

## **Transportation Worker Identification Credential (TWIC)**

**Docket Nos. TSA–2006–24191; USCG– 2006–24196**

Go to <http://dms.dot.gov/search/searchFormSimple.cfm> and enter 24196

### **Who it Covers**

A TWIC would be required for every maritime transportation worker who requires unescorted access to a secure facility or vessel. The total number of maritime industry workers who would need TWICs is estimated to be 750,000. The total estimated cost of the initiative is more than \$1 billion.

- The authority for the TWIC requirement is from the Maritime Transportation Security Act of 2002 (MTSA). However, the rulemaking goes far beyond the strict requirements of the law in some key areas.
- The Coast Guard would require every licensed or documented mariner to obtain a TWIC. This would be required regardless of whether or not the mariner works on a vessel that requires a security plan. In other words, licensed mariners on all T- boats would be required to obtain TWICs.
- Unlicensed mariners working on vessels that have security.
- Company personnel who visit vessels with security plans or vendors who would work on those vessels (such as an engine mechanic, elevator service techs, band members) would either need a TWIC or would require an escort.

### **How it could change your operation**

Vessels and facilities covered by security plans would be required to have biometric fingerprint readers and require everyone entering the vessel or facility to swipe their cards. The readers are estimated to cost up to \$11,000 per vessel.

- This provision goes beyond the strict requirements of the law. The MTSA does not require biometric readers for secure areas. It only requires that the cards have a biometric element.
- If the entire vessel is a secure area, no one without a TWIC would be allowed on the vessel without a round-the-clock escort.
- The security plan holder would be required to update the database for the TWIC reader with the latest information on cardholders. For MARSEC 1, the updates would be required at least every seven days and at least once a day under MARSAC 2. It is not known how large the data files would be to hold biometric information for 750,000 people.
- For crew members of small vessels, the proposal would allow them to scan their card when coming to the vessel as long as MARSEC 1 is in place. Under higher MARSEC levels, crewmembers would have to use the fingerprint/card reader more often. It is not certain from the rulemaking, but potentially smaller vessels could meet this requirement by using card readers at company offices.
- The TWIC holder would also have a four digit PIN number which could be used in conjunction with a fingerprint reader or under some limited circumstances, instead of the reader.
- Every passenger vessel and passenger facility would designate a “passenger access area” that would allow passengers to pass through your facility to the vessel and move about the vessel without having to be escorted.
- The proposal would require that records be kept for two years on every entrance to a secure area by every individual, regardless of whether they hold a TWIC. If they don’t have a TWIC, the records need to reflect who escorted them.

## Who it doesn't cover

Foreign vessels would not be required to meet the TWIC requirements and foreign workers who do not hold green cards would not be allowed to apply for TWICs.

- This means that foreign vessels would not have to meet the same requirements as those faced by U.S. vessels.
- Conversely, foreign specialists such as vessel manufacturers and naval architects would not be able to work on a U.S. boat covered by a security plan unless someone escorts them (24/7) in secure areas.

## How to get a TWIC

To obtain a TWIC, workers would be required to submit to an application to the Transportation Security Administration. TSA will then do a security background check on the applicant using the national criminal, immigration and terrorist databases.

- The background check will not include a number of aspects that the Coast Guard looks at, such as drinking or drug arrests. Consequently, the Coast Guard will perform a second background check for any MMD or license application.
- The fee for a first time issuance is \$149. However, in the case of mariners who have already undergone the Coast Guard security check, TSA will not do another background check and issue the card for a “reduced” fee of \$95.
- There is a long list of offenses that would disqualify someone for a TWIC. They are modeled on the requirements to hold a hazardous materials transportation endorsement.
- Permanent disqualifiers are:
  - Espionage or conspiracy to commit espionage.
  - Sedition or conspiracy to commit sedition.
  - Treason or conspiracy to commit treason.
  - A crime listed in 18 U.S.C. Chapter 113B—Terrorism, or a State law that is comparable, or conspiracy to commit such crime.
  - A crime involving a transportation security incident. 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.
  - Improper transportation of a hazardous material under 49 U.S.C. 5124, or a State law that is comparable.
  - Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device. An explosive or explosive device includes, but is not limited to, an explosive or explosive material 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).
  - Murder.
  - Violations of the Racketeer Influenced and Corrupt Organizations Act.
- For a number of other offenses, the applicant must not have been convicted within the past seven years or released from jail in the last five years:
  - Assault with intent to murder.
  - Kidnapping or hostage taking.
  - Rape or aggravated sexual abuse.

- Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon. A firearm or other weapon includes, but is not limited to, firearms
  - Extortion.
  - Dishonesty, fraud, or misrepresentation, including identity fraud.
  - Bribery.
  - Smuggling.
  - Immigration violations.
- If rejected the applicants would have a fairly complex process for appealing the determination or requesting a waiver. The appeal process involves the employee proving that the offense or conviction for which they have been denied did not occur or was not them. For a waiver the employee would be required to submit documentation that all “debts to society” have been paid and that the mariner has made such a lifestyle change as to no longer pose a threat to national security. Waivers can only be granted by the Deputy Director of TSA. Of particular note, the determination must be appealed within 60 days of mailing to the mariner or the determination becomes permanent.
  - Ironically, once the card is issued, the holder would be responsible for informing TSA if they violate one of the above-mentioned violations and are now a security threat.

