Department of Homeland Security
Transportation Security Administration
United States Coast Guard

Regulatory Impact Assessment

Final Rule

TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC) IMPLEMENTATION IN THE MARITIME SECTOR

33 CFR Parts 101, 103, 104, 105, 106
46 CFR Parts 10, 12, 15
49 CFR Parts 1515, 1570, 1572
[Docket Nos: TSA-2006-24191; USCG-2006-24196]
RIN 1652-AA41

November 2, 2006

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Executive Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 (E.O. 12866) directs each Federal agency to propose or adopt a regulation only if the agency makes a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (RFA) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. § 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, or the private sector, in the aggregate, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the Transportation Security Administration (TSA) and the United States Coast Guard (Coast Guard) have determined that this rule:

1. Is a "significant regulatory action" as defined in the E.O. 12866.
2. Has a significant economic impact on a substantial number of small entities. We have provided a Final Regulatory Flexibility Analysis (FRFA).
3. Will not impose significant barriers to international trade.
4. Does not impose an unfunded mandate on State, local, or tribal governments, but does on the private sector as costs exceed the inflation adjusted $100 million threshold in at least one year.

This regulatory impact assessment (RIA) is a joint effort of TSA and the Coast Guard. For ease of reading, the agencies decided to use the term "we" to represent both DHS components even for issues that might be directly related to the regulatory actions of only one agency. We believe this simplification will be less of a burden to the public in trying to understand the assessment. The reader is cautioned that we did not attempt to replicate precisely the regulatory language in this discussion of the final rule; the regulatory text, not the text of this assessment, is legally binding.

Impact Summary

Section 102 of the Maritime Transportation Security Act (MTSA) requires the Secretary of the Department of Homeland Security (DHS) to issue a biometric transportation security card to individuals with unescorted access to secure areas of vessels and facilities. Under this authority, DHS has developed this final rule, and this summary provides a synopsis of the costs and benefits of the final rule.

Benefits of the Final Rule

The final rule will increase security at vessels, facilities, and OCS facilities regulated by 33 CFR chapter I, subchapter H. It will accomplish this by: (1) reducing the number of high-risk individuals with unescorted access to secure areas of vessels, facilities, and OCS facilities

through the use of robust security threat assessments, and (2) improving access control measures in the maritime transportation sector by permitting only those with secure biometric credentials to have unescorted access to secure areas of vessels and facilities.

Costs of the Final Rule

In estimating the economic cost of the final rule, we have made a number of adjustments to our original forecast published in the NPRM. First, as the final rule includes significant changes to the NPRM, we have accounted for those modifications in our estimates. For example, the final rule will not require vessel, facility, and OCS facility owners/operators to install and maintain smart card readers for access control purposes, keep access control records, or submit TWIC addenda to security plans. Compliance costs associated with these requirements therefore no longer appear in our estimates because the E.O. 12866 assessment only covers the provisions of the final rule.

Second, we have modified many of our cost estimates in response to comments received from individuals and firms in the maritime industry. Several commenters argued that we understated or failed to identify several costs associated with complying with the rule. In response to these comments, we have adjusted some of our estimates and assumptions. For instance, many commenters asserted that we underestimated the opportunity cost to travel to TWIC enrollment centers. Based on several comments of this nature, we adjusted our estimate upward.

Third, we have better information with respect to many costs related to TSA's ability to deliver program services. This improved information is reflected in our new estimates.

After making these types of adjustments to our original estimate, we concluded that the 10-year cost of the rule, discounted at 7 percent, would range from $694.3 million to $3.2 billion. Much of the variance in our estimate is attributable to the uncertainty surrounding opportunity cost estimates and escorting cost estimates. Figure 1 displays the cost estimates for the NPRM and the final rule discounted at 7 percent. The differences between the two estimates are also shown, with negative numbers appearing in parentheses. Figure 2 displays this same information in constant 2005 dollars. Throughout the body of this regulatory impact assessment, costs are presented in constant 2005 dollars.

Figure 1: Change in Total Costs from NPRM to Final Rule (millions, discounted 7 percent)

Component	NPRM			Final Rule			Difference	Remarks
	Low	Primary	High	Low	Primary	High	(Low - High)	
Enrollment Opportunity Costs	-	**$71.8**	-	$73.8	**$196.7**	$393.5	**$2 - $321.7**	Public comments on original time estimate and increased population
Enrollment Service Costs	-	**91.9**	-	-	**94.9**	-	**3.0**	Increased population
Security Threat Assessment Costs	-	**57.9**	-	-	**57.9**	-	-	Increased population but reduced technology costs
TSA System Costs	-	**27.4**	-	-	**44.3**	-	**16.9**	Improved internal cost estimates
Appeals and Waivers Opportunity Costs	-	**5.7**	-	-	**5.9**	-	**0.2**	Increased population
Card Production Costs	-	**29.5**	-	-	**31.9**	-	**2.4**	Improved internal cost estimates and increased functionality
Issuance Opportunity Costs	-	**89.0**	-	123.4	**329.2**	658.4	**34.4 - 569.4**	Public comments on original time estimate and increased population
Program Office Support Costs	-	**41.0**	-	-	**19.9**	-	**(-21.1)**	Improved internal cost estimates
Compliance Costs, Facilities	299.0	**312.1**	325.1	82.2	**326.5**	644.3	**(-216.8) - 319.2**	Public comments on original estimates and changes to proposed requirements
Compliance Costs, Vessels	63.1	**75.8**	88.4	157.7	**638.8**	1,264.4	**94.6 – 1,176**	
Compliance Costs, OCS Facilities	0.6	**0.7**	0.8	2.4	**10.1**	20.1	**1.8 - 19.3**	
Total	**$777.0**	**$802.8**	**$828.6**	**$694.3**	**$1,756.3**	**$3,215.3**	**(-$82.7) - $2,386.7**	

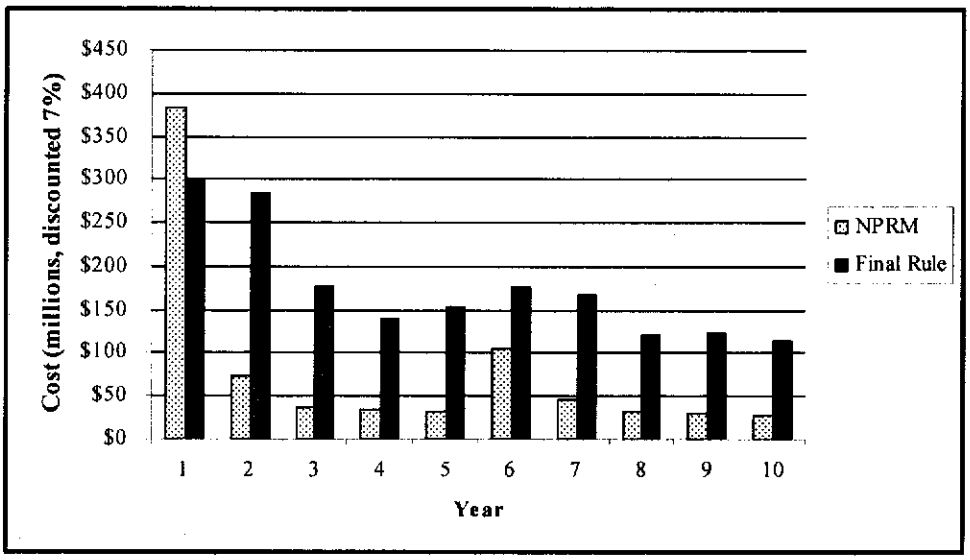
Figure 2: Change in Total Costs from NPRM to Final Rule (millions, constant 2005 $)

Component	NPRM			Final Rule			Difference	Remarks
	Low	Primary	High	Low	Primary	High	(Low - High)	
Enrollment Opportunity Costs	-	**$96.2**	-	$99.7	**$265.8**	$531.6	**$3.5 - $435.4**	Public comments on original time estimate and increased population
Enrollment Service Costs	-	**123.1**	-	-	**128.2**	-	**5.1**	Increased population
Security Threat Assessment Costs	-	**79.2**	-	-	**80.2**	-	**1.0**	Increased population but reduced technology costs
TSA System Costs	-	**37.1**	-	-	**61.0**	-	**23.9**	Improved internal cost estimates
Appeals and Waivers Opportunity Costs	-	**7.7**	-	-	**8.0**	-	**0.3**	Increased population
Card Production Costs	-	**40.2**	-	-	**43.0**	-	**2.8**	Improved internal cost estimates and increased functionality
Issuance Opportunity Costs	-	**121.6**	-	172.9	**461.0**	922.1	**51.3 - 800.5**	Public comments on original time estimate and increased population
Program Office Support Costs	-	**56.4**	-	-	**26.7**	-	**(-29.7)**	Improved internal cost estimates
Compliance Costs, Facilities	355.3	**373.1**	391.0	113.8	**461.8**	914.1	**(-241.5) - 523.1**	Public comments on original estimates and changes to proposed requirements
Compliance Costs, Vessels	77.5	**93.3**	109.0	219.8	**904.9**	1,795.5	**142.3 – 1,686.5**	
Compliance Costs, OCS Facilities	0.7	**0.8**	0.9	3.4	**14.3**	28.6	**2.7 - 27.7**	
Total	**$995.0**	**$1,028.8**	**$1,062.5**	**$956.7**	**$2,454.9**	**$4,539.0**	**(-$38.3) - $3,476.5**	

The annual primary cost estimates for the final rule are greater than those estimated for the NPRM in every year of the 10-year period of analysis except for the first year. There are two primary reasons for this: (1) under the final rule, vessels, facilities, and OCS facilities will no longer need to make capital investments in order to comply with the rule in the first year; and (2) based on comments from industry, we significantly adjusted our enrollment opportunity cost estimates, our issuance opportunity cost estimates, and our escorting cost estimates. These

modifications caused our cost estimates to increase in every year (except year one because under the final rule vessels and facilities do not need to invest in card readers or other security infrastructure after the effective date of the regulation). Figure 3 displays the differences on an annual basis.

Figure 3: Difference in Annual Primary Cost Estimates



Accounting Statement

TSA has determined that this is an economically significant rule within the definition of E.O. 12866, as estimated annual costs or benefits exceed $100 million in any year. As required by OMB Circular A-4 (available at http://www.whitehouse.gov/omb/circ), TSA has prepared an accounting statement showing the classification of expenditures associated with the final rule.

OMB A-4 ACCOUNTING STATEMENT

Agency/Program Office: TSA and the Coast Guard
Rule Title: Transportation Worker Identification Card (TWIC)
RIN#: RIN 1652-AA41
Date: November 2, 2006

Category	Primary Estimate	Minimum Estimate	High Estimate	Source
Benefits				
Monetized Benefits	None	None	None	N/A
Annualized quantified, but unmonetized, benefits	None	None	None	N/A
Qualitative (unquantified) Benefits	The final rule will increase security at vessels, facilities, and OCS facilities regulated by 33 CFR chapter I, subchapter H.			RIA
Costs				
Annualized monetized costs (discount rate appears to the right)	$250,054,891 7%	$98,856,705 7%	$457,790,807 7%	RIA
	$247,418,101 3%	$97,014,487 3%	$453,884,889 3%	RIA
	$245,494,936 0%	$95,668,277 0%	$451,040,168 0%	RIA
Annualized quantified, but unmonetized, costs	None	None	None	N/A
Qualitative (unquantified) costs	None	None	None	N/A
Transfers				
Annualized monetized transfers: "on budget"	None	None	None	N/A
From whom to whom?	None	None	None	N/A
Annualized monetized transfers: "off-budget"	None	None	None	N/A
From whom to whom?	None	None	None	N/A
Miscellaneous Analyses/Category				
Effects on State, local, and/or tribal governments	No Unfunded Mandate			RIA
Effects on small businesses	Determination of Significant Impact on a Substantial Number of Small Entities			RIA
Effects on wages	None			N/A
Effects on growth	None			N/A

Introduction

Background and Authority

In response to the September 11, 2001, terrorist attacks on the United States, Congress passed the Aviation and Transportation Security Act (ATSA), which established the Transportation Security Administration (TSA).[1] TSA was created as an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. Effective on March 1, 2003, TSA became an agency of the Department of Homeland Security (DHS), and the head of TSA is now the Assistant Secretary for Homeland Security, Transportation Security Administration (Assistant Secretary). The United States Coast Guard (Coast Guard) also moved from DOT to become an agency of DHS on March 1, 2003.

There are several substantive statutes important to the development of this final rule. Some, like the Maritime Transportation Security Act (MTSA) enacted November 25, 2002, provide express requirements that appear in the final rule.[2] Others, such as the USA PATRIOT Act, authorized the creation of other TSA security threat assessment programs that serve as models for the threat assessment standards set forth in the final rule.[3] A discussion of all of these statutes follows.

A. Maritime Transportation Security Act

MTSA established several significant programs for the maritime industry, many to be administered by the Coast Guard.

Pursuant to section 201 of the MTSA, which establishes several programs directed at enhancing port security, the Secretary conducted an assessment of vessel types and United States facilities on or adjacent to the waters subject to the jurisdiction of the United States to identify those vessel types and United States facilities that posed a high risk of being involved in a transportation security incident.

