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# HOMELAND SECURITY FAILURES: TWIC EXAMINED

## FULL HEARING

OF THE

## COMMITTEE ON HOMELAND SECURITY
## HOUSE OF REPRESENTATIVES

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# HOMELAND SECURITY FAILURES: TWIC EXAMINED

**Wednesday, October 31, 2007**

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
*Washington, DC.*

The committee met, pursuant to call, at 10:00 a.m., in Room 311, Cannon House Office Building, Hon. Bennie Thompson [chairman of the committee] presiding.

Present: Representatives Thompson, Sanchez, Dicks, Harman, DeFazio, Lofgren, Jackson Lee, Christensen, Carney, Perlmutter, King, Dent, Lowey, Etheridge and Broun.

Also present: Representative Castle.

Chairman THOMPSON. The Committee on Homeland Security will come to order.

We would like to welcome the Congressperson from Delaware, and I would like to ask unanimous consent that Representative Castle be allowed to sit and participate in the hearing before the committee today.

So ordered.

The committee is meeting today to do oversight on the Department of Homeland Security's rollout of the Transportation Worker Identification Credential.

I would like to also indicate that the ranking member indicated he is en route and that we could begin. He should arrive before I finish my remarks.

Good morning and thank you for being here today for the oversight hearing of the Transportation Worker Identification credential, commonly referred to as TWIC.

This hearing dovetails nicely with the hearing that was held by Ms. Sanchez's subcommittee yesterday.

TWIC was mandated in law 5 years ago. It was supposed to provide an extra layer of security at our nation's ports and other critical transportation hubs.

However, it seems that even before this program gets off the ground, it may have some fatal flaws that undermine its ultimate effectiveness.

I look forward to hearing testimony on how the rollout has been going in Wilmington over the past 2 weeks. It should be very instructive for what other ports should expect.

Already we are hearing that organized crime is working to develop a fake TWIC card to operate in our ports. It is time to say enough is enough.



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It is time for the Department of Homeland Security to step up. The department needs to be straight with us and give us specifics on when TWIC will be rolled out in all of our nation's ports.

We also need to know how many people will need a TWIC card and what resources will be necessary to process them. If the estimates that I am hearing are correct, you have a real problem on your hands with the estimates.

In the past, the department has projected that 750,000 workers would need cards in the entire nation. The port of Houston alone expects 350,000 applicants, unless we are wrong somehow, and Houston is not one of the largest ports, as you know.

We also need to know how many transportation workers are going to be disqualified from attaining a TWIC. We understand that some estimates go as high as 40 percent of all truck drivers could be disqualified.

The department's inability to correctly forecast these numbers undermines this committee's confidence in you getting the program right.

Ports are a vital part of ports commerce in this country and if TWIC is not done right, ports could come to a virtual standstill. This would have a real and direct impact on commerce.

Similarly, I am concerned about the department's waiver and appeal process. DHS is going to depend on the FBI records to check names. FBI records, according to the Justice Department, are flawed and incomplete. In fact, about half of all records do not even have information on final disposition.

Finally, I am concerned about the possibility that the TWIC credential is not going to be the one and only card that our nation's transportation workers will have to obtain. The department has decided not to preempt states' access card, therein creating yet another layer of bureaucracy and additional costs to our workers.

The department is already charging $132.50 for the TWIC. How much more should we expect folks to pay?

We also see that Florida, for instance, has already created its own access card. Our nation's transportation workers do not deserve more bureaucracy and confusion. We owe them security. We owe them accountability and, most importantly, we owe them freedom from fear. Our workers deserve no less.

PREPARED REMARKS OF THE HONORABLE BENNIE G. THOMPSON, CHAIRMAN, COMMITTEE ON HOMELAND SECURITY

Twic was mandated in law five years ago. It was supposed to provide an extra layer of security at our nation's ports and other critical transportation hubs.

