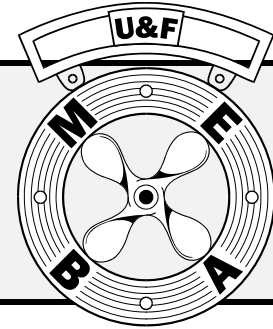


LEGISLATIVE UPDATE

APRIL 2009



Rep. Bobby Scott to Lead Push for Fairness and Accuracy in Background Checks

The Fairness and Accuracy in Employment Background Checks Act, a bill to be introduced by Rep. Robert Scott (D-VA), Chairman of the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, would improve the reliability and accuracy of criminal background checks issued by the FBI for employment screening purposes. Not unlike the FBI procedures that apply to gun checks, the bill will simply require the FBI to update old and incomplete arrest information it releases for employment purposes, while authorizing the FBI to collect a reasonable fee for this activity.

The Problem: As the U.S. Attorney General documented in a recent report to Congress, 50% of all the FBI's records are incomplete or inaccurate, mostly due to arrests that have not been updated by state and local authorities. The FBI conducts about 5 million criminal background checks a year for employment and licensing purposes at the request of the states and federal agencies, including the Transportation Security Administration. Some private employers can also access the FBI's records pursuant federal laws regulating nursing homes, schools, private security officers, and other occupations. Despite the increased access to the FBI's rap sheets for employment screening purposes, there have been no reforms to address the poor quality of the FBI's records. As a result, workers and employers are both penalized when background checks do not provide accurate information upon which to base decisions regarding the safety and security of the workforce.

The Solution: The Fairness and Accuracy in Employment Background Checks Act will significantly improve the reliability of the FBI's procedures.

- Similar to the practice of the FBI in reviewing criminal records for authorizations to purchase firearms, the FBI would be required, within five days of a request for an employment background check, to locate missing disposition information before releasing the rap sheet for employment screening purposes.

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- As required by the federal law regulating private security background checks, arrests older than one year that do not include a disposition will not be reported on an FBI rap sheet for employment purposes unless the FBI can verify that the case is still being actively prosecuted.
 - It would codify current FBI regulations that provide that "non-serious" juvenile and adult offenses should not be reported on FBI rap sheets prepared for employment purposes.
 - An individual subject to an employment criminal background check would have the right to receive a copy of his or her rap sheet, thus providing the individual with an opportunity to verify the accuracy of the information.
 - It would provide a fair and timely procedure for workers to challenge inaccurate FBI records, requiring an investigation of federal, state and local records and correction by the FBI.
 - Annual reporting requirements on the accuracy of the FBI's criminal records for employment screening purposes would be imposed.
 - Attorney General would be directed to inventory the employment restrictions based on criminal records required by federal law and policy.
 - The FBI would be authorized to charge a reasonable fee to pay for the activities necessary to investigate and update incomplete criminal records produced for employment background checks.

Great Lakes Maritime Task Force Hosts 13th Annual Congressional Briefing

On April 2, the GLMTF hosted another rousing look at the advancements and challenges in store for the embattled industry along the Great Lakes. The group was joined by Congresswoman Marcy Kaptur (OH-9), Congresswoman Kathy Dahlkemper (PA-3) and Congressman Mark Schauer (MI-7). In attendance from M.E.B.A. were, President Don Keefe, Secretary-Treasurer Bill Van Loo, Cleveland Rep. Torey Zingales and Political & Legislative Rep. Quentin Hines. Foremost on everyone's mind was the importance of ensuring that Harbor Maintenance Funds are used for Harbor Maintenance such as dredging and the House of Representatives' approval of funding

for a second Great Lakes Icebreaker. The following coverage of the briefing appeared in the April 3rd *American Shipper* newswire:

Large commodity shippers dependent on Great Lakes vessel transportation are increasingly frustrated about shortening their loads because of insufficiently dredged harbors. "In June, a vessel with a designed carrying capacity of 28,300 net tons left our plant in Calcite, Mich., with only a little more than 24,000 tons in her holds," said Thomas Buck, president and chief executive officer of Carmeuse Lime & Stone, in a speech Thursday to members of the Great Lakes Maritime Task Force in Washington. "The dredging crisis cost us nearly 15 percent of the vessel's carrying capacity." Carmeuse operates three large stone quarries that ship via the Great Lakes. In 2008, those quarries loaded 14 million tons of aggregate and fluxstone into Great Lakes freighters, making it one of the largest shippers in the region.

Buck said the dredging crisis costs Carmeuse nearly 2 million tons of cargo a year. "The same number of vessels needed to deliver Carmeuse's annual tonnage could deliver another 1.9 million tons of limestone and another 50,000 tons of kiln fuel if Great Lakes ports and waterways were properly dredged," he said. Other shippers, such as the region's coal and iron ore suppliers, are experiencing the same problems across the Great Lakes' more than 100 ports.

