DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101, 105 and 106

Transportation Security Administration

49 CFR Part 1572

[Docket Nos. TSA–2006–24191; USCG–2006–24196]

RIN 1652–AA41

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: Transportation Security Administration (TSA), United States Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS), through the Transportation Security Administration (TSA) and the United States Coast Guard (Coast Guard), issues this final rule to amend provisions of its previously issued final rule, to allow for greater participation in the TWIC program and codify final fees to obtain a TWIC. This final rule continues to further secure our Nation's ports and modes of transportation, and also implements the Maritime Transportation Security Act of 2002 (MTSA) and the Security and Accountability for Every Port Act of 2006 (SAFE Port Act). Those statutes require credentialed merchant mariners and individuals with unescorted access to secure areas of vessels and facilities to undergo a security threat assessment and receive a biometric credential, known as a Transportation Worker Identification Credential (TWIC).

With this final rule, the Coast Guard amends its regulations on vessel and facility security, requiring the use of the TWIC as an access control measure. Specifically, the Coast Guard is amending its definition of secure areas, to take into account facilities in the Commonwealth of the Northern Mariana Islands, whose workers are not required to obtain work visas from the United States before being allowed to work.

With this final rule, TSA amends its regulations on TWIC to allow additional non-resident aliens to apply for a TWIC if they are working in a job that requires them to have unescorted access to a maritime facility regulated under 33 CFR parts 105 or 106. TSA also amends the scope provision of the rule to include additional non-resident aliens that may apply for TWIC. TSA amends its regulations to clarify those credentialed merchant mariners who may receive a TWIC at a reduced fee. TSA amends the fee portion of the regulation, increasing the replacement credential fee from $36 to $60 and codifying the other fees that were announced in the **Federal Register** on March 20, 2007. Finally, TSA announces a reduction in the fee charged by the Federal Bureau of Investigation (FBI) to conduct fingerprint-based criminal history record checks (CHRCs) that are submitted to the FBI electronically. Therefore, the standard fee for a TWIC is $132.50 and the reduced TWIC fee for applicants who have completed a comparable threat assessment is $105.25.

DATES: This final rule is effective September 28, 2007.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of dockets TSA–2006–24191 and USCG–2006–24196, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Until September 27, 2007, you may also find and submit electronic comments to this docket on the Internet at *http://dms.dot.gov.* You may submit documents by fax, by courier or in person until September 28 at noon. On October 1, the Federal Docket Management System (FDMS) will replace the current system and you will be able to find and submit related documents at www.regulations.gov. The mailing address and fax numbers will remain the same.

FOR FURTHER INFORMATION CONTACT: If you have questions on the TSA portions of this rule, call Christine Beyer, telephone (571) 227–2657. If you have questions on the Coast Guard portions of this rule, call LCDR Jonathan Maiorine, telephone 1–877–687–2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 493–0402.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On May 22, 2006, The Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking entitled ''Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License'' in the **Federal Register**. 71 FR 29396. This was followed by a 45-day comment period and four public meetings. The Coast Guard and TSA issued a joint final rule, under the same title, on January 25, 2007 (hereinafter referred to as the original TWIC final rule). 72 FR 3492. The preamble to the original TWIC final rule contains a discussion of all the comments received on the NPRM, as well as a discussion of the provisions found in that final rule, which became effective on March 26, 2007.

On July 13, 2007, the Coast Guard issued another final rule, extending the deadline for facilities wishing to redefine their secure areas, under 33 CFR 105.115. 72 FR 38486. This delay allowed facility owners and operators to take guidance, issued by the Coast Guard in Navigation and Vessel Inspection Circular 03–07 on July 6, 2007, into consideration before being required to submit new security plans.

II. Background and Purpose

A complete discussion of the background and purpose of the original TWIC final rule may be found beginning at 72 FR 3494. This final rule is being issued in order to make amendments to the original TWIC final rule that have become necessary due to delays in the implementation of the original TWIC final rule, or that are necessary in order to allow for a more effective implementation of the original TWIC final rule.