However, it seems that even before this program gets off the ground, it may have some fatal flaws that undermine its ultimate effectiveness. I look forward to hearing testimony on how the roll-out has been going in Wilmington, over the past two weeks. It could be very instructive for what other ports should expect.

Already, we are hearing that organized crime is working to develop a fake TwIC to operate in our ports. If time to say enough is enough. It is time for the Department of Homeland Security to step up. The Department needs to be straight with us and give us specifics on when TWIC will be rolled out at all our nation's ports.

We also need to know how many people will need and TWIC and what resources are necessary too process them. If the estimates that I am hearing correct, you could have a real problem on your hands. In past, the Department has projected that just 750,000 workers would need cards in the entire nation. The port of Houston alone expects 350,000 applicants.

We also need to know how many transportation workers are going to be disqualified from attaining a TWIC. We understand that some estimates are that 10 to 40 percent of all truck drivers could be disqualified.

The Department's inability to correctly forecast these numbers undermines this Committee's confidence in you getting this program right. Ports could come to a virtual standstill.

This would have a real and direct impact on commerce. Similarly, I am also concerned about the Department's waiver and appeals process.

DHS is going to depend on the FBI records to check names. FBI records, according to the Justice Department are flawed and incomplete. In fact, about half of all records do not even have information on final dispositions.

Finally, I am concerned about the possibility that the TWIC credential is not going to be the "one and only" card that our nation's transportation workers will have to obtain. The Department has decided not to pre-empt State access cards—therein creating yet another layer of bureaucracy and additional costs to our workers.

The Department is already charging $132.50 for the TWIC. How much more should we expect folks to have to pay? Our nation's transportation workers do not deserve more bureaucracy and confusion. We owe them security. We owe them accountability. And most importantly, we owe them freedom from fear. Our workers deserve no less.

Mr. THOMPSON. The chair now recognizes the ranking member of the full committee, the gentleman from New York, Mr. King, for an opening statement.

Mr. KING. Thank you, Mr. Chairman. Again, I appreciate the hearing being held and thank you for holding it, scheduling it.

I also want to welcome Mr. Castle from Delaware. Obviously, the port in Delaware is the first up and it is very thoughtful of him to be here to give us the benefit of his insights, and thank him for his service.

Obviously, the TWIC program is vital. We have been waiting for it for years. It is a priority of the Congress that it be done. It is also a priority that it be done the right way.

It would serve no purpose to rush it through and create more problems. At the same time, DHS has to make sure that this is implemented. While the scheduled dates are not being met, the fact is every effort is being made to move it along as quickly as possible.

The chairman recited a list of things that could go wrong and potential problems, and that is true. Nobody said this would be easy. And I think it is important for us to listen to the testimony today, see what has been done, what is planned to be done, what is happening with the pilot programs, when full implementation is going to be inspected, what is going to happen as far as the card reader pilot, what is going to happen as far as the employees, as far as their backgrounds, how that will impact, how many it is going to affect, whether or not DHS is on target, close to being on target as far as the number of cards that will have to be issued.

All of these are significant issues. I think it is important, though, for us to realize that it serves no real purpose just reciting what is wrong or what could be wrong. Let us also see what can be done to address the deficiencies that are there, to make sure that when the program is fully up and running, that it is running at maximum effectiveness and that we not just, again, try to harp on what could be possibly done better at some time in the future.

Let us make a cooperative effort to work together. Where the department needs help, let us give it to them. Where we think the

department is deficient, let us make it known to them and deal with them in a very honest and straightforward way, as I know they will deal with us in their testimony today.

I especially want to welcome Bethann Rooney from the port of New York and New Jersey, who has been coming to these hearings for a number of years now. I don't know how she survives either the job or the hearings, but she does it and I want to thank her for her constant work and dedication, and all the witnesses, especially Kip Hawley, who I believe does an outstanding job and against terrible odds and under dire circumstances.

And with that, I yield back the balance of my time.

Chairman THOMPSON. Thank you very much.

