

# **Florida Ports** **C O U N C I L**

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## MEMORANDUM

DATE: March 30, 2007

TO: Florida Port Directors  
Florida Port Security Managers

FROM: Michael L. Rubin

SUBJECT: **FUPAC/TWIC DISCUSSIONS**

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As discussed in earlier memoranda, the state has been in discussions with the federal Transportation Security Administration seeking resolution to a “one-card” system in Florida. We were part of a telephonic meeting this week on the issue. Unfortunately, the news does not appear to be optimistic at this time. Discussions with the TSA have not provided any significant resolution over a variety of issues.

Attached is a copy of a letter that Office of Drug Control Director Bill Janes, is sending to both Senator Paula Dockery and Representative Sandy Adams. As you can see from the letter, the state has been unable to resolve the differences over disqualifying offenses with the TSA. In fact, the last few attempts by the state to discuss outstanding issues with the TSA over these issues have been met by silence.

The Director has stressed his desire to develop a one-card system in Florida, and stated he is available to discuss the issue with the seaports via a telephonic meeting on Tuesday, April 3, 2007 at 9:00 a.m.

The toll-free call-in number is: 877-540-9892  
The participant code is: 833035

In addition, we would note that the next meeting of the Florida Seaport Standards Advisory Council is scheduled for Tuesday, April 17, 2007 from 10 a.m. until 4 p.m. in Conference Room 2107 of the Capitol. You may want to advise interested users and tenants that this meeting would provide them a forum to discuss the impact of two cards on their operations. The Legislature also will be in hearings during that week, and those users and tenants could also discuss their concerns with legislative leadership – to include Senator Paula Dockery and Representative Sandy Adams.

If you have any questions or comments, please call us at (850) 222-8028.

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March 30, 2007

The Honorable Paula Dockery  
The Florida Senate  
Chair, Military Affairs and Domestic Security Committee  
314 Senate Office Building  
Tallahassee, Florida 32399

Subject: Alignment of TWIC and FUPAC Credentials

**Acronyms used in this letter**

AG	Attorney General
DHS	Department of Homeland Security
DHSMV	Department of Highway Safety and Motor Vehicles
FCIC	Florida Crime Investigation Center
FDLE	Florida Department of Law Enforcement
FUPAC	Florida Uniform Port Access Credential
NCIC	National Crime Investigation Center
ODC	Office of Drug Control
TSA	Transportation Security Administration
TWIC	Transportation Worker Identification Credential

Dear Senator Dockery:

I am writing to provide recommendations regarding future actions to comply with FS 311.125, Uniform Port Access Credential System. Our FUPAC working group has examined the feasibility of aligning the TWIC and the FUPAC. Formal analyses of the disqualifying criminal offenses (a major area of disagreement) have been completed by FDLE and the AG's Office. On behalf of our workgroup, I request your assistance in resolving this critical issue. I remain available to assist you in this effort.

**Workgroup conclusions that support the recommendations below:**

- a. We recommend one credential for access to Florida ports. Multiple credentials are inconvenient, more expensive, and confusing. However, all state and federal standards must be met before access is given.
- b. Differences between the federal rule and Florida Statutes are significant, particularly in the area of disqualifying criminal offenses.

- c. Florida cannot accept the TWIC as the single port access card without changing Florida law to align with the TWIC standard. In some instances, this would lessen current security; in others, security would be enhanced.
- d. The current TWIC enrollment process precludes effective state participation in determining eligibility and waiver approval.
- e. Other concerns between TWIC and FUPAC alignment remain unresolved including: the implementation schedule, new hire policy, escorting policy, and privacy issues.
- f. The FCIC is an important check that is not included in the federal adjudication for TWIC enrollment.
- g. Florida is willing to accept all disqualifying criminal offenses in the TWIC rule in addition to the Florida Statutes requirements; TSA is not willing to accept all Florida disqualifying criminal offenses in addition to the federal rule requirements. Combining the federal rule and Florida Statutes disqualifying criminal offenses will result in a comprehensive and necessary standard for access to a Florida port.
- h. The TSA rule, which uses only the NCIC, is an incomplete and unacceptable standard for granting access to Florida ports. The FCIC and NCIC must both be considered in adjudicating the federal rule and Florida Statutes disqualifying criminal offenses. **Please note the critical information regarding criminal offenses that is omitted from the NCIC check (Enclosure 1). When this information was provided our workgroup, we immediately concluded that an applicant should not be given access to a Florida port without an FCIC check in addition to the NCIC check.**

**Recommendations:**

- a. That Florida insist on one port access credential for our ports: (1) TSA authorize Florida to issue the TWIC after ensuring all Florida and federal standards are met. (2) TSA determine a way to integrate the Florida standards into their adjudication prior to issuing a TWIC for a Florida port; or (3) TSA accept the FUPAC as equivalent to the TWIC.
- b. That, if recommendation a (above) is not supported by TSA, Florida proceed with the FUPAC implementation. This would create a requirement for a minimum of two cards (TWIC and FUPAC). It must be noted, that some Florida ports have emphasized the necessity of a local port access card, which may result in a 3<sup>rd</sup> port access credential requirement for port workers in Florida.
- c. That, if recommendation a (above) is not supported by TSA, the DHSMV publish a FUPAC implementation schedule beginning July 1, 2007.

Our workgroup has included members of the Florida Office of Drug Control, Attorney General's Office, Florida Department of Law Enforcement, Department of Highway Safety and Motor Vehicles, and Senate/House senior staff. We have been meeting since the March 8, 2007 announcement that Steve Sadler, Transportation Security Administration, would call to discuss the possibility of aligning the TWIC and

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FUPAC. Mr. Sadler and Commander Peter Gautier, US Coast Guard, visited Tallahassee on March 14, 2007 to discuss differences between the two credentials. Mr. Sadler committed to assisting our workgroup in our analysis and efforts to obtain one credential. While he was supportive of our goals, he emphasized the limited flexibility in deviating from the federal TWIC rule.

I have attached the FDLE (Enclosure 2) and AG (Encl 3) analyses of the disqualifying criminal offenses. As indicated above, the process to enroll an applicant creates other problems that our workgroup has not been able to resolve completely. Please contact me if you have additional questions or concerns for me or our workgroup.