III. Discussion of Changes

A. Secure Areas

With this final rule, the Coast Guard amends its regulations on vessel and facility security, requiring the use of the TWIC as an access control measure. Specifically, the Coast Guard is amending its definition of secure area to take into account facilities in the Commonwealth of Northern Mariana Islands (CNMI) where non-resident alien workers are not required to obtain work visas from the United States before being allowed to work. Under the existing rule, these workers are ineligible to obtain TWICs. There are currently 12 facilities regulated by part 105 located in the CNMI. Non-resident alien workers at these facilities are not required to obtain visas from the U.S. Department of State (State Department)

before being allowed to work at facilities in CNMI. Without this amendment, these workers would be unable to obtain TWICs, and the facilities in CNMI would lose approximately 50 percent of their present workforce. Note that these facilities must continue to implement their previously approved facility security plans, which include provisions for maintaining access control. Vessels coming from the CNMI to any other port in the United States will still need to go through the same port state control screening required of a vessel coming from a foreign country. Additionally, workers provided unescorted access to facilities in the CNMI would not be eligible for unescorted access to any other part 105 facility, nor would they be eligible for unescorted access to any part 104 vessel, unless the were issued a TWIC. This amendment may be found at 33 CFR 101.105.

B. Areas Adjacent to Vessels

The Coast Guard is also adding a provision into parts 105 and 106 to mirror a provision added into part 104 in the original TWIC final rule. These provisions allow mariners serving aboard vessels to have access to those spaces immediately adjacent to their vessel when they are working in those spaces in the conduct of vessel activity, even if they do not have a TWIC. This provision was discussed in the preamble to the original TWIC final rule on 72 FR 3521, but the corresponding amendments were not made in parts 105 and 106. This final rule corrects that oversight. These amendments can be found in 105.105 and 106.105.

C. TWIC Eligibility

In the original TWIC final rule, TSA listed the categories of non-resident aliens who work in the maritime sector and would be eligible to apply for TWICs. TSA's intention was to allow lawful non-immigrants with legitimate employment authorization and lawful presence to obtain TWICs. Shortly after publication of the original TWIC final rule, Coast Guard received comments from industry questioning why B1/OCS (Outer Continental Shelf) and H2B visas were not included in the list of acceptable visas under 49 CFR 1572.105. This led TSA to re-examine the list of categories of individuals who should be able to apply for a TWIC and to make the changes described below to allow additional non-resident aliens to apply for a TWIC.

After further research, we determined that B1/OCS visas are currently in use in the maritime industry to allow specialized workers to fill open positions where U.S. employees are not available. Approximately 4,000 B1/OCS visas are issued annually to seamen who work at OCS operations. If these workers are not eligible to apply for a TWIC, they will likely not be employable in OCS operations. Further, owners/operators who currently rely on holders of B1/OCS visas will be adversely impacted if they cannot hire workers in sufficient numbers to keep the OCS facilities operating. For these reasons and in keeping with the criteria we established in the original TWIC final rule to determine which lawful non-immigrants should be eligible to apply for a TWIC, we are adding the B1/OCS visa to the list of permissible visa categories in 49 CFR 1572.105. (*See* 72 FR 3492, 3502–3505 for a full discussion of the immigration eligibility criteria.) Holders of the B1/OCS visa have restricted authorization to work and the restriction is intrinsically related to the maritime industry. Individuals who hold the visa typically will require a TWIC in order to complete their employment duties and the employers will be required to obtain the TWIC once the employment for which the visa was issued is completed.

At this time we are not adding the H2B visa to the list of permissible visas in section 1572.105. We believe approximately 78,000 H2B visas are issued annually, an indeterminate number of which are issued to maritime workers. The H2B visa is issued to temporary unskilled or skilled workers for up to one year, without regard to whether they work in the maritime industry. Workers who hold this visa are not restricted to work in the maritime industry and therefore, a maritime employer typically would have little control over when the employment for which the visa was issued is completed and the visa expires. This fact would make it difficult for the employer to retrieve the TWIC if the employee ceased working at that location.

