

TWIC/MTSA POLICY ADVISORY COUNCIL

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Policy

Bulk Grain, Oil Seed, and Edible Oils Facilities and the Redefinition of Secure Areas

09-08

Issue (09-08): Navigation and Vessel Inspection Circular (NVIC) 03-07 provides guidance to facilities wishing to redefine their secure areas for the purposes of the TWIC. Specifically, it states that facilities with a significant non-maritime portion may redefine their areas in their Facility Security Plans (FSP) to eliminate those non-maritime areas from the designation of “secure areas” where a TWIC or TWIC escort would be required. One of the areas which can not be eliminated from the secure area is the point where cargo is staged for loading to a vessel or landed after discharge from a vessel (“the first point of rest” at the pier). Facilities engaged in bulk commodity commerce do not have a traditional “first point of rest” as found in other types of cargo operations. Therefore, the secure area for a bulk agricultural commodities terminal should be relegated to the area where the regulated activity occurs or where there is an opportunity for a Transportation Security Incident. For grain, oil seed, and liquid edible oil terminals, if the silos or tanks are not physically co-located with the waterfront operation, are separated by multiple barriers, can not provide access to the waterfront operation, and can not be accessed by way of the overhead bulk conveyor or liquid piping system, must they be included in the secure areas where a TWIC will be required or do they constitute a “non-maritime” portion of the facility eligible for elimination from the TWIC requirements?

Discussion: Most, if not all grain, oil seed, and liquid edible oil (the principle agricultural products handled in international bulk shipments) terminals lack a traditional “first point of rest” but move their bulk cargo continuously via overhead conveyor or liquid piping system to or from storage silos or tanks physically separated from the waterfront operation. Many Facility Security Plans as well as the Coast Guard approved North American Export Grain Association Alternative Security Program, in fact, state that their members’ operations do not have a traditional “first point of rest” or cargo staging area as is found with, for example, break bulk, RO/RO or container operations. Since these silos and tanks are part of a grain/seed/edible oil storage facility that is removed and fenced off from the pier area, are often separated by a road from the dock and vessel operation, and maintain a separate access control system apart from the waterfront operation, in most cases they would constitute a non-maritime portion of the facility that does not interface with the regulated vessel.

Despite the fact that these silos have never been included as part of the regulated facility for the purposes of the MTSA regulations, some COTPs are refusing to approve any amendment to a grain terminal FSP that does not include these silos or edible oil tanks, citing the “first point of rest” language as the basis of their decision. There is also resistance to the redefinition of secure areas for NAEGA ASP subscribers despite the explicit reference in the approved program to the absence of a traditional “first point of rest” as is found in other types of cargo operations.

Decision: For the purposes of the maritime security regulations found in 33 CFR Subchapter H, agricultural product storage areas do not operate the same as cargo staging areas or the “first point of rest” used in break bulk, RO/RO, and container operations and constitute a significant non-maritime portion of the operation. Agricultural product storage areas legitimately can be subject to redefinition and exclusion from the secure area as defined in an FSP where a TWIC or TWIC escort will be required if the storage area is not immediately co-located in the area where the regulated maritime commercial activity occurs (i.e. on the waterfront or dock), is separated by physical barriers such as roads, berms, fences, etc., and is subject to separate access control procedures.