Based on the information gathered pursuant to the assessment, the owners and operators of vessels and facilities identified to most likely be involved in a transportation security incident were required to conduct a detailed security assessment of their respective vessels and facilities to identify vulnerabilities. The results of the security assessments serve as the foundation for vessel and facility security plans, which owners and operators are required to be operating under since July 1, 2004.

Section 102 of MTSA requires the Secretary to issue a biometric transportation security card to individuals with unescorted access to secure areas of vessels and

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[1] Pub. L. 107-71, November 19, 2001, 115 Stat. 597.
[2] Pub. L. 107-295, November 25, 2002, 116 Stat. 2064.
[3] The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Pub. L. 107-56, October 25, 2001, 115 Stat. 272.

facilities.[4] In addition, these individuals must undergo a security threat assessment to determine that they do not pose a security threat prior to receiving the biometric card and access to the secure areas. The security threat assessment must include a review of criminal, immigration, and pertinent intelligence records in determining whether the individual poses a threat, and individuals must have the opportunity to appeal an adverse determination or apply for a waiver of the standards.

Specifically, an individual cannot be denied the transportation security card and unescorted access authority to secure areas unless the individual—

(A) Has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

(i) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

(ii) for causing a severe transportation security incident;

(B) has been released from incarceration within the preceding 5-year period for committing a felony described in subparagraph (A);

(C) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) otherwise poses a terrorism security risk to the United States.[5]

B. USA PATRIOT Act

Section 1012 of the USA PATRIOT Act provides that a State cannot issue a hazardous materials endorsement (HME) to a commercial driver who poses a security threat.[6] TSA is responsible for conducting the threat assessment and making the security determination on which State issuance of the HME is based. As required in the USA PATRIOT Act, TSA checks criminal history records, immigration status, and security intelligence databases of individuals applying to obtain or renew an HME. These statutory requirements for the security threat assessment are similar to the standards set forth in MTSA. However, the USA PATRIOT Act does not specify the 'lookback' time period in which criminal activity may be disqualifying, unlike the 7- and 5-year time periods set forth in MTSA. Additionally, The PATRIOT Act does not require an appeal and waiver process for applicants that are initially disqualified. As TSA considered implementing the USA PATRIOT Act and MTSA, TSA decided that the best course, for enhancing security and providing consistent standards for transportation workers, was to establish one set of security threat assessment standards that satisfy both statutes, where possible. Consequently, the standards being implemented for TWIC are modeled after

[4] "Secretary" is defined as the Secretary of the department in which the Coast Guard is operating. Effective March 1, 2003, the Coast Guard was transferred to the Department of Homeland Security under the Homeland Security Act.
[5] 46 U.S.C. 70105.
[6] 49 U.S.C. 5103.

TSA's rule establishing threat assessment standards for drivers authorized to transport hazardous materials under the USA PATRIOT Act.

C. SAFETEA-LU

The Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users[7] (SAFETEA-LU) requires TSA to initiate a rulemaking to determine which background checks required by Federal law and applicable to transportation workers are equivalent to or less stringent than the security threat assessment TSA requires for HME drivers. [8] TSA believes that the elimination of redundant checks is an important objective in enhancing transportation security and reducing burdens on workers and the transportation industry. Shifting existing public and private sector resources from duplicative background checks to minimize security vulnerabilities in other ways enhances overall security and commerce. To further this aim and satisfy SAFETEA-LU, TSA included a list of criteria it will examine to determine the comparability of other security threat assessments and the process by which an agency or individual can apply to TSA to review an existing security threat assessment and determine whether it is equivalent or less stringent than the hazmat threat assessment. In addition, SAFETEA-LU requires TSA to develop a process for notifying employers of the results of a threat assessment conducted on an HME applicant.

D. 2004 Appropriations Act

On October 1, 2003, legislation was enacted requiring TSA to collect reasonable fees to cover the costs of providing credentialing and background investigations in the transportation field, including implementation of the USA PATRIOT Act requirements.[9] Section 520 of the Homeland Security Appropriations Act of 2004 (2004 Appropriations Act) requires TSA to collect fees to pay for the costs of the following: (1) conducting or obtaining a criminal history records check (CHRC); (2) reviewing available law enforcement databases, commercial databases, and records of other governmental and international agencies; (3) reviewing and adjudicating requests for waivers and appeals of TSA decisions; and (4) any other costs related to performing the background records check or providing the credential.

Section 520 requires that any fee collected must be available only to pay for the costs incurred in providing services in connection with performing the background check or providing the credential. The fee may remain available until expended. TSA must establish this fee in accordance with the criteria in 31 U.S.C. 9701 (General User Fee Statute), which requires fees to be fair and based on (1) costs to the government; (2) the value of the service or thing to the recipient; (3) public policy or interest served; and (4) other relevant facts.

In the final rule, TSA establishes four new user fees in addition to the FBI fee for

[7] Pub. L. 109-59, August 10, 2005, 119 Stat. 1144.
[8] 49 U.S.C. 5103a(g)(1)(B)(i).
[9] Department of Homeland Security Appropriations Act, 2004, Section 520, Pub. L. 108-90, October 1, 2003, 117 Stat. 1137.

performing the CHRC on behalf of government agencies for non-governmental applicants: (1) a fee to cover TSA's costs of performing and adjudicating a full security threat assessment (Threat Assessment Fee); (2) a fee to cover the cost of an modified threat assessment (i.e. a reduced fee for applicants who have already received a comparable threat assessment from DHS); (3) a fee to cover the costs of collecting and transmitting fingerprints and applicant information (Information Collection and Transmission Fee); and (4) a replacement fee for lost, stolen, or damaged credentials. In this final rule, TSA (or its agent) will collect and transmit the fingerprints and applicant information needed to complete the security threat assessment.

Reason for Final Regulatory Action

TSA and the Coast Guard developed the final rule to mitigate threats and vulnerabilities in the maritime transportation network in accordance with the requirements of the legislation described above. The two agencies designed the final regulation to combat the inability to: (1) positively identify individuals entering secure areas of the maritime transportation system; (2) assess the threat posed to the maritime transportation system by individuals due to lack of background information; and (3) identify individuals who fail to maintain their eligibility subsequent to being given unescorted access to secure areas.

In addition to the aforementioned justifications for regulation, the two agencies crafted the final rule in a manner that creates an access control solution that strives to be uniformly accepted across multiple modes of transportation; minimizes the need for redundant credentials; and protects personal privacy. By creating a secure, biometric identity credential for individuals entering secure areas of the maritime transportation network, this final rule addresses the preceding reasons for regulatory action.

A Note on Public Comments Relating to Economic Issues

TSA and the Coast Guard received several public comments on the RIA that was published in support of the NPRM during the 45 day public comment period. All comments are available for the public to view at www.regulations.gov.

As part of this rulemaking effort, we have summarized and responded to all public comments relating to the RIA published with the NPRM. Comment summaries and responses are located in the preamble to the final rule, which is available on the public docket and in the Federal Register.

The Final Rule

We here provide a brief outline of changes made to the final rule; for a comprehensive discussion of these changes, please see the final rule preamble. As a result of the comments received on the NPRM, the Coast Guard made the following changes to its proposed regulations:

- Instead of requiring the installation and use of card readers now, TWICs will be used as a visual identity badge – a badge that will be presented for visual examination of the physical features of and personalized data on the card – at all Maritime Security (MARSEC) levels. The Coast Guard intends to integrate the TWIC requirements into its already existing facility and vessel annual MTSA compliance exams, as well as through unannounced security spot checks using hand-held readers. As discussed further below, this final rule does not implement the card reader requirements proposed in the TWIC NPRM.
- The recordkeeping requirements proposed in the TWIC NPRM, which would have required owners/operators to keep entry and exit records of those individuals granted access to a vessel or facility for two years, are not being implemented in this final rule. As a result, the recordkeeping requirements which existed in 33 CFR parts 104, 105 and 106 prior to the NPRM's publication remain unchanged.
- Proposed TWIC Addendum requirements are not being implemented in this final rule.
- The phrase "escorted access" has been clarified.
- Provisions to accommodate new hires and persons who have reported their TWIC as lost or stolen have been added.
- Provisions to deal with mariner access around vessels and U.S. flagged vessels operating in foreign waters have been added.
- An allowance for facilities to amend their Facility Security Plans (FSPs) to redefine their secure areas, and new definitions for passenger access areas and employee access areas, were included in this rule, which may result in a reduction in the number of people who will require a TWIC on certain vessels and at certain facilities.

As a result of comments to the NPRM, additional analysis, and recent legislation, TSA changed the qualification and redress standards for TWIC and HME applicants by:

- Providing for review of waiver request denials by an ALJ.
- Enlarging the response time for applicants to appeal an adverse determination, correct an open criminal disposition, or apply for a waiver from 30 or 45 days to 60 days.
- Expanding the group of applicants eligible to apply for a waiver after being disqualified because of mental incapacity.
- Adding to part 1515 the appeal provisions that currently apply to air cargo personnel.

- Expanding the group of non-U.S. nationals who meet the immigration standards to include foreign nationals who are students at the U.S. Merchant Marine Academy; commercial drivers licensed in Canada or Mexico transporting hazardous materials into and within the U.S.; train crew members who are citizens of Canada or Mexico and are part of a train crew conducting movements into and within the U.S.; and a variety of professionals and specialists who work in the U.S. maritime industry on restricted visas.
- Adding threats concerning a lethal device, such as a bomb, as a permanently disqualifying offense.
- Making violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. 1962 or comparable state RICO statute) a permanently disqualifying offense, regardless of the underlying crime.
- Clarifying the types of crimes that are considered disqualifying offenses to better reflect offenses that are more likely to result in a terrorism-related security risk or a transportation security incident.

Benefits of the Final Rule

The final rule will increase security at vessels, facilities, and OCS facilities regulated by 33 CFR subchapter H.

Security

The rule will increase security at vessels, facilities and OCS facilities regulated by 33 CFR subchapter H. It will accomplish this by: (1) reducing the number of high-risk individuals with unescorted access to secure areas of vessels, facilities, and OCS facilities through the use of robust security threat assessments, and (2) improving access control measures in the maritime transportation sector by permitting only those with secure biometric credentials to have unescorted access to secure areas of vessels and facilities.

Security Threat Assessments

The final rule will reduce the number of high-risk individuals who have unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by 33 CFR subchapter H. By requiring all individuals with unescorted access to secure areas to have a TWIC, and by requiring all applicants for a TWIC to undergo a security threat assessment, the final rule will increase security at vessels, facilities and OCS facilities throughout the maritime sector.

Many individuals impacted by the final rule have not received CHRCs conducted by the FBI or name-based checked completed by TSA. This means that a majority of owners and operators of critical maritime assets do not know if their employees or other individuals accessing secure areas of their vessels, facilities or OCS facilities have serious criminal histories or links to terrorism.

Moreover, most individuals impacted by this final rule have not adequately proved their U.S. citizenship or legal right to work in the county. The final rule will change this.

This final rule will require all individuals applying for a TWIC to undergo a CHRC, as well as an immigration status check. Furthermore, the final rule will give TSA the authority to check domestic and international government databases to determine whether or not an applicant poses a risk of terrorism. We anticipate that these security threat assessment processes will mitigate the threat posed by individuals with unknown backgrounds accessing vessels, facilities and OCS facilities.

Increased Access Control Security

The final rule will increase security at vessels, facilities and OCS facilities by mandating higher security standards for access control. With few exceptions, the final rule will require all individuals with unescorted access to secure areas of vessels, facilities and OCS facilities to posses a TWIC. This change from the status quo will

increase security by establishing a standard access control credential, with recognizable visual security features, which will allow security guards and others to make more informed access control decisions.

The final rule will also require that, upon granting unescorted access to an individual for the first time, a vessel or facility owner or operator check the credential and its owner to verify: (1) the individual's claimed identity; and (2) the validity of his TWIC.

In practice, an owner or operator can fulfill the first verification requirement by having an individual match the photo on the TWIC to the individual presenting the TWIC. An owner or operator can confirm the validity of the TWIC, and therefore the risk posed by the individual accessing the secure area, by verifying that the TWIC has not expired and checking the various security features on the card for evidence of tampering.

These requirements will improve security with respect to access control. Owners or operators that currently have electronic access control systems will be capable of achieving higher security levels if they choose to update those systems to recognize the TWIC. Furthermore, the Coast Guard will perform random spot checks of individuals' TWICs using hand held biometric smart card readers. These measures should increase security across the maritime transportation sector.

Cost of the Final Rule

This section of the RIA includes our revised cost estimates for the final rule. Each subsection, which estimates the cost for a certain provision or facet of the rule, contains a brief description of why we have changed our assumptions or estimates. On the whole, changes to our original estimates are the result of: (1) modifications that TSA or the Coast Guard made to the final rule from the NPRM; (2) public comments received on the RIA for the NPRM; and (3) better internal information with respect to many costs related to TSA's ability to deliver TWIC program services. Also included in each subsection is a figure that displays our original cost estimate that we forecast for the NPRM, the new cost estimate for the final rule, and the difference between the two estimates, with negative numbers appearing in parentheses.