Even though TSA is not adding the H2B visas explicitly to the list of permissible visa categories at this time, we may consider permitting H2B visa holders to apply for a TWIC under a new provision of the rule. We are adding new subparagraph 1572.105(a)(7)(x) to the immigration standards to permit TSA to determine whether additional categories of lawful non-immigrants not explicitly listed in 49 CFR 1572.105(a)(7) may apply for a TWIC. We believe this provision is necessary to avoid the chance that we will inadvertently exclude aliens who possess lawful U.S. presence and are prevalent in or important to the maritime industry. Also, given the national interest in immigration reform legislation, there may be new visa categories created in the future that should be eligible for TWIC. Under this new provision, TSA may permit individuals to apply for TWIC if they possess an authorization that confers legal status, and the legal status is comparable to those listed in paragraphs (a)(7)(i)–(ix) of this section.

TSA will evaluate whether to add new categories of lawful non-immigrants using the same criteria by which we created the list of permissible categories in the original TWIC final rule. (See 72 FR 3492, 3502–3505 for a full discussion of the immigration eligibility criteria.) The critical issues we examined and on which we rely to determine whether an alien should be permitted to apply for a TWIC or hazardous materials endorsement (HME) are: (1) The statutory language regarding immigration status; (2) the degree to which TSA can complete a thorough threat assessment both initially and perpetually on the applicant; (3) the duration of the applicant's legal status as of the date he or she enrolls and the degree to which we can control possession of a TWIC once legal status ends; (4) the restrictions, if any, that apply to the applicant's immigration status; (5) particular maritime professions that commenters stated often involve aliens; and (6) the checks done by the State Department or other federal agency relevant to granting alien status.

TSA would make such determinations after careful evaluation and in consultation with the Coast Guard, the State Department, and other pertinent agencies within DHS. TSA would notify affected populations and provide the appropriate training to TWIC enrollment personnel to ensure that only the appropriate applicants are permitted to enroll.

With respect to H2B visas, commenters have informed Coast Guard and TSA that there may be particular operations or locations, such as large construction projects at port facilities, that rely heavily on H2B visa holders for completion. Although we are not amending the immigration standards to permit all H2B visa holders to apply for TWIC, we may consider permitting workers at these locations to apply for a TWIC to prevent adverse economic or security impacts on maritime operations. Employers in these kinds of operations should notify their respective Captain of the Port to discuss potential solutions to immigration eligibility problems. There may be methods to have the H2B visas holders complete the

work without requiring a TWIC. *See,* for example, Navigation and Inspection Circular 03–07, issued by the Coast Guard on July 2, 2007, enclosure (3) at 3.3 c.(6). If that is not possible, TSA may consider permitting the workers to apply for a TWIC, ensuring that the employer is in a position to retrieve all credentials TSA issues when the project is complete.

In addition to amending 49 CFR 1572.105(a)(7), TSA amends the scope provision to include other individuals that TSA may consider eligible to apply for a TWIC, such as holders of a visa not specifically listed in 49 CFR 1572.105(a)(7) that TSA has determined should be permitted to hold a TWIC. As discussed in the paragraph above, there may be other or new visas or similar authorizations that we have not anticipated that serve as legitimate grounds for lawful presence in the United States and justification for holding a TWIC. By adding this language to the scope provision of the rule, we remove unnecessary restrictions on broadening the applicant pool, if the need arises in the future due to the discovery of other visa holders or with the passage of new legislation. Also, in the future TSA may wish to expand the TWIC program to non-maritime modes of transportation and this new scope provision facilitates extending coverage to other populations. For instance, there may be situations in which a transportation worker who seeks access to a secure or otherwise prohibited area would wish to voluntarily undergo the threat assessment described in part 1572 to gain the benefit of access. The expanded scope provision would facilitate this. TSA also may wish to make the threat assessment mandatory, not voluntary, for a new population. If so, we would provide notice to the public and an opportunity to comment before implementing an expansion of the requirement to a new population.

TSA also amends the scope provision of part 1572 to include commercial drivers licensed in Canada or Mexico who apply for a TWIC so that they may transport hazardous materials in the United States in accordance with 49 CFR 1572.201. This population is permitted to apply for a TWIC under the original final rule, but was inadvertently omitted from the scope provision.

