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TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL: A STATUS UPDATE

HEARING

BEFORE THE

SUBCOMMITTEE ON BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM

OF THE

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TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL: A STATUS UPDATE

Wednesday, September 17, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER, MARITIME, AND GLOBAL COUNTERTERRORISM,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 311, Rayburn House Office Building, Hon. Loretta Sanchez [Chairwoman of the subcommittee] presiding.

Present: Representatives Sanchez, Cuellar, Green, and Souder.

Ms. SANCHEZ. The Subcommittee on Border, Maritime and Global Counterterrorism will now come to order. The committee is meeting today to receive testimony on the Transportation Worker Identification Credential program rollout, a status update.

Good morning. Thank you all for attending this morning to receive an update on the progress of the Transportation Worker Identification Credential program rollout, as we know it, TWIC. The program is rolled out and managed by the Transportation Security Administration, or TSA.

We have two great panels today that will allow us to gain some in-depth knowledge of where we stand with the TWIC. Both Government and industry are providing testimony for TWIC today. However, I am disappointed that TSA Administrator Hawley did not make this hearing a priority; his perspective on the current status of the TWIC rollout would have been very useful.

It is imperative that all levels of leadership at the Department of Homeland Security make this program a priority. TWIC is a key element in ensuring that our ports are secure and that the personnel operating them have the access that they need.

In a recent report conducted by the National Maritime Security Advisory Committee, which I will be submitting for the record, they stated that TWIC is a user-funded program; users must not be penalized for working to help TSA meet its goals.

I ask unanimous consent to submit this for the record that is part of report.*

Ms. SANCHEZ. For instance, throughout our Nation's ports, there are TWIC enrollees that have been part of our program for more than a year-and-a-half. I applaud these working men and women for taking the initiative and making the effort to enroll, knowing how difficult the process can be.

*The information referred to has been retained in Committee files.

However, having had to obtain a TWIC card and never once needing to actively use it once on a reader has made many workers feel foolish for signing up early, especially when the mandatory enrollment date keeps getting pushed back. Of course, they are complaining about how they have paid for this. For the workers who haven't enrolled yet, the constant delays only give them more incentive to wait until the very end until they sign up.

To put this in perspective, the program was authorized in the Maritime Transportation Security Act in November 2002. That was almost 6 years ago. The TWIC program is still not fully rolled out at port, much less at any other transportation modes, and we continue to see delays in the mandatory enrollment date and in the reader rollout.

Moreover, there have been significant technical problems in the TWIC enrollment rollout. For Example, the TWIC web site is frequently down for maintenance, workers often have to make multiple trips to the TWIC enrollment facilities. This is actually quite unacceptable, as they are working people and repeat trips are inefficient and they take up their valuable time.

The TWIC disclosure form that enrollees must sign is not in multiple languages, even though a large percentage of the workers may have difficulty understanding English. When there are multiple Government forms in various languages, there is no excuse for that. These workers have a right to know exactly what they are disclosing.

I could go on about this customer service and its issues for the program, but because we are pressed for time today, as it is a busy day, I will stop there.

A concern that I have not only with the program, but with many programs at the Department of Homeland Security, is what is the plan for transition as we go into the next administration?

Tomorrow we will once again hear about the lack of progress in the virtual border fence and these problems will be left for a new administration. So I hope that today that the panel can speak to us about the solutions for what plagues the TWIC and, more importantly, the plans for moving this program beyond the end of December; in other words, through the transition into the new administration.

I look forward to receiving your testimony and to your responses to the concerns that we are raising today. I now yield to my Ranking Member, Mr. Souder. Thank you.

Mr. SOUDER. Thank you, Madam Chairwoman. For the past 6 years, there have been numerous challenges and delays in the Transportation Worker Identification Credential program. The progress made since passage of the Safe Port Act, however, leaves me cautiously optimistic. Between October 2007 and today, there are over one-half million individuals in various stages of the TWIC process, either pre-enrollment, or having actually received a card. That having been said, there are still a large number of individuals who still need to enroll, with some estimates at over 1 million more.

The real impact will be apparent when the card readers are installed. Any problem with the readers, even slight delays, could cause major trucking delays at the port gates. With implementa-

tion deadlines looming, it is important that TSA proceed with a sense of urgency, while taking extreme care to get it right.

My congressional district has the highest number of manufacturing jobs in the United States. We are among the highest producers of steel, medical devices, RVs, boats, plastics, defense electronics and auto parts. The ability of the trucking community to access materials and components from exports and quickly transport them to the manufacturers in my district is essential not only for our local economy but for the rest of the Nation.

I have dedicated my time in Congress to making sure that U.S. companies are not disadvantaged due to unfair trade laws, counterfeiting, and dumping policies.

It is equally important that our homeland security initiatives do not negatively impact the movement of goods in and out of the United States or during domestic transportation.

To that end, I look forward to hearing from the witnesses today about the implementation of TWIC and especially how both the Government and the private sector are working to efficiently roll out the program. I hope to hear more about opportunities to improve the enrollment process and reduce the burden of workers needing a TWIC. I understand that individuals estimate a minimum of two trips to the enrollment center if everything goes right, and more if there are any issuance delays.

Given that U.S. passports are mailed to recipients, I am wondering why a similar process can't be set up for the TWIC. It seems that the cards could be activated in some other way without requiring a second in-person meeting.

I would like all the witnesses to think about where additional program efficiencies can be found so that this program can be rolled out successfully. Thank you for holding this hearing and I yield back the remainder of my time.

Ms. SANCHEZ. I thank my Ranking Member. I want to remind the other Members of the subcommittee that under committee rules, opening statements may be submitted for the record.

I am told that we are going to have votes at 10:30 or so, and so I would like to welcome our first panel. I am actually going to cut short your introductions in an effort to get your testimony before we go across for votes. I don't know how long those votes may be. Just one? There are two? We are unsure. We are unsure.

But what we will try to do is get your testimony in, probably go across for votes, and then come back for questions because we also have a second panel.

So our first witness is Rear Admiral James Watson, Director of Prevention Policy for Marine Safety, Security, and Stewardship, the U.S. Coast Guard.

Our second witness is Ms. Maurine Fanguy, Acting Director for Maritime and Surface Credentialing, Transportation Security Administration.

Our third witness is Mr. Stephen Lord, Acting Director of Homeland Security and Justice Issues, Government Accountability Office. Without objection, your full statements will be inserted into the record. I will now ask each witness to summarize his or her statement for 5 minutes, beginning with Admiral Watson.

STATEMENT OF REAR ADMIRAL JAMES WATSON, DIRECTOR OF PREVENTION POLICY FOR MARINE SAFETY, SECURITY AND STEWARDSHIP, U.S. COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

Admiral WATSON. Good morning, Chairwoman Sanchez and Ranking Member Souder. Thank you very much for this opportunity to speak with you about the progress that we have made and our future plans for the Transportation Worker Identification Credential.

Today I would like to update you on the Coast Guard's efforts, in partnership with the Transportation Security Administration, to implement the TWIC program. The TWIC is an additional layer of security to the Maritime Transportation Security Act, which has provided comprehensive security regimen for 3,200 waterfront facilities for over 5 years now.

While a significant portion of the expected maritime worker population has either pre-enrolled or enrolled, more work still lies ahead to fully realize the potential security benefits that TWIC provides. We constantly keep in mind that what we do directly impacts individuals, their livelihoods. We continue to focus on balancing the need to facilitate commerce while minimizing adverse effects on those individuals.

Since enrollment started in Wilmington, Delaware on October 16, 2007, the Coast Guard, TSA and TSA's contractor, Lockheed Martin, have been closely monitoring the TWIC enrollment process to identify and address any areas of concern. For example, due to the delay in the opening of enrollment centers, the TSA and Coast Guard published a final rule on May 7, 2008, changing the compliance date from September 25, 2008 to April 15, 2009, providing 18 months from the date the initial enrollment centers opened to compliance date, the intended timeline of the TWIC final rule. This ensures that every individual, particularly mariners who are at sea for extended periods of time that require a TWIC, will have ample opportunity to enroll prior to the compliance date.

We also have been working closely with TSA in the development of phased-in Captain of the Port Zone compliance dates in accordance with the TWIC final role. Factors taken into account when determining dates include progress of TWIC enrollments and activation, estimated local and regional TWIC populations, regional maritime commerce and enrollment capacity in a given Captain of the Port Zone. Currently, TWIC compliance dates have been announced for 30 of the 42 Captain of the Port Zones.

From the outset, engagement with our affected stakeholders has been crucial to the program's success. From the thousands of comments received during the initial TWIC making to the National Maritime Security Advisory Committee, NMSAC, recommendations on reader specifications, stakeholder dialog continues to play a key role in the creation of critical Coast Guard policies related to TWIC.

While TSA has primary responsibility for outreach during the initial enrollment phase, the Coast Guard through captains of the port and area maritime security committees continue to closely monitor and encourage TWIC enrollment by working closely with

owners and operators of MTSA-regulated facilities and vessels to ensure industry will be ready for the compliance date.

As enrollment moves forward and compliance is on the horizon, the Coast Guard is focused on the implementation and enforcement of TWIC regulations. Phased-in COTP zone compliance for MTSA-regulated facilities allows for the security benefits of the program to begin as early as possible.

The first group of the Captain of the Port Zones is in the northern New England area. It has a TWIC compliance date of October 15, 2008. Internal guidance documents for training implementation and enforcement for Coast Guard personnel are being finalized for completion this month.

We also continue to work on proposed rulemaking that addresses potential requirements for regulated vessels and facilities to apply electronic card readers to verify a TWIC holder's identity before gaining unescorted access to secured areas.

Card readers are a key step in maximizing the secure benefits of a TWIC. But we need to be mindful of the technological challenges and potential adverse impacts that are involved. A key component of this second role will be operational, environmental and technical data that will be collected from a TWIC reader pilot test. TSA and the Coast Guard have already identified geographically and operationally diverse port and vessel locations willing to participate in the reader pilot testing. The initial planning and testing protocols have been developed and we look forward to deploying and testing readers in the real-world maritime environments in the very near future.

In the meantime, to maximize the security benefit of the current TWIC retirement, the Coast Guard is in the process of procuring and will deploy hand-held readers in the coming months for use during routine and unscheduled vessel and facility security examinations after the compliance date. These readers will supplement our already established examinations which verify that facility and vessel owners and operators are in compliance with the approved MTSA security plans.

The first compliance date, next month, marks a major milestone in the MTSA port security program. We approach that milestone with a steadfast commitment to protecting the maritime transportation system while facilitating commerce. We remain committed to the developing and operationally sound framework that maximizes the security benefit that TWIC provides.

These vetted individuals are a vital component of our multi-layered approach to preventing a transportation security incident and serve as the eyes and ears of our maritime commerce. While we have accomplished a great deal thus far, we acknowledge that the process has not been free from challenges. As we have in the past, we will address any future challenges in turn to the best of our ability in keeping with the best public interest, and we will keep you informed on our progress.

Thank you very much for the opportunity to speak today and I will be happy to answer questions.

[The statement of Admiral Watson follows:]

PREPARED STATEMENT OF JAMES WATSON

SEPTEMBER 17, 2008

Good morning, Mr. Chairman and distinguished Members of the committee, thank you for the opportunity to provide you an update about how the Coast Guard and the Transportation Security Administration (TSA) are partnering to implement the Transportation Worker Identification Credential (TWIC) program. I am Rear Admiral James Watson, Director of Prevention Policy.

At the outset, I would like to note with the commencement of TWIC enrollment in Wilmington, Delaware on October 16, 2007, and the 148 other enrollment centers thereafter, this program reached a major milestone where the plans and capabilities developed in the past will yield the security benefits envisioned for our ports and vessels. In the 20 months since the Department of Homeland Security (DHS) published the TWIC requirements in a Final Rule, the Coast Guard and TSA have been developing regulations, policies, systems, and capabilities to serve as a solid foundation for enrollment and compliance. The deliberate process and careful steps taken to lay this foundation have been absolutely crucial to ensuring that we gain the full security benefit from TWIC, facilitating compliance for the approximate 1.2 million people who are required to enroll.

BACKGROUND

The TWIC program builds on the security framework established by Congress in the Maritime Transportation Security Act (MTSA) of 2002. Coast Guard regulations stemming from the Act established security requirements for maritime vessels and facilities posing a high risk of being involved in a transportation security incident. MTSA also required DHS to issue a biometric transportation security card to all licensed and documented U.S. mariners as well as those individuals granted unescorted access to secure areas of MTSA-regulated 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, technology, TWIC issuance, conduct of the TWIC appeal and waiver process as it pertains to credential issuance, and management of Government support systems. The Coast Guard is responsible for establishing and enforcing TWIC access control requirements at MTSA-regulated vessels and facilities. Both agencies communicate daily to make sure our collective efforts achieve the increased security objectives envisioned in MTSA.

TSA and the Coast Guard published a joint TWIC Notice of Proposed Rulemaking (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 their TWIC application is being processed; and concurrent processing of the TWIC and merchant mariner applications.

TSA and the Coast Guard published the TWIC 1 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. After receiving many comments and concerns regarding technology issues of the reader requirements as proposed in the NPRM, we removed from this final rule the requirements to install TWIC readers at vessels and facilities. This requirement is currently being addressed in a second notice and comment rulemaking which I will discuss hereafter.

On May 7, 2008, TSA and the Coast Guard published a Final Rule moving the compliance date from September 25, 2008 to April 15, 2009. This extension provides 18 months from the initial enrollment center opening to the compliance date, the intended timeline of the TWIC 1 Final Rule. By extending the compliance date, this ensures that every individual who requires a TWIC will have the opportunity to enroll and TSA will have time to complete the security threat assessments on all applicants. This now allows mariners until April 15, 2009, to obtain a valid TWIC.

Owners and operators of MTSA-regulated vessels have until the new compliance date to implement access control procedures using TWIC. For owners and operators of facilities and Outer Continental Shelf (OCS) facilities, the Coast Guard has begun announcing rolling Captain of the Port (COTP) zone compliance dates requiring the use of TWIC in access control procedures before April 15, 2009 in accordance with the TWIC 1 Final Rule.

The Coast Guard, TSA and TSA's contractor, Lockheed Martin, worked collaboratively to develop the rolling COTP zone compliance dates. Factors taken into account when determining dates include progress of TWIC enrollment and activation, estimated TWIC population, and the enrollment capacity in a given COTP zone. COTP zones are grouped geographically for compliance where possible to account for the regional nature of commercial operations and to address concerns regarding port competition within geographical regions. Compliance dates seek to balance progress of enrollment with the need to motivate individuals to enroll. Capacity to enroll the TWIC populations is also a critical factor. In general, COTPs with smaller estimated TWIC populations and fewer enrollment locations were grouped together for earlier compliance while larger populated port areas with multiple locations were grouped later in the compliance schedule to facilitate a smooth transition from the enrollment phase to compliance.

At present, TWIC compliance dates have been announced for 30 of the 42 COTP zones. The first compliance date of October 15, 2008, was published in the Federal Register on May 7, 2008, for COTP Zones Boston, Northern New England, and Southeastern New England. The most recent announcement for a TWIC compliance date of January 13, 2009, was announced for COTP zones Hampton Roads, Morgan City, New Orleans, Upper Mississippi River, Miami, Key West, and St. Petersburg on September 9, 2008.

POLICY

The Coast Guard and TSA developed several supplementary documents to help those who are required to comply with the regulation. To explain in detail how the Coast Guard intends to apply TWIC regulations, we established policy guidance in the form of a Navigation and Vessel Inspection Circular (NVIC), and provided answers in three Policy Advisory Council Frequently Asked Questions documents which were made available to the industry and general public on July 6, 2007, November 21, 2007 and January 7, 2008 respectively.

The Policy Advisory Council is a group which was established during the original implementation of the MTSA regulations. It is made up of Coast Guard representatives from Headquarters, Area, and District level commands that are charged with considering questions from stakeholders and/or field offices to ensure consistent interpretation of regulation. These guidance documents will assist the maritime industry and general public with TWIC compliance and are designed to ensure consistent application across all of our MTSA-regulated facilities and vessels.

Additionally two Small Business Administration Compliance Guides, one for owners and operators and another for TWIC applicants, were written to explain the program in basic language intended for the general public. These guides are available on our web sites and at our field units in printed form.

Internal guidance documents for training, implementation, and enforcement for Coast Guard and TSA personnel were approved and distributed to field personnel during the first week of September.

STAKEHOLDER ENGAGEMENT AND OUTREACH

From the onset, we have recognized that engagement with our affected stakeholders is crucial to successful implementation. The responses received during the NRPM comment period, for example, provided valuable insight into the unique operational issues facing labor, maritime facilities, and vessels required to comply with TWIC requirements. Comments questioning the technological and economic feasibility of employing the TWIC cards and card readers in the maritime environment led to splitting the rule, with the card reader requirements forming a separate, pending rulemaking.

The Coast Guard also 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 which needed more clarification. The stakeholder dialog continues and informs Policy Advisory Council decisions that aid in consistent TWIC implementation.

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, American Waterways Operators, National Association of Charter Boat Operators, National Association of Waterfront Employers, and National Petrochemical Refiners Association meetings, SMART card and biometric industry conferences, maritime union meetings, American Association of Port Authorities conferences, and many others.

While TSA has primary responsibility for outreach, the Coast Guard through Captain of the Port (COTP) and Area Maritime Security Committees (AMSC) continues

to closely monitor and encourage enrollment for TWIC and work collaboratively with owners and operators of regulated facilities and vessels to ensure industry will be ready for compliance.

ENROLLMENT STATUS

The first enrollment center opened on October 16, 2007. With the opening of the enrollment center in Saipan, all 149 enrollment centers are currently operational. As of September 5, 2008, more than 483,000 people have enrolled for their TWIC. The estimated population for those who will require this credential is between 750,000 and 1.2 million individuals.

COMPLIANCE

The Coast Guard has the primary responsibility for ensuring compliance with the TWIC regulations. We are working extensively with our DHS partners, including TSA and Customs and Border Protection (CBP), to develop enforcement assistance protocols.

We have instituted several initiatives to encourage TWIC enrollment and to prepare owners and operators for compliance. One example is allowing MTSA exercise credit for facilities and vessels that survey TWIC holders through anticipated screening tactics and provide the data to the COTPs on the number of employees who have enrolled and activated their TWICs.

We are also performing spot checks at facilities to gauge overall compliance. The data collected from these efforts is critical in understanding the overall readiness for compliance within a geographic region.

READER REQUIREMENTS

The Coast Guard, with the support of TSA, has commenced work on the second TWIC rule which will address the requirement for TWIC readers in the maritime environment. Our intent for this rulemaking is to apply requirements in a risk-based fashion to leverage security benefits and capabilities. The Coast Guard solicited and received valuable input and recommendations from the Towing Safety Advisory Committee (TSAC), Merchant Marine Personnel Advisory Committee (MERPAC), and the National Maritime Security Advisory Committee (NMSAC) on specific aspects of potential applications of readers for vessels and facilities. As in all aspects of the TWIC program, our goal is to enhance maritime security while balancing the impact upon the stakeholders who are at the forefront of providing that security. As we evaluate the economic and operational impact on the maritime industry, we will continue to seek input and recommendations to develop and propose regulations requiring industry compliance.

READER PILOT TESTING

In accordance with the SAFE Port Act of 2006, TSA and the Coast Guard identified geographically and operationally diverse port and vessel locations willing to participate in the TWIC reader pilot testing. We are engaged in planning these pilot tests with ports and facilities including Los Angeles, Long Beach, New York, New Jersey, Brownsville, Magnolia Marine in Vicksburg, MS, Kinder Morgan in Chicago, IL, and Watermark Cruises in Annapolis, MD. All involved ports and facilities volunteered to participate and have received grants to purchase and install readers with necessary equipment. The initial planning and testing protocols have been developed and we look forward to deploying and testing readers in real world environments over the coming months. The data and lessons learned from the pilot tests will be invaluable information for the second proposed rulemaking.

THE WAY AHEAD

As enrollment rolls out across the country, the Coast Guard is also focusing on implementation and enforcement of the TWIC regulations. Compliance for MTSA-regulated facilities will be staged for each COTP Zone to gain the security benefits of the program as early as possible. TSA and the Coast Guard are continuing to monitor enrollment progress and trends. As we consider appropriate COTP zone compliance dates, we are mindful to balance the motivation to enroll with the capacity to deliver. In each case, the Coast Guard will announce compliance dates for each zone at least 90 days in advance. Currently, vessels and all mariners will be required to have TWICs by the national compliance date of April 15, 2009. Thus far, we have announced compliance dates for MTSA-regulated facilities in 30 out of 42 COTP zones.

To leverage TWIC's biometric capability, the Coast Guard is procuring handheld biometric card readers to enable verification of identity and validity of credentials during vessel and facility inspections and spot checks. We are also on track with developing the systems necessary to implement the provision for newly hired employees to work while they await issuance of a TWIC.

CONCLUSION

The TWIC program is a complex endeavor. We continue to work closely with TSA to facilitate outreach to the maritime industry and improve enrollment processes. We have accomplished important milestones, strengthened working relationships with public and industry stakeholders, and held a steadfast commitment to protecting the maritime transportation system while facilitating commerce. While we have accomplished a great deal, much work remains involving implementation, compliance, enforcement, and continued industry engagement. As in the past, we will ensure Congress is informed of our progress.

Thank you for the opportunity to testify today. I look forward to your questions.

Ms. SANCHEZ. Thank you for your testimony. I now recognize Ms. Fanguy. Is that correct? I always slaughter your name.

Ms. FANGUY. You have it exactly right.

Ms. SANCHEZ. To summarize her statement for 5 minutes.

STATEMENT OF MAURINE FANGUY, ACTING DIRECTOR FOR MARITIME AND SURFACE CREDENTIALING, TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY

Ms. FANGUY. Good morning, Chairwoman Sanchez, Ranking Member Souder and distinguished Members of the subcommittee. Thank you for this opportunity to speak about the steady progress we have made in implementing the Transportation Worker Identification Credential, or TWIC program.

My name is Maurine Fanguy and I am the program director for TWIC. Today I am pleased to announce that we opened the final enrollment center in Saipan, successfully completing TWIC deployment. This makes 149 enrollment centers, 19 more than originally planned, and together with our mobile units provides an extensive network to support workers.

We have the facilities and resources in place to support a smooth transition to compliance starting in October. We encourage workers who have not yet enrolled to start the process as soon as possible.

Since we began TWIC enrollment 11 months ago, we have a number of other accomplishments to report. This week we crossed the half-million mark on enrollments and are well positioned to enroll all workers prior to April 2009. We have partnered with over 200 local businesses, unions and industry groups to enroll workers at their places of business. This has made the process much easier and saved the industry millions of dollars in travel and time away from work.

We are enrolling nearly 20,000 workers per week and that number is climbing. Processing time has been streamlined and turnaround times continue to decrease. Currently the average time to get a card after enrollment is less than 2 weeks for workers with routine cases.

We have 98.8 percent success rate with fingerprint submissions to the FBI, which is better than the industry standard. We have worked closely with the National Institute of Standards and Technology to ensure that those workers with poor quality or no prints are provided with cards that reflect that status. Help desk wait

times average less than a minute, and customer satisfaction surveys indicate that the process is working.

TWIC is by far the largest biometric smart card program of its kind in the world. As leaders in Federal credentialing, we continually analyze data in the field to find ways to streamline processes, refine the technology, and make TWIC easier and more convenient for workers.

Partnership with industry is critical to developing practical approaches to make the program successful now and in the future. Some of these common-sense solutions include adding and relocating enrollment centers and direct response stakeholder feedback.

For example, we recently added new centers on terminal islands between Los Angeles and Long Beach, and also in Houston, offering flexible hours of operation to accommodate after-hours enrollment when requested by stakeholders; adding on-line status checks so that workers can track the progress of their credentials; redesigning the disclosure form and translating it into 12 languages; rewriting the eligibility letters to make them easier for workers to understand and facilitate the appeals and waivers process; adding new help desk features, including e-mail and on-line and phone self-help to facilitate resolution of questions.

We also continue with our aggressive communications campaign in partnership with the Coast Guard and industry. We have provided communications tool kits to our industry partners and maintain an outreach database with over 7,000 stakeholders. We applaud the efforts of maritime stakeholders to aggressively get the word out to their workers.

We have developed targeted marketing materials for trucking and rail, advertising industry publications, attended numerous conferences and local meetings and participated in trucking radio call-in programs. We redesigned the TWIC web site to provide information tailored more specifically to workers, owners and operators, and technology providers.

We also have several milestones to report on the TWIC reader pilot. In June we issued an announcement calling for biometric reader manufacturers to provide products for testing. We completed one round of testing and are pleased with the results. We are preparing to publish those results in the next few weeks.

Based on the interest of additional manufacturers, we opened a second round of testing in August and expect to complete this testing in early October. The two rounds of testing will provide pilot participants with a wide selection of readers to choose from for their operational tests.

We have completed initial baseline analysis at all of the pilot locations. We currently have more than 20 participants at four port authorities and three vessel operators, including the Port Authority of Los Angeles, Long Beach, New York and New Jersey, Brownsville, Magnolia Marine in Mississippi, Watermark Cruises in Annapolis, and the Staten Island Ferry.

Based on the progress of our port partners in developing their operational test plans, we expect to begin field testing readers this winter. Much progress has been made in the first 11 months of the TWIC enrollment program. When compliance begins next month, it

will mark a significant milestone in our multilayered approach to securing our Nation's ports.

We will continue to work with our partner, the Coast Guard, maritime stakeholders, and this subcommittee to ensure the ongoing success of the TWIC program.

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

[The statement of Ms. Fanguy follows:]

PREPARED STATEMENT OF MAURINE FANGUY

SEPTEMBER 17, 2008

Good morning Chairwoman Sanchez, Ranking Member Souder, and distinguished Members of the subcommittee. Thank you for this opportunity to speak about the steady progress we have made in implementing the Transportation Worker Identification Credential (TWIC) program.

My name is Maurine Fanguy and I am the Director of the TWIC program.

TWIC, as you know, is a Department of Homeland Security (DHS) program with joint participation from the Transportation Security Administration (TSA) and the United States Coast Guard (USCG) to provide a tamper-resistant biometric credential to maritime workers requiring unescorted access to secure areas of port facilities and vessels regulated under the Maritime Transportation Security Act of 2002 (MTSA), (Pub. L. 107–295). The operational costs of the TWIC program are entirely funded from fee revenue with no direct appropriated funds.

I am especially pleased to announce today that we are completing the rollout of fixed enrollment centers with the opening of a center in Saipan. In 11 months since our beginning in Wilmington, Delaware, TSA has opened 149 fixed enrollment centers across the United States—from Maine to Hawaii; from Florida to Alaska, and the territories of Puerto Rico, the U.S. Virgin Islands, Guam, and now, Saipan.

PROGRESS

As we continue rolling-out the TWIC program throughout the Nation, we have also made steady progress in several other areas in the past year.

Successful Program Rollout

In addition to the 149 fixed enrollment centers, TSA continues to establish mobile enrollment centers Nation-wide, and has opened 183 mobile centers to date, with plans for more than 100 additional mobile centers to bring TWIC to the worker. These mobile centers save workers significant travel costs, particularly in remote locations such as Alaska. As of the first week of this month, nearly 500,000 workers enrolled for their card, with more than 447,000 cards printed and 319,000 cards activated. We are pleased with the program's start and look forward to continuing our efforts to complete the initial enrollment and support the full implementation of the TWIC program. A dashboard containing all pertinent enrollment statistics is updated weekly and publicly available through our web site at: *www.tsa.gov/assets/pdf/twic_dashboard.pdf.*

Online Self-Service Capability

As the enrollment program has grown over the past year, we enhanced our customer service by providing many services on the TSA TWIC web site. We offer workers the opportunity to pre-enroll by entering basic biographic data in advance of an appointment; locate enrollment center addresses and hours of operation; schedule appointments for enrollment and activation; check the status of the TWIC; access frequently asked questions; and obtain port-specific information, including timely information on enrollment center closings due to hurricanes.

Improved Operational Efficiency

We have significantly shortened the time required for a worker to enroll in the program, produce the card, and return the card to the enrollment center. Currently, we are showing an average turnaround time of 2 weeks or less to provide a TWIC for a worker who completes the enrollment process with no additional issues requiring attention.

Establishing Reader Technical Specifications

On June 20, 2008, TSA issued a Broad Agency Announcement (BAA) inviting vendors to express their interest, provide information, and demonstrate their capability

to provide Smart Card biometric readers. Through the BAA, TSA is interested in obtaining information on both fixed and handheld portable readers that will fully read a TWIC and the biometric capabilities. A number of vendors participated in the first round of Initial Capability Evaluation (ICE) testing. Although TSA has not completed the formal review of the results of the first round of ICE testing, we are encouraged with the preliminary findings. TSA issued a second BAA on August 28, 2008, to solicit additional vendors to participate in the ICE testing of readers. Our intent is to continue ICE testing on an on-going basis to assist our stakeholders with identifying a choice of readers for deployment at secure areas of the marine transportation system.

Update on Card Reader Pilot Program

As required by the SAFE Port Act, in cooperation with the USCG we have initiated pilot programs with over 20 participants at 7 locations across the country to test card readers. The pilots will test access control technologies in real world marine environments by investigating the impacts of requiring biometric identity verification on business processes, technology, and operational impacts on facilities and vessels of various size, type, and location. Our current list of locations includes the Port Authorities of Los Angeles, Long Beach, Brownsville, and New York/New Jersey, in addition to Watermark Cruises in Annapolis, Maryland, Staten Island Ferry, New York, and Magnolia Marine Transport of Vicksburg, Mississippi. For fiscal year 2008, Congress appropriated $8.1 million to support the card reader pilots, enabling TSA and the USCG to move forward with this important program. As part of the outreach efforts for the TWIC program and in conjunction with the Department's Port Security Grant Program, we continue to seek additional participants. Our objective is to include pilot test participants that are representative of a variety of facilities and vessels in a variety of geographic locations and environmental conditions. There appears to be sufficient interest from the maritime community to achieve this objective.

Through collaborative efforts with our DHS and stakeholder partners we have made steady progress. We gained DHS approval of the pilot Test & Evaluation Master Plan. We obtained initial baseline data collection from all the pilot test locations and are working with each participant as they develop facility and vessel plans for the installation of readers and access control systems. As one example, the Port of Los Angeles has made commendable progress by completing detailed facility plans and utilizing an integrated approach for the facilities participating at the Port. As the program proceeds, the pilot tests will inform the USCG's TWIC reader rulemaking process and ultimately result in final regulations that require the deployment of transportation security card readers consistent with the findings of the pilot program.

Implementation of Compliance Date

The TWIC Final Rule established an 18-month enrollment period. To better synchronize the implementation of the TWIC enrollment program with the TWIC Final Rule, TSA and the USCG published a final rule on May 7, 2008 (May Final Rule), moving the compliance date from September 25, 2008 to April 15, 2009. The extension ensures that every individual who requires a TWIC will have the full 18-month enrollment period and provides adequate time for completion of the required security threat assessment, especially for workers who may be on the road or at sea for long periods of time. The May Final Rule also extends the compliance period for implementation of access control procedures for owners and operators of MTSA regulated vessels. Owners and operators of facilities and Outer Continental Shelf facilities should note, however, in accordance with the TWIC Final Rule, the Coast Guard has begun announcing rolling Captain of the Port zone compliance dates that require the use of TWIC in their access control procedures before April 15, 2009.