Sincerely,

William H. Janes  
Director  
Florida Office of Drug Control

WHJ/pl  
Enclosures

cc: Attorney General William McCollum  
Gerald Bailey, Commissioner, FDLE  
Electra Bustle, Executive Director, HSMV  
George LeMieux, Chief of Staff  
Eric Eikenberg, Deputy Chief of Staff  
Frank Bonner, Florida Washington Office

During the review of criminal history checks, the Florida Department of Law Enforcement provided the following summary regarding the importance of including the Florida criminal history check. Clearly, the FCIC must be considered before allowing any applicant access to a Florida port. Reportedly, these shortcomings in the federal check have been discussed with TSA. I will send a formal letter reminding them of the importance of using state checks in the adjudication prior to issuance of a TWIC credential.

The following Information/services are available in the State of Florida criminal history check and not in the federal check:

**1. Immediate notification of a Florida arrest**

Each person with seaport access fingerprints are retained by FDLE. Each person who is arrested in Florida is fingerprinted and the arresting agency submits fingerprints to FDLE. The arrested person's fingerprints are searched against the fingerprints retained from the seaport; when they are the same person, the seaport is notified of the arrest. This service is not available at the federal level.

**2. Florida criminal record information on 1.8 million persons not available at national level**

For a variety of reasons, including quality of fingerprints and policies of what categories of arrests were acceptable, all states have arrests that are not "indexed" at the national level. This means that they are not available when the criminal record check does not go through the state. While policies have improved so there are fewer of these in recent years, there are still significant numbers. In fact, since 1999, there are nearly 42,000 felony arrests in Florida that are not available if a national check is completed but are available if a state check is done. This includes over 350 homicides; over 3,000 each aggravated assault with a weapon, aggravated battery and burglary; and over 10,500 various drug arrests. Over 6,800 of these are known to have resulted convictions.

**3. Vital warrant and intelligence information available to Florida official only if Florida check is completed**

- Florida agencies can enter warrants into the Florida Crime Information Center (FCIC) or both FCIC and NCIC (the National Crime Information Center). Approximately 70% of Florida's warrants are exclusively in FCIC and will not be returned if only a national check is completed.
- Additionally, FDLE has intelligence databases—potential cargo theft suspects and potential gang members—that are searched routinely and that frequently have hits that are of interest to FDLE and local Florida agencies that work Florida seaports. These are Florida only files and are not available at the national level.
- Yet another intelligence database, the Violent Gang and Terrorist Organization File is a national file but the hit will go exclusively to the FBI if the search does not go through the state process. Once again, this information is of interest to FDLE and local Florida agencies that

work Florida seaports and history shows that this information is not traditionally shared unless the local or state agency does their own check.

**Criminal record information obtained for access to secured areas of a seaport and for a HAZMAT endorsement may be shared**

- As also mentioned in the conference call, criminal record information obtained for the same purpose may be shared. Timing is critical because an arrest could have occurred the day after the criminal record check; it is always a difficult decision as to how long to allow a record to stand before it would have to be “rechecked” for another access or endorsement.
- One important factor to keep in mind is that the HAZMAT fingerprints are not retained and there is not notification of subsequent arrest. Basically, this would mean it would make sense to use the seaport checks for the HAZMAT endorsements because the prints would be retained but it would not make sense in reverse because there would not be retained prints. However Hazmat screening is a federal responsibility and TSA would have to agree to use the information obtained for the seaport check.
- NOTE: The FBI would like a little more time on this issue to confirm the interchange of the hazmat/seaport check. They will get back to us on Monday.

**FDLE can provide criminal record results to Florida seaports/DHSMV and TSA through the CJIS WAN**

For HAZMAT endorsements, FDLE sends criminal record results to the Department of Highway Safety and Motor Vehicles (DHSMV) and also to the Transportation Security Administration (TSA) through the Criminal Justice Information Services Wide Area Network (CJIS WAN). For seaports, FDLE can likewise send results to Florida seaports/DHSMV and TSA through the CJIS WAN. This would preclude the need for duplicate checks. TSA would have to agree to do this for seaports as they have done for HAZMAT endorsements.

MEMORANDUM

TO: Bill Stewart  
Deputy Chief of Staff

FROM: Joslyn Wilson and Gerry Hammond  
Opinions Division

RE: Florida Uniform Port Access Credential—comparison with the federal  
Transportation Worker Identification Credential

DATE: March 23, 2007

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You have asked us to compare the requirements set forth in section 311.12(3)(c), Florida Statutes, for the Florida Uniform Port Access Credential (FUPAC) with those for the federal Transportation Worker Identification Credential (TWIC) in 49 C.F.R. 1572.103 and 49 C.F.R. 1572.107, to determine whether the requirements are substantially the same such that the state may administratively adopt the federal credential as meeting the state standards.

Based upon our review, it appears that while many of the provisions are similar, there are sufficient differences in the two acts that would, in our opinion, require legislative action in order for the state to utilize the federal credentials. While the federal act appears to be broader in many aspects (*e.g.*, TWIC includes attempts to commit a disqualifying offense which FUPAC generally does not), there are provisions in the state law that are not specifically covered by the federal act. In addition, as discussed more fully *infra*, TWIC contains several provisions which could, but may not, encompass some of the omitted offenses. For example, 49 C.F.R. 1572.107, setting forth disqualifying offenses for TWIC, states that the Transportation Security Administration (TSA) may determine that an applicant poses a threat if a search reveals a conviction for a serious crime not listed in 49 C.F.R. 1572.103 or a period of domestic incarceration exceeding 365 days.

Moreover, it should be recognized that this office, as did the Florida Department of Law Enforcement (FDLE), would normally defer to the federal agency regarding the interpretation of its own laws and regulations. In addition, there are other factors which would be relevant to the determination of eligibility as pointed out by FDLE in its note. Finally, we would note that, as discussed by the Transportation Security Administration (TSA), contained in Federal Register Vol. 72, No. 16, p. 3550,

states define crimes differently and . . . these inconsistent standards may lead to unequal standards for denying individuals employment. Where necessary TSA evaluates an applicants' State conviction by comparison to the State crime to the elements of the applicable federal crime. TSA

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may review the individual circumstances of a conviction, including the elements of the crime, as defined by a particular State, if the crime is identified as one for which the applicant may be eligible for a waiver and the applicant seeks a waiver from disqualification.

