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TRANSPORTATION WORKER IDENTIFICATION CARDS

(110–58)

HEARING

BEFORE THE

SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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CONTENTS

Page

Summary of Subject Matter vi

TESTIMONY

Allegretti, Thomas, President, American Waterways Operators 33
Candies, III, Otto, Secretary/Treasurer, Otto Candies, LLC for Offshore Marine Services Association 33
Fanguy, Maurine, TWIC Program Manager, Transportation Security Administration 5
Gosselin, Debbie, Owner of Chesapeake Marine Tours/Watermark Cruises, Passenger Vessel Association 33
Holder, Tamara, Representative for Rainbow/Push Organization 33
Rodriguez, Michael, Executive Assistant to the President, International Organization of Masters, Mates, and Pilots 33
Salerno, Rear Admiral Brian, Assistant Commandant for Policy and Planning, U.S. Coast Guard 5
Willis, Larry, General Counsel, Transportation Trades Department, AFL-CIO 33

PREPARED STATEMENTS SUBMITTED BY WITNESSES

Allegretti, Thomas A. 48
Candies, III, Otto 57
Fanguy, Maurine 61
Gosselin, Debbie 72
Holder, Tamara N. 80
Rodriguez, Michael 85
Salerno, Rear Admiral Brian 92
Willis, Larry I. 111

SUBMISSIONS FOR THE RECORD

Salerno, Rear Admiral Brian, Assistant Commandant for Policy and Planning, U.S. Coast Guard, responses to questions from Rep. Cummings 97

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July 10, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Coast Guard and Maritime Transportation

FROM: Subcommittee on Coast Guard and Maritime Transportation Staff

SUBJECT: Hearing on Transportation Worker Identification Cards

PURPOSE OF THE HEARING

On Thursday, July 12, 2007, at 10:00 a.m., in 2167 Rayburn House Building, the Subcommittee on Coast Guard and Maritime Transportation will meet to examine the Transportation Worker Identification Credential ("TWIC") program. The TWIC program was established to ensure that transportation workers – in all modes – are not a "terrorism security risk". The Subcommittee is interested in learning about the administrative issues that have delayed the implementation of this program for years; and whether the appeal process for transportation workers realistically assesses the likelihood that the applicant poses a terrorism security risk.

BACKGROUND

The Maritime Transportation Security Act of 2002 ("MTSA") required the Coast Guard to develop a biometric transportation security identification card for maritime workers and any individual that would be granted unescorted access to a secure area of a port facility.

An individual could not be denied a TWIC card unless the Secretary determined that the individual had been convicted within the preceding seven years of a felony that the Secretary believes could cause the individual to be a terrorism security risk to the United States or for causing a severe transportation security incident, or if the individual has been released from prison within the past five years for causing one of those two types of violations. An individual could also be denied a TWIC card if the Coast Guard found that the individual "otherwise poses a terrorism security risk to the United States."

The SAFE Ports Act of 2006 required the Secretary to disqualify any individual who has been found guilty of treason, espionage, sedition, or terrorism from getting a TWIC.

The regulations prescribed to implement the TWIC regulations establish two sets of disqualifying crimes: "permanent disqualifying criminal offenses" and "interim disqualifying felonies".

Individuals convicted or found not guilty by reason of insanity of the criminal offences below are permanent disqualifying from receiving a TWIC:

- Espionage, or conspiracy to commit espionage.
- Sedition, or conspiracy to commit sedition
- Treason, or conspiracy to commit treason.
- A federal or State crime of terrorism, or conspiracy to commit such a crime.
- A crime involving a transportation security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. (Work stoppage, or other nonviolent employee-related action, resulting from an employer-employee dispute is not a transportation security incident.)
- Improper transportation of a hazardous material as defined in federal or State law.
- Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device, as defined by federal regulation.
- Murder.
- Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility.
- Violations of the Racketeer Influenced and Corrupt Organizations Act or any comparable State law, where one of the predicate acts found by a jury or admitted by the defendant, consists of one of the crimes listed above.
- Attempt to commit espionage, sedition, treason, or terrorism.
- Conspiracy or attempt to commit the remainder of the crimes above.

The criminal offences listed below are "interim disqualifying felonies" IF (a) the applicant was convicted, or found not guilty by reason of insanity within 7 years of the date of application; or, the applicant was incarcerated for that crime and released from incarceration within 5 years of the application:

- Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transportation, delivery, import, export of, or dealing in a firearm or other weapon, as defined by federal regulation.
- Extortion.
- Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering where the money laundering is related to any of the list of permanently disqualifying crimes, or interim disqualifying crimes. (Welfare fraud and passing of bad checks do not constitute dishonesty, fraud, or misrepresentation of purposes of this paragraph.)
- Bribery.
- Smuggling.
- Immigration violations.

- Distribution of, possession with intent to distribute, or importation of a controlled substance.
- Arson.
- Kidnapping or hostage taking.
- Rape or aggravated sexual abuse.
- Assault with intent to kill.
- Robbery.
- Conspiracy or attempt to commit the crimes listed above.
- Violations of the Racketeer Influenced and Corrupt Organizations Act, or comparable State law other that the violations listed in the previous paragraph, for fraudulent entry into secure seaport areas.

Further, an applicant who is wanted for a crime; has an outstanding warrant; or indictment for a felony listed in either list above is disqualified until the want or warrant is released or the indictment is dismissed. If a fingerprint check reveals an arrest for a disqualifying crime without indicating the disposition, TSA will notify the applicant and provide instructions on how the applicant must clear the disposition. The applicant has 60 days to provide TSA with written proof that the arrest did not result in a conviction of a disqualifying crime.

An applicant may "appeal an initial determination of threat assessment based on criminal conviction, immigration status, or mental capacity". TSA performs a paper work review of the material provided by the applicant. There are deadlines for supplying and requesting documents, and requests for extensions. Just how long this appeal process might take cannot be predicted because TSA can grant itself an extension of time 'for good cause'.

If the applicant may also request a "waiver of criminal offenses, immigration status, or mental capacity standards", but first must pay the fees for a TWIC and provide information demonstrating that he/she is not a terrorism security risk. TSA then considers the circumstances of the disqualifying act or offense, restitution made by the applicant, any Federal or State mitigation remedies, and court records or official medical release documents, or other factors that indicate the applicant does not pose a security threat warranting denial of the TWIC.

An applicant who is denied a TWIC may appeal to an Administrative Law Judge (ALJ). In the case of a mariner the request must be made to the ALJ Center in Baltimore, Maryland. Again the burden is on the applicant to prove that he/she is not a "terrorism security risk".

The SAFE Port Act required TWIC to be implemented by 2008. TWIC has encountered numerous delays since 2002. The Transportation Security Administration (TSA) has awarded a $70 million contract to Lockheed Martin to begin installing TWIC enrollment centers; however much of the infrastructure needed to handle the cards has yet to be put into place. TWIC cards were supposed to begin being issued in March in Wilmington, Delaware. Now it appears that this first cards will not be issued anywhere until fall. There is no firm schedule, but the Coast Guard regulations require transportation workers to obtain a TWIC card by September 2008.

When TSA begins issuing TWIC credentials it will be in selected locations and may require long travel by the applicant who much appear in person at least once to obtain the card.

The U.S. Department of Homeland Security published the final rule for the Transportation Worker Identification Credential program in January designed to enhance port security by checking the backgrounds of workers before they are granted unescorted access to secure areas of vessels and maritime facilities.

The rule lays out the enrollment process, disqualifying crimes, usage procedures, fees and other requirements.

The TSA and the U.S. Coast Guard held four public meetings around the nation and received more than 1,900 comments on the initial draft of the rule. Comments were filed by workers, port owners, port operators, small businesses and others who would be affected by the new program.

Specific measures include:

Security threat assessment. Applicants will undergo a comprehensive background check that looks at criminal histories, terrorist watch lists, immigration status and outstanding wants and warrants. If no adverse information is disclosed, TSA typically completes such an assessment in less than 10 days.

Technology. The credential will be a "smart card" containing not only visible information -- the applicant's photograph and name, an expiration date and a serial number -- but also an integrated circuit chip that will store the holder's fingerprint template, a PIN chosen by the individual, and a unique identifier.

Eligibility. Individuals lacking legal presence and immigration status in the United States, those connected to terrorist activity, and those convicted of certain crimes will be ineligible for this credential.

Use. During the initial rollout of the credential, workers will present their cards to authorized personnel, who will compare the holder to his or her photo, inspect security features on the card and evaluate the card for signs of tampering. The Coast Guard will verify the cards during inspections and during spot checks, using handheld readers to ensure credentials are valid. Until card reader technology is tested and a regulation issued on access control, however, facility owners and operators will not be required to use card readers for facility access.

Cost. The fee for the card will be between $139 and $159, and it will be valid for five years. Workers with current, comparable background checks – including a hazardous materials endorsement on a commercial driver's license, a merchant mariner document or a Free and Secure Trade (FAST) credential – will pay a discounted fee, between $107 and $127.

Biometric data. Applicants must provide a complete set of fingerprints and sit for a digital photograph. Fingerprint templates extracted from the biometric data will be stored on the card.

Privacy and information security. The entire enrollment record, including all fingerprints collected, will be stored in the secure TSA system. The "Trusted Agents" of any enrollment support vendors will have to undergo their own security checks before collecting workers' data. Once

enrollment is completed, all the individual's personal data will be deleted from the enrollment center work stations.

TWIC readers:

The Administration has not prescribed standards for "TWIC card readers". Those are devices that can read the biometric information on the TWIC card to verify that the individual that possesses the card is the individual to whom it was issued. The SAFE Port Act required the Coast Guard to prescribe TWIC card reader requirements based on the number of people on the vessel and the area of operation of the vessel. For example, a charter fishing boat operating on Chesapeake Bay with one licensed captain may not need to have a TWIC card reader. Operators of small vessels are very concerned about the cost and practicality of requiring TWIC card readers on their small vessels.

ISSUES

There remain several issues for the approximately 14 million transportation workers, including the 750,000 maritime workers, who will have to obtain a TWIC: when can they start obtaining their cards and where will they be able to get them; whether the disqualifying crimes included in the regulations accurately indicate an applicant's a terrorism security risk; what will a transportation worker have to do to prove that they are not a terrorism security risk to the transportation system; and will the control system adopted for commercial vessels be based on the terrorism risk of that vessel, or will it be a one-size-fits-all approach?

Many in the maritime sector have concerns about the process for "new hires" – people entering the maritime world for the first time. The current rules required that a "new hire" complete the application and pay the fees for a TWIC before the TSA will begin a background check to determine whether there is any risk. Industry would like to be able to check the potential mariner against the established data base at the same time they begin other screening, and allow a "new hire" to work on an interim basis while the finally processing is completed. Industry fears that the delay – and expense – of obtaining a TWIC will discourage potential workers from entering the industry at a time when much of the industry is desperately seeking workers.

Other segments of the maritime industry – particularly small passenger vessel operators are concerned about the impact anticipated delays in obtaining a TWIC will have on the hiring of seasonal workers, who in many cases work on vessels with short seasons. If they encounter any significant delays their season could be over before they get their credential. The news of delays could discourage many needed seasonal workers from returning to jobs that need to be filled.

There are persistent questions about whether the interim disqualifying crimes will prevent a transportation worker or 'new hire' access to a job in maritime transportation. The law establishes permanently disqualifying crimes – espionage, sedition, treason, and terrorism. However, the list of interim disqualifying offenses is established by regulation, and some question the relationship between these crimes and the assessment of the applicants risk as a terrorism security threat. The applicant must prove that those crimes do not make them a terrorism security risk.

WITNESSES

PANEL I

Rear Admiral Brian M. Salerno, USCG
Director, Inspection and Compliance
Coast Guard

Ms. Maurine Fanguy
TWIC Program Manager
Transportation Security Administration

PANEL II

Mr. Larry Willis
General Counsel
Transportation Trades Department, AFL-CIO

Mr. Mike Rodriguez
Executive Assistant to the President
International Organization of Masters Mates & Pilots

Mr. Thomas Allegretti
President
American Waterways Operators

Mr. Otto Candies III
Secretary & Treasurer for Otto Candies, LLC
Offshore Marine Services Association

Ms. Debbie Gosselin
Owner of Chesapeake Marine Tours/Watermark Cruises
Passenger Vessel Association

Ms. Tamara Holder
RAINBOW Push

HEARING ON TRANSPORTATION WORKERS IDENTIFICATION CARDS

Thursday, July 12, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
Washington, DC.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 2167, Rayburn House Office Building, the Honorable Elijah Cummings [Chairman of the Subcommittee] presiding.

Mr. CUMMINGS. Good morning. The Subcommittee will now come to order.

From the first day I assumed the Chairmanship of this Subcommittee I began to hear from the maritime industry about the "TWIC" program, the Transportation Worker Identification Credential. The TWIC is essential to ensuring that we allow only those people to access our nation's sensitive transportation infrastructure, like the ports through which so much of our commerce flows, who do not pose a threat to the security of that infrastructure, and, indeed, our nation.

However, like all the new security measures instituted after 9/11, the introduction of TWIC requires the Government to strike a delicate and careful balance to ensure that the security measure achieves our critical security goals but does not, and I emphasize does not, place an undue burden on the maritime industry, interfere with the flow of commerce, or lead to the unfair treatment of workers.

Today's hearing will give the Subcommittee the opportunity to take a comprehensive look at the impact that the introduction of the TWIC may have on the maritime industry. Unfortunately, also like many of the security improvements introduced after 9/11, the rollout of TWIC has not been as seamless as expected. The card was initially expected to be issued in 2003 and has now been issued to just a handful of transportation workers under a pilot program.

The first maritime workers will likely begin receiving cards in the fall. The current schedule expects all transportation workers to receive a card by September of 2008. But the Government Accountability Office estimates that 750,000 mariners and 3,500 maritime facilities and more than 10,000 vessels will need the card, presenting a significant challenge to TSA and to the Coast Guard.

Mariners will be required to pay approximately $140 to obtain a TWIC unless they already have a merchant mariner document.

However, the Government Accountability Office reported in a September 2006 study that the Transportation Security Administration has estimated that the rollout of the TWIC will cost the Government and maritime industry $800 million over the next 10 years. And we do not yet know for sure precisely how that sum will be divided between the two parties.

Importantly, the cards themselves is only half of the puzzle that needs to be solved to create the security regime that TWIC is intended to provide at our ports. The card must be validated by readers that will control access to secure locations. But the Government has not yet issued a final rule regarding the readers. Thus, many of the questions that the industry approached me with back in January remain to this day unanswered, including whether smaller vessels and facilities will be required to have a card reader, and even who will bear the cost of the reader installation. I hope our witnesses will address that issue because this is one that has been brought to me over and over and over again.

I noted that in Rear Admiral Salerno's testimony he talked about, and so did Ms. Fanguy, talked about not interfering with commerce, undue interference with commerce. I want to know about that because one of the things that I do not want to do is see small operators in the maritime industry be unduly burdened when they are trying to conduct their businesses. Of course, we want to strike that balance of national security, but we also want to make sure that we look at how this effects small operators.

Perhaps most critically, the rollout of the TWIC also entails the conduct of a comprehensive security screening of all workers now in the maritime industry and the introduction of an ongoing screening program that will examine all who will enter the maritime industry. A person who applies for a TWIC will undergo a background check, a check of immigration status, and a check against national terrorism databases. Certain crimes involving terrorism or transportation security incidents will permanently disqualify a person from receiving a TWIC. Other convictions within the past seven years will constitute interim disqualifications.

While individuals who are denied a TWIC because DHS believes that they pose a security risk or are due to a disqualifying crime will have the opportunity to appeal, the appeals process will be complicated. It will place the burden of disproving the Government's determination on the applicant. I note that the Baltimore Sun on June 24 of this year published serious allegations against the Coast Guard's administrative law system. If they prove to be true, ladies and gentlemen, they raise very, very, very disturbing questions about the ability of the system to guarantee fair treatment to mariners who come before it. Our Subcommittee is closely examining the allegations and we anticipate that the Coast Guard's administrative law system will be the subject of a hearing later this month.

Obviously, the purpose of the TWIC is to prevent people who pose a security risk from accessing a port, and that security purpose is paramount. However, I strongly believe that those who have made mistakes that did not involve security and who do not pose security risks should not be denied the opportunity to work in the maritime industry, which is essentially what the denial of

a TWIC application will mean. President Bush himself said in his 2004 State of the Union Address, "America is the land of the second chance." And when the gates of the prison open, the path ahead should lead to a better life. The maritime industry offers great opportunities for that better life and it also faces a critical labor shortage. It is imperative that the process for denying an individual those opportunities be fair and not put unsurmountable hurdles in the way of hardworking individuals who are truly committed to bettering their lives.

I look forward to today's testimony and our witnesses. I want to thank all of you for being here. And now I recognize our distinguished Ranking Member who I am honored to work with, it is a real pleasure, our Ranking Member Mr. LaTourette.

Mr. LATOURETTE. Well thank you very much, Mr. Chairman, and it is an honor and a pleasure to work with you. I think we have developed a good partnership in this early stages of the 110th Congress. Before giving my opening remarks, I would ask unanimous consent that Mr. Baker of Louisiana, a Member of the Full Committee but not of the Subcommittee, be permitted to make an opening statement and participate in today's hearing.

Mr. CUMMINGS. Without objection, so ordered.

Mr. LATOURETTE. I thank you, Mr. Chairman. The Subcommittee is meeting this morning to continue its oversight of the Department of Homeland Security's efforts to implement transportation security credential programs that were first required under the Maritime Transportation Security Act of 2002. Under that Act, all maritime workers will be required to apply for and receive the TWIC that is embedded with biometric information.

In the nearly five years since this requirement was first enacted several statutory deadlines have been established for the rollout of the program, including a deadline of July first of this year, 2007, which was set in last year's SAFE Port Act. The Department has issued final regulations to implement the program in January of this year; however, no TWIC cards have been issued and it is unclear when this program will be up and running. The program is critical for maintaining security levels at our seaports and we simply cannot afford to miss any further deadlines. I hope and expect that the witnesses will provide the Subcommittee this morning with a firm implementation schedule for this important program. I am confident that under the leadership of our very talented and gifted Subcommittee Chairman, this Subcommittee will do its part to make certain that this schedule is met.

Under the SAFE Port Act, the Department is required to develop TWIC card reader technologies and to test those technologies in a pilot program to be established at several U.S. ports. I understand that plans are underway to start the pilot program at the ports of Los Angeles and Long Beach in the near future. I hope that the witnesses will share more information with the Subcommittee regarding the Department's plans to carry out testing under the pilot program, the anticipated schedule for receiving results, and the number and location of ports that will participate.

The Subcommittee will also hear from several witnesses on the second panel regarding the anticipated impacts of the new TWIC requirements on maritime industries and maritime workers. I en-

courage the Coast Guard and the Transportation Security Administration to continue working with these groups to reduce negative impacts to the greatest extent possible.

I want to thank all of the witnesses for appearing today in advance. I look forward to receiving their testimony. And I yield back to the Chairman.

Mr. CUMMINGS. Thank you very much, Mr. LaTourette. We will certainly welcome Mr. Baker to our hearing.

We want to thank you, Mr. Baker, for your interest in this hearing. We have heard a lot of very good suggestions and input from you. So we welcome you, and I yield to you for an opening statement.

Mr. BAKER. Mr. Chairman, I appreciate the courtesy extended and the assistance of the Ranking Member in allowing me to have a brief opening statement on this matter. I come here today out of a strong sense of urgency for the Louisiana marine industry and the potential complications that the current structured TWIC implementation may present to that industry.

It is currently very difficult to get new hires to enter into the marine business. For those who have never been on the southern end of the Mississippi on a slow day in August, traveling seven knots on the river, it came make quite an impression on you. The practical observation I wish to make is that requiring someone to make the physical trip to a regional center and pay the $137, even if it is the most convenient and expedited process possible, creates a barrier to employment that is real. For many of these individuals, they are entry level jobs, first entering the workforce perhaps, and they have not yet made nor have they determined their suitability for a life in the marine industry.

Further, I would point out, at least from my perspective, that it is the person in command and control of that vessel tow that presents the most significant threat to some untoward ill-advised activity. A deck hand would have to join together with others and almost create some act of mutiny to take over the vessel and conduct some activity which would not be in the public interest. Now I realize individuals can do certain things to bring about certain ill events. But it would seem that in the risk profile that a new hire just coming on to the job should be able to pass some rudimentary background examination, checked against the terrorist list, drug screens, the very commonsense things that one might expect to be done on any employment, but then given some period of time and perhaps the ability to earn a paycheck or two so that when they pay that fee they have the financial ability to do it, and secondly, have made the career decision that this is something that I really want to continue to engage in, therefore applying for my TWIC makes professional sense.

I come to those observations and recommendations not on my own but from some considerable conversation with people in the industry who are struggling to find young men and women who choose to work in the this type of occupation. Further, Chairman Oberstar has indicated in a hearing just concluded his willingness to consider modifications statutorily to the program. I am anxious, of course, to work with and hear the reasonable explanations as to

why this approach could not be modified or, more importantly, be found a reasonable modification to the current proposal.

I regret further, Mr. Chairman, that because of Committee schedules, I cannot stay for the hearing this morning. But I did not want the opportunity to go by since I raised the issue at Full Committee. I certainly wanted to at least personally inform the expert witnesses here today of my sincere interest in this matter and, to express to you, Mr. Chairman, and to Ranking Member LaTourette my deep appreciation for the hearing and for the opportunity to continue to work with you as we go forward. I thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you very much, Mr. Baker. Mr. Coble.

Mr. COBLE. Mr. Chairman, very briefly. I, not unlike the gentleman from Louisiana, have another Committee hearing as well. I want to hang around here for a while because this is a very, very significant issue. I thank you and the Ranking Member for having called the hearing. Thank you.

Mr. CUMMINGS. Thank you very much, Mr. Coble.

We now welcome our first panelists. Ms. Maurine Fanguy is the TWIC Program Manager for the Transportation Security Administration, and Rear Admiral Brian Salerno is the Director of Inspection and Compliance for the United States Coast Guard. We will hear from Ms. Fanguy first and then we will hear from the Rear Admiral. Again, we thank you very much for being with us.

TESTIMONY OF MAURINE FANGUY, TWIC PROGRAM MANAGER, TRANSPORTATION SECURITY ADMINISTRATION; REAR ADMIRAL BRIAN SALERNO, ASSISTANT COMMANDANT FOR POLICY AND PLANNING, U.S. COAST GUARD

Ms. FANGUY. Good morning Chairman Cummings, Ranking Member LaTourette, and distinguished Members of the Subcommittee. Thank you for this opportunity to speak about the Transportation Worker Identification Credential, or TWIC, program.

My name is Maurine Fanguy and I am the program director for TWIC. I am pleased to represent Assistant Secretary Kip Hawley here today. I would first like to thank this Committee for its leadership in defining the vision and requirements for TWIC. Today I will discuss TSA's progress in delivering this critical security enhancement.

For us, the stakes are enormously high. We are mindful of the SAFE Port Act July 1 deadline. But before TSA rolls out one of the world's most advanced interoperable biometric systems, we must ensure that we get it right the first time, and, even more importantly, the TWIC enrollment process cannot negatively impact the free flow of commerce or people's livelihoods.

Once TWIC is up and running, TSA will vet as many workers in one day as we did during the entire year of prototype. The importance and enormity of this task within the maritime environment, with a dynamic and mobile workforce, demands that we get it right. Moreover, for the people who pay for these cards and use them daily to enter their workplaces and jobs, we must ensure that the program is fully tested and does not compromise security or privacy.

It is important to realize that there are four key differences that make the TWIC card dramatically different from the badges we all wear everyday:

One, the TWIC cards uses "smart card" and biometric technologies based on the most advanced Federal Government standards and for the first time applies them in the commercial sector.

Two, TWIC issues cards that can be used at any port or vessel across the entire nation.

Three, TWIC has massive scale. Over one million cardholders will use this same credential across 3,200 facilities and on 10,000 vessels.

Four, finally, TWIC issuance is based on comprehensive security checks that involve sharing data across multiple agencies. These checks are integrated into all of TSA's vetting programs. Which means that we can connect the dots throughout the entire transportation sector.

TWIC is a sophisticated system powered by state-of-the- art technologies and we are focused on a rigorous program to flight test TWIC before we can go out to the ports. Testing is well underway and, based on our most recent test results, we expect to begin enrollment in Wilmington, Delaware in the fall of this year. After proving our field processes in Wilmington, TWIC enrollment will proceed throughout the nation in a phased-in approach based on risk and other factors. The 130 enrollment sites will be established by the end of fiscal year 2008.

TSA will continue to work with our partners, the U.S. Coast Guard, and maritime stakeholders to ensure that for the first time in history thousands of independent businesses will have one interoperable security network and workers will hold a common credential that can be used across that entire network. Assistant Secretary Hawley has given us the mandate to get TWIC right the first time.

Thank you for the opportunity to appear today. I would be happy to answer any questions.

Mr. CUMMINGS. Thank you very much. Rear Admiral.

Admiral SALERNO. Good morning, Chairman Cummings, Ranking Member LaTourette, and distinguished Members of the Subcommittee. Thank you for this opportunity to speak with you this morning about the current status and the way ahead for the TWIC program. Specifically, I would like to update the Subcommittee on the Coast Guard's efforts, in partnership with TSA, to implement this program. Our overall goal is to strengthen maritime security while balancing the need to facilitate commerce and minimize negative impacts on port and vessel operators.

Although the TWIC program has not moved as rapidly as all of us would like, important milestones have been accomplished, working relationships have been strengthened with public and key industry stakeholders, and our commitment to protecting the maritime transportation system while facilitating commerce has not wavered. Since publication of the final rule in January of 2007, Coast Guard and TSA have continued to meet with our stakeholders in various venues and we have received considerable input on their ongoing concerns. These venues have included national

trade associations, marine industry organizations, and labor unions.

The concerns expressed in these meetings have focused on the details of TWIC enrollment and vetting, the need to ensure that new hire provisions contained in the rules function as intended and serve the needs of small businesses, and the execution of pilot tests which will pave the way for the follow on rulemaking addressing card reader requirements.

To facilitate the rollout of the TWIC cards, Coast Guard and TSA have worked together to develop several supplementary documents to assist those affected by the regulations. These documents include a Navigation and Vessel Inspection Circular, or what we call a NVIC, which explains the processes and procedures related to the implementation of the TWIC. In creating this NVIC, we have solicited and we have received valuable input from the affected industry as well as from Coast Guard field personnel.

This NVIC, which is numbered 307 and entitled Guidance for the Implementation of the Transportation Worker Identification Credential Program in the Maritime Sector, was approved last week and is now available to our industry partners, our stakeholders, and other interested parties on the Coast Guard and TSA internet websites.

We have also assisted in the development of two Small Business Administration compliance guides to further assist our industry partners and to provide a plain language overview of the program for TWIC applicants. These are currently undergoing final review and will be released in the near future.

Additionally, we are developing internal guidance documents for training, implementation, and enforcement to provide Coast Guard field personnel with the tools and policy necessary to ensure that the TWIC program is soundly and consistently implemented nationwide.

As we prepare for the implementation phase, we are committed to continue working with industry to bring about the smooth transition to TWIC access control measures. We are particularly aware of stakeholder concerns regarding the high turnover rate of personnel in some maritime trades and their ability to enable newly hired employees to begin work right away.

Our current regulations, policy, and guidance reflect those concerns, such as in provisions that enable new employees to begin work immediately after enrolling for their TWIC. In implementing TWIC, however, we want to ensure that special provisions like this one achieve an equivalent level of security across the maritime transportation system as a whole. For this reason, we are concerned about proposals that would grant specific maritime trade special exemptions to current requirements.

Although we are now working on implementation of the current TWIC program requirements, we have also begun to work on future rulemaking that will address requirements for card readers. The readers will be designed to verify a TWIC- holder's identity before gaining unescorted access to secure areas of a vessel or a facility. We are seeking the collaboration of our stakeholders in this effort. We have requested recommendations on specific potential reader provisions from our partners in the National Maritime Secu-

rity Advisory Committee, the Merchant Marine Personnel Advisory Committee, and the Towing Safety Advisory Committee.

In the meantime, to maximize the security benefit contained in the current TWIC requirements, the Coast Guard intends to procure handheld readers for use during vessel and facility spot checks. After the compliance date is reached in a given port, the Coast Guard will use the handheld card readers to randomly check the validity of an individual's TWIC. This will serve as an interim measure until the industry's card reader requirements are established.

TSA and Coast Guard continue to reach out to our private sector stakeholders in the interest of fashioning a regulation that strengthens America's maritime security while advancing commerce. Thank you, Mr. Chairman, for the opportunity to speak with you today. I will be happy to take your questions.

Mr. CUMMINGS. Thank you very much, Rear Admiral. I want to start with you, Rear Admiral, and just ask you a few questions. My concerns go in large part to where we are and are we going to be prepared to do this Coast Guard-wide. One of the things that this Committee has done is we are in the process of tackling a lot of issues, things like LNG, short sea shipping, boating safety, things of that nature, and one of the things that has become clearer and clearer, particularly post-9/11, is that the Coast Guard is being stretched and stretched and stretched.

And now here we have something new that we have got to deal with and is very, very important. I want to make sure that we are prepared, that we have the manpower and womanpower to do this and do it effectively and efficiently. Ms. Fanguy said something that is exactly right. We really have to get this right. Because if we do not get this right, it is going to be total chaos.