Other members of the committee are reminded that under committee rules, opening statements may be submitted for the record.

I welcome the first panel of witnesses to the hearing. Our first witness is the honorable Kip Hawley, administrator of the Transportation Security Administration.

Our second witness is Rear Admiral Brian Salerno, director, Inspection and Compliance, U.S. Coast Guard. Welcome.

Our third witness is Ms. Cathy Berrick, who is a senior executive for the Government Accountability Office's homeland security and justice team. We are happy to have you.

Without objection, the witnesses' full statements will be inserted in the record.

I now ask each witness to summarize his statement for 5 minutes, beginning with Administrator Hawley. Welcome.

## STATEMENT OF EDMOND S. "KIP" HAWLEY, ADMINISTRATOR, TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY

Mr. HAWLEY. Thank you, Mr. Chairman, Ranking Member King and members of the subcommittee.

I have submitted the testimony for the record, and in the spirit of plain talking, which is honored in this committee, I would like to just address the issues.

I took six issues from the opening statement from both Mr. Thompson and Mr. King that I think are the primary issues that we need to address and I will just quickly hit them.

On the issue of the number of people who will need TWIC cards, the business model, that is, a pay-as-you-go system, allows for that to be scalable up to whatever number that is. So whether it is a million, a million-two, a million-five is not a constraint on the viability of the program, because the contract is written that our provider gets paid by the card. So there will be resources to flex to whatever that number is.

So the fact that we can't identify an exact number of people who will want a card and who will get one, even though it may not be specifically required of them, is not a constraint on the program.

On the issue of the disqualifications, the data point that we have is the HAZMAT endorsement on the commercial driver's license and it has very similar requirements as the TWIC card, and that has proven not to be a major problem.

Our interest is in finding terrorists and keeping them out of our ports, not denying a card to somebody who had an issue earlier in their career.

So we found essentially that of the 730,000 people that have been vetted, less than 100 who have been willing to work with us to resolve the issues have had an issue, which is about one in 10,000.

So our sense is we are not going to have the problem that is projected. We are going to make sure that this program does not become a barrier for good people who are working to be disqualified. Our interest is to get as many people as quickly on board.

On the issue of the card readers, the Safe Port Act requires us to do a pilot and then, within 2 years, issue the final rule on what the card reader requirements are. So in terms of us not having card readers out there when we are issuing TWIC cards, that is directly responsive to the law that was just passed by the Congress and I think that the enforcement by the Coast Guard is, in fact, a good security measure that we can elaborate as we go forward.

As to the when, we announced, for the 147 ports, we announced a quarterly roll for when that should be expected. I think the key point is the one that Mr. King made about that we do it right, that this is the most advanced biometric system that is flexible, with all employers, all ports.

And if we roll it out too quickly and, therefore, as Mr. Thompson said, tie up commerce in these ports, that would defeat the purpose. So our goal is to roll it out as expeditiously as possible, but with a caveat that we are going to make sure it observes all the privacy requirements, the proper due process, the security requirements. We are going to make sure it is a success as we go.

As to the issue of the organized crime thing, I think that is a very good signal that they ought to be worried that the TWIC card is coming, because they are not able to counterfeit it.

When the Coast Guard shows up with their handheld biometric readers, they will be caught. I think they should be worried about it.

And the program has gone through an extensive period of preparation and vetting and we have had a lot of criticism that, frankly, has helped the program, both from the inspector general's office, the Congress, and the GAO, that has highlighted the issues with TWIC and we have addressed those issues and now the program is, in fact, up and running and I do not see a barrier why this program should not continue to be a success, and I look forward to discussing those issues with the committee.

Thank you, sir.

[The statement of Mr. Hawley follows:]

PREPARED STATEMENT OF THE HONORABLE EDMOND "KIP" HAWLEY, ADMINISTRATOR, TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY

Good morning Chairman Thompson, Ranking Member King, and distinguished members of the Committee. Thank you for this opportunity to share with you the significant progress we have made on the Transportation Worker Identification Credential (TWIC) program. I would like to acknowledge the leadership this committee has provided in defining the vision for TWIC.