TSA is also amending its regulations to clarify which credentialed merchant mariners who may receive a TWIC at a reduced fee. The original TWIC final rule contained a separate implementation schedule for mariners, which allowed a mariner who had already undergone a security threat assessment by the Coast Guard to apply for their TWIC but forego an additional security threat assessment by TSA. This would allow mariners to obtain their TWIC at a reduced fee, but would also mean that their TWIC would be given the same expiration date as the credential for which the Coast Guard conducted their security assessment. This provision, found at 49 CFR 1572.19(b), incorrectly limited those mariners who may take advantage of this provision by including an end date of March 26, 2007 (*i.e.*, the effective date of the original TWIC final rule). That date should have been the September 25, 2008 date, calculated to mark the compliance date for mariners, to allow all mariners who receive their Coast Guard security assessment before they are required to obtain a TWIC the opportunity to receive a reduced fee and not have to undergo an additional security threat assessment. We are amending 49 CFR 1572.19(b) to reflect the September 25, 2008 compliance date.

D. TWIC Fees

TSA is amending the TWIC Card Replacement Fee, codifying the exact fee amounts for the Standard and Reduced TWIC Fees, and codifying a change the FBI is making to its fees for electronic submission of fingerprint-based criminal history record checks (CHRC).

1. Card Replacement Fee

TSA is increasing the Card Replacement Fee for lost, damaged, or stolen TWICs to $60.00 and is amending § 1572.501(d) to include the revised amount. In the original TWIC final rule, TSA established the Card Replacement Fee at $36.00 as was proposed in the TWIC NPRM. However, TSA stated that a re-evaluation of the costs associated with card replacement revealed that the actual cost should be $60.00. For a detailed discussion of the increased Card Replacement Fee, see the preamble of the original TWIC final rule at 72 FR 3505–3508.

In summary, the per-person cost for the Card Replacement Fee is derived from four of the cost components that make up the total TWIC fee: Enrollment/Issuance,[1] the TWIC information data management system (IDMS), Card Production, and Program Support. The Enrollment/Issuance cost component increased by approximately one percent to account for the contractor fee of $5 associated with replacing a credential. The IDMS cost component increased by $19 per credential produced due to: (1) The need to increase the hardware and software required to obtain a Security Certification & Accreditation, and to support the full volume of TWIC applicants; (2) system changes required to address security vulnerabilities; and (3) increases in contractor support necessary for systems operations and maintenance.

The Card Production cost increased by approximately 39 percent based on the need to add a third work shift at the production facility to produce cards more rapidly during the initial enrollment phase. This increase was necessary to address concerns from stakeholders that cards must be produced very quickly to minimize adverse impacts on commerce. Also, this increase was necessary to cover technology and product improvements for the TWIC system, credentials, and readers in the future. Including the cost of technology and system improvements is a common practice for programs that rely heavily on software and hardware to collect and transmit large amounts of information.

Finally, the Program Support cost decreased by approximately 17 percent based on reduced program staff levels and the cost of interagency communications. This resulted in a $2 per card decrease.

We invited comment on raising the Card Replacement fee from $36 to $60 and received comments from four entities. One entity stated that replacement cards should cost no more than the actual card stock and personalization, which it asserts is $14, shipping and handling at $10, and a reasonable contractor issuance fee of $5—a total of $29.

We developed the fees by spreading all of the program costs (enrollment/issuance, IDMS, threat assessment, card production, and program support) over 5 years and according to whether a particular cost component is related to the corresponding fee. If we failed to calculate the fees in this way, there would be an unfair distribution of the costs among the population and over the time period, and the regular applicant fee during initial enrollment would be significantly higher. Thus, the card replacement fee includes a portion of the program costs that relates to issuing a replacement card, including the IDMS and program support costs. Therefore, we are not accepting the recommended change—we must take into account the cost of the IDMS, enrollment/issuance, card production, and program support

[1] Although the majority of the Enrollment/Issuance requirements have already been satisfied by the applicant through initial enrollment, there are still some enrollment/issuance functions associated with card replacements, such as overhead.

because producing a replacement card involves all of these program components. As stated in the original final TWIC rule, the IDMS cost increased by 135 percent from the NPRM due to the need for more hardware and software, and additional security features. In addition, card production costs increased by 39 percent due to the need to add a third worker shift to cover card production during initial enrollment. These increased the Card Replacement Fee.