And so, Admiral Salerno, concerns are being raised about possible TWIC card reader requirements. And I know what you said about the regulations, but I hear this over and over again. For example, should a charter fishing boat with one licensed captain have to have a TWIC card reader so he can scan his own card? I am very serious about this. Part of the problem is that having been a businessman myself, one of the things that business people are concerned about is they have to know what is expected of them because they have to actually plan far out and they need to be clear as to what is expected. So can you comment on that one for me please.

Admiral SALERNO. Yes, sir. I will answer in two ways, if you will permit me, sir. As far as the requirement to obtain a TWIC, a merchant mariner, anybody who has a license or a document is required to obtain a TWIC. That is derived from the legislation.

Mr. CUMMINGS. Right. Talk about the card reader.

Admiral SALERNO. The card reader is the second aspect of this. That will be the subject of the next rulemaking. We have not yet determined what the threshold will be for card readers on smaller vessels. There are a series of pilots that will take place. You mentioned Los Angeles, Long Beach as a facility pilot, there are other facilities that will be looked at. But included in the pilot program are some vessels and we will look at towing vessels, for example, and small passenger vessels and make some determination as to

what the appropriate threshold is for a reader or if a reader is necessary. So I would say, sir, that is still to be determined.

Mr. CUMMINGS. And when do you anticipate that rulemaking?

Admiral SALERNO. It will become part of the pilot project but as well we have also asked the advisory committees to comment on what are the appropriate thresholds. So all of this will be taken up in the process of the second rulemaking.

Mr. CUMMINGS. I have read the testimony of our various witnesses, and you probably will not be here when they testify, but say, for example, a towing vessel with a crew of six people who have sailed together for years, would they have to have a TWIC card so that they can scan each other as they move on and off the vessel in fleeting operations with other barges? Those are the kind of questions they have.

Should a vessel on an inland lake such as Lake Powell in Utah have to have a TWIC card if there is little chance that they could be involved in a transportation security incident? Those are real practical questions that are going to be raised after you leave. Another one is how are you going to deal with TWIC card readers on ships like cruise ships whose personnel move constantly from a public area to a restricted area? Is it reasonable to require a cruise ship to have over 200 card readers at each doorway between a public and a restricted area? And would waiters have to scan their cards to get into the kitchens to pick up a tray of food?

These things sound very mundane but they are very real. And again, I have got to tell you, in talking to industry folks, maritime folks, they want to obey the law but they need to know what is expected of them so that they can properly prepare. And I am sure they would want to have as much input as possible into what you are doing in this rulemaking so that their concerns might be taken into consideration. And listening to what you just said, I take that to be the case?

Admiral SALERNO. Yes, sir. Absolutely the case that our intention is to remain fully engaged with our stakeholders so that as we go through this process of developing the requirements in the second rule we have the benefit of their views and we understand what is reasonable and practical.

Mr. CUMMINGS. Can you describe how the TWIC will work with or compliment merchant mariners documents, and how will the documents be consolidated, and how will the application process be coordinated?

Admiral SALERNO. The merchant mariners credentials, we have a proposal or project in place now to consolidate some of the existing merchant mariner credentials into a single document. Currently, there is a license, there is a document, potentially a certificate of registry, an STCW endorsement and so forth. So we have this multiplicity of documents that a mariner is required to obtain.

We are proposing to consolidate those. It will not at this point, however, include consolidation of the TWIC. So that a mariner would still have to have his merchant mariner credential and a TWIC. We do plan to harmonize as much as possible between those two documents so that we can parallel process the application for a TWIC and for a merchant mariner's document, so compressing the timeframe required.

Currently, to obtain a merchant mariner's document there is a security background check associated with that which is performed by the Coast Guard. Once the TWIC takes place, that background check requirement for security purposes will shift to the TWIC process. So there will not be a duplication of the security background check. What the Coast Guard will continue to do is a safety background check, such things as looking at the National Driver Register for drunk driving offenses and so forth, because there is a safety concern there that TWIC is not concerned with.

So to the extent possible, we will harmonize. But we are looking at still two separate documents.

Mr. CUMMINGS. All right. Well the current schedule expects that all transportation workers receive a card by September 2008. That is just a little over a year from now. But the Government Accountability Office estimates that 750,000 mariners, and 3,500 maritime facilities, and more than 10,000 vessels need the card. Is the Government prepared, and perhaps, Ms. Fanguy, you might want to take a look at this question, is the Government prepared to have issued all of those cards by September 2008?

Ms. FANGUY. We have established a plan that once we complete our testing of the system we will begin in Wilmington. After we have done the proving out of our processes in Wilmington, we have a pretty aggressive plan to stand up over 130 enrollment sites throughout the United States and its territories. Our plan is a two-pronged approach. We will be standing up fixed sites, those are the over 130 sites I mentioned, as well as mobile sites so that we can really get coverage across the nation. We recognize that this is a very large population, very mobile, and that is why we have this two-pronged approach so that we can try to get as much coverage as possible early on.

So right now, in partnership with our contractor Lockheed Martin, we certainly believe that we have the ability to fan out quickly. There is also a lot of flexibility within our contract to be able to add shifts if necessary to cover more workers in an area, to send out equipment and people to actually enroll workers. So we feel like we have a flexible plan in place. But, of course, we need to measure progress once we begin enrollment using a series of standard metrics that we will actually use to measure our contractor's performance and also our own. And that is how we will manage the program to make sure that we enroll all of the workers.

Mr. CUMMINGS. If I remember, in your testimony you talked about the contract with Lockheed Martin. And as you might imagine, this Committee has many concerns about contracts, particularly in light of deep water. I think you did say in your testimony something about bonuses. Did you mention bonuses in your testimony and how that would be determined?

Ms. FANGUY. We have a performance-based contract which is considered to be a best practice in Government contracting. So it is not a typical time and materials type of contract. We have set out a fixed price for enrollment. So we have one price that we pay the contractor for each person who comes in and applies for a TWIC. We then have a series of performance measures that our contractor must perform to, and there are both disincentives if they do not meet those performance levels as well as incentives. We

would be happy to get back to you with more details on the specific performance measures if that is something you would be interested in.

Mr. CUMMINGS. Yes. And the reason why I mentioned it is what you have said in your statement and in your written testimony, and that is that we have to get it right. We cannot afford to get it wrong.

I just have one or two more questions and then I will turn it over to Mr. LaTourette.

Going back to full implementation, are there plans, do you have contingency plans to delay implementation if the things do not go as you hope they should as you proceed?

Ms. FANGUY. In terms of Wilmington?

Mr. CUMMINGS. In terms of implementation of the requirement for the maritime workers to obtain the TWIC.

Ms. FANGUY. In terms of start of enrollment, we are basing the start of enrollment on completion of our testing. Right now, we would anticipate that that would start in the fall. But we will continue to monitor the progress of our testing of the system throughout the rest of the summer so that we can prepare to begin enrollment as quickly as possible in the fall.

Mr. CUMMINGS. One of the things that I want you to do so that we will not have any surprises is that I want you to keep the Committee apprised of what is going on, and if there are any significant problems we would like to know about them. We do not want to have to read about them in The Washington Post. If you would kindly do that, stay in contact with us and let us know what is going on.

Finally, let me ask you this. One of the things that I raised, and I have a number of questions about this but I am going to just ask you one, Ms. Fanguy, would you please walk us through the process of how you would evaluate whether someone with a felony conviction should be issued a TWIC card. For example, if a 30 year old man held up a 7-11 when he was 18 years old and went to prison for 3 years but now he has cleaned up his life, has held a steady job for the past 7 years, has family, volunteers in his church, would TSA automatically deny him a TWIC card because of his felony conviction, or will you evaluate his history to determine if he is a terrorism security risk?

Ms. FANGUY. That is a great question. That is something that we would take very seriously. We have based the TWIC process for conducting security threat assessments on our hazardous materials endorsement program which does the same kinds of checks. The type of situation that you mention is something that we deal with every day on the Hazmat program. So in that particular case, the individual would come into an enrollment site, would provide their biographic and biometric information. Once we get that information, we send that off to do a legal presence check, we also do an FBI criminal history records check, and then we check against our intelligence databases for potential ties to terrorism. At that point a trained adjudicator will get all of the data in a case file that they are going to look at.

So in the case that you mentioned, if it was one of the felonies that is a disqualifier within the TWIC rule, the individual would

be mailed what we call an initial determination of threat assessment. And what that letter is is it lets the person know that you have one of the crimes within the timeframes that is a disqualifier, but if you would like to get a waiver—in other words, if you were convicted and that truly is you, you can get a waiver for that offense. And that certainly is something, again, that we deal with every day.

We have tried to simplify our waiver process based on feedback from stakeholders on the Hazmat program. In terms of simplifying that process, we have made it more plain English. The other thing is we have made it so that you can provide any kind of evidence of your good character and the fact that you no longer present a security threat. So as an example, we would get letters from members of the community to attest to the person's good character, and also the time elapsed is certainly something that we would take into account.

When we get that information back from the individual we then look at it and look very hard at the facts presented to us and we will determine whether they truly present a security threat. And in that case that you described, without having the full details, it would be potentially that the person would get the endorsement in the Hazmat case or TWIC if they do not present a security threat assessment. The thing that is important is that the person actually take advantage of the appeal and waiver process, though.

Mr. CUMMINGS. Just one last thing. Who hears these cases? You just mentioned that they go before some type of adjudicatory body. Who hears these cases?

Ms. FANGUY. The first step is an appeals and waivers board. So an appeal is in the case that there may be erroneous information in your file. The waiver is if you truly did that offense on your rap sheet and you provide evidence to apply for a waiver for that.

Mr. CUMMINGS. You did not answer my question. I said who hears that.

Ms. FANGUY. TSA is the first body who hears that information.

Mr. CUMMINGS. Okay. Does the Coast Guard ALJ get involved in this at all?

Ms. FANGUY. In the next step in the process there is an ALJ hearing. We are currently a customer of the Coast Guard ALJ office.

Mr. CUMMINGS. And has there been any evaluation as to whether or not there are sufficient Coast Guard ALJs? Because I have got a feeling you are going to have a lot of cases coming through there. Is there any coordination?

Ms. FANGUY. Absolutely. We meet with the Coast Guard ALJ office regularly. We just met with them yesterday. They had two open ALJ positions and they are now filled and the judges will be reporting to duty shortly from what I understand. In terms of the actual ALJ function, I would defer to the Admiral to talk more about the Coast Guard function.

Mr. CUMMINGS. Admiral?

Admiral SALERNO. Yes, sir. The ALJ process would work as an administrative hearing where the respondent would present information to be considered by the judge on that case and the judge would make the ruling on that. We do feel that with the additional

two judges that have been hired we have the capacity to handle the anticipated workload from this program.

Mr. CUMMINGS. Mr. LaTourette.

Mr. LATOURETTE. Thank you, Mr. Chairman. The first thing I want to ask I am going to ask on behalf of the Ranking Member of the Full Committee, Mr. Mica, he asked me to ask a question about Florida. He says that the State of Florida conducted a TWIC pilot program with TSA for nearly two years and the result of the project is the State issued a Florida Uniform Port Access Credential. Unlike TWIC, FUPAC is in place and is providing additional safety and security protection of Florida ports. It is his understanding that FUPAC meets TWIC technical requirements, and the first part of the question would be is his understanding correct?

And secondly, that the State of Florida is concerned that it is unnecessary and redundant to also require TWIC at Florida ports. The question is, one, is it your understanding that this FUPAC meets TWIC technical requirements, and the second part is how is the department planning to work with Florida to address their concerns?

Ms. FANGUY. You are absolutely right that we have been working with Florida since the pilot and we have been in regular contact with them since the prototype ended. In fact, we had folks in Florida earlier this week meeting with the State of Florida to look at how we can consolidate into a single credential. Based on the conversations that we had then, it is our understanding that the Florida folks would like to consolidate and have one credential be the TWIC credential.

What we are really looking at is harmonization of the security checks. TSA does a comprehensive set of security checks that are quite different that the Florida checks. Our checks cover criminal history records checks, legal presence, as well as the consolidated Watch List checks. We feel that is very different, it is a security focused check and we feel like that is absolutely important to have in place to make sure that we are mitigating the risks in the ports including in Florida today.

Mr. LATOURETTE. I thank you. I think Mr. Baker, who is not here anymore, was here not only because of his great interest, but during a recent markup he had an amendment and there was a colloquy between he and the Chairman of the Full Committee, Mr. Oberstar, and it was proposal in an amendment that he withdrew that I guess the two sides are working on that deals with this interim period. I think you heard in his opening remarks that he is proposing something that is different from the current regulations.

My understanding, under the current regulations new hires will be allowed to work for 30 days or up to 60 days if granted a waiver, his proposal was 90 days, and the difference was that under the regulations you have to show proof that you have applied for the TWIC card and paid the fee, and I think his proposal is not in that regard.

I guess I would ask you, are you familiar with his proposal and would solicit any views that either of you have on it?

Admiral SALERNO. Sir, I will take the initial stab at that and then see if Maurine has anything to add. We do have some concerns about that. The one difference, primary difference is that in

the regulations as they are currently configured the applicant does have to apply for a TWIC, so that process begins to work. In the proposal as we have seen it, there is no requirement to apply. There is a 90 day window.

So right away there is a concern about how do we track individuals who are in this 90 day window, how do we enforce that. The 90 days sounds good but it may be so open-ended that it may be 180 days before we even become aware of it. So there is no database to track that.

There is a funding issue. The way TWIC is currently configured it is meant to be a self-funding system. So that the application fee works to help fund that background check. In the provision as we have seen it, there is no funding mechanism.

So those are some of the initial concerns, sir.

Mr. LATOURETTE. Ms. Fanguy?

Ms. FANGUY. I think the other thing TSA is concerned about is the level of checks that would be done. We think the checks that we have established for the TWIC program are comprehensive and really help to mitigate the threats that we have in the ports today. Our focus is to keep terrorists and associates of terrorists out of the ports. That is why we have the three phased series of checks. And we do have a concern if those checks are not conducted that we may be introducing a window where somebody could take advantage of that and do harm to our ports or on vessels.

Mr. LATOURETTE. Thank you. As my time winds down, I am very sensitive to the observation that you made a number of times that we have to get it right. But I can remember after September 11 visiting a company, sadly, it is an Italian manufacturer but I think they install most of the magnetometers now at the airports, it is like CEIA, and on that visit, which was four years ago, they gave me a card after I just walked through the door and when I walked through their reader my picture showed up, my birth date, my biometric information showed up. That was four years ago. So I guess the question I would have is, understanding you want to get it right, why has this program experienced so many delays?

Ms. FANGUY. In terms of the credential that we are putting out for TWIC, I think that it is fair to say that TWIC is probably at the forefront of biometric and credentialling technology globally. We are not aware of any other program that has implemented a biometric credential on this scale in such a short timeframe anywhere else in the world. There certainly are other cards that are out there.

One of the things that we are focused on, however, is interoperability, making sure that for technology manufacturers we do not go with proprietary standards, which is why we have gone with the latest standards from NIST that are the most advanced Federal Government standards that we have here in the United States today, so that we can have an interoperable system that will work across all of the ports.

The other thing that we are focused on is realizing that we have over 3,200 facilities, over 10,000 vessels, they all have very unique business processes, different kinds of security access control regimes in place today. The TWIC card is very, very flexible. Some of the other cards that are out in the market today are only able

to be used in a limited number of ways and you have to use proprietary technology. Our card can be used in a number of different ways that will hopefully make it easier for people once we actually require readers to implement it within their legacy access control systems or other technology that they may have in place at their facilities or on vessels.

Mr. LATOURETTE. Thank you. Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you, Mr. LaTourette. Mr. Baird.

Mr. BAIRD. I thank our witnesses. One of the things that I am interested in affects a number of operations in my district. These are integrated facilities. In my region we have got pulp and paper mills that of necessity have docks with them, so they serve as both a port and a manufacturing plant, and they have got log yards and sorting yards and whatnot. I cannot imagine that they are very high priority targets for terrorists due to the location, the nature of the business, et cetera, but they employ literally over a thousand people. Only a relatively small subset of those people actually work on the docks. The rest are in the pulp and paper mill. But it becomes prohibitively expensive and impractical to quarantine, as it were, the port operations from the rest of the operations, it becomes very expensive to do that physically.

To TWIC everybody who works in the pulp and paper mill even though they may not ever get to the port operations seems a little silly. How do you deal with a situation like that? We all want to support your mission of security but we also want to apply some commonsense to this and not impose undue costs or burdens on various businesses and employers and employees. Can you enlighten us about how we can balance the security element with the commonsense element.

Admiral SALERNO. Yes, sir. Regulated facilities are required to develop a facility security plan and within that plan the facility operator can designate the secure areas of the facility. As we have rolled out the TWIC requirements, we have encouraged facilities to take another look at their secured areas so that they do not necessarily need to embrace the entire industrial complex.

If there is nonmarine-related aspects to their facility, as you pointed out, they can be excluded and so that the workers in those nonmarine areas would not require TWICs. They can define the secured area in whatever way makes sense and it is then to gain entry into that secured area as defined by the operator that a TWIC would be required. So there is a great deal of flexibility there. And there is also an area maritime security committee which provides assistance at the port level as to what makes sense.

Mr. BAIRD. I appreciate that. The experience of some industries in my district has been that there is not a great deal of flexibility, that the pragmatics of running a particular operation, in this case pulp and paper mill, but I imagine there are others around the country, do not lend themselves to the kind of security that is being mandated. You can imagine that there is a fence around the entire pulp and paper mill operation, basically, but not necessarily a fence around, because it is impractical to do so, around the port, per se. Just the way the mill operation works. I have been out there several time. The problem seems to be that if you cannot install certain physical infrastructure that is required in a certain con-

strained area, then one must TWIC everybody, a thousand people, most of whom never get there, some of whom have worked fifty years there. You just have to say this does not make sense. There is nobody who is going to hijack a pulp and paper barge and bring it into this Capital; it is just not going to happen. So there is a balancing of risk and practicality. It is a little bit analogous to me, I know a pilot who had his toothpaste confiscated but he was able to carry his gun onboard a flight. It is not maybe that bad yet. I just would urge you to adopt some flexibility and rationality to this.

Let us say you do not feel it is a rational process. How do you appeal this? Do you have a chance to sit down and have cooler heads prevail or somebody work with you, or somebody just says no, you have got to fence, everybody has got to be TWICed, X cost of money. It does not produce anything worthwhile.

Admiral SALERNO. There are mechanisms at the port level. The Captain of the Port and his staff that specialize in area maritime security matters are a resource to the facilities and they can discuss these matters and really come to some reasonable and practical solution. It is certainly not our intention that everybody at an industrial facility have a TWIC. Our intention is that the secure areas of the facility, the marine portions would. I am not familiar with the pulp and paper industry.

Mr. BAIRD. We would love to have you come visit if you want to see.

Admiral SALERNO. I will have to do that.

Mr. BAIRD. It is quite an operation and it is complex, it just does not lend itself easily. And again, we are not talking containers coming in from overseas. We are talking barges and the chips for the most part, and exports of logs. It is just not going to lend itself to loose nukes I would not think.

Thank you for your time.

Mr. CUMMINGS. As we move to Mr. Coble, let me just interject one thing real quick. Mr. Baird makes a very important point. As I have traveled around the country and talked to heads of ports, one of the things that they are concerned about, and mariners, they really want to work with the Coast Guard, as a matter of fact, it is a top priority with them, but so often what they find is that when the Coast Guard comes in there is no flexibility. This is what they have told me in many instances. Some of them will probably as a result of the TWIC be changing those secure areas. And you all would have to approve that, right?

Admiral SALERNO. Yes, sir. The facility plans are approved by the Coast Guard.

Mr. CUMMINGS. I have raised this issue of some flexibility, not going against national security, still maintaining that, but coming up with practical solutions. Mr. Baird makes a very good point. It just seems as if now we are moving into another area where there is no flexibility. Again, I am not saying lessening national security. But if there is no flexibility, I can see this could be kind of chaotic.

Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Admiral, I had to leave the hearing room. I hope I am not repeating a question that has already been put to you. Let me put a two part question to you, Admiral. Would the Coast Guard be able to review application for

new hires and issue merchant mariner credentials within the 30-day interim clearance period under the TWIC rules, and does the Coast Guard need additional authority to authorize newly hired maritime workers to work at a conditional status until they receive their MMCs?

Admiral SALERNO. Sir, I think there are a couple of questions in there. To obtain the merchant mariner credential there will be the requirement that one have a TWIC. And we will coordinate very closely with TSA to make sure that the communication between databases and agencies occurs in a very timely fashion so there is no practical delay once the TWIC is obtained in getting the merchant mariner credential. We intend to parallel process; you can apply for both simultaneously.

If I understood the additional question, is there authority for interim issuance of a temporary MMD while the primary MMD is being processed?

Mr. BAIRD. Yes.

Admiral SALERNO. Sir, I believe there is authority for that. But I will say that our goal as part of the consolidation and restructuring of the licensing and mariner credentialling process is to drive the cycle time down so that that would not be necessary.

Mr. BAIRD. Thank you, Admiral.

Admiral SALERNO. We will make that as quick as possible.

Mr. COBLE. Ms. Fanguy, under current law, applicants who are denied a TWIC may appeal a decision of the TSA, or in the case of a person who is disqualified from receiving a TWIC because of a prior conviction of a disqualifying crime may request a waiver. Will an individual automatically be denied a TWIC because of a prior conviction for an interim disqualifying offense, or will the reviewer take into account the circumstances related to that specific offense?

Ms. FANGUY. In terms of the interim disqualifiers, our adjudicators will look at the time that has passed since the date of incarceration as well as the time from the date of conviction, and if either one of those dates is within either five years from the date of incarceration or seven years from the date of conviction, the person would receive an interim determination of threat assessment. At that point the person has the opportunity to apply for a waiver. And we highly encourage people to apply for a waiver if they do fall into that category so that they can provide more information so that we can make the determination that they do not pose a threat. And if that is the case, we would provide them with a TWIC.

Mr. COBLE. Mr. Chairman, I am by no means trying to open the door to invite felons aboard. But I guess I am looking for some flexibility. If the offense is not related to terrorism or safety or security, I can see some flexibility might be in order there.

Ms. FANGUY. In our waiver process, we certainly look at all the information that is provided. One thing is time that has passed, evidence that the person has been rehabilitated.

Mr. BAIRD. Yes. That is where I am coming from.

Ms. FANGUY. References. We try to be as flexible as possible and taken into account all of the information that the person provides to us.

Mr. COBLE. Thank you both, Admiral, Ms. Fanguy. I yield back, Mr. Chairman.

Mr. CUMMINGS. Thank you very much, Mr. Coble. Mr. Oberstar.

Mr. OBERSTAR. Thank you, Mr. Chairman. This hearing on transportation worker identity cards is a very important matter for our Committee and for the maritime community. I appreciate very much your pursing this matter, and I appreciate the support of Mr. LaTourette and his questions and line of inquiry.

I will depart from the regular order for a moment, Mr. Chairman. In addition to all the distinguished Members and witnesses participating today, I would like to note the presence in our hearing room of a former colleague, a former member of the Merchant Marine and Fisheries Committee with whom I served for many years, and a Member of this body, former Congresswoman Helen Delich Bentley, a strong advocate for the merchant marine, former maritime commission member, and whose zeal for the Jones Act and Buy America is equaled or maybe exceeded only by that of Mr. Taylor. So we thank Ms. Bentley. She is a regular participant at our hearings.

I have to say, Admiral and Ms. Fanguy, it is frustrating that we are five years from enactment of the Maritime Transportation Security Act and we still do not have this transportation worker identity card. More troublesome is that there really is not an effective alternative program in place that has met the purposes of the Act and one that has engaged the support of the maritime community.

I understand all the complexities of developing this card. I understand all the difficulties you have in doing the background checks. I have been involved with this since Pan Am 103. I served on the Pan Am 103 Commission. I was Chair of the Aviation Subcommittee at the time. That was our commission that made recommendations for background checks for airline workers, not only pilots and flight attendants, but the ground crews and all those who service airports. And we had an extremely difficult time getting regulations adopted and practices put in place. But eventually it happened.

Now you should have been able to learn from the experience of aviation and put in place practices and technologies—good Lord, we are the land of technology—to establish this card, establish the background checks. These are not new issues. We have confronted them before and dealt with them in the aviation sector. I know Chairman Cummings has already quoted the President's 2004 State of the Union message that America is the land of second chance. The gates of prison open a path ahead that should lead to a better life. We know that the waterfront is not a particularly savory place. It is a rough and tumble environment. People have incidents.

Staff MEMBER. People like me.

Mr. OBERSTAR. People like you? I do not know, you did not get much rough and tumble there. You came out of it pretty clean. But I would hire you on.

[Laughter.]

Mr. OBERSTAR. That is why we hired you on this Committee to help us with Jones Act. We need guys like you, Mr. Taylor.

So there may be explanations, but I do not find a valid excuse for the failure to develop programs to keep felons out, to stay within the purposes of the Act, and to follow the purpose of the law that an individual can be denied only if the Secretary has determined that person to be a terrorism security risk or was convicted of treason, espionage, sedition, terrorism. I do not think that is terribly hard to establish background checks for that. We did it in aviation going back ten years. We had trouble with foreign airlines and foreign repair stations and maintenance facilities outside the United States and with domestic repair stations in the U.S., they did not want the application of those provisions. But what is the difficulty? What is the problem in complying with the law? Ms. Fanguy?

Ms. FANGUY. We definitely have taken the lessons learned from aviation. That has been very important to us. In looking at the disqualifying offenses for the TWIC program, the disqualifying offenses that we have now in our regulation are actually based on the felonies that are in the aviation statutory language. Other lessons learned have been taken from our prototype program where we went out to a number of select ports and issued prototype TWICs. Some of the technology has changed since the prototypes took place. We want to be in alignment with the latest and greatest technology that America has to offer and that is where we are going in order to begin enrollment this fall. We think it is important to make sure that the system is going to be able to support the large volumes of workers that we are anticipating enrolling in the next year or so. We anticipate to have over a million people. In comparison, in our prototype program we enrolled in one year the same number of people that we will enroll in one day of TWIC. So the scale for the TWIC national rollout is tremendously greater than what we had during the prototype.

For the security threat assessment aspect, we are certainly basing it on the lessons learned. But we want to make sure, again, that in terms of the volumes we are able to plan for the large number of people who are going to be coming through not just our system but other systems within the TSA and elsewhere within the Federal Government. And so that takes planning and setting up of equipment. We are well underway with that but we want to make sure that we can handle the volumes and make sure that we can provide a secure credential that will protect people——

Mr. OBERSTAR. Have you tested a card? Have you tested a background check against an individual? Have you put it in the marketplace and run real life people through the process?

Ms. FANGUY. That is what our prototype focused on. We took information from the people and we gave them a card. We are now in the process——

Mr. OBERSTAR. And what problems did you find?

Ms. FANGUY. We had a lot of lessons learned that were very valuable and we have——

Mr. OBERSTAR. For example? Give me an example?

Ms. FANGUY. Flat versus rolled fingerprints. Critical piece. Makes it very inconvenient for people. Rolled fingerprints take a much more trained enrollment agent and you do not get tremendously better results when you do flat slap fingerprints. We tested out both methods during our prototype. We are now doing ten print

flat fingerprints that we then send to the FBI to do our checks. It makes the enrollment time much quicker, much more convenient for people, and it makes it so that we can actually make the card cheaper because the training aspect is not as great.

Mr. OBERSTAR. And how many people have you run through the prototype program?

Ms. FANGUY. One of the other things that we found that was critical was pre-enrollment.

Mr. OBERSTAR. Say again.

Ms. FANGUY. Pre-enrollment. So we provide a website where people can go and provide their basic biographic information and they can schedule an appointment. That helps us to plan our resources. That helps to keep down lines at the centers and it also helps us to plan how many people to have.

Mr. OBERSTAR. Have you worked with the longshoreman's union and with the barge operators, and with the coastwise trade operators?

Ms. FANGUY. That is another lesson learned, too, is communication. So we have actually established a TWIC stakeholder communications committee. We had a meeting yesterday.

Mr. OBERSTAR. That was a major problem in aviation. They never talked to the airlines, they did not talk to the unions, did not talk to the ground workers, did not talk to the fuel handlers, or anybody. They just went ahead with the program and then it failed because they did not talk to those who were on the ground. So I am glad to hear that you are doing that.

Are you coordinating with the Coast Guard? Admiral, are you in touch day-to-day, in lockstep with TSA on this process?

Admiral SALERNO. We are, sir. And we do participate in the stakeholders meetings as well. I think before you arrived, sir, I mentioned that we do have advisory committees with whom we interact; the merchant marine personnel advisory committee, national maritime security advisory committee, transportation safety advisory committee. All of whom we have engaged on the way forward, especially with TWIC readers, as to what will be reasonable and practical. But we are very much concerned about obtaining the input and advice of the industry stakeholders in this process.

Mr. OBERSTAR. What about the background checks. What issues do you see, have you seen, both of you, in background on individuals and distinguishing the classifications that we have established in law—terrorism, security, risk?

Ms. FANGUY. In terms of the security threat assessments, we are actually basing our security threat assessment program on our hazardous materials endorsement program. To date, we have conducted over 600,000 security threat assessments for hazardous materials endorsement drivers. The checks are the same. So we have been able to prove out the process for getting the information, feeding it out to the various Government agencies who provide us then information to come back.