Thus because of the differences between the two acts and the uncertainties regarding the interpretations of both TWIC and FUPAC by the federal government, it does not appear that resolution of these issues may be accomplished administratively.

Section 311.12(3)(c), Florida Statutes, states:

Any person who has within the past 7 years been convicted, regardless of whether adjudication was withheld, for a forcible felony as defined in s. 776.08; an act of terrorism as defined in s. 775.30; planting of a hoax bomb as provided in s. 790.165; any violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as provided in s. 790.166; dealing in stolen property; any violation of s. 893.135; any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance; burglary; robbery; any felony violation of s. 812.014; any violation of s. 790.07; any crime an element of which includes use or possession of a firearm; any conviction for any similar offenses under the laws of another jurisdiction; or conviction for conspiracy to commit any of the listed offenses shall not be qualified for initial employment within or regular access to a seaport or restricted access area[.]

Section 776.08, Florida Statutes, defines "Forcible felony" to include "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." Thus, the above felonies constitute disqualifying felonies under FUPAC.

1. Treason. TWIC also includes treason as a disqualifying offense. A comparison of the state statute and federal law defining treason indicates this offense is similar for both FUPAC and TWIC.<sup>1</sup> Thus, treason would appear to be a disqualifying offense for both FUPAC and TWIC.

2. Murder. Both FUPAC and TWIC include murder as a disqualifying offense.<sup>2</sup> Both the state statute and federal law defining murder include deaths caused during the perpetration, or attempt to perpetrate, certain offenses; however, the state statute includes, for example, aggravated abuse of an elderly person or disabled adult, carjacking, resisting an officer with violence to his or her person. The Florida statute does not include treason, espionage or sabotage as does the federal law, but does include deaths caused during the perpetration, or attempt to perpetrate, an act of terrorism. While in most instances, the disqualifying offense for murder under FUPAC and TWIC would appear to be the same, there are some differences that create uncertainty as to whether all offenses under state law would be covered by TWIC, e.g., the unpremeditated killing of a person while engaged in the aggravated abuse of an elderly person or elderly adult.

3. Manslaughter. While manslaughter constitutes a disqualifying offense for FUPAC,<sup>3</sup> TWIC does not include the offense of manslaughter as a disqualifying offense.<sup>4</sup> However, 49 C.F.R. 1572.107 states that the TSA may determine that an applicant poses a security threat if a search reveals "a conviction of a serious crime not listed in 49 C.F.R. 1572.103, or a period of foreign or domestic imprisonment that exceeds 365 consecutive days." Thus, an individual convicted of manslaughter might be determined by the TSA to pose a security threat and thus be disqualified, but TWIC does not make a conviction for manslaughter an automatic disqualification.

4. Sexual battery. Under state law, sexual battery constitutes a disqualifying offense while TWIC refers to aggravated sexual abuse. While the language in the two acts differs, the provisions are similar enough that it appears that both TWIC and FUPAC consider acts of this nature to be a disqualifying offense. The federal statute also includes travel across state lines with intent to engage in a sexual act with children within the definition of aggravated sexual abuse which the state statute does not.<sup>5</sup> It should further be noted that the state statute includes attempts to commit sexual battery. Pursuant to 49 C.F.R. 1572.103, attempts to commit sexual battery are also included as a disqualifying offense under TWIC.

5. Carjacking.<sup>6</sup> TWIC does not include carjacking as a disqualifying offense while such an offense is included under FUPAC. The TSA might deem conviction for such an offense to be included pursuant to 49 C.F.R. 1572.107 (a conviction for a serious crime not listed in 49 C.F.R. 1572.103 or a period of foreign or domestic imprisonment that exceeds 365 consecutive days),<sup>7</sup> but TWIC does not make carjacking an automatic disqualification as does FUPAC. In addition, the federal government may consider carjacking to be a robbery (which is listed under TWIC) where a motor vehicle is taken through force or threat of force.

6. Home invasion robbery is a disqualifying offense under FUPAC.<sup>8</sup> TWIC does not refer to home invasion robbery; it does, however, include, as does FUPAC, robbery. The term robbery is not defined in TWIC although various other provisions of federal law define the term for purposes of the specific law. For example, 18 U.S.C. 1951(b) states that for purposes of section 1951 which relates to the obstruction, delay, or affect on commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or by physical violence to any person or property, or the threat thereof,

[t]he term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.<sup>9</sup>

Federal law regulates robberies in terms of federal jurisdiction, that is, commerce, banks, mail, etc. While a home invasion robbery would appear to be a subcategory of robbery as generally defined, in light of the federal provisions relating to robbery, we cannot conclusively state that home invasion robberies would automatically be included. There may be instances, however, where such offenses would be included under the specific facts of the case.

7. Robbery. Both FUPAC and TWIC include robbery as a disqualifying offense. Robbery is generally defined by section 812.13(1), Florida Statutes, as "the taking of money or other property which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking there is the use of force, violence, assault, or putting in fear." See 6, *supra*, discussing the federal provisions for robbery.

8. Burglary. FUPAC includes burglary as a disqualifying offense.<sup>10</sup> Section 810.02, Florida Statutes, defines burglary differently for offenses committed on or before July 1, 2001, and offenses committed after that date. TWIC does not specifically include burglary within its disqualifying offenses. Although the TSA might deem conviction for such an offense to be included pursuant to 49 C.F.R. 1572.107 (a conviction for a serious crime not listed in 49 C.F.R. 1572.103 or a period of foreign or domestic imprisonment that exceeds 365 consecutive days), TWIC does not make burglary an automatic disqualification as does FUPAC.

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9. Arson. Both FUPAC and TWIC include arson as a disqualifying offense. The definitions of both state and federal law appear to be substantially similar.<sup>11</sup> Thus, arson would appear to be a disqualifying offense for both FUPAC and TWIC.

10. Kidnaping. Both FUPAC and TWIC list kidnaping as a disqualifying offense. Section 787.01, Florida Statutes, generally defines kidnaping under state law. 18 U.S.C. 1201 is the federal provision defining kidnaping but qualifies the definition of the offense in relation to federal jurisdiction, e.g., transportation across state lines.<sup>12</sup>

11. Aggravated assault. While FUPAC includes aggravated assault as a disqualifying offense, TWIC does not, although the TSA might deem conviction for such an offense to be included pursuant to 49 C.F.R. 1572.107 (a conviction for a serious crime not listed in 49 C.F.R. 1572.103 or a period of foreign or domestic imprisonment that exceeds 365 consecutive days).<sup>13</sup>

12. Aggravated battery. While FUPAC includes aggravated battery as a disqualifying offense, TWIC does not.<sup>14</sup> Thus, FUPAC's disqualifying offense for aggravated battery would not appear to be a qualifying offense under TWIC.