Another entity stated that increasing the Card Replacement Fee based on the need for three shifts rather than two at the card production facility during the initial enrollment phase should not apply to replacement cards at all, because most replacement cards will be issued after the initial enrollment phase. This argument is similar to the one immediately above. We disagree. We calculated the fees by spreading the costs of the program over 5 years to prevent the unfair result of having people who enroll in TWIC in the first year pay a much higher fee than those who apply in the third year.

An entity stated that using three shifts rather than two in the card production process should decrease, not increase, TSA's card production costs because the fixed costs would remain and the cost per card would be lower. We disagree. Even assuming the fixed costs remain constant with the addition of a third shift, which would not necessarily be the case, there are increased labor costs associated with adding a third shift that increase TSA's costs.

An entity suggested that TSA should conduct a cost-comparison between the federally-managed card production facility and an established commercial card production facility, such as a credit card facility, where high-volume services around the clock are typical. We agree. Under the terms of the enrollment provider contract, we permit our contractor to seek out and use other card production facilities that offer high quality products that meet the TWIC specifications at lower cost.

An entity commented that if a TWIC card malfunctions as a result of normal wear, TSA should replace it free of charge. TSA is purchasing card stock that is designed to remain operable under normal conditions for 5 years. If TSA determines that the card stock does not perform satisfactorily under normal handling conditions or fails to meet the design warranty, TSA will replace the cards at no charge to applicants.

Finally, an entity claimed that technology improvements should decrease, not increase, costs associated with the TWIC system, credentials and card production. We agree that technology improvements that occur in the future will improve efficiency and are likely to reduce some costs. However, equipment and software changes will be necessary to take advantage of the improved technology, and therefore, those costs must be accounted for in the TWIC fee. If TSA's overall costs decrease, TSA will reduce the TWIC fees accordingly.

2. FBI Fee

The Criminal Justice Information Services (CJIS) Division of the FBI recently notified government agencies and other entities of revised interim fees for fingerprint-based CHRCs, effective October 1, 2007. The revised interim fees will remain in effect until the FBI announces final fees through a Notice in the **Federal Register**. However, the FBI does not anticipate significant changes to the interim fee structure.

The FBI is reducing its fee for electronically submitted CHRCs from $22.00 to $17.25. The existing rule text in § 1572.501(b)(3) states that if the FBI changes its fee for CHRCs, TSA will collect the amended FBI fee. Therefore, it is not necessary to change the rule text to authorize TSA to collect $17.25 from applicants rather than $22.00. Nonetheless, to avoid confusion, TSA is amending the rule text by removing the old fee amount—''$22''— from § 1572.501(b)(3). We are retaining the language stating that if the FBI amends its fees in the future, TSA will collect the amended FBI fee.

3. Standard and Reduced TWIC Fees

In this final rule, TSA also codifies the exact Standard TWIC and Reduced TWIC Fee amounts. When the original TWIC final rule was published, we provided ranges for these fees in the preamble as follows: the Standard TWIC Fee would be $139–$159, and the Reduced TWIC Fee would be $107–$127. TSA could not provide exact figures at that time because the contract for enrollment services was not yet finalized and thus some of the costs could not be determined with specificity. We noted that we would publish a notice in the **Federal Register** announcing the exact fee amounts as soon as possible.

On March 20, 2007, TSA announced the exact fee amounts. 72 FR 13026. For the Standard TWIC Fee, the Enrollment Segment Fee would be $43.25, the Full Card Production/Security Threat Assessment Segment Fee would be $72, and the FBI Fee would be $22. We announced the Standard TWIC Fee total as $137.25 ($43.25 + $72 + $22) to obtain a TWIC. In this final rule, we are codifying the Enrollment Segment Fee ($43.25) and the Full Card Production/Security Threat Assessment Segment Fee ($72). However, since the FBI is changing its fee as of October 1, 2007, as discussed in detail above, the new Standard TWIC Fee total for a TWIC is $132.50. We are codifying these fees in § 1572.501(b).