We have also been able to prove out our adjudication process where we have trained adjudicators who look at all that information to determine if there is a security threat assessment or not. So we are trying to base this on lessons learned from other programs that have been successful and continue to refine the existing

programs as well as the TWIC business model to make sure we have improvements along the way.

Mr. OBERSTAR. When do you expect to have this identification card operational?

Ms. FANGUY. We would anticipate that we would begin enrollment in Wilmington, Delaware, in the fall.

Mr. OBERSTAR. This fall?

Ms. FANGUY. That is correct.

Mr. OBERSTAR. That is a long period of time, three or four months depending on where you live in this country. Fall is a shorter time in Minnesota, a longer time out here on the East Coast.

Ms. FANGUY. I certainly understand that. We can get back to you with a more detailed schedule. But right now we are focused on the testing. The testing process, the way that we go about it is there are five key components to the TWIC systems and so we need to test each one of those pieces in and of themselves, make sure that those all work. I had mentioned the pre-enrollment website. That is one piece that we are very near completion on testing. But then the next piece is the enrollment work station. We are very near completion on the testing of that. We can then hook those two pieces together, make sure that the data from pre-enrollment goes into the enrollment workstation so that a trusted agent can complete an enrollment. Then we have the three other pieces to send the data for our security threat assessments and actually produce a card at the end. We need to finish testing on all five of the key components before we can send the data through end-to-end to make sure that we have a solid business model in place and to make sure that all of the data can flow through the system and produce a good card at the end.

Mr. OBERSTAR. I, for one, and I am sure Chairman Cummings, Mr. LaTourette, and other Members of the Committee would like to have a visual hands-on observation. Our worst nightmare is that innocent person who is kicked out because they did not do the proper review of the background check or they confused the name with somebody else and that person is then out of work for no good valid cause. I know that it takes time to set up a program to do those things properly. But that is our worst fear.

I will suspend there, Mr. Chairman. I regret my late arrival. I was on a highway coming in here behind a two car accident for the last hour.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. As we move on to Mr. LoBiondo, I hope you are understanding what is coming out of the Committee, Ms. Fanguy and Rear Admiral. We see, and I know you do, too, the practical side of all of this. As Mr. Oberstar said, somebody being possibly put out of work, unable to make their mortgage payment, unable to do the things that they need to do for their kids or whatever, that is real. So we want to make sure that this thing is done right.

And I was just wondering, one quick follow-up to Mr. Oberstar, as I listened to the process, you said five steps, do you see any way that you would publish regulations for the readers before the pilot is finished?

Admiral SALERNO. Sir, our intention is to follow the provisions of the SAFE Port Act, which would require that we take into account the results of the pilot in the development of the regulations for the readers.

Mr. CUMMINGS. So you are telling me that when that pilot is finished and not until then will we see the final regulations; is that right? Because I am going to hold you to it.

Admiral SALERNO. Sir, I do not have a time line for you. We are beginning work on——

Mr. CUMMINGS. No. Wait a minute. Hold on. This is not about a time line. This is one simple question. I just have got to have the answer to this. What I am asking you is not complicated. Ms. Fanguy just talked about a process, a pilot process. All I am asking you, I am not asking for the time line, I will get to that some other time, is you are not going to issue regulations until that pilot is complete. It is not complicated.

Admiral SALERNO. We are beginning the process now of gathering information for the regulations process. But sir, if I could just say, our intention is to gather information from that pilot process to include in the regulation process. But I can get back to you with more details on that. I have not looked ahead as to the time line for the regulations yet.

Mr. CUMMINGS. Mr. LoBiondo.

Mr. LOBIONDO. Mr. Chairman, thank you very much. I am trying to find the right words to say how I feel about all of this. Extremely frustrated does not quite get it, but that is probably as far as I will go at this point with the delays and continued problems that TSA is having deploying the TWIC card. Over the last couple of years we have held hearings. We had Secretary Baker here last March. Mr. Baker sat there, was not able to give us any explanation of the delays. The law was passed, the Maritime Transportation Security Act, five years ago that mandated this. It seemed like either it was not a priority or someone did not care. We were assured that is not the case. We are back here again today. And as I am listening to all of this, almost as strong a feeling as I have about the outrage and the frustration of the delays is that since TSA has gotten so very little right, when you do roll this out the real world and the people who have to live with this everyday, and we are going to hear from the second panel about this in great detail, are going to have some great obstacles to overcome.

I, like the Chairman and the other Members of the Subcommittee, and Mr. Oberstar, we are trying to be patient and understand that you are trying to get it right. But we are five years later and there is a limit to this. And when you do finally roll this out, I hope you realize that there is no room for any excuse of why it does not work. And for someone, if we have that problem, to come up here and tell us why everyday people who are going to be affected by what you do are incredibly screwed up because something was not done right is just not going to be acceptable.

I just have a couple of questions. How does the TSA intend to deal with the day laborers and other workers that are not terminal workers but need unescorted access to the facility to perform sporadic maintenance or construction?

Ms. FANGUY. I will actually defer to the Admiral on that. The Coast Guard is responsible for defining who needs a TWIC and where.

Admiral SALERNO. Sir, we have some provisions in our draft guidance for periodic workers that can be either escorted or accompanied, and there are some thresholds for the numbers of workers that could be monitored in a work area. But the intention is that if they are frequent workers, people who come into a facility on a daily basis or several times a week and enter into secure areas, our expectation is that they would have a TWIC. So there are provisions for the occasional workers. They would not be unescorted or unmonitored, however.

Mr. LOBIONDO. So if you have got a construction project that is a six month project or a twelve month project but that is all, then how are those folks going to be dealt with?

Admiral SALERNO. That is something, sir, that we would probably have to address almost on a case-by-case basis. I do not know that we have addressed that specifically in our guidance. We have addressed the occasional worker but certainly the situation you described I think would probably require a specific policy statement.

Mr. LOBIONDO. We understand that DHS is now starting to develop the regulations governing the installation of the card readers. When does DHS plan to publish the rulemaking?

Admiral SALERNO. Sir, we do not have the time line for the publishing of the rulemaking as yet. We are beginning the process of developing the regulation. And just to clarify the question earlier. Part of the process is the pilot projects that are beginning this summer. We will not publish the final rule until the information is received from the pilot. But we are beginning the process of developing the information for that rulemaking now. I do not know if that clarifies your question earlier, sir. We will have the pilot information before the final rule is published.

Mr. LOBIONDO. That leads me, Mr. Chairman, to the last question. I think the last question. Several ports have receive port security grants to install the TWIC readers. Will their projects be integrated into the TWIC reader pilot program?

Ms. FANGUY. I can address that. Absolutely. We have been working with a number of parties who received port security grants. LA and Long Beach are a good example. We have also been working with the Port Authority of New York and New Jersey to look at doing a pilot there. Additional port security grant recipients have been identified who we plan on approaching to see if they would like to be a participant in the pilot of the readers. But that certainly is our approach.

Mr. LOBIONDO. How are you going to do that? How are you going to integrate them into the pilot program?

Ms. FANGUY. Our plan would be to work very closely with the various stakeholders to look at their particular access control systems that they currently have in place and then look to see how TWIC readers would be implemented within their facility or on their vessels. So we will work very closely with them. Our overall goal in the pilot is to implement technology that we would hope would actually work when the final regulations are in place. So you would hopefully not have to go out and buy new equipment. You

would be able to reuse the equipment that we installed during the pilot process.

Mr. LOBIONDO. Normally, the word "hopefully" would not be troubling. In this case, it is. Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you. As we move on to Mr. Larsen, just a quick question. Admiral, you tried to answer my question but you did not answer it. I was not going to come back to it, but I have got to ask you, and I will tell you it is frustrating and I would not want to be in your position and not be able to answer this question. Let me try to put it to you real succinctly. There is a pilot process.

All I am asking you is will the card reading regulations be published after that process is complete? What you answered was that you will get information. That does not answer my question. I am not asking for a time line. I am just asking you a simple question. You have got people in this audience who are dependent upon how you all deal with this. They want to know what they can expect. And we would like to know. Do you follow what I am saying?

Admiral SALERNO. Yes, sir. The final rule——

Mr. CUMMINGS. Let me do it this way. This is the end of the process, okay? This is the regulations. I am just asking you one thing: Do the regulations come out over here, or do the regulations come out over here?

Admiral SALERNO. The regulations come out after we have the data from the pilot process.

Mr. CUMMINGS. Is that after the pilot is complete? That is the question. Do not forget, this is completion. Is it over here, this is before, or is it after?

Admiral SALERNO. Yes, sir. It is after the pilot project is complete and we have the data.

Mr. CUMMINGS. Fine. I just wanted to know. The completion of the project. I know you will get the data. I just wanted to know whether it is after or before. And you have answered me.

Admiral SALERNO. It is after.

Mr. CUMMINGS. All right. Thank you. Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman. I would just disagree with my colleague from New Jersey, Mr. LoBiondo. I have actually run out of patience. I do not have any more patience. We are dealing in Washington State with the Western Hemisphere Travel Initiative as well as this and when you look at the delays in this and the problems that we are having in the WHTI program, it reminds me of Chris Berman calling a long run on ESPN football highlights about people rumbling, stumbling, and bumbling down the field. That is how this all sounds to me. And the reason that we do not do this very well is because do not invade citizen's privacy very well in America. That is why we have problems with this and it should tell us something about how we do these kinds of things and how far we are going to try to meet security needs. We go so far that the only way to do it is to invade citizen's privacy. And there are some questions that I have with regard to that.

Ms. Fanguy, have you ever tried to get off a "No Fly" list?

Ms. FANGUY. I personally have not.

Mr. LARSEN. Do you know anybody who has?

Ms. FANGUY. No.

Mr. LARSEN. Okay. I have been working with two folks in my district who have. There is no reason in the world why they ought to be on a No Fly list, and yet they are. So if, in that example, someone was on the TSA No Fly list, the appeal, so-called appeal, if it went to Admiral Salerno's office or folks at the ALJ in Baltimore if you are a maritime worker, it would not be 30 days, it would not be 90 days, it would be forever in the appeal process.

Admiral Salerno, have you ever dealt with an appeal of somebody trying to get off the No Fly list or any select T list?

Admiral SALERNO. No, sir, I have not.

Mr. LARSEN. Well, feel lucky. If anybody applying for a TWIC happens to be on a No Fly list or a select T list for no apparent reason, they might as well be in Franz Kafka's "The Trial." They are going to be lost forever in that process to get off that list and never get a TWIC card, ever.

Seasonal workers, the issue of seasonal workers is important because seasons differ depending on where you live in this country. I imagine Florida's seasonal worker season is a little longer than Alaska's, for instance. And the fishing fleet in Alaska is based in Alaska and in my State in Washington State and you have a lot of seasonal workers who fish just for the season. You know, they fish, go into port, offload, go back out, and so on.

I am just curious if that would be a kind of worker who needed a TWIC card because they are going to be accessing a portside for delivery before they go back out. And if they are, how does it apply to that seasonal worker where the season is maybe two months long, maybe a month and a-half long, including my nephew, who I am sure has got no problem getting a TWIC card but I am sure there are folks up there who might have problems getting a TWIC card. Have you considered the idea that seasons are different depending on where you are in the country, the length of a season for a seasonal worker?

Admiral SALERNO. Sir, what we have considered is the need for people to get to work quickly, and we realize that that affects seasonal operations. The regulations themselves do not pertain to seasons, per se, they pertain to getting people to work quickly. One clarification may be not all vessels require a TWIC. Only those that are regulated by MTSA, Maritime Transportation Security Act, really come under this body of regulation that would require a TWIC.

Mr. LARSEN. Not every fishing vessel is 12 feet long, either.

Admiral SALERNO. That is correct. They would not be regulated under MTSA in all likelihood.

Mr. LARSEN. Okay. What do the regulations say about those folks who have been convicted but exonerated?

Ms. FANGUY. I would need to get back to you with the specific details. However, in terms of our overall process, one of the differences from the No Fly list that you had talked about was that we do a pretty comprehensive series of checks. We get a fair amount of data back based on the application information. That allows us, in the case of somebody's criminal history, to look at the full information. I would have to get back to you on the exoneration. But we would have the information available to us. If their record has been expunged, we would take that into account and

make the determination appropriately. But we can get back to you with more details on your specific question.

Mr. LARSEN. If you could do that. Because there is nothing in my notes or even the GAO report of April that talks about conviction but exoneration. It strictly talks about conviction.

If I could, just one more question. This has to do with the contractors issue that I think Mr. LoBiondo brought up. I have four refineries in my district, all of which have piers, all of which at points throughout time obviously need repair. At any one time at these refineries they might be employing 800 people, some of whom have to work the pier, some who do not, but then they have on any one day 100 to 200 contractors on site for maintenance, some of which is strictly doing classic refinery maintenance, some are actually doing piers.

For those contractors, if they were down doing pier work, would they have to get a TWIC for the time they are doing pier work, since they might be interacting with oil tankers? I imagine oil tankers are on this list of vessels.

Admiral SALERNO. In a construction or a repair case like that, in all likelihood they could wall that off from the secure area so that the workers would not need a TWIC.

Mr. LARSEN. The workers may not, but if the contracting crew was down on the pier doing maintenance work?

Admiral SALERNO. You are talking about a specific project to do maintenance work?

Mr. LARSEN. Right.

Admiral SALERNO. That can be, if it is a sustained thing, they could in all likelihood wall that off, with the approval of the Captain of the Port. If it is an occasional worker that comes down once a month to do maintenance work or something like that, it may be a little bit different story where the worker is escorted. It may depend somewhat on the scenario. But for construction, major projects there is a provision where that can be walled off.

Mr. LARSEN. Okay. Thank you.

Mr. CUMMINGS. Mr. Poe.

Mr. POE. Thank you, Mr. Chairman. Thank you both for being here. I represent southeast Texas, the Sabine-Natchez riverway that divides Texas from Louisiana. On that riverway is the port of Beaumont and the port of Port Arthur. The port of Beaumont is the number one deployment port for shipping military cargo to Iraq. Along the riverway are numerous refineries including, soon to be the largest refinery in the United States, the Motiva refinery. We have small shippers who take crews out to the oil platforms. We have the refineries, we have the port. So I have several questions.

First of all, Admiral, I want to commend the Coast Guard on the way they secure the riverway, even using up to half of their personnel or reservists all the way from Minnesota.

But be that as it may, my concern is the fact that once 9/11 happened the refineries did not wait for the Government to come in and tell them to secure their refineries. Now they are under the control of the Department of Homeland Security. They have a model that is working. Many times these chemical plants require as many as 800 to 1,500 employees within 24 hours notice to show up and do repairs. During Hurricane Rita, which people do not talk

much about, it came up the Sabine-Natchez riverway. Those refineries closed for the first time in history, up to 25 or 30 years. And yet, they did not wait for FEMA to show up. They started working and repairing those refineries as soon as they could.

Under the TWIC program, how long would it take to get these new employees screened before they could repair damages to refineries? When these refineries went down gasoline prices in the United States went up 20 percent during that period.

Admiral SALERNO. Sir, there is provision where they could, again, wall off areas that would need special construction or repair. But also on a day-to-day basis, the facilities have the option of redefining the secure areas on the facility to limit it only to the marine portions of the facility. So that not everybody who goes to work at the refinery would necessarily need a TWIC, only those who have access to the marine portion. So there is a day-to-day component and the emergency component, as you pointed out, where that could be just walled off within their security plan, in consultation with the captain of the port.

Mr. POE. Under Department of Homeland Security, these refineries and the chemical industry are already under a screening process that seems to work very well. No one wants refineries with personnel that are any potential threat. And chemical companies along the channel here say it is working well. Why now do we have to have another system that will override this current system that seems to be working? Why do we not use the same system that is currently working? I ask that of either one of you.

Admiral SALERNO. Sir, I am not familiar with the other system that you are referring to.

Mr. POE. Well the Department of Homeland Security accepts screening processes by private contracting companies and they can have a turnaround very quickly on whether this person coming onto this plant is qualified, whereas TWIC will take however long, weeks.

Admiral SALERNO. As far as access into the marine portion, I am not acquainted with the other vetting process that you are referring to, other than we did perform an interim vetting. Approximately a year or so ago, we began that process for regular workers at marine facilities. This was done in conjunction with TSA where we took names of employees and vetted them through a database and then, in consultation with the facilities, provided feedback. I am not sure if that is the process you are referring to.

Mr. POE. The chemical plants have a system that works when they contract out to private screening industry that has a turnaround relatively quick. They have two types of employees at these chemical plants. They have people who have been working there for 30 years, same job, and then they have contract laborers that come on on a regular basis to the chemical plants. They have both of these types of people coming on and they already have been screened under a process. Under TWIC, will all of these people have to be rescreened and have the delay of two or three weeks before they get this new TWIC card? My concern is we have a system that works according to the chemical companies and DHS, why are we trying to develop another unproven system to take precedence over this?

Admiral SALERNO. For access to the marine portion, sir, under the current regulations, they would need a TWIC. I would have to get back to you on the other method that you are referring to. I am not familiar with it.

Mr. POE. Can TSA help me out here?

Ms. FANGUY. I am not familiar about the private companies. But I do know that the checks that we do and the access to the information especially as it relates to terrorism is something that private companies would not have access to. So the TSA has access to a number of the different Watch Lists and information from law enforcement as well as intelligence that we feel is critical to keeping terrorists out of the ports and off of vessels.

Mr. POE. Last question. Has there been any work with Department of Homeland Security that approves these methods at chemical plants with TSA to merge the process? Have there been discussions between Department of Homeland Security and TSA on this issue of chemical plant security?

Ms. FANGUY. I can say that the chemical plant program within the Department of Homeland Security has been working closely with TSA so that we can take the lessons learned from doing security threat assessments that we do with MTSA for the aviation mode, hazardous materials endorsement, and other programs and apply that to the national program for the chemical plant workers.

Mr. POE. So is that a yes?

Ms. FANGUY. There have been talks, yes.

Mr. POE. Thank you, Mr. Chairman.

Mr. CUMMINGS. Thank you. Mr. Taylor.

Mr. TAYLOR. Thank you, Mr. Chairman. Admiral, let me begin by saying I have got to express some concern that the folks you hired to do this are the same folks who did not think you should have waterproof radios, or waterproof radars, or waterproof GPS on the exposed bridge of your 110 foot cutters when they were modified. I would hope that someone, based on those mistakes, is looking for some very obvious things that are getting fixed before we have 60 Minutes show us our mistakes again.

Turning this over to contractors really makes me question. Just last week, I guarantee, up in New London you had about, what, 500 bright young people from all over the country show up, the Nation is going to spend a small fortune to educate them, you are going to send them to sea, they are going to get better at what they do. Why the compulsion to contract out everything?

Quite frankly, I look at this $137 fee, for a Congressman, nothing, but for somebody just out of high school, somebody who is in a jam, someone who needs to get a job in a hurry and the waterfront becomes available, that is a sizeable amount of money. I have got to believe that money is not going to the Treasury. It is going to go to the contractor. I have noticed where you have got a fee in there for somebody who has already got merchant mariner documents. So to just take a background check that has already apparently been done and rubber stamp it, a guy has got to pay another $100? Again, for an Admiral or a Congressman, not that big a deal. For somebody who is in a financial jam that is a lot of money. And again, I do not think it is Treasury-driven. I think it is contractor-

driven. We have been burned by some of these contractors already. So I have got to ask, where is the commonsense there?

What I am seeing is you are going for a 100 percent solution and in the meantime you are not even doing simple things like checking driver's licenses. I have got to believe, and Congressman Larsen agrees, that probably 95 percent of the people who walk through these doors already have a driver's license. And amongst the 5 percent who do not are people who have probably done something really stupid that required them to forfeit their driver's license. Maybe that ought to be a red flag right there that you have got a problem.

So what is the Coast Guard, what are smart guys like you doing to try to reign this in and bring some commonsense to it?

Second question. Most of the folks work offshore, 7 on, 7 off, 14 on, 14 off, 30 on, 30 off. So the time they have ashore is really precious. And unlike a Congressman, they do not have a staffer to say go get this. They have got to do it themselves. So if they are out trying to get these documents, it is days they are not working, they only get paid when they work. What are you doing to keep that in mind? And again, some things just ought to be abundantly simple. If a guy walks to you with a reservist i.d. card, a driver's license, and wants to go to work as a longshoreman, I would think that ought to be good enough right there for him to get an immediate document. So walk me through the commonsense efforts that are being made on the part of the Coast Guard to reign in the contractors, to bring some sense to all of this.

Then I see the waiver that you have issued or at least you are talking about that says in the event of a national emergency, in effect, you can waive the Jones Act. Let me tell you what troubles me about that. I was just at Camp Shelby, Mississippi, where they are training people to go to Iraq. One of the drills they go through is they blow up a fake IUD under one of the vehicles to watch them react and then they blow up a second IUD because the first one was just a trap. If in the event of a national emergency we are going to waive the Jones Act, does that mean you are going to let a whole bunch of foreign ships in that you normally would have checked? Does that mean you are going to let a guy like me who does not have a merchant mariner document work for a little while because it is an emergency and you just need to throw guys into the breech but guys you know who are Americans?

What exactly does that waiver mean, and are you qualifying that in some way? Yeah, it is an emergency, you have got to get stuff done. You will take people who have got an American driver's license, you have got guys with a social security card, guys who may be naval reservists, let them go work on a tug for a while even though they do not have their merchant mariner documents. Or does it mean you are going to let a battled of Hondurans or El Salvadorans or whatever just come on in unchecked?

Admiral SALERNO. Sir, a couple of questions there. Let me see if I can get them all. Certainly, for access to a facility——

Mr. TAYLOR. Let us start with the common sense with the contractor and reigning those guys in. Because that is not a what if, they really did happen and it burns me to this day.

Admiral SALERNO. If you do not mind, sir, I may have to defer to Ms. Fanguy on that since the contract is administered by TSA.

I will see if I can answer your other questions. There is a provision for Government-issued identification to be used as access to facilities, such as a military i.d. or law enforcement credential when the individual is acting in a law enforcement capacity. So that provision is there.

Mr. TAYLOR. Okay. All right. So why should that guy who has already got that who wants to upgrade to this card, why should he have to pay $100? That background check has already been conducted.

Admiral SALERNO. The background checks are a little bit different, and Ms. Fanguy can explain that probably in more detail. But the TWIC requirement would be for people operating in a commercial capacity. If someone is going onto a facility in an official capacity, has official identification, that official i.d. would suffice.

Mr. TAYLOR. Okay. But according to this lady's testimony, if you have already got a merchant mariner's card, you still have got to pay, what, $125 to get it upgraded to a TSA card. That is nuts. That is literally somebody just raking in a bunch of money for doing almost nothing. That is not fair and we should not be about doing unfair things.

Admiral SALERNO. Roger for the concern, sir. It is something that has been the subject of a great deal of discussion as to how the price can be brought down as much as possible throughout the rulemaking process. And a lot of interaction with the affected industry as well. And we did hear that concern loud and clear.

The issue that I know TSA was up against was the program has to be self-sustaining. So with the work through their economists and figuring out what things would cost, that is about as low as they could get the price based on the cost predominantly on the background checks. The actual cost of producing the card is not that great. It is the cost of a lot of the work that goes behind it. Maurine can fill in some of the details.

Ms. FANGUY. Yes. In terms of the reduced fee for, as the example that you mentioned, mariners, we really look at the overall cost of running the program. It is not just the security threat assessments, it is collecting the data and then actually doing the document authenticity verification. So we have checks at the upfront that when somebody presents an MMD, we want to make sure that that is a valid MMD and that it is not a forged document. Because we are then going to be giving somebody a credential that will grant them significant privileges in having unescorted access to secure areas.

So we want to make sure that we are doing those checks at the upfront to make sure that the people's information is correct. After we get that information, we do not do redundant checks if somebody already has the same kind of security threat assessment. So an MMD holder, we would not reconduct those checks, a Hazmat driver, nor a FAST cardholder.

But there is a lot of work that goes on after somebody has actually applied. A card is good for five years. We continue to check people's information during that time to. If somebody has no ties to terrorism on the day they apply for a TWIC, they are going to get a TWIC. If in two years from now we have intelligence that indicates that person may have ties to terrorism, we need to know that so we can rescind their TWIC and go out and find that person.

And so that is one of the aspects that actually costs money and that has been included in the fee for both the standard TWIC fee as well as the reduced TWIC fee is those redundant checks.

There is also the cost of actually producing the credential itself. And as I talked about, it is a fairly sophisticated credential. So we need to be able to pay for the manpower in the Government facility that actually prints those cards, the card stock itself, and the card has a lot of security features in it just with the way we print it, there is laminate and holograms and the electronic pieces as well. And as the Admiral said, we have tried to reduce the costs as much as possible, and it is certainly something that we are very mindful of going forward and trying to be frugal with the program while still making sure that we have the right security controls in place.

Mr. TAYLOR. Who gets the money? Does the contractor get the money?

Ms. FANGUY. The contractor does not get all of the money. The contractor gets——

Mr. TAYLOR. Who helped determine the cost? The same folks who said we do not need waterproof radios?

Ms. FANGUY. Absolutely not. The Government was responsible for developing the regulations including the fee model. We put that out as part of our Notice for Proposed Rule Making where we had to lay out what all of our anticipated costs were. At the time that we developed our regulations, we actually did not have a contractor on board at all, so they were not at all involved. The Government was solely responsible for developing the overall fees.

Mr. TAYLOR. And who made the decision to contract this out? Because I have got to tell you, everything I see the Department of Homeland Security doing is almost always contracted out and is almost always screwed up, whether it is the Federal Flood Insurance, whether it is FEMA, or whether it is this. You guys do not have a very good record of performance. And in almost every instance you have contracted out what should be a core governmental function.

And so I want to know, who made this call? Was it mandated by Congress? Was it mandated by the Administration? Did someone within the Department of Homeland Security say this is the way we are going to do it? Who made that call? I doubt you made it. So who made it?

Ms. FANGUY. The Government made the decision to establish a competitive process——

Mr. TAYLOR. No. Who? The Government is a big thing.

Ms. FANGUY. The Department of Homeland Security made the decision to compete this. We did this in a competitive manner where we put this out to industry in a full and open competition. We received bids back from numerous companies who offered to do enrollment and manage our systems. If you look at the overall scope of the work that needs to be performed in the coming months, we are going to be bringing on a significant number of contractor resources, as you mentioned. So the overall number of resources and the types of skills that are necessary meant that we needed to compete this and get the best qualified contractor to perform the work.

Mr. CUMMINGS. We are running out of time. We have four minutes before the vote.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. CUMMINGS. We have three votes. We are going to come back here at a quarter after twelve.

To our witnesses, I want to thank you very much for your testimony. I must tell you that this has been extremely frustrating. I am going to bring you back in 90 days to let us know where you are. In the meantime, we will be submitting some questions and trying to get from you some time lines so we will know where we should be in 90 days so that we will have clarity.

With that, we will suspend now and come back at a quarter after twelve. Thank you.

[Recess.]

Mr. CUMMINGS. Ladies and gentlemen, we will proceed with the hearing.

We will now hear from our second panel. Mr. Larry Willis, Mr. Michael Rodriguez, Mr. Thomas Allegretti, Mr. Otto Candies, Ms. Debbie Gosselin, Tamara Holder, please come forward.

Before we start with you, Mr. Willis, let me say I have often questioned the good of hearings. And so I think so that we can be most effective and efficient, you all have been fortunate enough to have heard the testimony already and what we want to do is be most effective and efficient with your time, so, first of all, I am going to hold you to the five minutes. I want to move through this piece of the hearing quickly because a lot of us have other hearings that we have got to get to later on.

But if you can, I know how it is when you have got a statement, you just feel like the world has got to hear it. I know. I know. Your kids are watching on C-SPAN and your co- workers and all that. I got it. All I ask you to do is make your statement as succinct as you can. But do something else. Tell us how we can address the problems after hearing what you have heard. Other than that, it does not do us a lot of good.

We have heard the testimony. My plan is to take a lot of things that you say, present them to the Coast Guard and to TSA so that when I bring them back in 90 days, first of all I am going to try to get some type of timetable, and then I want to make sure that we try to get them to address your concerns. You have the advantage. You have been fortunate enough to have heard what they had to say. So all I am trying to do is get you to help us help you.

So with that, Mr. Willis, five minutes.

TESTIMONY OF LARRY WILLIS, GENERAL COUNSEL, TRANSPORTATION TRADES DEPARTMENT, AFL-CIO; MICHAEL RODRIGUEZ, EXECUTIVE ASSISTANT TO THE PRESIDENT, INTERNATIONAL ORGANIZATION OF MASTERS, MATES AND PILOTS; THOMAS ALLEGRETTI, PRESIDENT, AMERICAN WATERWAYS OPERATORS; OTTO CANDIES, III, SECRETARY/TREASURER, OTTO CANDIES, LLC FOR OFFSHORE MARINE SERVICES ASSOCIATION; DEBBIE GOSSELIN, OWNER OF CHESAPEAKE MARINE TOURS/WATERMARK CRUISES, PASSENGER VESSEL ASSOCIATION; TAMARA HOLDER, REPRESENTATIVE FOR RAINBOW/PUSH ORGANIZATION

Mr. WILLIS. Mr. Chairman, Congressman LoBiondo and others, and I will try to follow your dictate. I will keep my comments under five minutes. Let me first thank you for inviting transportation labor to testify this morning, I guess afternoon now.