LESSONS LEARNED AND FUTURE EFFORTS

As we move forward with the TWIC program, we continue to incorporate our "lessons learned" to drive sound management decisions that improve all aspects of the program and continue to closely monitor the end-to-end process to ensure accurate and timely security threat assessments are being conducted and high quality credentials are produced. We are proud of the significant progress we have made during the past year and we remain mindful of the challenges that lie ahead. These include:

- *Looking for efficiencies by eliminating duplicative regulatory processes.*—TSA and Coast Guard continue to develop procedures for the sharing of fingerprints, identity verification, criminal history, and photographs for TWIC and Merchant Mariner Documents, which is expected to save not only money but time. In ad-

dition, 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.

- *Placing the highest value in stakeholder input; it is time well spent*.—The public hearings, comments to the Notice of Proposed Rulemaking, meetings with operators and associations, and contributions of advisory councils all added great value. We came away from each and every one of these efforts better informed about the challenges, the impacts, and the practicable options for protecting our ports. As an example, we added 19 fixed enrollment centers as a result of stakeholder feedback.
- *Promoting and safeguarding privacy*.—All data collected at an enrollment center is completely deleted from the enrollment center work stations after transmission to TSA. The entire enrollment record (including all fingerprints collected) is stored solely in a secure TSA system, which is protected through role-based entry, encryption, and segmentation to prevent unauthorized use. No paper records with personally identifiable information are created in the enrollment process.
- *Implementing technical innovation and adaptive contract management*.—The TWIC card is a 21st Century technology that accommodates evolving IT standards suited to emerging needs that span local, international, public, and private interests. This requires continual reevaluation of the scope and methods of contracting. We will continue to look for and implement adaptive program planning, aggressive contractor oversight, and metrics to ensure the success of the program.
- *Addressing new issues that may arise as we continue to implement the program*.—TSA is working towards coordinating the technology, such as card readers, and creating a changing environment and program control constraints. This is especially a concern 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. We will closely monitor the results of the card reader pilot and work with the USCG to ensure the results are reflected in the final rulemaking.

CONCLUSION

In implementing TWIC, we are taking steps that constitute an extremely important aspect to the security of our port facilities and vessels. TSA will continue to work with the U.S. Coast Guard and our 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.

I appreciate the subcommittee's keen interest in an effective implementation of TWIC and I thank you for your support. Madam Chairwoman, this concludes my testimony, and I would be pleased to answer any questions that you may have.

Ms. SANCHEZ. Thank you for your testimony.

I now recognize Mr. Lord to summarize his statement for 5 minutes.

STATEMENT OF STEPHEN M. LORD, ACTING DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. LORD. Thank you, Chairwoman Sanchez, Ranking Member Souder and Members of the subcommittee for inviting me here today to discuss GAO's work on TWIC. We have reported on the status of TWIC several times over the last few years, most recently in October 2007. My statement today is based on the information in these prior reports as well as some of the updated information we are collecting as part of our ongoing audit.

Today I will highlight the recent progress made in implementing the program as well as some of the challenges facing TSA, the Coast Guard, and the maritime industry in implementing the program.

I would now like to summarize my key observations. Overall, TSA and the Coast Guard continue to make progress in rolling out this program on a Nation-wide basis.

First, TSA and the Coast Guard issued a first TWIC rule in January 2007, which establishes the basic enrollment requirements for the program. In addition, in July 2007, the Coast Guard issued additional guidance to clarify requirements for industry stakeholders.

Second, enrollment numbers continue to grow. Close to 500,000 of the estimated 1.2 million TWIC users are now enrolled in the program. Further, about 319,000 cards have been activated and issued to workers.

Third, a TWIC reader pilot has been initiated to test TWIC access control technologies and their impact on maritime operations. This testing is an important step as the results of the pilot test will help inform the development of the second TWIC rule. However, given the complexities of the program, it will be important that TSA and the Coast Guard continue to work with industry stakeholders to monitor the program and effectively address any challenges that arise.

One challenge is related to enrollment. TSA and the enrollment contractor continue to face the challenge of enrolling and issuing TWICs to a large population of workers by the April 15, 2009 deadline. Although TSA and its enrollment contractor have enrolled close to 500,000 people in the program, they still need to enroll an additional 700,000 workers by the April 15, 2009 deadline. However, based on our review of average monthly enrollment trends, TSA could experience challenges in meeting this enrollment target.

A second potential challenge is related to testing, as highlighted in our prior work, TSA and industry stakeholders need to carefully test the TWIC technology to ensure it works effectively in the harsh maritime environment. However, TSA and the Coast Guard have yet to complete these tests, distill the lessons learned of these tests, and incorporate these results in the proposed second rule. Thus, until the testing is completed and the second rule is issued, we will not know how well the technology works in practice or the time frames for final program implementation.

In closing, as highlighted in our recent work, TSA has taken some important steps to strengthen the program. We commend their efforts. However, we still have several unanswered questions about the TWIC program:

No. 1: How many people will eventually enroll in the program? Will TSA meet its looming April 15, 2009 enrollment deadline?

No. 2: Will the technology work as designed in the harsh maritime environment? What are the lessons learned of the initial test?

Finally, when will the second TWIC rule be issued? When will the TWIC program be thought fully operational? As you know, this program has been on-going for several years.

Chairman Sanchez and Members of the subcommittee, this concludes my statement. I look forward to your questions.

[The statement of Mr. Lord follows:]

PREPARED STATEMENT OF STEPHEN M. LORD

SEPTEMBER 17, 2008

GAO HIGHLIGHTS

Highlights of GAO–08–1151T, a testimony before the Subcommittee on Border, Maritime, and Global Counterterrorism, Committee on Homeland Security, House of Representatives.

WHY GAO DID THIS STUDY

U.S. transportation systems and the estimated 4,000 transportation facilities move over 30 million tons of freight and provide an estimated 1.1 billion passenger trips each day. Since 2001 the Transportation Security Administration (TSA), part of the Department of Homeland Security (DHS) has protected these systems and facilities from terrorist attack. One program TSA utilizes is the Transportation Worker Identification Credential (TWIC) program, through which a common credential is being developed for transportation workers with access to secure areas. Ultimately planned for all transportation sectors, TSA, in cooperation with the U.S. Coast Guard, is initially focusing the TWIC program on the maritime sector.

This testimony discusses: (1) The progress made in implementing the TWIC program and (2) some of the remaining program challenges. This testimony is based on GAO's September 2006 TWIC report, as well as selected updates and on-going work. To conduct this work, GAO reviewed program requirements and guidance, documentation on the status of the TWIC program, and interviewed program officials from TSA and the Coast Guard.

WHAT GAO RECOMMENDS

GAO has previously recommended that TSA conduct additional testing of the TWIC program to help ensure that all key components work effectively. TSA agreed with this recommendation and has taken action to implement it.

TRANSPORTATION SECURITY.—TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL: A STATUS UPDATE

What GAO Found

Since GAO's 2006 report on the TWIC program, TSA and the Coast Guard have made progress in addressing legislative requirements and implementing and testing the program through a prototype and pilot, as well as addressing GAO recommendations related to conducting additional systems testing. Although GAO has not yet evaluated the effectiveness of TSA's and the Coast Guard's efforts, the two agencies have taken the following actions to continue to implement the TWIC program:

- In January 2007, TSA and the Coast Guard issued the first rule in Federal regulation to govern the TWIC program, setting the requirements for enrolling maritime workers in the TWIC program and issuing TWICs to these workers. The Coast Guard issued complementary guidance in July 2007 to explain how the maritime industry is to comply with these requirements.
- Enrollment efforts began at the Port of Wilmington, Delaware, in October 2007, and additional enrollments are under way through a contractor. Of the 1.2 million identified TWIC users, 492,928 (41 percent) were enrolled as of September 12, 2008.
- The TWIC program has initiated its TWIC Reader pilot to test card reader technology for use in controlling access to secure areas of maritime transportation facilities and vessels, and assess the impact of their installation on maritime operations. This pilot is expected to inform the development of a second TWIC rule on implementing access controls in the maritime environment.

TSA and the maritime industry continue to face two potential challenges in implementing the TWIC program.

- TSA and its enrollment contractor continue to face challenges in enrolling and issuing TWICs to a significantly larger population than was done during TWIC program prototype testing. TSA and its enrollment contractor now plan to enroll and issue TWICs to an estimated target population of 1.2 million workers by April 15, 2009, compared to 770,000 workers estimated in January 2007. Over 700,000 additional workers (59 percent of projected enrollees) still need to be enrolled in the program by the April 15, 2009 deadline.
- TSA and industry stakeholders will need to ensure that TWIC access control technologies perform effectively in the harsh maritime environment and balance security requirements with the flow of maritime commerce. While testing is un-

derway, the lessons learned of the on-going tests remain to be distilled and used to inform the development of additional regulatory requirements.

Madame Chairwoman and Members of the subcommittee: Thank you for inviting me to participate in today's hearing on the status of the Transportation Security Administration's (TSA) Transportation Worker Identification Credential (TWIC) program. The TWIC program was created to help protect the Nation's transportation facilities from the threat of terrorism by issuing identification cards only to workers who are not known to pose a terrorist threat and allowing these workers unescorted access to secure areas of the transportation system. Key aspects of the TWIC program include collecting personal and biometric information, such as fingerprints, to validate workers' identities; conducting background checks on transportation workers to ensure that they do not pose a security threat; and issuing tamper-resistant, biometric credentials, such as identification cards, for use in granting workers unescorted access to secure areas. The TWIC program is ultimately intended to support all modes of transportation. However, TSA, in partnership with the Coast Guard, is focusing initial implementation on the maritime sector.

The TWIC program was established to respond to the provisions of several pieces of legislation and subsequent programming decisions. In the aftermath of the September 11, 2001, terrorist attacks, the Aviation and Transportation Security Act (ATSA)[1] was enacted in November 2001 and, among other things, requires TSA, an agency within the Department of Homeland Security (DHS), to work with airport operators to strengthen access control points in secure areas and consider using biometric access control systems[2] to verify the identity of individuals who seek to enter a secure airport area. In response to ATSA, TSA established the TWIC program in December 2001. Enacted in November 2002, the Maritime Transportation Security Act of 2002 (MTSA)[3] required the Secretary of Homeland Security to issue a maritime worker identification card that uses biometrics to control access to secure areas of maritime transportation facilities and vessels. In addition, the Security and Accountability For Every (SAFE) Port Act of 2006 amended MTSA to direct the Secretary of Homeland Security to, among other things, implement the TWIC Program at the 10 highest-risk ports by July 1, 2007.[4] TSA's responsibilities include enrolling TWIC users, conducting security threat assessments, and processing appeals to adverse TWIC qualification decisions. The Coast Guard is responsible for developing maritime security regulations and ensuring that maritime facilities and vessels are in compliance with these regulations.

We have reported on the status of the development and testing of the TWIC program several times. Our 2004 report[5] identified challenges that TSA faced in developing regulations and a comprehensive plan for managing the program, as well as several factors that caused TSA to miss initial deadlines for issuing TWICs. In September 2006, we reported[6] on challenges TSA encountered during TWIC program testing and several problems related to contract planning and oversight. We have since provided updates to this work in April and October 2007.[7]

My testimony today focuses on: (1) The progress made since September 2006 in implementing the TWIC program; and, (2) some of the remaining challenges that TSA, the Coast Guard, and the maritime industry must overcome to ensure the successful implementation of the program. Today's observations are based on our September 2006 TWIC report, which reflects work conducted at TSA and the Coast Guard, as well as site visits to transportation facilities that participated in testing the TWIC program; our subsequent updates to this work issued in April and October 2007; and our on-going review of the TWIC program initiated in July 2008. This current review of the implementation of the TWIC program will be published in 2009, and is being conducted for the Senate Committee on Commerce, Science, and

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[1] Pub. L. No. 107–71, 115 Stat. 597 (2001).

[2] A biometric access control system consists of technology that determines an individual's identity by detecting and matching unique physical or behavioral characteristics, such as fingerprint or voice patterns, as a means of verifying personal identity.

[3] Pub. L. No. 107–295, 116 Stat. 2064 (2002).

[4] Pub. L. No. 109–347, 120 Stat. 1884 (2006).

[5] GAO, *Port Security: Better Planning Needed to Develop and Operate Maritime Worker Identification Card Program,* GAO–05–106 (Washington, DC: Dec. 10, 2004).

[6] GAO, *Transportation Security: DHS Should Address Key Challenges Before Implementing the Transportation Worker Identification Credential Program,* GAO–06–982 (Washington, DC: Sept. 29, 2006).

[7] GAO, *Transportation Security: TSA Has Made Progress in Implementing the Transportation Worker Identification Credential, but Challenges Remain,* GAO–07–681T (Washington, DC: Apr. 12, 2007), and GAO, *Transportation Security: TSA Has Made Progress in Implementing the Transportation Worker Identification Credential Program, but Challenges Remain,* GAO–08–133T (Washington, DC: Oct. 31, 2007).

Transportation; the House Committee on Homeland Security; and the House Committee on Transportation and Infrastructure. As part of our current engagement, we reviewed program documentation on the status of TWIC implementation; related guidance provided by the Coast Guard; information from maritime industry stakeholders, such as TWIC Stakeholder Communication Committee meeting minutes and reporting by the National Maritime Security Advisory Committee—an advisory council to DHS. In addition, we interviewed TWIC program officials from TSA—including the TWIC Program Director—and the Coast Guard regarding their efforts to implement the TWIC program and our prior recommendations although we did not independently assess the effectiveness of these efforts. We requested and received comments on the draft statement from TSA. We conducted this work from July 2008 through September 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

SUMMARY

Since we reported on the TWIC program in September 2006,[8] progress has been made in implementing the program. Although we have not yet independently assessed the effectiveness of these efforts, TSA and the Coast Guard have taken action to address legislative requirements to implement and test the program as well as our recommendations related to conducting additional systems testing. Specifically:

- TSA and the Coast Guard issued the first TWIC rule in January 2007, which sets forth the requirements for enrolling maritime workers in the TWIC program and issuing TWICs to these workers. In July 2007 the Coast Guard issued guidance complementing the January 2007 TWIC rule. This guidance provides additional context for how the maritime industry is to comply with this TWIC rule.
- Enrollment efforts have been underway. As of September 12, 2008, 492,928 enrollees, or 41 percent of the anticipated 1.2 million TWIC users, have enrolled in the TWIC program. Further, 318,738 TWICs have been activated and issued.
- The TWIC program initiated the TWIC reader pilot to test TWIC access control technologies and their impact on maritime operations. A second rule is planned to be issued on the use of TWIC access control technologies,[9] including TWIC readers, for confirming the identity of the TWIC holder against the biometric information on the TWIC. However, TSA has not established a date for completing the pilot.

TSA and maritime industry stakeholders face two potential challenges in implementing the TWIC program.

- As we have previously reported, TSA and its enrollment contractor continue to face the challenge of enrolling and issuing TWICs to a significantly larger population of workers than was previously estimated. TSA and its enrollment contractor now plan to enroll and issue TWICs to an estimated target population of 1.2 million workers by April 15, 2009, compared to 770,000 workers estimated in January 2007.[10] While 492,928 enrollments (41 percent) out of an estimated target population of 1.2 million had been processed as of September 12, 2008, an additional 707,072 workers (59 percent) still need to be enrolled in the program by the April 15, 2009, deadline.
- As highlighted in our prior work, TSA and industry stakeholders will need to ensure that TWIC readers perform effectively in the harsh maritime environment and balance security requirements with the flow of maritime commerce. However, since testing of how this technology works in practice and accumulating the lessons learned remains on-going, TSA and Coast Guard have yet to incorporate the results of these tests into the second rule establishing the requirements and time frames for implementing TWIC access control technologies. Our on-going work will assess how the results of this testing is used

[8] GAO–06–982.

[9] With regard to TWICs, access control technologies include, for example, card readers capable of reading TWICs, existing systems for controlling access at maritime transportation facilities and vessels, the TWIC database containing biometric information, and the interface between existing access control systems and the TWIC database.

[10] The January 2007 TWIC rule established that all maritime workers were expected to hold TWICs by September 25, 2008; however, the final compliance date has been extended from September 25, 2008 to April 15, 2009, pursuant to 73 Fed. Reg. 25562.

to inform the development of a second TWIC rule, and help ensure an appropriate balance between security and commerce requirements.

BACKGROUND

Securing transportation systems and facilities is complicated, requiring balancing security to address potential threats while facilitating the flow of people and goods. These systems and facilities are critical components of the U.S. economy and are necessary for supplying goods throughout the country and supporting international commerce. U.S. maritime transportation systems and facilities[11] move over 30 million tons of freight and provide approximately 1.1 billion passenger trips each day. The ports of Los Angeles and Long Beach estimate that they alone handle about 43 percent of the Nation's ocean-going cargo. The importance of these systems and facilities also makes them attractive targets to terrorists.

These systems and facilities are vulnerable and difficult to secure given their size, easy accessibility, large number of potential targets, and proximity to urban areas. A terrorist attack on these systems and facilities could cause a tremendous loss of life and disruption to our society. An attack would also be costly. According to testimony by a Port of Los Angeles official, a 2002 labor dispute that led to a 10-day shutdown of West Coast port operations cost the Nation's economy an estimated $1.5 billion per day.[12] A terrorist attack at a port facility could have a similar or greater impact.

One potential security threat stems from those individuals who work in secure areas of the Nation's transportation system, including maritime transportation facilities, airports, railroad terminals, mass transit stations, and other transportation facilities. It is estimated that about 6 million workers, including longshoremen, mechanics, aviation and railroad employees, truck drivers, and others access secure areas of the Nation's estimated 4,000 transportation facilities each day while performing their jobs. Some of these workers, such as truck drivers, regularly access secure areas at multiple transportation facilities. Ensuring that only workers who are not known to pose a terrorism security risk are allowed unescorted access to secure areas is important in helping to prevent an attack.

TWIC Program History

In the aftermath of the September 11, 2001, terrorist attacks, the TWIC program was established in December 2001 to mitigate the threat of terrorists and other unauthorized persons from accessing secure areas of the entire transportation network, by creating a common identification credential that could be used by workers in all modes of transportation.[13] As of September 2008 appropriated funds for the program totaled $103.4 million. Below are a number of key actions taken with respect to the implementation of the TWIC program.

- *November 2002*.—Enactment of the Maritime Transportation Security Act of 2002, which required the Secretary of Homeland Security to issue a maritime worker identification card that uses biometrics to control access to secure areas of maritime transportation facilities and vessels.
- *August 2004 through June 2005*.—As part of its prototype testing, TSA—through a private contractor—tested the TWIC program at 28 transportation facilities across the country.
- *August 2006*.—TSA decided that the TWIC program would be implemented in the maritime sector using two separate rules. The first rule covers use of TWICs as a credential for gaining access to facilities and vessels. The second rule is planned to address the use of access control technologies, such as TWIC readers, for confirming the identity of the TWIC holder against the biometric information on the TWIC.
- *October 2006*.—The SAFE Port Act directed the Secretary of Homeland Security to, among other things, implement the TWIC program at the 10 highest-risk ports by July 1, 2007, and to conduct a pilot program to test TWIC access control technologies, such as TWIC readers, in the maritime environment.
- *January 2007*.—TSA and the Coast Guard issued a rule requiring worker enrollment and TWIC issuance. TSA also awarded a $70 million contract to begin enrolling workers and issuing TWICs to workers.

[11] For the purposes of this report, the term maritime transportation facilities refers to seaports, inland ports, offshore facilities, and facilities located on the grounds of ports.

[12] Testimony of the Director of Homeland Security, Port of Los Angeles, before the U.S. Senate Committee on Commerce, Science, and Transportation, May 16, 2006.

[13] TSA was transferred from the Department of Transportation to DHS pursuant to requirements in the Homeland Security Act of 2002 (Pub. L. No. 107–296, 116 Stat. 2135 (2002)).

- *July 2007*.—The Coast Guard issued guidance on how the maritime industry is to comply with the January 2007 TWIC rule and how the Coast Guard will implement TWIC compliance efforts.
- *June 2008*.—As part of the TWIC reader pilot, TSA issued an agency announcement calling for biometric card readers to be submitted for assessment as TWIC readers.

Key Components of the TWIC Program

The TWIC program includes several key components:

- *Enrollment*.—Transportation workers will be enrolled in the TWIC program at enrollment centers by providing personal information, such as name, date of birth, and address, and will be photographed and fingerprinted. For those workers who are unable to provide quality fingerprints, TSA is to collect an alternate authentication identifier.
- *Background checks*.—TSA will conduct background checks on each worker to ensure that individuals do not pose a security threat. These will include several components. First, TSA will conduct a security threat assessment that may include, for example, checks of terrorism databases or watch lists, such as TSA's No-fly and selectee lists. Second, a Federal Bureau of Investigation criminal history records check will be conducted to identify if the worker has any disqualifying criminal offenses. Third, the worker's immigration status and prior determinations related to mental capacity will be checked. Workers will have the opportunity to appeal negative results of the threat assessment or request a waiver in certain circumstances.
- *TWIC production*.—After TSA determines that a worker has passed the background check, the worker's information is provided to a Federal card production facility where the TWIC will be personalized for the worker, manufactured, and then sent back to the enrollment center.
- *Card issuance*.—Transportation workers are to be informed when their TWICs are ready to be picked up at enrollment centers. Once a TWIC has been activated and issued, workers may present their TWICs to security officials when they seek to enter a secure area, and in the future may use biometric card readers to verify identity.

PROGRESS HAS BEEN MADE IN IMPLEMENTING THE TWIC PROGRAM

Several positive steps have been taken since our September 2006 report[14] toward successfully implementing the TWIC program. One key step was the issuance of the first TWIC rule by TSA and the Coast Guard in January 2007 establishing requirements for providing workers and merchant mariners access to maritime transportation facilities and vessels. To help facilitate the rule's implementation, in July 2007 the Coast Guard issued complementary guidance to help the maritime industry comply with the new TWIC regulations and facilitate the Coast Guard's implementation of TWIC-related compliance efforts. In addition, enrollment efforts have been under way, and 41 percent of the estimated 1.2 million people needing TWICs have been enrolled. Finally, the TWIC program has initiated the TWIC reader pilot and is moving forward in testing TWIC access control technologies and their impact on maritime operations. However, TSA has not established time frames for completing this pilot program, the results of which will be used to inform the second rulemaking related to TWIC access control technologies.

TSA and the Coast Guard Issued a TWIC Rule, and Coast Guard Has Issued Complementary Guidance to Facilitate TWIC's Implementation

On January 25, 2007, TSA and the Coast Guard issued the first TWIC rule that, among other things, sets forth the regulatory requirements for enrolling workers and issuing TWICs to workers in the maritime sector. Specifically, this TWIC rule provides that workers and merchant mariners requiring unescorted access to secure areas of maritime transportation facilities and vessels must enroll in the TWIC program, undergo a background check, and obtain a TWIC before such access is granted. In addition, the rule requires owners and operators of MTSA-regulated maritime transportation facilities and vessels to change their existing access control procedures to ensure that a merchant mariner and any other individual seeking

[14] GAO–06–982.

unescorted access to a secure area of a facility or vessel has a TWIC.[15] Table 1 describes the key requirements in the first TWIC rule.

TABLE 1.—KEY REQUIREMENTS IN THE JANUARY 2007 TWIC RULE

Requirement	Description of Requirement
Transportation Workers	Individuals who require unescorted access to secure areas of maritime transportation facilities and vessels, and all merchant mariners, must obtain a TWIC before such access is granted.
Fees	All workers applying for a TWIC will pay a fee of $132.50 to cover the costs associated with the TWIC program. Workers that have already undergone a Federal threat assessment comparable to the one required to obtain a TWIC will pay a reduced fee of $105.25. The replacement fee for a TWIC will be $60.
Access to secure areas of maritime facilities and vessels.	By no later than April 15, 2009, facilities and vessels currently regulated under the Maritime Transportation Security Act must change their current access control procedures to ensure that any individual or merchant mariner seeking unescorted access to a secure area has a TWIC.
Newly hired workers and escorting procedures.	Newly hired workers who have applied for, but have not received, their TWIC, will be allowed access to secure areas for 30 days as long as they meet specified criteria, such as passing a TSA name-based background check, and only while accompanied by another employee with a TWIC. Individuals that need to enter a secure area but do not have a TWIC must be escorted at all times by individuals with a TWIC.
Background checks	All workers applying for a TWIC must provide certain personal information and fingerprints to TSA so that they can conduct a security threat assessment, which includes a Federal Bureau of Investigation fingerprint-based criminal history records check, and an immigration status check. In order to qualify for a TWIC, workers must not have been incarcerated or convicted of certain disqualifying crimes, must have legal presence or authorization to work in the United States, must have no known connection to terrorist activity, and cannot have been adjudicated as lacking mental capacity or have been committed to a mental health facility.
Appeals and waiver process	All TWIC applicants will have the opportunity to appeal a background check disqualification through TSA, or apply to TSA for a waiver of certain disqualifying factors, either during the application process or after being disqualified for certain crimes, mental incapacity, or if they are aliens in Temporary Protected Status. Applicants who apply for a waiver and are denied a TWIC by TSA, or applicants who are disqualified based on a determination that he or she poses a security threat, may, after an appeal, seek review by a Coast Guard administrative law judge.

[15] Persons not required to obtain or possess TWICs before accessing secure areas include, for example, Federal officials with specified types of credentials, State or local law enforcement officials, and State or local emergency responders.

TABLE 1.—KEY REQUIREMENTS IN THE JANUARY 2007 TWIC RULE—Continued

Requirement	Description of Requirement
Access control systems	The Coast Guard will conduct unannounced inspections to confirm the identity of TWIC holders using hand-held biometric card readers (i.e., TWIC readers) to check the biometric on the TWIC against the person presenting the TWIC. In addition, security personnel will conduct visual inspections of the TWICs and look for signs of tampering or forgery when a worker enters a secure area.

Source: GAO analysis of TWIC rule and TSA information.

The January 2007 TWIC rule does not currently require owners and operators of maritime transportation facilities and vessels to employ TWIC readers to verify the biometric feature (e.g., TWIC holder's fingerprints) of the TWIC. These requirements are to be issued under a second rule at a later date. As a result, the TWIC will initially serve as a visual identity badge (i.e., a "flash pass ") until the new rule requires that TWIC access control technologies, such as TWIC readers, be installed to verify the credentials when a worker enters a secure area. According to TSA, during initial implementation, workers will present their TWICs to authorized security personnel, who will compare each TWIC holder to his or her photo and inspect the card for signs of tampering. In addition, the Coast Guard will verify TWICs when conducting vessel and facility inspections and during spot checks using handheld TWIC readers to ensure that credentials are valid.

On July 2, 2007, the Coast Guard also issued some supplementary guidance to help facilitate implementation of the January 2007 TWIC rule. Among other issues, the Coast Guard's Navigation and Vessel Inspection Circular (NVIC) Number 03–07 is designed to clarify the TWIC enrollment and issuance process, the waiver and application process, and approaches for enforcing TWIC program compliance. For instance, with regard to TWIC enrollment, the NVIC provides guidance on applying for appeals to disqualification decisions. The NVIC also provides guidance for escorting non-TWIC holders in secure areas. Under current procedures, one TWIC holder is allowed to escort 10 non-TWIC holders in secure areas of a facility.

TWIC Enrollment Efforts Are Progressing

As we reported in October 2007,[16] following the issuance of the first TWIC rule in January 2007, TSA awarded a $70 million contract to a private contractor to enroll the then estimated 770,000 workers required to obtain TWICs. Since our last update, enrollment in the TWIC program has progressed. TSA began enrolling and issuing TWICs to workers at the Port of Wilmington, Delaware, on October 16, 2007. Since then, 148 of 149 enrollment centers have been opened to meet TWIC enrollment demand, with the remaining center scheduled to be opened by September 17, 2008. Additionally, according to TSA, mobile centers have been deployed on an as-needed basis. As of September 12, 2008, TSA reports 492,928 enrollments and 318,738 TWICs activated and issued. All maritime workers are expected to hold TWICs by the January 2007 TWIC rule's revised compliance deadline of April 15, 2009.

TWIC Reader Pilot Has Been Initiated to Test TWIC-Related Access Control Technologies

In response to our recommendation,[17] and as required by the Safe Port Act,[18] TSA has initiated a pilot, known as the TWIC reader pilot, to test TWIC-related access control technologies. This pilot is intended to test the business processes, technology, and operational impacts resulting from the deployment of TWIC readers at secure areas of the marine transportation system. As such, the pilot is expected to test the viability of existing biometric card readers for use in reading TWICs within the maritime environment. It will also test the technical aspects of connecting existing access control systems at maritime transportation facilities and vessels to TWIC readers and databases containing the required biometric information, for confirming the identity of the TWIC holder against the biometric information on the TWIC.

[16] GAO–08–133T.
[17] GAO–06–982.
[18] Pub. L. No. 109–347, 120 Stat. 1884, 1889–90 (2006).

After the pilot has concluded, the results are expected to inform the development of the second rule requiring the deployment of TWIC readers for use in controlling access in the maritime environment. However, at this time, TSA officials do not yet have a date established for the completion of this pilot. Further, time frames for completing the second rule are not set.

The TWIC reader pilot consists of three assessments with the results of each assessment intended to inform subsequent assessments. This testing is currently under way, and we will analyze the test results as part of our on-going work. The three assessments are as follows:

- *Initial technical testing*.—This assessment is laboratory-based and is designed to determine if selected biometric card readers meet TWIC card-reader specifications.[19] These specifications include technical and environmental requirements deemed necessary for use in the harsh maritime environment. At the completion of initial technical testing, a formal test report will be developed to prioritize all problems with readers based on their potential to adversely impact the maritime transportation facility or vessel. Based on this assessment, readers with problems that would severely impact maritime operations are not to be recommended for use in the next phase of testing. At this time, TSA is conducting the initial technical testing portion of the TWIC reader pilot. As part of this assessment, in June 2008, TSA issued an announcement calling for biometric card readers to be submitted for assessment as TWIC readers. According to the TWIC Program Director, an initial round of TWIC reader testing has been completed and a second round of testing has been initiated. This is expected to provide a broader range of readers to be used as part of subsequent assessments.
- *Early operational assessment*.—This assessment is to evaluate the impact of TWIC reader implementation on the flow of commerce. Key results to be achieved as part of this assessment include obtaining essential data to inform development of the second rule, assessing reader suitability and effectiveness, and further refining reader specifications. As part of this process, maritime transportation facilities and vessels participating in the pilot are to select the readers they plan to test and install, and test readers as part of the test site's normal business and operational environment. In preparation for the early operational assessment segment of this pilot, the TWIC Program Director stated that program staff have started working with pilot participants to review test plans and expect to initiate the early operational assessment portion of the pilot in early 2009. As part of this pilot, TSA is partnering with maritime transportation facilities at five ports as well as three vessel operators.[20] TSA's objective is to include pilot test participants that are representative of a variety of maritime transportation facilities and vessels in different geographic locations and environmental conditions.
- *System test and evaluation*.—Building on the results of the initial technical testing and the early operational assessment, the system test and evaluation is intended to evaluate the full impact of maritime transportation facility and vessel operators complying with a range of requirements anticipated to be included in the second TWIC rule, such as TWIC reader effectiveness, suitability, and supportability. In addition, this evaluation is expected to establish a test protocol for evaluating readers prior to acquiring them for official TWIC implementation.