In March, TSA also announced that the Reduced TWIC Fee for applicants who have completed a comparable threat assessment and can forego a new FBI criminal check would total $105.25. This includes the Enrollment Segment Fee of $43.25 and the Reduced Card Production/Security Threat Assessment Segment Fee of $62. We are codifying these fee amounts in § 1572.501(c).

IV. Regulatory Requirements

A. Administrative Procedure Act

TSA and the Coast Guard provided the public an opportunity to comment on the bases for the TWIC fee calculations. However, we did not publish a notice of proposed rulemaking (NPRM) regarding other amendments in this final rule. Under 5 U.S.C. 553(b)(B), the Coast Guard and TSA find that good cause exists for not publishing an NPRM with respect to these amendments, because providing opportunity for public comment is unnecessary and would be contrary to the public interest. Each of the provisions being amended by this final rule without prior notice and comment ease a restriction on the public, in some cases by removing regulatory requirements completely, or by expanding the pool of persons allowed to apply for a TWIC in a manner that meets the rule's original intent. These immediate revisions are in the public interest because they expand the pool of workers who are lawfully present in the United States and will perform needed services. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard and TSA also find that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

We note that the fee provisions of this final rule were subject to notice and comment, and therefore we need not claim good cause for the amendments to 49 CFR 1572.501.

B. Executive Order 12866 (Regulatory Planning and Review)

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be

minimal and a full Regulatory Evaluation is unnecessary.

This rule provides technical clarifications and additional flexibility for some mariners and vessel and facility owners and operators to comply with TWIC requirements. The rule better clarifies the definition of secure areas and corrects for omissions from the original TWIC final rule. The rule extends the end date for mariners who may receive a TWIC at a reduced fee. To the extent that deadlines have changed, affected parties may incur some TWIC-related costs later rather than sooner.

With this final rule, TSA is amending provisions to allow TSA to evaluate and decide if individuals holding other visa types are eligible for a TWIC on a case-by-case basis. TSA is also formally publishing final fee changes after considering public comments and assessing final impacts in the original TWIC final rule.

We anticipate that these changes will not substantially increase TWIC-related compliance costs to the affected entities and in most cases will provide them advantages through deadline extensions, technical clarifications, and flexibility.

C. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We do not expect this rule to substantially increase TWIC-related compliance costs. This rule provides technical clarification and adds flexibility for some mariners and vessel and facility owners and operators affected by the TWIC requirements. The Coast Guard and TSA certify under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

Under sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard and TSA will not retaliate against small entities that question or complain about the rule or any policy of the Coast Guard or TSA.

E. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Indian Tribal Governments

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

L. Energy Effects

We have analyzed this rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

M. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Environment

The provisions of this rule have been analyzed under the Department of Homeland Security (DHS) Management Directive (MD) 5100.1, Environmental Planning Program, which is the DHS policy and procedures for implementing the National Environmental Policy Act (NEPA), and related E.O.s and requirements. The changes being made by this final rule have no effect on the

environmental analysis that accompanied the promulgation of the original TWIC final rule. That analysis can be found at 72 FR 3576–3577.

Accordingly, there are no extraordinary circumstances presented by this rule that would limit the use of a categorical exclusion (CATEX) under MD 5100.1, Appendix A, paragraph 3.2. The implementation of this rule, like the implementation of the original TWIC final rule, is categorically excluded under the following CATEX listed in MD 5100.1, Appendix A, Table 1: CATEX A1 (personnel, fiscal, management and administrative activities); CATEX A3 (promulgation of rules, issuance of rulings or interpretations); and CATEX A4 (information gathering, data analysis and processing, information dissemination, review, interpretation and development of documents). CATEX B3 (proposed activities and operations to be conducted in an existing structure that would be compatible with and similar in scope to ongoing functional uses) and CATEX B 11 (routine monitoring and surveillance activities that support law enforcement or homeland security and defense operations) would also be applicable.