13. Aggravated stalking. While FUPAC includes aggravated stalking as a disqualifying offense, TWIC does not.<sup>15</sup> Thus, FUPAC's disqualifying offense for aggravated stalking would not appear to be a qualifying offense under TWIC.

14. Aircraft piracy. While FUPAC includes aircraft piracy,<sup>16</sup> TWIC does not specifically list aircraft piracy as a disqualifying offense although it could fall within TWIC as terrorism or a transportation security incident which are specifically included. In addition, TWIC could disqualify a conviction for aircraft piracy as a serious crime pursuant to 18 U.S.C. 1572.107.<sup>17</sup>

15. Destructive device or bomb. The unlawful throwing, placing or discharging of a destructive device or bomb, included within section 776.08, Florida Statutes, as a forcible felony, is a disqualifying offense under FUPAC.<sup>18</sup> While TWIC does not specifically refer to the unlawful throwing, placing or discharging of a destructive device or bomb, it does include as a disqualifying offense the unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage or dealing in an explosive or explosive device as defined in 18 U.S.C. 232(5), 841(c) through 841(f), and 844(j); and a destructive device, as defined in 18 U.S.C. 921(a)(4) and 26 U.S.C. 5845(f). In addition, TWIC refers to terrorism as defined in 18 U.S.C. 2332b(g) which references certain offenses including explosives.<sup>19</sup> In light of the above, it appears that the unlawful throwing, placing or discharging of a destructive device or bomb would also qualify as a disqualifying offense under TWIC.

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16. Any other felony involving the use or threat of physical force or violence against an individual. Since it is unclear what crimes under state law this refers to, we cannot definitively determine whether all disqualifying crimes under FUPAC pursuant to this section would necessarily constitute disqualifying crimes for TWIC. Even though not specifically addressed by TWIC, such crimes might fall within the provisions of 49 C.F.R. 1572.107.

17. Act of Terrorism as defined in section 775.30. The statute defines terrorism as an activity that:

- (1)(a) Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
  - (b) Involves a violation of s. 815.06 (offenses against computer users);
- and
- (2) Is intended to:
    - (a) Intimidate, injure, or coerce a civilian population;
    - (b) Influence the policy of a government by intimidation or coercion; or
    - (c) Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

While the federal provision relating to terrorism is more specific with regard to the particular crimes involved, it is very broad and would appear to be substantially comparable to the state law.<sup>20</sup>

18. Placing a hoax bomb as provided in section 790.165. Under state law, the offense is broadly defined.<sup>21</sup> TWIC lists as a disqualifying crime conveying false information regarding an explosive or other lethal device. While there are jurisdictional issues, e.g., the federal law relates the crime to a place of public use, transportation system, government facility or infrastructure facility while the Florida statute does not limit application to public places, it appears likely that in most instances both TWIC and FUPAC would consider this to be a disqualifying offense.

19. Weapons of mass destruction. FUPAC includes a violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a weapon of mass destruction or hoax weapon of mass destruction as defined in section 790.166, Florida Statutes, as a disqualifying offense.<sup>22</sup> There is a provision in the federal terrorism definition which relates to weapons of mass destruction threats while the federal crime of terrorism includes biological weapons as well as chemical weapons.<sup>23</sup> In addition, if explosives were used, such an act might fall within the disqualifying offenses in TWIC relating to the unlawful possession, use, etc., of explosive or explosive devices or making a threat or conveying false information

regarding an explosive or other lethal device. Thus, it appears likely that TWIC and FUPAC would both consider a conviction for this offense to be a disqualifying offense.

20. Dealing in stolen property. Dealing in stolen property is listed as a disqualifying offense under FUPAC.<sup>24</sup> TWIC does not specifically refer to this offense, however, it does include, as a disqualifying crime, a felony conviction for dishonesty, fraud or misrepresentation (but would not include welfare fraud or passing bad checks). Thus it is possible that TWIC would treat such a felony conviction as a disqualifying offense.

21. Any violation of section 893.135. The state statute addresses drug trafficking; mandatory sentences, the suspension or reduction of sentences, and conspiracy to engage in trafficking in listed substances in specified amounts, for example, cannabis, cocaine, morphine, and amphetamines as well as other specified drugs. TWIC includes the distribution of, possession with intent to distribute, or importation of, a controlled substance, if the conviction is for a felony. We were unable to determine whether all the listed substances in section 893.135 were also considered controlled substances for purposes of TWIC; however, it appears clear that some of the crimes within FUPAC would also be disqualifier crimes under TWIC.

22. Any violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a controlled substance. Section 893.02(4), Florida Statutes, defines "controlled substance" as "any substance named or described in Schedules I-V of s. 893.03." Section 893.13, Florida Statutes, makes it unlawful for any person to sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance and provides felony and misdemeanor penalties for persons who violate this provision with respect to such controlled substances. As noted in 21, *supra*, TWIC includes the distribution of, possession with intent to distribute, or importation of, a controlled substance, if conviction is for a felony. We were unable to determine whether all the state controlled substances were also considered controlled substances for purposes of TWIC; however, it appears clear that some of the crimes within FUPAC would also be disqualifier crimes under TWIC.

23. Burglary. See 8, *supra*.

24. Robbery. See 7, *supra*.

25. Any felony violation of section 812.014. The statute provides that a person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

- (a) Deprive the other person of a right to the property or a benefit from the property.
- (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.<sup>25</sup>

TWIC does not specifically list theft as a disqualifying offense. However, TWIC does contain a provision making a felony crime involving dishonesty, fraud or misrepresentation a disqualifying offense (with the exception of welfare fraud or passing bad checks). Thus, it is possible that such a FUPAC crime could be interpreted as a TWIC disqualifying offense.

26. Violation of section 790.07. The statute addresses persons engaged in criminal offenses having weapons, with the exception of antitrust violations, unfair trade practices, restraints of trade, nonsupport of dependents, bigamy, or other similar offenses.<sup>26</sup> TWIC refers to the unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer in a firearm or other weapon (if a felony). The TWIC disqualifying offense relating to the unlawful use of a firearm or weapon could be interpreted to encompass the disqualifying offense for violations of section 790.07, Florida Statutes, contained in FUPAC.