Our on-going review of the TWIC program will provide additional details on the results of the TWIC reader pilot and how these results helped inform the anticipated second TWIC rule.

TSA AND MARITIME INDUSTRY STAKEHOLDERS FACE TWO POTENTIAL CHALLENGES IN IMPLEMENTING THE TWIC PROGRAM

TSA and maritime industry stakeholders face two potential challenges in ensuring that the TWIC program will be implemented successfully. TSA and its enrollment contractor are planning to enroll and issue TWICs to a significantly larger population of workers than was originally estimated. Specifically, TSA estimates that it

[19] TWIC Card Reader Specifications were first published in September 2007 and last updated on May 30, 2008.

[20] Port test participants include the port authorities of Los Angeles, Long Beach, Brownsville, New York, and New Jersey. In addition, vessel operation participants include the Staten Island Ferry in Staten Island, New York; Magnolia Marine Transports in Vicksburg, Mississippi; and Watermark Cruises in Annapolis, Maryland.

will need to issue TWICs to 1.2 million workers by April 15, 2009.[21] This target population is significantly larger than the estimated target population identified in the January 2007 rule. Further, TSA and maritime industry stakeholders also face challenges in ensuring that TWIC access control technologies, such as biometric card readers, work effectively in the harsh maritime environment and ensuring that security requirements are balanced with the flow of commerce. However, since TSA is still testing this technology and accumulating the lessons learned from this testing, it is unclear how effectively this technology works in practice. These testing results will be used to help inform the development of the second rule establishing the requirements and time frames for implementing TWIC access control technologies. Our on-going work will assess how the results of this testing are used to inform the development of the second rule and help ensure an appropriate balance between security and commerce.

Increase in Estimated Target Population one of Several Issues Identified During the Initial Enrollment Process

In September 2006 we reported[22] that TSA faced the challenge of enrolling and issuing TWICs in a timely manner to a significantly larger population of workers than was done during the TWIC prototype test, which was conducted from August 2004 through June 2005. Since then, steps have been taken to improve the enrollment and TWIC issuance process. For example, according to TSA officials, the TWIC enrollment systems were tested to ensure that they would work effectively and be able to handle the full capacity of enrollments during implementation.

Despite these positive steps, there have been issues associated with the TWIC enrollment process. As documented in TWIC program documentation, enrollment issues include miscommunication about the wait time for TWICs to be available, such as enrollees being told that TWICs would be available in 10 to 30 days rather than 6 to 8 weeks. In addition, help desk issues existed, such as approximately 70 percent of calls placed to the help desk being abandoned and call wait times reported to be as long as 20 minutes when they were planned for 3 minutes. According to TSA officials, actions have been taken to address these problems.

Additionally, in July 2008, the National Maritime Security Advisory Committee—chartered to advise, consult with, report to, and make recommendations to the Secretary of the Department of Homeland Security on matters relating to maritime security—reported[23] on several unresolved problems, which it contends help to foster an unfavorable sentiment among stakeholders.[24] Among other issues, the committee report noted:

- poor communication and outreach regarding the trucking and merchant mariner communities, and whether these communities are fully aware of TWIC program requirements, and:
- technical issues whereby biometric scanning equipment did not accurately record and process enrollee fingerprint templates.

TWIC program management disputed the National Maritime Security Advisory Committee's findings, stating that some of the findings in the report are outdated or inaccurate. For instance, according to the TWIC Program Director, the fingerprint rejection rates for the program are within acceptable standards as defined in the contract and are consistent with other Government experiences. Moreover, the Program Director noted that to be helpful, the committee needs to prioritize the issues it identified. TSA plans to meet with the committee on September 18, 2008 to respond to the report.

Nevertheless, TWIC program management and the contractor report that they have taken action to remediate several of the problems identified above. For example, to address the issues related to the help desk, TWIC program management reports that it worked with its contractor to add additional resources at the help desk to meet call volume demand. Similarly, to counter the lack of access or parking at enrollment centers at the Port of Los Angeles, TSA's contractor opened an additional enrollment facility with truck parking access as well as extended operating hours.

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[21] As previously noted, the final compliance date has been extended from September 25, 2008, to April 15, 2009 (73 Fed. Reg. 25562 (May 7, 2008)).

[22] GAO–06–982.

[23] National Maritime Security Advisory Committee, TWIC Working Group, Discussion Items, as amended July 30, 2008.

[24] The National Maritime Security Advisory Committee was established under the authority of the Maritime Transportation Security Act of 2002 to provide advice and make recommendations to the Secretary of Homeland Security via the Commandant of the Coast Guard on national maritime security matters.

Additional Steps Are Being Taken to Clarify Final Enrollment Figures and Address Enrollment Challenges

To help meet the challenge of enrolling and issuing TWICs to an estimated 1.2 million workers by April 15, 2009, TSA and the Coast Guard are working to update estimates for the number of people requiring TWICs. TWIC program management does not have a precise estimate of the total number and location of potential enrollees. For instance, while the January 2007 TWIC rule identifies that 770,000 TWIC enrollments were anticipated, that number has been revised to approximately 1.2 million—nearly double the original estimate. According to the TWIC Program Director, it is difficult to know how many individuals will enroll in the program as no association, port owner, or government agency previously tracked this information. The Program Director also told us that some anticipated enrollees may have been double-counted. Therefore, the number of enrollees that actually enroll may be fewer than the estimated 1.2 million. As part of an effort to develop better enrollee estimates, TSA reports that it is currently completing a contingency analysis in coordination with the Coast Guard that will better identify the size of its target enrollee population at major ports. For example, in preparation for meeting enrollment demands at the Port of Houston, TWIC program officials are updating prior estimates of maritime workers requiring TWICs for access to this port's facilities. To better meet possible short-term spikes in enrollment application demand—such as in final weeks before individual ports must meet final TWIC enrollment requirements—the TWIC program is promoting the use of mobile enrollment centers whereby temporary centers are set up to help enroll employees for TWICs.

However, given that 492,928 enrollments (41 percent) out of an estimated target population of 1.2 million had been processed as of September 12, 2008, an additional 707,072 workers (59 percent) still need to be enrolled in the program by the April 15, 2009 deadline. Further, assuming the current rate of enrollment, there will be an estimated shortfall of 393,391 TWIC enrollees in April 2009. As such, meeting final enrollment and TWIC issuance requirements by April 15, 2009, could pose a challenge. We will continue to monitor these efforts as part of our on-going engagement.

TSA and Industry Stakeholders Taking Steps to Ensure That TWIC Access Control Technologies Work Effectively in a Harsh Maritime Environment

In our September 2006 report,[25] we noted that TSA and maritime industry stakeholders faced significant challenges in ensuring that TWIC access control technologies, such as biometric card readers, work effectively in the maritime sector. Few facilities that participated in the TWIC prototype tested the use of biometric card readers. As a result, TSA obtained limited information on the operational effectiveness of biometric card readers for use with TWICs, particularly when individuals use these readers outdoors in the harsh maritime environment, where they can be affected by dirt, salt, wind, and rain. In addition, TSA did not test the use of biometric card readers on vessels, although they will be required on vessels in the future. Further, industry stakeholders with whom we spoke were concerned about:

- the costs of implementing and operating TWIC access control systems;
- linking card readers to their local access control systems; and,
- how biometric card readers would be implemented and used on vessels.

Because of comments received from maritime industry stakeholders prior to issuing its January 2007 TWIC rule, TSA and Coast Guard excluded all access control requirements from this rule. Instead, TSA and Coast Guard now plan to issue a second TWIC rule pertaining to access control requirements, such as TWIC readers.

In our September 2006 report, we noted[26] that TSA and industry stakeholders will need to consider the security benefits of the TWIC program and the impact the program could have on maritime commerce. According to TSA, if implemented effectively, the security benefits of the TWIC program in preventing a terrorist attack could save lives and avoid a costly disruption in maritime commerce. Alternatively, if key components of the TWIC program, such as biometric card readers, do not work effectively, they could slow the daily flow of commerce.

Our September 2006 report[27] also recommended that TSA conduct additional testing to ensure that TWIC access control technologies work effectively and that the TWIC program balances the security benefits of the program with the impact that it could have on the flow of maritime commerce. In response to our rec-

[25] GAO–06–982.
[26] GAO–06–982.
[27] GAO–06–982.

ommendation and to address SAFE Port Act requirements,[28] TSA has initiated a TWIC reader pilot that, as previously discussed, includes an assessment of card readers against TWIC technical and environmental specifications. In addition, the pilot will include testing at various maritime transportation facilities and vessels to assess the performance of biometric card readers as well as the impact TWIC use will have on operations when used as part of existing maritime transportation facility and vessel access control systems. The results of this pilot are to be used to help develop the second TWIC rule on TWIC access control technologies, such as TWIC readers. However, as discussed earlier, this testing is still under way and TSA has not established a date for completing the pilot program. Moreover, a date has not been set for issuing the second TWIC rule on the requirements and time frames for implementing the TWIC access control technology. Our on-going work will assess how the lessons learned from the testing are used to inform the development of the second rule and help ensure an appropriate balance between security and commerce.

CONCLUDING OBSERVATIONS

Addressing the issue of maritime security is a major challenge given the size and complexity of the maritime transportation network. Since we first reported on the TWIC program in December 2004,[29] TSA has made progress toward implementing the program, including issuing a TWIC rule, enrolling some workers in the program, and conducting additional testing at several key maritime transportation facilities and vessels. While the additional testing that TSA reports conducting and the actions it has taken should help address the challenges that we have previously identified, the effectiveness of these efforts will not be clear until the program further matures. TSA still faces the challenges of clarifying the size of its target enrollee population and ensuring that the lessons learned from the ongoing TWIC pilot are distilled and used to inform the development of additional regulatory requirements. Given the looming April 2009 enrollment deadline and that more than 700,000 workers still need to be enrolled in the program, a late enrollment surge could potentially impact maritime security and trade. Successfully addressing these challenges will help ensure that TWIC meets the goal of establishing an interoperable security network based on a common identification credential.

Madam Chairwoman, this concludes my statement. I would be pleased to answer any questions that you or other Members of the subcommittee may have at this time.

Ms. SANCHEZ. I thank the witnesses. I remind each Member that they will have 5 minutes to question the panel. I will now recognize myself for questions.

Ms. Fanguy, Mr. Lord had a series of questions at the end of his testimony, including how many people do we think will eventually be signed up in this program and will we meet the April 2009 enrollment deadline? Will the readers work? Can you give me your best guess, since you are the program manager on the answers to his questions?

Ms. FANGUY. Absolutely. On question No. 1, in terms of the enrollment numbers, we are continuing to work with the Coast Guard to make sure that we refine the population estimates locally. When we are looking at the trending of enrollment figures, what we are seeing is that the numbers each week go up, especially as the Coast Guard continues to announce compliance. So as we are looking at the trending, we do feel confident that we will enroll all of the workers by April 2009.

On the second question of the technology, again I think that is where industry collaboration is key. We worked very closely with the NMSAC TWIC Working Group to actually develop the technology standards for TWIC, and I think that we got some very good

[28] The SAFE Port Act requires TSA to issue a final rule containing the requirements for installing and using TWIC access control technologies no later than 2 years after the initiation of the pilot.

[29] GAO–05–106.

input from them which we incorporated into our final specifications. So we are in the process of completing our bench-testing of the readers. We have had very good results thus far. We are looking forward later this year to actually be able to take that equipment and put it out in the field so we can get good data back.

Ms. SANCHEZ. When will the second rule be done?

Ms. FANGUY. The Coast Guard is actually the lead agency on the final rule, but we will be supporting them in that effort.

Ms. SANCHEZ. Admiral.

Admiral WATSON. We are in the process of getting that second rule sequence going. It will begin with an advance notice of proposed rulemaking very, very soon. The challenge is that we need to get some information so that we can propose rules for how these readers are going to be used in different circumstances, with different risk levels, in the various ports.

Ms. SANCHEZ. Let us go back. Very, very soon means?

Admiral WATSON. Oh, within days. For the advanced notice of proposed rulemaking.

Ms. SANCHEZ. What type of information do you not have in hand, and how long will it take you to get that before you can move forward?

Admiral WATSON. We got a lot of information through our advisory committee, but obviously the broader public has information to offer in light of the fact that there are technological challenges as well as operational challenges for reader deployment and use. So getting this information back is critical for us to put out the notice of proposed rulemaking. But because of all of that work that has been done, we don't anticipate a very long time frame between getting the responses from the advance notice to putting out the notice.

Ms. SANCHEZ. Back to the original question. How many people in total do you think are going to be in this program, enrolled by April 2009? Do you think that will be the—I mean, what will that—what do you think that will be? Ninety percent of the people who actually are the ones trying to get enrolled, 99 percent of the people?

Ms. FANGUY. We are aiming for 100 percent. Right now our population estimate is 1.2 million. But again, one of the challenging parts of this industry is that we have a highly mobile work force. There are people who work at multiple ports, multiple facilities, and they move around quite a lot. So what we are trying to do is make sure we are not double-counting. But the best estimate we have right now is 1.2 million. But we are going to continue to work very closely with our partners at the Coast Guard as well as industry to make sure that everyone has enrolled in time.

Ms. SANCHEZ. So you think 1.2 million people would be the total, and you are shooting for 100 percent, and you think you are going to meet that 100 percent by April 2009?

Ms. FANGUY. Our goal is to continue to communicate with people to make sure that they come in on time, to make sure that they know what their responsibilities are.

Ms. SANCHEZ. That wasn't the answer—I mean, I asked a specific question.

Ms. FANGUY. We have more than adequate capacity to handle that. The one thing we don't have under control is human nature.

But anybody that wants to enroll. There are plenty of appointments right now, especially in some of the larger areas. Right now, of course, in Texas, people have other things that they may be focusing on. But out on the West Coast, plenty of appointments for people to come in and enroll, and we encourage people to come in now so that they don't have any inconvenience as it gets closer to April.

Ms. SANCHEZ. What about this whole issue as with respect to citizenship? I know it has affected many of your people, Admiral. The issue that the Lockheed people don't have a very good understanding of the differences in ship, paper, et cetera. Do we have a program where we are educating more about what to accept? What about these people who came in with passports and were actually sent away without even getting copies of their passports and then denied because you all thought they weren't citizens?

Ms. FANGUY. A few things on that. One is that we asked our contractor to do a retraining of all their trusted agents, which they have done, to make sure that they have the right information on collecting immigration documentation. They have been given the clear message that if somebody brings in a passport, that is absolutely a good document to take and that should be taken.

In addition to that, we recently put out guidance to be able to go through all of the different immigration classes that we support to provide information to workers about what documents to bring. But if somebody is confused about the process, we do have a way of handling their cases. All they have to do is really to send us a photocopy of their documentation so that we can clear them out of the system and get them their card.

Ms. SANCHEZ. I am going to let Mr. Souder ask his 5 minutes' worth.

I would just say to Mr. Lord, I would like you to think if there are any questions you would like answered by any of these that we can come back and ask them. Yes?

Before we do that, I would like to ask unanimous consent to proceed in the absence of a quorum because I don't know, Mr. Souder, if you will be coming back or not. So be it. Five minutes.

Mr. SOUDER. I am merely going to put two questions on the record because I have a bill up that I have to go over and see what the status of it is right away. But I wanted to make sure that these two questions get answered, but I need to take off as quick as I can.

One is what specific steps has TSA taken to ensure that the trucking industry is adequately notified of their need to have a TWIC, and is there any way to gauge how successful these efforts have been? Is that part of this unknown? We are getting more and more people coming in because there was lack of clarity as to who needed what, and now there is increasing concern, and do we know where that cap is?

The other question for the Coast Guard is, as you said, you were looking at the proposed rulemaking; that you will play a large role in specifying the facilities, how they screen their employees for TWIC upon entry. There are numerous questions. Will they be required to give their fingerprint each time they enter, or once a day?

What about their PIN number? What if the machine is malfunctioning, will they be required to swipe their TWIC card upon exit?

All of these will have a direct impact. The question is, will you get an operational test of this while we are testing the systems, or could this result in significant delays depending on the details of how it is implemented as we are moving forth? I am sorry I need to head to the floor, but I need to get there as quick as possible. Thank you.

Ms. SANCHEZ. Okay. Well, why don't we hear the answers to those questions?

Ms. FANGUY. I can address the aspect about trucking. Trucking is an absolutely critical part of maritime transportation security, and we have embarked on a pretty aggressive campaign to get outreach out to the truckers. I know I personally have attended a number of trucking association meetings. I have worked very closely with the American trucking associations. We have recently developed flyers that are very specifically targeted to truckers, and then try to get those out to our port partners.

As I have been traveling around the port, I think that there is very good messaging. When we actually got some photographs from Boston and it says "No TWIC, no entry" right there on the gates to the port, I think that is a pretty clear message, very easy for truckers to see.

When I was out on the West Coast, Los Angeles and Long Beach, very clear signage to let people know you need to come in and enroll for a TWIC. We are actually located right off of the roads where the truckers are going back and forth.

In addition to that, we have tried to do outreach through other mechanisms, like call-in radio programs. I think that has actually been pretty effective to get the drivers who are actually at work hauling between the different ports. But truckers are certainly an unknown population in terms of how large they are. We want to continue to work to make sure that we enroll all of the truckers so there is no delay at the ports.

Ms. SANCHEZ. Mr. Lord, can you comment on what you have seen with respect to truckers and the TWIC situation?

Mr. LORD. I agree with Ms. Fanguy that truckers tend to be an independent lot by nature and they have been reluctant in the past to come forward, absent a firm deadline for enrolling. So I think it is good that the Coast Guard is moving this to a phased-out process and establishing deadlines before April 15 to help serve as an additional incentive to enrollment.

But I think that poses an additional challenge, you know, identifying the magnitude of the truckers subject to TWIC. I think they are still working through that.

Ms. SANCHEZ. I hope when you are out in Los Angeles/Long Beach next week, maybe you will take a look at how that whole trucking situation is happening out there.

Mr. LORD. We would be glad to.

Ms. SANCHEZ. Great. How will these on-going programs with the TWIC be handed over when a new President comes in? What is the backup plan? What is the transition plan? What have you been doing with respect to all of this?

I will start with Ms. Fanguy and then I will ask the Admiral.

Ms. FANGUY. In terms of transition planning, we have an overall program plan that takes us up to April and then plans we have had in place for a long period of time post-April. So our plans really won't change.

The other part of it is that we have been developing transition briefing materials for the next administration so that whoever that may be, will be well-briefed on where we are in the program, any of the challenges we face, the history of the TWIC program, and what our plans are for going forward. But we have a strong structure in place and the management team that is running the TWIC program, to the best of my knowledge, will be the same team as we move into—as the January time frame.

Ms. SANCHEZ. Admiral.

Admiral WATSON. The same with the Coast Guard. We have plans set through April 15. We are announcing these different sequential Captain of the Port Zones for enforcement. We have got a plan to get these regulations out for the reader program and deployment.

The transition I don't think will have a huge effect on this. We will obviously get the new people that come in as a result of the transition fully informed and explain to them the timeline and where we have come from and where we are going to.

Ms. SANCHEZ. Thank you, Admiral. Mr. Lord, is there a question I should be asking these two in front of me about the program?

Mr. LORD. One question I am still interested in clarifying is the relationship between the issuance of the final rule and the testing. If the testing is not scheduled for completion until late next year, how will that inform the development of the rule if it is issued earlier? I mean, to me it makes sense to distill the lessons learned of the test and then issue the rule. But from Admiral Watson's testimony, it sounds like the rule may be issued before all the testing is completed.

Ms. SANCHEZ. Anybody want to take that?

Admiral WATSON. I think I can try that. It also ties into, I think, Congressman Souder's questions with regard to the terminal operator's use of the TWIC reader equipment. We are collecting a lot of this information on basically how terminals work. As you know, there is lots of credentialing already going on at the individual port level. There are even readers in place in a lot of facilities using locally developed systems and so on. There are lessons learned from that. We expect to be collecting that information, even before we do our own piloting, and then put out a notice of proposed rulemaking. That actually is timed, I think appropriately, so that the pilots in Los Angeles and New York and so on, can actually deploy their pilot readers using that proposed rule as their standard. Then we will see how that proposed rule standard is working through the piloting program and then the final rule will come out.

Now, you know, the exact timing of the final rule to the completion of the pilot program, obviously, there are some variables in there. I don't think that we necessarily have to wait until the pilot program is completely finished and documented and all that stuff. But we will certainly be looking very closely to get as much out of that pilot program before we publish the final rule as possible.

Ms. SANCHEZ. Unfortunately, I have to go down to the House because it is 2 minutes away from the end of a vote. Mr. Souder did have a question about the types—the operational questions that he had about the card reader pilots and the role and the guidance of the Coast Guard and et cetera.

So, for the written record we will be submitting his questions to make sure you all get back to us on those. I hope you do get back to us on those. Because sometimes the Department of Homeland Security doesn't answer our questions when we send them in writing, and that is all going to change from now on.

So I have, I believe—most likely Mr. Souder won't be coming back, and I will be the only one. So what I am going to do is thank you for being before our committee and actually dismiss you. It will be about half-an-hour's worth of vote because there are some recommits and some debate that will have to happen on the House floor before we get back. So what I will do is go into recess on the committee and we will meet back in about half-an-hour's time with the second panel. But the first panel is not off the hook because we are going to submit some questions to you in writing and we would like those answers back from you as quickly as possible. Thank you.

[Recess.]

Ms. SANCHEZ. The subcommittee is now in order, and I welcome the second panel of our witnesses.

Our first witness is Ms. Judy Marks, President, Lockheed Martin Transportation and Security Solutions. Our second witness is Ms. Stephanie Bowman, Manager, Federal Governmental Affairs, Port of Tacoma. Mr. Roberto Saarenas, the Security Director, was originally supposed to testify, but his father passed away on Monday, so we offer our condolences to him and to his family. Our third witness is Mr. Philip Byrd, President and CEO, Bulldog Hiway Express. Our fourth witness is Mr. Steve Golding, President of Golding Barge Line; and our fifth witness is Ms. Laura Moskowitz, Staff Attorney, National Employment Law Project. Or whatever. It is easy here.

So, without objection, the witnesses' full statements will be inserted into the record.

I now ask Ms. Marks to summarize her statement in 5 minutes or less.

STATEMENT OF JUDITH MARKS, PRESIDENT, TRANSPORTATION AND SECURITY SOLUTIONS, LOCKHEED MARTIN

Ms. MARKS. Chairwoman Sanchez and Members of the subcommittee, thank you for the opportunity to discuss the Transportation Worker Identification Credential, or TWIC, program. I look forward to sharing the progress we have achieved on this important program.

Before discussing our role in depth, I would like to provide a real-time snapshot of where we are in the Nation-wide enrollment phase of the program.

Lockheed Martin has deployed all 149 enrollment centers and provided enrollment and activation services for the past 11 months. We are proud to report that we have deployed more sites faster than any other credentialing program in operation today. On aver-

age, we enroll 3,200 people every day; and, to date, we have enrolled over 500,000 individuals and have activated and distributed credentials to over 300,000 enrollees.

The wait times continue to meet all required TSA service level agreements; and, perhaps most importantly, we have received a greater-than 93-percent-positive customer satisfaction rating based on individual customer surveys. As with any program of this magnitude, we have experienced some start-up challenges. But the majority of these initial issues have been resolved through the deployment of additional resources, assets and skilled people.

Currently, our national average wait time to enroll is under 15 minutes. We continuously monitor throughput, and we have routed additional resources and staff to areas of high demand. The current average time of enrollment to the credential being available for issuance is approximately 2 to 3 weeks, and we have been able to issue credentials to applicants in as little as 5 days.

The Coast Guard, as you just heard, has begun announcing compliance dates for ports. While we continue to enroll and activate TWIC credentials Nation-wide, we are also focusing our energies on encouraging the remainder of the transportation worker population to enroll prior to these announced compliance dates.

As part of our targeted outreach and in direct response to stakeholder feedback, we have opened two additional facilities, one in Long Beach and the other in Houston, to increase convenience and enrollment capacity.

Lockheed Martin and the Coast Guard have met with the majority of rail industry leaders, and in response to concerns from the rail industry TSA and Lockheed Martin are working together to develop alternative enrollment options. Similarly, we have met with representatives from major trucking companies and associations, including the ATA, Truck Stop Operators and Motor Vehicle Association, to find ways to reach out to the trucking community, including utilizing trucking publications and other methods.

Initial enrollment projections indicated an estimated 750,000 applicants would be enrolled in TWIC. Since contract award, the Coast Guard, TSA and Lockheed Martin have received reports from a number of ports indicating national population will be significantly larger than was initially anticipated. We anticipate the initial population to be closer to 1.2 million individuals.

The Coast Guard continues to conduct weekly calls with the captain of the port zones to develop an accurate assessment of how many people remain to enroll before the mid-April compliance date. Meanwhile, we have taken a very flexible approach to planning our operations. We focus on the use of mobile enrollment stations which can be taken directly to stakeholder facilities and certain geographically dispersed communities in Alaska and other locations. To date, we have conducted over 220 mobile enrollments Nation-wide at port facilities, at employers, maritime academies and union halls. In addition to the use of mobile units we have developed a Nation-wide surge plan that allows for rapid expansion of capacity at any of the 149 port locations.

Lockheed Martin also provides resources and information to applicants through our web site at a TWIC call center. Earlier this year, we did experience challenges with this TWIC call center, an

important resource for all workers. We made multiple enhancements at no cost to our customers which decrease helped us speed up answer times, bringing them well below our contractual requirement of a 3-minute average. In fact, today the average caller to the help desk experiences less than a 30-second wait time.

Lockheed Martin is committed to the successful implementation of the Nation-wide enrollment phase of the TWIC program. As compliance is declared at ports across the country, we will work diligently to support the remaining maritime workers who need to enroll; and we will promptly activate their credentials.

In addition, we very much appreciate your continued leadership in your home States and districts. The relationships you have cultivated with port and industry leaders in your communities will be invaluable in continuing to emphasize the critical nature of this program to our Homeland Security and to our continued economic vitality.

Thank you.

[The statement of Ms. Marks follows:]

PREPARED STATEMENT OF JUDITH MARKS

SEPTEMBER 17, 2008

The Transportation Worker Identification Credential (TWIC) IV program is a Transportation Security Administration and U.S. Coast Guard port security initiative. The TWIC program provides a tamper-resistant biometric credential to maritime workers requiring unescorted access to secure areas of port facilities, outer continental shelf facilities, vessels regulated under the Maritime Transportation Security Act (MTSA), and to all U.S. Coast Guard credentialed merchant mariners.

Enrollment and issuance of TWIC credentials began in October 2007 at the Port of Wilmington, Delaware and is now available at 149 port locations and at multiple stakeholder facilities via mobile enrollment. Although original estimates placed the port worker population requiring TWICs at 750,000, recent data suggests the revised population count may be double that original projection. Over 500,000 people have enrolled to date. To obtain a TWIC credential, an individual must provide biographic and biometric information in the form of fingerprints, sit for a digital photograph, and successfully pass a security threat assessment conducted by TSA.

The Coast Guard continues to announce compliance dates for ports, mandating that those personnel who require unescorted access to secure areas of port facilities must have received their credentials. We are continuing to enroll and activate TWIC credentials Nation-wide, while also focusing our energies on encouraging the remainder of the port worker population to enroll prior to the Coast Guard compliance dates.

ENROLLMENT ACTIVITIES TO DATE

Lockheed Martin has deployed 149 enrollment centers and provided enrollment and activation services for the past 11 months. We are proud to report that we have deployed more sites faster than any other credentialing program in operation today. On average, we enroll 3,200 individuals daily but in recent weeks have seen daily volumes approach 5,000 as we near the first compliance date. To date, we have enrolled more than 500,000 individuals, activated and distributed credentials to 300,000 enrollees, and deployed to 149 fixed port locations.

We are proud that Lockheed Martin has met every contractual deployment milestone on the TWIC IV program, including deploying to some of the Nations' largest ports: Los Angeles/Long Beach, New York/New Jersey, and Houston. Wait times continue to decrease and continue to meet all required TSA service level agreements for wait time. Perhaps most importantly, we have received a greater than 93 percent positive customer satisfaction rating to date based on individual customer surveys that TWIC recipients return after their credentials have been activated. As with any program of this magnitude, we have experienced some start-up challenges, specifically in areas such as network connectivity, customer interaction, and wait times. The majority of these initial issues have been resolved through the deployment of additional resources, assets and skilled people to address them when and

where they have been identified. We have continued to apply lessons we learn during each port deployment to avoid repetition as we completed the national network of enrollment centers.

PROGRAM OUTREACH

The TWIC program will touch more than 1 million Americans' lives, and we have strived to ensure that the experience is as positive as possible for those affected. We utilize several methods for communicating about the program and receiving feedback.

On a national level, stakeholder outreach and communications is facilitated primarily through the TWIC Stakeholder Communications Committee (TSCC). The TSCC is facilitated by Lockheed Martin and Deloitte Consulting. TSA and the Coast Guard take a leadership role in our monthly TSCC meetings, which are attended by representatives from 49 organizations including labor unions, industry associations, and other related groups. The TSCC provides a forum for communication about the program status and key features, and offers stakeholders the opportunity to provide feedback and voice concerns. To date, 21 meetings of the TSCC have been held.

Local outreach to port stakeholders has always been an integral part of the TWIC deployment process. Our local database is approaching 7,000 owners, operators, unions, port authorities, associations and other TWIC program participants.

In several port locations, local stakeholder working groups have been formed, which may be chaired by TSA, Coast Guard or a local stakeholder. These groups have provided an excellent forum to discuss on-going enrollment operations, provide updates on the program, and receive feedback. As part of our targeted outreach, Lockheed Martin has met with the majority of rail industry leaders. In response to concerns from the rail industry, TSA and Lockheed Martin are working together to develop alternative enrollment options. Similarly, we have met with representatives from major trucking companies and associations to find ways to reach the trucking community.

ENROLLMENT POPULATION

One of the key objectives of our deployment operation is to understand the size and geographic distribution of the maritime population. Initial projections developed under contract to TSA were provided to Lockheed Martin as part of the TWIC IV solicitation process. These projections indicated that an estimated 750,000 applicants would be enrolled during the initial base term of the Lockheed Martin contract. Since contract award, the Coast Guard, TSA, and Lockheed Martin have received reports from a number of ports indicating that the actual population may be significantly larger in some areas than was initially anticipated. We anticipate the initial population to be closer to 1.25 million people. The Coast Guard continues to conduct weekly calls with Captain of the Port Zones, which are actively surveying and assessing their population numbers to develop an accurate assessment of how many people remain to enroll in the TWIC program.