List of Subjects

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 105

Facilities, Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 106

Facilities, Maritime security, Outer Continental Shelf, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1572

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

The Final Rule

■ For the reasons set forth in the preamble, the Coast Guard amends Chapter I of Title 33, Code of Federal Regulations, parts 101, 105, and 106 and the Transportation Security Administration amends Chapter XII, Title 49, Code of Federal Regulations, part 1572 to read as follows:

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD

PART 101—MARITIME SECURITY: GENERAL

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 101.105, revise the definition of ''secure area'' to read as follows:

§ 101.105 Definitions.

* * * * *

Secure area means the area on board a vessel or at a facility or outer continental shelf facility over which the owner/operator has implemented security measures for access control in accordance with a Coast Guard approved security plan. It does not include passenger access areas, employee access areas, or public access areas, as those terms are defined in §§ 104.106, 104.107, and 105.106, respectively, of this subchapter. Vessels operating under the waivers provided for at 46 U.S.C. 8103(b)(3)(A) or (B) have no secure areas. Facilities subject to part 105 of this subchapter located in the Commonwealth of Northern Mariana Islands have no secure areas. Facilities subject to part 105 of this subchapter may, with approval of the Coast Guard, designate only those portions of their facility that are directly connected to maritime transportation or are at risk of being involved in a transportation security incident as their secure areas.

* * * * *

PART 105—MARITIME SECURITY: FACILITIES

■ 3. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 4. Amend § 105.105 by adding paragraph (d) to read as follows:

§ 105.105 Applicability.

* * * * *

(d) The TWIC requirements found in this part do not apply to mariners employed aboard vessels moored at U.S. facilities only when they are working immediately adjacent to their vessels in the conduct of vessel activities.

PART 106—MARITIME SECURITY: OUTER CONTINENTAL SHELF (OCS) FACILITIES

■ 5. The authority citation for part 106 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 6. Amend § 106.105 by re-designating the introductory paragraph and paragraphs (a), (b), and (c) as (a), (1), (2), and (3), respectively, and adding paragraph (b) to read as follows:

§ 106.105 Applicability.

* * * * *

(b) The TWIC requirements found in this part do not apply to mariners employed aboard vessels moored at U.S. OCS facilities only when they are working immediately adjacent to their vessels in the conduct of vessel activities.

Title 49—Transportation

Chapter XII—Transportation Security Administration

PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS

■ 7. The authority citation for part 1572 continues to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

Subpart A—Procedures and General Standards

■ 8. Revise § 1572.3(b)(2) to read as follows:

§ 1572.3 Scope.

* * * * *

(b) * * *

(2) Is applying to obtain or renew a TWIC in accordance with 33 CFR parts 104 through 106 or 46 CFR part 10; is a commercial driver licensed in Canada or Mexico and is applying for a TWIC to transport hazardous materials in accordance with 49 CFR 1572.201; or other individuals approved by TSA.

■ 9. Revise § 1572.19(b) to read as follows:

§ 1572.19 Applicant responsibilities for a TWIC security threat assessment.

* * * * *

(b) *Implementation schedule for certain mariners.* An applicant, who holds a Merchant Mariner Document (MMD) issued after February 3, 2003, and before September 25, 2008, or a Merchant Marine License (License) issued after January 13, 2006, and before

September 25, 2008, must submit the information required in this section, but is not required to undergo the security threat assessment described in this part.

* * * * *

Subpart B—Qualification Standards for Security Threat Assessments

■ 10. Revise § 1572.105(a)(7) to read as follows:

§ 1572.105 Immigration status.

