part of their regulatory inspection duties. Will fire department officials be required to obtain a TWIC or be escorted when conducting this function?

Background – 33 CFR 101.514(c) states that “law enforcement officials at the State or local level, are not required to obtain or possess a TWIC to gain unescorted access to secure areas. Enclosure (3) to NVIC 03-07 pg. 2 Section 3.1.c (2) states “State and local law enforcement officials may use this exemption in the course of their official duties.” Further guidance as to what constitutes a law enforcement official for exemption purposes has been requested. Specifically, do State environmental officials and others with regulatory enforcement responsibilities at the State and local level qualify?

Discussion – We consider a law enforcement official for the purpose of TWIC to be any officer or employee of any agency or authority of the United States, a State, a commonwealth, a territory, a political subdivision of a State or territory, or an Indian tribe, who is empowered by law to:

Investigate or conduct an official inquiry into a potential violation of law; or

Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law;

and is doing so while acting in their official capacity.

State environmental officials and others with regulatory enforcement responsibilities at the State and local level who meet these criteria are not required to obtain a TWIC to gain unescorted access. However, they may voluntarily obtain a TWIC.

State and municipal fire departments and their officials who require access to secure areas of MTSA facilities for regulatory inspections in conjunction with their official duties fall within the definition given above, and as such are *not* required to obtain a TWIC or be escorted, as they are considered law enforcement officials. However, they may voluntarily obtain a TWIC.

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Escorting aboard U.S. Flagged Vessels Operating in Foreign Waters

02-07

Issue (02-07) – What are the acceptable escorting standards for U.S. vessels operating in foreign waters?

Background – 33 CFR 104.265 requires that individuals who do not have a TWIC be escorted, as defined in 33 CFR 101.105, at all times while inside a secure area of the vessel. 33 CFR 101.105 defines “escorting” as “ensuring that the escorted individual is continuously accompanied while in a secure area in a manner sufficient to observe whether the escorted individual is engaged in activities other than those for which escorted access was granted.” The definition elaborates that this can be accomplished through side-by-side accompaniment or via monitoring, depending upon where the escorted individual is granted access.

Discussion – U.S. vessels operating in foreign waters face considerable challenges when implementing the TWIC program. Foreign port workers will likely not have TWICs, and as a result, they would need to be escorted every time they step aboard the vessel. This presents operational difficulties, as there are not likely to be sufficient vessel personnel onboard to escort the port workers in the ratios described in NVIC 03-07.

These vessels are required, under 33 CFR 104.265, to control access to the vessel (in a general fashion, in addition to requiring TWICs). These access control methods should already be included in the vessel’s security plan, and they should include methods and/or security measures for ensuring, for example, that foreign port workers do not access restricted areas unless absolutely necessary (33 CFR 104.270(a)), and that foreign port workers are not able to introduce dangerous substances or devices onboard the vessel(33 CFR 104.265(a)). Thus, U.S. vessels operating in foreign waters shall be deemed to be properly “escorting” individuals who do not hold a TWIC when operating in accordance with the U.S. Coast Guard approved vessel security plan. This interpretation ONLY applies, however, when the vessel is operating in foreign waters.