The TWIC program is moving towards its objectives while making sound decisions focused on enhancing port security and a reasoned, phased-in program implementation approach. I am happy to inform the Committee that TWIC enrollments began in Wilmington, Delaware, on Tuesday, October 16, 2007. After successful start-up

in Wilmington, we will now proceed to Corpus Christi in early November. By mid-November, enrollment will start in Baton Rouge, Beaumont, Honolulu, Oakland, and Tacoma. This group will be followed in late November by Chicago/Calumet, Houston, Port Arthur, Providence, and Savannah.

In addition to announcing the implementation of the program, we have made significant progress in other areas since our last appearance before this sub-committee:

- Implementation of the pre-enrollment capability;
- Completing test milestones on the enrollment system;
- Adding TWIC enrollment sites based on stakeholder input;
- Reducing the price of a TWIC card;
- Establishing reader technical specifications; and
- Identifying card reader pilot participants and holding kick-off meetings.

***Completing Test Milestones on the Enrollment System***

TWIC will impact hundreds of thousands of American workers essential to the smooth flow of global commerce. Once TWIC is up and running, TSA will vet as many workers in one day as we did during the entire year-long prototype. The importance and enormity of this task within the maritime environment, with a dynamic and mobile workforce, has demanded a methodical approach with rigorous testing.

TWIC will be one of the world's most advanced, interoperable biometric credentialing programs and is powered by state-of-the-art technologies. We have completed our "flight test" of the full TWIC system, which has five main components:

- **Pre-Enrollment Web Site:** allows workers to schedule appointments and provide information ahead of time to make enrollment easier.
- **Enrollment Center:** captures a worker's biometric and biographic information and submits the information for security processing.
- **TWIC Core System:** routes applicant information for processing, conducts data integrity checks, and manages the status of TWIC cards.
- **Screening Gateway:** aggregates security threat assessment data from the FBI, Citizenship and Immigration Services, and watchlists. It is important to note that the Screening Gateway is used across all of TSA's vetting programs.
- **Card Production:** electronically loads an applicant's information onto a TWIC smart card and then physically produces the card.

All five of these parts were first tested individually. Next, these pieces were integrated to ensure the functionality of the end-to-end process of conducting accurate and timely security threat assessments and producing high quality credentials. In addition, security and privacy requirements were validated throughout the process. After our contractor verified system readiness, TSA completed independent verification before beginning final test enrollments in the field using live vetting on government and trusted contractor personnel.

Today the switch has been turned on and the doors have opened with the commencement of enrollment in Wilmington, Delaware. After we verify successful enrollment operations in Wilmington, we will move forward to expand TWIC across the nation.

***Adding TWIC Enrollment Sites***

The TWIC final rule established a network of 130 enrollment sites located across the nation. Understanding the importance of making enrollment as convenient and accessible as possible, we have worked with maritime stakeholders, the Department, and our partners in the United States Coast Guard to add additional locations for TWIC enrollment centers. At this time, we will field 146 fixed enrollment centers. In addition, we have worked with our contractor to add a mobile enrollment capability to take TWIC to the workers.

***Reducing the Price of a TWIC Card***

TWIC is a fee-based program paid for by applicants. We fully realize that these costs are significant, and we are mindful of the need to identify areas for cost reduction. Recently, we announced that the fee for a standard TWIC will now be $132.50, a decrease from the price anticipated in the Final Rule. Workers with current, comparable threat assessments including HAZMAT, Merchant Mariner Document (MMD) or Free and Secure Trade (FAST)) will receive a discounted fee of $105.25. The cost of a lost, damaged or stolen credential is $60.