27. Any crime an element of which includes use or possession of a firearm. The same analysis as discussed in 26, *supra*, would appear to be applicable provided that it is a felony conviction.

28. Similar offenses under the laws of another jurisdiction. We would agree with FDLE that TWIC partially covers these offenses. We note that several provisions of TWIC specifically refer to comparable state law, for example, the offense of terrorism, fraudulent entry into a seaport, and violations of the Racketeer Influenced and Corrupt Organizations Act.

29. Conspiracy to commit any of the above offenses. Since TWIC's disqualifying offenses do not completely match the identifying offenses set forth in FUPAC, the provision relating to conspiracies to commit such offenses would only partially apply.

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<sup>1</sup> See s. 876.32, Fla. Stat., defining "Treason," and 18 U.S.C. 381.

<sup>2</sup> See, e.g., ss. 782.04 and 782.09, Fla. Stat.; 18 U.S.C. 1111.

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<sup>3</sup> See s. 782.07, Fla. Stat.

<sup>4</sup> Cf. 18 U.S.C. 1112 which generally defines voluntary or involuntary manslaughter.

<sup>5</sup> See 18 U.S.C. 2241.

<sup>6</sup> See s. 812.133(1), Fla. Stat.

<sup>7</sup> Cf. 18 U.S.C. 2119.

<sup>8</sup> See s. 812.135(1), Fla. Stat., defining "home invasion robbery."

<sup>9</sup> See also 18 U.S.C. 2113 (bank robbery), 18 U.S.C. 2114 (mail robbery), and 18 U.S.C. 2118 (robberies and burglaries involving controlled substances). And see 34 C.F.R. Part 99 Appendix A To Part 99 -- Crimes of Violence Definitions, defining "robbery" as "[t]he taking of, or attempting to take, anything of value under confrontational circumstances from the control, custody, or care of a person or persons by force or threat of force or violence or by putting the victim in fear."

<sup>10</sup> See s. 810.02, Fla. Stat., defining "burglary." And see s. 810.015, Fla. Stat., setting forth legislative findings and intent regarding burglary.

<sup>11</sup> See, e.g., ss. 806.01 and 806.031, Fla. Stat.; 18 U.S.C. 81 and 18 U.S.C. 3559(c)(2)(B). And see 34 C.F.R. Part 99 Appendix A To Part 99 -- Crimes of Violence Definitions, defining "Arson" as any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

<sup>12</sup> And see 34 C.F.R. Part 99 Appendix A To Part 99 -- Crimes of Violence Definitions, defining "Kidnaping/Abduction" as the "unlawful seizure, transportation, or detention of a person, or any combination of these actions, against his or her will, or of a minor without the consent of his or her custodial parent(s) or legal guardian;" 18 U.S.C. 3559(c)(2)(E) the term "kidnapping" means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force.

<sup>13</sup> See s. 784.021, Fla. Stat., defining "aggravated assault." Cf. 18 U.S.C. s. 16 defining "crime of violence," and 34 C.F.R. Part 99 Appendix A To Part 99 -- Crimes of Violence Definitions, defining "Aggravated Assault" as an "unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury.

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This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm."

<sup>14</sup> See s. 784.045, Fla. Stat., defining "aggravated battery."

<sup>15</sup> See s. 784.048(3), Fla. Stat., defining "aggravated stalking."

<sup>16</sup> See s. 860.16, Fla. Stat., defining "aircraft piracy."

<sup>17</sup> See 46 U.S.C. 70101(6) defining the term "transportation security incident" to mean a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. In this paragraph, the term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employee-employer dispute. Cf. 49 U.S.C. 46502 defining "aircraft piracy" in special aircraft jurisdiction.

<sup>18</sup> See s. 790.161, Fla. Stat., (unlawful throwing, projecting, placing or discharging of a destructive device or bomb); s. 790.1615, Fla. Stat., provides for the unlawful throwing, projecting, placing or discharging of a destructive device or bomb that results in an injury to another. *And see* s. 790.001(4), Fla. Stat., defining "Destructive device."

<sup>19</sup> See 18 U.S.C. 844(f)(2) or (3) which is referenced in 18 U.S.C. 2332b(g) and which provides penalties for whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance, and causes personal injury or creates a substantial risk of injury, or death, to any person, including any public safety officer performing duties. In addition 18 U.S.C. 2332b(g) refers to 18 U.S.C. 842(m) relating to plastic explosives that do not contain a detection agent.

<sup>20</sup> Under 18 U.S.C. 2332b(g)(5) the term "Federal crime of terrorism" means an offense that--

(A) is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct; and

(B) is a violation of--

(i) section 32 [18 U.S.C. 32] (relating to destruction of aircraft or aircraft

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facilities), 37 [18 U.S.C. 37] (relating to violence at international airports), 81 [18 U.S.C. 81] (relating to arson within special maritime and territorial jurisdiction), 175 or 175b [18 U.S.C. 175 or 175(b)] (relating to biological weapons), 175c (relating to variola virus), 229 [18 U.S.C. 229] (relating to chemical weapons), subsection (a), (b), (c), or (d) of section 351 [18 U.S.C. 351] (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 [18 U.S.C. 831] (relating to nuclear materials), 832 [18 U.S.C. 832] (relating to participation in nuclear and weapons of mass destruction threats to the United States)[,] 842(m) or (n) [18 U.S.C. 842(m) or (n)] (relating to plastic explosives), 844(f)(2) or (3) [18 U.S.C. 844(f)(2) or (3)] (relating to arson and bombing of Government property risking or causing death), 844(i) [18 U.S.C. 844(i)] (relating to arson and bombing of property used in interstate commerce), 930(c) [18 U.S.C. 930(c)] (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon), 956(a)(1) [18 U.S.C. 956(a)(1)] (relating to conspiracy to murder, kidnap, or maim persons abroad), 1030(a)(1) [18 U.S.C. 1030(a)(1)] (relating to protection of computers), 1030(a)(5)(A)(i) [18 U.S.C. 1030(a)(5)(A)(i)] resulting in damage as defined in 1030(a)(5)(B)(ii) through (v) [18 U.S.C. 1030(a)(5)(B)(ii)-(v)] (relating to protection of computers), 1114 [18 U.S.C. 1114] (relating to killing or attempted killing of officers and employees of the United States), 1116 [18 U.S.C. 1116] (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons), 1203 [18 U.S.C. 1203] (relating to hostage taking), 1361 (relating to government property or contracts), 1362 [18 U.S.C. 1362] (relating to destruction of communication lines, stations, or systems), 1363 [18 U.S.C. 1363] (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States), 1366(a) [18 U.S.C. 1366(a)] (relating to destruction of an energy facility), 1751(a), (b), (c), or (d) [18 U.S.C. 1751(a), (b), (c), or (d)] (relating to Presidential and Presidential staff assassination and kidnaping), 1992 [18 U.S.C. 1992] (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air), 2155 [18 U.S.C. 2155] (relating to destruction of national defense materials, premises, or utilities), 2156 (relating to national defense material, premises, or utilities), 2280 [18 U.S.C. 2280] (relating to violence against maritime navigation), 2281 [18 U.S.C. 2281] (relating to violence against maritime fixed platforms), 2332 [18 U.S.C. 2332] (relating to certain homicides and other violence against United States nationals occurring outside of the United States), 2332a [18 U.S.C. 2332a] (relating to use of weapons of mass destruction), 2332b [18 U.S.C. 2332b]