Meanwhile, we have taken a very flexible approach to planning our operations. We focus this flexible approach on the use of mobile enrollment workstations, which can be taken directly to stakeholder facilities. This provides an additional level of convenience for the individual workers and employers, and also enables more effective management of applicant throughput, by minimizing lines at fixed facilities and easing the burden on major employers.

To date, we have conducted over 220 mobile enrollments at port facilities, employers, maritime academies and union halls. In addition to use of mobile units, we have developed a national surge plan that allows for rapid expansion of capacity at any of the 149 port locations. This includes extending the hours of operation and adding additional work shifts, adding additional staff, and increasing the number of enrollment stations by bringing in mobile units. We demonstrated this flexibility and used this plan to move additional assets and resources into key areas such as Baton Rouge, Lake Charles, New Orleans and Houston.

MINIMIZING INCONVENIENCE

We recognize that with a population that is already working hard to support a constantly growing maritime transportation and commerce system, convenience in the TWIC enrollment process is critical. That's why we have taken steps to make this process as smooth as possible.

As discussed above, we work with major stakeholders at all ports to enroll as much of the population as possible at stakeholder facilities. These may be employer

facilities, union halls, maritime academies or industry association offices. We also coordinate the issuance and activation of cards at these locations wherever possible.

We also offer multiple pre-enrollment options. Pre-enrollment involves the advance provision of biographical information so that this information does not need to be collected at the time of enrollment. Pre-enrollment may be accomplished online, via the TWIC Helpdesk phone number, or, at larger ports, via self-service kiosks. Pre-enrollment also provides an opportunity to schedule an appointment at the TWIC enrollment facility, further reducing an applicant's wait time.

Currently, our national average wait time to enroll is 15 minutes. We continuously monitor throughput and we have routed additional resources and staff to areas of high demand. From the point at which an enrollment application is completed, the information is securely sent within 1 day to the Government. A background check is conducted via the TSA security threat assessment, which varies in cycle time. Other factors may also influence the turnaround time for a credential being available for issuance. We have been able to issue credentials to applicants in as little as 5 days. The current average from time of enrollment to the credential being available for issuance is approximately 2 to 3 weeks.

We recognize that certain parts of the country have significant populations of people for whom English is not their first language. In these locations, we have trusted agents who speak other languages. Our pre-enrollment web site and multiple help desk call attendants are bilingual (English/Spanish), as is our enrollment center work station software and TWIC web site.

As with any program involving a FBI background fingerprint check, a percentage of the population will have their fingerprints rejected by the Bureau as unreadable. Our current fingerprint rejection rate is 1.5 percent of the population, which is far lower than other fingerprinting programs nationally which range between 2 percent and 4 percent. To minimize the number of rejects, we apply quality algorithms to each set of fingerprints captured in our enrollment centers. This provides trusted agents with an immediate indicator if prints are of low quality, and provides an opportunity to recapture them on the spot. If repeated attempts to capture high-quality prints are unsuccessful, we turn to a procedure recently developed in conjunction with TSA to electronically enhance the captured fingerprint, without distortion, and resubmit to the FBI. This new process should allow us to avoid calling the applicant back to the enrollment center and further inconveniencing the applicant. Notifications of this new policy and information on the status of the applications were recently sent out to those affected applicants.

In addition, when enrollment centers have experienced technical difficulties that resulted in significant downtime, or have had to close, we have made efforts to contact affected individuals and offered to reschedule appointments. We understand that workers' time is very valuable—to them and to the companies they support.

GULF COAST

One of the geographic areas we have seen significant differences in the population estimates to date has been in the Gulf Coast. In Baton Rouge, initial enrollee estimates were around 6,000 and current estimates appear to be closer to 40,000 to 60,000. This initially resulted in higher-than-expected demand and, as a consequence, longer-than-desired wait times. To address this, we activated our surge plans, increasing our capacity to five times greater than the number of enrollment stations originally deployed and scheduling mobile enrollment at additional sites. Feedback from our Exxon mobile enrollment has been positive and we have seen sustained improvement in enrollment activities at the Baton Rouge site.

In Houston, we anticipated a large demand and started with a higher capacity than originally planned. We also instituted longer operating hours. To date, Houston throughput has been the highest of any site to date, averaging 250 enrollments per day. We have sent additional enrollment and activation stations to Houston as well as brought on additional trusted agents to handle the increasing workload. We have also been working closely with the local stakeholder working group to quickly address issues as they arise; recent feedback has been positive. Perhaps most notably, based on stakeholder feedback, we opened an additional enrollment center in Houston in July.

PORTS OF LOS ANGELES AND LONG BEACH

We had also encountered some concerns regarding enrollment operations at the Ports of Los Angeles and Long Beach. This issue focused primarily on the enrollment center locations, specifically their proximity to the ports and the availability of truck parking. Additionally, stakeholders expressed concern that the two initial

fixed enrollment locations would be insufficient to cover the enrollment population at their ports.

To address these issues, we have worked very closely with key port personnel and area stakeholders to develop an aggressive mobile enrollment plan. We also opened an additional fixed enrollment center at Terminal Island, squarely between the two port properties, with truck parking and directly on a key route that truck operators utilize. Since opening in June, this Terminal Island location has seen more than 1,600 enrollees.

ALASKA

Enrollments in Alaska began on April 28 in Juneau, the first of four fixed centers to open in the State. Over the ensuing 2 months, centers also opened in Anchorage, Valdez and Nikiski. We knew that four fixed centers would not fully accommodate Alaska's geographically dispersed projected population of 5,000 port workers. Along with TSA and the Coast Guard, we worked closely with key stakeholders in Alaska, including the Alaska Marine Highway Association and the Alaska Maritime Exchange to develop a "round robin" approach to enrolling hard-to-reach communities.

Through this method, we utilize mobile enrollment units in publicly accessible "hosted" locations. Some of the populations to be enrolled in these hosted locations are small in comparison to our normal mobile activities. Once enrollments are completed in each area, the mobile team then moves to the next location. The mobile team will re-deploy at the appropriate time to those locations to issue and activate the cards.

Multiple communities in Alaska have or will benefit from this tailored approach, including Kodiak, Sitka, Cordova, Wrangell, Craig, Dutch Harbor, Ketchikan, Skagway, and Haines.

We are very proud of our work with the Alaska stakeholders to develop an enrollment plan that will reach a significant majority of the estimated population in Alaska. We are striving to replicate this model for some of the hard-to-reach communities in Hawaii and we are currently working with local stakeholders there.

HELP DESK

Lockheed Martin also provides program resources and information to applicants through a web site and a TWIC call center. Earlier this year, Lockheed Martin experienced challenges with the TWIC call center help desk, an important resource for port workers. Reducing wait times and enhancing service levels to increase customer satisfaction is a top priority. We made multiple enhancements—at no cost to our customer—which decreased help desk speed of answer times, bringing them well below our contract requirement of a 3-minute average. In fact, today, the average caller to the help desk experiences only a 30-second wait time.

CONCLUSION

Lockheed Martin is committed to the successful implementation of the enrollment phase of the TWIC program. We are proud of our team which has successfully opened 149 enrollment locations Nation-wide, enrolled over 500,000 people in the program, remained responsive to stakeholder and applicant feedback, and conducted extensive stakeholder outreach across the country. As compliance is declared at ports across the country, you have our promise that we will work diligently to support the remaining maritime workers who need to enroll—and to promptly activate their credentials. In addition, we very much appreciate your continued leadership in your home States and districts. The relationships you have cultivated with port and industry leaders in your communities will be invaluable in continuing to emphasize the critical nature of this program—to our homeland security and to our continued economic vitality.

Ms. SANCHEZ. Thank you.

Now we will hear from Ms. Bowman.

STATEMENT OF STEPHANIE BOWMAN, MANAGER, FEDERAL GOVERNMENT AFFAIRS, PORT OF TACOMA

Ms. BOWMAN. Good morning Madam Chairwoman, Members of the committee. For the record my name is Stephanie Bowman, Director of Federal Affairs for the Port of Tacoma. I am here on today on behalf of our port security director, Mr. Roberto Saarenas. Thank you for the opportunity to submit testimony on behalf of the

implementation of the Transportation Worker Identification Credential.

The Port of Tacoma began TWIC implementation on November 7, 2007. We were selected by the Department of Homeland Security as one of the first five ports to adopt TWIC; and as of September 5 of this year we have had 6,107 enrollments, of which 4,635 cards have been activated. However, we conservatively estimate that 4,000 individuals, or about 40 percent, still need to enroll in our port area before the deadline in 7 months.

Last week, the Port of Tacoma participated in the Port Security Caucus hosted by the American Association of Port Authorities. At this meeting, port security directors from around the country exchanged information about their experiences with the TWIC enrollment process. We are experiencing similar challenges as other ports, including:

Problems with the fingerprint readers. Specifically, there have been problems with the software being unable to verify fingerprints of individuals when they come into the enrollment center to activate their TWIC. If there are problems in a secure office environment, it is difficult to imagine how the readers will work once exposed to the extreme weather of the maritime terminal.

Lack of communication and inconsistent messages from the enrollment center staff about requirements for enrollment or activation. For example, some of the our security officers have been told to come into the enrollment center and then are admonished by staff when they show up without an appointment. Additionally, citizens born outside the United States receive inconsistent information about the documentation required of them. This has frequently resulted in long waits to enroll or activate cards. We are concerned that the situation will get significantly worse the closer to the enrollment deadline or unsure if the contractor will be prepared to handle the surges in enrollment.

Outreach to critical port personnel such as truckers, vendors and contractors. While we and other ports have conducted considerable outreach, including signage, town hall events and the like, this remains a significant concern.

Looking forward, the Port of Tacoma, along with other U.S. major ports, have identified a number of areas we urge DHS and the Coast Guard to address, including:

Ensuring ample time for vendors, contractors and service workers to get their TWIC. This is particularly worrisome for those individuals who need access to the port only temporarily or infrequently but for whom an escort is unreasonable; for example, municipal utility workers checking meters or railroad workers handling secure cargo.

Providing clear and consistent guidelines for escorting of roll-on roll-off cargo—that is large bulk cargo such as automobiles or tractors—as well as guidelines for escorting shipboard crew. In the absence of industry guidelines, the Port of Tacoma is developing its own protocol for escorting in these situations, but it is clearly in the best interest of everyone if there is a template for all ports to adhere to.

Greater outreach. TWIC is a Federal mandate. We believe the U.S. Coast Guard and the Department of Homeland Security

should take greater responsibility and have a much more active role in the outreach efforts about this new requirement. They cannot rely only on industry and the Federal contractor to get the word out.

Long-term plans for enrollment centers. Most enrollment centers, like ours in Tacoma, are in temporary locations or on short-term leases. What is the long-term, on-going plan for these centers? For example, enrollment centers need to have adequate parking for trucks; and they need to be ADA-compliant. They can't simply be located in a shopping mall.

Finally, we urge DHS to exempt TWIC card readers from the cost-share requirement under the port security grant program.

In conclusion, the public ports of the United States share the goal of Congress and the Federal agencies in ensuring the security of our Nation's gateways while avoiding disruption of the flow of international commerce. The Port of Tacoma and other U.S. ports are committed to doing our part to comply. We offer our concerns today not simply to criticize but to educate and hopefully improve the system.

Thank you for your attention. I am happy to answer any questions.

[The statement of Ms. Bowman follows:]

PREPARED STATEMENT OF STEPHANIE BOWMAN

SEPTEMBER 17, 2008

Good morning Madam Chairman and Members of the subcommittee. Thank you for the opportunity to provide this subcommittee with an update on the implementation of the Transportation Workers Identification Card (TWIC).

The Port of Tacoma began TWIC implementation on November 7, 2007. We were selected by the Department of Homeland Security as one of the first five ports to adopt TWIC, and as of September 5, 2008, we've had 6,107 enrollments, of which 4,635 cards have been activated. However, we conservatively estimate another 4,000 individuals—or 40 percent—still need to enroll in our port area before the deadline in only 5 months.

Last week, the Port of Tacoma participated in the Port Security Caucus hosted by the American Association of Port Authorities. At this meeting, port security directors from around the country exchanged information about their experiences with the TWIC enrollment process. We are experiencing similar challenges as other ports, including:

- *Problems with fingerprint readers*.—Specifically, there have been problems with the software being unable to verify the fingerprints of individuals when they come in to the enrollment center to activate their TWIC. If there are problems in a secure office environment, it's difficult to imagine how the readers will work once exposed to the extreme weather of a maritime terminal.
- *Lack of communication and inconsistent messages from the enrollment center staff about requirements for enrollment or activation*.—For example, some of my security officers have been told to come to the enrollment center, and then are admonished by staff when they show up without an appointment; additionally, citizens born outside the United States receive inconsistent information about the documentation required of them. This has frequently resulted in long waits to enroll or activate cards. We are concerned this situation will get significantly worse the closer to the enrollment deadline. We are unsure if the contractor is prepared to handle the surges in enrollment.
- *Outreach to critical port personnel such as truckers, vendors and contractors*.—While we and other ports have conducted considerable outreach including signage, town hall events and the like, this remains a significant concern.

Looking forward, the Port of Tacoma along with other major U.S. ports has identified a number of areas we urge DHS and the USCG to address, including:

- Ensuring ample time for vendors, contractors and service workers to get their TWIC. This is particularly worrisome for those individuals who need access to the Port only temporarily or infrequently but for whom an escort is unreason-

able; for example, municipal utility workers checking meters or railroad workers handling secure cargo.

- Providing clear, consistent guidelines for escorting of roll-on, roll-off cargo—that's large bulk cargo such as automobiles or tractors—as well as guidelines for escorting ship-board crew. In the absence of industry guidelines, the Port of Tacoma is developing its own protocol for escorting in these situations, but clearly it's in the best interest of everyone if there is a template for all ports to adhere to.
- Greater outreach. TWIC is a Federal mandate; we believe the U.S. Coast Guard and Department of Homeland Security should take greater responsibility and have a much more active role in the outreach efforts about the new requirement. They cannot rely only on industry and the Federal contractor to get the word out about this mandate.
- Long-term plans for enrollment centers. Most enrollment centers, like ours in Tacoma, are in temporary locations or are on short-term leases. What is the long-term, on-going plan for these centers? For example, enrollment centers need to have adequate parking for trucks and they need to be ADA compliant; they can't simply be located in a shopping mall.
- Finally, we urge DHS to exempt the TWIC card readers from the cost-share requirement under the port security grant program.

The public ports in the United States share the goal of Congress and the Federal agencies in ensuring the security of our Nation's gateways, while avoiding disruption of the flow of international commerce. The Port of Tacoma and other U.S. ports are committed to doing our part to comply. We offer our concerns not simply to criticize but to educate and hopefully improve the system.

Thank you for your attention today; I'm happy to try and answer any questions you may have.

Ms. SANCHEZ. Thank you, Ms. Bowman.

Mr. Byrd for 5 minutes or less.

STATEMENT OF PHILIP L. BYRD, SR., PRESIDENT AND CEO, BULLDOG HIWAY EXPRESS

Mr. BYRD. Good morning, Madam Chairwoman. Thank you for inviting me to testify today on behalf of the American Trucking Association on the subject of the Transportation Worker Identification Credential.

My name is Phil Byrd, and I am President and Chief Executive Officer of Bulldog Hiway Express, a trucking company that hauls container freight in and out of the seaports on the East and Gulf Coast.

When I testified at a similar hearing 2 years ago, the TWIC was a proposed rule. However, now that the TWIC is being implemented, several concerns that I presented back then continue to go unresolved. The most important concern is that the overall goal of the TWIC is not being accomplished: one background check, one credential that allows transportation workers to comply with multiple screening requirements. Unfortunately, today the main question on my drivers' minds and those of other companies is: How many fingerprint background checks do I have to go through to do my job transporting America's freight?

To enter a port, a driver needs a TWIC. To transport HAZMAT, a driver has to go through HAZMAT endorsement background checks. To cross the border, a driver has to get a Fast Card. To transport air cargo, go through another screening process. To enter Florida ports, get a Florida Port Access Card. And on and on. I think you get the picture. These credentials add up to hundreds of dollars of cost to check the same database over and over again.

Madam Chairwoman, we need a common-sense solution to this problem. That is why I urge you and Members of this committee

to support the act, the SAFE Truckers Act of 2008. This bill establishes a risk-based approach to best allocate security resources.

Briefly, the bill authorizes the Secretary of Homeland Security to establish a security sensitive material list, cargo that could potentially be used as a weapon and represents a high risk. Second, the bill requires only drivers transporting security sensitive material to undergo fingerprint-based background checks through the TWIC program. Third, it requires TSA to continue conducting name-based background checks on all HAZMAT-endorsed drivers, ensuring the continued screening of a large portion of these drivers.

The bill is important because many trucking companies are simply getting out of the transportation of HAZMAT to eliminate the need of their drivers to undergo an inconvenient and expensive screening to transport commodities such as nail polish and soft drink syrup.

I urge you again to support the act, the SAFE Truckers Act. I urge Members of the committee to require TSA to promptly implement this mutual recognition as mandated by the 9/11 Commission Act.

Last, the failure to preempt State and local background check credentials and access requirements for the ports is another costly problem for companies such as mine. While my drivers may obtain the TWIC, the final TWIC rule allows each port to require additional credentials involving additional fees. Again, my company does business at a number of ports in several States. If each port requires its own credential, the results will be crippling.

The multiple credentialing scenario is exactly what TWIC was originally intended to prevent. When issuing the regulation implementing the Maritime Transportation Act, the Coast Guard claimed the need for national standards of security and claim preemption. ATA believes the same approach should be embraced in the implementation of the TWIC. The absence of a single, universally accepted security access credential will result in huge costs with no corresponding security benefit.

I know from a personal experience that the TWIC is presently not in the most efficient, convenient or cost-effective program. A consolidated background check process under the TWIC, one process, one background check and one fee, would be a vast improvement over the present enrollment.

To conclude, I urge the Members of this subcommittee to support and act on the SAFE Truckers Act. I thank you for the opportunity to testify today and look forward to any questions that you may have.

[The statement of Mr. Byrd follows:]

PREPARED STATEMENT OF PHILIP L. BYRD, SR.

SEPTEMBER 17, 2008

INTRODUCTION

Madam Chairwoman and Members of the subcommittee, thank you for inviting me testify today on the status of the Transportation Worker Identification Credential, also known as TWIC. My name is Phil Byrd and I am President and CEO of Bulldog Hiway Express, a company based in Charleston, South Carolina. Founded in 1959, Bulldog Hiway Express is an intermodal motor carrier that moved the first container to come off a vessel in the Port of Charleston. The company has approxi-

mately 200 power units, 350 trailers and 250 employee-drivers, many of whom will be required to apply and get a TWIC in order to enter the various port facilities where we operate in South Carolina, North Carolina, Florida, Georgia, and Virginia.

Today, I am also testifying on behalf of the American Trucking Associations (ATA). ATA's membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation. As an ATA member, I serve as chairman of the association's Homeland Security Policy Committee (HSPC) and as Vice Chairman of its Intermodal Motor Carriers Conference (IMCC). Both the HSPC and the IMCC, and their respective members, have been closely following the development of the TWIC since its legislative inception through its present regulatory implementation phase.

Madam Chairwoman, I urge this subcommittee and the Committee on Homeland Security as a whole, to support the SAFE Truckers Act of 2008 and to ensure the following are achieved in the near future:

- Require TSA to immediately recognize U.S. commercial drivers who possess a TWIC as already compliant with the Hazardous Materials Endorsement Security Threat Assessment program, as allowed by statute and as TSA already does for Canadian and Mexican commercial drivers;
- Ensure that the TWIC is used as the single, universally accepted security credential for transportation workers by preempting other security and access control credentials required of motor carriers that operate in multiple jurisdictions.

BACKGROUND

Almost 2 years ago, on September 27, 2006, I had the honor of testifying before the Small Business Committee of the U.S. House of Representatives in a hearing focused on striking the right balance between security and commerce at our Nation's ports. In large measure, the hearing discussed the TWIC, which was not yet implemented. During that hearing, I testified that security and commerce are not mutually exclusive goals, not just at our ports, but throughout the entire transportation system and supply chain. Enhancing security without disrupting the flow of commerce can be achieved by implementing risk-based programs in a cost-effective and coordinated manner. Although I faced operational challenges in getting my TWIC (requiring multiple visits to the enrollment center in Charleston and waiting a couple of hours each time), the trucking industry believes the TWIC can be such a program if implemented and utilized in an appropriate manner.

ATA has long supported the original concept of the TWIC: one application/enrollment process, one fee, one security threat assessment (STA), and a single credential that transportation workers may carry to demonstrate compliance with multiple access control security requirements. However, commercial drivers today continue to face multiple security credentialing requirements. In addition to the TWIC, drivers must undergo separate STAs for the HME, air cargo and facility access, the Free and Secure Trade (FAST) program for border crossings, access to U.S. Department of Defense (DOD) facilities, and a myriad of State and locally administered STA programs (i.e. Florida Unified Port Access Card—FUPAC). The cost to drivers of these separate STA and credentialing programs is more than $400 in fees, not including the costs associated with drivers' lost wages while traveling to and from enrollment centers, fuel costs, and the aggravation of providing fingerprints multiple times for each program.

In January 2003, Admiral Loy, then the second-most senior official at TSA, summed up the concept and the purpose of the TWIC, stating:

"A fourth initiative also underway is development of a Transportation Worker Identification Credential or TWIC . . . The idea is to have these [transportation] employees undergo only one standard criminal background investigation . . . I've heard that there are some truck drivers currently carrying up to 23 ID cards around their necks. I wouldn't want to pay that chiropractor bill. Under the TWIC program drivers and other transportation workers will only have one card to deal with which would be acceptable across the United States."[1]

Unfortunately, the TWIC program/concept has not lived up fully to its promise and has become just another expensive, duplicative security credential that truck drivers must obtain to access port facilities. TWIC works, but the goal of universal acceptance of a single security credential has been discarded by TSA.

[1] Remarks of Admiral James M. Loy, Under Secretary of Transportation for Security, Transportation Security Administration, during Transportation Research Board 82nd Annual Meeting Chairman's Luncheon, January 15, 2003.

TSA MUST ESTABLISH IMMEDIATE RECOGNITION OF TWIC AS COMPLIANT FOR HME STA

ATA believes that TSA should recognize drivers carrying a valid TWIC as fully compliant with the security requirements for the HME expressed in 49 CFR Parts 1570 and 1572. ATA arrives at such a conclusion based on two key premises:

First, Congress already intended this result by granting TSA the statutory authority to do so under Public Law 110–53 (H.R. 1, Implementing the Recommendations of the 9/11 Commission). Section 1556 states in part, "An individual who has a valid transportation employee identification card issued by the Secretary under section 70105 of title 46, United States Code, shall be deemed to have met the background records check required under section 5103a of title 49, United States Code." The intent behind this provision was to allow a TWIC holder to walk into a State's Department of Motor Vehicles (DMV) office and be legally issued an HME, assuming the driver passes the hazardous materials (hazmat) knowledge test, without requiring further screening under the HME threat assessment program.[2] Thus, a TWIC holder should not be subjected to the duplicative STA requirement and fees when applying for an HME.

Second, there is regulatory precedent for compliance with the HME STA through enrollment in the TWIC credentialing program. In its Final Rule on the TWIC, TSA states:

"The Secretary may apply TWIC requirements to individuals including those "not otherwise covered by this subsection". TSA has exercised the discretion by allowing Canadian and Mexican commercial drivers who transport hazardous materials to obtain TWICs, which will allow them to transport hazardous materials in the United States."[3]

ATA supports TSA's solution to allow Canadian and Mexican commercial drivers to be in compliance with the HME STA requirements provided they have a TWIC. We strongly believe that U.S. commercial drivers should be afforded the same flexibility for compliance with the HME STA requirements. In essence, U.S. Commercial Driver's License (CDL) holders who seek an HME on their license and who hold a TWIC should not be required to undergo the HME STA.

I urge you to require TSA to make such a policy a reality in an expedited manner.

ATA SUPPORTS THE SAFE TRUCKERS ACT OF 2008

Shortly after the tragic events of September 11, 2001, Congress passed the USA PATRIOT Act in an effort to better secure the United States against future terrorist attacks. Among its numerous provisions was a requirement that all drivers seeking, renewing, or transferring a HME to their CDL had to undergo an STA. While the provision was no doubt well-intentioned, it was enacted with little debate or discussion. Unfortunately, it has resulted in a driver being subjected to a costly and burdensome STA in order to be authorized to transport such everyday hazmat as paint, perfume and soft drink concentrate (which require an HME when transported above certain threshold quantities). Requiring a STA of individuals that transport paint, perfume and other everyday commodities was an unintended consequence of legislation meant to protect against real risks to homeland security, i.e., transportation of chemicals that could be used as weapons of mass destruction.

On April 29, 2008, the "Screening Applied Fairly and Equitably to Truckers Act of 2008" or the "SAFE Truckers Act of 2008" (H.R. 5915) was introduced in the U.S. House of Representatives and referred to the Committee on Homeland Security's Subcommittee on Transportation and Infrastructure. The SAFE Truckers Act of 2008 represents an efficient risk-based approach to security, an approach DHS and TSA leadership embrace, by, among other things:

- Directing the Secretary of Homeland Security to establish a list of Security Sensitive Materials, in consultation with the Secretaries of Transportation, and Health and Human Services, distinguishing between materials that could potentially be used as a weapon and those that are not attractive to a terrorist, (e.g., paint, adhesives, food additives);
- Establishing the TWIC as the STA required to transport Security Sensitive Materials, obviating the need to use the HME as a security credential and returning it to its original purpose of establishing an individual's fitness to safely operate a commercial vehicle transporting hazmat;

[2] ATA notes that States will still be the final arbiters of the safety/skills-based portion of HME issuance.

[3] 72 *Federal Register* at 3511.

- Requiring DHS to periodically conduct name-based background checks of all CDL holders with an HME, utilizing the integrated and consolidated terrorism watch list; and,
- Including a transition period for drivers who have already undergone a STA under the present HME program before requiring them to get a TWIC.

At a time when the public and private sectors alike have limited resources, our security efforts must be focused on the most significant risks. The imposition of burdensome, costly duplicative security programs governing the transportation of hazmat, such as the hazmat background check program, threatens to erode the industry's ability to continue to deliver the goods that the consumer expects.

It is important to highlight the fact that although only drivers transporting Security Sensitive Materials will be required to get a TWIC and thus undergo a fingerprint-based STA, all HME holders, regardless, will undergo a periodic name-based background check. By determining what hazmat truly poses a significant risk and not requiring a fingerprint-based threat assessment for drivers transporting non-threatening hazmat commodities, Congress will be eliminating many of the costs and burdens imposed by the USA PATRIOT Act while still strongly promoting and protecting homeland security.

ATA fully supports the SAFE Truckers Act of 2008 and urges members of this subcommittee to support and co-sponsor this legislation.

ESTABLISHING FEDERAL PREEMPTION FOR THE TWIC

The trucking industry believes that the TWIC should serve not only as the one STA but also as a uniform, Nation-wide secure access control credential. This means the States and thousands of local jurisdictions should not be allowed, without demonstrating some compelling need, to require additional security checks and/or credentials for individuals that have a federally issued TWIC.

The TWIC Final Rule allows State authorities to impose additional requirements for access to the ports, potentially allowing each port authority to issue its own credential on top of the TWIC. The State of Florida is already doing so at its seaports, through the FUPAC. In my home State of South Carolina, the trucking industry has had to counter several proposals to impose additional background check and credentialing requirements for access to the South Carolina ports. The regulations issued by the Coast Guard under the Maritime Transportation Security Act (MTSA) properly claimed the need for national standards of security and claimed preemption. ATA supported this eminently sensible position. ATA is disappointed that TSA has not fully embraced this approach, as the absence of national standards and a single universally accepted security credential has amounted to a huge expenditure of resources with no corresponding security benefit.

One rationale frequently proffered by States that require additional checks of their State criminal history databases is that their State databases are more comprehensive or fully populated. The failure of States to upload criminal history information to the FBI's national databases actually creates a security loophole rather than bolstering security. For example, an individual may commit a disqualifying offense in Florida that is only in the Florida database but has not been uploaded into the FBI's database. That individual would not be able to pass a Florida-specific STA but he/she could pass a STA in South Carolina, because the check against the FBI's database would not reveal the disqualifying offense in Florida. If the disqualifying offense indicates that the individual is a threat in Florida (which purportedly is the rationale for having a list of disqualifying offenses), then that same individual is also a threat in South Carolina. The failure to upload State data in a timely manner is a security problem that needs to be addressed.

Other than the differences between the criminal history databases, it is difficult to conceive of scenarios where a State's judgment on security of the Nation's supply chain should supplant the Federal Government's considered judgment. If such a scenario exists, however, the State should request a waiver from preemption after demonstrating some unique security concern that is not addressed by the Federal program.

There is an additional area of interest for Federal and State governments to consider the TWIC as a coordinated credentialing access process: Emergency response and relief operations. The trucking industry is primarily responsible for transporting relief supplies into areas affected by a natural disaster. Relief efforts required by Hurricane Katrina, Gustav and most recently Ike serve as reminders of the critical role that trucking plays in responding to these emergencies. The timing of this hearing coincides with one of the most active hurricane seasons in recent memory. Truck drivers transporting and providing relief supplies face challenges in accessing disaster areas due to differing Federal, State and local access control policies. Such

challenges were evident during our response to Katrina. But the recent relief efforts in response to Gustav, though of a much smaller scale, allowed DHS agencies to coordinate access protocols with State and local officials. The standards established under the access protocols recognized the TWIC as a valid access credential. If each State and local government established separate access control protocols, our industry's ability to respond and provide relief supplies to areas affected by such disasters would be greatly diminished.

ATA urges Members of this subcommittee to preempt States from establishing additional screening requirements where the Federal Government has already set in place a program such as the TWIC.

CONCLUSION

The screening of individuals involved in the transportation of goods is important to my company and to the trucking industry. Our industry has long sought and supported a national, uniform process to check a commercial driver's criminal history due to issues related to cargo theft. However, as the leader of a trucking company, the present STA environment of multiple checks does not bode well for my drivers' morale and, worst yet, creates a significant challenge for retention and recruitment of qualified drivers that may seek gainful employment elsewhere to avoid such a costly and cumbersome work environment.

In order to bring some common-sense relief to our drivers while still promoting supply chain security, I again urge Members of this subcommittee to:

- Require TSA to immediately recognize U.S. commercial drivers who possess a TWIC as compliant with the HME background check program;
- Support and co-sponsor the Safe Truckers Act of 2008; and,
- Ensure that the TWIC is used as the single, universally accepted security credential for transportation workers by preempting other security credentials required of motor carriers that operate in multiple jurisdictions.

As addressed in this testimony, ATA supports background checks of individuals in the trucking industry. However, ATA opposes the wasteful expenditure of resources—both Government and private sector—that comes with conducting multiple background checks of the same individual against the same databases. Even with the very high cost of the TWIC, at $132.50, it is a more cost-efficient scenario rather than paying multiple fees and undergoing multiple enrollment and fingerprinting processes. The trucking industry simply asks that these costs be reasonable and part of an efficient, risk-based process. ATA supports an approach that is good for security—and good for commerce.