***Establishing Reader Technical Specifications***

The TWIC technical architecture is compatible with the credentialing standards established in Federal Information Processing Standard (FIPS) 201–1. This alignment is critical to support card and reader interoperability within the maritime mode. In response to comments received on the initial TWIC Notice of Proposed

Rulemaking (NPRM), TSA and the Coast Guard decided to remove the requirement for biometric readers from the TWIC final rule to allow time to establish technology specifications to support maritime operations.

TSA and the Coast Guard sought the advice of the National Maritime Security Advisory Committee (NMSAC), which established a working group to collaboratively develop new technical specifications that complement FIPS 201–1 and add features that will support high-volume physical access in the harsh maritime environment. The working group included representatives from both the maritime and technology industries.

TSA recently published the TWIC reader hardware and card application working technical specification. The working specification establishes the requirements for biometric card readers for the pilot projects required by the SAFE Port Act. These readers will be tested during the pilot program. As the card and readers are envisioned to operate when TWIC is fully implemented, use of a PIN will not be necessary to release the biometric, unless the owner/operator chooses to use contact readers and the contact side of the credential.

***Identifying Card Reader Pilot Participants and Holding Kick-Off Meetings***

As required by the SAFE Port Act, we have initiated pilot programs with five partners across the country to test card readers. The pilots will test access control technologies in real world marine environments. Our current list of participants includes the Port Authorities of Los Angeles, Long Beach, Brownsville, and New York/New Jersey, in addition to Watermark Cruises in Annapolis, Maryland. As part of the outreach efforts for the TWIC program and 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 facility vessels which operate in a variety of geographic locations and environmental conditions. There appears to be sufficient interest from the maritime community to achieve this objective.

We are in the process of finalizing the test approach for the pilots. We are working with the Department of Homeland Security's Science and Technology component and the National Institute of Standards and Technology (NIST) to establish a test plan that will evaluate the card-reader interface under a variety of conditions and assess its impact on operations. Through the pilot tests, we will investigate the impacts of requiring biometric identity verification on business processes, technology, and operational impacts on facilities and vessels of various size, type, and location. As the program proceeds, the pilots will inform the 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.

***Lessons Learned and Future Efforts***

We are proud of the significant progress we have made in the past six months and are mindful of the challenges ahead. As we move forward in the TWIC program, we are committed to incorporating our lessons learned to drive sound management decisions geared at improving all aspects of the program, including:

- *Look for efficiencies by eliminating duplicative regulatory processes.* TSA and Coast Guard are developing procedures for the sharing of fingerprints, identity verification, criminal history, and photographs for TWIC which is expected to save not only money but time. In addition, merchant mariners will no longer be required to visit a Regional Exam Center to obtain and renew their credentials, resulting in substantial time and travel savings.
- *Place the highest value in stakeholder input; it is time well spent.* The public hearings, comments to the NPRM, meeting with operators and associations, and contributions of advisory councils all added great value. We came away from each and every one of these efforts better informed about the challenges, the unacceptable impacts, and the practicable options for protecting our ports.
- *Address the impact on small businesses.* TSA and the Coast Guard worked closely with the Small Business Administration to minimize the financial and operational impact on small businesses wherever possible. The rule includes provisions that allow MTSA-regulated passenger vessels (excluding cruise ships) to establish employee access areas for crewmembers that do not require unescorted access to secure areas such as the pilot house and engine room. This provision reduces the impact on those employees who rarely need to use spaces beyond those designated for support of passengers while maintaining the integrity of vessels' secure areas. We are also producing and distributing a Small Business Compliance Guide to assist small businesses in their implementation of the program.
- *When practical, preserve State regulatory flexibility.* Mariner regulations and port security plans preempt state regulations. However, the TWIC regulations

do not preempt States from requiring background checks and badging systems for non-security purposes in addition to TWIC. States may need to set standards for important purposes other than terrorism threats, such as theft or organized crime.

• *Plan for privacy.* All data collected at an enrollment center will be completely deleted from the enrollment center work stations after transmission to TSA. The entire enrollment record (including all fingerprints collected) is stored in the TSA system, which is protected through role-based entry, encryption, and segmentation to prevent unauthorized use. No paper records with personal identification information are created in the enrollment process.