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(relating to acts of terrorism transcending national boundaries), 2332f [18 U.S.C. 2332f] (relating to bombing of public places and facilities), 2332g [18 U.S.C. 2332g] (relating to missile systems designed to destroy aircraft), 2332h [18 U.S.C. 2332h] (relating to radiological dispersal devices), 2339 [18 U.S.C. 2339] (relating to harboring terrorists), 2339A [18 U.S.C. 2339A] (relating to providing material support to terrorists), 2339B [18 U.S.C. 2339B] (relating to providing material support to terrorist organizations), 2339C [18 U.S.C. 2339C] (relating to financing of terrorism), 2339D [18 U.S.C. 2339D] (relating to military-type training from a foreign terrorist organization), or 2340A [18 U.S.C. 2340A] (relating to torture) of this title;

(ii) sections 92 (relating to prohibitions governing atomic weapons) or 236 (relating to sabotage of nuclear facilities or fuel) of the Atomic Energy Act of 1954 (42 U.S.C. 2122 or 2284);

(iii) section 46502 (relating to aircraft piracy), the second sentence of section 46504 (relating to assault on a flight crew with a dangerous weapon), section 46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft), section 46506 if homicide or attempted homicide is involved (relating to application of certain criminal laws to acts on aircraft), or section 60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility) of title 49; or

(iv) section 1010A of the Controlled Substances Import and Export Act [21 U.S.C. 960a] (relating to narco-terrorism).

<sup>21</sup> See s. 790.165, Fla. Stat., which prohibits any person who, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use, or conspires to use, or who makes readily accessible to others, a hoax bomb, or who, while committing or attempting to commit any felony, possesses, displays, or threatens to use any hoax bomb.

<sup>22</sup> Section 790.166, Fla. Stat., prohibits a person who, without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use, or conspires to use, or makes readily accessible to others, a weapon of mass destruction or hoax weapon of mass destruction, or who, while committing or attempting to commit any felony, possesses, displays, or threatens to use any hoax weapon of mass destruction.

<sup>23</sup> See n.20, *supra*.

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<sup>24</sup> See s. 812.019, Fla. Stat. (dealing in stolen property) and s. 812.0195, Fla. Stat. (dealing in stolen property by use of the Internet).

<sup>25</sup> Section 812.014, Fla. Stat., provides in pertinent part:

- (2)(a)1. If the property stolen is valued at \$100,000 or more or is a semitrailer that was deployed by a law enforcement officer; or
  2. If the property stolen is cargo valued at \$50,000 or more that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or
  3. If the offender commits any grand theft and:
    - a. In the course of committing the offense the offender uses a motor vehicle as an instrumentality, other than merely as a getaway vehicle, to assist in committing the offense and thereby damages the real property of another; or
    - b. In the course of committing the offense the offender causes damage to the real or personal property of another in excess of \$1,000, the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084.
- (b)1. If the property stolen is valued at \$20,000 or more, but less than \$100,000;
2. The property stolen is cargo valued at less than \$50,000 that has entered the stream of interstate or intrastate commerce from the shipper's loading platform to the consignee's receiving dock; or
  3. The property stolen is emergency medical equipment, valued at \$300 or more, that is taken from a facility licensed under chapter 395 or from an aircraft or vehicle permitted under chapter 401, the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084. Emergency medical equipment means mechanical or electronic apparatus used to provide emergency services and care as defined in s. 395.002(10) or to treat medical emergencies.
- (c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:
1. Valued at \$300 or more, but less than \$5,000.
  2. Valued at \$5,000 or more, but less than \$10,000.
  3. Valued at \$10,000 or more, but less than \$20,000.
  4. A will, codicil, or other testamentary instrument.
  5. A firearm.

6. A motor vehicle, except as provided in paragraph (2)(a).
  7. Any commercially farmed animal, including any animal of the equine, bovine, or swine class, or other grazing animal, and including aquaculture species raised at a certified aquaculture facility. If the property stolen is aquaculture species raised at a certified aquaculture facility, then a \$10,000 fine shall be imposed.
  8. Any fire extinguisher.
  9. Any amount of citrus fruit consisting of 2,000 or more individual pieces of fruit.
  10. Taken from a designated construction site identified by the posting of a sign as provided for in s. 810.09(2)(d).
  11. Any stop sign.
  12. Anhydrous ammonia.
- (d) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is valued at \$100 or more, but less than \$300, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1).

\* \* \*

(3)(c) A person who commits petit theft and who has previously been convicted two or more times of any theft commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

<sup>26</sup> Section 790.07, Fla. Stat., provides:

- (1) Whoever, while committing or attempting to commit any felony or while under indictment, displays, uses, threatens, or attempts to use any weapon or electric weapon or device or carries a concealed weapon is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (2) Whoever, while committing or attempting to commit any felony, displays, uses, threatens, or attempts to use any firearm or carries a concealed firearm is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, and s. 775.084.
- (3) The following crimes are excluded from application of this section: Antitrust violations, unfair trade practices, restraints of trade, nonsupport of dependents, bigamy, or other similar offenses.
- (4) Whoever, having previously been convicted of a violation of subsection (1) or subsection (2) and, subsequent to such conviction,

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displays, uses, threatens, or attempts to use any weapon, firearm, or electric weapon or device, carries a concealed weapon, or carries a concealed firearm while committing or attempting to commit any felony or while under indictment is guilty of a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Sentence shall not be suspended or deferred under the provisions of this subsection.