Population Impacted

Additional research completed after the publication of the NPRM has caused us to adjust our estimate of the population affected by the rule. In order to account for foreign commercial truck drivers who regularly access U.S. seaports and who may need to obtain a TWIC, we have increased the population estimate to 770,000 from 750,000. We based this increase on information received from another Federal government program that interacts directly with foreign commercial truck drivers.

Enrollment Opportunity Costs

In the NPRM RIA, we assumed individuals applying for a TWIC would spend 90 minutes traveling to and from an enrollment center and waiting in line. Several commenters stated this estimate was too low. Consequently, in the final rule, we have estimated a range of enrollment opportunity costs. Our low estimate remains 90 minutes, while we evaluated eight hours for our high estimate and four for our primary. In preparing the final rule, TSA and the Coast Guard revisited our assumptions on the timing of the enrollment periods. This change in timing affected estimates of renewal applications and new applications from industry turnover. These changes, in conjunction with the addition of 20,000 initial applicants, account for the difference between the NPRM estimate and the low case estimate in the final rule.

Figure 4: Enrollment Opportunity Costs (millions)

Year	NPRM Estimate	Final Rule Estimate			Difference (Low – High)
		Low	Primary	High	
1	$25.0	$18.9	$50.3	$100.5	(-$6.1) - $75.6
2	12.6	20.0	53.4	106.7	7.4 - 94.1
3	4.0	4.1	11.0	22.0	0.1 - 18
4	4.0	4.2	11.1	22.3	0.1 - 18.2
5	4.1	4.2	11.3	22.5	0.1 - 18.4
6	16.6	14.0	37.3	74.7	(-2.6) - 58.1
7	10.8	14.3	38.0	76.1	3.5 - 65.3
8	6.3	6.6	17.6	35.2	0.3 - 28.9
9	6.4	6.7	17.8	35.6	0.3 - 29.2
10	6.5	6.7	18.0	36.0	0.3 - 29.5
Total	**$96.2**	**$99.7**	**$265.8**	**$531.6**	**$3.5 - $435.4**

Enrollment Service Costs

We have not changed our estimate of unit enrollment service costs from the NPRM to the final rule. As with the enrollment opportunity costs, the final rule enrollment service costs are higher than the NPRM values due to our re-evaluation of the timing of enrollments and addition of 20,000 initial applicants.

Figure 5: Enrollment Service Costs (millions)

Year	NPRM Estimate	Final Rule Estimate	Difference
1	$32.0	$24.2	(-$7.7)
2	16.1	25.7	9.6
3	5.1	5.3	0.2
4	5.2	5.4	0.2
5	5.2	5.4	0.2
6	21.2	18.0	(-3.2)
7	13.8	18.3	4.5
8	8.1	8.5	0.4
9	8.2	8.6	0.4
10	8.3	8.7	0.4
Total	**$123.1**	**$128.2**	**$5.0**

Security Threat Assessments

Since publishing the NPRM, we have been able to further refine our estimates of costs associated with conducting security threat assessments. Population-driven costs, including estimates for CHRCs, name-based checks, immigration checks, and adjudication costs all increased somewhat due to the addition of 20,000 enrollees. These increases total approximately $6 million and include estimates of TSA's cost to provide applicants the opportunity to request an administrative law judge review of a denied

waiver request. TSA subject matter experts, however, reduced their 10-year estimate of information technology modification costs by approximately $5 million.

Figure 6: Security Threat Assessment Costs (millions)

Year	NPRM Estimate	Final Rule Estimate	Difference
1	$18.3	$12.3	(-$6.0)
2	8.7	$13.2	4.6
3	3.5	$3.9	0.4
4	3.5	$4.0	0.4
5	3.6	$4.0	0.5
6	14.0	$12.2	(-1.8)
7	9.4	$12.4	3.0
8	6.0	$6.0	0.0
9	6.1	$6.1	0.0
10	6.1	$6.1	0.0
Total	**$79.2**	**$80.2**	**$1.0**

Appeals and Waivers

We have not changed our estimate of the unit opportunity costs associated with the appeals and waivers process from the NPRM to the final rule. As with other opportunity cost estimates, the final rule estimate is slightly changed from the NPRM due to our re-evaluation of the timing of the enrollment process and adjustment of the initial population.

Figure 7: Appeals and Waivers Costs (millions)

Year	NPRM Estimate	Final Rule Estimate	Difference
1	$2.0	$1.5	(-$0.5)
2	1.0	$1.6	0.6
3	0.3	$0.3	0.0
4	0.3	$0.3	0.0
5	0.3	$0.3	0.0
6	1.3	$1.1	(-0.2)
7	0.9	$1.1	0.3
8	0.5	$0.5	0.0
9	0.5	$0.5	0.0
10	0.5	$0.5	0.0
Total	**$7.7**	**$8.0**	**$0.3**

Card Production

Since publication of the NPRM, we have revisited several components of our card production estimate. Card redesign costs remained unchanged from the NPRM, while card production system costs fell by approximately $2.7 million.

Variable card production costs fell by roughly $0.4 million over 10 years. Since the NPRM, we have revised down our estimate of unit card costs from $8.75 to $8.00. The impact of this reduced unit cost was largely mitigated, however, by increased costs resulting from the reprinting during years two and three of all cards printed during the first year of the program. This will be necessary because TSA and the Coast Guard plan to align cards issued in the first year of the program with anticipated new national standards for smart cards. We expect these standards to be in place by year two of the program.

Finally, we received comments stating that a smart card will not last the full five years between enrollment and renewal, particularly in the harsh marine environment. We corroborated these comments with another government agency that havs experience with large credentialing programs. We have thus included this assumption that TWICs will wear out after 3 years and have estimated costs associated with replacing them. We expect the need to print replacement cards will add an additional $5.9 million to card production costs.

Figure 8: Card Production Costs (millions)

Year	NPRM Estimate	Final Rule Estimate	Difference
1	$7.9	$6.2	(-$1.7)
2	5.0	$7.8	2.8
3	3.2	$7.2	4.0
4	3.2	$1.0	(-2.2)
5	3.1	$4.4	1.3
6	5.2	$3.3	(-1.9)
7	3.2	$3.5	0.3
8	3.2	$1.4	(-1.8)
9	3.1	$4.0	0.9
10	3.2	$4.0	0.8
Total	**$40.2**	**$43.0**	**$2.8**

Issuance

As discussed above under enrollment opportunity costs, based on public comments we have estimated a range of opportunity costs for individuals to travel to enrollment centers. We have retained the 90 minute estimate from the NPRM for our low estimate, adopting eight hours for our high estimate and four hours for our primary. Our estimate of the rate of lost, stolen, and damaged cards also remains unchanged from the NPRM, as do the wage rate used for calculating opportunity costs to applicants. Although these variables in the low scenario are equivalent to those used in the NPRM,

final rule costs are higher primarily as a result of the new expectation in the final rule that cards will wear out after 3 years. This assumption adds numerous additional trips to the enrollment center in the later years of the program.

Figure 9: Issuance Opportunity Costs (millions)

Year	NPRM Estimate	Final Rule Estimate			Difference (Low – High)
		Low	Primary	High	
1	$25.9	$19.6	$52.1	$104.3	(-$6.4) - $78.4
2	14.8	28.0	74.7	149.4	13.2 - 134.6
3	6.7	16.3	43.5	87.0	9.6 - 80.3
4	6.7	7.0	18.6	37.1	0.2 - 30.4
5	6.8	17.0	45.2	90.5	10.2 - 83.7
6	19.3	19.1	50.9	101.9	(-0.2) - 82.6
7	13.6	19.4	51.8	103.6	5.8 - 90
8	9.1	11.8	31.5	63.0	2.7 - 53.9
9	9.2	17.3	46.0	92.0	8 - 82.8
10	9.3	17.5	46.7	93.3	8.2 - 84
Total	**$121.6**	**$172.9**	**$461.0**	**$922.1**	**$51.3 - $800.5**

TSA System

TSA subject matter experts have significantly revised their estimates of TSA's system costs since publication of the NPRM. Startup and operations and maintenance costs have increased from the NPRM estimate of $23.3 million to $42.8 million. Much of this increase is due to revised estimates of the costs TSA will incur in future years to enable the system to communicate with other government systems relevant to the TWIC application and review process. Hardware, software and other direct costs fell from $12.4 million to $12.3 million, while system disaster recovery costs increased, rising from $1.5 million to $6.0 million.

Figure 10: TSA System Costs (millions)

Year	NPRM Estimate	Final Rule Estimate	Difference
1	$8.5	$8.3	(-$0.2)
2	3.7	$8.9	5.2
3	3.1	$6.3	3.2
4	3.1	$5.7	2.5
5	3.1	$5.7	2.5
6	3.1	$5.2	2.1
7	3.1	$5.2	2.1
8	3.1	$5.2	2.1
9	3.1	$5.2	2.1
10	3.1	$5.2	2.1
Total	**$37.1**	**$61.0**	**$23.8**

TSA Program Management Costs

As TSA has re-evaluated its operational needs, it has modified its NPRM estimates of the amount of Federal labor and contract support required to operate the program office. TSA reduced its estimate of TWIC Program Office labor required from $20.7 million to $11.3 million over 10 years. Contract labor costs and accreditation and certification costs also fell by $1.3 million and $2.9 million, respectively. TSA removed legal costs for redress from its estimate ($1.7 million) and miscellaneous costs decreased from $2.3 million to $1.4 million. Finally, interagency systems and communication infrastructure costs fell from $18.7 million to $5.2 million.

Figure 11: TSA Program Management Costs (millions)

Year	NPRM Estimate	Final Rule Estimate	Difference
1	$7.9	$4.7	(-$3.3)
2	8.9	$4.3	(-4.6)
3	5.1	$2.8	(-2.3)
4	4.8	$2.4	(-2.4)
5	5.0	$2.5	(-2.5)
6	4.8	$2.5	(-2.3)
7	4.8	$1.9	(-3.0)
8	5.0	$1.9	(-3.2)
9	4.8	$1.9	(-3.0)
10	5.0	$1.9	(-3.2)
Total	**$56.4**	**$26.7**	**(-$29.7)**

Compliance Costs for Vessels

As noted in the response to comments above, we have eliminated from this final rule the proposed requirement that covered entities establish electronic access control systems or purchase handheld biometric smart card readers. Further, we have removed requirements for covered entities to submit addendums to their security plans in order to establish TWIC access areas. Finally, without electronic access control points, we have also eliminated the proposed requirement for covered entities to keep records of persons entering and exiting their vessel or facility.

For vessels, the elimination of these requirements removed $63.3 million from the low estimate and $94.9 million from the high estimate published in the NPRM RIA. The final rule retains the requirement that vessel security personnel become familiar with the requirements of the rule and the technical capabilities of the TWIC, however. This requirement represents a 10-year estimated cost of $14.2 million.

The final rule also retains provisions requiring an owner or operator of a vessel to provide an escort for persons requesting access to the vessel's secure area who do not have a TWIC. In the NPRM RIA, we did not estimate a cost to vessels associated with this requirement; however, we received comments stating that some vessels will incur costs to comply with this provision of the rule.

The final rule contains provisions for certain vessels to establish passenger and employee access areas, effectively reducing the scope of secure areas aboard a vessel. The final rule further states that vessels will not be required to enforce the TWIC regulations when outside U.S. territorial waters. Based on these considerations, we have evaluated a range of escorting costs in the final rule. Our low estimate assumes vessels will spend an average of 120 hours per year escorting individuals accessing the vessel secure area without a TWIC. We retained from the NPRM RIA the fully loaded wage rate for escort personnel, $32.58, as BLS reports the same wage for vessel operators and port site management employees. This assumption results in a 10-year escorting cost to vessels of $205.5 million. We assumed 1,040 hours for our high estimate and 520 hours for our primary estimate, representing $1,781.2 million and $890.6 million over 10 years, respectively.

Figure 12 compares the total costs for the low, primary, and high estimates from the NPRM and final rule calculations.

Figure 12: Compliance Costs for Vessels (millions)

Year	NPRM Estimate			Final Rule Estimate			Difference (Low - High)
	Low	Primary	High	Low	Primary	High	
1	$42.2	$50.1	$57.9	$14.2	$14.2	$14.2	(-$27.9) - (-$43.7)
2	2.1	2.1	2.1	20.6	89.1	178.1	18.5 - 176.1
3	2.1	2.1	2.1	20.6	89.1	178.1	18.5 - 176.1
4	2.1	2.1	2.1	20.6	89.1	178.1	18.5 - 176.1
5	2.1	2.1	2.1	20.6	89.1	178.1	18.5 - 176.1
6	18.9	26.8	34.6	20.6	89.1	178.1	1.7 - 143.5
7	2.1	2.1	2.1	20.6	89.1	178.1	18.5 - 176.1
8	2.1	2.1	2.1	20.6	89.1	178.1	18.5 - 176.1
9	2.1	2.1	2.1	20.6	89.1	178.1	18.5 - 176.1
10	2.1	2.1	2.1	20.6	89.1	178.1	18.5 - 176.1
Total	**$77.5**	**$93.3**	**$109.0**	**$219.8**	**$904.9**	**$1,795.5**	**$142.3 - $1,686.5**

Compliance Costs for Facilities

In response to numerous comments that provisions of the proposed rule would have been too costly for vessels and facilities, we have removed from the final rule many of the provisions that generated estimated compliance costs in the NPRM. Elimination of the requirements for facilities to submit addendums to their security plans, create recordkeeping systems, and validate TWICs reduced the estimated burden to facilities by $24.2 million over 10 years. Elimination of the requirement that facilities upgrade electronic access control systems or purchase handheld biometric smart card readers further reduced the 10-year estimated impact of the rule by $217.3 million in the low estimate and $253.0 million in the high.