We agree with the comments that have been made here, made by you, Mr. Chairman, and others that the TWIC program to be effective and to do it in the right way has to strike the right balance. It absolutely has to enhance security, but it also has to protect the legitimate rights of frontline workers, those that are represented by our 32 member unions, and it also has to ensure that you have the free flow of commerce. Because making sure that our guys can get to work everyday and go do their jobs, whether they be longshore workers, maritime workers that Mike Rodriguez will talk about in a second, rail workers that are also covered under this rule to the extent that they have unescorted access to a seaport, truck drivers and other workers is critical.

We think on the criminal background check part, Congress generally got it right with the MTSA of 2002, that an individual should only be disqualified for their criminal activity if they have committed a crime within the past seven years or released from incarceration within the past five for an offense that causes that person to be a terrorism security risk. We always thought that was a pretty good standard and we did a lot of work with Members of this Committee and the Senate back in 2002.

We are concerned, though, especially as we move to implementation of this program, that the offenses articulated by TSA and how they interpret those offenses and apply it criminal records, that we indeed want to accomplish the goal, which is to not have terrorist elements work in our seaports or our vessels, but not punish someone twice for simply making a bad decision several years ago that had nothing to do with terrorism.

On that point, the waiver process that was included in the MTSA and that has been picked up by TSA in their regulations both for Hazmat and maritime TWIC, it is absolutely critical that a worker should have the opportunity to come forward and say yes, I committed a disqualifying offense but nonetheless I am not a security risk, and do that in a reasonable expediated fashion. TSA has told us, as they have told others, that on the Hazmat program they wished that more people would apply for waivers. I think it is going to be incumbent for TSA to make that process as easy to navigate as possible, to get information out. We are going to do that from obviously a union perspective. But it is a very large pop-

ulation and I think TSA and the Coast Guard should be in the forefront of that.

Let me make a comment about talk that is going on right now about the 9/11 bill. There is a provision that got in in the Senate that would codify the list of offenses that TSA has put out into statute. Members of this Committee, Members of the Homeland Security Committee on this side and others have expressed concern of whether the list of crimes that will disqualify a worker is appropriate. To the extent that conference committee is considering putting that into statute, that could run counter to that.

We would hope that the Secretary would have some discretion to modify the offenses as this program goes forward. We would hope that the concept that someone would be disqualified from holding a TWIC simply for being indicted for a disqualifying offense should not be included in the legislation. And I wanted to raise that because I know that matter is being discussed and debated as we speak.

On the waiver process, as was discussed in the first panel, the inclusion of an Administrative Law Judge to hear denial of waivers was another important priority for us and one that was included by this Committee and others in the Coast Guard reauthorization bill. We think that is a good right. We think that it will bring some fairness and balance to the program. But Mr. Chairman, as you pointed out in your opening statement, there has been some recent questions about the impartiality and the independence of Coast Guard ALJs that I think need to be understood and worked out.

We are also concerned that as the process has been explained to us, even if an ALJ determines that a waiver should have been granted, TSA can appeal that back to itself and overrule the ALJ decision. So I guess we fundamentally question whether the ALJ process as envisioned by the Coast Guard and TSA is really going to be the independent review that Congress intended when it included it.

Also, a lot of talk in the first panel about the cost. We are very concerned that 100 percent of the cost of the card is going to be imposed on individual workers. We hope that is something that can be reexamined.

I see that my time is up so I will stop and let others speak. Thank you.

Mr. CUMMINGS. I failed to give your title, Mr. Willis. I apologize. Mr. Willis is General Counsel for the Transportation Trades Department.

Mike Rodriguez is Executive Assistant to the President of the International Organization of Masters, Mates and Pilots. Mr. Rodriguez.

Mr. RODRIGUEZ. Thank you very much, Mr. Chairman. In the interest of time, I will cut to some of the more important parts of what I had prepared. I would agree with much of what Mr. Willis said. We are concerned about fairness in the determination of who is really a terrorism risk. But we also want to point out a couple of other points.

The TWIC program must be a national program. We believe Congress envisioned a national maritime security system that would preempt State and local systems. Indeed, protecting our nation

from terrorist attacks is a national priority. However, the TWIC regulations allow State or local governments to impose their own duplicate systems. We feel this will result in higher costs and additional burdens for workers and vessel operators as they trade between States and even between facilities in the same State. We are also concerned about processing delays at the State and local levels. Congress should act to ensure that the Federal laws and regulations governing the TWIC program preempt all other State and local access control requirements for all transportation workers.

The other point that we wanted to make is something along the lines of where the TSA has gone. We heard the first panel talk a little bit about the standard that they have adopted for the TWIC. We feel that is kind of at the heart of a lot of the delays. So the piece that I have here that is relevant is the TWIC program should be compatible with international systems.

We have argued that the TWIC program should take advantage of proven biometric technology by using the International Civil Aviation Organization standards, or ICAO. The ICAO standards are simple, efficient, and recognized worldwide. Machine readable travel document control systems used by the United States for electronic passports that monitor entry of foreign travellers to the U.S. employ the ICAO standard.

We feel the ICAO standard is the logical choice for a biometric security card that could be interoperable with the TWIC and the Seafarers' Identity Documents that will be carried by the crews of foreign ships trading with the U.S. We feel the U.S. could have had a TWIC program up and running long before now had TSA adopted the ICAO standards and then developed the additional functionalities in partnership with the rest of the world.

Again, Mr. Chairman, in the interest of time, I will conclude my remarks there and look forward to your questions. Thank you.

Mr. CUMMINGS. Thank you very much.

Mr. Tom Allegretti is President of the American Waterways Operators.

Mr. ALLEGRETTI. Thank you, Mr. Chairman. Good afternoon, Mr. LoBiondo. Thank you for the opportunity to testify. I will respect the five minute rule and I will simply highlight our major concerns with the TWIC rule.

Let me start by saying this is a truly big deal for America's tugboat and towboat industry. AWO members from across the country have very serious concerns with the impact that this regulation is going to have on our industry and on the men and women who work in our industry. We have three major concerns.

First, we are concerned that the continuing delay in the startup of the TWIC enrollment process makes it increasing difficult for mariners to obtain their TWIC cards before the deadline. The SAFE Port Act told DHS to begin TWIC enrollment on July 1 of this year, and it requires mariners to obtain their TWICs by September 25 of 2008. As the enrollment process continues to be delayed, the timeframe for mariners to obtain their TWICs continues to be shortened. DHS and Congress need to be prepared to extend the September 2008 deadline in order to allow mariners to obtain their TWICs without a last minute crisis.

Second, we are concerned that requiring card readers on small vessels like tugboats, towboats adds no practical security value at all either for the vessel itself or for the overall transportation system. The SAFE Port Act gives DHS the authority to limit the card reader requirement to vessels with more than a certain number of crew. We suggest that vessels with 12 or fewer crew members should not be required to have a card reader aboard the vessel.

Third, our most significant concern is the process for obtaining a TWIC card and that it will become a significant barrier to entry in the maritime industry for new hires and that this is going to worsen the personnel shortage on our vessels. Mr. Chairman, this is a huge deal and unless Congress fixes it, companies face the prospect for tying up their boats for lack of crew members to operate them, and the nation faces the prospect of interruptions in the delivery of essential cargoes.

The legislative change that was discussed by Congressman Baker and Chairman Oberstar during the markup of the Coast Guard authorization bill two weeks ago would go a long way towards solving this problem. The provision would allow a newly hired employee to work onboard a vessel for up to 90 days before, before making application for a TWIC. We urge the Committee to include a provision of this type in the manager's amendment when the Coast Guard authorization bill goes to the House floor.

Mr. Chairman, let me emphasize that it is important to say that this provision in no way degrades the security that Congress meant to achieve through the MTSA 2000 law. The provision only applies to crew members who are working on vessels that are already operating in compliance with Coast Guard vessel security plans, and only applies to crew members who have both passed a preemployment drug test and a name- based check against the terrorist watch list. This is the same security screen conducted by the same Federal agency that is currently required by TSA's existing interim work authority for new hires. We take security very seriously and we think that this provision is essential and in no way degrades maritime security.

Mr. Chairman, let me just close with an observation and one that piggybacks on something you said in your opening remarks. Since 9/11 the Federal Government has sought to enhance our security infrastructure. What they have not done very well in my view is to achieve a proper balance between new levels of security and other important national goals.

In this case, the other significant goals that have suffered in the development of these regulations are those of providing economic and employment opportunities to American workers and keeping the commerce of our Nation flowing. These two goals are critical to our national health and vitality. And by not including a real interim work authority provision in its regulations, DHS has in our view not given proper attention to these other national priorities. Congress can lead the way to ensure the security of our country while also keeping mariners working, keeping vessels operating, and keeping the nation's commerce flowing. Thank you.

Mr. CUMMINGS. Thank you very much.

Mr. Candies is the Secretary and Treasurer of the Offshore Marine Services Association. Mr. Candies.

Mr. CANDIES. Good morning, Mr. Chairman and Committee Members. My name is Otto Candies, III, and I am testifying on behalf of the Offshore Marine Service Association, or OMSA. OMSA is the national trade association representing the owners and operators of vessels that support America's offshore oil and gas industry.

OMSA member vessels carry every piece of equipment and many of the workers needed to explore and produce our offshore energy resources. Our company and our industry takes its responsibilities very seriously, whether it is our responsibility to our customers or, in the case of security, the responsibility to the country and the American people.

The Commandant has talked about the need to buy down risk in the maritime sector, and here are some of the things that our industry is already doing to buy down that risk.

We have already worked with the Coast Guard to develop comprehensive industry-wide security plans for our vessels.

We have trained and drilled our crews on the requirements of those security plans so that even the newest, least experienced mariner on one of our vessels understands his or her responsibility to maintain security.

Significantly, the Coast Guard puts our mariners through one of the most vigorous background checks of any mariners in the world.

Far and away, we believe that the biggest factor in buying down risk offshore is a requirement that our vessels be owned by Americans and crewed by Americans. That one thing is key to protecting our maritime sector from foreign terrorists who would use our vessels as weapons. On the other hand, if U.S. citizens working on U.S.-flagged vessels in U.S. waters increase our security, anything that creates an obstacle to putting U.S. citizens to work or discourages U.S. citizens from wanting to go to sea reduces our security.

With that in mind, we are concerned that the TWIC program as currently envisioned will subject our mariners to an overly complex, overly expensive process that will discourage Americans from seeking a career in the maritime industry. Let me be clear, our industry supports background checks. However, if the system is too cumbersome and expensive, if the long wait for a TWIC card makes it too difficult to recruit people into our industry, it will harm our ability to maintain security.

We are also concerned over the confusion and changes in the TWIC program. The regulations say that mariners must obtain a TWIC card by September 2008. With the delays that we have seen thus far in implementing the process, we are concerned about that deadline for mariners. That looming deadline is another source of uncertainty and worry for mariners. We need only to look at the recent change in the passport requirements to see what an overly short deadline can do to the processing system. That sudden demand on a system that was not prepared for it resulted in thousands of Americans being inconvenienced. The same kind of delay in TWIC processing could cripple our industry.

At the very least, we feel that the deadline for mariners should be delayed by 12 months, to September of 2009. However, we suggest the agencies go one step further. That they implement the processing for non-mariners, allowing that backlog to clear, and

then implementing TWIC for mariners on vessels. Remember, this will not degrade security because our mariners are already undergoing a Coast Guard check that is more thorough than the TWIC security check. On the contrary, by implementing the shore side TWIC requirements first, you allow those workers to obtain their cards without facing the crush of 200,000-plus mariners trying to get their cards at the same time.

We are also very concerned about the potential requirement for TWIC readers on our vessels. We oppose this for the following reasons:

The MTSA does not require readers and we do not believe that Congress intended for there to be readers on the vessels. The agencies have pushed for that concept over the near universal opposition of the maritime industry. By OMSA's very rough estimates, the readers and personnel to keep them in operation could cost our fleet alone more than $100 million. Yet the agencies have never shown that the readers on vessels reduce risk in a cost effective manner.

While we agree that the background checks provide companies with an effective way to vet prospective mariners in the hiring process, readers in the vessels would be more of a hindrance than a help.

We question the reliability of the readers on offshore vessels. Our work takes us from the hot, humid waters of the Gulf of Mexico to the frigid waters of the Arctic. There have been no tests to prove that these readers can work under these conditions.

Finally, we understand that there is an amendment, which was mentioned earlier by Congressman Baker, that would allow newly hired employees to go to work while their TWIC cards are being processed. We agree with that concept and, indeed, have made similar recommendations. But the amendment as it is offered is unnecessarily limited. If it was expanded to include offshore vessels and passenger vessels, then it would receive our wholehearted support. Thank you.

Mr. CUMMINGS. Thank you very much.

Ms. Debbie Gosselin is the owner of the Chesapeake Marine Tours/Watermark Cruises company and a member of the Passenger Vessel Association. Thank you very much for being with us.

Ms. GOSSELIN. Mr. Chairman and Members of the Committee, thank you for this opportunity today. My name is Debbie Gosselin. I am owner of Watermark Cruises, and I am here to ask for your assistance in changing the TWIC requirements so that they do not cripple my small business and many others across the country like mine.

We have been in business since 1972 in Annapolis, Maryland. We have 11 Coast Guard-inspected, U.S.-flagged passenger vessels, with capacities from 17 to 297 passengers. I will cut short my comments about the card readers and say that I echo everything that Mr. Candies said about the card readers.

Watermark and PVA understand the need for and support rational security measures. Our vessels operate in compliance with an approved security plan, as required by MTSA. We completed our risk-based threat assessment, identified our vulnerabilities, and established procedures to control access to the restricted areas of our

vessels. We have led the industry in our area with our extensive security training and crew drills, at considerable cost.

We believe that a company like mine, a small one, does not need an electronic TWIC card or a reader for that card to know that our crew members are who they say they are when they show up to work. Here is a picture of three of our regular crew members here. They are the same Sam and Karly and Bill that we interviewed, hired, and trained. There are other methods, such as traditional background checks, company i.d. cards, and simple recognition by sight, that can be used to verify the status of employees at little or no cost to the small employer. All of our captains and crew are, of course, U.S. citizens. We are a completely domestic operation.

Our vessel operation depends on a seasonal workforce, and that is the focus of my comments. Last year we hired 80 seasonal employees, many of whom would have to get a TWIC. For every one that was hired and showed up to work, there were at least four candidates for those positions. We compete aggressively with other businesses for good seasonal employees. Our competitors are hotels, marinas, and restaurants. These are not subject to TWIC.

Most of our seasonal employees are college or high school students who need a job when school gets out to make the money they need for school next year. They are only available for 90 to 100 days. They cannot apply for summer employment and then wait 30 days for an i.d. card. They cannot even wait two weeks, and neither can I. They cannot afford to pay for the TWIC card, so I would be forced to pay.

And there are other costs associated, as you know, with getting the cards which I will not go into, because the bottom line for me is that if I asked these kids to make this trip, no matter who pays for it, they are just going to simply work elsewhere. It is too much trouble for a summer job. And I am lucky to have an enrollment center that is only a hour away, unlike many of our PVA members.

In its recently issued implementation guidance, the Coast Guard says that an employee can to be put to work for an interim period based on the applicant's preliminary background check while the TWIC application is being processed. I do not need sophisticated card biometrics to recognize my employees. Why cannot this background check be sufficient, thereby avoiding the issuance of the expensive and unnecessary card? If each employee on my boat could be checked by the FBI and TSA, would that not accomplish Congress' goal of knowing who is on our vessels?

And I said I would not get into the card readers. We are going to participate in one of the prototype testing. I am looking forward to that. It is going to be very interesting to find out where they are going to put this thing. They may just have to nail it to a piling at the end of City Dock in Annapolis. We have a public access facility there.

I believe that an appropriate level of security can be achieved without unnecessarily harming American small businesses like mine. But changes in the TWIC requirement are essential to accomplish this. Thank you.

Mr. CUMMINGS. Thank you very much.

Ms. Tamara Holder represents Rainbow/PUSH Coalition. She and Reverend Jesse Jackson were some of the folks who brought

this issue to my attention after becoming Chairman almost immediately after I got the position. So thank you very much for being with us, Ms. Holder.

Ms. HOLDER. Thank you. Good afternoon, Chairman Cummings and Members of Congress. Thank you for the opportunity to speak on behalf of the Rainbow/PUSH Coalition, Reverend Jesse Jackson, Senior, and, most importantly, I am speaking on behalf of over 100 men who I represent as an attorney who are employed in Chicago as America's railway workers.

I have very little knowledge about the TWIC legislation and the maritime industry. However, I have basically become an expert in this pseudo TWIC program that was implemented possibly throughout the country on America's railroads. I am here to provide you with our expectation of the serious problems that will occur if certain TWIC standards are not more carefully defined before they are implemented. I am shocked that we presented this case back in November to Congress and there have been no hearings as to the impact that this has had on the rail industry and how that could transfer over into maritime.

The railroads took recommended action items from the Hazmat program, applied similar standards to the employees of the railroads' contractors, and they did not give much thought to the consequences. I represent men and women who have worked on the yards for as many as 13 years. They were forced to submit to background checks in the name of homeland security, they were denied access, they were not given a reason why they were denied access, and they were left with no answers, very little appeals process, and basically no job and no money to provide for their families. Furthermore, the vendors were threatened that if they did not comply they would face fines, they would lose their contracts, so their backs were against the wall as well.

To further explain this, I am here to forewarn you that we anticipate three problems with the TWIC program, if it is implemented immediately. And that is the issue of crimes of concern, the reporting of these crimes, and the appeals waiver process. We really feel that you need a bit more time before this program is implemented.

Crimes. None of my clients have similar stories. There are some who have one felony conviction, others have a felony and multiple arrests, other have misdemeanors that may fall under crimes of concern. I would like you to go back to the history books. History notes that African-American inmates worked on the railroads in the chain gangs, and the movies depict mafia ex-cons working on the ports of the East Coast. Although these are people who have felony convictions, they are not terrorists in the traditional sense of the word. Also, these men who are convicted felons, they know that they can get jobs on the railroad. They go to actual reentry employment programs and get placement on the railroads. I asked each of my clients what would happen is a terrorist walked onto the yard, a traditional terrorist, and they said they would immediately report it and they would never allow somebody onto the property. So they are a second layer of security.

None of my clients represent the traditional permanently disqualifying offenses of terrorism, espionage, or treason. These are people who have committed crimes of drug and gun offenses, also

there are murders on the yard. Most of these men lack formal education or GED. Many of them do not have options before they become convicted felons because of the environment they grew up in. They become convicted felons and they have even less options. We understand the need for a screening process but it needs to be more defined. It cannot be so vague.

These interim disqualifying offenses do not make sense. I have a client who has a misdemeanor gun possession that is sealable in the State of Illinois. Would that disqualify him? This five to seven year period needs to be more clearly defined. I have a client who actually won an appeal, however, he is on parole, and this was for a murder case. So he is back on the yard even though murder under TWIC is a permanent disqualifying offense. Also, I would like you to consider that many people in America have substance abuse issues and that does not relate to terrorism. We have people who had DUI felony convictions and they do not have a license, and therefore they were barred.

As far as reporting goes, we feel that this is the most essential element to the program. Background checks must be done more thoroughly. In almost every case I reviewed, the screener looked at the applicant's records superficially and made a swift determination without looking into the record. For example, one client was originally charged with felony possession with intent to deliver, but the charge was amended to a misdemeanor possession of cannabis to which he pled guilty. What they reported was the arrest for the felony and the guilty conviction. They did not go through the record thoroughly. The process may be a bit more time consuming, but if the cost is on the applicant, he must be entitled to a thorough background check. It is not his duty to prove that a report was inaccurate. These screeners are people who sit in the clerks office and just type away on a computer.

Another problem is that an applicant's FBI records and fingerprints are not necessarily thorough enough. I have a client who was held on a murder charge and they reported that to the FBI, except when he was released that was not reported. This man lost his job. Furthermore, although the Fair Credit Reporting Act does not apply to these people, I believe that the standards should apply to the TWIC program. A copy of one's record should be given to them prior to adverse action being taken so that they can review it. It should not be a process where they ask for the report that they paid for.

As far as the appeal and waivers process, all citizens of this country should be afforded equal protection of the laws. However, this fundamental right was stripped from these contractor employees because they were not afforded a due process opportunity. The railroads did attempt to create some kind of appeals process but because there was no original standard for the disqualifying offenses, there was no formal appeals process. The terminated men were given letters of denial, which is similar to what TWIC will do. They were not given a copy of their background check. They were not given guidance as to how to get their job back. It was even stated on the first panel that the person needs to take advantage of the appeal. Well if they do not know about an appeal, how do they take advantage of it?

Members of Congress, many of these employees will not be able to properly read or write. Rainbow/PUSH and I worked together with about 30 people writing their appeals for them.

As far as this ALJ hearing, where is it going to be located? Do people in California have to travel to the one location that has the appeal address that currently is listed, from California across the country for an appeal? Some were told to submit their appeals via email.

We represent men who have been on the yards for over a decade and these men are dedicated to their jobs. They want to go to work. They have been rehabilitated. And we ask that you further look into this pseudo-type TWIC program to get some of the answers that you have asked of the panel. Thank you.

Mr. CUMMINGS. Thank you very much.

Mr. Rodriguez or Mr. Willis, you both have indicated that you believe the TWIC program should preempt all of the State and local access control requirements. Do you believe that there are legitimate local security concerns that a State or local jurisdiction may need to address that are not addressed by the TWIC security program?

Mr. RODRIGUEZ. Mr. Chairman, as I stated in my remarks, this is a national concern. And in order to balance the needs of this program, security and the facilitation of commerce, we believe that it is the role of the Congress to set the standard for the system and to make it uniform throughout. To answer your question in another way. Sure, every facility has a right to protect itself, to put up a system that it believes is going to be secure.

But still we have this other aspect that we have to be aware of. We are talking today about workers in the maritime industry. I am hearing now about the rail workers. There are truckers who are going to come under this security system. So to the extent that we have to balance the needs of security and facilitate commerce, I believe that this needs to be a Federal system.

Mr. WILLIS. I would agree with the comments that Mike just made. When Congress put this in place in MTSA, even before that when TWIC was envisioned as TSA sort of sees it, it was supposed to be a national program. You are supposed to do a security check at the national level.

And for our guys to go do that, to go pay $139 or whatever the cost ends up being, and then to have to get a duplicative card or a duplicative check depending on what port or what State or what vessel that you may be operating is just going to create an additional burden that, quite frankly, is unnecessary because TSA has made a threat assessment based on a criminal review, based on an immigration check, based on their terrorist watch list. So we think that is sufficient. We would like to see Congress preempt that or TSA preempt that. If we are going to do this, let us do this once.

Mr. CUMMINGS. Mr. Willis, Mr. Rodriguez, Mr. Allegretti, and I guess Ms. Holder, all of you talked about this issue of past criminal activities. The more I listened to the earlier testimony, I can see where you would have a whole lot of appeal situations. You would have a lot of cases because of the fact that, several of you have said, you have folks who may have limited educations, they may have done something years ago, they have straightened their lives

out, they are in a position now where they are taking care of their family, they are working every day, they have a great work record, and the next thing you know they have no job. On the other hand, we are trying to make sure that we address the issues of national security. And I take it that what you all are saying is that, and correct me if I am wrong, that you want to have the national security but you want to make sure that any kind of disqualifying decisions are consistent with a reasonable likelihood that somebody has done something connected with national security. Is that right?

Mr. WILLIS. That is correct.

Mr. CUMMINGS. Do you think that a number of your members would be affected by this, Mr. Allegretti?

Mr. ALLEGRETTI. Yes, Mr. Chairman, I think so. I have heard a lot on this subject from our members. Much of what I hear is consistent with what many Members of the Committee said this morning. It is looking at the issue of risk. What is the risk profile of the people we are trying to keep out of our industry? We are not trying to keep someone out of the industry who may not qualify to be a choirboy at the Vatican. We are trying to keep someone out of the industry who poses a national security threat.

And when you look at the folks who are in our industry, they may not have a purely pristine background, but there is plenty of evidence to suggest that many of those folks deserve a second chance and when given a second chance become very productive, stable, reliable crew members aboard our vessels and the vessels of many of the folks represented here. And so I think it is really an issue of evaluating the risk profile of the candidate and having that metric be national security.

Mr. CUMMINGS. Ms. Gosselin, one of the things that you mentioned, and it just took me back to some of the issues that Mr. Taylor raised, this whole idea of the cost for the TWIC cards. I take that these young people work during the summer; is that right?

Ms. GOSSELIN. Yes, sir, primarily.

Mr. CUMMINGS. How many of them do you have working on average during the summer?

Ms. GOSSELIN. During the summer this year, so far we have hired 26 deckhands.

Mr. CUMMINGS. Okay. So that means that you would have to be paying 26 times $137.

Ms. GOSSELIN. And multiply that by four because you have to pay for the potential employees and we get four applications for every person that we actually put to work.

Mr. CUMMINGS. So that is a problem.

Ms. GOSSELIN. That is a problem in itself. And even larger for me is that I think that our students will go to the restaurant or marina or hotel right next door rather than deal with this, even if I pay for it.

Mr. CUMMINGS. Do you all have anything that you would like for us, you heard the testimony—and by the way, we will give you a few days, so if you get back to office and think of some other things—things that you would like for us to address to our witnesses that appeared a little earlier? You can tell me now, or if you have some things, let me know. Let me give you an example of what I am talking about. One of the things that when they were

talking about the readers, you may have heard me mention I met with some folks in my office who were small operators, just the types of things that you are talking about, Ms. Gosselin, and they were saying that because they are so small they do not know how this would work. That is why we spent some time trying to address how does all of this work when have these situations like with your boats, Ms. Gosselin, and others. So those kind of unique questions.

Sometimes I think there is a divide between those who make policy and folks who have to deal with policy, who actually have to deal with the results of what we do. So I just want to make sure that you have every opportunity so that we can at least present those issues. I do not want you to spend a year to tell me this. And you do not have to say anything. But if there are things that you really want us to address, and I want you to be short.

Ms. Gosselin?

Ms. GOSSELIN. I think the first thing is what you talked to the Admiral about; and that is, to make sure that the pilot program, the testing program is completed before they write the regulations. There is concern among all of us that the regulations are being written and will come out simultaneously with the end of the testing. We want to make sure that the testing produces the regulation.

Mr. CUMMINGS. Very well. Mr. Allegretti?

Mr. ALLEGRETTI. Mr. Chairman, I think the record on the Government panel was left a little muddled and I would like to clarify for the Committee's consideration. In response to the question about why they do not like the interim work authority that is under consideration by the Full Committee, they talked about a couple of things. They mentioned the inability to track an individual who would be put through this interim work authority process. They absolutely have the ability. Once that person goes into Homeport and has cleared the terrorist watch list, notification is provided back to the company that is dated and that document will be aboard the vessel for any Coast Guard boarding officer to look at.

On the issue of funding, they suggested that perhaps there would be an absence of the Government's ability to collect a fund because we are pushing off the TWIC application. Well, the Government would not incur the cost of the TWIC application if we pushed it off for 90 days. Also, that process of running people through the terrorist watch list is a very low cost process and one that the agency has actually already used to clear port workers and longshoremen. So we are not asking for something that they have not already done without the requirement for Government funding.

And the final point, very briefly, is that what we are asking for here differs not at all from the current regulation that was published by the agency. We are simply asking to change the order so that someone new coming aboard does not have to do as their very first order of business travel to a TWIC center. All of the other elements of clearing that person's background will remain the same. I would like the record to be clear on that.

Mr. CUMMINGS. Very well. Mr. Rodriguez?

Mr. RODRIGUEZ. Yes, Mr. Chairman. Going back to something that I mentioned before in my remarks about preemption, there is

also a problem that we have in getting our sailors, our mariners on and off their ships, on and off their vessels, crossing through facilities. I think something that Mr. Poe touched on earlier was the chemical facility security regulations.

We are a little surprised that the Coast Guard and the TSA were unaware of the rulemaking that came out last winter, early spring. We provided comments that there should be a way for an MTSA regulated facility, a marine facility that is on a chemical production facility, there should be a way for those mariners to have access to shore leave and those kinds of things. Very important issue for us.

I would also like the Congress, your Committee to look at the ILO Convention 185 that talks about using the ICAO standards, the International Civil Aviation Organization standards for Seafarers' Identity Documents. Right now, the way the TWIC program is structured, we are looking at ourselves, we are looking at Americans. Probably 95 percent of the vessels coming into this country are foreign flags with foreign crews. Eventually they will carry Seafarers' Identity Documents that will comply with the ILO 185 Convention. So we would like you to look at that. We would be very happy to come in and talk to you about what all that means.

Mr. CUMMINGS. Mr. Willis?

Mr. WILLIS. I think there are several issues to talk to TSA and the Coast Guard about. First, as TSA mentioned, the background check that they are going to do for maritime TWIC is basically identical to the background they have done for the Hazmat program and are doing for the Hazmat program. I think it would be interesting to ask them to ask them how they are dealing with the appeal/waiver issues. How many of these waivers are actually granted? Why are they denying waivers? What are some of the crimes in the background that they really have a problem with?

Are people not re-upping for the Hazmat CDL because of this background check process? How many workers are being lost in that industry? That I think is going to be a problem in that industry. But I think if you go to the port, maritime side of things, it is going to be even more important.