Again, I thank you for inviting me to come here today and share some thoughts on the TWIC program, and I look forward to answering any questions you may have.

Ms. SANCHEZ. Thank you, Mr. Byrd. I appreciate your testimony. Now we have Mr. Golding for 5 minutes or less.

STATEMENT OF STEVE GOLDING, PRESIDENT, GOLDING BARGE LINE

Mr. GOLDING. Good morning, Madam Chairman. My name is Steve Golding. I am President of Golding Barge Line in Vicksburg, Mississippi. I am here representing the American Waterways Operators. We are a national trade association of the tugboat and barge industry in our country.

My business is a family-owned business. I would like to take this opportunity, if I could, to introduce my wife, Melody Golding, and my son, Austin Golding. I am proud to say as a side note the photographs on the wall here were taken by Melody Golding of the Hurricane Katrina devastation to the Mississippi Gulf Coast, and they are on loan to the committee.

The main theme of my testimony is reducing the burden on the inland mariner so that TWIC does not become a roadblock or barrier to entry in our industry. Presently, we have a 30-day interim work authority, and this doesn't match up with our work schedule. When we hire our mariners, they go to the TWIC center. Then

within 5, 10, no more than 15 days, we dispatch them to a vessel; and they are required to ride 28 days on board. So, as you can see, the 30-day interim work period is going to come up while they are on board. When they are on board, they are perhaps 100, maybe 1,000 miles away from the TWIC center; and they can't get off to go get the TWIC card.

We are allowed to apply for a waiver to 60 days with the Coast Guard. I can see that under present system we will constantly be applying for a 60-day waiver on our new hires. I urgently request that this committee ask the Coast Guard to grant us a 60-day blanket waiver so that we can put our crewmen on board and they can work their normal hitch and then get their TWIC card on their 14 days off.

The other item I want to mention is the second trip back to the center. This time is very, very precious to our crewmen. They work 28 days on, 14 days off. Oftentimes, they have to drive 3 hours to a center, spend 2 hours to maybe get the TWIC card, 3 hours back home. As you can see, that is a full day out of a 14-day period that they have off. Oftentimes, they are not successful in getting their TWIC card so that it requires a third trip back.

I would think in today's technology that there could be a secure way that we could facilitate getting these cards in the hands of the mariner without requiring a second trip back. We do it with passports. I don't see why we can't do it with a TWIC card.

Post-April 15 concerns. We don't want to see the models shrink. We don't want to see it contract. We want to see other venues that we can get TWIC cards. I don't like asking my crew members to drive 3 and 4 and 5 hours to get a TWIC card. I would love to send them to the post office or the airport or other Government Coast Guard offices, not make it a burden on the working people of America to move our commerce but to facilitate it so that it is easier in the future that our crewmen can receive their TWIC credentials.

The last item I want to mention is card readers. I really feel like this is an instrument that is more designed for a busy, busy port facility.

We have six crew members on our boats. Every 14 days, three get on, three get off. They are like a family. They spend 8 months of the year together on board. They spend 4 months of the year home. They are together as a family unit more on the boat than they are at home with their own family. They really laugh at the idea that I may have to put a machine on board that they would key in to come home.

This is their home. They eat together, sleep together, work together. Most of them are kin to each other or close personal friends. I don't think a card reader is designed for a small inland towboat that doesn't interact with other communities and stays as a self-contained unit as it moves up and down our inland waterways moving our freight.

I really appreciate the opportunity to be here. This is my first experience doing this, and it is a real honor, and I appreciate your leadership and your guidance. Thank you.

[The statement of Mr. Golding follows:]

PREPARED STATEMENT OF STEVE GOLDING

SEPTEMBER 17, 2008

Good morning, Madam Chairman. I am Steve Golding, President of Golding Barge Line, headquartered in Vicksburg, Mississippi. I am testifying this morning on behalf of The American Waterways Operators (AWO), the national trade association for the tugboat, towboat, and barge industry. Thank you for the opportunity to be here today and to share with you our concerns about the Transportation Worker Identification Credential (TWIC) program.

Our fundamental message is this: Congress, the Department of Homeland Security, and industry must work together to implement the TWIC program in a way that ensures high standards of maritime security without driving new employees away from our industry, imposing unreasonable burdens on those currently working in this business, and saddling American companies with costly requirements that add little practical security value. We understand that TWIC is the law, and we are doing everything we can to ensure that we are prepared to comply fully by the April 15, 2009 deadline. However, there are significant challenges ahead, and we will need the leadership and oversight of this committee to meet them. This is not a Democratic or a Republican issue, a labor issue or a management issue; it is an issue for all of us who care about the health of our Nation's maritime transportation system and the men and women who make their living in it.

Our concerns fall into three categories: (1) Reducing burdens on mariners and ensuring that the TWIC program does not become a barrier to entry into our industry; (2) ensuring TWIC compliance by the regulatory deadlines—and taking steps now to meet the challenges of the post-April 15 period; and (3) ensuring that electronic card readers are not required on vessels with small crews, such as towing vessels.

I will discuss each of these concerns briefly, but first, let me say a few words about my company and about our industry to give you some context for our perspective. Golding Barge Line is a family-owned company that specializes in the movement of refined petroleum products, petrochemicals, and chemical products throughout the U.S. inland waterway system. I have been in the barge business for more than 40 years, and it is truly a labor of love for me. We are blessed with an extremely dedicated and loyal team of employees, and my wife Melody and son Austin are both here with me today. We are passionate about our people and the work we do together. The safety and security of our employees are our paramount concerns.

Golding Barge Line is a proud member of The American Waterways Operators, the national trade association for the tugboat, towboat, and barge industry. AWO's 350 member companies span the spectrum from medium-sized family owned companies like mine, to the largest publicly traded companies in our business, to small but vital one- and two-boat operations. Our industry is the largest segment of the U.S.-flag domestic fleet, operating nearly 4,000 tugboats and towboats and over 27,000 dry and liquid cargo barges on the inland rivers, on the Atlantic, Pacific and Gulf coasts, on the Great Lakes, and in ports and harbors around the country. Barges and towboats are a vital part of America's transportation system, safely and efficiently moving over 800 million tons of cargo each year in the domestic commerce of the United States. Our industry employs more than 30,000 American mariners as crewmembers on our vessels, providing good, family wage jobs with excellent opportunity for career advancement.

Our industry is serious about security. Less than 2 months after 9/11, we began working with the Coast Guard and the Army Corps of Engineers to develop a Model Vessel Security Plan for towing vessels, a year before such plans were required by the Maritime Transportation Security Act (MTSA) of 2002. When MTSA became law in November 2002, AWO worked with the Coast Guard to transform the Model Vessel Security Plan into one of the first Alternative Security Programs approved by the Coast Guard. We work hard to transport our Nation's cargo safely and securely, and we take pride in the fact that our American-owned, American-crewed, American-built vessels are the "eyes and ears on the waterways" for the Coast Guard. But, we are deeply concerned by the burdens the TWIC program continues to impose on American workers and American companies. Let me elaborate on those concerns briefly.

BARRIER TO ENTRY/BURDEN ON MARINERS

The process of applying for a TWIC is expensive and time-consuming. When the process works as intended, it requires an applicant to make two trips to an enrollment center that may be located many hours away—one trip to apply for the card, and a second trip to pick it up. (And, that's when the process works as intended. Unfortunately, it is not unusual for an individual to have to make multiple trips

to an enrollment center because something did not work as it should have: trouble with the fingerprint matching process, for example, or a missing card despite an email notification that the card was ready for pickup.) Our industry—and my home State of Mississippi—cannot afford to see that burdensome process deter individuals from entering this industry and missing out on the solid wages and potential for advancement that the industry offers.

We had originally sought to address this concern by proposing a modification to the interim work authority provision included in the January 2007 Department of Homeland Security final rule that would have allowed for 60 days of interim work authority after an electronically initiated background check. We were disappointed that the administration staunchly opposed such a provision.

But, AWO members are businesspeople and we take a practical approach to solving problems. Over the last 6 months, we have tried to find other means of achieving the same goal—to ensure high standards of security while reducing the burdens the TWIC program places on mariners. I am pleased to tell you that we have had some success in doing that. We are currently working with the Coast Guard on amendments to the AWO Alternative Security Program that clarify what it means to "monitor" a new hire who has not yet received his or her TWIC. We are working with Lockheed Martin to help companies who can afford to do so enter into "trusted agent" agreements that will allow them to operate TWIC enrollment centers on their premises. These are small steps, but, combined with other common-sense changes to the program, they will help to make the program more workable for companies and mariners.

There are two outstanding issues that we have raised with TSA and the Coast Guard on which we believe Congressional help is needed to stimulate further progress.

First, under the current DHS regulations, an applicant who completes the TWIC enrollment process and satisfies other prescribed conditions is eligible for 30 days of interim work authority. With the approval of the Coast Guard Captain of the Port (COTP), this interim work authority period may be extended to 60 days if TSA has not issued the applicant his or her TWIC at the end of the initial 30-day period. We have urged the Coast Guard to extend this interim work authority period to a uniform 60 days, without requiring an applicant to seek approval from the COTP.

We believe this change is necessary not only because of industry experience with the TWIC enrollment process (unfortunately, card processing times extending well beyond 30 days are the norm, not the exception), but also because work schedules in our industry do not mesh well with a 30-day interim work authority period. Many crewmembers in our industry work schedules such as 28 days on/28 days off, 28 days on/14 days off, or 30 days on/15 days off. Under the rules as currently written, a new hire is likely to be in the midst of his or her first trip on a boat when the 30-day interim work authority period expires. Companies will routinely be required to request an extension of the interim work authority period in order to allow the individual to complete the trip (even if the TWIC has been processed and is ready for pickup in less than 30 days). Granting an automatic 60 days of interim work authority to new hires who meet the criteria prescribed by the current regulations will allow a new employee time to complete his or her initial trip, pick up the TWIC during his or her time off, and then return to the vessel for the next hitch with TWIC in hand. We see this as a common-sense change that will eliminate unnecessary burdens on companies, mariners, and Coast Guard Captains of the Port, without jeopardizing maritime security in any way. The Coast Guard has the authority to make such a change, and we respectfully request that the subcommittee urge the agency to take this action now.

Second—we talk plainly in Mississippi, so let me say this plainly—it just doesn't seem right to us that a mariner should be required to make a second trip to the TWIC enrollment center for the purpose of picking up his or her TWIC, when passports and other secure documents (such as Merchant Mariner's Documents) can be mailed back to the holder. This "second trip" requirement doubles the burden on the applicant, and doubles the number of customers that enrollment center personnel have to deal with. (It's worth noting, too, that mariners who are required to carry Coast Guard licenses or MMDs are actually forced to make three trips—one to a Coast Guard Regional Exam Center to be fingerprinted for their license or document, and two to the TWIC enrollment center. It is just plain wrong that two agencies operating under the same Federal department have not figured out a way to work together to consolidate this process and save hard-working mariners an extra trip.) When a TWIC costs $132.50 and gas costs $3.50 a gallon, American companies and American mariners deserve a more efficient process that is respectful of their time and their money. We urge this subcommittee to make clear its expectation that

DHS find a way to eliminate the requirement that applicants make a second trip to the enrollment center for the purpose of picking up their TWIC.

IMPLEMENTATION SCHEDULE

Despite the considerable burdens that the TWIC program places on companies and mariners, our industry is committed to complying with the law and doing everything we can to ensure that our people are ready to work, TWIC in hand, by April 15, 2009. We appreciated DHS's realization that the September 25 deadline was not achievable and its extension of that deadline by 7 months to compensate for delays in initiating the enrollment process. We are not here today to request another extension, but we still have grave concerns about the ability of this very imperfect system to accommodate all applicants required to have a TWIC by April 15. We urge you to exercise your very important oversight function to ensure that we do not find ourselves in a "train wreck" situation next April. The stakes for our Nation's commerce are simply too high.

We ask, too, that you pay close attention to the rolling implementation dates for TWIC compliance at facilities as they begin to unfold this fall. We have seen little evidence of pre-planning and consultation with stakeholders prior to the announcement of those deadlines, and this troubles us greatly. We simply do not know whether the port-by-port compliance targets set by the Coast Guard are achievable.

We must also be mindful that the challenges will not go away after April 15, 2009; new applicants will walk through our industry's doors on a daily basis and will require a TWIC in order to make a living in this industry. We have received mixed messages from TSA over the past 9 months about how the agency will ensure that sufficient Nation-wide coverage continues to exist to make it as easy—and I use that word guardedly—to get a TWIC in the spring of 2010 as in the fall of 2008. While we were originally told that the number of fixed enrollment centers would be consolidated after April 15, we are now told that all existing enrollment centers will remain open, albeit perhaps with reduced hours. While we do not doubt the good faith of those who have made such promises, we are skeptical, as business people, that the "business case" will continue to exist to support indefinitely all of the centers that now exist. This will be a huge problem for the young person in Vicksburg or Paducah who finds him- or herself without a nearby enrollment center and forced to travel to another State to apply for a TWIC. We believe the solution is to look beyond the business model of stand-alone enrollment centers and expand the venues where TWIC enrollment can take place, from post offices to airports to Departments of Motor Vehicles. We thank this subcommittee for including provisions in the Coast Guard authorization bill that require DHS to begin exploring this possibility, and we urge you to exercise your oversight responsibility to see that this examination takes place promptly and seriously. The time to begin thinking about the sustainment phase of the TWIC program is now.

CARD READERS

In May 2006, DHS published a sweeping proposal to require electronic TWIC readers on all vessels subject to the MTSA security plan requirements. The Department subsequently announced its decision to rethink the card reader requirements and publish a separate notice of proposed rulemaking (NPRM) on this topic. We see no added security value in having card readers on vessels with small crews, such as towing vessels. The card reader requirement was conceived with the scenario of a busy public port in mind, with hundreds of longshoremen, truckers, and other personnel pouring through the gates at shift change. While we can see the value of an electronic reader under those circumstances, the situation on a towing vessel is much different. Typical crew sizes on a towing vessel range from 3 to 10, depending on the type of operation; there are never more than a few crewmembers seeking access to a vessel at any given time. We see no value to a card reader in such circumstances.

The SAFE Port Act gives DHS the authority to limit the card reader requirement to vessels with more than a threshold number of crewmembers, to be determined by the Department. The congressionally established Towing Safety Advisory Committee (TSAC), a Federal advisory committee to the Coast Guard, last year recommended that card readers not be required on vessels with 14 or fewer crewmembers. We support that recommendation and urge this subcommittee to make clear to the agencies that Congress does not support a requirement for card readers where they will not meaningfully improve maritime security. We also urge that publication of the card reader NPRM not proceed until the results of the congressionally mandated reader pilot program (in which AWO member Magnolia Marine Transport

Company is participating) are available. Publishing the NPRM without waiting for the results of the pilot program would be premature at best.

CONCLUSION

Madam Chairman and Chairman Thompson, thank you for the opportunity to testify today. Thank you for listening to our industry's concerns and for your leadership and oversight in helping to resolve them. We are grateful for your work to resolve the serious problems that have plagued the TWIC Help Desk and for the efforts of your staff to intercede directly with TWIC applicants who fear they have become lost in a faceless, bureaucratic system. We urge you to continue to exercise your oversight and leadership to ensure that we achieve the TWIC program's goal of enhanced maritime security without jeopardizing the efficiency of our Nation's transportation system or imposing unsustainable burdens on hard-working American mariners.

Thank you.

Ms. SANCHEZ. Thank you, Mr. Golding, for being here today. We appreciate it.

Now I will recognize Ms. Moskowitz for her 5 minutes or less.

STATEMENT OF LAURA MOSKOWITZ, STAFF ATTORNEY, NATIONAL EMPLOYMENT LAW PROJECT (NELP)

Ms. MOSKOWITZ. Chairwoman Sanchez, thank you for this opportunity to testify on the status of the TWIC program.

My name is Laura Moskowitz, and I am a staff attorney with the National Employment Law Project. As part of our work to improve the fairness of employment background checks, we have been closely monitoring the TWIC program. We are especially concerned that workers know about and access their TWIC waiver and appeal rights so that they don't unfairly lose their jobs when they are clearly not a terrorism security risk.

We work closely with the transportation unions to help port workers navigate the TSA background checks, and we have helped over 100 workers to successfully file appeals and waivers after they have been denied by TSA. Our written testimony includes several recommendations based on our experiences. I am going to address two today.

First, it is clear that TSA and Lockheed Martin need to take serious steps to bring the program into compliance with the Maritime Transportation Security Act's requirements for screening TWIC applicants, and this should happen before workers fall through the cracks of the program with only 6 months left until the compliance deadline.

TSA has erroneously denied thousands of applicants because the agency's review process relies solely on the FBI rap sheets which are notoriously incomplete. The U.S. Attorney General says that the FBI rap sheets are missing final disposition information in 50 percent of all the cases. Most of that is because the arrest information is not updated by the States to reflect whether an arrest has been dismissed or successfully prosecuted.

The FBI's rap sheets also routinely fail to list whether an offense is a felony or a misdemeanor, and this critical information that TSA needs to know in order to determine whether an offense is disqualifying.

Rather than track down the correct information required by the maritime law, like whether the person was actually convicted of a felony within the 7-year period, TSA now issues a denial requiring

the worker to appeal their case. It is a guilty-until-proven-innocent model that sends a message that workers with a criminal record are not going to get a TWIC.

For example, take the case of Jeffrey Carmichael, a longshore worker from southern California who was recently denied based on a misdemeanor marijuana sales conviction, even though the law is clear that only felonies are disqualifying. Like thousands of people, his FBI rap sheet did not reflect whether this offense was a felony or a misdemeanor. So, based on TSA's current policy, he was denied his TWIC, which means that he then had to travel to the courthouse, obtain documentation from the clerk's office showing that this was a misdemeanor, not a felony, and submit this information to TSA to appeal his denial.

To TSA's credit, 99 percent of those who manage to appeal their cases end up qualifying for the TWIC. This just goes to show the serious problem with the FBI's records. Thousands more who have been denied have not filed appeals, and most of these workers should never have been denied in the first place if TSA was doing even the minimum to track down the missing information from the FBI rap sheets, like the FBI does, for example, in the case of Federal gun checks under the Brady law, where they are able to track down 65 percent of the missing information within 3 business days.

It is not rocket science to fix this problem. Starting right away, TSA should prioritize the old arrests that are still showing up on FBI rap sheets to find out that missing disposition information; and they can prioritize drug and weapons offenses that often result in misdemeanor rather than felony convictions. This can be as easy as looking at the State records that are available publicly on-line or by picking up the phone and calling the local courthouse.

Our second main concern is that TSA and Lockheed Martin have failed to comply with the safeguards required by the civil rights laws to ensure that thousands of port workers who don't speak English as a first language can fairly access the TWIC. The Chairwoman recognized this in her opening statement.

Again, TSA and Lockheed Martin have cut corners and shifted the burden to workers to address this serious problem, rather than developing an effective agency response. Their policy now is to allow workers to bring family and friends to help translate, which contradicts the Department of Justice's guidelines that talk about how highly personal and technical information, the kind that is solicited during the TWIC enrollment process, should only be handled by qualified and experienced translators, not family and friends. Like other Federal programs, TSA and Lockheed Martin should be providing interpretation services in the enrollment centers and the help desk; and they should translate important documents like the denial letter with its critical appeal and waiver right information.

In the written statement today, Lockheed Martin claims to be providing translators, but we have seen no evidence of this, certainly not of trained staff deployed to specific ports most in need.

We also commend TSA for finally translating the disclosure form into 12 languages, but this is simply not enough.

It is not too late for TSA and Lockheed Martin to make these and other critical changes we described in our written testimony. These reforms will go a long way to improve the fairness of the

process and enrollment in the program before the April deadline. Thank you.

[The statement of Ms. Moskowitz follows:]

PREPARED STATEMENT OF LAURA MOSKOWITZ

SEPTEMBER 17, 2008

Chairwoman Sanchez and Members of the committee, thank you for this opportunity to testify on the status of the Transportation Worker Identification Credential (TWIC).

My name is Laura Moskowitz, and I am a Staff Attorney at the National Employment Law Project (NELP), a non-profit research and advocacy organization that promotes a more fair and effective system of employment screening for criminal records. As part of our work to improve the fairness and accuracy of employee background checks, we have focused specifically on the TWIC program and its security threat assessment, especially the critical waiver and appeal procedures.

Over the past year, NELP has helped over 100 TWIC applicants file appeals and seek waivers after being initially denied by the Transportation Security Administration (TSA), and has spoken with hundreds of workers going through the TWIC application process. We have worked closely with the transportation unions to provide information and assistance about the TWIC application, appeal, and waiver process, and have conducted TWIC information sessions for longshore workers and port truck drivers across the country. We have visited the Lockheed Martin enrollment centers, worked closely with TSA program and adjudication staff, and participate in the TSA TWIC Stakeholder Communications Committee meetings. Our "Know Your Rights" TWIC materials are also featured on TSA's TWIC web site.

As the TWIC program nears its 1-year mark next month and the final compliance date is only 6 months away, it is not too late for TSA and Lockheed Martin to prioritize some key fixes that will become critical as the compliance date nears and the number of applications grows. Our testimony focuses on the following major problems facing TWIC applicants and key recommendations for improvement.

- Poor outreach and communication by TSA and Lockheed Martin have resulted in workers failing to apply for TWICs, including large numbers of eligible workers with criminal records, which has contributed to low enrollment. To maximize enrollment on the part of eligible workers, TSA and Lockheed Martin should specifically tailor communications for workers with criminal records, explain what the disqualifications are, assure workers with criminal records that they qualify, and encourage them to utilize the TWIC waiver process.
- Due to inadequate screening, TSA is disqualifying large numbers of workers whose criminal records do not make them ineligible, in violation of the standards under the Maritime Transportation Security Act (MTSA). Before issuing an initial denial, TSA should marshal its resources to track down missing information that is critical to the determination that someone has a disqualifying felony conviction.
- TSA is denying TWICs to large numbers of foreign-born U.S. citizens and other qualified workers due to poor training by Lockheed Martin of its "Trusted Agents" and poor communication with applicants regarding necessary citizenship and immigration documents. Lockheed Martin must more effectively train its Trusted Agents to accept the necessary documents during enrollment, and TSA must take far more proactive steps to ensure that documents needed by foreign-born applicants are brought to the enrollment center and sent to TSA.
- TSA and Lockheed Martin have not provided language-appropriate services to the ports' diverse immigrant work force, thus hindering their ability to obtain TWICs. TSA and Lockheed Martin should make translations of vital documents available and hire bilingual staff or use a language interpretation telephone service at the enrollment centers and Help Desk.

NELP submitted testimony before the full Homeland Security Committee last October which featured many of the same recommendations, yet these problems have only become more apparent over the past year.

I. THE BASICS OF THE TWIC BACKGROUND CHECK PROCESS

By way of background, we describe below the TWIC security threat assessment process. We also note specific points where problems have been identified by NELP, the National Maritime Security Advisory Committee (NMSAC), and many of the transportation unions, before describing in more detail our primary concerns with the TWIC process.

The Federal law sets forth specific TWIC disqualifying offenses, which include especially serious "permanent" disqualifying offenses (like espionage and treason) and more common "interim" disqualifying crimes (like drug dealing and weapons possession). Both categories are limited to felony convictions, not misdemeanors, and the "interim" disqualifications apply to offenses that date back 7 years from the date of the application, or 5 years from when the individual was released from incarceration (whichever is the more recent event).

1. TWIC Pre-Enrollment.—TSA created an optional pre-enrollment process which allows the worker to enter his or her basic biographical information with TSA before enrolling in-person at an enrollment center. The pre-enrollment process is intended to help save time by providing the individual with an appointment for the in-person enrollment, but the complicated process for setting up a password on-line has proven difficult for many applicants.

2. Enrollment at Designated Locations.—During enrollment, all information relevant to TWIC eligibility is supposed to be collected, including the fingerprints required to generate an FBI rap sheet and documents pertaining to citizenship and immigration status. In practice, there have been widespread problems with fingerprints being rejected and necessary documents not being collected for transmission to TSA.

3. Threat Assessment Determination.—Based on the background information provided by the applicants and the resulting search of the various criminal record, terrorist watch-list and immigration status databases, TSA will issue an initial threat assessment determination. According to TSA, a web-based system first "scores" the application. Then, the case is reviewed by at least four adjudicators (first two contractors, then two TSA staff), resulting in the threat assessment determination.

a. TWIC Approved and Card Production.—If TSA fails to identify any disqualifying information, the individual is notified that he or she qualifies for a TWIC, and card production begins. Lockheed Martin's backlog in card production currently means that an applicant waits 6 to 8 weeks after approval before being notified by the enrollment center that the card is ready to be picked up. There have been myriad problems with card pick-up and activation, as described in detail in the July 2008 NMSAC report.[1]

b. Initial Denials Subject to "Appeal".—When TSA determines that the individual has or may have committed a disqualifying offense, or when TSA cannot confirm citizenship/immigration status, the applicant receives an initial denial letter. If the information reported by TSA is incorrect and the individual is TWIC-eligible, the individual can "appeal" the case within 60 days by providing the official court or citizenship/immigration documentation to correct the information.

c. Initial Denials Subject to "Waiver".—If the individual has a disqualifying criminal offense, then he or she can seek a "waiver" of the disqualification based on evidence of rehabilitation, a solid work history and other relevant factors. Selected "permanent" disqualifying offenses are not subject to the waiver process.[2] If the waiver request is denied by TSA, the worker has the right to review of the decision by an administrative law judge.

II. DUE TO POOR OUTREACH AND COMMUNICATION BY TSA AND LOCKHEED MARTIN, WORKERS ARE FAILING TO APPLY FOR A TWIC, INCLUDING LARGE NUMBERS OF ELIGIBLE WORKERS WITH CRIMINAL RECORDS

"Some individuals are told [by the TWIC Program Help Desk] that if they have a permanent disqualifying offense on their records, they cannot obtain TWICs."—National Maritime Security Advisory Committee, TWIC Working Group Discussion Items Report (July 30, 2008).

"Everyone down on the docks is saying if you have a criminal record, don't even bother trying to apply for a TWIC."—Statement recently made by a longshore worker from Philadelphia helped by NELP to obtain a waiver of a disqualifying offense.

As the above statements show, misinformation and inaccurate rumors abound about the TWIC eligibility requirements. We have heard time and time again from workers who believe that if they have had any brush with the law, they need not apply for a TWIC. Many of them only have misdemeanors, which are not disqualifying. Many of them have convictions that are 20 or 30 years old and are no longer disqualifying. Many of them do have disqualifying offenses, but they do not realize

[1] National Maritime Security Advisory Committee (NMSAC), TWIC Working Group, "Discussion Items" Report (July 30, 2008), at page 8.

[2] The offenses not subject to waiver include espionage, sedition, treason, terrorism, or conspiracy to commit these crimes. (49 C.F.R. § 1515.7, 1515.103(a)(1)–(4)). All the other "permanent" disqualifying offenses are waivable.

that they can apply for a waiver and still obtain their TWIC card. All are afraid to apply and often seriously consider looking for work in other industries.

Based on our experience, it is clear that much of this confusion and fear is due to TSA and Lockheed Martin's failure to get the word out about the types of disqualifying offenses and the possibility of obtaining a waiver of these disqualifying crimes. When we asked Lockheed Martin representatives at the enrollment centers whether they discussed the waiver with applicants who indicated that they had disqualifying crimes, they responded that they did not. We have seen only one TSA flyer that addresses the disqualifying criminal offenses, and it conspicuously fails to emphasize the waiver process.

As NMSAC recently noted, "[o]ther than providing updates on when enrollment is beginning in certain ports, the [TWIC] communications team is not particularly visible."[3] Last week, for the first time, we saw two slides in a Lockheed Martin/Deloitte compliance presentation that encouraged workers with criminal records to apply and use the waiver process. However, to our knowledge, that material has not made its way to workers on the front lines.

These workers with records have often worked for decades at the port, along with generations of their family members, and they are the least likely to do anything that would risk the safety and security of the port and their livelihood. If they do not access the waiver process, the Nation's ports risk losing some of their most experienced and dedicated workers, and the workers risk losing some of the few good jobs available for workers with criminal records.

To its credit, TSA has granted almost all of the waiver requests it has received, thus proving the indispensable value of the waiver process. We believe that TSA is thoroughly and fairly considering these waiver applications. However, we are concerned that the total number of waivers sought (809 as of September 5, 2008) is quite low compared to the likely number of workers who have waivable disqualifying offenses out of the estimated 1.5 million workers who will be screened by TSA.

Recommendation: TSA and Lockheed Martin should specifically tailor communications for workers with criminal records, explain what the disqualifications are, assure workers with criminal records that they qualify for TWICs, and encourage them to utilize the waiver process.

Promotion of the waiver process will increase enrollment by those who fear applying and thus postpone it as long as possible or seek work in other industries. In addition, providing basic information about the disqualifying offenses will encourage workers with non-disqualifying prior records to come forward and apply. The more workers see that their colleagues at the ports with criminal records are successfully obtaining TWICs, the more they will apply. To improve enrollment, there is simply no substitute for aggressive and smart outreach, prioritizing the large ports where a significant number of applicants has still not applied. TSA and Lockheed Martin should distribute a "know your rights" fact sheet that specifically describes the disqualifying criminal offenses, the waiver process, and the key considerations that argue in favor of a waiver. Facility and vessel owner-operators should be provided with these outreach materials as well. The current outreach teams should also engage local employers and media in targeted communities to help get the word out. TSA should also urge the ports to partner with local unions and non-profit organizations that can help deserving workers prepare the TSA waiver application.

III. DUE TO INADEQUATE SCREENING, TSA IS DISQUALIFYING LARGE NUMBERS OF WORKERS WHOSE CRIMINAL RECORDS DO NOT MAKE THEM INELIGIBLE FOR TWICS, IN VIOLATION OF THE STANDARDS UNDER THE MARITIME TRANSPORTATION SECURITY ACT (MTSA)

Unfortunately, after applicants with criminal records make it through the enrollment process, they still often face an uphill battle to obtain their TWICs because TSA's flawed screening procedures routinely result in erroneous denials of eligible workers. TSA's cursory criminal history record review, which is limited to whatever appears on the face of an applicant's FBI rap sheet, is not—as the law requires—a true screening for disqualifying felony convictions.

For example, a longshore worker from Southern California was recently denied due to a misdemeanor marijuana sales conviction. As is commonly the case, the FBI rap sheet TSA used to make its determination did not indicate whether this was a felony or misdemeanor. Rather than taking steps to determine the degree of the offense by contacting the State repository or local courthouse, TSA issued an initial denial. The applicant then had to take off time from work, travel to the courthouse,

[3] NMSAC "Discussion Items" Report, at page 2.

and obtain documentation from the clerk's office showing that this was a misdemeanor in order to successfully appeal his denial.