Several commenters also stated our estimate of facility escorting costs in the NPRM was too low. Many of these commenters interpreted the proposed rule to mean that an escort would have to be provided for each individual entering the facility without

a TWIC. In the response to public comments in the preamble to the final rule, the Coast Guard has provided guidance on the escorting requirement. In general, facility owners and operators must monitor non-TWIC holders in the secure area and provide a physical escort for persons in the restricted area. This guidance should reduce the burden on facilities to comply with the escorting provision.

To address the comments on our estimated escorting costs in light of the Coast Guard's guidance, we have evaluated a range of escorting costs. We have retained for our low estimate the 240 annual hours published in the NPRM. This represents a 10-year cost to facilities of $104.4 million. One commenter stated an additional employee would have to be hired just for escorting purposes. This would represent an annual burden of 2,080 hours, which we have adopted for our high estimate. We estimate this would result in a 10-year cost to facilities of $904.7 million. For our primary estimate we assumed 1,040 hours, half of an FTE, resulting in a 10-year cost of $452.3 million.

The final rule also retains the proposed provisions requiring certain facility employees responsible for security to familiarize themselves with the security features of the TWIC. Although the proposed rule would require no formal training, employees with security duties would have to understand the benefits and limitations of TWIC, procure the proper technology to utilize TWIC, or set up standard operating procedures to use TWIC. We retained our NPRM estimate of the cost of this requirement: $9.5 million over 10 years.

Figure 13: Compliance Costs for Facilities (millions)

Year	NPRM Estimate			Final Rule Estimate			Difference (Low - High)
	Low	Primary	High	Low	Primary	High	
1	$228.2	$232.5	$236.8	$19.9	$54.7	$99.9	(-$208.3) – (-$136.9)
2	11.8	11.8	11.8	10.4	45.2	90.5	(-1.4) - 78.7
3	11.8	11.8	11.8	10.4	45.2	90.5	(-1.4) - 78.7
4	11.8	11.8	11.8	10.4	45.2	90.5	(-1.4) - 78.7
5	11.8	11.8	11.8	10.4	45.2	90.5	(-1.4) - 78.7
6	32.6	46.2	59.7	10.4	45.2	90.5	(-22.2) - 30.7
7	11.8	11.8	11.8	10.4	45.2	90.5	(-1.4) - 78.7
8	11.8	11.8	11.8	10.4	45.2	90.5	(-1.4) - 78.7
9	11.8	11.8	11.8	10.4	45.2	90.5	(-1.4) - 78.7
10	11.8	11.8	11.8	10.4	45.2	90.5	(-1.4) - 78.7
Total	**$355.3**	**$373.1**	**$391.0**	**$113.8**	**$461.8**	**$914.1**	**(-$241.4) - $523.1**

Compliance Costs for OCS Facilities

As noted elsewhere in this document, we have eliminated from the final rule many of the provisions that generated estimated compliance costs in the NPRM. Removal of the requirements for OCS facilities to submit addendums to their security plans, create recordkeeping systems, and validate TWICs reduced the estimated burden to OCS facilities by approximately $0.3 million over 10 years. Elimination of the requirement that facilities purchase biometric smart card readers further reduced the 10-

year estimated impact of the rule by $0.7 million in the low estimate and $0.9 million in the high.

Similar to comments received on our compliance cost estimates for vessels and facilities, some offshore firms stated that we failed to include the cost of complying with the escorting provisions in the NPRM for OCS facilities. We agree with commenters that the costs were excluded from the NPRM and, after further analysis, conclude that this was an oversight. In response to this comment, we have included escorting cost estimates here.

Due to some uncertainty about how different firms will comply with the requirement, we have again evaluated a range of escorting costs. We have used for our low estimate the 240 annual hours for facilities to provide escorts that was published in the NPRM. This represents a 10-year cost to OCS facilities of $3.3 million. One commenter stated an additional employee would have to be hired just for escorting purposes. This would represent an annual burden of 2,080 hours, which we have adopted for our high estimate. We estimate this would result in a 10-year cost to OCS facilities of $28.5 million. For our primary estimate we assumed 1,040 hours, half of an FTE, resulting in a 10-year cost of $14.2 million. Adding the rule familiarization costs that we originally estimated for the NPRM gave us the total, 10-year estimates shown below.

Figure 14: Compliance Costs for OCS Facilities (millions)

Year	NPRM Estimate			Final Rule Estimate			Difference (Low - High)
	Low	Primary	High	Low	Primary	High	
1	$0.4	$0.5	$0.5	$0.4	$1.5	$3.0	$0.1 - $2.4
2	0.0	0.0	0.0	0.3	1.4	2.8	0.3 - 2.8
3	0.0	0.0	0.0	0.3	1.4	2.8	0.3 - 2.8
4	0.0	0.0	0.0	0.3	1.4	2.8	0.3 - 2.8
5	0.0	0.0	0.0	0.3	1.4	2.8	0.3 - 2.8
6	0.2	0.2	0.3	0.3	1.4	2.8	0.2 - 2.6
7	0.0	0.0	0.0	0.3	1.4	2.8	0.3 - 2.8
8	0.0	0.0	0.0	0.3	1.4	2.8	0.3 - 2.8
9	0.0	0.0	0.0	0.3	1.4	2.8	0.3 - 2.8
10	0.0	0.0	0.0	0.3	1.4	2.8	0.3 - 2.8
Total	**$0.7**	**$0.8**	**$0.9**	**$3.4**	**$14.3**	**$28.6**	**$2.7 - $27.7**

Alternatives Considered

TSA and the Coast Guard considered a number of alternatives to the final rule during the rulemaking process. These alternatives ranged from creating performance standards for regulated entities and private sector firms to manage the credentialing process, to providing security threat assessments for all employees in the maritime sector, to the provisions contained in the final rule. In the end, we determined that the final rule was the most effective way to provide the greatest measure of security to regulated vessels, facilities, and OCS facilities.

Furthermore, TSA and Coast Guard decided that the provision of the final rule would also meet the statutory requirements embodied in ATSA, MTSA, and the USA PATRIOT Act and all other applicable statutes. This section of the RIA includes a brief summary of each alternative considered during the regulatory process; a concise cost estimate for each alternative; and a reason for why each alternative was not adopted.

Alternative 1: Performance Standards for Decentralized Production and Issuance of Biometric Security Credentials

In the course of developing the NPRM and final rule, TSA and the Coast Guard considered developing a performance standards-based rule that would allow regulated vessels, facilities, and OCS facilities, as well as other private sector firms, to issue biometric security credentials to individuals needing unescorted access to secure areas of the maritime transportation sector. This alternative would allow regulated entities and other private enterprises to conduct enrollment, card production, and issuance for biometric security credentials. Standards for how these processes would be completed would be dictated by TSA and Coast Guard in the rule, and TSA would conduct the security threat assessments, upon which production and issuance of credentials would be contingent. Under this alternative, TSA and Coast Guard would need to audit private firms offering such services in order to limit fraud and other abuses. This alternative would also require regulated entities to ensure individuals who access their secure areas have credentials or an escort. In essence, this alternative would have many of the same provisions as the final rule, although it would shift the responsibility of producing and issuing credentials onto the private sector from the Federal government.

This alternative is attractive because it would confer greater flexibility upon regulated entities by allowing them to directly enroll and produce credentials for employees. Local maritime establishments could create customized systems to best fit their security needs. In general, performance standards are usually superior to design standards because they give the regulated parties the most flexibility to achieve regulatory objectives in the most cost-effective way. In this specific case, however, where security is the paramount concern, an approach utilizing performance standards would be problematic.

Under this alternative, as stated above, private enterprises – such as port authorities, container terminals, maritime concerns, and other private vendors – would collect information from individuals needing a security credential. This information

would include fingerprints and demographic information that would be sent to TSA so that it could conduct security threat assessments. The information from applicants would also be used to produce their credentials, but only after the successful completion of a security threat assessment. TSA would issue standards to ensure that enrollments would be conducted in a manner to maintain the privacy and security of individuals' personal information.

Having individuals enroll at private facilities or vendors would impose costs on the affected parties. Whether or not these costs would be passed on to applicants would be up to the private enrollment providers. In some cases, we could envision regulated firms offering this service to their employees as a benefit of employment; in other instances, individuals seeking a credential might have to pay for this service.

To estimate these costs, we first calculated opportunity costs for individuals to enroll, and then the cost for firms to provide enrollment services to those individuals. Due to the uncertainty described above, we did not assign the enrollment service cost to any particular group (e.g. facilities, vessel owner / operators, private vendors, etc.). This alternative would not include prescriptive standards for who could conduct enrollment; therefore, any facility or company could provide the service, and thus incur the cost. We did, however, estimate this cost on a per applicant basis, which is described in more detail below.

Enrollment Opportunity Costs

The population affected by this alternative would be identical to the population impacted by the final rule – individuals needing unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by 33 CFR subchapter H. The number of estimated enrollments, therefore, is the same as those included in the previous section of this document that details the costs of the final rule. As enrollment opportunity costs are largely a function of the number of estimated enrollments, we used the same opportunity cost estimates as those used for the final rule, which ranged from $99.7 million to $531.6 million over 10 years, with a primary estimate of $265.8 million.

Enrollment Service Costs

In order to estimate the costs to private enrollment providers to collect individuals' personal information, provide that information to TSA in a secure form, and then retain it for card production purposes, we examined other government programs that utilize private contractors to provide enrollment services comparable to the ones needed under this alternative. One program utilizes a private firm to conduct enrollments similar to those that would be required for this alternative, and is able to provide services for $38 per applicant. We used this unit cost as the basis for our low estimate of enrollment service costs. Given the uncertainty surrounding the costs of this provision, we also developed a range of estimates. To develop our high cost estimate, we used a unit cost of $55, which formed the basis of the enrollment service costs for the enrollment costs estimates for the final rule. To develop our primary cost estimate, we took the average of the high and low unit costs. Multiplying these unit costs out over the number of forecasted enrollments for the 10-year period of analysis gave us the totals shown below.

Figure 15: Enrollment Service Costs

Year	Enrollments (millions)	Enrollment Cost, Low	Enrollment Cost, Primary	Enrollment Cost, High	Low Estimate Total (millions)	Primary Estimate Total (millions)	High Estimate Total (millions)
	A	B	C	D	A x B	A x C	A x D
1	0.43	$38.00	$46.50	$55.00	$16.4	$20.1	$23.8
2	0.46				17.4	21.3	25.2
3	0.09				3.6	4.4	5.2
4	0.10				3.6	4.5	5.3
5	0.10				3.7	4.5	5.3
6	0.32				12.2	14.9	17.6
7	0.33				12.4	15.2	18.0
8	0.15				5.8	7.0	8.3
9	0.15				5.8	7.1	8.4
10	0.15				5.9	7.2	8.5
Total	**2.28**				**$86.8**	**$106.2**	**$125.6**

Total enrollment cost estimate for this alternative appear below.

Figure 16: Total Enrollment Costs (millions)

Year	Low Estimate Total	Primary Estimate Total	High Estimate Total
1	$35.3	$70.4	$124.3
2	37.4	74.7	131.9
3	7.7	15.4	27.2
4	7.8	15.6	27.6
5	7.9	15.8	27.8
6	26.2	52.3	92.3
7	26.7	53.2	94.0
8	12.4	24.7	43.6
9	12.5	24.9	44.0
10	12.6	25.2	44.5
Total	**$186.5**	**$372.0**	**$657.3**

Security Threat Assessment Costs

Similar to the provisions of the final rule, this alternative would require individuals to undergo security threat assessments. The security threat assessments envisioned in this alternative would be identical to those required by the final rule. The costs of this provision of this alternative, therefore, would be identical to those of the final rule, which we estimated to be $80.2 million over 10 years.

Waivers and Appeals

The standards for appeals and waiver would be identical for those included in the final rule. Therefore, the costs would also be identical, which for the final rule we estimated to be $8.0 million over 10 years.

Card Production Costs

As described above, this alternative to the final rule would allow private facilities and other vendors to produce credentials that would meet standards set by TSA and the Coast Guard. Credentials produced under this alternative would be similar to those that will be manufactured under the final rule; however, they would simply be produced by private vendors with little oversight by the Federal government. Individuals would still need to obtain a security threat assessment before obtaining a credential.

For this alternative, and for cost estimating purposes, we categorized card production costs into three categories: (1) card production system costs; (2) labor costs; and (3) variable printing costs. Due to the uncertainty about who would conduct card production activities, we developed a wide range of estimates.