I think also asking who is really looking, and Mr. Chairman, I think you raised this in the first panel, who is really looking at these criminal records? Are they trained to do it? Is this a TSA function, is this a contractor function? Does TSA have some obligation to make sure that when they look at the criminal records from the FBI that they are accurate. There have been a number of problems, and Ms. Holder mentioned this in her opening statement, with the accuracy of these records. There has to be some affirmative duty on TSA's part to make sure that what they are looking at is accurate.

And finally, the whole ALJ process that, again, originated in this Committee, it originated with then Chairman Don Young in the Coast Guard reauthorization bill, that that is going to be a program that is going to work as designed and will actually provide workers with a real, independent process. Because I think, as it has been laid out, there is going to be a limited number of ALJs in a limited number of cities. And the ability I think of TSA to appeal an adverse decision back to itself is troubling to us.

Mr. CUMMINGS. Mr. Candies?

Mr. CANDIES. Just one observation that I wanted to make. I think everyone has pretty much already mentioned the same concerns that I would have. The observation I had is I noticed, despite the varying backgrounds of the people here, the consistency of the concerns that they have. None of the concerns were with the idea of security. I think everyone here has pretty clearly stated that they are in favor of that. It is with the functionality of this process and making sure that we do not introduce yet another barrier to entry for the workers that we are already having difficulty obtaining and retaining. So that was the observation that I had from the comments that were made and what echoed the comments that the other panelists made.

Mr. CUMMINGS. Ms. Holder?

Ms. HOLDER. We would like you to look into this pseudo- TWIC pilot program that was instituted on the rail industry. I think it could provide you with a lot of answers as to what you can expect. The crimes, they really do need to be more thoroughly defined. It seems that they are extraordinarily broad. The appeals process, like Mr. Willis stated, needs to be fair and independent.

And also, what is the time period? These people are waiting around for months and months and months. It is not going to be a 30 or 60 day period; there is no way of that. And the background check training, who is really looking into these records. Also, when we brought the issue to TSA, they said they had people on the ground investigating the issue. I would like to ask TSA what did your investigation of the railroad case reveal. And if it revealed anything at all, then how can we use the revelations to apply it to the TWIC program.

Mr. CUMMINGS. Thank you very much. Mr. Taylor?

Mr. TAYLOR. Mr. Chairman, I want to thank all of our witnesses. Cutting to the quick, Mr. Chairman, I am less convinced of the need for this card than I was a year ago. And I will give you a for instance. Both Mr. Candies' State and my State were hit very hard by Hurricane Katrina. Congress responded in a number of ways, one of which was a very generous program for homeowners who lived outside the flood plain, who had homeowners insurance, and were flooded. They could apply for up to $150,000, but part of that was they had to agree to buy Federal flood insurance in perpetuity so that this did not happen to them again.

Well, just a couple of weeks ago over in the Financial Services Committee, David Maurstad, who is head of the Federal Flood Insurance program, testified that he was not going to follow up on that requirement. So a person gets $150,000, signs a contract to participate in a Federal Flood Insurance program forever, and here is the head of the Federal Flood Insurance program saying he did not have the resources to follow up on that $150,000 gift from our nation, which again, tremendously generous to the people in Mississippi, tremendously generous to the people in Louisiana.

And so it has really got to make you wonder. If one department of Homeland Security is too lazy to follow through, why are we going through this $137 rigmarole that I have zero confidence that they are going to do any better job of following up on.

And so I think all of these panelists have made some excellent points. Ms. Gosselin, that obviously looks like a bunch of terrorists to me that you have presented to this Committee.

[Laughter.]

Mr. TAYLOR. By the way, my teenage daughter would like to meet some of them.

[Laughter.]

Ms. GOSSELIN. She would have fun.

Mr. TAYLOR. Okay. So I think they have made some excellent points. And if there is anything I am convinced of today, it is that the Commandant needs to come talk to us and walk this Committee through what exactly is it that he hopes to accomplish with this program. And if he cannot make a compelling case for it, then my opinion would be that we just suspend it or outright kill it right now. If they cannot do a better case of saying what it is they are trying to accomplish, how they are going to accomplish it, and what this is going to do instead of making these kids and young people all over the country want to go to work for Mr. Candies and others.

Again, in the case of the merchant mariner documents, which is a fairly extensive background check, the idea of making them pay another $125 just to rubber stamp a background check that has already been done, that is not fair. That is not right. And we should not be about that.

I want to thank all of our witnesses. I think you have all made some very compelling arguments.

Mr. CUMMINGS. I, too, want to thank all of the witnesses. And I want you to understand what you do for us. You help us connect the dots. Again, there is policy over here—it is sort of like what I tell my staff, my scheduler. I say, you make out my schedule, but while you are asleep I am still carrying out that schedule, so be careful how you make my schedule. That is a fact. And I think most Members of Congress probably feel the same way. The fact is that we make policy but we need you all to tell us how that plays out. So this has been extremely helpful.

Again, I hope you understand what I was trying to do. I am just trying to make sure that your testimony is as effective and efficient as it possibly can be. I just do not want you to come here, say a few words, and then it is over. What we are going to do is follow up. And I agree with Mr. Taylor. It is one thing if you are truly doing what you say you are going to do. But I will tell you that our experience with Deepwater has left many of us on both sides of the aisle, and I think you could feel the frustration, this is not just one side of the aisle opinion, both sides are very, very concerned about this program.

So again, if you have some suggestions, you really do need to get them to me by Monday at the close of business. Any thing that perhaps you may think of when you get home, get back to your offices or what have you that you want us to ask.

Thank you very, very much. Thank you for spending your morning here with our Committee.

With that, we will end this hearing. Thank you.

[Whereupon, at 1:18 p.m., the Subcommittee was adjourned.]

Statement of

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Before the
Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, DC

July 12, 2007

Good morning, Mr. Chairman. I am Tom Allegretti, President and CEO of the American Waterways Operators (AWO.) Thank you for holding this important hearing and for the support you have shown for our industry.

AWO is the national trade association for the tugboat, towboat, and barge industry. The industry AWO represents is the largest segment of the U.S.-flag domestic fleet and a vital part of America's transportation system. The industry safely and efficiently moves over 800 million tons of cargo each year with a fleet that consists of nearly 4,000 tugboats and towboats, and over 27,000 barges. Our industry employs more than 30,000 mariners as crewmembers on our vessels.

Mr. Chairman, the members of AWO have been, and will continue to be, partners with Congress and the Department of Homeland Security in ensuring the security of our country. Immediately after the September 11, 2001 attacks, the members of AWO worked in cooperation with the Coast Guard to develop security plans for our vessels, even before they were required by the Maritime Transportation Security Act (MTSA) of 2002. We take security seriously, and we are proud of the fact that our vessels and their crews are considered to be the "eyes and ears" for the Coast Guard on our nation's waterways.

The members of AWO have a number of serious concerns about the impact of the TWIC program on our industry and the men and women who work in it. First and foremost among these is that the process for obtaining a TWIC card will become a significant barrier to entry into the maritime industry for new hires, and this will exacerbate an existing shortage of personnel for our vessels. Second, we are concerned that requiring card readers on small vessels like tugboats and towboats will add no practical security value and should not be part of the forthcoming "TWIC 2" rulemaking on card readers. Third, we are concerned that continued delays in beginning the TWIC program may prevent mariners from obtaining their TWIC cards by the September 2008 deadline imposed by the January 25 final rule. If mariners are unable to obtain their cards in a timely manner, they will be unable to work, vessels will be unable to sail for lack of crew, and maritime commerce will suffer serious disruptions. Allow me to elaborate on each of these concerns.

Interim Work Authority for New Hires

The Department of Homeland Security's May 2006 notice of proposed rulemaking (NPRM) contemplated a TWIC enrollment process taking 30 to 60 days. In our comments on the NPRM, AWO expressed concern that such a time frame would "seriously impede the ability of companies to bring new mariners into the industry in a timely manner." AWO and many of the 2,000 other organizations and individuals commenting on the NPRM urged DHS to include an interim work authority provision in the final TWIC rule that would enable new hires in the industry to begin working immediately once they have passed an initial security screening.

AWO is enormously grateful that the Congress recognized these concerns, and as a result, a provision of the SAFE Port Act (P.L. 109-347), signed into law in October 2006, required the inclusion of an interim work authority provision in the final rule. The statute provides: "The regulations shall include a background check process to enable newly hired workers to begin working unless the Secretary makes an initial determination that the worker poses a security risk. Such process shall include a check against the consolidated and integrated terrorist watch list maintained by the Federal government." This language embodied the request made by AWO in its comments on the NPRM and required a process to allow new hires to begin working following an initial security screening unless there is a determination that the worker poses a security risk.

Unfortunately, the January 25 final rule does not achieve the intent of the statute to avoid creating barriers to new hires entering the industry. The rule denies a new hire the ability to begin work until the expensive and burdensome application process for a TWIC has been completed. Under the process prescribed in the final rule, new applicants must first travel to a TWIC enrollment center to make application for a TWIC in person, as well as pay the TWIC enrollment fee of $137, before undergoing an initial check against the terrorist watch list.

For many applicants, this trip to the TWIC enrollment center will not be quick, easy or inexpensive. Some applicants will have to travel significant distances, to an enrollment center that may be many hours away, in order to apply for their TWIC. This process creates a very high

barrier to entry for new entrants to the industry who are not even sure yet whether a career in the maritime industry is right for them.

Under the final rule, the "initial" security screening can only occur after the applicant has gone through the time and expense of completing his or her TWIC application at a TWIC enrollment center. At that point, the employer may enter the individual's information into the Coast Guard's Homeport website to obtain the results of the check against the terrorist watch list. The rule indicates that a response can be expected within 24 to 72 hours after enrollment is completed. The problem is that for new hires and their employers, the TWIC enrollment process is only one step in a larger process of coming to work in the maritime industry. The first thing a company does when a new hire makes application is put him or her through a drug screen. If he or she passes that test, the next step is a physical exam, followed by a reference check. In the real world, neither the applicant nor an employer will want to invest in a trip to a TWIC enrollment center until those steps are taken. What that means is that it could easily take more than a week before an applicant is ready to travel to an enrollment center and make application for a TWIC, and then wait an additional three days for the results of the terrorist watch list check to be available.

Mr. Chairman, we are concerned that requiring new applicants to undergo such a burdensome process will deter individuals from entering the maritime industry. AWO member companies provide excellent entry-level opportunities for high school graduates looking to begin a career in the marine industry as deckhands on our vessels. These men and women come to our industry with a need to begin earning a paycheck and providing for themselves and their families right away. Faced with the burdensome requirements surrounding the TWIC process, many will seek employment in another industry where the barriers to entry are not so high. Even without the TWIC rule, AWO members are struggling with a chronic shortage of personnel to man their vessels. We estimate that the annual turnover of entry-level personnel in the towing industry is 50 percent. New hires may find that they get seasick or homesick and choose not to continue with a maritime career. Companies must also evaluate an individual's ability to perform on the job. Both the new hire and the company must come to the conclusion that a career as a working mariner is the right "fit" for the individual and the company before a long term commitment is

made. For many new hires, the first manifestation of that commitment is the trip to the TWIC enrollment center and the payment of the application fee. That commitment should not be required until both the company and the applicant have concluded that the individual will continue in the industry.

In this environment, we are very concerned that the burdensome requirements for obtaining a TWIC will exacerbate the current personnel shortage and could even force companies to tie up boats for lack of crewmembers to operate them. Such an outcome would have a negative impact on the ability of our industry to deliver the cargoes that are the building blocks of our national economy.

The legislative change discussed by Congressman Baker and Chairman Oberstar during markup of the Coast Guard authorization bill two weeks ago would go a long way toward solving this problem. This provision would allow a newly hired employee to work on board a towing vessel for up to 90 days before making application for a TWIC, provided that: the vessel is operated in compliance with all provisions of its Coast Guard-approved vessel security plan; the employee passes a pre-employment drug test as required by existing Coast Guard regulations; and, the employee passes a name-based security screen against the terrorist watch list. This is the same security screen, conducted by the same federal agency, that would be used to grant interim work authority under the current TWIC rule.

However, by requiring that the initial security screening be conducted electronically, this provision would spare newly hired employees the time and expense associated with traveling to an enrollment center to make application for a TWIC before they are certain that they intend to stay in the towing industry. It would also avoid bogging down the TWIC enrollment system with applicants who may conclude after one or two vessel tours that the maritime lifestyle is not for them. This is a significant benefit given TSA's increasingly high estimate of the number of workers who may be affected by the TWIC program, which has recently doubled from an estimated 750,000 workers to as many as 1.5 million. A new hire who intends to continue in the industry for more than 90 days would be required to obtain a TWIC following the process laid out in TSA regulations.

AWO very much appreciates Mr. Baker's introducing this amendment and Chairman Oberstar's support for including it in the manager's amendment when the Coast Guard authorization bill goes to the House floor this summer. We believe this provision will achieve the goals that Congress intended in the SAFE Port Act: raising the bar of safety and security in the industry without disrupting maritime commerce or imposing prohibitive barriers to entry on American workers in need of employment opportunities.

Mr. Chairman, the reality is that this provision represents a higher level of security than that which has existed in the five years since MTSA 2002 was enacted. The TWIC program has not yet been implemented anywhere. For the past four years, towing vessels have operated under Coast Guard-approved vessel security plans that include procedures for verifying crewmember identity and controlling access to vessels. Establishing an interim work authority provision for new hires that requires a check against the terrorist watch list before an individual can begin working on a towing vessel is a higher level of security than exists today.

It is worth emphasizing that under this provision:

- No vessel crewmember covered by the MTSA 2002 mandate will be exempted from the requirement to obtain a TWIC.

- Only new hires who successfully pass a security screen against the terrorist watch list will receive temporary interim work authority. This is the same security screen (conducted by the same federal agency) that is required under TSA's current interim work authority regulations for new hires;

- Only new hires who successfully pass a Coast Guard-mandated drug test will receive temporary interim work authority;

- The vessel on which a new hire is employed will be required to be in full compliance with all provisions of its Coast Guard-approved vessel security plan; and,

- A new hire who intends to continue in the industry for more than 90 days will be required to obtain a TWIC following the process laid out in TSA regulations.

Mr. Chairman, including this provision in the Coast Guard authorization bill will go a long way toward mitigating the human costs of the TWIC program without undermining our mutual goal of enhancing maritime safety and security.

Card Readers on Towing Vessels

A second significant concern for the towing industry is the potential requirement for electronic TWIC card readers on towing vessels. The NPRM proposed requiring readers both at facilities and on vessels. There was no exemption for vessels with small crews, such as towing vessels. DHS subsequently announced that the card reader requirement would not be implemented as part of the initial TWIC rule but would be considered further as part of a separate rulemaking. This was a proper response to the deluge of negative comments about the card reader requirement, but the issue of card readers on towing vessels remains an open one.

Card readers are simply unnecessary for vessels with small crews, such as towing vessels. As AWO noted in its comments on the NPRM, crew sizes on tugboats and towboats typically range from four to ten mariners. In a typical U.S.-flagged towing vessel operation, every employee is known to management and fellow crewmembers. A stranger onboard the vessel is immediately obvious. Personal knowledge of fellow employees provides a higher security standard than reliance upon an electronic reader, no matter how sophisticated the technology employed. Access control procedures are already included as part of a Coast Guard-approved vessel security plan. Moreover, the validity of TWIC cards can be checked through means other than mandating computerized equipment on board each vessel to constantly communicate with a DHS database.

Mr. Chairman, even if card readers could be operated reliably in the severe marine environments where towing vessels routinely go – and that has not yet been demonstrated – there is simply no

need to require their installation on every towing vessel in order to ensure the security of those vessels, or to ensure the security of the maritime transportation system. The SAFE Port Act gives DHS the authority to limit the card reader requirement to vessels with more than a certain number of crew, to be determined by the agency. We suggest that, at a minimum, vessels with 12 or fewer crew members requiring a TWIC should not be required to have a card reader installed on board.

Implementation Delay and Mariner Deadline

Mr. Chairman, our third concern is that with the continuing delay in beginning the TWIC enrollment process, mariners may not be able to obtain their TWIC cards in a timely manner. While the SAFE Port Act established a deadline of July 1, 2007, for the onset of enrollment in the top ten priority ports, DHS said earlier this year that it intended to begin issuing TWICs in the spring. That would have allowed nearly 18 months for enrollment centers around the country to come on line and ample opportunity for mariners to obtain their TWICs by the regulatory deadline of September 25, 2008. However, DHS recently announced that it would not meet the July 1 deadline, and projected that enrollment would commence in Wilmington, Delaware, in September or October. Even if that schedule holds true, there will be less than one year from the time enrollment begins in the first port in the country to the time all mariners are required to have a TWIC. AWO is very concerned that this increasingly compressed time frame will not allow adequate time for mariners across the country to obtain their TWICs. As the schedule continues to slip, the window for mariners is closing.

While the regulatory deadline of September 25, 2008, may seem like a long way off, for mariners it is getting closer all the time. With the time allowed to obtain a TWIC dwindling, and DHS estimates of the number of individual TWIC cards to be issued doubling, mariners are understandably concerned that the process may not allow them the opportunity to obtain their TWIC cards in a timely manner. Both DHS and Congress need to be prepared to extend the September 25, 2008, deadline to ensure that mariners can obtain TWICs, vessels can sail with the necessary crew, and vital maritime commerce can continue to flow smoothly.

Conclusion

Mr. Chairman, AWO members share the goal of increasing maritime security throughout the United States, but we continue to have serious concerns about the TWIC program and its impact on our industry and on the men and women who make their living in it – or who would like to have that opportunity in the future. Security is an important national goal, but it should never be our only goal. Providing employment opportunities for American workers and keeping the commerce of the nation flowing are also important to the health and vitality of our country. We believe it is possible – and necessary – to modify the TWIC program to achieve all of these goals simultaneously. Congress can lead the way by including a practical interim work authority provision in the Coast Guard authorization bill, sending a clear signal to DHS that card readers should not be required on vessels with small crews, and ensuring adequate lead time for mariners between the start of TWIC enrollment and the deadline for mariners to obtain TWICs.

Mr. Chairman, I very much appreciate the opportunity to appear before you today. AWO and its member companies stand ready to work with this committee, and with the Department of Homeland Security, to ensure the security of our country while keeping mariners working, vessels moving, and the commerce of the United States flowing. Thank you.

Subcommittee on Coast Guard and Maritime Transportation Of The U.S. House Committee on Transportation and Infrastructure

Hearing on Transportation Worker Identification Credential Implementation

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July 12, 2007

Good morning and thank you for giving us the opportunity to testify on the Transportation Worker Identification Credential. Close Congressional oversight of this program will be important if we are to maintain the balance between commerce and security in our maritime industry.

My name is Otto Candies, III and I am Secretary/Treasurer of Otto Candies, LLC. I am testifying on behalf of the Offshore Marine Service Association, where I serve as Vice Chairman. OMSA is the national trade association representing the owners and operators of vessels that support America's offshore oil and gas industry. OMSA member vessels carry every piece of equipment and many of the workers needed to explore and produce our offshore energy resources.

I am part of the third generation involved in our family-owned business. We own some 50 vessels and employ well over 200 mariners who may be required to obtain TWIC cards.

My company and our industry has come a long way since my grandfather, Captain Otto Candies, started the company in 1942 with one boat, a wooden lugger, working for one customer who wanted to explore for oil in the marshes of Louisiana. Today that first customer is still one of our best customers. I stress that to point out that our company and

our industry takes its responsibilities seriously, whether it is responsibility to our customers or, in the case of security, the responsibility to the country and the American people.

The Commandant has talked about the need to "buy down risk" in the maritime sector, meaning to take the steps and commit the resources to reduce the threat of terrorist attack. Here is how our industry "buys down risk:"

- We have worked with the Coast Guard to develop comprehensive industry-wide security plans for our vessels.
- We have trained and drilled our crews on the requirements of those security plans, so that even the newest, least experienced mariner on one of our vessels understands his or her responsibility to maintain security.
- We have installed AIS tracking devices on our vessels.
- Significantly, the Coast Guard puts our mariners through one of the most rigorous background checks of any mariners in the world.

Far and away, we believe that the most important factor that reduces the terrorist threat in U.S. waters is the requirement that our vessels be owned by Americans and crewed by Americans. That single requirement, that mariners on our vessels be U.S. citizens, is the key to protecting our maritime sector from foreign terrorists who would use our vessels as weapons.

However, if U.S. citizens working on U.S. flag vessels in U.S. waters increase our security, anything that creates an obstacle to putting U.S. citizens to work or discourages U.S. citizens from going to sea reduces our security.

Unfortunately, that is our real concern with the TWIC program as it has developed over the past year. Based on everything we have seen and read concerning this program, it seems to be overly complex and overly expensive. In order to obtain a TWIC card, an entry-level mariner must:

1. Travel to a processing center;
2. Pay a fee that appears to be well above the actual cost of the card;
3. Wait for the process to be completed and:
4. Return to the processing center to pick it up.

Then he must go through a separate process, including an additional background check and an additional separate fee in order to obtain a mariner credential…all in order to prove he is not a terrorist. Imagine a young prospective employee considering a career in our industry, only to be told that he or she will have to go through a protracted process and face potentially long delays before starting work. We support background checks. As I mentioned earlier, our mariners already go through a very comprehensive background check from the U.S. Coast Guard. However, if the system is too cumbersome and expensive and if it sends the signal to mariners that they can't be trusted, it will harm our ability to maintain security in ways we can't even measure.

Making matters worse, the delays and unexplained changes in the program are creating uncertainty and worry for mariners and their industry. Under the regulations, mariners must obtain a TWIC card by September of 2008. They are the only group with a hard deadline for compliance in the regulations. Now the start of TWIC processing has been delayed at least six months and yet there has been no official delay in the deadline for mariners.

We only need to look at the recent change in passport requirements to see what an overly short deadline can do to the processing system. That sudden demand on a system that wasn't prepared for it resulted in thousands of Americans being inconvenienced. That sort of delay in TWIC processing could cripple our industry. We need to learn from the passport example, not repeat it.

At the very least, the deadline for mariners should be delayed by 12 months to September of 2009. That would allow shoreside workers to obtain TWICs in a more timely manner without the added burden of an additional 200,000 mariners trying to obtain their cards at the same time. We would suggest that the agencies go one step further...implement processing for shoreside workers, allow that backlog to clear and then begin processing mariner applications. This will not degrade security because our mariners are already undergoing a more thorough background check with the Coast Guard. On the contrary, by reducing the number of workers trying to obtain TWICs in such a short timeframe it may actually allow the program to succeed.

Just as the delays in passport processing give us some concern over the plan to process TWIC cards, the experience with the "No Fly List" raises the concern that mariners may be wrongly denied TWICs and will need a quick, expedient way to resolve questions that may arise from the background checks. Hopefully the vast majority of transportation workers will sail through the TWIC process without problems and will receive their TWIC card within the time-frames that TSA has estimated. Just as clearly, some potential workers will be permanently rejected based on the disqualifying offenses in the law. However, there will also be a third group that will fall somewhere in the middle. These individuals may have their initial application rejected because of errors or because they committed an offense that requires a judgment call by someone in government. We only raise this because TSA has not publicly discussed the staffing levels or procedures that it intends to put in place to ensure that mariners are not wrongly denied TWIC cards. Lacking that, all we can look at are the problems that have arisen from the "No Fly List."

We are also very concerned about the potential requirement for TWIC readers on vessels. We strongly oppose this for the following reasons:

- The Maritime Transportation Security Act does not require readers and we do not believe that Congress intended for there to be readers on vessels. The concept of readers on vessels originated with the agencies and is nearly universally opposed by vessel operators.
- The agencies have never explained how readers on vessels would reduce risk in a cost effective manner even though by OMSA's estimates readers on vessels would conservatively cost the offshore vessel fleet alone 100 million dollars.

- While we agree that the background checks envisioned by TWIC (and currently provided by Coast Guard background checks) provide companies with an effective way to vet prospective mariners in the hiring process, readers on vessels will be more of a hindrance than a help.
- The relatively small crews on offshore vessels are assigned to specific vessels by the company and may work together for years at a time. In other words, it would be hard for a foreign terrorist to simply show up and go to work on a vessel.
- Finally, we question the reliability of the readers on offshore vessels. We work in hot humid waters of the Gulf of Mexico. Soon we will be working in frigid waters of the arctic. Despite Congress' direction to test these readers under all conditions before requiring them, the agencies have still not explained how they intend to run the tests even as they begin planning the reader requirement.

Let me take this opportunity to give credit to the Coast Guard for one part of this process that it has handled very well. In the last week, the Coast Guard released Navigation And Vessel Inspection Circular No. 03-07, which outlines how the TWIC requirement will be implemented and enforced for vessels and facilities. The document focuses on who will be required to carry a TWIC and how non-TWIC holders will be monitored on vessels and at facilities. While OMSA has not had the time to fully analyze this document, from our initial reading, it appears that the Coast Guard has worked hard to incorporate many of the concerns of industry and to arrive at solutions that allow us to continue maintain security without stymieing our ability to operate.

Finally, we understand an amendment addressing temporary access by newly hired workers awaiting their TWIC cards to be processed may be offered when the Coast Guard Authorization Act of 2007 goes to the House floor. While we agree with the concept and, indeed, first recommended the need for a process to put new hires to work while they wait for their TWIC cards to be processed, the amendment as offered is unnecessarily limited because it only offers the temporary access for towing vessel crews. If it is expanded to include offshore vessels and passenger vessels, it will receive our wholehearted support.

In conclusion, OMSA and its members take the responsibilities for security very seriously and want to be a partner with Congress and the agencies in ensuring security. However, we believe that we can only accomplish that with a process that incorporates the needs and unique operations of our vessels and our greatest asset – American workers. Thank you and I would be happy to answer any questions.

TRANSPORTATION WORKER INDENTIFICATION CREDENTIAL (TWIC)

TESTIMONY OF

MAURINE FANGUY
PROGRAM DIRECTOR

TRANSPORTATION SECURITY ADMINISTRATION
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION and INFRASTRUCTURE,
SUBCOMMITTEE on COAST GUARD and MARITIME TRANSPORTATION

July 12, 2007

Good morning Chairman Cummings, Ranking Member LaTourette, and distinguished members of the Subcommittee. Thank you for this opportunity to speak with you about the Transportation Worker Identification Credential (TWIC) program.

I would like to acknowledge the leadership this Committee has provided in defining the vision and requirements for TWIC. The TWIC program is moving aggressively towards its objectives with a focus on enhancing security and sound programmatic decisions.

Let me begin by acknowledging the SAFE Port Act deadline of July 1 to enroll ten ports in TWIC as well as the obstacles that prevented us from meeting it. After a great deal of hard work and earnest effort on the part of the Transportation Security Administration (TSA) and our partners, we were not at a point where we could initiate the program and assure total quality. Given a choice between meeting the deadline and program integrity, we choose the latter.

TWIC is an advanced, sophisticated credentialing system. The greatest technological challenge that we are addressing is not the card itself as much as it is the network behind the card. Breaking new ground in technology has obvious advantages but it always brings schedule risk, and TWIC is no different.

Three developments in the last year have made this project even more complex. The first was our decision to bring TWIC into alignment with the new federal government credentialing standards called Federal Information Processing Standards (FIPS) 201. Secondly, we identified, and closed, potential data privacy gaps as of this past February. And third, working with the Coast Guard, we incorporated more than 1900 comments received during our rule-making process into the detailed blueprint for TWIC.

On top of the challenges of introducing new technology, while at the same time making the three major program adjustments, we have an additional complexity. We will connect TWIC into what we call the Screening Gateway. The Screening Gateway is a TSA enterprise asset that aggregates security threat assessment data, working with the FBI, Citizenship and Immigration Services, and TSA's Colorado Springs Operations Center. It is important to note that the Screening Gateway is used across all of TSA's vetting programs. Not only must the internal components of the TWIC card work together, they must work in combination with a larger Screening Gateway. Rigorous performance testing is the only way to know for sure that TWIC is ready to go live.

That is where we are in the process, and what remains is the testing. While the ultimate start of enrollment will be based on the results of these rigorous assessments, we currently anticipate enrollment will begin in the fall at the Port of Wilmington, Delaware with a continuing broader rollout from there. It is important to note that TWIC will be phased in with ample notice to and coordination with our affected stakeholders.

For us, the stakes are enormously high. Before TSA rolls out one of the world's most advanced interoperable biometric systems, we must ensure the IT network behind the system is functional, secure, integrated, sustainable, and does not adversely affect the free flow of commerce. Once TWIC is up and running, TSA will vet as many workers in one day (approx. 5,000) as we did during the entire prototype (4,000). The importance and enormity of this task within the maritime environment, with a dynamic and mobile workforce, demands that we get it right. Moreover, for the people who pay for these cards and use them daily to enter workplaces and jobs we must ensure that the program is tested, fully integrated and does not compromise security in any linked system.

The Final Rule

The final rule for TWIC went into effect on March 26, 2007. This hearing provides an excellent opportunity to highlight program developments and describe how we are incorporating our lessons learned into an effective, efficient business plan for TWIC enrollment.

We have framed our program decisions and processes within the context of the nation's port security goals, including the need to:

- Identify authorized individuals who require unescorted access to secure areas of Maritime Transportation Security Act (MTSA) regulated facilities and vessels;
- Determine the eligibility of an individual for access through a security threat assessment;
- Ensure unauthorized individuals are denied access through biometric confirmation of the credential holder;
- Revoke access promptly for individuals who fail to maintain their eligibility;
- Apply privacy and security controls to protect TWIC information; and,
- Fund the program entirely by user-fees.