As this example demonstrates, the FBI's rap sheets routinely lack the critical information TSA needs by law to determine whether the applicant has actually been convicted of a felony that meets the definition of one of the disqualifying offenses, within the requisite time period, and whether the person was released from incarceration more than 5 years before applying. The flawed screening procedures set up by TSA put the burden on applicants, thousands of whom are denied even though they are actually eligible, forcing them to take time off work, travel to courthouses, pay to obtain copies of official documentation, and submit appeals to prove eligibility. The emotional toll on workers is also significant; our clients who have been denied suffer from worry, stress, and nightmares as they and their families contemplate the loss of this job. The 99 percent success rate of appeals based on criminal history information shows that TSA's initial threat assessments are disqualifying an unacceptably high number of qualified applicants.[4]

Not only is the burden on the worker to fill the gaps in the FBI's rap sheets, but far too many innocent workers fall through the cracks of the system, either because they do not understand what they need to do to prove their eligibility, they cannot afford to take time off work and track down the official court records they need to appeal their denials, or they think it is not worth the effort because they are convinced they will be denied by TSA. Indeed, almost 2,000 workers who received initial denials have simply not responded, thereby timing out and losing their opportunity to obtain a TWIC card and keep their jobs.

More specifically, we have identified the following problems that routinely result in erroneous denials:

Incomplete State Arrest Records.—Of special concern to TWIC applicants, the FBI rap sheets are routinely incomplete. According to the U.S. Attorney General, the FBI's rap sheets relied upon exclusively by TSA are "still missing final disposition information for approximately 50 percent of its records."[5] Mostly, this includes arrest information that is never updated electronically by the States to reflect whether the charges have been dropped, dismissed, or successfully prosecuted. Regardless of the law's requirement that workers be disqualified only for convictions or outstanding charges open for prosecution, it is TSA's policy (49 C.F.R. Section 1572.103(d)) to automatically deny the TWIC to all those whose arrest information has not been updated unless official court documentation of the disposition is provided by the applicant within 60 days.

In 15 States (out of 39 that reported data in response to a national survey), more than one-third of the arrests in the past 5 years have no final dispositions reported in the State criminal record repository, which means that the FBI's records are similarly incomplete for those States.[6] That includes large port States like Florida, where 40 percent of the arrests in the State's system do not include the final disposition. Only nine States have more than 90 percent of the arrests in their databases updated to reflect the final outcome of the case.

Early Incarceration Release Dates.—Under the MTSA, workers may not be denied a TWIC based on an interim disqualifying offense that took place more than 7 years before the application or more than 5 years since the individual was released from incarceration. However, many States do not report the date when the individual was actually released from incarceration, thus that information does not appear on the FBI's rap sheet. As a result, large numbers of workers who have been released for good behavior before their minimum sentence expired are incorrectly denied because TSA believes they have been incarcerated within the 5-year period based on the original sentence entered on the rap sheet.

Incomplete Information on Expungements and Convictions Overturned on Appeal.—The FBI rap sheets frequently fail to include subsequent events beyond the initial arrest and/or conviction that affect applicants' eligibility, such as the expungement of a conviction or the reversal of a conviction on appeal.

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[4] Under the hazmat program, which requires the same background check as TWIC, literally 99 percent of the appeals filed were successful as of October 2007. One-third of the over 10,000 successful hazmat appeals were related to incorrect criminal records and the other two-thirds were attributed to immigration status issues. We have heard unofficially from TSA that under the TWIC program, the large majority of appeals continue to be immigration-related, and that the success rates on appeal continue to be in the 99 percent range.

[5] U.S. Attorney General, *The Attorney General's Report on Criminal History Background Checks* (June 2006), at page 3 (available at *http://www.usdoj.gov/olp/ag_bgchecks_report.pdf*).

[6] Bureau of Justice Statistics, *Survey of State Criminal History Information Systems,* 2003 (2006), at Table 1.

Non-Felony Offenses.—In addition, as discussed in the example, the FBI's rap sheets often do not distinguish between felonies, misdemeanors, and lesser categories of offenses, which is significant because the TWIC disqualifying offenses are expressly limited to felonies. Instead, the FBI rap sheet generally reports the offense without characterizing the severity of the crime.

Rap Sheet Items That Trigger Initial Denials But Are Not Actually Charges or Convictions.—Entries appear on the FBI rap sheet each time an individual is fingerprinted for a criminal justice purpose and that fingerprint is submitted to the FBI. This includes temporary detention of individuals crossing the border who are questioned by Immigration and Customs Enforcement officers, as well as fingerprinting done by correctional institutions when the person enters custody. These items often show up as open, pending charges on FBI rap sheets, triggering an initial denial and causing the worker to demonstrate that there was no criminal prosecution associated with the entry.

Recommendation: Before issuing an initial denial, TSA should marshal its resources to track down missing information that is critical to the determination that someone has a disqualifying felony conviction.

TSA and its contractors should take several significant steps to produce a determination that is based on accurate information and in compliance with the MTSA standards.

a. Track Down Missing Arrest Dispositions.—In order to correct the serious contravention of the law's requirement that only convictions and charges that are genuinely open for prosecution are disqualifying, TSA should prioritize tracking down missing dispositions for old arrests before issuing an initial denial. For example, any case that has been pending in the court system for more than 1 or 2 years without a disposition is far more likely to have been dismissed.

As is the practice of the FBI in reviewing gun checks under the Brady Act, TSA should designate staff to locate missing disposition information.[7] For the Federal gun checks required by the Brady Act, the FBI is able to track down 65 percent of the missing dispositions within 3 days rather than simply denying the license based on old arrest information.[8] TSA staff is able to access state court records to research waiver applications. Staff should similarly be directed to investigate the dispositions of old arrests, using existing State and local court contacts, the States' and courts' on-line criminal history record information, or by telephoning the courts. These verification procedures should be incorporated into the current review process, which now includes four levels of review by TSA and contractor adjudicators.

b. Identify Misdemeanors, Non-Conviction Data, and Incarceration Release Dates.—Again, to comply with the MTSA standards, TSA should develop contacts with each State criminal history repository and investigate the offense levels of potentially disqualifying criminal offenses before issuing an initial denial. TSA should prioritize cases like drug offenses, weapons charges, and robberies, which will routinely result in non-felony convictions. Similarly, in all cases where an applicant has indicated on the enrollment form that he or she has been released from incarceration more than 5 years before the date of the TWIC application, TSA should verify the release date with State corrections authorities instead of simply denying the application based on the original sentence imposed. Finally, where temporary border detentions and entry of custody data appear on the rap sheet, TSA should confirm whether these items were actually associated with any type of prosecution before issuing a denial.

IV. TSA IS DENYING LARGE NUMBERS OF U.S. CITIZENS AND OTHER QUALIFIED WORKERS DUE TO POOR TRAINING BY LOCKHEED MARTIN OF ITS "TRUSTED AGENTS" AND POOR COMMUNICATION WITH APPLICANTS REGARDING NECESSARY CITIZENSHIP AND IMMIGRATION DOCUMENTS

It has become increasingly apparent that foreign-born applicants, including military dependents born on bases abroad and other U.S. citizens, are being denied in large numbers even though they are TWIC-eligible. Indeed, about two-thirds of all appeals are based on citizenship or immigration status issues. In our experience, these denials are due to Lockheed Martin's failure to properly train its trusted agents to collect items that prove citizenship and immigration status, such as U.S.

[7] The Brady Act and implementing regulations (28 C.F.R. Part 25) created a National Instant Criminal Background Check System (NICS), a special unit that performs "instant" criminal background checks for Federal firearms licensees. Under the law, (18 U.S.C. 922(t)(B)(ii)), NICS is required to research the record and attempt to locate missing disposition information within 3 business days.

[8] *The Attorney General's Report on Criminal History Background Checks,* at page 108.

passports, naturalization certificates, green cards, visas, and employment authorization documents.

For example, two U.S. Coast Guard-licensed merchant mariners, one born on a military base abroad and the other a naturalized U.S. citizen originally from Poland, recently applied for their TWIC cards. They brought their U.S. passports with them to the enrollment center, but their passports were not collected by the Lockheed Martin trusted agent for inclusion in the electronic package sent to TSA. Both were subsequently denied based on TSA's failure to determine their citizenship, even though each has maintained a U.S. Coast Guard-issued license (which requires U.S. citizenship) and has sailed into harm's way in support of military operations during their seagoing careers. One is a former Navy reservist.

We have helped numerous workers from all over the country who found themselves similarly denied after bringing these documents to the enrollment center, only to have the trusted agents refuse to accept them because the applicants had already submitted identity-establishing documents such as a driver's license and social security card. When these applications reach the TSA adjudication office they often result in initial denials because TSA cannot complete this part of the background check without the additional documents. The applicants must then file an appeal and (re)submit this documentation to TSA. Large numbers of foreign-born workers are finding themselves in this situation, driving up the number of appeals sent to the adjudication office and placing an unfair burden and stigma on foreign-born workers.

TSA also tells us that applicants fail to bring the necessary documents to the enrollment centers. However, TSA and Lockheed Martin communication materials detailing what documents are required have not made it clear that specific documents, such as a U.S. passport or naturalization certificate, are required, rather than optional, for foreign-born applicants in order for TSA to conduct this part of the background check.

Although TSA's adjudication office is quick to rectify these situations when workers respond and provide the appropriate documentation, it is not acceptable or proper under the law to deny at the outset so many qualified foreign-born applicants. In addition, as discussed in more detail below, these applicants often have the hardest time navigating the application and appeal process due to language barriers.

Recommendation: Lockheed Martin must more effectively train its Trusted Agents to accept the necessary documents during enrollment, and TSA must take more proactive steps to ensure that documents needed by foreign-born applicants are brought to the enrollment center and properly scanned and sent to TSA.

TSA recently tripled the number of staff handling appeals due to the high volume of immigration appeals. We commend TSA for directing additional staff where needed to keep the appeals moving efficiently, and for their interest in trying to find ways to communicate better to foreign-born applicants regarding the documents needed.

TSA should revise its materials on the documentation required for TWIC to make clear that foreign-born applicants have different requirements, and ensure that this information is consistently communicated so that the information TSA needs to conduct this part of the background check is coming in on the front end, in order to reduce the number of denials and the burden on workers to fix these problems on the back end. In addition, Lockheed Martin must continue to train its trusted agents to collect the necessary citizenship and immigration status materials.

V. TSA AND LOCKHEED MARTIN HAVE NOT PROVIDED LANGUAGE-APPROPRIATE SERVICES TO THE PORTS' DIVERSE IMMIGRANT WORKFORCE, THUS HINDERING THEIR ABILITY TO OBTAIN TWICS

TSA and Lockheed Martin have not complied with Federal laws designed to provide meaningful access to the ethnically diverse TWIC applicants whose limited-English proficiency (LEP) requires translation and interpretive services to navigate the enrollment, appeal and waiver processes. Indeed, the only materials available in a language other than English are the pre-enrollment and outreach materials online in Spanish. TSA has just translated its disclosure form into 12 languages (it has yet to be deployed by Lockheed Martin), but no translation of vital documents such as denial letters has been made available, nor have any interpreters been provided to assist workers during the enrollment process.

Today's work force employed in the Nation's ports and with the trucking firms they do business with is more diverse than ever before, representing large numbers of workers born in Spanish-speaking countries (Mexico and Central America), South Asian-speaking countries (India, Bangladesh) and Southeast Asia (Vietnam, Cambodia, Laos) in particular. For example, consider the ethnic diversity of the West

Coast port truck drivers. In the Port of Seattle, 54 percent of the drivers are foreign born, and 44 percent speak a language other than English at home (most commonly Spanish, Punjabi and languages from Ethiopia).[9] In the Los Angeles and Long Beach ports, almost 90 percent of the truck drivers were born outside the United States, mostly in Spanish-speaking countries.[10] In the Port of Oakland, 93 percent of the truck drivers were born outside the United States, typically from Southeast Asian, South Asian and Latin American countries.[11]

The lack of language-appropriate services has created serious barriers for LEP applicants. For example, when the Oakland enrollment center opened last fall, a Chinese-speaking applicant had to wait for hours for someone to translate for him—finally, some Chinese and English-speaking applicants arrived and helped him. In addition, an employer from Florida who contacted NELP for assistance had to help his Spanish-speaking drivers through the entire application, denial and appeal process because no translation or interpretation was available. At significant time and expense, a union in Long Beach now helps numerous Spanish-speaking port truck drivers navigate the application, appeal, and waiver process, particularly because so many of the drivers there were born in Latin America and were being turned down, as discussed in the previous section.

None of these applicants should have to rely on the goodwill of others to help them obtain a Government license that is critical to maintaining their livelihood. Pursuant to Executive Order 13166, each Federal agency is required to "prepare a plan to improve access to its federally conducted programs and activities by eligible LEP persons."[12] Unfortunately, despite reaffirmation of this Executive Order under the current administration,[13] the Department of Homeland Security (DHS) has not yet prepared such a plan. While the DHS plan is under development, the agency's activities should be in compliance with the U.S. Department of Justice (DOJ) LEP guidance, which sets forth the criteria by which recipients of Federal funding (such as contractor Lockheed Martin) will be evaluated for their compliance with Title VI of the Civil Rights Act of 1964's prohibition on national origin discrimination."[14] The DOJ directive also applies the Title VI standards to Federal agencies."[15]

Where, as here, there is a significant number of LEP persons whose lives will be affected by a program, the DOJ guidance recommends providing both oral interpretation services and written translation of vital documents.[16] Recognizing the impropriety of family and friends serving as interpreters—TSA's chosen route—DOJ recommends that competent interpreter services be provided free of charge to persons with limited-English proficiency.[17] According to the DOJ guidance, "when particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical options."[18] Where necessary due to more limited demand and to save costs, the DOJ guidance also recommends contracting with professional in-

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[9] Port Jobs, "Big Rig, Short Haul: A Study of Port Truckers in Seattle" (2007), at pages 19–20 (available at *http://www.portjobs.org/bigrig_shorthaul.pdf*).

[10] Kristen Monaco & Lisa Grobar, "A Study of Drayage at the Ports of Los Angeles and Long Beach" (California State University Long Beach, December 2004), at page 15.

[11] East Bay Alliance for a Sustainable Economy, "Taking the Low Road: How Independent Contracting at the Port of Oakland Endangers Public Health, Truck Drivers, & Economic Growth" (September 2007), at page 25 (available at *http://www.workingeastbay.org/downloads/Coalition%20Port%20Trucking%20Report.pdf*).

[12] Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), at page 1.

[13] Letter of Ralph J. Boyd, Jr., Assistant Attorney General, U.S. Department of Justice, Civil Rights Division (July 8, 2002).

[14] U.S. Department of Justice, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," 67 Fed. Reg. 41455 (June 18, 2002).

[15] The guidance states: "Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set for the in the DOJ LEP Guidance are to additionally apply to the program and activities of Federal agencies[.]" Id. at 41459 n.4.

[16] Id. at 41459–60.

[17] The DOJ guidance contains an entire section on the use of family members and friends as interpreters, cautioning that they are often "not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement . . . family, or financial information to a family member, friend, or member of the local community." 67 Fed. Reg. at 41462 (emphasis added). These concerns are especially relevant to the TWIC enrollment process, where applicants are asked for specific information about their criminal history, immigration status, and mental health—all of which are sensitive, confidential and potentially embarrassing to reveal to family and friends.

[18] 67 Fed. Reg. at 41461.

terpreters and using telephone interpretation lines provided by AT&T and other major contractors.[19]

With respect to written translation, the DOJ guidance recommends that "vital" written material be translated where each LEP language group constitutes 5 percent of the population served or 1,000 people, whichever is less.[20] Given the large numbers of foreign-born workers employed in many of the Nation's largest ports, the TWIC materials clearly rise to the level of DOJ's recommended thresholds for multiple languages, not just Spanish.

Recommendation: TSA and Lockheed Martin should make translations of vital documents available and hire bilingual staff or use a language interpretation telephone service at the enrollment centers and Help Desk.

Oral Interpretation.—In the case of Spanish and the languages most commonly spoken by port workers, an adequate number of staff employed at the enrollment centers should be bilingual in those languages. In the case of languages spoken often by workers at certain ports and not others (including Southeast Asian and South Asian languages), Lockheed Martin could move specialized personnel to various ports as the enrollment process rolls out in different locations and contract with a telephone interpretation service for less-common languages. The TWIC Help Desk should also contract with a telephone interpretation service so that it can adequately respond to questions from LEP applicants.

Translation of "Vital" TWIC Documents.—The TWIC program should include written translation of critical documents, including the TWIC disclosure forms (this is in progress), the form consenting to the FBI criminal background check, and the initial denial letter, which includes the critical description of TWIC appeal and waiver rights. In the interim, at the very minimum, all initial denials should include a "tag line" in multiple languages directing the individual to call a dedicated number to obtain a translation of the letter in the appropriate language.

VI. TO PROPERLY MONITOR THE PROGRAM'S EFFECTIVENESS, TSA SHOULD REPORT ADDITIONAL DATA ON THE STATUS OF THE SECURITY THREAT ASSESSMENT, WAIVERS AND APPEALS

Finally, we urge TSA to provide additional data in the TWIC Dashboard or another format to better assess the effectiveness of key features of the TWIC process. Specifically, TSA should include: (1) Denials broken down by immigration status, criminal record, and other; (2) denials broken down by type of criminal offense; (3) the success rate of appeals based on immigration status, criminal record, and other; and (4) the number of appeals and waivers that are pending. This information, if provided monthly, will go a long way to monitor the effectiveness of the TWIC process heading into this critical period of enrollment.

Thank you again for the opportunity to testify on this important issue as we reach the 1-year mark and still have an opportunity to improve the program from an applicant's perspective. We look forward to working with TSA and the committee to ensure a more fair and effective TWIC process.

Ms. SANCHEZ. Thank you, Ms. Moskowitz.

I wish there were more Members of the committee here today because there are so many questions, and I am glad that all of you are before us today because this really is an important topic.

I want to begin by talking to Mr. Golding. Welcome, if it is your first time here. We are very glad that you are before us today.

Mr. GOLDING. Thank you, Madam Chair.

Ms. SANCHEZ. So enlighten me a little bit, because I am a little confused with your testimony, not because you didn't do a good job but because I don't have a lot of background in barges and cargo.

Explain to me—I am trying to put in my mind this 28. I understand people work 28 days, and there are 14 days off. So are you telling me that they have to get a TWIC card each time they go onto your boat? Are you telling me that—I am trying to understand. Is it just a one-time deal when they are trying to get their TWIC card that cuts into——

[19] Id. at 41462.
[20] Id. at 41463–64.

Mr. GOLDING. Yes ma'am.

Ms. SANCHEZ. Are these people who have worked for you for a long time or are they just crew that come off of the roster or what have you, the union roster or whatever it might be, to come over and work? I am trying to figure out how you end up, past the initial phase, how you keep ending up with crew that continues to need to go to TWIC.

Mr. GOLDING. This is just new hires that we bring on board as a new, green deckhand or pilot. They are new in the industry, new on our vessels. When we hire them, we send them to the TWIC center; and within 15 days we dispatch them to a boat.

Ms. SANCHEZ. So if they haven't gotten their TWIC card within those 15 days they have got a waiver from the Coast Guard for 30 days.

Mr. GOLDING. They have an automatic 30-day interim work authority. We have to, at that point, request the Coast Guard to give us 60 days. The captain of the port, we can make a request for a 60-day waiver.

We are going to be doing it on all our new hires, because they are going to be on the boat when their TWIC card comes in the majority of the time. They are not going get it before they catch the first boat. So if they are out for 28 days and their card comes in, they are not going to be available to go get it. We are going to have to request a 60-day waiver.

That is the reason I was asking for a blanket waiver of 60 days, so it matches up with our industry's work schedule. Most companies work either 28 or 30 days on, and the new hires are the only ones that would be involved in this.

Ms. SANCHEZ. So—again, to educate me a little bit. So you get a new hire in. You send them over to the TWIC station. They put in all their information. They get on the boat. They go and do their thing. They are out of port, I am assuming.

Mr. GOLDING. Right.

Ms. SANCHEZ. And day 20 the TWIC card comes into the port they left from, but they don't have it wherever it is they are.

Mr. GOLDING. That's right.

Ms. SANCHEZ. So they are out for 28 days. Are they going to other ports?

Mr. GOLDING. They may never stop. They may drop off their barges in St. Louis, turn around and head back to New Orleans. While they are notified, maybe via the Internet, that their TWIC card is available to be picked up, they are unable to physically do it because they are on the boat for 28 days, and maybe it comes while they are on the boat. So we have to ask for a blanket 60-day waiver so that they can get it on their 14 days that they are going to be off. It doesn't match up with our day schedule for new hires.

Ms. SANCHEZ. How often do you have new hires?

Mr. GOLDING. In our industry, the new hires is a high turnover rate. A lot of times their visions of what it is like working on the river doesn't really match up with reality. So we do have a high turnover in our initial job entry level. Once they make a few trips, we know then whether they are going to be with us long-term.

But with the new hires is the only problem. Because as the TWIC card comes in they are on the boat for 28 days, and they are

not allowed to get off. So they are going to be in violation of the 30-day interim work authority unless we ask for a 60-day waiver, and we will be doing it constantly on our new hires the way the system is set up now.

Ms. SANCHEZ. Okay. Now talk to me about the reader problem that you said, because you have the crew, once you get a crew together they are going out mostly together.

Mr. GOLDING. Yes, ma'am.

Ms. SANCHEZ. So in your opinion the reader—the card reader would be where?

Mr. GOLDING. It is my understanding it would have to be installed on the vessel. As crew members come aboard they would have to key in to accept their entry into the vessel.

Ms. SANCHEZ. So your belief is that for a six-member crew vessel you have got to put a reader, a card reader on that.

Mr. GOLDING. That is my understanding, that the rule would require vessels to have card readers. As I said, this is home to these men and women. They live together for 8 months out of the year. We would like to keep the same crews on the same boats for a lot of operational reasons. Some operators have larger crews, larger boats, perhaps have 8-, 10-member crews. But it is the same problem that they are all going to face, is the environment is not conducive to a lot of this type equipment as it is.

But they are home. I mean, they are family for the majority of the year. It just seems a waste of time, money and effort to put a reader on a boat. It is almost like having a reader at your home and key in before you go in your living room. This is the way these guys feel about it, and I wanted to bring that message to you.

Ms. SANCHEZ. Ms. Marks, is that your understanding, that a six-crew boat of his type going up an inland river would require a reader, a card reader on the vessel?

Ms. MARKS. Madam Chairwoman, I would have to ask you to ask either the Coast Guard or TSA. We have nothing to do with the card readers or that rule.

Ms. SANCHEZ. We will ask them. Okay. Thank you on that.

Ms. Bowman—I am sorry. I have a lot of notes up here—what do you think it is costing you to make all this extra effort to ensure that those who work on the port, whether they are truckers or longshore people or administrators, what does it cost you? What have you budgeted for the year to make a propaganda campaign to get people in, to put signs up, and are you being reimbursed for that at all?

Ms. BOWMAN. That is an excellent question. Thank you. I don't have an exact figure for you, but maybe I could outline some of the activities that we are doing.

First of all, the Port of Tacoma is paying for the TWIC card for all of its employees, although we only have 250 employees, so it is not a huge expense, but it is a line item budget.

Ms. SANCHEZ. This is for your administrators, people who actually go to work and are part of the port system.

Ms. BOWMAN. Correct. We also operate some of our own terminals, and so on those terminals we pay for our employees to get their TWIC cards.

In terms of—I wouldn't necessarily call it a propaganda campaign but the advertisement, we have, similar to what was mentioned earlier, banners at all of the terminal gates, no TWIC, no entry, that sort of a thing. Our security director meets monthly with the terminal operators to talk about TWIC enrollments. None of those costs have really been added up, but it is a considerable amount of time.

I mean, the ports are at the front line of this process. We want more than anybody else to make sure that this works. But we haven't been reimbursed for staff time, for example, for those sorts of things.

The issue that I brought up earlier regarding the reader cards and reimbursement for that through the Port Security Grant Program is allowing us to apply for TWIC implementation money. That is great. We really appreciate that. But there is also a 25 percent cost-share required. We feel that this is a Federal mandate; and, if it is being mandated, why are we requiring to put up 25 percent?

Ms. SANCHEZ. Excuse me. Did we waive that?

It is a DHS requirement. Thank you.

You said that you began with this in November 2007 and that you believe you have about 40 percent of the people who would require TWIC cards for your port are still not in the program, having applied for it, basically; and the deadline is, of course, April 2009. Do you think that there is adequate capacity between now and April to get in those 40 percent of the people or do you think there is going to be a problem for you?

Ms. BOWMAN. I think there is going to be a problem at the enrollment centers in terms of a surge. I guess the example that I would use is what happened when passports became required and there was an enormous backup.

I guess I would also use that example for what could possibly happen with DHS and the Coast Guard of getting the word out early about this requirement. Industry is doing everything they can, and we complement our labor partners in getting the word out to their workers as well, but we really feel that the Federal agencies need to take a greater and more active role in getting the word out about this.

It is not just an advertisement in a shipping journal. Truckers aren't reading shipping journals. So whether it is an advertisement in the newspaper, an ad on TV, those sorts of things that really get the word out about this. Because nobody wants to see it get to February and the system start to crash because there is too many people.

Ms. SANCHEZ. What about the on-going—after April 9, let us say we get the majority of the people—I don't know. They told me earlier in the last panel it was going to be 100 percent. But let us say that they get the majority of the people and get them their TWIC card. But then you have the on-going issue of new people coming or new hires, whether it is a trucker, it is a longshoreman, it is somebody in your own administration. What do you see the footprint being after April 2009 at your port as far as access to be able to get new hires and others through the process?

Ms. BOWMAN. Well, again, that is an excellent question. We haven't heard any information from the agencies about what their long-term enrollment plan is, whether the enrollment center will be in its current location, whether that will be a permanent location, and we are anxious to find out.

For example, at our port, we are expanding our terminals. We currently have 200 or—excuse me—2 million TEUs. In the next 5 years, we will be able to go up to 6 million TEUs. That is a considerable number of new port employees coming on-line.

Again, we don't know if that enrollment center is going to be there long-term or not. So it is a question that we have as well. I am sorry I am not able to answer it.

Ms. SANCHEZ. Okay. Talk to me about this whole issue of escorting foreign ship crew members. This also goes back to an issue that I think some in maritime have asked about. Why is it that a foreign crew member doesn't need a TWIC and can come on to our port but those who are on ships need to get a TWIC? So can you explain what your issue is with respect to escorting a foreign ship?

Ms. BOWMAN. It is not just—just to clarify, it is not just the foreign ship workers. For example, at our port, we have roll-on roll-off vehicles. We are a major port for automobile imports from KIA. So we have workers that actually have to go up onto the ship and drive the automobiles off the ship into the holding area. We don't know whether they are required to have TWICs or not at this point.

But we have heard from the Port of Seattle, our neighbor 35 miles north, they have cruise ships. Cruise ship employees, are they required to have—and these are just the entertainment workers, hospitality workers, those sorts. Right now, there seems to be no requirement for them to have a TWIC to work on board. Do they need to have a secure area to get on and off the ship, or are they now going to have to be required to go through the public access but they are not going to have a TWIC to get back on the board? So those are the issues that people are facing; and, again, we are just looking for guidance moving forward.

Ms. SANCHEZ. Thank you.

Mr. Byrd, you are representing the Trucking Association, correct?

Mr. BYRD. Yes, ma'am.

Ms. SANCHEZ. Mr. Byrd, you were talking about your company. I have a couple of questions with respect to your company, because I am trying to figure out what some of your concerns were, and then I have a broader overall thing.

With your company, do you have independent contractors or do you actually have employees and you are worried about your employees and their work as they come into the port?

Mr. BYRD. Yes ma'am. We have about 90 percent of our work force is company employees and about 10 percent is independent contractors. We have a number of issues, a number of concerns. As I spoke in my opening remarks, we talked about the duplication of credentialing.

Ms. SANCHEZ. This is a major problem.

Mr. BYRD. It is.

Ms. SANCHEZ. We all realize it here on this committee. Just the fact we even have something like Florida where they have their

own TWIC card and then we have our TWIC card and then you have the HAZMAT card. If I am—especially if I am an independent trucker which isn't making any money and they have got to get four cards in order to even go into any kind of a port to have some kind of a haul I think that that is outrageous.

Mr. BYRD. It has been excessive. Further on that point, one of the things that we have issue with is, of course, the duplication of background check and database credentialing for the hazardous endorsement criteria to move hazardous material throughout the country. We have a concern about the requirement for nonsensitive, nondangerous hazardous materials, such as I mentioned in the opening remarks; and, at the same time, we go through the same background check to get a hazardous endorsement on a CDL license that we go through for the TWIC.

On subsection B of section 1556 of the 9/11 Commission Act it requires—part of the requirement was to have the TWIC to satisfy the need for hazardous material endorsement. It is ironic that truckers coming into our country from Canada and Mexico, they have that privilege, that convenience, and American truckers don't have it. We feel that is an injustice to our drivers and our industry.

Ms. SANCHEZ. I have a broader question. Do you believe that truckers should be required to have this TWIC card? I ask that because there are a lot of people out there, especially with the independents, who believe this is a move, if you will, by Congress or people to actually crack down on people who don't have documents to be in this. In other words that we are just really trying to clean up the trucking industry. Do you think there is a real need for the truckers who go on to the ports to be an actual part of the TWIC program?

Mr. BYRD. Madam Chair, I would think that there is a need for a security background check to enter into sensitive, secure areas of both seaports and airports and other DOE facilities, DOD facilities, or what have you. We appreciate—as an industry, we appreciate the fact that we are trying to make our borders and our ports and our commerce safe from terrorism. That is a good thing. We just think that a sensible, logical approach would be more in-line.

For example, we have drivers that extend throughout the country. Drivers that live in the center part of the country and have to travel literally hundreds of miles in order just to enroll for TWIC, the cost of the card is $130.50, but that doesn't take into account the fact that when I stop a truck from generating revenue it is like a manufacturing facility stopping a production line. When I stop the revenue on that truck I not only stop the revenue for my company but I also stopped the earning ability of that driver. For him or her have to travel hundreds of miles to enroll and then again hundreds of miles perhaps to accept and take delivery of the card is a bit burdensome.

I can tell you from my own experience, because I am a TWIC cardholder, it didn't take 2 weeks to get my card. It took more like 2 to 3 months. That is what we are seeing. So we are concerned about that.

In Charleston, for example, our date of implementation is December 1, as is Savannah; and we are concerned, frankly, about the ability of getting these cards. We would hope that the program

might be in some way expanded so that a driver that lives in the center part of the country inland may be able to go into the Department of Motor Vehicles, for example, and go through the same qualifying criteria in a more convenient process.

But, to answer your question, we don't have any issue complying with the requirements. We just would like to see it in its original form: One card, one credential, one cost.

Ms. SANCHEZ. Great. Thank you.

Ms. Marks, recently, my staff went on a tour of the Port of Los Angeles Long Beach. I, unfortunately, couldn't be there that day, although I have gone many, many times.

But in particular they were looking at this whole issue of TWIC. They went over to the enrollment center on Terminal Island, for example. It was brought to their attention that the disclosure forms given to enrollees were only in English and that bilingual staff was prohibited from providing a verbal translation. Has there been any progress at Terminal Island?

I ask this because when I look at California, I represent the city of Anaheim, and its elementary school district has kids who come to school where the main language in the home that they come from is one of 93 different languages. So do you know what is going on over there in the port?