The card production system estimate below was derived from information we received from a private firm that produces printers capable of creating biometric smart

cards. The system costs are based on the assumption that each system would consist of software, one printer, printer supplies, and an initial supply of card stock. Operation and maintenance costs were assumed to accrue at a rate of 10 percent of the initial acquisition cost per year. We also assumed systems would last five years.

Because this alternative would confer a great deal of flexibility on the regulated community with respect to producing credentials, it was difficult for us to determine how many card production sites there would be under this option. As stated earlier, under this regulatory alternative companies that own affected vessels, facilities, and OCS facilities could conceivably offer enrollment and card production services to their employees. However, a firm not regulated under 33 CFR subchapter H could also offer these services. For this reason, we found if difficult to accurately quantify the cost of card production under this alternative.

However, in order provide a cost estimate for the purposes of this evaluation, we decided to use the number of major U.S. ports and regulated facilities and OCS facilities in order to provide the lower and upper bounds of the likely number of card production sites. For the cost estimate for the final rule, we estimated that there are 3,492 facilities and 42 OCS facilities. The sum of these two estimates formed the upper bound of the number of card production sites listed below. The low estimate of 130 represents the number of major U.S. port cities overseen by the Coast Guard. For the primary estimate, we again took the average of the high and low estimate. Multiplying these estimates by the card production and operations and maintenance costs gave us the 10 year cost estimates shown below.

Figure 17: Card Production System Costs

Year	Card Production System	Operations & Maintenance	Low Estimate of Number of Card Production Sites	Primary Estimate of Number of Card Production Sites	High Estimate of Number of Card Production Sites	Low Estimate Total (millions)	Primary Estimate Total (millions)	High Estimate Total (millions)
	A	B	C	D	E	(A + B) x C	(A + B) x D	(A + B) x E
1	$7,200	$720	130	1,832	3,534	$1.0	$14.5	$28.0
2	0	720				0.1	1.3	2.5
3	0	720				0.1	1.3	2.5
4	0	720				0.1	1.3	2.5
5	0	720				0.1	1.3	2.5
6	7,200	720				1.0	14.5	28.0
7	0	720				0.1	1.3	2.5
8	0	720				0.1	1.3	2.5
9	0	720				0.1	1.3	2.5
10	0	720				0.1	1.3	2.5
Total						$2.8	$39.6	$76.3

In addition to the cost of establishing card production systems, this alternative would also impose labor costs. Using the same assumptions regarding the number of card production locations, we assumed that each location would utilize one full-time equivalent (FTE) employee in the first year and then half a FTE in the subsequent years

to maintain a card production system. Unit FTE costs shown below were generated by multiplying $29.09, the loaded hourly wage rate used in other section of this analysis, by 2,080 hours.

Figure 18: Card Production Labor Costs

Year	FTEs	Annual Unit Cost	Low Estimate of Number of Card Production Sites	Primary Estimate of Number of Card Production Sites	High Estimate of Number of Card Production Sites	Low Estimate Total (millions)	Primary Estimate Total (millions)	High Estimate Total (millions)
	A	B	C	D	E	A x B x D	A x B x E	A x B x C
1	1.00	$60,507	130	1,832	3,534	$7.9	$110.8	$213.8
2	0.50					3.9	55.4	106.9
3	0.50					3.9	55.4	106.9
4	0.50					3.9	55.4	106.9
5	0.50					3.9	55.4	106.9
6	0.50					3.9	55.4	106.9
7	0.50					3.9	55.4	106.9
8	0.50					3.9	55.4	106.9
9	0.50					3.9	55.4	106.9
10	0.50					3.9	55.4	106.9
Total						**$43.3**	**$609.7**	**$1,176.1**

In addition to labor and system costs, facilities, vessel owners/operators or other private vendors would incur variable costs for card stock. Because this cost would largely be a function of the affected population, we estimated it would be equal to the variable printing costs estimated for the final rule

Summing the estimates above allowed us to estimate the total cost of card production for this alternative. As shown in the table below, the three cost estimates for this aspect of this alternative range widely, primary due to the uncertainty about how card production would actually occur.

Figure 19: Total Card Production Costs (millions)

Year	Low Estimate	Primary Estimate	High Estimate
1	$12.9	$129.4	$245.8
2	8.8	61.5	114.3
3	7.2	59.9	112.7
4	4.0	56.7	109.5
5	5.6	58.3	111.1
6	6.6	71.5	136.5
7	5.6	58.3	111.1
8	4.0	56.7	109.5
9	5.6	58.3	111.1
10	5.6	58.3	111.1
Total	**$66.1**	**$669.2**	**$1,272.4**

Issuance Costs

After a successful security threat assessment, an individual would need to retrieve his credential from the site of card production or enrollment. This would impose opportunity costs on individuals because they would need to take the time to travel to the issuance site. To account for this opportunity cost, we again used the same assumptions, and therefore cost estimate, that we forecasted for the final rule, as this cost would largely be a function of population. As such, we forecasted issuance opportunity costs would range from $172.9 million to $922.1 million over 10 years, with a primary estimate of $461.0 million.

TSA System and Program Management Costs

Under this alternative, TSA would still need to be able to receive, maintain, and send information on affected individuals in order to complete security threat assessments. Processes required to adopt this alternative would be similar to those needed for the final rule. We anticipate, therefore, that the costs associated with the necessary information technology systems and the operations of a program office would be the same as those estimated in the final rule. For the final rule, we estimated it would cost be $26.7 million over 10 years to run the program office, and $61.0 million over 10 years for all information technology costs.

Costs for Vessels, Facilities, and OCS Facilities

This alternative would require vessels, facilities, and OCS facilities regulated by 33 CFR subchapter H to adopt the credential described above in their access control policies. Regulated entities would need to require their employees and others seeking unescorted access to secure areas to obtain credentials and display them before gaining admission to secure areas. For this alternative, we assumed affected entities would utilize existing visitor policies that were acceptable before the publication of this final rule. As the credential would only replace the forms of identification currently being used for

individuals to gain access to secure areas, this would not place any burden on vessels, facilities or OCS facilities.

This alternative, like the final rule, however, would impose new costs for rule familiarization.[10] Owners and operators of affected entities would need to become familiar with the requirements so that they could be in full compliance. In order to estimate the cost of this, we calculated the number of affected entities, which is 8,791 (5,257 vessels + 3,492 facilities + 42 OCS facilities), assumed it would take 40 hours to understand the rule, and assumed whomever was tasked to ensure compliance was earning a loaded hourly wage of $67.63. Multiplying these values together produced a cost estimate of $23.8 million over 10 years.

Total Costs for Alternative One

The total primary cost estimate for this regulatory alternative appears below.

Figure 20: Total Costs for Alternative One (millions)

Year	Undiscounted	Discounted 7%
1	$302.8	$283.0
2	240.5	210.0
3	136.2	111.2
4	105.6	80.6
5	134.0	95.6
6	197.8	131.8
7	186.6	116.2
8	129.2	75.2
9	145.6	79.2
10	146.6	74.5
Total	**$1,724.8**	**$1,257.2**

Although this alternative would bestow some benefits on the regulated community and the Federal government, there would also be several problems with implementing the program in this manner. Above all, there would be several concerns about maintaining the integrity of a system and policy that would have the potential to lack uniformity. It would be difficult to establish a rigorous chain of trust between the Federal government and multiple private facilities or vendors conducting enrollment and producing their own credentials, and there would be a high potential for counterfeit and fraud.

This alternative would also not meet the provisions of the 2006 Department of Homeland Security Appropriations Act. Section 526 of the Department of Homeland Security Appropriations Act, 2006, P.L. 109-90 (Oct. 18, 2005) states that TSA shall conduct credential production for TWIC at an existing Federal card production facility. This alternative, by allowing multiple private facilities and other entities to conduct card production, would not meet this requirement.

[10] Although some facility and vessel owners/operators could engage in enrollment or card production activities, these costs were accounted for elsewhere in this section.

Although difficult to discern given the uncertainty surround how enrollment and card production would occur, this type of regulation would have the potential to impose higher costs on regulated entities or individuals, and the Federal government.

After weighing the merits of this alternative, TSA and the Coast Guard decided that this approach would introduce some unnecessary risk into the proposed TWIC rule, which would in fact adopt some performance standards by incorporating identification requirements into existing security plans. The agencies were primarily concerned with the potentially high costs to the economy in implementing an incongruous system of facility controls. Moreover, the high potential for fraud in this type of system concerned the agencies as well.

Alternative 2: Security Threat Assessments

During the regulatory process for this final rule, TSA and the Coast Guard also considered issuing regulations that would require private facilities to conduct security threat assessments on all their employees. This option would forgo the establishment of credentials that are one of the core components of this final rule. TSA and Coast Guard would ensure compliance with the regulation through the use of audits.

The main attribute of this alternative would be the relative ease and speed with which it could be implemented. Mandating security threat assessments would also place a relatively small financial burden on the Federal government. Furthermore, this option would not require the Federal government or local facilities to invest in technology or other components that would be part of this final rule.

There are a number of problems with this proposal. Primarily, this alternative would not satisfy current security needs. It would not provide: (1) a means by which to link a cleared security threat assessment to an individual; and (2) a mechanism to verify identity. This alternative would also not satisfy the MTSA, which states that the Secretary of the Department of Homeland Security shall issue biometric transportation security cards.

In the final analysis, because of these concerns, the agency decided to reject this option in favor of the final rule. A cost analysis of this proposal appears below.

Enrollment Costs for Security Threat Assessment

The population affected by this alternative would be identical to the population impacted by the final rule –individuals needing unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by 33 CFR subchapter H. For this reason, the number of forecast enrollments under this alternative is the same as that estimated for the final rule and for alternative one.

Under this alternative, owners/operators would be responsible for collecting all information necessary for the Federal government to conduct security threat assessments.

Owners/operators would collect fingerprints and other necessary biographical information from employees and others needing recurring unescorted access to secure areas and then pass that information along to TSA, which would then send it to the appropriate Federal agencies, including the FBI.

For employees and employers, time spent collecting information in order to complete security threat assessments would represent a loss of productivity. For this reason, we estimated the opportunity cost of employees' time to complete this process. In estimating this cost, we assumed that collection of information would occur at employees' place of employment, thereby minimizing travel time, and that total enrollment time, including incidental waiting time, would equal 30 minutes. The hourly wage rate shown below is the same loaded wage rate used for the remainder of the opportunity costs evaluated in this RIA.

Figure 21: Enrollment Opportunity Costs

Year	Enrollments (millions)	Hours per Enrollment	Hourly Wage	Total (millions)
	A	B	C	A x B x C
1	0.43	0.50	$29.09	$6.3
2	0.46			6.7
3	0.09			1.4
4	0.10			1.4
5	0.10			1.4
6	0.32			4.7
7	0.33			4.8
8	0.15			2.2
9	0.15			2.2
10	0.15			2.2
Total	**2.28**			**$33.2**

In addition to the opportunity costs of employees' time, this alternative would also create information collection and enrollment service costs similar to those incurred under the final rule. With respect to these costs, however, we have assumed that this alternative would be less costly. Under this alternative, owners/operators or other private firms conducting background checks would only need to collect information from employees and then send it on to TSA; they would not need to have employees reappear to retrieve a credential. This is a much less complex operation than the enrollment that would occur under alternative on or the final rule. There would also be some cost savings because enrollment under this alternative would not require as much hardware and other infrastructure.

In reality, owners/operators would likely collect information from employees in a variety of ways. Some firms would undoubtedly collect it from their employees while others would probably hire independent firms to do it on their behalf. Therefore, in order to estimate the cost of collecting this information, we used the information collection fee charged to individuals receiving security threat assessments as a part of another government program. This fee covers the cost of gathering fingerprints and other biographical information, and we felt it represents a good proxy for the cost of collecting

information under this alternative. The following figure shows the total cost of collecting the information necessary to complete security threat assessments on the affected population.

Figure 22: Enrollment Service Costs

Year	Enrollments (millions)	Enrollment Cost	Total (millions)
	A	B	A x B
1	0.43	$38.00	$16.4
2	0.46		17.4
3	0.09		3.6
4	0.10		3.6
5	0.10		3.7
6	0.32		12.2
7	0.33		12.4
8	0.15		5.8
9	0.15		5.8
10	0.15		5.9
Total	**2.28**		**$86.8**

Under this alternative, total enrollment costs would be less costly than under the provision of this final rule. See the following figure for total enrollment cost estimates.

Figure 23: Total Enrollment Costs (millions)

Year	Enrollment Opportunity Costs	Enrollment Service Costs	Total
	A	B	A + B
1	$6.3	$16.4	$22.7
2	6.7	17.4	24.1
3	1.4	3.6	5.0
4	1.4	3.6	5.0
5	1.4	3.7	5.1
6	4.7	12.2	16.9
7	4.8	12.4	17.2
8	2.2	5.8	8.0
9	2.2	5.8	8.0
10	2.2	5.9	8.1
Total	**$33.2**	**$86.8**	**$120.0**

Security Threat Assessments

This alternative would require covered individuals to undergo security threat assessments identical to those included in this final rule. Each individual covered by this alternative would receive a CHRC, conducted by the FBI, an immigration status check, and a name-based check to identify individuals with links to terrorism.