Achieving these ambitious goals has required creative planning, flexible implementation, effective stakeholder communication, and adaptive contract management. The basic program deployment philosophy has been a commitment to evaluate all practicable technical alternatives that will provide adequate port security and minimize adverse impacts, either economically or logistically, to our nation's citizens and our international trading system. This has been and will continue to be the program's implementation premise.

TWIC Milestones to Date

An estimated 750,000 workers currently have unescorted access to our ports. The central technical TWIC challenge is providing facilities and vessels with a reliable tool for identifying individuals who have been granted authorized access to our ports. Simply put, TSA has been tasked with the development of a 21st century identification system. The key element of the system is a card that includes biometric technology that makes it virtually impossible for the card to be used by anyone other than the person to whom the card was issued.

The technical principle underlying TWIC's ability to authenticate a person's identity includes three factors. When using the full extent of TWIC's authentication ability each person can be identified by:

- Something they know – a worker's Personal Identification Number (PIN);
- Something they have – the TWIC credential; and
- Something they are – a biometric.

Obviously, new processes and technologies require systematic pilot studies. The prototype study was deployed to 26 locations in the areas of Los Angeles/Long Beach, Wilmington/Philadelphia and Florida's deepwater ports. The prototype TWIC was successfully issued to more than 4,000 volunteer workers including truck drivers, longshoremen, container terminal, railway, and airport personnel. A name-based threat assessment was completed on each individual. A criminal background check was conducted by the State of Florida for the deep-water port volunteers. These efforts were a success on multiple levels; they provided invaluable experience and a much deeper understanding of the technical and logistical challenges.

Security improvements could not wait until TWIC is fully deployed. We have gone forward with significant interim security enhancements and actions during TWIC's initial development phase. These actions included:

- The Coast Guard worked effectively with National Maritime Security Advisory Committee (NMSAC) to define secure areas. This definition will have a direct impact on over 10,000 vessels and more than 3,200 facilities. These secure areas delineate where a TWIC will be required for unescorted access.

- The joint rulemaking process between the Coast Guard and TSA was accelerated, resulting in publication of the TWIC Notice of Proposed Rulemaking (NPRM) on May 22, 2006.
- The Coast Guard and TSA worked with industry partners to develop an interim process that compares a worker's biographical information against our terrorist watch lists and immigration databases.
- Facility owners, facility operators, and unions submitted worker names, dates of birth, and, as appropriate, alien identification numbers. Each worker's immigration status was checked by the U.S. Citizenship and Immigration Service using its Central Index.
- To date TSA has completed 740,000 name-based threat assessments on port workers and longshoremen. These assessments were an interim measure and did not include the criminal history records check or biometric credential that is part of TWIC.
- TSA will be refreshing its security risk assessment by running all of the name-based checks again.

TWIC Rule and Stakeholder Input

The TWIC rule was posted on the TSA and Coast Guard websites on January 1, 2007, and published in the Federal Register on January 25, 2007. The rule is the result of extensive public involvement and interagency coordination. In addition to the direct involvement of the National Maritime Security Advisory Committee, TSA and the Coast Guard held four public meetings in Newark, NJ; Tampa, FL; St. Louis, MO; and Long Beach, CA. Over 1,900 comments were received from workers, port owners and operators, small businesses and others affected by the new program. All comments were carefully considered, and we made significant changes to the NPRM in the development of the Final Rule. These changes include:

- The Coast Guard and TSA delayed the requirement to purchase and install electronic readers to allow for additional field testing, technology improvements, and more public comment.
- We created an expedited interim threat assessment process for new hires so that they may go to work pending completion of the full threat assessment.
- We expanded the immigration requirements to permit certain visa-holders who are prevalent in the maritime industry to apply for TWIC.

In addition, the TWIC NPRM and Final Rule include provisions that respond to comments we received from workers subject to similar threat assessment programs. These include:

- Creating a new process where TSA can make a determination that a security threat assessment conducted by another government agency is comparable, eliminating redundancy and reducing costs for workers;
- Providing workers more time to apply for an appeal or waiver;

- Streamlining the process, jointly with the Coast Guard, for merchant mariner credentialing and ensuring that there is no duplication of requirements resulting from the TWIC process.

TWIC cards will be required not only for port facility workers, but for anyone who seeks unescorted access to secure areas of a MTSA-regulated facility or vessel, regardless of frequency. The workers covered by this rule include certain truck drivers, rail employees, security guards, longshoremen, as well as all U.S. merchant mariners. TSA will use the time-tested security assessment procedures and standards that are currently used for commercial motor vehicle drivers licensed to transport hazardous materials, known as Hazardous Material Endorsements (HME). In short, TWIC will be issued to workers who successfully complete a security threat assessment, which includes: (1) a check against terrorist watch lists, (2) an immigration status check, and (3) a FBI fingerprint-based criminal history records check.

TWIC Card Readers

The TWIC rule does not currently include a requirement for owners and operators to use card readers. This was done as a response to important public comments received on the NPRM and concerns from Congress expressed in the SAFE Port Act. The card reader requirement is being formulated and coordinated with extensive technical input from industry and the public. In the interim, workers seeking unescorted access to secure areas will present their cards to authorized personnel, who will compare the photo, inspect security features on the card, and evaluate the card for signs of tampering. At facilities with various sophisticated access control systems, the magnetic stripe on the credential could be used to grant or deny access at entry gates. The Coast Guard will also institute periodic unannounced checks to confirm the identity of the holder of the TWIC.

We will continue to work closely with all interested parties to address the ever-evolving technology issues. The TWIC technical architecture is aligned with Homeland Security Presidential Directive (HSPD) 12 and FIPS 201-1 requirements, which provide an open standard that will ensure interoperability and real-time exchange for supply chain security cooperation between the Department and the private sector. The applicant's photograph, name, TWIC expiration date, and a unique credential number are printed on the card. An integrated circuit chip on the card stores two fingerprint minutia templates and a PIN as well as a digital photo of the applicant, the applicant's name, and card expiration. The embedded computer chip is capable of being read by both contact and contactless card readers and also contains the magnetic strip and linear bar codes.

In addition to previously conducted prototype testing, pilot test planning and discussions with interested port, facility, and vessel operators began late last year. The pilots will test access control technologies in real-world marine environments. The National Maritime Security Advisory Committee provided invaluable input regarding operational requirements and has recommended specifications for contactless biometric smart cards and card readers. We are in the process of publishing their feedback along with the final

program specifications in the Federal Register. As part of the outreach efforts for the TWIC program and the Department's Port Security Grant Program we have met with a number of maritime interests to invite their participation in the pilot tests. Our objective is to include pilot test participants that are representative of a variety of facility and vessel types and sizes that operate in a variety of geographic locations and environmental conditions. There appears to be sufficient interest from the maritime community to achieve this objective.

TSA and Coast Guard are working with Department test and evaluation experts to develop a comprehensive plan that addresses the unique pilot test challenges. The evaluation of the pilot tests will greatly facilitate the Department's efforts to propose a TWIC reader requirement rule that effectively addresses security requirements, maintains the flow of commerce, and protects the personal information used to validate the TWIC holder's identity.

Rollout Contract

A key operational piece of the rollout plan was the award of a competitively bid, indefinite delivery/indefinite quantity contract to Lockheed Martin Corporation. The TWIC enrollment and systems operations and maintenance contract will include a Quality Assurance Surveillance Plan (QASP) that establishes detailed metrics to be monitored through the life of the contract and will determine whether the contractor will receive any award fee for services performed.

Lockheed Martin will establish approximately 130 enrollment centers near the port facilities where applicants will provide biographic information and fingerprints. This information will be transferred to TSA so we may conduct a threat assessment involving checks of criminal history, immigration, and intelligence databases. Once a worker successfully completes the threat assessment process, the government will produce the credential and send it to the enrollment center, where the worker will retrieve it. TWIC enrollment will begin initially at select ports based on risk and other factors and will proceed throughout the nation in a phased-in approach. The 130 fixed enrollment sites will be established by the end of Fiscal Year 2008.

TWIC Card Costs

As required by Congress, the costs of the program will be borne by TWIC applicants. Therefore, we are obligated to look for practical ways of controlling costs, eliminating duplicative processes, providing timely decisions, and most importantly, ensuring accuracy and fairness.

The fees for a TWIC will be slightly lower than was anticipated in the Final Rule. A TWIC will be $137.25 for a card that is valid for 5 years. Workers with current, comparable background checks (e.g., HAZMAT, Merchant Mariner Document (MMD) or Free and Secure Trade (FAST)) will receive a discounted fee of $105.25. The cost of

a lost, damaged or stolen credential is $36, although we have solicited comment on raising that fee.

We fully realize that these costs are not an insignificant amount to some workers. However, we feel that the costs compare very favorably with equivalent HSPD-12-compliant card fees and in some instances may actually reduce the costs for some workers. For example, the Coast Guard is in the process of completing a companion rule that will consolidate existing mariner credentials and streamline the application process for mariners who have already applied for the TWIC. This will reduce the overall cost burden for these workers. Preparations are underway to reduce duplication by having TSA provide the Coast Guard with electronic copies of the applicant's fingerprints, proof of identification, proof of citizenship, photograph, and if applicable, the individual's criminal record, FBI number, and alien registration number. This will eliminate the need for TWIC-holding mariners to visit a Coast Guard Regional Exam Center to apply for or renew their Merchant Mariner Credential unless an examination is required.

Rollout Communication Plan and Pre-Enrollment

Effective public communication is fundamental to our rollout plan. The TWIC program office has used the lessons learned from the prototype phase to develop a multi-dimensioned outreach strategy for all of the enrollment phases. A toll-free help desk, Frequently Asked Questions, informational brochures, and a centralized e-mail address will provide up-front assistance and guidance for workers, owners, and operators. These services include program information, response to enrollment questions, pre-enrollment assistance, lost/stolen card reporting, credential replacement support, updates on an individual's case, and information on appeals and waivers. Applicants are encouraged, but not required, to "pre-enroll" and provide biographic information at the secure TWIC web site which should help reduce waiting time at the enrollment centers. An additional service that is provided during pre-enrollment is an opportunity for the applicant to schedule an appointment for appearing at the enrollment center.

Lockheed Martin is required by contract to develop a communication plan to ensure that applicants, operators, and relevant industry associations are educated and knowledgeable about the TWIC enrollment process. The communication plan will identify TSA goals and responsibilities, contractor goals and responsibilities, port facility and vessel responsibilities, target audiences, communications processes, and supporting communication tools. A key plan element is the use of a communication committee to ensure sustained two-way communication with major stakeholders. This vital effort is calculated to provide the most current, accurate program information to interested stakeholders and provide a mechanism for continuing stakeholder input during the rollout.

Enrollment Centers

Enrollment sites will be operated by trusted agents who are employees of a vendor under contract with TSA. These trained agents will have undergone a TSA security threat

assessment before being allowed to collect the data. The trusted agents will provide applicants with a privacy notice and consent form, by which the applicant agrees to provide personal information for the security threat assessment and credential. The trusted agents will verify an applicant's identity, confirm the accuracy of biographic information, collect biometric information (a full set of fingerprints and a facial photograph), and obtain the applicant's signature on the enrollment documents. The contract performance parameter for the trusted advisor enrollment process will be an average enrollment time of 15 minutes. The enrollment process for a pre-enrolled applicant is fully expected to take less time. As you can see, focused planning that fosters convenience for applicants will benefit workers as well as our process efficiencies.

Data Security Vetting and Card Issuance

After enrollment, an applicant's data is sent to the TSA system, and the vetting process (i.e., terrorism database, criminal history records check, immigration check) is started. We anticipate that the TWIC threat assessment processing time will be similar to our experience in the HME program. Since the inception of the HME program, threat assessments have frequently been completed in 3 days or less. During this same period the average time for completing HME threat assessments has been approximately 14 days, which includes all appeals and waivers. The process will be impacted by steps where there is minimum governmental control. For example, applicants need to promptly provide corrected records and respond to initial determinations. Other factors that we anticipate could result in processing delays include an applicant providing incorrect information, watch list determinations, evaluation of the nature of threats, whether the applicant is currently under criminal investigation, and confirming immigration status that is not available in electronic format. Nonetheless, the 14-day average for processing the HME assessments includes the time required to meet the same threat assessment challenges that we will face with TWIC.

If TSA determines that an applicant does not pose a security threat, the applicant's information is sent for card production. After the card is developed, it is sent to the enrollment center, where the worker will be notified to pick up the card. Due to the secure nature of the credential, the smart cards are shipped as "inactive." An applicant must verify his or her personal identity by providing a biometric (i.e., fingerprint) that is matched to the cards electronic template. After identity is verified, the applicant selects a secret PIN which is stored on the card as an additional identity authentication factor.

Worker Redress/Waivers/Appeals

If an applicant is denied a TWIC, he or she will be notified of the reason and instructed on how to apply for an appeal or waiver. All applicants have the opportunity to appeal a disqualification and may apply to TSA for a waiver. In order to expedite processing time, applicants who are aware of a potential disqualifying crime may begin the waiver process when they initially apply for a TWIC.

The standards for denial of a TWIC are the same standards that apply in the HME process. Any applicant who is subject to removal proceedings or an order of removal under the immigration laws of the United States is not eligible to apply for a TWIC. An individual will be disqualified if he or she lacks legal presence and/or authorization to work in the United States, has a connection to terrorist activity, or has been determined to lack mental capacity.

A person will also be denied a TWIC for a criminal history involving certain disqualifying crimes. TSA received valuable NPRM comments on the list of disqualifying crimes and decided to fine-tune the list to better reflect crimes that are more likely to result in a terrorism security risk or a risk that the individual may engage in a transportation security incident. Permanent disqualifying criminal offenses include: espionage; sedition; treason; terrorism; improper transportation of a hazardous material; unlawful possession, use or sale of an explosive; murder; threats to a place of public use (government facility, public transportation system, or infrastructure facility); violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act in which the predicate act is one of the permanently disqualifying crimes; and a crime involving a transportation security incident. A transportation security incident is a security incident resulting in a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

Individuals are ineligible for a TWIC if convicted in the last seven years or incarcerated within the last five years of the following crimes: unlawful possession, use or sale of a firearm or other weapon; extortion; fraud; bribery; smuggling; immigration violations; distribution or importation of a controlled substance; arson; kidnapping or hostage taking; rape or aggravated sexual abuse; assault with intent to kill; robbery; and RICO violations that do not involve a permanent disqualifying crime.

The appeal process involves ensuring that the information on which TSA bases its threat assessment is completely accurate. This process allows the applicant to correct the record on which that threat assessment occurs.

Fairness and accuracy in TWIC waiver determinations are further ensured by an opportunity for independent review by an Administrative Law Judge. As previously noted, the regulations provide a lengthened period for appealing denial of waivers, from 30 days to 60 days, to accommodate workers who tend to travel for extended periods of time. Furthermore, the regulations allow a worker to file a request for a time extension after the deadline has passed by filing a motion describing the reasons why they were unable to comply with the timeline. The extra procedural measures are intended to give workers every reasonable chance to bring legitimate concerns and issues to the attention of people who are trying to make the best and correct decision regarding security risks.

Lessons Learned and Future Efforts

The initial rollout of TWIC will be focused on the maritime mode. However, once the initial maritime rollout is complete DHS will evaluate deployment of this program in other modes of transportation. The analysis and planning for any resulting decision will

benefit from the experience, technical expertise, and lessons learned that evolved under the TWIC program.

There are several vital lessons learned during the development of this program that must be prominently considered in future efforts:

- *Look for efficiencies in duplicative regulatory processes.* As noted previously, TSA and Coast Guard are developing procedures for the sharing of mariner fingerprints, identity verification, criminal history, and photographs for TWIC which are expected to save not only money but time. In addition, merchant mariners will no longer be required to visit a Regional Exam Center to obtain and renew their credentials, resulting in substantial time and travel savings.
- *Address the impact on small businesses.* TSA and the Coast Guard worked closely with the Small Business Administration to minimize the financial and operational impact on small businesses wherever possible. The rule includes provisions that allow MTSA-regulated passenger vessels (excluding cruise ships) to establish employee access areas for crewmembers that do not require unescorted access to secure areas such as the pilot house and engine room. This provision reduces the impact on those employees who rarely need to use spaces beyond those designated for support of passengers while maintaining the integrity of vessels' secure areas. We are also producing and distributing a Small Business Compliance Guide to assist small businesses in their implementation of the program.
- *When practical, preserve State regulatory flexibility.* Mariner regulations and port security plans preempt state regulations. However, TSA does not preempt States from requiring background checks and badging systems in addition to TWIC. States may need to set standards for important purposes other than terrorism threats, such as preventing drug trafficking or organized crime.
- *Plan for privacy.* All data collected at an enrollment center will be deleted from the enrollment center work stations. The entire enrollment record (including all fingerprints collected) is stored in the TSA system, which is protected through role-based entry, encryption, and segmentation to prevent unauthorized use.
- *Technical innovation requires adaptive contract management.* TWIC is attempting to develop a 21st century technology that accommodates evolving IT standards suited to emergent needs that span local, international, public, and privates interests. This requires continual reevaluation of the scope and methods of contracting. The recent Lockheed Martin contract award is a culmination of our efforts to date; however, due to the nature of this task, we will need to continue to look for and implement adaptive planning, metrics, and changes to ensure this effort stays on track.
- *Don't expect a "silver bullet" technology solution.* Evolving technology, such as card readers, creates a changing environment and program control constraints. This is especially the case when the technology must be deployed to a vast multitude of entities with remote connectivity challenges (e.g., vessels) and varying degrees of access control system capabilities.

- *Place the highest value in stakeholder input; it is time well spent.* The public hearings, comments to the NPRM, meeting with operators and associations, and contributions of advisory councils all added pure value. We came away from each and every one of these efforts better informed about the challenges, the unacceptable impacts, and the practicable options for protecting our ports.

Conclusion

The steps we are taking will be an extremely important aspect to the security of our port facilities and vessels. It is an effort which, when completed, will assure our citizens that those people who have unescorted access to secure areas of these port facilities and vessels have been screened to make sure that they are not a security threat.

I appreciate the keen interest that this Subcommittee has in an effective implementation of TWIC, and I thank you for your support. Mr. Chairman, this concludes my testimony and I am pleased to answer any questions that you may have.

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SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

HEARING ON
TRANSPORTATION WORKER IDENTIFICATION CREDENTIALS

July 12, 2007

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John Groundwater, Executive Director

Mr. Chairman and Members of the Committee:

Thank you for the invitation to address you today about my concerns as a small business person regarding the implementation of the Transportation Worker Identification Credential, or TWIC. I am Debbie Gosselin, President of Watermark Cruises. I am here today to ask your assistance in modifying the TWIC requirements so that they do not cripple my small company and many other small companies like mine.

Watermark has been in operation since March of 1972. We are based in Annapolis, Maryland, on a tributary of the Chesapeake Bay. We currently have 11 Coast Guard-inspected, U.S.-flagged passenger vessels, with capacities ranging from 17 to 297 passengers.

I am also a member of the Passenger Vessel Association (PVA), serving on its Legislative Committee. PVA is the national trade association for U.S.-flagged passenger vessels of all types. It represents the interests of owners and operators of dinner cruise vessels, sightseeing and excursion vessels, passenger and vehicular ferries, private charter vessels, whalewatching and eco-tour operators, windjammers, gaming vessels, amphibious vessels, water taxis, and overnight cruise ships. PVA has been in operation for 36 years and currently has nearly 600 vessel and associate members. Its vessel-operating members range from small family businesses with a single boat to companies with several large vessels in different locations to governmental agencies operating ferries. Its associate members are key suppliers to the passenger vessel industry, including marine architects, vessel builders and decorators, insurance companies, publishers, food supply companies, computer software vendors, marine equipment suppliers, engine manufacturers, and others.

Watermark and PVA understand and support rational security measures. Our vessels operate in compliance with an approved security plan, as required by the Maritime

Transportation Security Act. Yet, this implementation has been very expensive for our small company. I have hired a Company Security Officer, a new position for us, who assisted in the completion of our risk-based threat assessment, identified our vulnerabilities and established procedures to control access to the restricted areas of our vessels. We have led the industry in our area with our extensive security training and crew drills, and we know that we still have the costs of TWIC cards and a vessel-tracking Automatic Identification System (AIS) to pay for soon.

We at Watermark believe that a small company does not need an electronic TWIC card or a reader for that card to know that Sam and Karly or Bill are who they say they are when they show up to work each day. They are the same Sam and Karly and Bill that we interviewed, hired and trained. I believe that there are other methods (such as traditional background checks, company ID cards, and simple recognition-by-sight) that in combination can be used to verify the status of employees that present little or no cost to the small employer.

We are a 100% domestic operation, located 120 miles from the Atlantic Ocean. We do not carry overnight passengers. The longest trip we offer is an 8-hour tour on the Chesapeake Bay. Most trips are 40 minute or less. All of our captains and crew are U.S. citizens.

The intent of TWIC was to focus on large ships that operate at commercial port facilities where the flow of cargo depends on numerous non-vessel, non-facility employees going in and out of the port. I do not believe that a small passenger operation such as mine was ever envisioned by Congress to be included in the security concerns of America's ports.

We Need to Put Individuals to Work Promptly

We are a seasonal operation with a pool of 30 to 35 captains, 20 deckhands and 10 concessionaires/bartenders. In 2006, we hired a total of 80 *seasonal* employees many of

whom, under the regulations, must have a TWIC next year. Nearly a third of those seasonal workers were hired just days before the season started or even after it was well underway. For every one that was hired and showed up for work, there were at least four potential candidates and a number of job offers extended that were not accepted. Given these realities, I can reasonably expect that I will be paying for TWICs for a considerable number of people who don't actually come to work for me or who leave in mid-season.

We compete aggressively with many other businesses for good seasonal employees. Our competitors for employees are hotels, marinas and restaurants, not subject to the TWIC requirement. Most of our seasonal employees are college or high school students who need a job when school gets out to make the money they need for the next school year. This generally means they are available to the employer for approximately 90 – 100 days, sometimes even less. They cannot apply for summer employment and then wait 30 days for an ID card. They cannot even wait two weeks. Neither can my company; I cannot afford a waiting time of 30 days for TWIC processing between hiring and working.

We Need to Reduce the Direct and Indirect Costs of the TWIC

Most of my applicants and employees cannot afford to pay $137 for a TWIC card. So, as their employer, I will be forced to pay the application fee for these potential employees, as we now pay for their pre-employment drug test, first-aid training and security training, all currently required for our employees, but not required of the waterfront restaurant or the marina up the street.

There are also other, unaccounted for costs of this rule. One such cost is transportation for our prospective employee to travel to the enrollment center in Baltimore for an in-person application. That means two, two-hour round trips, costing gas, parking, and time away from the job. Not once, but twice. The small employer will have to provide this

transportation for most employees when they either don't drive or don't have transportation. Many would have to have Mom or Dad drive them. This is a roadblock to hiring good seasonal employees. If asked to make this trip, no matter who pays for it, most will simply chose to work elsewhere. It's just too much trouble for a summer job. And I am lucky to have an enrollment center only two hours away. Employees of some PVA members will have to make two separate overnight trips to an enrollment center, because they are located far away for the traditional "port areas" that the federal government had in mind when implementing the TWIC rule.

How many TWIC cards will be requested by applicants who change their mind and go to work at the restaurant down the street when they find out that the restaurant will put them to work right away? How many TWIC cards will be issued, and the applicant never picks up the card, because Mom decided the family was going on vacation instead? How many new hires will quit after the first day? How many cards might not function correctly, requiring yet another trip to the enrollment center? These are the unintended costs for the small employer that we are concerned about.

In its recently-issued implementation guidance, the Coast Guard says that an employee can be put to work for an interim period based on the applicant's preliminary background check while the TWIC application is being processed. For an employer such as me who does not need sophisticated card biometrics to recognize their employees, why can't this background check be sufficient, thereby avoiding the issuance of the expensive unnecessary card? If each employee on my boat with unescorted access to secure areas could be checked by the FBI and TSA, wouldn't that accomplish Congress' goal of knowing who is in our ports?

We also object to the provision in a future proposed rule to require each employer to keep detailed records for two years, which show every occasion of which an employee enters a secure area. This does nothing to prevent security incidents, but does impose a huge

paperwork burden on a small business. Why add a new redundant record keeping requirement, on top of the payroll records and vessel log books that we already maintain? This idea was dropped from the original proposed rule, but I understand that the Coast Guard may resurrect it soon when it proposes the second part of the TWIC rulemaking.

Allow Employers to Define the Correct Secure Areas

The premise of the rule is that an individual must possess a valid TWIC to enter a secure area of a transportation conveyance or facility. A rational determination of risk will ensure that the marine employer is guarding against terrorism in the right locations without indiscriminately applying a TWIC requirement to locations where it is not justified. Adhering to this concept will make the TWIC rule more manageable for small businesses.

PVA acknowledges that the final rule recognizes that many vessel employees work primarily in passenger areas or service areas of the vessel that have no bearing on security (galleys, storerooms, etc.). These employees never need unescorted access to secure areas and so they will not need TWICs. These provisions will make the TWIC requirement more manageable than contemplated in the original proposed rule, but they still leave an unacceptable burden on a small employer with a large seasonal workforce.

Many of our seasonal employees will not have unescorted access to sensitive security information and will not access the restricted areas of the vessels. But there will be occasions when my captain will have to remain in the wheelhouse and send the sole seasonal deckhand down to check things in the unattended engine room. Under the rule as currently written, that seasonal employee will have to get a TWIC.

Test Readers Before Requiring Them

In the Safe Port Act, Congress told TSA and the Coast Guard not to proceed with a TWIC reader requirement until the technology was tested in several places in real-life maritime environments. Our company was asked to participate in a test of readers. We obtained a grant of $14,000 to finance the test. The cost of a reader has been described as about $2,500, but we have discovered one cannot simply plug in a reader and start using it. For our small business, we will have to buy a new computer to be the server to communicate with the reader and install the support equipment for the reader to "talk" to the new server and for the server to "talk" to Homeland Security. To ensure that a working reader will always be available, our grant proposal included the costs of a duplicate machine, in case the main machine failed during the work day. We look forward to participating in this important prototype test, because we believe that the test will prove that the reader is an unnecessary expense for a company such as ours and that it does not contribute significantly to our company's security.

We want to know where we will put a reader. Do we have to have a separate reader on each vessel with a security plan? It has been suggested that we have a single reader dockside, but our vessels depart from the Annapolis City Dock where there is no shelter and where the public has free and open access.

How will a reader stand up to a maritime environment? We have enough trouble now with our credit card machines malfunctioning because of moisture, exposure to weather, etc. I will be surprised if a reader's durability is any better.

Conclusion

Thank you for your assistance in assuring that this rule is modified to address the concerns of small businesses such as mine. It is my belief that an appropriate level of security can be achieved without unnecessarily harming American small businesses, but changes in the TWIC requirement are essential to accomplish this.

ON BEHALF OF

THE RAINBOW PUSH COALITION

AND

REVEREND JESSE L. JACKSON, SR.

STATEMENT OF

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ON THE

TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC)

BEFORE THE

COAST GUARD AND MARITIME TRANSPORTATION SUBCOMMITTEE

U.S. HOUSE OF REPRESENTATIVES

JULY 12, 2007
2167 RAYBURN HOUSE BUILDING
10:00 a.m.

Good morning, Chairman Cummings, Ranking Member LaTourette and members of the Subcommittee. Thank you for the opportunity to speak on behalf of The Rainbow Push Coalition and Rev. Jesse L. Jackson, Sr. Most important, I am also speaking on behalf of over 100 documented men and women who were employed in America's transportation industry, on the rail yards in Chicago, before they were terminated, due to a "psuedo-TWIC" program created by the railroads.

I have very little knowledge of the TWIC legislation per se and even less knowledge of the maritime industry. But, I do have knowledge of the negative impact a background check program can have on America's workers in the transportation industry. I am here to provide you with our expectation of the *serious* problems that are most likely to occur if certain TWIC standards are not more carefully defined *before* they are implemented. The lack of such standards in the rail industry has *already* adversely affected its contractor vendors and their employees. We hope you will look at the effect the railroads' "psuedo-TWIC" program had on the industry and use the case to ensure that the same problems will not arise when TWIC is eventually implemented. The railroads implemented this "psuedo-TWIC" program as early 2004. The railroads took the recommended action items listed under the Hazmat Program and applied the same or similar standards to the employees of the railroads' contractors, without giving the consequences much thought. Men and women, who had worked on the yards for as many as 13 years, were forced to submit to a background check in order to receive a badge, granting them access to the railroads' property. If the employee did not consent to the check or if they failed the check, they were denied access. The result was a large amount of America's transportation workers (not only convicted felons but victims of identity theft) were left without a job, without answers, and without an appeals or waiver process.

Again, I am here to forewarn you of the problems to anticipate if a bit more thought is not given to several aspects of the program before its implementation: 1) Crimes, 2) Reporting, and 3) Appeals/Waivers Processes. We believe a bit more time must be taken to clarify the TWIC program; otherwise, the negative impact on America's maritime workers – and our country's ability to effectively compete in the worldwide market in this important sector is – is sure to be profound.