• *Technical innovation requires adaptive contract management.* TWIC is attempting to develop 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. The recent Lockheed Martin performance-based contract award is a culmination of our efforts to date. We will continue to look for and implement adaptive program planning, contractor oversight, and metrics to ensure the success of the program.

• *Plan to address what issues may arise during testing.* Evolving technology, such as card readers, create a changing environment and program control constraints. This is especially the case when the technology must be deployed to a vast multitude of entities with remote connectivity challenges (e.g., vessels) and varying degrees of access control system capabilities.

***Conclusion***

The steps we are taking will be an extremely important aspect to the security of our port facilities and vessels. TSA will continue to work with our partners, the U.S. Coast Guard and maritime stakeholders, to ensure that for the first time in history thousands of independent businesses will have one interoperable security network and workers will hold a common credential that can be used across that entire network.

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

Chairman THOMPSON. Thank you very much for your testimony.

I now recognize Rear Admiral Salerno to summarize his statement for 5 minutes.

**STATEMENT OF ADMIRAL BRIAN SALERNO, DIRECTOR, INSPECTION AND COMPLIANCE, U.S. COAST GUARD, DEPARTMENT OF HOMELAND SECURITY**

Admiral SALERNO. Good morning, Mr. Chairman, Ranking Member King and distinguished members of the committee.

Thank you for this opportunity to speak with you this morning on the current status and the way forward for the TWIC program.

Since enrollment started in Wilmington, Delaware on October 16, we have been monitoring all aspects of the process in order to identify any areas that need refinement as we move forwards with enrollment in larger, higher consequence ports around the country.

The Coast Guard is committed to working in partnership with TSA and with our industry stakeholders to get this right. It is in this spirit that we have already addressed many of the concerns expressed by our stakeholders about TWIC implementation.

For example, based on stakeholder input, we, and I mean TSA and the Coast Guard collectively, have increased the number of TWIC enrollment locations from 130 to 147. We have enhanced mobile enrollment capabilities.

We have developed detailed guidance documents to assist owners, operators and TWIC applicants. We have instituted new special hire provisions. We have proposed regulations to streamline merchant mariner applications and reduce the number of creden-

tials they are required to carry. And we have developed and published a state-of-the-art contactless reader specification, which lays the foundation for readers that will maximize personnel throughput and meet the harsh environmental conditions common to maritime operations.

This latter point also signals our way forward. Even as we are working to implement the enrollment plan, we have concurrently begun work on a rulemaking that will address card readers, which will be used to verify a TWIC holder's identify.

We have sought the collaboration of our stakeholders in this effort and have received recommendations on specific potential reader provisions from the National Maritime Security Advisory Committee, the Merchant Marine Personnel Advisory Committee, and the Towing Safety Advisory Committee.

In the meantime, it is important to note that the implementation of TWIC, even in the absence of reader requirements, will have an immediate positive security benefit.

For the first time, we will have a universally recognized tamper-resistant credential, backed by a robust threat assessment, that will be checked before individuals are granted unescorted access to facilities and vessels.

The Coast Guard also intends to procure handheld readers for use during routine and unscheduled vessel and facility security examinations, and we use these to randomly check the validity of an individual's TWIC.

TSA and the Coast Guard continue to reach out to our private sector stakeholders in the interest of fashioning a regulation that strengthens American's maritime security, while advancing commerce.

While the TWIC program is multifaceted and includes numerous players, we are committed to developing an operationally sound framework that maximizes the security benefit that TWIC provides.

Thank you for the opportunity to speak to you today, and I will be happy to take your questions.

[The statement of Admiral Salerno follows:]

PREPARED STATEMENT OF REAR ADMIRAL BRIAN SALERNO

Good Morning Mr. Chairman and distinguished Members of the Committee, thank you for the opportunity to speak with you about how the Coast Guard, in partnership with the Transportation Security Administration (TSA), is implementing the Transportation Worker Identification Credential (TWIC) program.