These three types of checks would impose costs on the covered individuals. The FBI charges $22 for a CHRC. Each name-based check costs approximately five dollars, and there is also a small fee associated with the immigration status checks. Because the security threat assessments under this alternative would be identical to those conducted under this final rule, the costs would be the same as those described elsewhere in this evaluation, which we calculated to be $80.2 million over 10 years.

Waivers and Appeals

This alternative, like this final rule, would allow individuals to appeal the results of a security threat assessment or ask for a waiver from some of the security threat assessment standards. Individuals would need to undergo a security threat assessment prior to initiating an appeal or waiver.

Drafting an appeal or asking for a waiver would represent an opportunity cost to individuals. Under this alternative, we have estimated the cost of compliance would be equal to that calculated for the final rule, which was $8.0 million over 10 years.

TSA System Costs

In order to build the capability of receiving a broad array of information on thousands of individuals, TSA would need to increase the capability of its information technology systems. Under this alternative, as the number of individuals that TSA would receive information on would be identical to that of the final rule, we assumed these costs would similar as well. For the final rule, we forecasted adjustments to TSA information technology systems would cost $61.0 million over 10 years.

Program Management Costs

This alternative would also require TSA to manage the program through a combination of Federal employees and contractors. In addition to personnel costs, the program management office would also incur costs for office supplies, and establishing communications systems with the Coast Guard to integrate information from individuals with MMDs into the TSA vetting system.

We again estimated that this cost would be identical to program management costs incurred under the final rule. 10 year cost estimates for this component of this alternative, therefore, would be $26.7 million.

Costs to Vessels, Facilities, and OCS Facilities

Under this alternative, vessels, facilities and OCS facilities regulated by 33 CFR subchapter H would be responsible for ensuring that their employees and other visitors with unescorted access had received a security threat assessment. Although different impacted businesses would most likely comply with this requirement in different ways, we anticipate that at a minimum this alternative would cause entities incremental labor or administrative costs in order to ensure their employees had the requisite security threat

assessment. To account for this, we included some incremental labor cost per regulated entity. The estimates shown below are based on the assumption that regulated entities would incur 30 minutes of additional labor per week.

Figure 24: Costs to Vessels, Facilities and OCS Facilities

Year	Hours per Facility or Vessel	Affected Vessels, Facilities, and OCS Facilities	Hourly Wage	Total (millions)
	A	B	C	A x B x C
1	26	8,791	$67.73	$15.6
2	26			15.6
3	26			15.6
4	26			15.6
5	26			15.6
6	26			15.6
7	26			15.6
8	26			15.6
9	26			15.6
10	26			15.6
Total				**$155.5**

Total Cost of Alternative 2: Security Threat Assessments

The total cost of this alternative would be less than that estimated cost of the final rule. The following figures show the 10-year costs of this alternative, discounted at three and seven percent.

Figure 25: Total Costs for Alternative Two (millions)

Year	Undiscounted	Discounted 7%
1	$65.0	$60.8
2	67.7	59.1
3	33.9	27.7
4	33.0	25.1
5	33.1	23.6
6	53.4	35.6
7	53.4	33.2
8	37.2	21.6
9	37.3	20.3
10	37.5	19.0
Total	**$451.5**	**$326.2**

As stated previously in this section, this alternative was ultimately not adopted because it would not meet the requirements of the 2002 MTSA.

Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), TSA and the Coast Guard prepared this Final Regulatory Flexibility Analysis (FRFA) that examines the impacts of the rule on small entities (5 U.S.C. 601 *et seq.*). A small entity may be:

- A small business, defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act (5 U.S.C. 632);
- A small not-for-profit organization; and
- A small governmental jurisdiction (locality with fewer than 50,000 people).

This FRFA addresses the following:

- The reason the agency is considering this action;
- The objectives of and legal basis for the rule;
- The number and types of small entities to which the rule apply;
- Projected reporting, recordkeeping, and other compliance requirements of the rule, including the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of any reports or records;
- Other relevant Federal rules that may duplicate, overlap, or conflict with the rule; and
- Significant alternatives to the component under consideration that accomplish the stated objectives of applicable statutes and may minimize any significant economic impact of the rule on small entities.

We have discussed most of these issues in other sections of this Regulatory Impact Analysis and the final rule publication. In this section, we will address the issues specific to small entities that we have not addressed elsewhere.

When considering the impacts on small entities for the purpose of complying with the Regulatory Flexibility Act (RFA), we consulted the Small Business Administration's guidance document for conducting regulatory flexibility analysis.[11] A regulatory flexibility analysis is required when an agency determines that a rule may have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule.[12] This guidance document also includes a good discussion describing how direct and indirect costs of a regulation are considered differently for the purposes of the RFA. To wit, "The courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly

[11] Small Business Administration, Office of Advocacy. 2003. *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act.* May 2003.
[12] Small Business Administration, Office of Advocacy. 2003. *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act.* May 2003. Page 69.

regulates them."[13] However, as was first held in *Mid-Tex Electric Cooperative, Inc. v. Federal Energy Regulatory Commission* the court reasoned, "Congress did not intend to require that every agency consider every indirect effect that any regulation might have on small businesses in any stratum of the national economy."[14] The same court later held that an agency is under no obligation to conduct a small entity impact analysis of effects on entities it does not regulate.[15]

At this time, we have determined this rulemaking will have a significant economic impact on a substantial number of small entities. Please note that individuals are not defined as small entities for the purposes of the RFA.

Background and Authority

In response to the September 11, 2001, terrorist attacks on the United States, Congress passed the Aviation and Transportation Security Act (ATSA), which established the Transportation Security Administration (TSA).[16] TSA was created as an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. Effective on March 1, 2003, TSA became an agency of the Department of Homeland Security (DHS), and the head of TSA is now the Assistant Secretary for Homeland Security, Transportation Security Administration (Assistant Secretary). The United States Coast Guard (Coast Guard) also moved from DOT to become an agency of DHS on March 1, 2003.

There are several substantive statutes important to the development of this final rule. Some, like the Maritime Transportation Security Act (MTSA) enacted November 25, 2002 provide express requirements that appear in the rule.[17] Others, such as the USA PATRIOT Act, authorized the creation of other TSA security threat assessment programs that serve as models for the threat assessment standards described in this document.[18] A discussion of all of these statutes follows.

A. Maritime Transportation Security Act

MTSA established several significant programs for the maritime industry, many to be administered by the Coast Guard.

Pursuant to section 201 of the MTSA, which establishes several programs directed at enhancing port security, the Secretary conducted an assessment of vessel types and U.S. facilities on or adjacent to the waters subject to the jurisdiction of the United States to identify those vessel types and United States facilities that posed a high risk of being involved in a transportation security incident.

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[13] Small Business Administration, Office of Advocacy. 2003. *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act.* May 2003. Page 20.
[14] Mid-Tex Elec. Coop v. FERC, 773 F.2d 327, 342 (D.C. Cir. 1985).
[15] United Dist. Cos. v. FERC, 88 F.3d 1105, 1170 (D.C. Cir. 1996).
[16] Pub. L. 107-71, November 19, 2001, 115 Stat. 597.
[17] Pub. L. 107-295, November 25, 2002, 116 Stat. 2064.
[18] The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Pub. L. 107-56, October 25, 2001, 115 Stat. 272.

Based on the information gathered pursuant to the assessment, the owners and operators of vessels and facilities identified to be most likely involved in a transportation security incident were required to conduct a detailed security assessment of their respective vessels and facilities to identify vulnerabilities. The results of the security assessments serve as the foundation for vessel and facility security plans, which owners and operators are required to be operating under since July 1, 2004.

Section 102 of MTSA requires the Secretary to issue a biometric transportation security card to individuals with unescorted access to secure areas of vessels and facilities.[19] In addition, these individuals must undergo a security threat assessment to determine that they do not pose a security threat prior to receiving the biometric card and access to the secure areas. The security threat assessment must include a review of criminal, immigration, and pertinent intelligence records in determining whether the individual poses a threat, and individuals must have the opportunity to appeal an adverse determination or apply for a waiver of the standards.

Specifically, an individual cannot be denied the transportation security card and unescorted access authority to secure areas unless the individual—

(A) Has been convicted within the preceding 7-year period of a felony or found not guilty by reason of insanity of a felony—

(i) that the Secretary believes could cause the individual to be a terrorism security risk to the United States; or

(ii) for causing a severe transportation security incident;

(B) has been released from incarceration within the preceding 5-year period for committing a felony described in subparagraph (A);

(C) may be denied admission to the United States or removed from the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) otherwise poses a terrorism security risk to the United States.[20]

B. USA PATRIOT Act

Section 1012 of the USA PATRIOT Act provides that a State cannot issue a hazardous materials endorsement (HME) to a commercial driver who poses a security threat.[21] TSA is responsible for conducting the threat assessment and making the security determination on which State issuance of the HME is based. As required in the USA PATRIOT Act, TSA checks criminal history records, immigration status, and security

[19] "Secretary" is defined as the Secretary of the department in which the Coast Guard is operating. Effective March 1, 2003, the Coast Guard was transferred to the Department of Homeland Security under the Homeland Security Act.
[20] 46 U.S.C. 70105.
[21] 49 U.S.C. 5103.

intelligence databases of individuals applying to obtain or renew an HME. These statutory requirements for the security threat assessment are similar to the standards set forth in MTSA. However, the USA PATRIOT Act does not specify the 'lookback' time period in which criminal activity may be disqualifying, unlike the 7- and 5-year time periods set forth in MTSA. Additionally, The PATRIOT Act does not require an appeal and waiver process for applicants that are initially disqualified. As TSA considered implementing the USA PATRIOT Act and MTSA, TSA decided that the best course, for enhancing security and providing consistent standards for transportation workers, was to establish one set of security threat assessment standards that satisfy both statutes, where possible.

C. SAFETEA-LU

The Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users[22] (SAFETEA-LU) requires TSA to initiate a rulemaking to determine which background checks required by Federal law and applicable to transportation workers are equivalent to or less stringent than the security threat assessment TSA requires for HME drivers. [23] TSA believes that the elimination of redundant checks is an important objective in enhancing transportation security and reducing burdens on workers and the transportation industry. Shifting existing public and private sector resources from duplicative background checks to minimize security vulnerabilities in other ways enhances overall security and commerce. To further this aim and satisfy SAFETEA-LU, TSA has included a list of criteria it will examine to determine the comparability of other security threat assessments and the process by which an Agency or individual can apply to TSA to review an existing security threat assessment and determine whether it is equivalent or less stringent than the hazmat threat assessment. In addition, SAFETEA-LU requires TSA to develop a process for notifying employers of the results of a threat assessment conducted on an HME applicant.

D. 2004 Appropriations Act

On October 1, 2003, legislation was enacted requiring TSA to collect reasonable fees to cover the costs of providing credentialing and background investigations in the transportation field, including implementation of the USA PATRIOT Act requirements.[24] Section 520 of the Homeland Security Appropriations Act of 2004 (2004 Appropriations Act) requires TSA to collect fees to pay for the costs of the following: (1) conducting or obtaining a criminal history records check (CHRC); (2) reviewing available law enforcement databases, commercial databases, and records of other governmental and international agencies; (3) reviewing and adjudicating requests for waivers and appeals of TSA decisions; and (4) any other costs related to performing the background records check or providing the credential.

Section 520 requires that any fee collected must be available only to pay for the

[22] Pub. L. 109-59, August 10, 2005, 119 Stat. 1144.
[23] 49 U.S.C. 5103a(g)(1)(B)(i).
[24] Department of Homeland Security Appropriations Act, 2004, Section 520, Pub. L. 108-90, October 1, 2003, 117 Stat. 1137.

costs incurred in providing services in connection with performing the background check or providing the credential. The fee may remain available until expended. TSA must establish this fee in accordance with the criteria in 31 U.S.C. 9701 (General User Fee Statute), which requires fees to be fair and based on (1) costs to the government, (2) the value of the service to the recipient, (3) public policy or interest served, and (4) other relevant facts.

In the final rule, TSA establishes three new user fees in addition to the FBI fee for performing the CHRC on behalf of government agencies for non-governmental applicants: (1) the Information Collection and Credential Issuance fee; (2) the Threat Assessment and Credential Production fee; and (3) the fee for replacement of a lost, damaged, or stolen TWIC.

Reason for Final Regulatory Action

This rulemaking requires credentialed mariners and individuals seeking unescorted access to secure areas of vessels, facilities, and OCS facilities regulated by 33 CFR subchapter H to obtain a Transportation Worker Identification Credential (TWIC). The final rule also requires affected vessels and facilities to adopt TWIC into their existing access control procedures.

TSA and the Coast Guard developed these requirements to mitigate threats and vulnerabilities in the maritime transportation network in accordance with the requirements of the legislation described above. The two agencies designed the final regulation to combat the current inability to: (1) positively identify individuals entering secure areas of the maritime transportation system; (2) assess the threat posed to the maritime transportation system by individuals due to lack of background information; and (3) identify individuals who fail to maintain their eligibility subsequent to being given unescorted access to secure areas.

