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TWIC – this time for real

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On May 22, 2006, the Transportation Security Administration (TSA) and the US Coast Guard issued their long-awaited Notice of Proposed Rulemaking (NPRM) for implementation of the Transportation Worker Identification Credential (TWIC) in the maritime sector. Under the proposal, TSA would collect worker's biographic information (including but not limited to ten fingerprints, name, date of birth, address, telephone number, photo, employer, and job title). All individuals (including US merchant mariners) with unescorted access to secure areas of port facilities and vessels regulated under the Maritime Transportation Security Act would be required to have a TWIC. Background checks would include a review of criminal history records, terrorist watch lists, immigration status, and outstanding wants and warrants. The TWIC would utilize Smart Card technology and include the individual's photograph, name, and biometric information and would include multiple fraud protection measures. The program is expected to cover 750,000 individuals and would be funded by user fees (estimated to be approximately \$139 per person). Port facilities and vessels would be required to implement TWIC into their existing access control systems and operations, purchase and utilize card readers, and update their approved security plans. Implementation costs are estimated to be between \$8,900 and \$11,900 per facility or vessel. Public meetings will be held in Newark, NJ (May 31); Tampa (June 1); St. Louis (June 6); and Long Beach (June 7). Written comments on the proposal must be submitted by July 6. Actually, by the time you read this article, the meetings will probably have already been held, but there may still be time for you to submit written comments.

This rulemaking represents a major, if somewhat belated, step forward in the process which began with high hopes on the enactment of the Maritime Transportation Security Act (MTSA) in 2002. TSA, an agency largely focused on the aviation industry, was somewhat out of its element trying to implement a major program in the maritime industry.

Problems arose almost immediately with regard to data collection. The maritime unions feared a return to the port security cards of the 1950's, when some longshore workers lost their jobs supposedly in the name of national security, but just as likely for being union activists. The unions are also concerned with what criminal convictions and arrests would be considered disqualifying. Their argument is that most criminal acts that a person might have committed in the past do not indicate that the individual is disloyal or presents a threat to the security of the nation. This issue will be a stumbling block throughout the rulemaking and beyond.

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Another problem related to technology. No one knew what the TWIC should look like and what information it should include. Vigorous (and long-winded) debate ensued. Some contended the cards should be as simple as possible, with the information made easily retrievable. Others contended that the cards should incorporate the latest technology, hold a significant amount of identifying information, and include sophisticated security measures to both protect the information and preclude tampering.

The technology debate was prolonged in part due to Congressional intervention. One Congressional Representative, in particular, wanted the TWIC to be manufactured in his home district. You can read all the details in an article that appeared on the front page of the May 14, 2006 edition of the New York Times, which will not be repeated here. Eventually, once the Representative withdrew his objections, the TSA settled on using Smart Card technology – which, while not leading edge, is fairly sophisticated.

What's next?

One should expect the TWIC proposal to be finalized not long after the close of the comment period. Some objections will lead to changes from the initial proposal, but most will be rejected.

While collection of information from mariners, facility employees and longshore workers will be relatively easy, collection, verification, and processing of such information from other persons needing TWICs will prove more difficult. This group is highly disparate, consisting of chandlers, vendors, truck drivers, railroad workers, company officials, union officials, the media, ministers, and even lawyers (the latter group may have scarlet L's imprinted on their cards).

The biggest single problem to full implementation of the TWIC may, once again, be technology. To date, the TSA has not awarded a contract for production of the actual TWIC cards. It taxes one's faith in God, motherhood, and apple pie to believe that a government contract can be awarded and executed within the six-month timeframe that TSA envisions.

In addition to the collection and collation of personal information on over 750,000 individuals (which can't commence until after the rulemaking is finalized), there must be criminal record checks and terrorist checks on each person, as well as verification that each applicant is who he or she says they are. The TWIC cards will then have to be distributed. It must be hoped that few individuals will have changed jobs, locations, or qualifications during the interim between collection of the information and dissemination of the cards.

Each maritime facility and ship will then have to obtain the equipment necessary to read the TWIC card. I presume that this equipment will resemble the card reader at a bank's automatic teller machine (ATM), but without being mounted in a wall. The technology to develop a TWIC card reader that is both portable and electronically connected to the central database may prove very interesting. The facilities and ships will have to amend their security

plans to incorporate this process. The rulemaking, as currently drafted, requires that security plans include different processes for each different maritime security (MARSEC) level. The facilities and ships will then have to implement the TWIC security process.

It is unclear how foreign vessels, operating under security plans approved by their flag administrations, are to incorporate these processes, if at all. The regulations, as proposed, exempt foreign vessels entirely. It seems to be presumed that, since foreign vessels are largely restricted to berthing at US facilities that are compliant with the USCG maritime security regulations, any individual boarding or disembarking from the ship will have to pass through the facility's security system. The rulemaking includes the following caveat: "Nothing in the proposed exemption [for foreign vessels] should affect the existing requirements that owners and operators have procedures in place for allowing seafarers to traverse facilities for the purpose of completing crew changes or taking shore leave."

Legacy security systems and security systems mandated by state or local programs are not addressed in the rulemaking. Florida, for example, has a sophisticated port security identification card program. How is that accounted for in the TWIC process? Do the two systems operate independently or is there a way to merge them? Are all the time, effort, and monies devoted to other security card systems to be written off?

Merchant Mariner Credential

On the same date that the TWIC proposal was officially unveiled, the US Coast Guard issued its 74-page Notice of Proposed Rulemaking (NPRM) regarding consolidation of merchant mariner qualification credentials. This proposal is to be read in conjunction with the TWIC proposal. This rulemaking would combine the individual Merchant Mariner's Document (MMD), License, Certificate of Registry, and STCW Endorsement into a single Merchant Mariner Credential (MMC), which will be endorsed to reflect a mariner's qualifications. The Coast Guard also proposes to streamline the application process for the MMC by removing the requirement that mariners appear at least once at a Regional Exam Center (REC). Instead, the information previously submitted by the applicant at the REC would be submitted to the TSA through the TWIC enrollment process and shared with the Coast Guard by the TSA. US merchant mariners would carry the TWIC for identification purposes and the MMC for qualification purposes. Public meetings regarding this rulemaking will be held in conjunction with those for the TWIC proposal.

Time and space do not allow for a full exposition of all the issues raised by this dual rulemaking. The TWIC has spent four years in gestation and is not born yet. But, the sonograms have now been made available and everyone is hoping for a healthy baby. As with most newborns, one should expect some loud noises and some sleepless nights. Let us hope that the new baby grows up fast.