### **How TSA will administer the process**

- TSA intends to hire outside contractors to take and process the TWIC applications. The NPRM indicates that TSA intends to set up 125 different locations to cover 300 ports around the country. This may include mobile TWIC centers.
- Applicants may make the initial application over the internet, but must go in person to an enrollment center to finish the process. They must return to that or another enrollment center to pick up the card, once notified that it is ready. The NPRM is not clear on how the process would work if the applicant applies at one center and wants to pick the card up at another center.
- TSA hopes to process applications in less than 30 days, but warns that applicants should give up to 60 days to be safe.
- The card would be good for five years, requiring the applicant to repeat the process before the five-year deadline is up.
- Significantly, the applicant would have to go through the TWIC process before the Coast Guard would begin any process for an MMD or license.

### **How it would be implemented**

- Once the Final Rule on TWIC is published (perhaps by the end of 2006), vessels and facilities would have six months to amend their security plans to include TWIC. They would be required to be operating within their plan, presumably including installed biometric readers and the process for ensuring that no one without a valid card is allowed into a secure area.
- The NPRM leaves some uncertainty over who will enforce the rules. TSA will conduct the assessments and provide the cards. The Coast Guard will address the vessel and facility plans. However, there is a reference in the rulemaking to TSA’s responsibility for auditing the TWIC readers, implying that TSA might have a role in checking vessels for compliance.

# **Consolidation of Merchant Mariners Qualification Credentials**

## **Docket USCG– 2006–24371**

Go to <http://dms.dot.gov/search/searchFormSimple.cfm> and enter 24371

### **Who it Covers**

The Coast Guard proposes to streamline the existing merchant mariner credentialing process to minimize redundant requirements and simplify the credentialing program by combining the Merchant Mariner's Document, License, Certificate of Registry, and STCW Endorsement into a single certificate termed the Merchant Mariner Credential (MMC), which will be endorsed to reflect all of a mariner's qualifications.

### **How will the Coast Guard administer the process**

This rulemaking is predicated on the assumption that the TWIC rule will be enacted as proposed. The TWIC would replace the MMD as the mariner's identification document.

The MMC rule will not go into effect until 18 months after the TWIC rule.

Then the MMC will be phased in over a five-year period as mariners current documents expire.

A mariner would first be required to obtain a TWIC. The net result is that the already slow process of documentation would become even slower. TSA estimates a minimum 30-60 day processing window for a TWIC, for a clean background. While they may be eligible for a TWIC waiver upon further review by TSA, there is no reasonable estimate of the time this waiver process will take when the enrollment of hundreds of thousands of maritime workers begins.

The Coast Guard envisions a mariner candidate would mark a box on the TWIC application. That mark would key the TSA to send a copy of the file and results to the Coast Guard. There no mention in the rulemaking for provisions for the Coast Guard to request the information on any person and receive an immediate electronic response for those persons who "forget" to check the "please send my info to the Coast Guard box."

Currently mariners are required to report in-person at one of 17 Regional Exam Centers (REC) to prove their identity and provide fingerprints for background check. By allowing TSA to perform this function the number of enrollment sites is expected to be increased to 125 TSA enrollment centers.

### **How to get a MMC**

The Coast Guard proposes to streamline the application process for the MMC by removing the requirement that all mariners appear at least once at one of 17 Regional Exam Centers (RECs).

Instead of requiring a mariner to submit identity documentation and fingerprints at one of the RECs, the Coast Guard would accept the data submitted to TSA through the TWIC enrollment process and shared with the Coast Guard by TSA.

Upon issue of a TWIC a mariner would then be eligible to apply for a Coast Guard MMC.

The Coast Guard envisions all transactions with the REC's could be by mail as identification and fingerprint checks will be conducted by TSA. In the regulation preamble it states implementation of the TWIC rule would allow the required oath to be taken in front of a notary and mailed in. The body of the regulations does not clearly state such a provision which might negate the mail-in only option.

A mariner would then apply for a MMC. The current forms and qualification standards in use today would apply.

Upon receiving the TWIC data the Coast Guard will then perform a "safety and character" check of the individual. The data submitted to TSA will be examined by TSA for security purposes and then checked again by the Coast Guard for "safety and character" purposes effectively doubling the process.

The MMC will have a single period of validity for all qualifications on it. The MMC can be renewed at any time during its validity and up to 12 months after expiration (without loss of qualification). The Coast Guard needs to take this opportunity to address license creep, where a document is not usable for its fully valid period, due to the uncertainty that a mariner faces regarding delays in renewal at the REC. The period of validity is measured from the date issued. By using a system such as this the mariner is penalized by submitting their paperwork early.

### **How it would be implemented**

There is a disconnect between the TSA rule and Coast Guard current practice on criminal convictions. For licensing purposes the Coast Guard considers deferred adjudication and crimes that have been expunged as convictions. Many states do not consider these as convictions. The TWIC rule on the other hand will ignore these infractions.

The proposed regulations require that a mariner provide a written disclosure of all prior convictions. The Coast Guard is now conducting a 100% fingerprint/name/SSN based background check of all applicants. There is no apparent reason to continue to request this disclosure, and Coast Guard needs to be encourage to remove this section of the application.

The Coast Guard lists as locations where applications for MMC may be submitted as the current REC's. The list should include the new West Virginia office coming on line this summer.

The format for the proposal makes it difficult to read and analyze without going through a complex process of referring back to the original regulations that it would change. The newly re-designated chapter 11 does not contain the paragraph titles on all paragraphs making it difficult to track the changes but does appear to be missing the deck officer license progression figure and a number of license types. The industry will need to make sure that some license classes don't simply disappear from the regulations through oversight.

Additionally, some errors seem to have been carried forward for years such as the Section 12.02-7 reference to the non-existent position of shipping commissioner as a person to which these documents are required to be presented to prior to signing articles.