Ms. MARKS. Yes, Madam Chairwoman. That is an excellent question, and our trusted agents that are bilingual at many of our port facilities have been restricted from doing unofficial translations. We have been informed by TSA that the 12 languages and the new disclosure forms will be available. We anticipate receiving them sometime hopefully this week. We will then not only send them not only to our 149 locations in our mobile enrollments, but we will also provide refresher trainer for our over 700 trusted agents who will need to make sure they are available for people

Ms. SANCHEZ. You said there are six languages.

Ms. MARKS. Twelve languages.

Ms. SANCHEZ. Twelve languages that you are going to provide. You think it is going to come back in the next week or so to you?

Ms. MARKS. We believe so. As I believe the program director, Maureen Fanguy, said this morning, they were just approved, and we have been informed they will be coming to us, and we will expedite them out as well as provide refresher training.

Ms. SANCHEZ. Ms. Moskowitz, you were talking about—can you elaborate or go back to the testimony you gave about family members translating? Was that encouraged; was that just word-of-mouth, you have got to bring somebody who is going to translate for you because it is not available, and you are going to be wasting your time? How did that standard come to be?

Ms. MOSKOWITZ. My understanding is that TSA made a policy decision that they were going to allow applicants to bring friends and family members, really the person of their choice, to help translate. In fact, on the current disclosure form, there is a signature area on the bottom where the helper needs to sign under penalty of perjury that they have actually provided information correctly. So that was—my understanding is that is a policy decision.

Irrespective, as I mentioned in my testimony of Department of Justice guidelines, it talks specifically about how friends and fam-

ily members are not appropriate for this type of service, providing this kind of translation or interpretation.

Ms. SANCHEZ. Well, I would tend to agree with that. I mean, I know Spanish, and I can read and write it, and I have pretty good grammar in it, but there is no way I would pass myself off as an official translator, especially when it comes to perjury, you know, ability to disclose what criminal record somebody might have. I think it is a very big issue for to us take a look at and continue to ensure that TSA provides the translators.

Ms. Marks, in the people that you have from Lockheed who are at some of these centers, do you have any who are under—who are official translators or who have the credentials as official translators?

Ms. MARKS. We have trusted agents at the facilities who are bilingual. I cannot answer for you if they fit the official definition of translator, but I will be happy to get back to that for the written—to submit.

Ms. SANCHEZ. I definitely would like that, and I think we need to ask TSA whether they have credentialed translators and how many they have on staff with respect to these areas.

I am very concerned about this FBI database and the fact that—about half of what States have been doing doesn't get translated onto this database. I know this to be a fact because we have had plenty of case issues going through my office, not in this particular arena, but with respect to other issues, where, in fact, arrests or things that should have been purged because people were underaged at the time or what have you never show up on the official FBI transcripts or database. In fact, they are considered felons or what have you.

Ms. Moskowitz, how many waivers for disqualifying offenses are denied based on incomplete information?

Ms. MOSKOWITZ. Let me just explain. The waiver process is available for people who actually have a disqualifying offense. What we were referring to was the appeal process just to clarify that.

Ms. SANCHEZ. Sorry. The appeal process.

Ms. MOSKOWITZ. In the appeal situation, that is where the worker has an opportunity to say, I actually am eligible; TSA doesn't have all the information based on the FBI RAP sheet that they looked at.

Ms. SANCHEZ. But, as you say it, you are guilty or you are not getting your TWIC card unless you go and do the footwork to come back and to tell us that you are clear?

Ms. MOSKOWITZ. Exactly. Yeah. So we know—based on some of our most recent TWIC dashboard, there were about 16,000 denials, and we understand about a third of those are criminal-record-related. So thousands of workers have been denied based on their criminal records as they appear on the FBI RAP sheet. We know that, as I mentioned, the 99 percent success rate on appeal show that these are workers who were needlessly denied. If there was a better screening process that went beyond the surface of the FBI RAP sheet, these workers would not be required to go to the courthouses, locate this information and submit an appeal to TSA.

Ms. SANCHEZ. How do these workers know they are to come to somebody like you to help them with the appeal? Because, I mean,

that is a pretty scary process, actually to—to actually bring up old things that are on your RAP sheet or what have you, and to go through the process, and to go to the courts and get information, and go through the appeals process. How do people know? I mean, are you advertising? Does TSA tell them where to go?

Ms. MOSKOWITZ. Most of them will because we have done a lot of outreach with the transportation unions. So a lot of the union members know we are available to help. But there isn't any kind of instruction across the country, nor could we, frankly, handle all the workers that are being needlessly denied. It is very daunting—I can tell you from talking with hundreds of workers going through this bit, they are very worried and stressed out and having nightmares, as are their families, at the prospect of losing this job because they don't know how to navigate the system, how they prove that they are eligible. We know that at least 2,000 of them have not appealed, and they have just timed out.

Ms. SANCHEZ. Those that don't—2,000 of them out of how many?

Ms. MOSKOWITZ. Out of 16,000—about 16,000 initial denials that we have seen so far.

Ms. SANCHEZ. Because some people may not know to turn to you or may just throw up their hands or may think there is a problem. Okay.

Back to Ms. Marks. Ms. Fanguy said she thought there would be 1.2 million workers under the TWIC card by April 2009. Right now you have 500,000 who are enrolled, a little bit under 400,000 who have received the card. So that means you need to issue—get through the process and issue about 800,000 cards between now and April. Are you set up to do that, really?

Ms. MARKS. We are really set up to do that. If you look at our capacity, the capacity is there. We have over 700 trusted agents ready. If you look at even our system where people can pre-enroll and get an appointment, we have appointments at every port available, some are full this week. Obviously we have some impacts on the gulf and in Texas as we speak. But every single one of those 149 ports has capacity available and will take appointments today and next week.

Ms. SANCHEZ. What if everybody doesn't show up until the last month?

Ms. MARKS. Well, that is why we are trying desperately——

Ms. SANCHEZ. No, no, no. What happens if they don't show up—and I ask this because I have workers telling me some of you applied for the card 8 months ago, and it is only going to be good for a year, a year-and-a-half, or 2 years, or whatever the amount is, and they are going to have to pay their amount—yet they haven't even used it yet, really, except to flash it somewhere. They said then they are going to have to pay—so everybody I am talking to is telling me they are going to wait until the last day, because, you know, why should I pay $130 today when I can pay $130 on March 31, and then my card is good for another 2 years, rather than having 6 months of not even needing it?

Ms. MARKS. Well, first, the card is valid for 5 years. The $132.50 covers a credential for 5 years, and that credential starts at the time that the card is actually printed at the TSA facility in Ken-

tucky. So please allow me to clarify that, that it is good for 5 years, not 2.

We have been trying and working with all types of stakeholders to encourage people to enroll now. One of the reasons is, as Ms. Moskowitz said, if someone is going to get denied, we hope they come in early so they have the ability to appeal before they need to come into compliance. But we have the ability to extend hours at every port. We have the ability to extend locations, similar to how we put a new location at Terminal Island. We have added mobile enrollment stations. Eighteen percent of the population to date have enrolled at mobile enrollment stations at stakeholder locations, and we have got another several hundred of those planned.

We are ready for the surge, but in all honesty, if everyone comes on the last day, we cannot handle 800,000 people in a week.

Ms. SANCHEZ. Okay. I have a little vignette here I want to ask you about. This is about technical missteps which seem to be significant problems within the program. It seems that there is a Texas tankerman that applied for TWIC last November in Beaumont. He was informed within a few weeks that his TWIC was ready to pick up. He returned to the enrollment center in early December, but Lockheed Martin could not activate the card due to an unspecified glitch. A few weeks later he returned and faced the same problem again. Last month, after his seventh attempt to pick up the card, Lockheed Martin informed him that the same problem existed with respect to activating his card. He asked for a supervisor, but they said that that wouldn't be possible.

So unspecified glitches, what are those, and how often do they come up, and why has this guy had to go seven times and still doesn't have a card?

Ms. MARKS. I can't answer the specific, but I can commit to you to look into that. We have enrolled successfully over 500,000 people. We have had some human errors as we have a population of over 700 trusted agents doing this, geographically dispersed, locally hired. Anytime an issue has been raised to us by a stakeholder, by an enrollee, by a Member of Congress, we have looked into it, and we have taken rapid action. Anywhere where we can eliminate human error, we try to build checks into the technology and into the system.

One prime example, which you mentioned earlier, was people not being—not using their passports as their first credential in terms of enrolling. We have retrained all of our trusted agents to ensure that they do use passports as the first document to be enrolled now.

But we are learning as we go along. We have made tremendous progress, and I would be happy to take a look at that individual case.

Ms. SANCHEZ. There are several cases that have been brought to our attention that need help. Ms. Marks, what about Mr. Byrd's request that there may be—that maybe centers or some sort of thing might be put in middle America, because his people have to drive hundreds of miles to go try to get a TWIC card?

Ms. MARKS. We are happy to evaluate any potential locations for enrollment centers, as well as we have proposed to the TSA and are working together on actually I believe it was Mr. Byrd's re-

quest for is there a way that people can receive these and not have to come back a second time. We have heard that from Members and, I believe, from yourself over the past year since we started enrollment, and we are trying to evaluate is there a way with the secure card to be able to facilitate that as well.

Ms. SANCHEZ. So let me just get for testimony on the record here, Ms. Fanguy, the program manager for TSA and homeland security on this program has said she believes by April 2009, the deadline, there will be about 1.2 million people that should have TWIC cards, and you said here to me today that you believe you will be able to handle issuing TWIC cards—considering you have issued a little under 400,000 at this date, that you would be able to handle issuing 800,000 TWIC cards by April 2009?

Ms. MARKS. That is correct. We have the capacity and the personnel to do it. We just need the remaining 800,000 to come in and enroll. We encourage you and all the Members to encourage your local communities to do that as soon as possible.

Ms. SANCHEZ. Great. Thank you.

Does my staff have any question, or want an answer that you all—oh, Mr. Green.

Mr. GREEN. Thank you, Madam Chair.

Ms. SANCHEZ. Just in time.

Mr. GREEN. Thank you. Thank you.

Ms. SANCHEZ. Mr. Green of Texas.

Mr. GREEN. Thank you. I was listening to your melodious voice in the back and got carried away. I thank all of you for appearing today.

Let me start with something the Chairwoman was visiting with you about with reference to the 5 years. The time that the card starts is from the moment it is printed, and it is good for 5 years; is that correct? This being the case, why would a person wait—why would a person immediately go out, secure a card that really cannot be read, and lose the opportunity to extend that period of time? What is the inducement to get the card right away?

Ms. MARKS. Well, the length of the card has nothing to do with the card reader. The Coast Guard, starting October 15 in New England, will be basically enforcing compliance with hand-held readers. So starting October 15, the Coast Guard has announced different zones coming into compliance between October 15 and April 15 where people will need to show their TWIC credential, which can be read with a hand-held reader.

Mr. GREEN. Okay. Now, when we started this process, it was to be bifurcated. Were we to get the cards up first and then the readers come on-line, or were we to have cards and readers coming on-line at the same time? When did the process become bifurcated?

Ms. MARKS. Sir, I am afraid I can't answer that, being the contractor on the TWIC cards. I would have to ask you to ask either TSA or the Coast Guard.

Mr. GREEN. For edification purposes, we have had representatives here from TSA and other agencies, and they always talked until—just recently, not too long ago, maybe the last 8 months is my recollection, about card and reader together. In fact, we were given assurances about when the program would be up and running. I mention this to you because I am trying to understand the

value of initiating the card, putting it on-line without having the reader for the card. What was the value in doing this?

Ms. MARKS. Sir, again, I would have to defer to TSA.

Mr. GREEN. Does anyone else have information on what you perceive to be the value in doing this to be?

Okay. With reference to the appeals process, the indication to us is by way of intelligence from staff, 7,311 appeals requested, 4,734 appeals granted. If you know—and I apologize if I am asking the wrong people what I perceive to be the right questions—if you know, does "granted" mean that the appeals were actually granted in the sense that the persons were given the opportunity to acquire the card and move on with the process, or does it mean that these persons were given the opportunity to continue with their appeal?

Ms. MOSKOWITZ. I think I can answer that question. When the appeals are granted, the TWIC card is approved, and that begins card production.

Mr. GREEN. In terms of the number of appeals granted, the Chairwoman mentioned this, you have this information deficit within certain files. That granted appeal can be as a result of the card seeker having gone out, acquired certain intelligence, and accorded this intelligence to the agency or TSA so that they can make a fair determination about the person's record. Through no fault of the person, the record wasn't complete. Is that a fair statement?

Ms. MOSKOWITZ. That is exactly correct.

Mr. GREEN. This part of the process can be costly to the person who actually has to prove now that he or she is a legitimate person, notwithstanding some allegations that may not be understood, but the legitimacy has to be proven. I would assume that this means you will have to bring certified records to someone, that they won't just take your word for it, you will have to go someplace and acquire records that have been certified. I assume that there is a cost associated with getting records certified in Texas. We do have a cost if you want records certified. I would also assume that there may have to be some research involved. There are times that you have to pay for the research that is involved.

So that $132.50 that you start paying can go up, depending on how much research, how—what the cost is of the certification of documents and a number of documents that will have to be certified. Is that a fair statement?

Ms. MOSKOWITZ. That is an extremely correct statement, and I would add that the costs can range from days taken off work, traveling to local courthouses, doing research, obtaining copies of State criminal history records, which can cost between $40 and $60 depending on the State, in addition to the court certification costs for the folks who are getting the records certified from the clerks' offices, and then there is an issue of a number of workers who don't know where to turn and don't know how to do this research, as the Chairwoman recognized, are paying attorneys. I have heard rates of attorneys charging $10,000 to research this information that is missing from the FBI database.

Mr. GREEN. Have you found—and I don't want to stereotype, but have you found any segment of the population to be more vulnerable to this than another, or is this pervasive, and it could happen

to anyone; or do you find that may be happening to some more than others? If so, define "some" for me.

Ms. MOSKOWITZ. What I can say based on our experience working on criminal record base to employment and licensing in general and the clients who we have seen, there is a disproportionate impact based on race, African Americans and Latinos who are disproportionately impacted by any kind of criminal record screening policy.

Mr. GREEN. Does anyone else have some intelligence that you would like to share on these points? Anyone else? I don't mean to deprive others with the opportunity to share.

With reference to the card lasting for 5 years, I know that this was something that was decided on and that you have accepted, but is there a reason why a card should last 5 years as opposed to 10? Five years at the inception of this program seems to cause a degree of consternation in terms of people trying to save money. To some of us $132.50 is not a lot of money, but to many others it really is a lot of money, and those are the people that I really represent, if the truth be told, those that have a problem with the $132.50. So is there some rationale for the 5-year, or is it arbitrary and capricious?

Mr. BYRD. Your Honor, I don't have a reason or a rationale for the 5 years, but I can tell you that we share the concern that you mentioned a moment ago about the fact that the card—me and my company, we attempted to early enroll, and a large portion of my workforce has their TWIC card already issued to them, and that card is—the meter is ticking on that card, as I understand, and we are losing part of the validity of that 5-year process.

Mr. GREEN. Absolutely.

Now, back here, ma'am. You said that the Coast Guard will start a process of utilizing hand-held readers; is that correct?

Ms. MARKS. That is correct.

Mr. GREEN. Are you saying that the pilot has already been implemented, the reader is in place?

Ms. MARKS. No, sir. These are mobile—that have nothing to do with the card reader pilot. These are literally hand-held readers to do spot checks until the card reader, as I understand, but I would recommend you ask the Coast Guard.

Mr. GREEN. Because I am asking you this—the question is in this sense: Are you saying that the Coast Guard will have a device that we will call a reader that will now be able to scan what we are calling the card and check the biometrics in the card? Because that is ultimately where we are going. We want a card with biometric, and we have got a reader that can scan so that we can connect the card bearer to the card with more than a visual.

Ms. MARKS. That is what I have been led to believe, sir. Again, I would ask you to talk to the Coast Guard.

Mr. GREEN. I think I should, and I don't want to hold you to what the Coast Guard should tell me.

Ms. SANCHEZ. Mr. Green, just for amplification, that was asked of the earlier panel which had the rear admiral, and that is what they are seeking to do; however, they have not. They don't have a hand-held at this point. It is coming.

Mr. GREEN. I understand. Madam Chairwoman, as you recall, it has been coming for some time. It seems that is just metamorphosed now into a different type of device, because initially we did not hear about the hand-held that was to be something more, and now it is something less, and all of this is moving in some circle, it seems.

Finally, Madam Chairwoman, and I thank you for the time, I want to ask somewhat of a general question. The time—it seems that we were having a situation where the wait time on the phone was 20 minutes and 62 seconds, and I am told now that it is down to 27 seconds, and that is due to Chairman Thompson having contacted TSA. Just tell me, has that wait time changed? I am told that it is 27 seconds now. If it is more than that, maybe I need to ask the Chairman if he will make another call.

Ms. MARKS. Sir, I can answer that since we provide the help desk. It does average under 30 seconds on a given day, and that is every day as we speak. We take about 10,000 calls in a given week.

Mr. GREEN. Someone else had a hand up. Yes, sir.

Mr. GOLDING. Yes, sir, Mr. Green, Madam Chairman, I do want to make one point clear. There have been improvements in this program. The wait times are shorter for our mariner going to the facilities. The help desk lines are quicker. The personnel are more knowledgeable now at the centers now that they have been at it a while, and our cards are coming faster. So I think there are genuine improvements to the program.

Where we are still seeing problems, particularly as in the fingerprinting, our older people for some reason—and females, those two groups of people are having more trouble with the sensitivity of the scanner fingerprints. Also computer glitches, and I know that entails a lot, but that seems to require multiple trips back at times, which causes a lot of problems.

Addressing one other point with you, Madam Chairman, regarding the readers on board the boat, I do think that is the intention, because one of our companies in Mississippi, it is a member of our organization, is waiting for the pilot program of the readers to be sent to them so they can put them on board. So I do think that is the intent is to put readers on board our vessels.

There is a tremendous problem going on right now in miscommunication in the port facilities. They have earlier compliance dates than we do on board. We are April 15. Some of the Coast Guard offices have told our mariners that you have got to have your TWIC card on an earlier date if you are going to go into New Orleans or if you are going to go into one of these port facilities or other requirements. I think some real work in the communication needs to be done, because the Coast Guard officers have told us themselves you must have an earlier date if you are going into that port. Well, we are April 15, down the line for the mariners. So I see that as a communication problem that is going on right now that does need clarification. Thank you.

Mr. GREEN. You have caused me to think of something as you were talking. Is the TWIC card portable; meaning, can you go from one port to another and use a card? That is the way it was supposed to be.

Mr. GOLDING. Yes, sir.

Mr. GREEN. But let me ask you this in terms of portability. Do you find that some ports may have a different twist or tweak and require a little something more than the card, and as a result the card does not become the means by which you can enter?

Mr. GOLDING. I am not in and out of the port facilities. We are on and off our vessels. I would have to yield to one of the port operators.

Mr. GREEN. I believe Mr. Byrd has a desire to respond.

Mr. GOLDING. If I could address one thing in relation to the card that you just brought to mind. When I picked up my card last week, I was told at the center, don't put it in your wallet; the credit cards will deactivate the chip. If that is the case, there may be hundreds of thousands of cards out there that are deactivated, if that is the case. This young man just happened to tell me as I was on the way out the door, don't put it in your wallet. So I just present that for question.

Mr. GREEN. I can tell you that I had an experience recently, I went to this big convention out in a place called Colorado, I need not say more about it, and my card was a magnetic card for my room in my hotel. I placed it in with my other cards. That is exactly what happened to me. Exactly what happened. The cards in my wallet somehow deactivated the card that was to get me in my room. So I found myself late at night trying to get somebody to help me—I can imagine what it is going to be like for a worker who is trying to get—access his job, and now he has got to go through line A and fill out form C. Thank you for that. I will remember that. Yes, sir.

Mr. BYRD. Mr. Green, I was just going to respond to the fact that we do enter and access the ports on the land side. So what we are experiencing is exactly what you indicated, is the fact that we are being asked to present and go through duplicate credentialing and background checks in order to have access to the ports at this time. As I mentioned, I think before you entered into the room this morning, from the trucking industry perspective, we have a concern in the fact that we are having to go through duplicate background checks, fingerprint-based criminal history background checks for U.S. American truck drivers for their hazardous material endorsement, whereas Mexican and Canadian drivers don't have to do that. The TWIC represents that process for them, but not the U.S. drivers.

Mr. GREEN. The TWIC card is the sole card needed for persons who are from without the country, and from those who are within the country you need two cards?

Mr. BYRD. You have to go through two background checks.

Mr. GREEN. Okay. That is news to me. I appreciate you sharing that information.

Finally, 14 TWIC centers are down in Texas; is this correct?

Ms. MARKS. Two of the fourteen reopened today, sir, but we are—we, just like everyone in the community, are trying to bring, obviously, power in the TWIC enrollments in terms of mobile deployments up as quick as we can.

Mr. GREEN. What does "down" mean? Explain that to me so I can better understand.

Ms. MARKS. I can use an example. In Galveston, the facility that we were in was significantly damaged by Hurricane Ike. So we have ensured that the equipment was safe, we have ensured our personnel are safe. We are clearly concerned with that. Now we are putting work-around plans in place to figure out where can we set up a mobile station again that will allow us to start enrollments again in some of the places impacted by Hurricane Ike.

Mr. GREEN. Okay. We have two that have gone back on-line. So we only have 12 down?

Ms. MARKS. That is correct.

Mr. GREEN. Any anticipated time that the others will be back on-line?

Ms. MARKS. It varies by location. Again, we hope to open one of our Houston facilities up again as soon as we get power. We are prepared today, and we believe that power may come as soon as Monday.

Mr. GREEN. Thank you.

Madam Chairwoman, thank you for being so generous with the time.

Ms. SANCHEZ. Thank you, Mr. Green.

I have a couple of ending questions for Ms. Marks. The first one is—well, first I will just say to Mr. Green, you may have put that card, that magnetic card, actually not against your other credit cards, but usually it is your phone that deactivates it. If your phone was anywhere near, that always manages to demagnetize a card.

Mr. GREEN. It was.

Ms. SANCHEZ. It is usually the phone.

But to Ms. Marks on that issue, I have noted that when I have seen biometric cards, they are not really the type of card—or the information is not put on the card in the sense of what we are talking about as far as credit cards or as far as key—room keys. Do you believe that the TWIC card can be demagnetized by a phone or by some other means?

Ms. MARKS. Madam Chairwoman, thank you for asking and giving me the opportunity to address that. It cannot be. But clearly I have some refresher training I need to do in some of my enrollment locations immediately if that is the guidance that is being given out. The chip contained on it is not magnetic. We store data in a different way. Again, that is not the issue. Thank you.

Ms. SANCHEZ. That has been my experience when I have seen the types of chips. That is why I ask.

The last question is about your contract with TSA for the project. I know that you have a performance-based bonus, which is the award—called an award fee pool. Are you familiar with what I am talking about?

Ms. MARKS. We have an award fee plan, and that is what we get measured against.

Ms. SANCHEZ. So you were given one bonus so far on March 31, 2008, totaling almost $400,000, but you haven't been awarded a second performance bonus.

What improvements are your teams working on to meet mutual goals with TSA?

Ms. MARKS. Allow me again—it is not a bonus. This is an award fee. This is our ability—assuming we hit acceptable quality levels, the ability for us to earn some of that award fee. It has penalties that go with it as well. For one example, when we were not hitting the help desk call time, we were actually penalized of other amounts that we would have earned. That, again, is a contractual relationship between us and TSA that we had to give back as well. So they work both ways.

We have eight defined acceptable quality levels that we get measured against. When we achieve those levels, we then can start earning the award fee. If we achieve 100 percent of those—and it is staggered in between—we can do that. The first award fee period, the majority—half the award fee was on opening enrollment stations on schedule, which we did. As we move on through the program, we are now in the second period, the second 6-month period. During that second 6-month period, it will all be based on items such as wait time, customer satisfaction, all objective measurements that TSA measures us on.

Ms. SANCHEZ. Great.

I thank all of you for your testimony before our committee today, and I am sure that some of the Members who were not able to make the subcommittee hearing may ask in writing some questions of you all, and I hope you will get back to us and answer those questions in a quick manner.

The committee is now—I think there might have to be some official things I have to say. Hold on a moment. Actually, no. So hearing no further business, this subcommittee stands adjourned.

[Whereupon, at 12:53 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS FROM HON. LORETTA SANCHEZ FOR REAR ADMIRAL JAMES WATSON, DIRECTOR, PREVENTION POLICY FOR MARINE SAFETY, SECURITY AND STEWARDSHIP, U.S. COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

Question 1. To what extent is the Coast Guard enforcing the TWIC requirements, including verifying the TWIC holder's identity, at port facilities where the program has been implemented? Has the Coast Guard encountered any challenges to enforcing the TWIC requirements?

Answer. The Coast Guard began phasing in Transportation Worker Identification Credential (TWIC) implementation at port facilities by Captain of the Port (COTP) Zones beginning on October 15, 2008, and continuing through April 15, 2009. Once the TWIC compliance requirements are established, the Coast Guard will begin enforcing the requirements in the COTP Zones. Coast Guard personnel will verify TWIC compliance during announced facility inspections and unannounced security spot checks. The Coast Guard will also conduct random TWIC compliance inspections as directed by the COTP based upon risk and resource allocation. The Coast Guard has not, as of yet, encountered any challenges to enforcing the TWIC requirements.

Question 2. Why does an applicant for a Coast Guard license or Merchant Mariner's Document who has gone through the TWIC enrollment process need to also travel to a Coast Guard Regional Exam Center to be fingerprinted? Why can't the two agencies that exist within the same Federal Department share data so a mariner doesn't have to make a third trip to a Government office to get the credential he or she needs to earn a living?

Answer. Consolidation of Coast Guard-issued mariner qualification credentials was proposed in a Supplemental Notice of Proposed Rulemaking in conjunction with the Transportation Worker Identification Credential (TWIC) Final Rulemaking on January 25, 2007. The proposal acknowledges the need to reduce the burden on mariners who now must apply for and carry a TWIC as well as mariner qualification credentials. The proposed Merchant Mariner Credential (MMC) would consolidate the Merchant Mariner's Document, license, Certificate of Registry, and endorsements required by the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended.

The proposed consolidation proposal includes provisions for the Transportation Security Administration (TSA) to supply the Coast Guard with information collected during TWIC enrollment so the Coast Guard can eliminate appearance requirements for mariners applying for new and/or renewal credentials. It also proposed to reduce the fees that some mariners must pay for their credentials by eliminating the need to pay for more than one credential. These proposed changes, if implemented would decrease the number of appearance requires for mariners.

Question 3. The January 2007 TWIC rules allow for 30 days of interim work authority for new hires that have completed the TWIC enrollment process but have not yet received their TWIC. This can be extended to 60 days with the approval of the Coast Guard Captain of the Port. Given that many mariners report that it's taken much longer than 30 days to get a TWIC, and given that work schedules in the many sectors of the maritime industry require individuals to be on a boat for 30 days or more, wouldn't it make sense to extend this period to a blanket 60 days, without requiring companies or mariners to jump through the hoop of requesting COTP approval?

Answer. In accordance with the regulation (33 CFR 105.257), certain newly hired employees may be granted entry to secure areas of the facility for up to 30 consecutive calendar days prior to receiving their Transportation Worker Identification Credentials (TWIC) provided all of the requirements are met, and provided that the new hire is accompanied by an individual with a TWIC. If the Transportation Security Administration (TSA) does not act upon a TWIC application within 30 days, the

cognizant Coast Guard Captain of the Port (COTP) may further extend access to secure areas for an additional 30 days. Any deviation from this process would require a change to the existing regulations.

Question 4. There is the distinct possibility that Lockheed Martin and TSA will be overwhelmed by a flood of applicants within the next couple of months and that applicants will be face to wait a significant amount of time before they can attain a TWIC card. Will the Coast Guard modify the enforcement dates if TSA and Lockheed Martin are unable to process application requests in a timely manner?

Answer. The Transportation Worker Identification Credential (TWIC) Final Rule, published on January 25, 2007, stated the Transportation Security Administration (TSA) could not guarantee processing of an individual's application and issuance of his/her TWIC in less than 30 days. The TSA is currently overseeing 149 TWIC enrollment centers across the country. To date, the majority of these enrollment centers have extra capacity to facilitate additional enrollments and activations prior to compliance beginning in a particular COTP Zone.

It is unlikely that enforcement dates would be changed. We announce compliance dates in both a press release and in the Federal Register prior to the compliance date when enforcement begins. By regulation, announcements must be made 90 days prior to the compliance date; however we have been announcing as far out as 120 days whenever possible. Leading up to the compliance date, we increase outreach efforts to those areas to make every attempt to notify individuals that TWIC compliance is coming and individuals with a need should obtain a TWIC. Lead outreach initiatives to date have encouraged maritime stakeholders, port partners and potential applicants to apply for their TWIC as early as possible.

Question 5. Two months ago, the National Maritime Security Advisory Committee (NMSAC) submitted 17 pages of comments and concerns to the Coast Guard regarding the TWIC program.

Why hasn't the Coast Guard responded to the input?

Answer. The Coast Guard provided responses to questions submitted by the National Maritime Security Advisory Committee (NMSAC) on September 18, 2008.

Question 6. How much money is the Coast Guard going to request next year for hand-held readers?

Answer. On September 18, 2008, the Coast Guard awarded a 48-month contract to Science Applications International Corporation (SAIC) in the amount of $2,274,377 to provide training, warranty, help-desk support and the acquisition of up to 300 hand-held Transportation Worker Identification Credential (TWIC) readers. Future year funding needs will be assessed after the hand-held readers are deployed and evaluated.

Question 7. It is my understanding that in the aftermath of Hurricane Gustav, the Captain of the Port of New Orleans issued a memo stating that TWIC holders should be classified as high-priority personnel and should be allowed onto the port. This was the first time that the TWIC card had been used in such a way. Will this become standard operating procedure in the future?

Answer. TWIC was used as a valid identification credential for individuals who were critical components to the re-establishment of commerce and re-vitalization of the Port of New Orleans as identified by the Coast Guard Captain of the Port (COTP). This action is an option for future COTPs to assist critical industry and maritime personnel if re-entry into hurricane-impacted ports becomes hindered. Currently FEMA is looking at utilizing FIPS–201 interoperable credentials, among other identity credentials, to support incident management and response. TWIC is being considered as part of these discussions.

QUESTIONS FROM HON. LORETTA SANCHEZ FOR MAURINE FANGUY, ACTING DIRECTOR, MARITIME AND SURFACE CREDENTIALING, TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY

Question 1. What is your plan for the post-April 15, 2009 period?

How will you ensure that everyone who needs to get a TWIC after that date can do so at least as conveniently as today?

Answer. The Transportation Worker Identification Credential (TWIC) enrollment process was developed to support workers both pre- and post-April 15, 2009. The Transportation Security Administration (TSA) has established 149 enrollment centers across the United States and in U.S. territories to serve workers in maritime areas. TSA will continue to operate centers to support workers in maritime areas, taking into account feedback from local security partners. It is anticipated that the number of enrollment centers will not change, however, based on a hub-and-spoke concept, there may be adjustments to hours and resources at outlying enrollment centers that are underutilized or where maritime operations are seasonal in nature.