In addition to the above justifications for regulation, the two agencies crafted the rule in a manner that will create an access control solution that strives to be uniformly accepted across multiple modes of transportation; minimizes the need for redundant credentials; and protects personal privacy.

A Note on Public Comments on the Initial Regulatory Flexibility Analysis

TSA and the Coast Guard received several public comments on the IRFA that was published in support of the NPRM during the 45 day public comment period. All comments are available for the public to view at www.regulations.gov.

As part of this rulemaking effort, we have summarized and responded to all public comments relating to the IRFA published with the NPRM. Comment summaries and responses are located in the preamble to the final rule, which is available on the public docket and in the Federal Register.

Description and Estimated Number of Small Entities

The final rule will impact entities presently regulated by 33 CFR subchapter H. Firms that fall under the authority of this subchapter of Title 33 include businesses operating vessels, facilities, and OCS facilities.

Businesses impacted by this rule fall within the NAICS codes found in Figure 26.

Figure 26: Impacted Industries and Size Standards

Industry Title	NAICS Code	Size Standard
Deep Sea Freight Transportation	483111	500 employees
Deep Sea Passenger Transportation	483112	
Coastal and Great Lakes Freight Transportation	483113	
Coastal and Great Lakes Passenger Transportation	483114	
Inland Water Freight Transportation	483211	
Inland Water Passenger Transportation (pt)	483212	
Scenic and Sightseeing Transportation, Water (pt)	48721	6.5 million
Navigational Services to Shipping (pt)	488330	6.5 million
Other Support Activities for Water Transportation	488390	6.5 million
Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing (pt)	532411	6.5 million
Sightseeing Water	48799	6.5 million
Casinos (Except Casino Hotels)	713210	6.5 million
Other Gambling Industries	713290	6.5 million
Marinas	713930	6.5 million
Ports and Harbors	48831	23.5 million
Marine Cargo Handling	48832	23.5 million
Seafood Product Preparation and Packaging	3117	500 employees
Ship Building and Repair	336611	1,000 employees
Boat Building	336612	500 employees
Sources: SBA, TSA, and the Coast Guard		

Vessels

With the exception of foreign-flagged vessels, the final rule requires vessels presently regulated by 33 CFR part 104 to modify existing access control policies and other security measures to integrate the TWIC into the maritime environment. Regulated vessels conduct many different types of operations, from moving passengers on the inland waterways to supplying offshore platforms in the Gulf of Mexico.

In 2003, the Coast Guard documented small business impacts for the final rule "Vessel Security" (USCG-2003-14749). The FRFA for that rule estimated the number of small business entities affected based on NAICS and the Reference USA database available online. The 2003 analysis found 88 companies owning 162 U.S.-flagged SOLAS vessels and 1,683 companies owning 4,813 domestic vessels were small businesses affected by the rule. The analysis of the 2003 rule proved helpful because the

applicability section, with few exceptions, mirrors the applicability section for vessels of this final rule.

Using current information contained in the Marine Information for Safety and Law Enforcement (MISLE) database, an information system maintained by the Coast Guard, however, we determined that approximately 1,770 firms presently own all affected vessels covered by 33 CFR subchapter H. The vast majority of these firms fall within one of the codes shown in Figure 26. The size standard established by SBA for small entities in these industries also appears in the figure above. This estimate is likely different from the estimate completed in 2003 due to growth in the fleet of affected vessels.

We used the identified NAICS codes to create a distribution of the number of firms in the affected industry by revenue, shown in Figure 27[25], and by employee size, shown in Figure 28.[26]

Figure 27: Distribution of Vessels by NAICS and Revenue

NAICS Code	Industry Title	Number of Entities by Revenue Size								
		$0-$99,999	$100k-$500k	$500k-$900k	$1m-$5m	$5m-$10m	$10m-$50m	$50m-$100m	$100m+	Total
48721	Scenic and Sightseeing Transportation, Water (pt)	595	795	172	146	25	16	2	5	**1,756**
48833	Navigational Services to Shipping (pt)	110	306	104	148	31	29	5	20	**753**
488390	Other Support Activities for Water Transportation	204	264	90	91	12	17	3	12	**693**
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing (pt)	178	256	96	125	25	25	8	30	**743**
713210	Casinos (except casino hotels)	37	77	41	99	42	89	30	50	**465**
713290	Other Gambling Industries	264	504	190	254	42	75	15	28	**1372**
Total		**1388**	**2202**	**693**	**863**	177	**251**	**63**	**145**	**5,782**
Source: US Census Bureau										

[25] It is important to note that estimates shown in this figure do not represent the number of regulated vessels. Instead, the figure displays the number of firms in NAICS codes that may be affected by the final rule.

[26] It is important to note that estimates shown in this figure do not represent the number of regulated vessels. Instead, the figure displays the number of firms in NAICS codes that may be affected by the final rule.

Figure 28: Distribution of Vessels by NAICS and Employee Size

NAICS Codes	Industry Title	Number of Entities by Employee Size							
		0	1-4	5-9	10-19	20-99	100-499	500+	Total
483111	Deep Sea Freight Transportation	34	84	20	18	33	17	23	**229**
483112	Deep Sea Passenger Transportation	18	36	10	7	9	5	9	**94**
483113	Coastal and Great Lakes Freight Transportation	29	105	64	44	75	32	28	**377**
483114	Coastal and Great Lakes Passenger Transportation	24	40	22	11	18	8	1	**124**
483211	Inland Water Freight Transportation	59	115	53	45	59	28	27	**386**
483212	Inland Water Passenger Transportation (pt)	63	85	30	23	31	10	3	**245**
Total		**227**	**465**	**199**	**148**	**225**	**100**	**91**	**1,455**
Source: US Census Bureau									

Figure 27 and Figure 28 suggest that most vessel owner establishments are classified as small businesses if $6.5 million and 500 or 1,000 employees are used as the small entity size standards.

Facilities

The final rule will require facilities regulated by 33 CFR part 105 to modify their access control policies and other security measures to integrate the TWIC into the maritime environment. Regulated facilities are comprised of establishments located on inland waterways and at coastal ports, and they support the transport of everything from bulk oil and liquid hazardous materials to break bulk cargo, containers, and even people.

In 2003, the Coast Guard documented small business impacts for the final rule "Facility Security" (USCG-2003-14732). The Final Regulatory Flexibility Analysis (FRFA) estimated the number of small business entities affected based on the NAICS and the Reference USA database available online. This analysis found information for 296 companies owning 518 facilities that were small businesses affected by the rule. It was instructive to look at the 2003 analysis because the applicability section of the current final rule mirrors the applicability section of the 2003 Facility Security rule.

Based on current information maintained by the Coast Guard in its MISLE database, we identified the number owned by obviously large firms (e.g. large, publicly traded companies). Of the nearly 3,000 facilities examined, we determined that large firms own approximately 1,700 facilities. From the approximately 1,300 remaining facilities, we first classified the facilities again using the information located in the MISLE database and the 2002 NAICS. Figure 26 displays the identified industries and the small entity size standards for each industry.

After identifying all the relevant NAICS codes and their corresponding size standards, we developed a possible distribution of the number of firms by revenue within the identified industries. This allowed us to identify the number of firms within an industry below a certain revenue threshold, which in turn permitted us to make an

estimate of the number of small facilities within the industry, as defined by SBA. See the figure below.[27]

Figure 29: Distribution of Facilities by NAICS and Revenue

NAICS CODE	INDUSTRY TITLE	NUMBER OF ENTITIES BY REVENUE SIZE								
		$0-$99,999	$100k-$500k	$500k-$1m	$1m-$5m	$5m-$10m	$10m-$50m	$50m-$100m	$100m+	Total
48799	Sightseeing Water	595	795	172	146	25	16	2	5	**1,756**
713930	Marinas	635	1704	741	690	66	46	3	21	**3,906**
48831	Ports and Harbors	24	40	16	34	8	12	8	27	**169**
48832	Marine Cargo Handling	44	76	43	87	37	50	8	35	**380**
Total		**1,298**	**2,615**	**972**	**957**	**136**	**124**	**21**	**88**	**6,211**
Source: US Census Bureau										

For some facility owners, the SBA size standard is determined by employment size, so we also created a distribution of firms by employees (see Figure 30).[28] Using the employee size standard, the results for businesses in these industries indicate that nearly all businesses are small businesses.

Figure 30: Distribution of Facilities by NAICS and Employee Size

NAICS CODE	INDUSTRY TITLE	NUMBER OF ENTITIES BY EMPLOYEE SIZE							
		0	1-4	5-9	10-19	20-99	100-499	500+	Total
3117	Seafood Product Preparation and Packaging	85	126	93	88	152	74	25	**643**
336611	Ship Building and Repair	42	151	88	69	122	61	27	**560**
336612	Boat Building	104	339	187	153	193	63	16	**1,055**
Total		**231**	**616**	**368**	**310**	**467**	**198**	**68**	**2,258**
Source: US Census Bureau									

In the course of our research, we determined that 102 government entities own or operate 259 facilities in the MTSA regulated data.[29] Of these government entities, we determined that 63 are large governments (i.e., government jurisdictions representative of a population 50,000 or more) consisting of Federal, state, and some county and large municipality governments. We further determined 39 are small governments representing a population less than 50,000 and primarily consisting of small municipalities and local jurisdictions.

[27] It is important to note that estimates shown in this figure do not represent the number of regulated facilities. Instead, the figure displays the number of firms in NAICS codes that may be affected by the final rule.

[28] It is important to note that estimates shown in this figure do not represent the number of regulated facilities. Instead, the figure displays the number of firms in NAICS codes that may be affected by the final rule.

[29] Estimates of government-owned entities were gleaned from information in the Coast Guard Marine Information for Safety and Law Enforcement system. The estimates, however, may not be completely accurate due to limitations inherent in the data contained in the system.

Using the information above, we determined that the final rule will have an impact on many small facilities.

OCS Facilities

The final rule will also require OCS facilities regulated by 33 CFR part 106 to modify their access control policies and other security measures to integrate the TWIC into the maritime environment. Regulated OCS facilities engage exclusively in the exploration for oil and natural gas in the Gulf of Mexico. Again using information maintained in the Coast Guard MISLE database, we determined that the rule will impact 42 facilities on the OCS.

All companies operating OCS facilities are large, publicly traded firms that do not meet the small entity definition established by SBA. These firms generally fall under NAICS codes 211111 Crude Petroleum and Natural Gas Extraction; and 211112 Natural Gas Liquid Extraction. The small entity size standard for these industries is 500 employees. For the reasons outlined above, we anticipated that the final rule will not impact any small entities operating on the OCS.

Description of Projected Reporting, Record Keeping and Other Compliance Requirements for Small Entities

We here provide a brief outline of changes made to the final rule; for a comprehensive discussion of these changes, please see the final rule preamble. As a result of the comments received on the NPRM, the Coast Guard made the following changes to its proposed regulations:

- Instead of requiring the installation and use of card readers now, TWICs will be used as a visual identity badge – a badge that will be presented for visual examination of the physical features of and personalized data on the card – at all Maritime Security (MARSEC) levels. The Coast Guard intends to integrate the TWIC requirements into its already existing facility and vessel annual MTSA compliance exams, as well as through unannounced security spot checks using hand-held readers. As discussed further below, this final rule does not implement the card reader requirements proposed in the TWIC NPRM.
- The recordkeeping requirements proposed in the TWIC NPRM, which would have required owners/operators to keep entry and exit records of those individuals granted access to a vessel or facility for two years, are not being implemented in this final rule. As a result, the recordkeeping requirements which existed in 33 CFR parts 104, 105 and 106 prior to the NPRM's publication remain unchanged.
- Proposed TWIC Addendum requirements are not being implemented in this final rule.
- The phrase "escorted access" has been clarified.

- Provisions to accommodate new hires and persons who have reported their TWIC as lost or stolen have been added.
- Provisions to deal with mariner access around vessels and U.S. flagged vessels operating in foreign waters have been added.
- An allowance for facilities to amend their Facility Security Plans (FSPs) to redefine their secure areas, and new definitions for passenger access areas and employee access areas, were included in this rule, which may result in a reduction in the number of people who will require a TWIC on certain vessels and at certain facilities.

As a result of comments to the NPRM, additional analysis, and recent legislation, TSA changed the qualification and redress standards for TWIC and HME applicants by:

- Providing for review of waiver request denials by an ALJ.
- Enlarging the response time for applicants to appeal an adverse determination, correct an open criminal disposition, or apply for a waiver from 30 or 45 days to 60 days.
- Expanding the group of applicants eligible to apply for a waiver after being disqualified because of mental incapacity.
- Adding to part 1515 the appeal provisions that currently apply to air cargo personnel.
- Expanding the group of non-U.S. nationals who meet the immigration standards to include foreign nationals who are students at the U.S. Merchant Marine Academy; commercial drivers licensed in Canada or Mexico transporting hazardous materials into and within the U.S.; train crew members who are citizens of Canada or Mexico and are part of a train crew conducting movements into and within the U.S.; and a variety of professionals and specialists who work in the U.S. maritime industry on restricted visas.
- Adding threats concerning a lethal device, such as a bomb, as a permanently disqualifying offense.
- Making violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. 1962 or comparable state RICO statute) a permanently disqualifying offense, regardless of the underlying crime.
- Clarifying the types of crimes that are considered disqualifying offenses to better reflect offenses that are more likely to result in a terrorism-related security risk or a transportation security incident.