REVISED  
03/14/07

FDLE REVIEW OF DISQUALIFYING CRIMES RE: FUPAC AND TWIC (REVISED: March 14, 2007)		
	FUPAC DISQUALIFYING CRIME (pursuant to <a href="#">s. 311.12(3)(c)</a> , Florida Statutes (2006))	DISQUALIFYING UNDER TWIC?
	<p>The list below is not comprehensive of every Florida statutory offense covered by the language of s. 311.12(3)(c), F.S. (2006). (The Florida Department of Motor Vehicles may have a more comprehensive list which that agency may use in its administration of the electronic FUPAC system.)</p> <p style="text-align: center;"><u>Attempts to commit these crimes are not designated as disqualifying under FUPAC, unless "attempt" language is included in the specific definition of the crime.</u></p>	<p>FDLE opinions are offered here, by request, as part of ongoing discussions with Florida and federal officials, regarding port security. FDLE defers to federal officials for opinions as to actual disqualifications under TWIC.</p>
	Forcible Felony (as defined in <a href="#">s. 776.08</a> ) (listed below):	Partially <sup>1</sup>
1	• Treason	Yes
2	• Murder	Yes
3	• Manslaughter	No
4	• Sexual Battery	Yes
5	• Carjacking	No
6	• Home-Invasion Robbery	Likely <sup>2</sup>
7	• Robbery	Yes
8	• Burglary	No
9	• Arson	Yes
10	• Kidnapping	Yes
11	• Aggravated Assault	Possibly <sup>3</sup>
12	• Aggravated Battery	No
13	• Aggravated Stalking	No
14	• Aircraft Piracy	Yes
15	• Unlawful throwing, placing, or discharging of a destructive device/bomb	Yes
16	• Any other felony which involves the use or threat of physical force or violence against any individual	Partially
17	<p>Act of Terrorism (as defined in <a href="#">s. 775.30</a>)</p> <p>(An activity that:                      (1)(a) Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or                      (b) Involves a violation of <a href="#">s. 815.06</a> (Offenses against computer users); and                      (2) Is intended to:                      (a) Intimidate, injure, or coerce a civilian population;                      (b) Influence the policy of a government by intimidation or coercion; or                      (c) Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.)</p>	Yes
18	<p>Planting of a <b>hoax bomb</b> (as provided in <a href="#">s. 790.165</a>)</p> <p>(Without lawful authority, manufactures, possesses, sells, delivers, sends, mails, displays, uses, threatens to use, attempts to use, or conspires to use, or who makes readily accessible to others, a hoax bomb – as defined in s. 790.165(1))</p>	Likely
19	Violation involving the manufacture, possession, sale, delivery, display, use, or attempted or threatened use of a <b>weapon of mass destruction</b> or hoax weapon of mass destruction as provided in <a href="#">s. 790.166</a> .	Likely
20	<p><b>Dealing in Stolen Property</b></p> <p>(See, e.g., <a href="#">s. 812.019</a> – (Felony) Dealing in Stolen Property:</p>	Likely if Felony; No if Misdemeanor

	Traffics in, or endeavors to traffic in, property that he or she knows or should know was stolen; or initiates, organizes, plans, finances, directs, manages, or supervises the theft of property and traffics in such stolen property; and <a href="#">s. 812.0195</a> - (Misd/Felony) Dealing in Stolen Property By Use of the Internet: Person in this state who uses the Internet to sell or offer for sale any merchandise or other property that the person knows, or has reasonable cause to believe)	
21	Violation of <a href="#">s. 893.135</a> - <i>Example:</i> Except as otherwise provided, knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of <b>listed substances / drugs</b> , in specified amounts, etc.; example substances: cannabis, cocaine, gamma-butyrolactone, flunitrazepam, amphetamine, etc.)	Partially
22	Violation involving the sale, manufacturing, delivery, or possession with intent to sell, manufacture, or deliver a <b>controlled substance</b>	Partially
23	<b>Burglary</b> (also included under "forcible felonies" above)	No
24	<b>Robbery</b> (also included under "forcible felonies" above)	Yes
25	<b>Felony Theft</b> - violation of <a href="#">s. 812.014</a>	Likely
26	Violation of <a href="#">s. 790.07</a> - <b>Persons engaged in criminal offense, having weapons</b> (certain offenses excluded)  While committing or attempting to commit any felony or while under indictment, displays, uses, threatens, or attempts to use any weapon or electric weapon or device or carries a concealed weapon; While committing or attempting to commit any felony, displays, uses, threatens, or attempts to use any firearm or carries a concealed firearm; Having previously been convicted of a violation of either of the above, subsequent to such conviction, displays, uses, threatens, or attempts to use any weapon, firearm, or electric weapon or device, carries a concealed weapon, or carries a concealed firearm while committing or attempting to commit any felony or while under indictment	Yes
27	Crime an <b>element</b> of which includes <b>use or possession of a firearm</b>	Yes, if Felony; No, if Misdemeanor
28	<b>Similar offenses under the laws of another jurisdiction</b>	Partially
29	<b>Conspiracy to commit</b> any of the above offenses	Partially
	<sup>1</sup> "Partially" means that some of the crimes within the FUPAC category or classification are also disqualifier crimes under TWIC. <sup>2</sup> "Likely" means that, based upon the elements, descriptors, definitions, and/or meanings of the crime(s) within the specific FUPAC category or classification, such FUPAC crimes would likely be interpreted as one or more of the disqualifying crimes/categories under TWIC, because there are strong similarities and/or because certain TWIC crimes specifically a reference to "a comparable State law". <sup>3</sup> "Possibly" means that the crimes within the FUPAC category or classification might be disqualifiers under TWIC, depending upon the actual charge and facts in a particular case.	