At the outset, I would like to note that with the commencement of TWIC enrollment in Wilmington, Delaware on October 16th, this program reached a major milestone where the plans and capabilities developed in the past will start to yield the security benefits envisioned for the future. In the 15 months since DHS proposed TWIC requirements in a Notice of Proposed Rulemaking (NPRM), the Coast Guard and TSA have been laying a solid foundation in the form of regulation, policy, systems, and capabilities which sets the stage to succeed with enrollment and compliance. The deliberate process and careful steps taken to lay this foundation have been absolutely crucial to ensure that we gain the full security benefit from TWIC and minimize the negative impact of the program on trade and the many hundreds-of-thousands of people who will be enrolling.

**Background**

In understanding where we are today, I would like to review the efforts of the past. The TWIC program builds on the security framework established by Congress in the Maritime Transportation Security Act of 2002 (MTSA). 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. The MTSA also required the Department of Homeland Security (DHS) to issue a biometric transportation security card to licensed and documented U.S. mariners and 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, TWIC issuance, conduct of the TWIC appeal and waiver process, and management of government support systems. The Coast Guard is responsible for establishing and enforcing TWIC access control requirements at regulated vessels and facilities. Both agencies partner daily to make sure that our collective efforts achieve the increased security objectives which MTSA intended.

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

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

**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 and TSA intend to apply TWIC regulations, we established policy guidance in the form of a Navigation and Vessel Inspection Circular (NVIC), which was made available to the industry and general public on July 6, 2007. This cornerstone guidance document will assist the maritime industry and general public with TWIC compliance and is designed to ensure consistent application across all of our MTSA regulated facilities and vessels. 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. Internal guidance documents for training, implementation, and enforcement for Coast Guard and TSA personnel continue to be developed.

**Stakeholder Engagement**

From the outset, engagement with our affected stakeholders has been crucial to the program's success. The comments during the NRPM comment period provided valuable insight into the unique operational issues facing labor, the maritime facilities and vessels which would have to implement the program and comply with its requirements. Comments questioning the technological and economic feasibility of employing the TWIC cards and card readers in the maritime environment led to the splitting of the rule and card reader requirements being addressed in a separate rulemaking. Throughout February and March of this year, the Coast Guard solicited comments from Coast Guard field units and industry stakeholders while drafting the TWIC NVIC. We received over 400 comments voicing general support for the policy and highlighting issues which needed more clarification. The stakeholder dialogue we developed allowed us to include most of the recommended policy changes into the NVIC. Since publication of the Final Rule, the Coast Guard, TSA and TSA's contractor Lockheed Martin have conducted numerous outreach events at national venues such as the Passenger Vessel Association Conference, smart card and biometric industry conferences, maritime union meetings, American Waterways Operators meetings and American Association of Port Authorities conferences.

**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. The Coast Guard and TSA solicited and received valuable input and recommendations from the Towing Safety Advisory Committee (TSAC), Merchant Marine Personnel Advisory Committee (MERPAC) and the National Maritime Secu-

rity 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 in this is to enhance maritime security while balancing the impact upon the stakeholders who are at the forefront of providing that security. As this second rule will have a significant economic and operational impact on the maritime industry, which is also a critical component of our national maritime security efforts, we will continue to seek their input and recommendations as we develop regulations for which they must comply.

To move forward establishing these requirements, TSA and the Coast Guard had to address a principal stakeholder concern that open slot, or "contact" readers are not appropriate for application in all maritime environments or operations. To address this, the Coast Guard and TSA chartered the NMSAC to recommend a specification which would enable the TWIC and readers to function in a "contactless" fashion, without having to insert a card into a reader. Combining the operational experience of maritime stakeholders with the technical expertise of members of the security and biometrics industry, the NMSAC produced recommendations which resulted in a working specification published by TSA and the Coast Guard on September 19th. This specification will enable biometrics manufacturers to produce readers which can be applied to the TWIC pilot and eventually towards future reader requirements promulgated by the Coast Guard.