1) CRIMES

Members of Congress, none of the 911 participants were American citizens. And to expound upon that, there is no evidence of American citizens with felony convictions as a class or population engage in espionage or terrorism. A look at America's history shows hiring convicted felons in the transportation industry has long been a common practice. Even movies depict African American inmates working on the railroads in a "chain gang" or Mafia-related ex-cons working at the ports on the East Coast. In fact, many of the people I represent went directly to the railroad or through a re-entry program, after their release from incarceration, because they *knew* they could get a job there. This is a similar belief at America's ports.

None of those whom I represent committed TWIC's "permanent disqualifying offenses" of crimes of terrorism, espionage or treason. Instead, they committed crimes ranging from murder to possession of drugs or a firearm. We are not minimizing the severity of these crimes; however, many of these workers are victims of their environment in which

they grew up. Geography is the main culprit. They grew up in poor neighborhoods, "the ghetto" where survival sometimes causes good men and women to do very bad things. Many of the Railroad workers I represent lack a formal education; many do not even have a GED. Unfortunately, these men and women were left with little or no options before becoming a "convicted felon" and even less options once released from prison. A felony conviction, in most states, follows a person for the rest of his or her life. We understand the need for a screening process and do not take issue with the underlying purpose – which is a valid one. We do, however, take issue with the hopelessly vague and undefined way in which it is being implemented. The "interim disqualifying offenses" must be very clearly defined. The majority of the felons I represent would fall in this category because of their convictions for possession of drugs and/or firearms. But what about my client who was convicted of *misdemeanor* possession of a firearm, which is a sealable offense in the state of Illinois? He was disqualified from the railroad because of a misdemeanor offense committed many years prior. Perhaps a time limitation for those convicted of misdemeanors would be appropriate. And, one of the largest studies ever on alcohol and drug addiction was released less than two weeks ago, showing that 30% of Americans suffer from alcohol or drug addiction. Should be bar all those with possession of drugs from any gainful employment? Many do get well with treatment. Those that do deserve a chance for gainful employment. Yet, simple possession charges – with no intent to sell or distribute – can also bar employment in our nations ports and other transportation industries.

2) <u>REPORTING</u>

The reporting of an applicant's criminal background is a *most essential element* to this program. Background checks must be done more thoroughly. In almost all of the cases I have reviewed, the screener looked at an applicant's record superficially and made a swift determination without looking further into a record. For example, one client was originally charged with Felony possession with intent to deliver drugs; however, the charge was later amended to a misdemeanor possession of cannabis of which he pleaded guilty to and served probation. This man, however, was barred from the railroad's property because the report was not 100% complete. It was reported that he was charged with a felony and found guilty, which was true, but only partially true. A *deeper* review of the record would have revealed the amended charge and this man probably would not have been barred from the property. Instead, he was out of work for almost one month while he fixed the screener's error, a burden which was placed on him.

This process may be more time consuming but if the cost is on the applicant, he must be entitled to a *thorough* background check and it should not be his duty to prove a reported inaccuracy that is visible to the original screener.

Another problem is that the review of an applicant's FBI records and fingerprints is not necessarily thorough enough. Often times, the state police or county court does not send completed information on a case to the FBI. For example, a rail worker was merely *held* on a murder charge and released two days after his arrest. The arrest for "murder" was immediately submitted to the FBI; however, his release was not submitted. This man was barred from the employment at the Railroad because his report from the FBI came back with a "murder" hit. If the screener had reviewed this record with the arresting agency and the corresponding county court, it would have been determined

that he was never even charged with the crime! Yet, this type of problem is commonplace in the Rail industry and we urge you to consider it.

Although the Fair Credit Reporting Act does not apply to TWIC, we suggest a FCRA-like standard be applied to those who are denied the TWIC card. A copy of one's record shall be given to him if he is going to be denied employment because the misreporting of information is so prevalent. Again, the applicant had paid for the check; therefore, he should be entitled to receive the product and review the report for any inaccuracies.

3. APPEALS/WAIVER PROCESS

All citizens of this country shall be afforded equal protection of the laws; however, this fundamental right was stripped from the railroad's contractor employees because they were not given an opportunity for due process when their were barred from the railroads property.

The railroads did attempt to create an appeals process but because there was no *original standard* of disqualifying offenses, there was no formula for a proper appeals process.

The terminated men simply given letters of denial from the property, similar to how TWIC will operate. They were not given a copy of their background check. They were left with no guidance as to how to get their job back. Most were told they could write a letter of appeal and submit back to the railroad; but there were many who did not know of this option.

Members of Congress, many of these employees will not be able to properly read and write. Rainbow Push and I worked together at types out about 30 appeals for the men because they were unable to do it themselves.

Some men received a call immediately, allowing them back onto the property; others are still waiting, 6 months later, for a response on their appeal. One woman, who was a victim of identity theft, was able to return to work after waiting over 30 days for her appeal to be processed. This woman is a single mother of three children. She was then barred from the property again, without explanation, and then brought back to work after being out for about 3 more weeks.

Some were told they could only submit their appeal via email while others were told it could only be submitted via fax. The TWIC standard lists one address where an appeal is to be sent. Will this me the single location where an appeal is actually heard? Will an applicant from California have to travel cross-country for an appeal? *There must be a fair and effective appeal process in place before TWIK is implemented.*

We represent men who have been on these yards for over a decade. The majority of the workers have several years work experience without incident. These workers should have been able to request a waiver, reviewed by an committee independent from the railroad, within a reasonable time frame.

CONCLUSION

In Conclusion, before TWIC is implemented, we strongly recommend 1) the list of disqualifying offenses be reviewed with great scrutiny and those crimes be related to national crimes of security, 2) the procedure by which background checks are done involve a more detailed review of an applicant's criminal record before being denied acess to the yard, and 3) a fair and affective appeals process be established so that applicants denied a job are still afforded due process under the Constitution of the United States. I will answer your questions at this time. Thank you.

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STATEMENT OF MICHAEL RODRIGUEZ
EXECUTIVE ASSISTANT TO THE PRESIDENT
INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS
to the
SUBCOMMITTEE ON COAST GUARD AND MARITIME TRANSPORTATION
on the
TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL
JULY 12, 2007

Mr. Chairman and Members of the Subcommittee:

My name is Michael Rodriguez. I am Executive Assistant to the President of the International Organization of Masters, Mates & Pilots (MM&P). The MM&P represents Ship's Masters, Licensed Deck Officers and unlicensed mariners working aboard United States-flag commercial vessels operating in the foreign and domestic trades and on the inland waterways. We also represent mariners working aboard civilian crewed ships in the government's Ready Reserve and Military Sealift Command fleets, as well as harbor pilots in ports throughout the United States.

I appreciate the opportunity to present the views of maritime labor on the status and implementation of the Transportation Worker Identification Credential (TWIC) in the maritime sector. I am presenting these views not only on behalf of my union, the MM&P, and our parent union, the International Longshoreman's Association (ILA), but also on behalf of the International Longshore and Warehouse Union (ILWU); the Marine Engineers' Beneficial Association (MEBA); and the Seafarers International Union (SIU) and its affiliates, the American Maritime Officers (AMO), the Marine Firemen's Union (MFU) and the Sailors' Union of the Pacific (SUP).

I wish to make clear that all the maritime unions have a vital interest in, and an unwavering commitment to, the enhancement of America's maritime security. We want an effective and realistic system for controlling access to facilities and vessels because our members are on the front lines. The members of our respective organizations will almost certainly be among the first American citizens directly affected, injured and killed in the event of such an incident or breach of maritime security. Therefore, we desire to be regarded by our government as an ally here at home, in the same way that we sail and work in support of our armed forces overseas in the war against terror.

At the same time, we have another obligation to our nation: to safely and economically move America's foreign and domestic commerce. We strongly believe strengthening maritime security and facilitating the movement of cargo to strengthen our economic security are not mutually exclusive goals and objectives. Rather, we can achieve both goals provided the Transportation Security Administration (TSA) understands that a poorly designed and implemented program will unnecessarily burden our industry and seriously diminish our ability to do our jobs without providing any real maritime security benefits to our nation.

Disqualifying Crimes

Concerning the crimes that would disqualify an American worker from obtaining a TWIC, we feel that Congress had it right in the Maritime Transportation Security Act of 2002 (MTSA). MTSA sets the standard for denying a person a TWIC based upon that person's potential as a terrorism risk. Yet, TSA has chosen to broaden this standard through regulation to disqualify an individual who has committed crimes that do not predispose an individual to be a terrorism risk. We are troubled by the prospect that a large number of workers might be disqualified from obtaining a TWIC or at least become entangled in the process for past offenses that are not relevant. Therefore, we call for a fair and robust appeals process, monitored closely, to ensure that workers who pose no threat are not unjustly denied a TWIC and therefore denied the opportunity to pursue their livelihoods.

It is our understanding that TSA intends to use Administrative Law Judges (ALJs) provided by the Coast Guard. We are concerned that there may be an insufficient number of ALJs within the present Coast Guard system to handle the caseload the program may generate. We ask this Subcommittee and the Congress to ensure that the Coast Guard has the resources to administer the waiver and appeals process fairly and in a timely fashion.

Federal Preemption

The protection of our country from terrorist acts is a national concern. The TWIC program is intended to enhance security within America's ports and facilities and aboard vessels in such a way that there is a minimal impact on the movement of goods in domestic and foreign commerce. Unfortunately, unless the Federal government acts to ensure that the TWIC program will preempt state and local programs, the maritime workforce and America's maritime transportation system will be adversely affected without resulting in any additional security benefits for our nation.

Maritime workers are a mobile workforce, continually in transit between different states, ports and facilities. The imposition of numerous inconsistent local requirements will mean that maritime transportation workers will have to file numerous applications, undergo numerous and duplicative background checks, and pay all the fees associated with possibly dozens of identity cards. If the TWIC regulations allow each state, port and facility to develop its own unique access control system above and beyond and in addition to what the Federal government deems necessary to protect the national interest,

then the TWIC program will become an unjustifiably burdensome and costly administrative impediment to the efficient flow of commerce. It may well also discourage Americans from entering our industry and encourage others to leave our industry for other employment - adversely affecting the civilian maritime manpower base relied upon by the Department of Defense.

We note that in testimony presented to the House Subcommittee on Border, Maritime and Global Counterterrorism of the Committee on Homeland Security on April 26, 2007, the TWIC Program Director stated that "TWIC issues cards that can be used at any port or vessel across the nation . . .[and] For the first time in history, thousands of independent businesses will have one, interoperable security network and workers will hold a single common credential that can be used across that entire network." Maritime labor strongly agrees that workers should hold a single common credential that can be used across the entire security network. Unfortunately, the statements that there will be a common and national TWIC are not accurate. Despite the statements made to the Congress, this is not the direction that the TSA and the Coast Guard have taken in their statements accompanying their TWIC regulations. Simply put, the Coast Guard and TSA have stated on the record that "States will not be preempted from instituting their own background check or badging systems ***in addition to the TWIC***". (Emphasis added)

In addition, in the absence of a national TWIC program that supersedes all others, mariners who do not also possess an identity card issued by a particular state, port or facility may find themselves forbidden to take shore leave or prohibited from transiting between vessels without first paying "escort" fees. The result will be mariners imprisoned aboard their vessels.

Consequently, Mr. Chairman, maritime labor is united in our position that Congress must act to ensure that the Federal laws and regulations governing the TWIC program preempt all other state and local access control requirements for maritime transportation workers. We do not believe that this request is inconsistent with the goals and objectives of the TWIC program or with our nation's efforts to prevent a maritime-related terrorist incident. Rather, we believe that the war against terror is and should be treated as a national effort, and the national standards and system put in place through the TWIC program to combat terrorism should take precedence over all others and not be secondary to the systems of each individual facility, port, city or state. America's maritime workforce must have an access control card that they can present at whatever state, port or facility their employment may take them. If they do not, and our government allows numerous additional local requirements to be imposed upon them, we will be unfairly and unjustifiably burdening this American workforce while undermining our country's efficient and reliable interstate and foreign commerce maritime transportation system.

Competitiveness Issues

It is also important to note that approximately 95 percent of all the cargo entering and leaving the United States is carried aboard foreign flag vessels operated by foreign

crews. What is even more important is that none of these vessels and none of these foreign crews are subject to the same requirements as those imposed by our government on U.S.-flag vessels and their American crews. Foreign crews are not covered by the TWIC program. Foreign crews operating vessels in and out of American ports are not subject to U.S. government imposed background checks. Consequently, the overwhelming majority of maritime personnel responsible for the carriage of hazardous and other cargoes in and out of our country will not have to obtain a TWIC or obtain an access control credential issued by American states, ports and facilities – only American mariners will be subjected to these numerous and onerous requirements.

Interoperability with International Standards

After the terrorist attacks against our country on September 11, 2001, government, industry and labor turned their attention to ways to prevent maritime-related terrorist incidents. The United States, recognizing the international nature of maritime commerce, looked to the International Maritime Organization (IMO), the United Nations body that regulates international shipping, for support. In 2002, the IMO, relying most heavily on principles put forward by the United States, developed an international maritime security regime that applies to ships and ports.

This IMO security regime has been incorporated into a mandatory international convention, the *International Ship and Port facility Security Code* (ISPS Code). The Coast Guard's maritime security regulations contained in 33 CFR 104 and 105 are based upon ISPS to ensure that our country meets its international obligations under the Code.

The IMO member states collectively realized that identity documents and access control are essential elements of an effective maritime security system. They requested that the International Labor Organization (ILO), another United Nation's body, develop a uniform international standard for a seafarer's identity document to be used in conjunction with the ISPS Code. With the participation of the United States, the ILO adopted the Seafarers' Identity Document (SID) Convention (C-185) in June 2003.

C-185 establishes international standards for an identity document based on the biometric identifier standards of the International Civil Aviation Organization (ICAO), the United Nations entity responsible for the regulation of international air transport. In fact, the ICAO biometric identifier standards are already being utilized by the United States in the Machine Readable Travel Documents (MRTD) systems used to read the new electronic passports held by foreign visitors entering our country through airports.

Unfortunately, rather than use the internationally accepted ICAO standards as the basis for the TWIC, the TSA made the decision to use the U.S.-specific Federal Information Processing Standard (FIPS), which was developed for Federal ID cards used by Federal workers and has never been used in the commercial sector. We believe that many of the problems that have plagued the TWIC program and delayed its implementation can be attributed to TSA's decision to adopt the inappropriate FIPS standard as the basis for the TWIC card.

We wish to point out that Congress has strongly suggested the use of an international standard for transportation worker identity cards.

For example, the MTSA encouraged the U.S. Coast Guard to:

"...negotiate an international agreement, or an amendment to an international agreement, that provides for a uniform, comprehensive, international system of identification for seafarers that will enable the United States and another country to establish authoritatively the identity of any seafarer aboard a vessel within the jurisdiction, including the territorial waters, of the United States or such other country."

In addition, section 303(b) (1) of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act) very clearly establishes Congress's intent that the U.S. system of machine readable, tamper-resistant travel documents conform to international standards. The section reads, in part:

"The Attorney General and the Secretary of State shall jointly establish document authentication standards and biometric identifier standards to be employed on such visas and other travel and entry documents from among those biometric identifiers recognized by domestic and international standards organizations."

Given the unambiguous intent of Congress as expressed in the MTSA and the Border Security Act that the TWIC and U.S. travel documents conform to international standards, it is clear that Congress recognized the value of globally interoperable systems and directed the relevant Federal agencies to pursue interoperability. What is not clear is why TSA and the Coast Guard have ignored this aspect of the Congressional mandate and have chosen instead an internal federal government standard for the TWIC that will never be interoperable with international standards and is untested and unproven on the massive scale required for the TWIC program.

The ICAO standards are a proven and internationally accepted technology for identity documents. The readers and other supporting hardware have also been proven at airports around the world. We believe TWIC should start with this established system and build upon it as technology advances and new capabilities emerge.

If this were done:

First, the Department of Homeland Security and the American taxpayer will not have to invent a new technology. In our view, this is what Congress envisioned in authorizing the TWIC program.

Second, because the Seafarers' Identity Documents carried by seafarers from other nations will be ICAO compliant, port facility operators and the Coast Guard would be able to scan and track the identity documents of foreign seafarers as they enter and exit the United States. Additionally, there would be less of a tendency for facility operators to lock down seafarers aboard their vessels. The identity card carried by a professional mariner should allow the mariner the same freedom of movement in the United States that passports and visas give other travelers.

Third, American seafarers would be able to use their TWIC cards abroad for access to facilities in foreign ports. This would have the effect of ensuring American seafarers will have free access for shore leave, crew changes, and travel to and from their ships.

By starting from a straightforward and uncomplicated foundation – by adopting the same proven technology that is widely used for access control of foreign visitors to the United States as well as at international airports and in foreign ports - we can dramatically reduce the problems with the present TWIC program and increase the ease and speed of implementation of the TWIC.

We understand that TSA and the Coast Guard have invested a great deal of time and money in trying to develop a new technology for the TWIC program. However, TSA has not issued even a single working TWIC card five years after being directed to do so by Congress. We believe it is not too late to get the program right by moving forward with a simple, internationally accepted and interoperable identification program based on the ICAO standards.

Combining the Merchant Mariner Credential and TWIC

All mariners employed aboard U.S.-flag merchant vessels greater than 100 gross register tons (except for those operating exclusively on the rivers) are required to have a U.S. government issued Merchant Mariner's Document (MMD). An MMD is a card that serves as both an identity credential and as a qualification credential. They are issued to shipboard officers and to unlicensed personnel who work in support of the operation of the vessel. In conjunction with this requirement, and long before the events of 9/11 and the enactment of legislation authorizing the establishment of the TWIC program, individuals seeking employment as a licensed or unlicensed merchant mariner were subject to extensive background checks. In addition, the Maritime Transportation Security Act of 2002 (MTSA) requires transportation workers, including individuals who hold a merchant mariners document, to undergo a criminal background check.

Currently, when an individual submits an application to the Coast Guard for evaluation for an MMD, he must include a copy of proof of citizenship and establish proof that he has a Social Security Number. The individual must further undergo a drug test, and is also fingerprinted so that the Federal Bureau of Investigation can perform the necessary criminal background checks. Finally, the individual must agree to a check of the National Driver Register so the Coast Guard can determine if there are any offenses relating to the operation of a motor vehicle which may render the individual unsuited for the duties and responsibilities associated with shipboard employment.

We believe that the merchant mariner document (MMD) that is currently issued to seafaring personnel should be updated in order to comply with the requirements of the MTSA in order to allow the MMD to serve as a TWIC for all merchant mariners, licensed and unlicensed. We believe that the MMD can and should be upgraded to include the biometric identifier standards of the TWIC and that a combined MMD/TWIC should be issued after the requirements of both statutes are met. Doing so, and giving the Coast Guard exclusive jurisdiction to provide the requisite background checks, will eliminate the need for two or more Federal agencies to perform separate background

checks; will eliminate redundancies in the vetting process; will streamline the credentialing process for mariners; and will eliminate the need for mariners to carry more than one Federal identification credential for maritime employment.

We understand the Coast Guard is concerned that combining the MMD/TWIC and a license on one card would exceed the space available for printing on the TWIC card and that the amount of information would exceed the storage capacity of the chip under current technology. We agree and believe very strongly that this problem can be overcome by continuing to issue a merchant mariner's license as a separate document in its current format. It is easy to print all the information pertaining to a licensed officer's qualifications on a license in its current form which would be available for inspection by port control officers.

Under this system, an unlicensed mariner would be required to hold only one document: a combined MMD/TWIC that would serve as a certificate of qualification, an identity document and as a biometric transportation security card. Licensed officers would hold the same combined MMD/TWIC and also be issued a separate license which would serve as the individual's certificate of qualification with all endorsements clearly indicated.

Conclusion

We thank you again, Mr. Chairman, for the opportunity to present our comments on the TWIC program. We stand ready to work with you and your colleagues and with other concerned and affected parties to achieve a safer and more secure maritime transportation network.

U. S. Department of Homeland Security

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DEPARTMENT OF HOMELAND SECURITY

U. S. COAST GUARD

STATEMENT OF

RDML BRIAN SALERNO
ASSISTANT COMMANDANT FOR POLICY AND PLANNING

ON THE

TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC)

BEFORE THE

COAST GUARD AND MARITIME TRANSPORTATION SUBCOMMITTEE

U. S. HOUSE OF REPRESENTATIVES

JULY 12, 2007

Good morning, Chairman Cummings, Ranking Member LaTourette and members of the Subcommittee. Thank you for this opportunity to speak with you about the current status and the way ahead for the Transportation Worker Identification Credential (TWIC) program. Specifically, I would like to update the Subcommittee on the Coast Guard's efforts, in partnership with the Transportation Security Administration (TSA), to implement a program that will strengthen maritime security while balancing the need to facilitate commerce and minimize negative impacts to our port and vessel stakeholders.

Background and Authority

As a result of the Maritime Transportation Security Act of 2002 (MTSA), the Coast Guard developed regulations establishing security requirements for maritime vessels and facilities posing a high risk of being involved in a transportation security incident. As part of these regulations, these vessels and facilities owners and operators were required to conduct detailed security assessments and in turn, develop security plans. Owners and operators have been required to operate in compliance with these plans since July 1, 2004.

MTSA also requires the Department of Homeland Security (DHS) to issue a biometric transportation security card to those individuals who satisfactorily pass a security threat assessment in order to be granted unescorted access to secure areas of vessels and facilities. TSA was assigned this requirement, and because of our overlapping responsibilities, the Coast Guard and TSA formally joined efforts to carry out the TWIC program in November 2004. In this partnership, TSA is responsible for TWIC enrollment, security threat assessment and adjudication, card production, TWIC issuance, conduct of the TWIC appeal and waiver process, and management of government support systems, and the Coast Guard is responsible for establishing and enforcing TWIC access control requirements at regulated vessels and facilities. Both agencies partner daily to make sure that our collective efforts achieve the increased security objectives that MTSA intended.

The TSA and the Coast Guard published a joint TWIC Notice of Proposed Rule Making (NPRM) on May 22, 2006. Following the publication of the NPRM and the subsequent comment period, Congress enacted the Security and Accountability for Every Port Act of 2006 (the SAFE Port Act). The SAFE Port Act created new statutory requirements for the TWIC Program, including: the commencement of a pilot program to test the viability of TWIC cards and readers in the maritime environment; deployment of the program in priority ports by set deadlines; inclusion of a provision to allow newly hired employees to work while the TWIC application is being processed; and concurrent processing of the TWIC and merchant mariner applications.

TSA and the Coast Guard published the TWIC final rule on January 25, 2007 in which the Coast Guard's MTSA regulations and TSA's Hazardous Material Endorsement regulations were amended to incorporate the TWIC requirements. Despite the original proposal in the NPRM, this final rule did not require the installation of card readers at vessels and facilities. This requirement is currently being addressed in a second notice and comment rulemaking which is under development.

Joint Rulemaking by TSA and the USCG

For the TWIC Program, TSA is responsible for TWIC enrollment and issuance, including hardware and software applications and the data storage system. This responsibility involves conducting a security threat assessment on TWIC applicants, which includes a check against terrorist watch lists, an immigration status check, and a fingerprint-based criminal history records check as well as perpetual vetting against the terrorist watch lists throughout the 5 year life of the TWIC. The Coast Guard is responsible for implementing TWIC in the maritime environment and achieves this by requiring a TWIC for all individuals who need unescorted access to secure areas of MTSA regulated facilities and vessels and requiring a TWIC for all U.S. merchant mariners with active credentials.

TSA and the Coast Guard also worked together to develop several supplementary documents to help those who are required to comply with this regulation. For example, we have established policy guidance in the form of a Navigation and Vessel Inspection Circular (NVIC), which was made available to the industry and general public on Friday, July 6, 2007. This cornerstone guidance document will assist the maritime industry and general public with TWIC compliance and will effectively ensure consistent application across all of our MTSA regulated facilities and vessels. Two Small Business Administration Compliance Guides will also be available in the coming weeks, and internal guidance documents for training, implementation, and enforcement for Coast Guard and TSA personnel continue to be developed.

Stakeholder Engagement

As we continue to develop the wide variety of elements that comprise the TWIC program, we recognize engagement with our affected stakeholders is crucial to the program's success. When the TWIC NPRM was published in May of last year, TSA and the Coast Guard received just under 2,000 comments expressing concern with our path forward. The comments provided valuable insight into the operational issues facing labor, the facilities, and vessels that would have to implement the requirements. Specifically, comments questioned the technological and economic feasibility of employing the TWIC cards and card readers in the maritime environment. While smart cards, open slot card readers, and the use of biometrics have been used for a number of years in controlled, office-like environments, very few studies have examined how currently approved biometric card readers will withstand the comparatively harsh environments of vessels and maritime facilities. In addition, several commenters stated that biometric card readers would be extremely cost prohibitive for small entities, especially small vessels with a high rate of employee turnover. TSA and the Coast Guard found the comments received to be invaluable in determining the best way forward for this rule.

Throughout February and March of this year, the Coast Guard solicited comments from Coast Guard field units and industry stakeholders while drafting the TWIC NVIC. We received over 400 comments voicing general support for the policy and highlighting issues that needed more clarification. The robust stakeholder dialogue we have developed allowed us to include most of the recommended policy changes into the NVIC.

Since publication of the Final Rule, the Coast Guard, TSA and TSA's contractor Lockheed Martin have conducted numerous outreach events at national venues such as the Passenger Vessel Association Conference, SMART card and biometric industry conferences, maritime union meetings, American Waterway Operators meetings, and American Association of Port Authorities conferences.

The Coast Guard and TSA have now commenced work on the second TWIC rulemaking which will address the requirement for TWIC readers in the maritime environment. In a collaborative effort to achieve an operationally sound regulation, the Coast Guard and TSA have asked for the assistance of Towing Safety Advisory Committee (TSAC), Merchant Marine Personnel Advisory Committee (MERPAC) and the National Maritime Security Advisory Committee (NMSAC) to provide input on specific aspects of potential applications of readers for vessels and facilities. Our wish in this, as in all aspects of the TWIC program, is to maximize maritime security while minimizing negative impact to the stakeholders that are at the forefront of providing that security.

"New Hire" Provision

A particularly important provision that was developed in response to stakeholder engagement is the process to accommodate newly hired employees within the TWIC regulations. This process, known as the "new hire" provision, specifically addresses access control procedures for newly hired individuals and allows them to begin work, subject to certain provisions, within days after applying for their TWIC. It was designed to address numerous comments voicing concern that TWIC would exacerbate a shortage of employees in the maritime workforce and complies with the resulting SAFE Port Act requirement. In the provision, a direct hire of a vessel or facility can go to work after he or she has applied for a TWIC and has completed a name-based terrorist watch list check facilitated through the Coast Guard's Homeport secure web portal. The most important step in this provision is TWIC enrollment, which positively identifies the TWIC applicant, and both funds and initiates the background check that is at the heart of the security benefit of the TWIC program. The individual can then work in secure areas provided he or she is monitored while in restricted areas such as the engine room or pilot house of a vessel, subject to other minor provisions. The new hire program provides an acceptable degree of security pending completion of the background check and receipt of the TWIC.

As we move into the implementation phase, we are committed to continue working with industry to bring about the smooth transition to this much needed security measure. In doing so, however, we want to ensure that special provisions like this one provide an equivalent level of security across the maritime transportation system as a whole and do not support future efforts to grant specific maritime trades special exceptions to current requirements. We strive in our current regulations, policy and guidance to provide the flexibility necessary for stakeholders to implement TWIC in a manner that best suits their own security needs and operating conditions.

The Way Ahead

Work continues on several aspects of the TWIC Program. The Coast Guard is in the process of procuring handheld biometric card readers for use during vessel and facility inspections and spot checks. The Coast Guard will use the card readers to randomly check the validity of an individual's TWIC. Also, the provision for newly hired employees to work while they await issuance of a TWIC is in development and on track between the Coast Guard's Homeport web portal engineers and TSA's Identity Data Management System engineers. Internally, policy is being written for implementation and enforcement of the TWIC Program in our ports through collaboration of our law enforcement, port security, and technology experts.

Conclusion

TSA and the Coast Guard continue to reach out to our private sector stakeholders in the interest of fashioning a regulation that strengthens America's maritime security while advancing commerce. While the TWIC Program is multifaceted and includes numerous players, we are committed to developing a useful and valuable system. I would be happy to take any questions you have at this time.

Question#:	1
Topic:	port workers
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

Question: Under the Coast Guard's Maritime Identification Credentials program noticed in the Federal Register on April 28, 2006, port workers and sailors needing unescorted access to secure port areas are required to undergo name-based background checks against the terrorist watch lists and an immigration status check to receive a credential until the TWIC program is implemented. Port truck drivers, who make up one of the largest segments of port workers, are not covered by this requirement. Please explain the rationale behind this decision? If it was deemed too difficult to require name-based background checks for port drivers under this program, how will TSA handle fingerprint-based background checks for port truckers when the TWIC is implemented?

Answer: Section 125 of the Security and Accountability for Every Port Act of 2006 addresses a population on which no government entity, association, or industry organization maintains information. Generally, each port Terminal Operator contracts with an estimated 500,000 trucking companies, many of which are independently owned and operated, to provide drivers and trucks to transport containers from secure areas to staging areas. Neither the Terminal Operator nor the trucking companies keep accurate logs of drivers entering the secure areas of the port. Therefore, most trucking companies do not have the necessary information to submit to the Transportation Security Administration (TSA) to successfully vet each of their drivers.