In addition to the changes described above, we here provide a brief description of the requirements for which small entities will incur compliance costs. For more discussion on these requirements, see the preamble to the final rule and the Cost of the Final Rule section of this document.

- Escorted Access: For individuals seeking to enter secure areas without a TWIC, vessel, facility and OCS facility owners/operators will need to provide an escort. As stated above, this provision has been clarified in the preamble to the final rule. We have clarified that in restricted areas an escort will

generally mean physical accompaniment while outside of restricted areas it will simply mean monitoring. We have provided an estimated cost of compliance with this requirement below. The cost estimates shown below have been modified from the estimate contained in the IRFA to account for public comments.

- Knowledge Requirements and Rule Familiarization: In the IRFA, we included a cost estimate for rule familiarization and knowledge requirements associated with the rule. We assumed that in order to understand all the provisions of the rule, small entity owners would incur opportunity costs. As we received no public comments on this issue, we have not changed these cost estimates from those contained in the IRFA.

Given the flexibility the rule provides to facilities and vessels, we estimated costs for small entities would fall into two primary categories, knowledge requirement costs and escorting costs.

All small entities will incur costs to comply with the rule's knowledge and administrative components. Because small entities generally have fewer employees and less complex security measures than many larger firms, we do not anticipate that the knowledge requirements will impose costs that are significant. To estimate the cost of compliance for these requirements, we assumed it would take an individual earning $67.73 per hour 40 hours to meet the knowledge requirements. This requirement would thus result in a first-year, one-time cost to small entities of $2,709.

As noted above, TSA and the Coast Guard also received comments on our estimates of the time facilities will spend escorting individuals without a TWIC. While commenters stated our estimates were too low, few provided revised numbers for our consideration. To address these comments, we have thus incorporated in our analysis of the final rule a range of possible costs associated with the escorting requirement for both facilities and vessels. In our low estimate for facilities, we retained the estimate published in the regulatory evaluation accompanying the NPRM: 240 hours per year. Based on comments received, we adopted for our high estimate one additional FTE for escorting, which equals 2080 hours per year. We assumed half of an FTE for our primary estimate. Given that vessels do not experience the same traffic as facilities and will not need to enforce the TWIC requirements when outside U.S. waters, we assumed their escorting requirements will be less than those of facilities. We thus adopted a range of time estimates equal to half of those for facilities.

Figure 31 shows the potential costs of meeting these requirements of the rule. Escorting costs were calculated by multiplying the estimated times by a fully loaded wage rate of $32.58 per hour, which is the BLS rate for both Port Admin and Site Management workers and Vessel Operators and Port Support workers.

Figure 31: Potential Impacts to Small Entities

Requirement	Initial Costs			Recurring Costs		
	Low	Primary	High	Low	Primary	High
Knowledge Requirement	$2,709	$2,709	$2,709	$0	$0	$0
Escorting (Facilities)	$7,819	$33,883	$67,766	$7,819	$33,883	$67,766
Escorting (Vessels)	$3,910	$16,942	$33,883	$3,910	$16,942	$33,883
Total: Facilities	**$10,528**	**$36,592**	**$70,476**	**$7,819**	**$33,883**	**$67,766**
Total: Vessels	**$6,619**	**$19,651**	**$36,592**	**$3,910**	**$16,942**	**$33,883**

Among the estimates presented in Figure 31, all facilities and vessels will incur costs associated with the knowledge requirements. Our estimate of $2,709 to comply with this requirement would amount to 2% of the revenue of an entity taking in $135,500 annually. Assuming that covered vessels and facilities are uniformly distributed among the NAICS classifications presented in Figure 27 and Figure 29, vessels in the $0-$99,999 category represent 24% of the vessel population, while facilities in the same category comprise 21% of the facility population. Adding in the low estimate of the escorting requirements, which may not be incurred by all small vessels or facilities, expands the affected population to vessels and facilities in the $100,000-$500,000 category. From Figure 27, this represents 62% of vessels, and from Figure 29 63% of facilities.

In addition to the estimates above, some commenters stated that the nature of the market in which they operate and the labor force they use will result in a de facto requirement that they pay for their employees' TWICs. TSA and the Coast Guard acknowledge that this may be the case; however, we did not have sufficient data to estimate this aspect of the rule. Thus, although some small entities may not incur escorting costs, others may incur indirect costs we have not quantified here, leading us to believe a large percentage of small entities will incur significant costs in at least one year as a result of this final rule.

Identification of Duplication, Overlap, and Conflict with other Rules

TSA and the Coast Guard have no knowledge of any duplicative, overlapping, or conflicting federal rules.

Description of Any Significant Alternatives to the Final Rule

The provisions of the final rulemaking were adopted only after the consideration of numerous alternatives, some of which TSA and the Coast Guard decided to include in the final rule in the hope of minimizing any adverse economic effects on small entities. This section of the FRFA describes alternatives contemplated during the regulatory process but ultimately rejected by TSA and the Coast Guard and explains policies included in the final rule with the intent of minimizing impacts to small business.

Alternatives Considered

As stated in a previous section of this document, TSA and the Coast Guard considered issuing a regulation to solely require security threat assessments for credentialed mariners and individuals seeking unescorted access to secure areas of vessels, facilities, and OCS facilities. This alternative, in all likelihood, would have been equally or more attractive to small entities than the proposed or final rule. This alternative would have allowed small entities and other firms to assess the security risk posed by new and existing employees while not overly burdening them with complicated compliance requirements.

This alternative policy, as noted elsewhere in this document, has a number of shortcomings, and was therefore not adopted by TSA and the Coast Guard. The primary flaw with the security threat assessment alternative was that it did not meet the requirements of MTSA, which state that the Secretary of the Department of Homeland Security shall issue biometric transportation security cards. For this reason, we did not pursue this alternative.

We also examined issuing an alternative rulemaking that would have allowed for a more decentralized approach to producing and issuing identification credentials. Although it is debatable whether this alternative would have proved more beneficial for small entities and other maritime enterprises, it is quite possible that this type of policy would have bestowed more flexibility on regulated firms.

This alternative, however, was not pursued because it did not meet the provisions of the 2006 Department of Homeland Security Appropriations Act. Section 526 of the Department of Homeland Security Appropriations Act, 2006, P.L. 109-90 (Oct. 18, 2005) states that TSA shall conduct credential production for TWIC at an existing Federal card production facility.

Other alternatives considered but ultimately rejected during the rulemaking process also included making certain exemptions for small entities. For example, TSA and the Coast Guard contemplated exempting certain small entities from the escort requirements included in the final rule. Many small entities stated in their comments that smaller firms, especially those located on the inland waterways, do not represent the same risk as large coastal facilities. TSA and Coast Guard, after analyzing this exemption policy, determined that it would not fulfill the security goals of the final rule. We firmly believe that all vessels, facilities, and OCS facilities regulated under 33 CFR

subchapter H are at risk of being involved in a transportation security incident, and therefore we cannot exempt any from the escort provision of the rule.

Flexibility in the Final Rule

First, and perhaps most importantly, the final rule no longer requires the use of biometric smart card readers by vessels, facilities and OCS facilities. Instead, the rule requires the TWIC to be used as a visual identity badge. The Coast Guard will conduct spot checks with hand held readers to ensure that individuals and regulated entities are utilizing the TWIC in a fashion consistent with the requirements of the rule. By completing these types of checks, the Coast Guard will be able verify the identity of TWIC holders, as well as confirm the validity of their credentials. This change – by shifting the responsibility to validate credentials and verify the identity of card holders from the private sector to the Federal government – should significantly decrease the regulatory burden for some affected small entities.

The recordkeeping requirement proposed in the NPRM has also been dropped from the final rule, as has the requirement for firms to submit TWIC addenda. These alterations should also decrease the cost of compliance to small entities.

The provision for passenger access areas, which we originally proposed in the NPRM for passenger vessels, remains in the final rule and provides flexibility for small entities offering services to passengers. The MTSA requires that no one be given unescorted access to secure areas unless they carry a TWIC. To ensure that passenger vessels need not require passengers to obtain TWICs or ensure that passengers were "escorted" at all times while on the vessel, the rule creates the "passenger access area," allowing vessel owners/operators to carve out areas within the secure areas aboard their vessels where passengers are free to move about unescorted.

In addition to the passenger access areas, the final rule creates "employee access areas," allowing passenger vessel and ferry owners/operators more flexibility. An employee access area is a defined space within the access control area of a ferry or passenger vessel that is open to employees but not passengers. It is not a secure area and does not require a TWIC for unescorted access. It may not include any areas defined as restricted areas in the vessel security plan. We believe that this new provision should reduce the regulatory burden on many small passenger vessels, especially those that primarily utilize and rely on seasonal labor.

The final rule also includes a new provision that will allow a direct hire new employee to receive limited access for 30 consecutive days to secure areas, including restricted areas, of a vessel or facility within three days of applying for a TWIC, provided that TSA has completed a name-based check on the new employee. This new policy, which TSA and the Coast Guard did not propose in the NPRM, is intended to give owners/operators the flexibility to quickly grant new employees who do not yet hold a TWIC access to secure areas. In order to ensure ample security for vessels and facilities, though, there are certain stipulations that owners/operators and TWIC applicants must meet before leveraging the new provision.

First, any owner/operator that desires to have a new employee who does not hold a TWIC work in a secure area must confirm that the employee has in fact completed the TWIC enrollment process and is not in midst of an appeal or waiver of application. An owner/operator can attain this confirmation by having the new employee sign a statement affirming that he or she has completed enrollment and has not filed for an appeal or waiver with TSA.

Second, within three days of a new employee's enrollment, an owner/operator must submit to TSA and the Coast Guard certain information about the employee via the Homeport website, a secure web portal intended to facilitate the sharing of sensitive security information between industry and the Coast Guard. This information, which includes basic biographical information such as name and date of birth, is intended to ensure that an employee is not identified on any of the name-based terrorist watch lists.

This provision cannot be utilized by newly hired facility or vessel security officers, and in all cases there must be no other circumstances that would cause reasonable suspicion regarding the new hire's ability to obtain a TWIC. Furthermore, individuals who take advantage of this new policy must have and display a form of identification as stipulated by 33 CFR 101.515 until they receive their TWIC.

After an employee's information is entered into Homeport, an owner operator may grant the newly hired employee access to a secure area, provided the employee is accompanied by another employee who holds a TWIC. For the purposes of this provision, the Coast Guard will determine the manner in which new hires will be accompanied by issuing guidance that considers vessel or facility size, crew or staff size, vessel or facility configuration, the number of TWIC holders, and other appropriate factors, or by making a determination on a case-by-case basis. The Coast Guard also plans to issue a NVIC to provide further guidance and information on this new measure, which is designed to provide regulatory flexibility for all types of vessels and facilities.

In addition to making accommodations for new hires, the final rule will also include a provision for individuals who have reported their credential as either lost or stolen. Although the provision contains certain caveats that are specified in the regulatory text, this new policy allows an employee missing his or her credential to receive limited unescorted access to secure areas for seven consecutive days.

Further, the final rule also allows certain facilities to submit amendments to their security plans in order to redefine their secure areas. By allowing certain small facilities to more closely focus their secure areas on truly sensitive sections of their facilities, this may reduce the rule's economic impact on small entities.

Finally, in an effort to maintain security but ensure applicants' rights, the rule now also contains provisions for Administrative Law Judge services for applicants denied a waiver. Moreover, the final rule extends the response time for applicants to appeal an adverse determination, correct an open criminal disposition, or apply for a waiver to 60 days.

TSA and the Coast Guard believe the policies outlined above provide small entities with flexibility in complying with the rule. We believe the final rule minimizes the adverse economic effects to small business while fulfilling all statutory requirements, as well as TSA's and the Coast Guard's primary objective of increased security.

Findings

Although we believe we have taken tangible steps to reduce the burden to small entities, we have nevertheless determined the rulemaking will have a significant economic impact on a substantial number of small entities under section 605(b) of the RFA (5 U.S.C. 601 et seq.).

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general benefits and desirability of free trade, it is our policy to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

The final rule will not impose significant barriers to the international trade of the United States. In their remarks posted to the public docket, a few commenters asserted that the cost of complying with the rule would adversely impact the competitiveness of U.S. firms operating in international markets. We agree that this could occur in isolated markets as a result of the requirements of the rule, but we do not have any data that would allow us to quantitatively measure such an effect.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effect of any Federal mandate in a proposed or final agency rule that may result a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.

This rulemaking does not impose an unfunded mandate in excess of the inflation adjusted $100 million threshold on State, local, or tribal governments, but it does impose an unfunded mandate on the private sector. The analysis required under Title II of the Act is satisfied within the analysis provided above.