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## ***TWIC Eligibility for Foreign Nationals***

### ***Reason for Update***

The Transportation Worker Identification Credential (“TWIC”) program has been closing in on the maritime industry for several years and was initially focused on credentialing U.S. citizens and resident aliens. However, the expansion of the program’s eligibility criteria has largely gone unnoticed. This update discusses which foreign nationals may apply for a TWIC in order to qualify for “unescorted access” privileges to a maritime facility or outer continental shelf (“OCS”) facility regulated under the Maritime Transportation Security Act of 2002 (“MTSA”). These facilities are commonly called MTSA facilities. This could be of particular importance to a foreign national who is performing a job that requires unescorted access.

### ***Background and Status***

The TWIC final rule was published on January 25, 2007. Under

the final rule, all Coast Guard credentialed mariners, and all others seeking unescorted access to secure areas aboard a vessel, must possess a TWIC by September 25, 2008. Compliance dates for shore-based maritime facilities and OCS facilities subject to MTSA, however, will be phased in by Captain of the Port zones as published in the Federal Register 90 days prior to the compliance date. The SAFE Port Act establishes the deadline for compliance for MTSA facilities as January 1, 2009. Many TWIC watchers doubt that these dates will be achievable. The Transportation Security Administration (“TSA”) estimates that up to 1.5 million persons will require a TWIC. As of the end of January 2008, only about 1/3 of the proposed 147 enrollment centers were open and fewer than 20,000 TWICs had actually been activated. In order to meet the statutory deadlines, it is estimated that approximately 5,000 TWICs

will have to be issued per day, whereas at present, fewer than 500 are being issued per day.

As discussed in the January 25 final rule, and as amended by a September 28, 2007 final rule, certain foreign nationals are also eligible to apply for a TWIC. Although TWIC does not apply to foreign-flag vessels, absent a TWIC, crewmembers and others aboard foreign-flag vessels moored at U.S. facilities will require escorts when leaving the vessel for any purpose except when working immediately adjacent to their vessels in the conduct of vessel-related activities.

### ***TWIC Eligibility and Enrollment for Non-Resident Workers***

In short, the TSA, in conjunction with the Coast Guard, decided that greater participation in the TWIC program would alleviate certain burdens within the maritime industry for foreign experts working onboard U.S.-flag vessels and multi-

national corporations who have foreign employees and business partners in the United States. Even though a TWIC is not mandatory for these individuals, once successfully vetted and enrolled in the program, they will qualify for the same unescorted access as U.S. citizens and resident aliens with a TWIC. With regard to MTSA OCS facilities, unescorted access will not be allowed to any part of an MTSA OCS facility without a TWIC. It is important to note, however, that a TWIC does not entitle the holder to unescorted access, rather it qualifies them for unescorted access at the discretion of the MTSA facility operator.

There are a number of foreign nationals in a lawful nonimmigrant status with unrestricted authorization to work in the United States. In addition, the following nonimmigrant individuals who have restricted authorization to work in the United States with the following visas are eligible for a TWIC:

- B1/OCS Business Visitor/ Outer Continental Shelf;
- C-1/D Crewman Visa;
- H-1B Special Occupations;
- H-1B1 Free Trade Agreement;
- E-1 Treaty Trader;
- E-3 Australian in Specialty Occupation;
- L-1 Intracompany Executive Transfer;
- O-1 Extraordinary Ability; and
- TN North American Free Trade Agreement

TSA has the authority to determine that other nonimmigrants who have restricted authorization to work in the United States and, although not specifically listed above, who have a legal status comparable to the legal status set forth in this list, are eligible for a TWIC on a case-by-case basis.

Upon expiration of non-immigrant status, a TWIC must be surrendered to the employer and returned to TSA. When a nonimmigrant quits or is terminated, the employer is required to provide notification to TSA within five business days.

Foreign nationals will first have to provide documentation to establish a qualifying visa status as discussed above prior to being able to obtain a TWIC. Such individuals will then have to visit a TWIC enrollment center to get photographed and fingerprinted, and pay the enrollment fee. TSA will conduct a security threat assessment, which will include a criminal background check, an immigration status check, and an intelligence/terrorism check. An applicant must return to the same enrollment center where they enrolled to activate and pick up the TWIC.

**Recommendations**

Employers of non-immigrants that hold certain work visas and other immigration documents as discussed above should consider whether such individuals should apply for a TWIC in order to qualify for unescorted access privileges to MTSA shoreside and OCS facilities. Factors that should be considered include the access that certain employees may be required to have to perform their work and the length of time that the individual will be employed. Additionally, owners and operators of MTSA OCS facilities should recognize that anyone, including foreign workers, coming aboard such a facility will require escorting unless the individual possesses a TWIC, subject to the discretion of the facility operator.

If an employer decides to pursue a TWIC for non-immigrant individuals, it should initiate the process as soon as possible once enrollment is announced in the applicable COTP zone in order to ensure that a TWIC is obtained prior to the effective date for TWIC compliance being announced at a particular facility. ■



**For Additional Information**

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