

TSA/USCG TWIC Implementation in the Maritime Sector: Hazardous Materials Endorsement for a Commercial Driver's License

FINAL RULE

The Maritime TWIC final rule implements the MTSA and SAFE Port Act requirements to perform security threat assessments and issue a biometric credential to maritime and port workers requiring unescorted access to secure areas of vessels and maritime facilities, including truck drivers. The rule establishes the process, procedures, fees, disqualifying crimes, and other requirements of the program. Under the rule, more than 750,000 workers, including an estimated 110,000 truck drivers will be directly affected. This rule does not include the card reader requirements which will be addressed in a future rulemaking.

Security Threat Assessment

TWIC applicants will undergo a comprehensive, fingerprint-based background check including checks against criminal history records, terrorist watch lists, immigration databases, and outstanding wants and warrants.

TSA will apply the same security threat assessment standards to maritime workers that currently apply to commercial driver's obtaining an HME.

The final rule amends the threat assessment standards to include a process by which TSA determines if a security threat assessment conducted by another governmental agency or by TSA for another program is comparable to the standards in this rule.

Disqualifying Crimes

The list of criminal acts that disqualify an applicant from holding an HME will apply to TWIC applicants. TSA amends the list of disqualifying crimes that bar an individual from holding a TWIC or a hazardous materials endorsement. Changes include:

- TSA is adding felony bomb threat as a permanent disqualifier
- TSA is adding fraudulent entry into seaport secure areas to the list of interim disqualifiers
- Money laundering is an interim disqualifier when the conviction was for proceeds of other disqualifying criminal activities such as drugs or weapon sales
- Welfare fraud and passing bad checks are not disqualifying crimes under MTSA
- Non violent, labor-management activity is not a disqualifying offense
- TSA is clarifying that listed crimes are disqualifying if the conviction date is within 7 years of the application date or, if the applicant was incarcerated for the crime and released within 5 years of the application date

TWIC Expirations

A TWIC expires 5 years after the date of issue with the following exceptions:

- TWICs issued based on a comparable threat assessment will expire 5 years from the date on the credential associated with the comparable threat assessment
- TWICs issued to applicants with lawful nonimmigrant status will expire if the applicant's status expires or employment is terminated
- TWICs may be issued for a term less than 5 years to match the expiration date of an applicant's visa

Fees

The rule establishes proposed user fees for the TWIC and invites comment on one component of the fee, the card replacement fee.

TSA has reevaluated the cost estimates that drive the TWIC fees and increased the proposed costs accordingly.

TWIC Per Person Fee Segments – NPRM vs Final Rule

	NPRM	Final Rule	\$ Increase	% Increase
Standard TWIC Fee				
Enrollment Segment:	\$45 - \$65	\$45 - \$65		
Full Card Production/STA Segment (for Individuals requiring a full STA)	\$62	\$72	\$10	
FBI Segment	\$22	\$22		
Total	\$129 - \$149	\$139 - \$159	\$10	7.86 – 6.7%
Reduced TWIC Fee				
Enrollment Segment:	\$45 - \$65	\$45 - \$65		
Reduced Card Production/STA Segment (for individuals not requiring a full STA)	\$50	\$62	\$12	
Total	\$95 - \$115	\$107 - \$127	\$12	12.6 – 10.4%
Card Replacement Fee				
Card Replacement Segment	\$36	\$60	\$24	66.7%

Increased estimates of IDMS and card production drove the cost higher. The final fee will be published in a subsequent Federal Register Notice once the support contract is finalized in early 2007.

Immigration Standards

TSA is amending the immigration standards for TWIC and HME applicants.

- All applicants for TWICs must be lawfully present in the country
- TWICs will be issued only to those individuals that State and Homeland Security departments can perform an adequate security review
- Canadian commercial drivers must provide a Canadian passport at enrollment if they do not hold a FAST card. A Mexican passport is not required for enrollment for Mexican commercial drivers.

Appeals and Waivers

TSA expands the appeal and waiver provisions of HME and TWIC applicants to apply to air cargo employees who undergo a security threat assessment. These modifications include a process for the review of adverse waiver decisions and certain disqualification cases by an administrative law judge.

- TSA is changing the waiver process to allow applicants previously declared mentally incapacitated to apply for a waiver.

TWIC Card Technology

- Workers will receive a Smart card containing the individual's photograph, name, expiration date, and serial number.
- An integrated circuit chip will store the holder's fingerprint template, personal PIN, and unique identifier.
- Initial TWIC cards will not support contactless biometric operations.

- TSA will publish a notice detailing the draft contactless biometric software specification for TWIC cards no later than the date by which it publishes the final TWIC fee. (publication of notices expected in February 2007)

Workers will present their cards to authorized personnel, who will compare the holder to the photo, inspect security features on the TWIC and evaluate the card for signs of tampering. The Coast Guard will conduct spot checks using hand held readers to ensure valid credentials.

Card reader requirements will be issued under a separate rulemaking. DHS will conduct a pilot program on card readers as soon as practicable. Until card reader technology is tested and a regulation issued on access control, facility owners and operators will not be required to utilize TWIC readers for facility access.

Implementation Schedule

The TWIC enrollment and compliance schedule for facilities will be phased in across the country based on port risk priority. The SAFE Port Act provides requirements for implementing TWIC according to the following schedule:

- By July 1, 2007 – Top 10 priority ports
- By January 1, 2008 – Next 40 priority ports
- By January 1, 2009 – All other ports

TSA plans to establish enrollment locations at approximately 130 locations using a combination of fixed and mobile enrollment stations. Future Federal Register notices will announce the enrollment period and compliance dates at each port.

Mexican and Canadian Licensed Drivers Transporting Hazmat

TSA is amending 49CFR 1572.201 to allow possession of a TWIC card by a driver licensed in Mexico or Canada to satisfy the SAFETEA-LU requirement for those drivers to undergo a background check similar to that undergone by U.S. licensed hazmat drivers. Therefore, Canadian or Mexican licensed drivers may obtain either a FAST card or a TWIC credential to meet the SAFETEA-LU requirement.

New Hires

New hires can gain port access once they have submitted a TWIC application and received an initial name-based check. Access will be granted up to 30 days as long as the applicant has passed the name-based background check and is accompanied by another TWIC holder.

Lost, Stolen, Damaged TWIC Cards

Workers may continue to have unescorted access to secure areas for up to 7 days if they report their card lost/stolen/damaged to the TWIC center and are able to produce an alternative acceptable ID. A TWIC toll free number will be set up to serve as an around the clock help desk.

Pre-Enrollment

Pre-enrollment is encouraged through tsa.gov/twic or at TWIC kiosks set up during the initial enrollment period.

During the prototype testing phase, pre-enrolled applicants' average processing time to complete enrollment was 10 minutes, 21 seconds. TSA estimates applicants not pre-enrolled will take 15 minutes to complete the process.