(a) * * *

(7) An alien in the following lawful nonimmigrant status who has restricted authorization to work in the United States—

(i) B1/OCS Business Visitor/Outer Continental Shelf;

(ii) C–1/D Crewman Visa;

(iii) H–1B Special Occupations;

(iv) H–1B1 Free Trade Agreement;

(v) E–1 Treaty Trader;

(vi) E–3 Australian in Specialty Occupation;

(vii) L–1 Intracompany Executive Transfer;

(viii) O–1 Extraordinary Ability;

(ix) TN North American Free Trade Agreement; or

(x) Another authorization that confers legal status, when TSA determines that the legal status is comparable to the legal status set out in paragraphs (a)(7)(i)–(viii) of this section.

* * * * *

■ 11. Amend § 1572.501 by revising paragraphs (b), (c), and (d) to read as follows:

§ 1572.501 Fee collection.

* * * * *

(b) *Standard TWIC Fee.* The fee to obtain or renew a TWIC, except as provided in paragraphs (c) and (d) of this section, is made up of the total of the following segments:

(1) The Enrollment Segment covers the cost for TSA or its agent to enroll applicants. The Enrollment Segment fee is $43.25.

(2) The Full Card Production/Security Threat Assessment Segment covers the costs for TSA conduct security threat assessment and card production. The Full Card Production/Security Threat Assessment Segment fee is $72.

(3) The FBI Segment covers the cost for the FBI to process fingerprint identification records. The FBI Segment fee is the amount collected by the FBI under Pub. L. 101–515. If the FBI amends this fee, TSA or its agent will collect the amended fee.

(c) *Reduced TWIC Fee.* The fee to obtain a TWIC when the applicant has undergone a comparable threat assessment in connection with an HME, FAST card, other threat assessment deemed to be comparable under 49 CFR 1572.5(e) or holds a Merchant Mariner Document or Merchant Mariner License is made up of the total of the following segments:

(1) The Enrollment Segment covers the cost for TSA or its agent to enroll applicants. The Enrollment Segment fee is $43.25.

(2) The Reduced Card Production/Security Threat Assessment Segment covers the cost for TSA to conduct a portion of the security threat assessment and card production. The Reduced Card Production/Security Threat Assessment Segment fee is $62.

(d) *Card Replacement Fee.* The fee to replace a TWIC that has been lost, stolen, or damaged is $60.00.

* * * * *

Issued in Arlington, Virginia, on September 21, 2007.

Kip Hawley,

Assistant Secretary, Transportation Security Administration.

F.J. Sturm,

Captain, U.S. Coast Guard, Acting Director, Inspections and Compliance.

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DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682 and 685

RIN 1840–AC88

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary is amending the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations to implement the changes to the Higher Education Act of 1965, as amended (HEA), resulting from enactment of the Third Higher Education Extension Act of 2006 (THEEA), Pub. L. 109–292. These final regulations reflect the provisions of the THEEA that authorize the discharge of the outstanding balance of certain Perkins, FFEL, and Direct Loan Program loans for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks.

DATES: *Effective Date:* These final regulations are effective October 29, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Smith, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006. Telephone: (202) 502–7551 or via the Internet at: *Brian.Smith@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: On December 28, 2006, the Secretary published in the **Federal Register** (71 FR 78075) interim final regulations for the Federal Perkins Loan, FFEL, and Direct Loan programs. The interim final regulations were effective on January 29, 2007.

The December 28, 2006, interim final regulations included a request for public comment. This document contains a discussion of the comments we received and revisions to the interim final regulations that we made as a result of these comments.

These final regulations contain several significant changes from the interim final regulations. We fully explain the changes in the Analysis of Comments and Changes section elsewhere in this preamble.

Analysis of Comments and Changes

In response to the Secretary's invitation in the interim final regulations, 8 parties submitted comments on the interim final regulations.

An analysis of the comments and of the changes in the regulations since publication of the interim final regulations follows. We group major issues according to subject, with appropriate sections of the regulations referenced in parentheses. Generally, we do not address technical and other minor changes and suggested changes the law does not authorize the Secretary to make. We also do not respond to comments that address issues that were outside the scope of the interim final regulations.

Rights of a Borrower if an Application Is Denied

Comments: One commenter noted that, while there is no formal appeals process for a borrower whose application for a discharge is denied under the interim final regulations, if a borrower disputes the lender's decision,