TSA does not possess sufficient accurate identifying biographic information necessary to conduct valid name-based checks. Initial vetting without this information would result in an extremely high number of mis-identified drivers resulting in incorrectly identifying a driver as a risk, which could lead to loss of employment.

The fingerprint-based criminal history records check is part of the security threat assessment we will conduct on individuals requiring a Transportation Worker Identification Credential (TWIC). TWIC enrollment will begin at the conclusion of our TWIC system performance testing. TWIC implementation will capture the information TSA must have to conduct the vetting process efficiently and accurately. As a secondary measure, we signed a Memorandum of Understanding with the Federal Motor Carrier Safety Administration to obtain some personal data on individuals who hold commercial drivers licenses, which we will use to conduct name-based security threat assessments. We are exploring various alternatives as to how we might best complete these assessments with the limited resources available.

Question#:	1
Topic:	port workers
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

Question#:	2
Topic:	TWIC readers
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

Question: Will work on the proposed rule for TWIC readers begin before all tests of proposed TWIC readers are finished? Will a notice of proposed rulemaking be published for review before all tests of proposed TWIC readers are finished? Please also provide a timeline for the conduct of all real-life tests of the TWIC reader.

Answer: The Coast Guard is currently working with its advisory committees and the Transportation Security Administration (TSA) to evaluate options and develop the Transportation Worker Identification Credential (TWIC) reader Notice of Proposed Rulemaking (NPRM).

At this time, the Coast Guard has not established the timeline for publication of the NPRM and is evaluating options regarding timing with respect to the TWIC pilot.

TSA expects to begin initial reader tests later this year. These Early Operational Assessments will be at selected pilot sites, involving maritime workers with their actual TWICs. TSA expects to conduct full system tests involving all pilot sites by mid-2008.

Question#:	3
Topic:	TWIC enrollment
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

Question: The increasingly short time between the start of TWIC enrollment, now slated for this fall, and the deadline for mariners to have TWICs is of great concern to the Subcommittee. Please provide a timeline detailing how many TWIC enrollment centers will be opened and when each will be opened – and please explain exactly how the Coast Guard and the Transportation Security Administration will ensure that sufficient capacity exists to enroll all those in the maritime industry who need a TWIC between the start of enrollment in the fall of 2007 and the deadline by which enrollment is to be completed in September 2008.

Answer: Although the timeline for establishing an enrollment capability at each port has not been finalized, the Transportation Security Administration, the Coast Guard, and the Transportation Worker Identification Credential (TWIC) contractor will continue to communicate with local stakeholders and monitor the enrollment population to ensure adequate resources are deployed to enroll the affected population in an effective manner. The TWIC contractor is responsible for ensuring sufficient resources are in place to conduct timely and efficient enrollments and card issuance during the initial enrollment period. The contractor has the flexibility to add or re-adjust assets as required to ensure adequate resources are in place to provide these cards in a timely and efficient manner.

Additionally, the TWIC contract contains a Quality Assurance Surveillance Plan with Acceptable Quality Levels for enrollment and wait times against which the contractor will be measured.

Question#:	4
Topic:	outsourcing
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

Question: Consistent with the "outsourcing" regulations issued by the Compact Council (69 Fed.Reg. 75243, December 16, 2004; 69 Fed.Reg. 75350, December 16, 2004), please explain how the agreements with all contractors comply with the Compact Council's privacy and security standards.

Answer: The Transportation Security Administration (TSA) has ensured that all requirements for contractors to review Criminal History Records Information (CHRI) are being met. TSA successfully completed a Federal Bureau of Investigation compliance review in 2006. Contract adjudicators must possess or be capable of holding a SECRET security clearance. TSA's contract facility supporting TSA adjudication has a Department of Defense Form 254 "Contract Security Classification Specification" on file. All contractors and TSA employees dealing with CHRI have undergone security threat assessments and are certified at the SECRET level or greater. While the materials the contractors and TSA employees are working with are unclassified, the disposal methods for any printed materials are at the SECRET level or higher. TSA also requires its employees and contractors to complete annual online training courses outlining their duties and responsibilities in handling, disseminating and disposing of records containing Sensitive Security Information (SSI) and sensitive Personally Identifiable Information (PII) in both paper and electronic media. Each contract adjudicator must sign a statement that they have completed and understand the SSI training and another statement that they will follow the adjudication procedures provided without fail.

Question#:	5
Topic:	training
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

Question: At the July 12 hearing, TSA explained that a trained evaluator will look at an individual's criminal record to determine if they individual is eligible to hold a TWIC. What training will this person receive? Will the person be a TSA employee or a contractor?

Answer: Transportation Security Administration (TSA) adjudicators are both government and contractor employees. Each adjudicator receives four levels of training consistent with their level of experience and proficiency at reviewing criminal and immigration records.

1. The first training level is Initial Training where senior adjudicators train new adjudicators on the program requirements, disqualifying criteria from the regulation, the adjudication computer system, and criminal record review. New adjudicators are partnered with a more experienced, mid-level adjudicator who reviews all of the new adjudicator's decisions and provides feedback and additional training, including on-the-spot, as needed.

2. The second level of training provides additional instruction in the review of immigration records and how to successfully perform electronic queries of immigration databases.

3. The third level of training provides additional instruction in interpreting criminal statutes and initial letters of disqualification that will be sent to applicants that may have a disqualifying criminal or immigration status.

4. The fourth level of training provides instruction in the post-adjudication process, in which adjudicators are provided advanced training evaluating appeals and waivers submitted by applicants that have received a letter of initial disqualification. Only Senior Adjudicators, specifically trained and designated, may issue letters of initial disqualification. Adjudicators that process appeals or waivers are different than those that processed the initial cases. Waivers can only be granted or disapproved by the Assistant Administrator for TSA's Office of Transportation Threat Assessment and Credentialing.

Adjudicators are continuously evaluated to ensure they meet certain performance criteria. All adjudicators receive initial and annual security, privacy and handling of Criminal History Records Information (Compact Council) training. Additionally, a certain

Question#:	5
Topic:	training
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

percentage of completed cases are reviewed each day by a government adjudicator for quality control purposes.

Question#:	6
Topic:	hazmat
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

Question: A series of questions on the TSA's issuance of hazardous material (Hazmat) endorsements is provided below.
a.How many threat assessments has TSA conducted for the Hazmat program?
b.How many Hazmat drivers have yet to be checked?
c.How many drivers with a Hazmat endorsement have chosen not renew their endorsement? How does this number compare with renewal rates before the threat assessment requirement became effective?
d.Of the threat assessments conducted, how many individuals were found to have a criminal offense that constituted either a "permanent" or "interim" disqualification?
e.How many individuals were denied a Hazmat endorsement due to a disqualifying offense?
f.How many individuals applied for a "waiver" and what were the results of the waiver applications?
g.How many individuals denied a waiver appealed to an Administrative Law Judge? How many such appeals cases are pending? Please also provide details on the number of appeals that have been filed and the final disposition of the appeals (rejected, granted, etc.)?
h.What is the average length of the screening process, from application to approval or denial of the endorsement?
i.What is the average length of the appeal and waiver processes?

a. How many threat assessments has TSA conducted for the Hazmat program?

Answer: The Transportation Security Administration has processed 651,374 hazmat driver fingerprint-based security threat assessments.

b. How many Hazmat drivers have yet to be checked?

Answer: The Transportation Security Administration (TSA) estimates that there are approximately 2.7 million drivers with a hazardous materials endorsement (HME). In September 2006, TSA completed name-based/biographic checks for ties to terrorism on 2.7 million HME drivers submitted by each state licensing agency at its Vetting Operations Center in Colorado Springs, CO. In addition, TSA has completed approximately 650,000 fingerprint-based security threat assessments (STAs) on drivers seeking to obtain, transfer, or renew a hazmat endorsement. TSA continues to conduct the full fingerprint-based STA as drivers apply to obtain, renew, or transfer their HME.

Question#:	6
Topic:	hazmat
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

However, TSA has no way of knowing if all 2.7 million HME holders will seek to renew their endorsements.

c. How many drivers with a Hazmat endorsement have chosen not to renew their endorsement? How does this number compare with renewal rates before the threat assessment requirement became effective?

Answer: There are no mechanisms that track this metric within the Department of Transportation's (DOT's) Commercial Drivers License Information System (CDLIS). Most state licensing systems record new, renewal, and transfer licenses as new applicants. The Transportation Security Administration (TSA) plans to implement new mechanisms which will collect this information during the application process in the future. However, this data would not consider macroeconomic variables that also affect the size of the licensing population and rate of renewal, such as changes in state and Federal Motor Carrier Safety Administration licensing requirements and industry factors such as consolidation, pay, benefits, and competition, among others, which are difficult to enumerate. Prior to the implementation of the program, TSA reported in its evaluation of the industry (the Fee Rule, 70 F.R. 2549-2551) that the population of active HME drivers appeared to be in decline due to a variety of industry trends. Additionally, this analysis was not able to determine the number of "active" HME drivers from the total population of HME drivers. Interviews with industry stakeholders suggested the additional burden and cost of the TSA background check requirement would contribute to this decline. TSA estimated that this decline would continue for the first three years of program operations. Currently, TSA has an application rate of approximately 25,000 applications per month, compared to the estimated 32,500 applications per month in the fee rule. This is a five percent increase over last year's applications.

d. Of the threat assessments conducted, how many individuals were found to have a criminal offense that constituted either a "permanent" or "interim" disqualification?

Answer: The Transportation Security Administration has issued less than 1,000 initial criminal disqualification letters for permanently disqualifying criminal offenses and over 5,000 initial criminal disqualification letters for interim criminal offenses.

e. How many individuals were denied a Hazmat endorsement due to a disqualifying offense?

Answer: 3,497 individuals have been denied a Hazmat endorsement due to a disqualifying offense.

Question#:	6
Topic:	hazmat
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

f. How many individuals applied for a "waiver" and what were the results of the waiver applications?

Answer: The Transportation Security Administration (TSA) has received 963 requests for waivers. TSA has denied 65 requests for waivers and approved 701. Currently, 197 requests for waivers are in process.

g. How many individuals denied a waiver appealed to an Administrative Law Judge? How many such appeals cases are pending? Please also provide details on the number of appeals that have been filed and the final disposition of the appeals (rejected, granted, etc.)?

Answer: To date, the Transportation Security Administration has only just recently received one request for an appeal by an Administrative Law Judge.

h. What is the average length of the screening process, from application to approval or denial of the endorsement?

Answer: The program currently receives over 24,000 applications a month, 95 percent of which are processed in five days or less. From the start of the program (January 31, 2005), the average time to complete all cases is 14 days.

i. What is the average length of the appeal and waiver processes?

Answer: The average time to complete all appeals is 12 days. The average time to complete all waivers is 127 days. During the waiver process, many applicants fail to submit proper and sufficient documentation as provided in the waiver application guidance. TSA adjudicators attempt to contact and work with these applicants to ensure that the appropriate materials are submitted prior to formal evaluation of the waivers.

Question#:	7
Topic:	rap sheets
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

Question: According to a recent report by the U.S. Attorney General, the FBI's rap sheets are "still missing final disposition information for approximately 50% of its records." As a result, the rap sheets used by the TSA may fail to include critical information necessary to evaluate an individual's record, including the results of arrests, dismissals of charges and expungements. In order to evaluate the impact of incomplete criminal records on TSA background checks of hazmat drivers, please provide the following information:

a.What are TSA's procedures and policies for tracking incomplete disposition information and are there any internal analyses or evaluations of the issue?
b.What is the percentage of missing dispositions located by TSA before an HME determination is issued, with a breakdown indicating the major categories of corrected information (e.g., convicted of a disqualifying offense, acquitted, charges dismissed, expunged, no prosecution)?
c.What is the average time spent per case locating missing disposition information?
d.How many initial determinations of a security threat assessment were based in whole or in part on arrest information that had not resulted in a conviction?
e.How many and what percentage of appeals resulted in a reversal of the initial determination based on more complete or accurate criminal history information provided by the Hazmat endorsement applicant? What was the breakdown of the corrected information submitted by the applicant?
f.Does TSA have any policies or procedures to identify the dates of release from incarceration as distinguished from the length of sentence as reported on the rap sheet?
g.In how many appeals was an initial determination reversed based on information indicating that the individual was released from incarceration outside the required 5-year time period?
h.Does TSA have any policies or procedures to identify the grade of an offense (i.e., felony or misdemeanor) listed on an FBI rap sheet?
i.In how many appeals was an initial determination reversed based on information indicating that the individual was convicted of a misdemeanor, not a felony?

a. What are TSA's procedures and policies for tracking incomplete disposition information, and are there any internal analyses or evaluations of the issue?

Answer: The Transportation Security Administration (TSA) makes every effort to research open dispositions by conducting legal research to verify that the listed offense is disqualifying. TSA sends a letter to the applicant informing the driver of the details of

Question#:	7
Topic:	rap sheets
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

the open disposition and provides instructions on how to submit additional information to TSA that could be used to complete the case assessment. TSA requests that the applicant provide information to resolve the open disposition within 60 days or risk being disqualified. Applicants have 60 days to provide the requested information or request an extension of time. Applicants may also request the records upon which TSA based its determination. For applicants renewing or transferring their hazardous materials endorsement (HME), TSA rules allow States to extend the driver's HME past the expiration date pending the results of the security threat assessment.

b. What is the percentage of missing dispositions located by TSA before an HME determination is issued, with a breakdown indicating the major categories of corrected information (e.g., convicted of a disqualifying offense, acquitted, charges dismissed, expunged, no prosecution)?

Answer: The Transportation Security Administration does not track how many letters are issued because dispositions are incomplete. Records are tracked by the type of disqualifying offense.

c. What is the average time spent per case locating missing disposition information?

Answer: The Transportation Security Administration (TSA) does not keep records of how long applicants take to rectify open dispositions. TSA does track how long it takes to process appeals once received by TSA. TSA allows applicants up to 60 days to submit the required information, or request an extension of time. For applicants renewing or transferring their hazardous materials endorsement (HME), TSA rules allow States to extend the driver's HME past the expiration date pending the results of the security threat assessment. However, the ultimate decision to do so resides with the State licensing authority.

d. How many initial determinations of a security threat assessment were based in whole or in part on arrest information that had not resulted in a conviction?

Answer: The Transportation Security Administration does not track how many letters are issued based in whole or in part on arrest information that had not resulted in a conviction. Records are tracked by the type of disqualifying offense. Most final disqualifications are due to applicants not responding; over 96 percent of applicants who are issued initial determination letters, including cases where there is an open disposition, do not request an appeal or a waiver and consequently, are disqualified.

Question#:	7
Topic:	rap sheets
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

e. How many and what percentage of appeals resulted in a reversal of the initial determination based on more complete or accurate criminal history information provided by the Hazmat endorsement applicant? What was the breakdown of the corrected information submitted by the applicant?

Answer: The Transportation Security Administration (TSA) does not collect the metrics needed to answer this question. However, about half of all initial determination letters are for criminality and half are for immigration issues, but only one third of appeals are for criminality. Therefore, TSA receives a higher appeal rate for immigration issues versus criminality issues.

f. Does TSA have any policies or procedures to identify the dates of release from incarceration as distinguished from the length of sentence as reported on the rap sheet?

Answer: Yes. Program policies and procedures require this information be confirmed, generally by querying the applicable jurisdiction.

g. In how many appeals was an initial determination reversed based on information indicating that the individual was released from incarceration outside the required 5-year time period?

Answer: The Transportation Security Administration (TSA) does not collect the metrics needed to answer this question. Currently, TSA can track successful appeals by the type of disqualification.

h. Does TSA have any policies or procedures to identify the grade of an offense (i.e., felony or misdemeanor) listed on an FBI rap sheet?

Answer: Yes. Program policies and procedures require that if this information is not presented on the rap sheet, adjudicators are required to determine this information, generally by querying the applicable jurisdiction.

i. In how many appeals was an initial determination reversed based on information indicating that the individual was convicted of a misdemeanor, not a felony?

Answer: The Transportation Security Administration (TSA) does not collect the metrics needed to answer this question. Currently, TSA can track appeals that were won by disqualifier.

Question#:	7
Topic:	rap sheets
Hearing:	TWIC
Primary:	The Honorable Elijah E. Cummings
Committee:	TRANSPORTATION (HOUSE)

STATEMENT OF
LARRY I. WILLIS, GENERAL COUNSEL
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO

BEFORE THE
HOUSE SUBCOMMITEE ON COAST GUARD AND MARITIME TRANSPORTATION

ON THE
TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL

July 12, 2007

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I want to thank you for the opportunity to testify today on the Transportation Workers Identification Credential (TWIC) and specifically on its application to port, maritime, rail and related workers. TTD consists of 32 member unions, including those that represent thousands of longshore, maritime, rail and other workers who work in and around port facilities and who will be directly affected by the TWIC rule issued earlier this year by the Transportation Security Administration (TSA) and the U.S. Coast Guard.[1] I want to note that Mike Rodriguez, Executive Assistant to the President of the International Organization of Masters, Mates & Pilots, a TTD affiliate, is also testifying this morning and will talk specifically about how the TWIC program will impact workers onboard vessels.

In addition to our work with the TWIC maritime program, TTD directly participated in the regulatory proceeding that implemented the threat assessments and background checks for Hazmat truck drivers. We also are working with our aviation unions to address concerns that have been raised in that mode of transportation. We worked with members of this Committee and the Homeland Security Committee with regards to background checks initiated by Class I railroads through its so-called E-RAILSAFE program.[2] And finally, we understand that TSA has an interest in eventually extending TWIC to other modes of transportation and thus our unions not directly covered by the program today have a vested interest in this issue. So again, thank for the opportunity to share our views and concerns.

Overview

At the outset, let me state clearly that no one wants to secure our nation's ports, vessels and other transportation assets more than the men and women represented by our affiliated unions. Our members are on the front lines and they will be the ones first affected by a terrorist attack on or

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[1] Attached is a complete list of TTD affiliated unions.
[2] A provision that would provide some protections to workers was included in the House passed version H.R. 1401 and is now the subject of the conference committee reconciling the differences in the 9/11 bill.

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using our nation's transportation system. We also understand that access control procedures, including the use of tamper-resistant biometric identification cards, is part of this effort and we support initiatives to identify and bar individuals who pose a terrorism security risk from working in security-sensitive transportation jobs.

With that said, any TWIC program must strike the right balance – it must enhance the security of our transportation system, but must also preserve the legitimate rights of workers and not unduly infringe on the free flow of commerce. In short, the TWIC program must provide workers with basic due process rights, including a meaningful appeal and waiver process. It must ensure that privacy rights are respected, not force workers to pay the costs of this mandate and avoid multiple and duplicative checks and cards.

The TWIC program was originally designed to control access and to identify genuine security risks to our transportation system. It was not designed, at least from our perspective, to unjustly punish someone twice for a bad decision made years ago that had nothing to with terrorism. On this point, I want to acknowledge the work of this Committee in passing Section 70105 of the Maritime Transportation Security Act (MTSA) that first established the requirements and limits for a maritime transportation security card. While not a perfect compromise, there are important protections and limitations included in this provision. In fact, after passage of the MTSA in 2002, these protections have been enhanced by providing workers with access to an Administrative Law Judge (ALJ) to adjudicate waiver and appeal cases.

We appreciate the fact that in many regards the final rule issued by TSA and the Coast Guard follows the mandates of Section 70105 and otherwise attempts to put forth a reasonable and workable program. Unfortunately, as we approach implementation of this long-delayed program, we remain concerned that TWIC could still be used to disqualify individuals who are not terrorism security risks and in other ways place unnecessary burdens on workers. TSA and the Coast Guard must strike the right balance between legitimate security concerns, ensuring that port and maritime facilities remain efficient and providing a fair system for workers. These objectives are not inconsistent. To the contrary, a workable, reasonable and fair TWIC program will only enhance transportation security, and we see no reason why this program cannot be implemented in a manner that will achieve these objectives.

Determining Security Risks

Section 70105 set a standard for what criminal activity will disqualify a worker from holding a maritime TWIC. Specifically, an individual may not be denied a security card unless the individual has been convicted within the past seven years or released from incarceration in the last five, of a felony "that the Secretary believes could cause the individual to be a terrorism security risk to the United States." We support this standard. However, we remain concerned that some of the disqualifying offenses in the TSA rules are too broad, vague and include descriptions of crimes that do not appear to have a direct nexus to identifying terrorism security risks.

As this Committee is aware, the Conference Committee considering the 9/11 implementation legislation is considering whether to accept an amendment offered in the Senate that would codify into statute the TSA offenses that would disqualify a person from holding a TWIC. To the extent that the current list and description of crimes needs refinement, we are opposed to any legislation that would run counter to this objective. I know many on this Committee and in the Homeland Security Committee have expressed concern that the disqualifying crimes proposed by TSA may not be appropriate. At a minimum, there must be an ability to modify these offenses as needed, and some of the language included in the Senate bill that was regulatory in nature should not be codified into statute. Finally, I want to reiterate our opposition to the concept that those charged with a disqualifying crime, but not convicted, should lose their TWIC and thus their job.

In response to our calls to refine the list of disqualifying crimes, TSA has often stated that such refinements are unnecessary because a worker can always apply for waiver. While we appreciate the inclusion of a waiver process in Section 70105, and its adoption in the TWIC rule, it should not be used as excuse to adopt an overly broad list of felonies and allow other problems with the list of disqualifying crimes to go unaddressed.

Deeming someone a terrorism security risk is not a characterization that should be casually rendered and places an obvious burden on a person to overcome that label. While TSA is apparently granting waivers in the Hazmat program, we do not know how many workers have declined to apply for a Hazmat endorsement in the first place because of the long and vague list of disqualifying offenses. Furthermore, TSA will need to review and process the criminal histories of between 750,000 and 1.5 million port and related workers pursuant to this rule on an extremely tight deadline. On top of the other procedural challenges inherent in this program, it makes little sense to overload the waiver process with individuals who should never have been disqualified in the first place.

We are also disappointed that the regulations do not provide a mechanism for a person to challenge the determination that a particular crime is indeed a disqualifying offense. There may be situations where a person is convicted of crime that TSA believes fits into the broad description of the disqualifying offenses, but a legitimate argument could be made to the contrary. To rectify this problem, TSA should allow workers to challenge the characterization of a particular offense either as part of the waiver or appeal process.

Waiver Process and ALJs

When Congress first considered Section 70105 of the MTSA, the inclusion of a waiver process – where workers could demonstrate they were not a security threat even if they had committed a disqualifying crime – was a major priority for our member unions. We were therefore pleased that TSA chose to incorporate this waiver process into the Hazmat program and it has been offered as part of the TWIC program.

However, we were concerned that the waiver process, as envisioned in the proposed rule issued in 2006, required workers to apply back to the very same agency that determined the individual was a security risk in the first place. Given the high public anxiety over terrorist risks and the insular nature of this process, we were concerned that TSA might reject waivers that are otherwise meritorious.

To address this problem, Congress specifically mandated in Section 309 the Coast Guard and Maritime Transportation Act of 2006 (P.L. 109-241) that workers could have their waiver cases heard by an ALJ. I want to thank Members of the Committee, particularly then-Chairman Don Young, Chairman Oberstar, and others for their strong support for that provision that originated in the House bill. It is our hope that this will allow employees to make their case in front of an impartial decision-maker not bound by political pressures or subject to agency interference. In addition, ALJ decisions will establish case precedent that should better define what constitutes a security risk. This would bring a level of fairness and consistency to a system that is central both to employee rights and national security.

But I must say that we are very concerned with recent reports questioning the impartiality and independence of Coast Guard ALJs. I understand that the Subcommittee intends to hold a separate hearing on this issue and to examine these charges in more detail. Let me just say today that Congress specifically provided for ALJ review because it wanted to ensure a level of fairness for workers that are initially deemed a security risk and thus denied a TWIC. If ALJs charged with hearing these cases are found not to provide a true impartial forum, then Congress's intent will be thwarted. And workers will, of course, be denied genuine due process and could unfairly lose their jobs and livelihoods. Congress must ensure that the Coast Guard ALJ program does indeed operate fairly and independently or an alternative forum must be found to hear these cases.

We are also concerned that there be a sufficient number of ALJs available to hear these cases. Clearly, if the program experiences significant delays and workers are not able to obtain final resolution to their cases it would run counter to the intent in creating the ALJ right in the first place. We clearly want to work with this Committee and the Coast Guard to ensure this does not happen.

National Standard Needed

We are concerned that the national TWIC rule would specifically allow states to impose additional and broader background checks and to do so without any of the protections or limitations included in the federal program. If security threat assessments are needed to enhance our national security, the TSA should adopt and enforce a national standard. It makes little sense for TSA to establish a national program, force workers to pay for this program (over our objections), and then allow local jurisdictions to use national security as an excuse to create yet another security review process.

What constitutes a security risk should not be based on what state or jurisdiction a port resides in. Furthermore, TSA and the Coast Guard have a stated intent to achieve a level of consistency governing threat assessments and transportation credentials. Allowing states to arbitrarily

impose different security requirements is inconsistent with this objective and should be reversed. As Mike Rodriguez will explain in more detail, this problem is especially acute for mariners whose jobs take them to several different ports.

Cost of the TWIC

We are vehemently opposed to the provisions of the TWIC rule that passes one hundred percent of the costs of this program on to individual workers. The security threat assessments and the background checks mandated in this proposal are considered necessary to enhance the security of our nation's ports and are part of the overall effort to fight terrorist elements. Given the reality of this national priority, the government, and not individual workers, must absorb the costs of this program.

The TWIC card, and the accompanying background check, is essentially a condition of employment and will surely benefit employers. The port and related facilities will be more secure and access control procedures will be in place. If the federal government refuses to step in and fund this security mandate, employers should fund a program that will directly benefit their operations. Employees will have to spend time and effort to apply for the TWIC and may incur additional expenses if an appeal and waiver are needed. It is neither fair nor reasonable to ask workers to also pay for this security mandate that has broader benefits.

It is also important to note that TSA will apparently force workers to pay for a biometric card but not require owners and operators of maritime facilities and vessels to purchase and install biometric readers at this time. Biometric identification cards cost more than less sophisticated identification. But without the readers in place, these fancy and expensive cards are nothing more than glorified flash passes.[3] In short, the cost, both financial and otherwise, are being imposed solely on workers, but the broad security benefits promised through biometric technology are not going to be realized any time soon. While reports indicate that TSA will issue a rule on readers sometime in 2008, given the history of this program we question when the readers will actually be in place and what technology will eventually be adopted.

Exemption Requests

As this Committee is aware, an amendment was offered during consideration of the Coast Guard bill that would have created a special exemption from the TWIC requirements for employees on board towing vessels. We are opposed to this amendment. The amendment would allow newly hired employees to work on a towing vessel for up to 90 days without even applying for a TWIC so long as that worker passes a drug test and name-based check against the terrorism watch list. Proponents of this amendment paint it as a simple extension of the interim work authority included in the SAFE Ports Act and codified in the final TWIC rule. This is not the case. All other workers covered by the interim work authority would still need to apply for a TWIC – under the proposed amendment, towing vessel operators would be exempted from this requirement. If there are problems with TWIC application procedures then TSA and the Coast

[3] While the Coast Guard states that it will verify TWIC cards with hand-held biometric readers when conducting "spot" inspections, on regular basis workers will present their TWIC cards to security personnel who will only compare the cardholder to his or her photo and inspect the card for evidence of tampering or alteration.

Guard, or even Congress, should address them across the board. Allowing special exemptions for one sector of the industry raises both security and basic fairness questions that have not been adequately addressed by supporters of this amendment. Congress and the Administration have made a policy decision that TWIC and its accompanying background checks are necessary to enhance security. Based on this premise, it makes little sense to exempt a group of 15,000 employees that will essentially create a revolving temporary workforce that has had no comprehensive threat assessment.

Privacy of Information

As we have consistently stated, maintaining the privacy and confidentiality of the information collected and generated by the TWIC process is crucial. Toward this end and at our request, Section 70105(e) includes a specific mandate that "information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including the individual's employer." Consistent with this requirement, information that is gathered from the use of the card, i.e. when the employee enters and leaves a port facility, must not be shared with the employer. The TWIC program was conceived and mandated by Congress to enhance the security of our nation's seaports. For this effort to succeed, it must remain solely focused on that objective and not be used for any non-security reason.

Application of TWIC to Aviation

As the Committee is well aware, Congress has mandated that workers in the aviation sector undergo separate threat assessments, including a review of criminal histories. I should note that aviation workers are still denied access to a waiver process, rights afforded to Hazmat and maritime employees, and this double-standard should be rectified. Even though these threat assessments are in place, electronic identity cards have yet to be issued by TSA. Given the unique nature of the aviation industry, and the mobility of its workforce, an electronic biometric identification card would allow these employees to move more efficiently through the system and at the same time enhance aviation security. We hope that TSA will work with our aviation unions to implement an aviation TWIC card based on the checks that have already been completed on those employees and consistent with the protections and limitations previously articulated.

Conclusion

Transportation labor has always supported policies that will enhance the security of our nation's seaports and the entire transportation system. We understand and recognize that the TWIC program is part of the federal response to terrorism, and we specifically support its stated purpose of preventing terrorist elements from infiltrating our transportation network. But for this program to be successful the legitimate rights of workers must be preserved and those who pose no terrorist threat must not be denied their right to work in this industry. We look forward to working with this Committee, the TSA and the Coast Guard to meet these objectives.

Thank you again for the opportunity to share the views of transportation workers.

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Airways Systems Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)
United Transportation Union (UTU)

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