**NOTE:** Also significant to a determination of eligibility or qualification for a seaport access credential under both FUPAC and TWIC is how the laws/rules address the following issues: 1) date of a conviction in relation to the date of the application for a credential; 2) required period of time from incarceration and/or completion of probation/court supervision which must be clear of disqualifying convictions/arrests; 3) types of dispositions of charges; 4) pending dispositions of criminal charges/cases (arrests only); 5) wants/warrants; 6) types of waivers and appeals, review process/criteria, percentage of approvals, and court/administrative judge involvement; 7) threat assessment process and information used; and 8) additional criteria, factors, and/or restrictions applicable to qualification or revocation processes.

**FDLE REVIEW OF DISQUALIFYING CRIMES**  
**RE: FUPAC AND TWIC**  
 (March 2007)

	TWIC DISQUALIFYING CRIME (pursuant to 49 CFR 1572.103, <i>as corrected</i> , and 49 CFR 1572.107 (2007))	DISQUALIFYING UNDER FUPAC?
		FDLE opinions are offered here, by request, as part of ongoing discussions with Florida and federal officials, regarding port security. They are intended for use only <u>as a guide</u> . In practice, FDLE and the ports evaluate such criminal history record issues on a case-by-case basis.
1	<b>Espionage</b>	Possibly <sup>1</sup>
2	<b>Sedition</b>	Possibly
3	<b>Treason</b>	Yes
4	<b>Terrorism</b> (as defined in 18 U.S.C. 2332b(g), or comparable State law)	Yes
5	Crime involving a <b>transportation security incident</b> .  (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, as defined in 46 U.S.C. 70101. The term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employer-employee dispute.)	Possibly
6	Improper <b>transportation of a hazardous material</b> under 49 U.S.C. 5124, or a State law that is comparable.	Possibly
7	Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an <b>explosive or explosive device</b> (as defined).	Likely <sup>2</sup>
8	<b>Murder</b>	Yes
9	Making any threat, or maliciously conveying false information knowing the same to be false, concerning the <b>deliverance, placement, or detonation of an explosive or other lethal device</b> in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility.	Likely
10	Violations of the <b>Racketeer Influenced and Corrupt Organizations Act (RICO)</b> , 18 U.S.C. 1961, et seq, or a comparable State law, <u>where one of the predicate acts found by a jury or admitted by the defendant, consists of one of crimes (1)-(9) or (11)-(12) on this list</u>	Partially <sup>3</sup>
11	<b>Conspiracy to commit</b> any of the crimes (1)-(10) on this list	Partially
12	<b>Attempt to commit</b> any of the crimes (1)-(10) on this list	Partially
	*****	
13	Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a <b>firearm or other weapon</b> (if felony).	Yes
14	<b>Extortion</b> (if felony)	Possibly
15	<b>Dishonesty, fraud, or misrepresentation</b> (if felony)  (Includes identity fraud and money laundering where the money laundering is related to a crime listed here. Does <i>not</i> include welfare fraud or passing bad checks.)	Partially
16	<b>Bribery</b> (if felony)	Unlikely <sup>4</sup>
17	<b>Smuggling</b> (if felony)	Partially

18	<b>Immigration violation</b> (if felony)	Unlikely
19	Distribution of, possession with intent to distribute, or importation of a <b>controlled substance</b> (if felony)	Partially
20	<b>Arson</b> (if felony)	Yes
21	<b>Kidnapping or hostage taking</b> (if felony)	Yes
22	<b>Rape or aggravated sexual abuse</b>	Yes
23	<b>Assault with intent to kill</b> (if felony)	Likely
24	<b>Robbery</b> (if felony)	Yes
25	<b>Fraudulent entry into a seaport</b> (if felony) (as described in 18 U.S.C. 1036, or a comparable State law)	Possibly
26	Violations of the <b>Racketeer Influenced and Corrupt Organizations Act (RICO)</b> , 18 U.S.C. 1961, <i>et seq.</i> , or a comparable State law, <u>other than the violations listed in crime (10) of this list.</u>	Partially
27	<b>Conspiracy to commit</b> any of the crimes (13)-(25) on this list	Partially
28	<b>Attempt to commit</b> any of the crimes (13)-(25) on this list	Partially
29	<p><b>Other offenses if they indicate the person poses a security threat</b> (49 CFR 1572.107)</p> <p>TSA may also determine that an applicant poses a security threat, if the search conducted under 49 CFR 1572.107 reveals</p> <ul style="list-style-type: none"> <li>• <b>extensive foreign or domestic criminal convictions,</b></li> <li>• <b>a conviction for a serious crime <u>not</u> listed in 49 CFR 1572.103</b> (crimes (1)-(27) on this list)</li> <li>• <b>or a period of foreign or domestic imprisonment that exceeds 365 consecutive days.</b></li> </ul>	Partially

<sup>1</sup> "Possibly" means that the crime(s) within the TWIC category or classification might be disqualifiers under FUPAC, depending upon the actual charge and facts in a particular case, and the application of one or more other provisions of applicable Florida law.

<sup>2</sup> "Likely" means that, based upon the elements, descriptors, definitions, and/or meanings of the crime(s) within the specific TWIC category or classification, such TWIC crimes would likely be interpreted as one or more of the disqualifying crimes/categories under FUPAC, because there are strong similarities and/or because FUPAC includes a broad category for "similar offenses under the laws of another jurisdiction".

<sup>3</sup> "Partially" means that some of the crimes within the TWIC category or classification are also disqualifier crimes under FUPAC.

<sup>4</sup> "Unlikely" means that, based upon the elements, descriptors, definitions, and/or meanings of the crime(s) within the specific TWIC category or classification, such TWIC crime(s) would *not* likely be interpreted as one or more of the disqualifying crimes/categories under FUPAC, but a possibility exists that sufficient similarities might be defined.

**NOTE:** Also significant to a determination of eligibility or qualification for a seaport access credential under both FUPAC and TWIC is how the laws/rules address the following issues: 1) date of a conviction in relation to the date of the application for a credential; 2) required period of time from incarceration and/or completion of probation/court supervision which must be clear of disqualifying convictions/arrests; 3) types of dispositions of charges; 4) pending dispositions of criminal charges/cases (arrests only); 5) wants/warrants; 6) types of waivers and appeals, review process/criteria, percentage of approvals, and court/administrative judge involvement; 7) threat assessment process and information used; and 8) additional criteria, factors, and/or restrictions applicable to qualification or revocation processes.