The U.S. Army Corps of Engineers estimates it needs \$200 million to restore the Great Lakes navigation system to functional dimensions. Without the necessary funding, Great Lakes vessels will continue to ship at less than their capacity potential.

The Great Lakes Maritime Task Force is pressing Congress to provide sufficient funds for dredging harbors and waterways. In 2008, the task force's lobbying helped secure a nearly \$40 million increase in the Corps' dredging budget for the Great Lakes.

Donald Cree, president of the task force, and national vice president of the Great Lakes for the American Maritime Officers union, said the funding increase "allowed the Corps to not only remove the sediment that built up over the year, but even begin to whittle away at the 18 million cubic yards of sediment that still clog our ports and waterways." He noted, however, that the effort was short-lived. President Bush's final proposed budget for fiscal year 2009 slashed nearly \$50 million from the Great Lakes' dredging appropriation. "Fortunately, the omnibus bill added \$35 million back for lakes dredging, so we should be able to keep reducing the backlog in 2009."

Cree said the “ace in the hole” for Great Lakes dredging initiatives should be the existing Harbor Maintenance Trust Fund, the repository for the port-use tax levied on waterborne commerce, which now has a surplus of about \$5 billion.

“That surplus is tax dollars American industries paid so waterways would be dredged,” Cree said. “It was not a charitable contribution to be used at the government’s discretion. Quite frankly, some people in Washington forgot about the ‘trust’ in the trust fund.”

The nation’s port interests have launched an effort to have legislation passed that would require the Harbor Maintenance Trust Fund to spend what it takes in each year. “That’s a considerable amount of money -- about \$1.1 billion a year. The reason we have a dredging crisis is the fund only spends about \$700 million a year. So much for ‘user pay, user say,’ ” Cree said.

Buck of Carmeuse urged members of the task force to work even harder this year to get Congress to fully fund Great Lakes dredging. He said a lawmaker warned him during a Wednesday meeting that there are “worse things to come. I’m afraid we’ll see the numbers go down instead of up.”

Rep. Marcy Kaptur, D-Ohio, told the task force that the time is now to lobby the Congress for sufficient Great Lakes dredge funds and infrastructure upgrades, especially with Rep. James Oberstar, D-Minn., at the helm of the House Transportation and Infrastructure Committee and President Obama in the White House. “You should be busier now than you’ll ever be in your life,” she said. — Chris Gillis

Coast Guard Releases ANPRM on TWIC Reader Requirements

On March 27th, the Coast Guard published the agency's preliminary thoughts on potential requirements for the use of electronic readers designed to work with TWIC as an access control measure in an advanced notice of proposed rulemaking (ANPRM) in the *Federal Register*.

Specifically, this ANPRM discusses separating individual MTSA-regulated vessels, facilities, and Outer Continental Shelf (OCS) facilities into one of three risk groups. According to the notice, each risk group would have its own associated electronic TWIC reader requirements:

Risk Group A. "Vessels and facilities in the lowest risk group continue to use TWICs primarily as a visual identity badge only, at all Maritime Security (MARSEC) Levels, and subject to electronic verification during inspections and spot checks, as currently required in the joint Coast Guard and TSA final rule on TWIC, issued on January 25, 2007. 72 FR 3492."

Risk Group B: At "MARSEC Level 1, those in the middle risk group would perform an electronic read of the TWIC to verify its authenticity and to verify the validity of the card (i.e., ensure that it has not been revoked). Owners or operators of these vessels and facilities would match the TWIC-holder's fingerprint to the biometric template stored within the TWIC (i.e., perform a biometric match) at MARSEC Level 1 on dates chosen randomly within a frequency of at least once a month. They would perform the biometric match at each entry at the higher MARSEC Levels."

Risk Group C: "Vessels and facilities falling into the highest risk group would perform the biometric match and verify the authenticity and validity of the card at each entry at all MARSEC Levels.

The Coast Guard is specifically requesting comments on this process and, in particular, the Risk Group divisions and application of MARSEC Levels to reader requirement frequency.

Another area where the Coast Guard is seeking comment is to its proposal that each risk group have the option of using recurring unescorted access for up to 14 TWIC holders, per vessel or facility, if that provision is included in their amended security plan and approved by the Coast Guard. The Coast Guard describes this process in the notice as follows: "In order to take advantage of recurring unescorted access, the owner or operator of the vessel or facility would conduct an initial biometric match of the individual against his/her TWIC, either at hiring or upon the effective date of a final rule, whichever occurs later. This biometric match would include a verification of the authenticity and validity of the TWIC. Once this check is done, the TWIC need only be used as a visual identity badge, at a frequency to be approved by the Coast Guard in the amended security plan, so long as the validity of the TWIC is verified periodically, ranging from monthly to daily, depending upon risk group and MARSEC Level."

The Coast Guard specifically seeks comment as to whether 14 persons is the appropriate number of persons eligible for recurring unescorted access and whether this process is appropriate for facilitating industry operations while maintaining an appropriate level of port security.