This will allow for a more efficient use of resources while still accommodating the individual workers.

Question 2. Why should an applicant for a TWIC have to return to the enrollment center to pick up his or her card when a passport can be mailed back to the applicant? This seems like a significant burden on working Americans that can and should be eliminated.

Answer. The Transportation Security Administration (TSA) established the enrollment and activation process based on national credentialing and security standards that included a requirement for workers to biometrically verify their identity at card pick-up. This is an important security step in the process and completes the "chain of trust" in the Transportation Worker Identification Credential (TWIC) model. The two-step process was included in the TWIC final rule and the burden to workers was included in the regulatory evaluation. TSA will continue to work with Government credentialing and security standards experts to identify areas for improvement, but there is no plan to change the process at this time.

Question 3. Given that the TWIC card reader pilot must be completed and results analyzed before TSA can initiate the second rulemaking, when do you expect to start the pilot? What are the estimated time frames for issuing the second rule?

Answer. The Security and Accountability For Every Port Act of 2006 (SAFE Port Act) requires the Department of Homeland Security to issue final reader regulations no later than 2 years following commencement of the pilot programs. Those final rules must be consistent with the findings of the pilot program. The Transportation Security Administration (TSA) started working with pilot test participants and developing plans shortly after the SAFE Port Act was enacted. A plan for a three-phase test was approved in December 2007. The first phase of that plan included conducting technical tests of the Transportation Worker Identification Credential readers in a controlled environment. The first of those tests began on August 20, 2008. On October 7, 2008 the first test results were made available to the pilot test participants and to the public. These, and other, reader tests will continue throughout the pilot. TSA expects to conduct field reader tests at pilot participant vessels and facilities during calendar year 2009.

The Coast Guard expects to issue an Advance Notice of Proposed Rulemaking (ANPRM) before the end of the year. An NPRM would follow, incorporating comments received on the ANPRM and any available pilot data. We expect to hold public meetings during the comment periods for both the ANPRM and the NPRM. A final rule would be issued once the pilot program is completed, as per the SAFE Port Act, taking the results of the pilot and all comments received into consideration.

Question 4. TSA originally estimated that the TWIC enrollment contract would cost about $70 million. Since the enrollment population is greater than originally expected, to what extent has the total contract cost increased?

Answer. The enrollment portion of the Transportation Worker Identification Credential (TWIC) enrollment services contract is transaction-based, and our contractor is paid $43.25 per enrollment. The price per enrollment does not change based on the number of enrollments. Furthermore, neither the contract ceiling nor the base period estimated expenditure will change as a result of the potential increase in the population estimate. The base period estimated expenditure would accommodate the potential rise in the population estimate from 850,000 to 1.2 million workers; at $43.25 per enrollment, this rise equates to an increase from $36,762,500 to $51.9 million; the remainder of the base period estimated ceiling would then be available for other activities associated with system maintenance and enhancements.

Question 5. Is the TWIC enrollment contractor meeting all performance metrics stipulated in the contract? If not, what metrics are not being met and why? How has help desk performance and fingerprint reject metrics changed over time?

Answer. The Transportation Security Administration (TSA) awarded Lockheed Martin a performance-based contract that includes Acceptable Quality Levels (AQLs) directly tied to the Transportation Worker Identification Credential (TWIC) program's enrollment objectives. Lockheed Martin is currently exceeding all AQLs in accordance with the contract.

Lockheed Martin did not initially meet the AQL for help desk response times of 3 minutes. A corrective action plan was requested, in accordance with the Quality Assurance and Surveillance Plan (QASP), which Lockheed Martin provided and implemented. As a result of these corrective actions, Lockheed is reporting an average response time of 2 minutes or less, which exceeds the AQL.

The fingerprint rejection rate has consistently improved and is currently less than 1 percent. The fingerprint reject AQL in the contract is 2 percent.

Question 6. What is TSA's official position on expanding the TWIC program to other modes of transportation beyond the maritime sector?

Answer. The Transportation Security Administration does not currently have plans to expand the Transportation Worker Identification Credential beyond the maritime sector.

Question 7. One of the more controversial TWIC issues has always been the encryption of fingerprint data. There's been a lot of discussion about whether encryption would create additional processing time, increase processing failures and drive up the cost. Despite all these concerns, DHS decided to go ahead and encrypt the card data. But now we're finding out that this system may not work. A recent report from the National Maritime Security Advisory Committee's TWIC Working Group states:

"It has been discovered that the encryption of the fingerprints on certain cards was not performed properly which causes the decryption to fail. No one will know the extent of the problem until those cards that have been issued are tested."

Can you talk to me about the extent of the encryption problem and when will it be fixed? What will happen to the malfunctioning TWIC cards? Who will pay the additional cost to fix it?

Answer. The incorrect encipherment of the ANSI 378 biometrics template stored within the Transportation Worker Identification Credential (TWIC) card application is an extremely rare card issuance event. According to information provided as recently as October 8, 2008, from the Transportation Security Administration's (TSA) prime contractor, less than 100 records in 600,000 were found to have an incorrect encipherment. All were identified and corrected, and new cards were ordered for the impacted workers. TSA and the TWIC prime contractor have taken steps to reduce this type of fault even further and, as already stated, are replacing the impacted cards at a cost to be borne by the program.

Question 8. TSA contractors known as "Trusted Agents" enroll transportation workers who sign up for the TWIC. These people are on the front lines of the TWIC system. They schedule applicant meetings, answer their questions, troubleshoot any problems, verify applicants' personal information and take fingerprints. It's important that they be well-trained and fully qualified, because their errors can cost someone a job or even allow a terrorist to slip through the cracks. Unfortunately, a number of the problems we hear about with the TWIC are associated with trusted agents. Some of these trusted agents can't find the TWIC cards when applicants come to pick them up. They can't find people in the computer system or they don't collect or scan immigration documents properly.

What kind of training are these people getting? What are the qualification requirements for trusted agents? Can you assure this committee that no one working as a trusted agent—or performing trusted agent duties—has done so while working through a temporary placement company?

Answer. During the initial contract startup, the Transportation Security Administration (TSA) provided Lockheed Martin with a comprehensive Trusted Agent Training Package and conducted the initial training in support of the initial deployment. The Lockheed Martin training program is based on this initial TSA training package and Lockheed Martin continues to conduct training for all Trusted Agents. In addition, Lockheed Martin is conducting refresher training across the enrollment sites and provides periodic training updates. Lockheed Martin does contract with other companies to support the need for Trusted Agents; the contract does not restrict Lockheed Martin from using temporary placement companies to support the Trusted Agent requirements. All Trusted Agents, however, must successfully complete the Security Threat Assessment necessary to receive a Transportation Worker Identification Credential and must successfully complete the additional TSA Security process required of all TSA contractors. All Trusted Agents must follow the training guidelines and direction provided by Lockheed Martin. Lockheed Martin has established Area Coordinators, Field Coordinators, and Trusted Agent Supervisors to support the management of the Trusted Agents staffing the 149 enrollment sites.

Question 9. It's really common for Americans to move from one part of the country to another. That's especially true for workers who are required to have a TWIC. Mariners can leave from one port, spend months at sea, and return to a completely different port. In fact, I'm aware of a seafarer who applied for a TWIC in Florida but subsequently moved to the Great Lakes area. TSA says he's got to go back to Florida to pick up his TWIC even though he doesn't live there or even work there. He asked for the paperwork to be transferred, but the answer was no. He asked for the TWIC to be sent by FedEx, but the answer was no. He offered to pay for the FedEx fee, but the answer was no. What are people in this situation supposed to do? If we can mail a passport to somebody, why can't you mail out a TWIC?

Answer. The Transportation Security Administration (TSA) has received a number of requests by workers to pick up their Transportation Worker Identification Credential (TWIC) at a different enrollment location other than the site where they initially enrolled. We have identified the requests for those individuals who are now at the October compliance ports, and Lockheed Martin is sending the TWIC cards to the requested location. In addition, we are working with Lockheed Martin on a solution that will allow the capability for transportation workers to request a change in the pick-up location. This solution is expected to be implemented in the near future. In the meantime, we will continue to support the requests with a priority going to those individuals where the compliance date has been announced.

Unlike a passport that can be mailed directly to the individual, it is necessary for the individual worker to return to an enrollment site to activate his/her TWIC and to ensure the TWIC is working properly. TSA established the enrollment and activation process based on national credentialing and security standards that included a requirement for workers to biometrically verify their identity at card pick-up. This is an important security step in the process and completes the "chain of trust" in the TWIC model. The two-step process was included in the TWIC final rule and the burden to workers was included in the regulatory evaluation. TSA will continue to work with Government credentialing and security standards experts to identify areas for improvement, but there is no plan to change the process at this time.

Question 10. It is my understanding that many workers are unfairly denied a TWIC by TSA based on inaccurate and unreliable criminal history information because 50 percent of the FBI's records are incomplete. What steps are being taken to clean up these databases and what role does TSA have in ensuring that the information that this information is accurate?

Answer. No person has been unfairly denied a Transportation Worker Identification Credential (TWIC) based on inaccurate or unreliable information. The Transportation Security Administration (TSA) affords all TWIC applicants the opportunity to correct criminal records that are inaccurate or that have not been updated before a decision is made to either issue or deny a TWIC. In the case of a potential criminal disqualification, TSA sends the applicant a letter stating that he or she may not be eligible for a TWIC and lists the criminal record on which we are relying. We invite the applicant to appeal this initial determination and notify us if the criminal record is inaccurate within 60 days (or more if the applicant requests an extension of time to reply). It is only after an applicant is given every opportunity to utilize our redress process that TSA makes a determination as to whether or not an applicant is eligible for a TWIC. TSA is able to grant the overwhelming majority of appeals because applicants provide us with corrected criminal records that show the applicant to be eligible for a TWIC.

TSA has no role in the maintenance of or standards concerning the national repository for criminal history records criminal history. The Federal Bureau of Investigation (FBI), through the Criminal Justice Information Service (CJIS), maintains and has established submission guidelines for the States and Federal law enforcement agencies to follow. TSA staff has participated in working group meetings led by the Compact Council (the national independent authority that sets policy in this area) to discuss how the CJIS data may be improved.

Question 11a. Currently, workers who do not speak English as their first language are having problems filling out the paperwork and submitting this information at the TWIC enrollment centers because of the absence of any meaningful policy to provide translated multi-lingual services and interpreters, even at the ports with the largest immigrant populations.

Please tell me what specific analysis TSA has done to determine the need for multilingual services, beyond allowing workers to bring friends and family members to help translate.

Answer. When the Transportation Security Administration (TSA) conducted economic and related analyses for the Transportation Worker Identification Credential (TWIC) rulemaking, we discovered that there is very little data available on the people who enter maritime facilities and vessels. This view was generally articulated by all of the security partners who participated in the rulemaking process. As a result, the TSA has no specific numbers on TWIC applicants who may be considered to have limited English Proficiency (LEP).

Question 11b. Are you aware that the Department of Justice's guidance on complying with Title VI of the Civil Rights Act of 1964 strongly cautions against allowing non-qualified personnel, like family and friends, to translate especially in cases, like the TWIC program, which involve disclosures of sensitive personnel information, like criminal records and immigration status, and highly technical rules and policies?

It is my understanding that TSA and Lockheed Martin are relying on families and friends to translate information and I would like to know if the current system is in compliance with Title VI.

Please tell me what specific analysis TSA has done to determine the need for multilingual services, beyond allowing workers to bring friends and family members to help translate.

Answer. The Transportation Security Administration is aware of the Department of Justice (DOJ) guidance on this issue. Section 2 of the Executive Order, entitled "Federally Conducted Programs and Activities" provides that each Federal agency must work to ensure that persons with limited English proficiency (LEP) have meaningful access to the agency's programs and activities. The DOJ Guidance on the Executive Order discusses a variety of tools that agencies may use to meet the spirit of the Order, including translating important documents and permitting LEP persons to use their own interpreters. For the Transportation Worker Identification Credential (TWIC) program, we have incorporated both of these suggested tools in the enrollment process. The TWIC Program provides communications materials in Spanish and English. Our pre-enrollment web site is offered in Spanish and English, as well as our help desk services. The TWIC Disclosure Form has been translated into 13 languages based on input from our security partners and "field-testing" and these have been placed on the web site. Also, as indicated on the disclosure form, TWIC applicants who are not proficient in English may bring a translator to enrollment to assist in completing the process. We continue to research other ways to assist individuals who have limited English proficiency, and work closely with our security partner groups such as the National Employment Law Project (NELP) and our TWIC Stakeholder Communications Committee (TSCC) to gather recommendations and feedback.

Question 12a. It is my understanding that TSA does not know how many truckers will be required to attain a TWIC and that the Agency has only recently increased its outreach to the trucking population.

Why doesn't TSA have this information?

Answer. The Transportation Security Administration (TSA) originally conducted population estimates by working with academia, industry security partners, trade associations, labor unions, and other Government agencies to develop an initial population estimate for all maritime transportation workers, including truckers, who may require a Transportation Worker Identification Credential (TWIC). Nearly 700,000 trucking companies operate in the United States and provide short-haul, long-haul, and drayage services and meet pre-planned, as well as just-in-time delivery requirements. The fluidity and mobility of the trucking industry add to the complexity of developing population estimates for truckers who require a TWIC.

Question 12b. Are you confident that 100 percent of the truckers in this country are aware of the fact that they will have to get a TWIC card if they transport cargo to and from maritime facilities?

Answer. The Transportation Security Administration (TSA) has worked closely with the Coast Guard to ensure that truck drivers are aware of the TWIC requirement and are prepared prior to compliance. In New England, Coast Guard, in coordination with terminal operators, conducted pre-compliance checks to ensure that truck drivers were informed and ready for the new requirement. When compliance went into effect on October 15, 2008, TSA and Coast Guard received positive reports about trucker readiness from field personnel. Nearly all truck drivers presented a TWIC for entry to the terminals. TSA will continue to work closely with Coast Guard to conduct pre-compliance activities at all ports to ensure awareness and readiness.

TSA has conducted extensive outreach to maritime transportation workers, including truckers who transport cargo to and from maritime facilities. In addition, the Transportation Worker Identification Credential (TWIC) Final Rule requires that owners and operators inform their workers of the need for a TWIC. Coast Guard Captain of the Ports have also conducted extensive local outreach to facility owners and operators, Area Maritime Security Committees, and regional trucking companies, to ensure this traditionally non-maritime population is aware of TWIC.

TSA's communication campaign has included multiple outreach efforts, including:

- A national TWIC Stakeholder Communications Committee (TSCC) that includes representatives from trucking-related industry associations and labor unions, such as the American Trucking Associations (ATA), Intermodal Association of North America (IANA), Owner-Operator Independent Drivers Association (OOIDA), AFL–CIO, and the Teamsters. This group meets approximately every month to review progress and answer stakeholder questions.
- E-mail communication with over 7,000 industry security partners on a nearly weekly basis.

- Attendance at national and local security partner meetings, conferences, and workshops, including trucking-specific meetings sponsored by industry associations and State trucking associations.
- Participation in locally sponsored TWIC working groups that include trucking companies and drivers.
- Advertising in trucking trade publications.
- Local media events with locally known industry members and elected representatives to promote TWIC enrollment and compliance.
- Satellite radio call-in programs.
- Press releases tailored to drive local media attention.
- Port-specific outreach brochures and flyers.
- Industry-specific promotional materials, including specific flyers for trucking, rail, mariner populations.
- United States Coast Guard local exercises to promote enrollment and compliance-readiness through spot checks at access control points.

Question 13. Railroad personnel will also be required to attain TWICs and it is my understanding that many of these men and women are unaware of this obligation.

What outreach have you done with this community?

Have you spoken with all of the labor organizations representing this large segment of the transportation population?

Answer. The Coast Guard and the Transportation Security Administration (TSA) have met on numerous occasions with the American Short Line and Regional Railroad Association (ASLRRA), which represents over 500 shortline operators across the country, and the American Association of Railroads (AAR), which represents all Class I freight railroads in the United States. The Coast Guard and TSA have attended national and regional meetings with railroad operators and security personnel, to discuss the requirements of the Transportation Worker Identification Credential (TWIC) program, and provided maps of all facilities regulated by the Coast Guard pursuant to the Maritime Transportation Security Act of 2002 (MTSA) in North America to facilitate their planning. Both the AAR and ASLRRA have been proactive in ensuring the railroad operators are aware of the TWIC program and their responsibility to ensure that personnel who need unescorted access to secure areas of certain facilities must possess a TWIC. It is important to note that railroad employees are not specifically required by law or regulation to obtain a TWIC due to their occupation alone. As with other forms of transportation, such as trucking, the TWIC regulations impact all individuals who require unescorted access to secure areas of facilities or vessels which are regulated under MTSA. Currently, there are over 3,200 maritime facilities regulated pursuant to MTSA and over 10,000 vessels.

QUESTIONS FROM HON. LORETTA SANCHEZ FOR STEPHEN M. LORD, ACTING DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, GOVERNMENT ACCOUNTING OFFICE

Question 1. One of the challenges you reference in your testimony is the rate of enrollment, do you think that Department will be able to successfully overcome this challenge and meet the April 15 deadline?

Answer. While about 498,000 enrollments (41 percent) out of an estimated target population of 1.2 million had been processed as of September 12, 2008, an additional 702,000 workers (59 percent) still need to be enrolled in the program by the April 15, 2009 deadline. Assuming current enrollment rates of about 45,000 workers per month, and as highlighted in the testimony, TSA could experience an enrollee shortfall of several hundred thousand workers by the April 15, 2009 enrollment deadline. While it is difficult to predict whether TSA will successfully overcome this enrollment challenge, and whether additional resources will be devoted to help address this enrollment issue, we will continue to monitor enrollment trends as part of our on-going TWIC review.

Question 2. Your written testimony references TSA's inability to successfully predict the number of TWIC applicants. What went wrong? Why was TSA unable to successfully identify the number of individuals who would be required to obtain a TWIC?

Answer. According to the TWIC program director, it is difficult to estimate how many individuals will enroll in the program as no association, port owner, or Government agency previously tracked this information. It is difficult to estimate the numbers of some types of workers requiring TWICs at individual facilities, such as truckers, since they operate independently and are sometimes engaged in transporting activities at several ports. We are encouraged that TSA and its contractor

are taking additional steps to update enrollment estimates for the Ports of Houston, New York, Baton Rouge, Los Angeles, and Long Beach.

Question 3. The second challenge you reference is technology and the testing needed to ensure that the readers will be fully operational. What steps should TSA take to maximize the lessons learned from the testing that is currently on-going in South Carolina?

Answer. As highlighted in the hearing, we believe that TSA should carefully test the TWIC technology before fully deploying it. We are encouraged that TSA is conducting tests of the TWIC technology to ensure that it can operate effectively in the harsh maritime environment and in a variety of vessels and port facilities. TWIC's economic impact on commerce is also being evaluated. As part of our current review, we will review TSA's testing and assessment of biometric card readers and other access control technologies in the maritime environment. A primary objective of the tests is to assess the effect that using TWIC for biometric verification of identity, credential authentication, and validation would have on the flow of commerce. According to TSA's plans, it will need to develop and promulgate a second rule to govern the use of these readers by ports and vessels. It will also need to establish a reader conformance testing program to support future acquisitions. To accomplish these objectives, TSA will need to carefully structure its tests to ensure that it will be able to collect the needed data to support these future decisions and activities. For example, to assess the effect on the flow of commerce, TSA will need to compare entrance processes and times, e.g., the number of seconds per transaction, using TWIC readers with baseline conditions that do not currently use TWIC readers.

Question 4. TSA is going to begin TWIC enforcement before the fixed readers are in place. Why do you think it has taken so long for the Department to test the reader technology and rollout a complete program instead of giant flash-pass?

Answer. Our current and prior work has identified a number of program challenges related to testing and the program roll-out. According to the program documentation we reviewed, the pilot tests will end in late 2009. However, we have not assessed whether this is a reasonable amount of time for completing these tests. Our final report will provide an update on the results of these tests, and the time taken to complete these tests.

Question 5. TSA has not yet established an end date for the reader pilot test. How long should this pilot last and what should TSA do with the information that it gains from the pilot?

Answer. TSA's TWIC program schedule indicates that the pilot tests will be completed in late 2009. At the hearing, the Coast Guard representative indicated that the draft rule would be issued soon after the hearing, that is, before the results of the pilot tests are available. It is important that the technology be fully tested before it is deployed, and that the results of the tests be used to help inform the development of the second rule. We will continue to monitor this issue as part of our ongoing TWIC review.

QUESTIONS FROM HON. LORETTA SANCHEZ FOR JUDITH MARKS, PRESIDENT, TRANSPORTATION AND SECURITY SOLUTIONS, LOCKHEED MARTIN CORPORATION

Question 1. How much money has Lockheed Martin spent on outreach, enrollment, screening, and other activities?

Answer. Response was not provided at the time of publication.

Question 2. What is your plan for the post-April 15, 2009 period? How will you ensure that everyone who needs to get a TWIC after that date can do so at least as conveniently as today?

Answer. Response was not provided at the time of publication.

Question 3. It is my understanding that TSA is currently considering whether or not it should give your company an award fee for the work it has done these past months. Do you believe that Lockheed Martin has earned this fee and if so, why?

Answer. Response was not provided at the time of publication.

Question 4. One of the issues raised today is the requirement to return to the Lockheed Martin enrollment center to pick up the TWIC cards. Many folks have argued that if the State Department can mail passports then the Homeland Security Department should be able to mail TWIC cards instead of requiring a second trip to the enrollment facility. Do you support the concept of mailing the TWIC cards to the applicants?

Answer. Response was not provided at the time of publication.

Question 5. It is my understanding that TWIC applicants have to pick up their TWIC cards at the place in which they enrolled. What happens if they move? Why can't Lockheed Martin send their card to the enrollment center that is closest to their new home?

Answer. Response was not provided at the time of publication.

Question 6. This morning we learned that Lockheed Martin has not made the application process available to workers who do not speak English as their first language, even though many ports, and especially the truck drivers who work there, have limited English proficiency. That includes the failure to hire qualified bilingual staff, especially in major ports with large immigrant populations, translate educational materials into critical languages, and other safeguards required of Government contractors under Title VI of the Civil Rights Act of 1964. Please tell us what specific analysis you have done to determine your obligations under Title VI at the various ports and what steps you have taken to provide multilingual services?

Answer. Response was not provided at the time of publication.

Question 7. We have heard from several witnesses about serious problems with the training of Lockheed Martin's "trusted agents" and the failure to collect all the proper citizenship and immigration paperwork so workers are not denied their TWIC. What type of training is provided to your employees?

Answer. Response was not provided at the time of publication.

Question 8. Fourteen TWIC enrollment centers were closed because of the destruction wrought by Hurricane Ike. What steps have been taken to bring these centers back on-line?

Answer. Response was not provided at the time of publication.

Question 9. In the short history of your firm's involvement with TWIC, there have been significant concerns raised about process and delays. Your firm underestimated the level of support that would be required for workers to complete the TWIC enrollment process. Can you assure me that you will devote the necessary resources to assist the projected 1.5 million transportation workers who will need these cards?

Answer. Response was not provided at the time of publication.

QUESTIONS FROM HON. LORETTA SANCHEZ FOR STEPHANIE BOWMAN, MANAGER, FEDERAL GOVERNMENT AFFAIRS, PORT OF TACOMA

Question 1. In your written testimony, you reference problems with the fingerprint readers at the enrollment centers. Please provide us with more information about this issue.

Answer. Response was not provided at the time of publication.

Question 2. Every time I talk with my constituents about the TWIC program, I hear about a lack of communication. What is happening at your port?

Answer. Response was not provided at the time of publication.

Question 3. According to your written testimony, the Port of Tacoma has developed is own guidelines for escorting personnel. What guidance has the Department given you with regards to this issue?

Answer. Response was not provided at the time of publication.

Question 4. What guidance has TSA given your port with regards to TWIC enrollment after the initial phase is completed?

Answer. Response was not provided at the time of publication.

Question 5. How much money and how long will it cost to install readers at your port?

Answer. Response was not provided at the time of publication.

QUESTIONS FROM HON. LORETTA SANCHEZ FOR PHILIP L. BYRD, SR., PRESIDENT AND CEO, BULLDOG HIWAY EXPRESS

Question 1. In your written testimony, you stress the need for the Federal TWIC to be the one-and-only transportation security ID. Why is this important? Why shouldn't individual States be allowed to have their own ID?

Answer. Response was not provided at the time of publication.

Question 2. How many different types of background checks do your drivers currently undergo?

Answer. At Bulldog Hiway Express our drivers are subject to the following background checks:

- TWIC
- HME for the CDL
- Individual sea port I.D. pass background checks.

This constitutes approximately 12 port I.D.'s for my company.

Question 3. It is my understanding that there has been limited outreach to the trucking community with regards to the upcoming TWIC enforcement deadline. What type of outreach has been done in South Carolina?

Answer. I personally feel that the outreach to the community has been adequate concerning the upcoming enforcement deadlines.

Question 4. On average, how many times have your drivers had to go to their respective TWIC enrollment centers?

Answer. On average our drivers have had to make 2 trips to the enrollment center, and one trip to our office for pre-enrollment. We still have several drivers that have not received their TWIC card that date back to the first quarter of 2008.

Question 5. On average, how long has it taken your drivers to attain a TWIC?

Answer. On average it has taken 2.5 months for our drivers to attain a TWIC.

QUESTIONS FROM HON. LORETTA SANCHEZ FOR STEVE GOLDING, PRESIDENT, GOLDING BARGE LINE

Question 1. What are the biggest problems your employees/members are experiencing with TWIC enrollment?

Answer. Our employees are experiencing some fingerprint reader difficulty. This is particularly true with our older mariners. Several of our employees have been told that they could not pick up their TWIC cards because the office that they went to was experiencing "computer glitches". Overall the TWIC enrollment process has improved from what it was 6 months ago.

Question 2. How long, in your experience, does it take from the time a mariner applies for a TWIC to the time he or she is notified that the TWIC is ready for pick-up?

Answer. The time that a mariner applies for a TWIC card until they actually are notified that the card is ready for pick-up has greatly improved. It is now down to about a 2-week average time.

Question 3. Can you describe the changes your company has had to make to deal with the TWIC requirements? How have they affected your employees? Tell us about the typical Golding Barge employee who needs a TWIC and what this requirement has meant to him or her.

Answer. The TWIC process is another obstacle to a new prospective employee choosing a career in the barge industry. Oftentimes we have to ask them to travel 2–6 hours round-trip from their home to the nearest enrollment center to apply, and then ask them to return for a second trip to pick up their card. It becomes another barrier to their entry into our industry. Most of the time the applicant needs a job as fast as he can find it. By adding this traveling and returning to the center to pick up the card, we have made it harder for us to attract new hires. We desperately need to alleviate the second trip back to a TWIC center to pick up the cards. There has to be a secure way to get these cards back to the mariner like a passport is done.

We need to create more venues to allow a new hire to more conveniently enroll for a TWIC card. It is not uncommon for a new hire to have a 6-hour round-trip drive to the nearest TWIC center to get his or her card. We desperately need to be able to apply for these cards in post offices, airports, and Coast Guard offices so that we do not put up more obstacles toward our prospective new employees choosing our industry.

We need the Coast Guard to be able to extend the interim work authority from 30 days to 60 days without having to get this approval from the "Captain of the Port" on each individual case. When we have a new employee and put him on the boat, he is gone for a 30-day period. He will normally get a notice that his new card is ready to be picked up between his 10th and 20th day on the boat. He may be 1,000 miles away from the TWIC center that he enrolled in and in the middle of his 30-day hitch. We do not let our mariners get off the boat during their 30-day hitch unless it is an absolute emergency. We will constantly be applying for a 60-day interim work authority on our new hires so that he or she can pick up their TWIC card on their "days off" after their first 30-day hitch. The work schedule of 30 days on and 15 days off just do not match up for only a 30-day work authority. We desperately need the 60 days to be made automatic on all new hires so that we do not have to keep going to the captain of the port and requesting the 60-day authority.

Question 4. Why do you think that card readers aren't necessary on towing vessels?

Answer. Card readers have no place and serve absolutely no purpose on an inland towboat. We only carry a crew of six on our boats and every 2 weeks we only have 3 mariners getting off for crew change, and three getting on. This crew change is all the interchange of people that are coming and going on our vessels. Our crews are all very close friends, or they are related. They live with each other on-board for 8 months out of the year and are only at home for 4 months out of the year. They know each other better than they know their own families. In most cases, they are more like family than co-workers. All of my crew members feel as thought it

would be like having to go through a card reader to come into your own home. The boat is home to my crews and we want it to feel that way. These readers were designed for busy port facilities where dozens of people are coming and going each day. The crews on our towing vessels live together for 8 months out of the year and need no reader to come back to their homes after being off for 2 weeks vacation.

QUESTIONS FROM HON. LORETTA SANCHEZ FOR LAURA MOSKOWITZ, STAFF ATTORNEY, NATIONAL EMPLOYMENT LAW PROJECT (NELP)

Question 1a. In your written testimony, you talk about how workers are unfairly denied a TWIC by TSA based on inaccurate and unreliable criminal history information because 50 percent of the FBI's records are incomplete. That happens mostly because the States fail to update the status of arrest records to let the FBI know if there has in fact been a conviction.

Why is this a problem for workers applying for a TWIC card and what can TSA do right away to fix it?

Answer. Response was not provided at the time of publication.

Question 1b. What steps should the FBI take to fix its databases?

Answer. Response was not provided at the time of publication.

Question 2. According to your written testimony, many workers with criminal records are afraid to apply for a TWIC, which may have something to do with the low enrollment rates. In your experience providing training to workers and helping in various ports, what is the most important thing that TSA and Lockheed Martin can do right away to get at this serious problem?

Answer. Response was not provided at the time of publication.

Question 3a. We heard today, that even U.S. citizens are having a hard time navigating the process with Lockheed Martin's "trusted agents" and with TSA to prove that they are qualified for a TWIC.

How often does this happen in your experience?

Answer. Response was not provided at the time of publication.

Question 3b. What should Lockheed Martin and TSA do right away to ensure that all eligible workers in this situation are not denied the TWIC and made to jump through so many hoops that they are discouraged from applying or appealing?

Answer. Response was not provided at the time of publication.

Question 4. Many non-native English speakers are struggling to fill out the TWIC paperwork and many of these individuals are having to rely on their friends and family to translate for them. In your experience, how often is this happening and where is this occurring?

Answer. Response was not provided at the time of publication.

Question 5. Over the past several months, you have helped many transportation workers track down missing paperwork so that they can appeal an initial disqualification. On average, how much time does it take and how much does it cost to track down this information?

Answer. Response was not provided at the time of publication.

Question 6. In your testimony, you highlight the current flaws with the administration's databases and watchlists—flaws that have made it more difficult for a former Navy reservist—a U.S. citizen—to obtain a TWIC card. What should the administration do to fix us this problem?

Answer. Response was not provided at the time of publication.

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