

TWIC/MTSA POLICY ADVISORY COUNCIL

September 5, 2008

Policy

TWIC Applicability Regarding Railroad Police Officers

04-08

Issue (04-08) – What are the Transportation Worker Identification Credential (TWIC) requirements for railroad police officers who, through the normal execution of their duties, require access to secure areas of Maritime Transportation Security Act (MTSA) regulated facilities?

Background – Title 33, U.S. Code of Federal Regulations (CFR), section 101.514 requires all persons requiring unescorted access to secure areas of facilities regulated by part 105 of subchapter H to possess a TWIC before such access is granted. The term “secure area” is defined as “the area over which the owner/operator has implemented security measures for access control in accordance with their security plan.” 33 CFR 101.105. For most facilities, the secure area encompasses the entire facility footprint as described in their currently approved facility security plan. Due to the integration of various transportation modes for business processes, rail lines may cross into and through the secure area of MTSA regulated facilities. It is possible that sworn members of the railroad police may need access to MTSA facilities as part of their duties with the railroads. Railroad police officers work for individual railroads, but have state law enforcement authority over crimes against railroad property, if they have registered their credentials with that state. The TWIC regulations exempt Federal Officials, and State or Local Law Enforcement officers from having to possess a TWIC in order to be eligible for unescorted access to secure areas of MTSA regulated facilities or vessels. 33 CFR 101.514. This was further clarified in PAC 01-07, but railroad police officers were not specifically included.

Discussion – As stated in PAC 01-07, the Coast Guard considers 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.

49 CFR 207 defines a railroad police officer as a peace officer who is commissioned in his or her state of legal residence or state of primary employment and employed by a railroad to enforce state laws for the protection of railroad property, personnel, passengers, and/or cargo. Commissioned means that a state official has certified or otherwise designated a railroad

employee as qualified under the licensing requirements of that state to act as a railroad police officer in that state.

Railroad police officers are in the employ of a specific railroad and thus their authority extends only to that railroad's property and the cargo/passengers with which the railroad is entrusted to transport. Railroad police officers enforce within the narrow jurisdictional slice of the state(s) in which they are certified and the railroad for which they are employed. Normal extended jurisdictional hot pursuit authority applies to railroad police as well.

Policy—For purposes of TWIC enforcement, the Coast Guard recognizes railroad police officers as exempt from obtaining a TWIC, similar to other state law enforcement personnel, so long as they are empowered to act as railroad police within the jurisdiction in which the MTSA facility they are accessing lies. Marine Terminal Operators and Coast Guard inspectors may ask to see the railroad police officer's credentials and may verify their legitimacy with the railroad if any doubt arises regarding the officer or the officer's credential's veracity.