**Redefinition of Secure Areas**

An aspect of the TWIC program which provides flexibility in implementation enables owners or operators of facilities containing both a maritime transportation portion and a non-maritime transportation portion, such as areas devoted to manufacturing or refining operations, to request a redefinition of their secure area where TWICs will be required for unescorted access. This process includes an amendment to a facility's security plan. This process is currently underway across the United States with owners and operators engaging directly with their local Coast Guard Captains of the Port (COTP) to determine how TWIC will be applied at their facilities.

**Enrollment Sites by Port**

Over the last several months, we have reviewed and reevaluated the list of original TWIC fixed enrollment locations, which included enrollment in 130 ports. With a goal of maximizing convenience and service to the maritime community, we solicited input from Coast Guard COTP and stakeholders, resulting in the addition of a number of fixed enrollment sites and the shifting of others. Today, the list contains 147 port enrollment locations including key inland ports such as Paducah, Kentucky as well as remote locations such as Saipan, where MTSA regulated facilities and vessels routinely operate.

**Reader Pilot Testing**

In accordance with the SAFE Port Act of 2006, TSA and the Coast Guard have identified geographically and operationally diverse port and vessel locations willing to participate in the reader pilot testing. We have been engaged in planning these pilot tests with the ports of Los Angeles, Long Beach, New York, New Jersey, Brownsville and Annapolis, Maryland, all of whom have volunteered to participate and have received grants to purchase and install readers with associated equipment. The initial planning and testing protocols have been developed and we look forward to deploying and testing readers in real world environments in the coming months. The data and lessons learned from the pilot tests will be invaluable to inform the second proposed rulemaking in accordance with Congressional intent.

**The Way Ahead**

As enrollment rolls out across the country, the Coast Guard is also focusing on implementation and enforcement of TWIC provisions. Compliance for regulated facilities will be staged for each COTP Zone to gain the security benefits of the program at the earliest moment. TSA and the Coast Guard will monitor enrollment progress and will announce compliance in each zone at least 90 days in advance. Vessels and mariners will have to have TWICs by the national compliance date of September 25, 2008.

To leverage TWIC's biometric capability, the Coast Guard is in the process of procuring handheld biometric card readers which will enable us to verify the identity of an individual and the validity of their credential during our 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. Internally, we are crafting policy for enforcement of the TWIC program in our ports and will seek enforcement collaboration with other law enforcement agencies.

**Conclusion**

The TWIC program is a complex endeavor. However, we are working with TSA to set a solid foundation upon which to execute enrollment and implementation. 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 acknowledge much has been accomplished to set the stage for this program, we cannot guarantee a trouble free process. Inevitably, we will continue to encounter additional challenges, as happens in any major endeavor of this complexity. As we have in the past, we will address each of these in turn, to the best of our ability, in keeping with the best public interest, and we will keep you informed on our progress. I would be happy to take any questions you have at this time.

Chairman THOMPSON. Thank you for your testimony.

I now recognize Ms. Berrick to summarize her statement for 5 minutes.

## STATEMENT OF CATHY BERRICK, DIRECTOR, HOMELAND SECURITY AND JUSTICE, GOVERNMENT ACCOUNTABILITY OFFICE

Ms. BERRICK. Thank you, Mr. Chairman, Ranking Member King and members of the committee, for inviting me here to discuss GAO's work assessing TSA's efforts in implementing the TWIC program.

My testimony will focus on the progress TSA has made in implementing TWIC and in responding to GAO's prior recommendations and key remaining efforts that TSA and the maritime industry will need to address to help ensure the program's successful implementation.

In September 2006, we reported that TSA and industry stakeholders faced several challenges in implementing TWIC. These challenges related to the enrollment and issuance of TWIC cards to a significantly larger population of workers than had been previously tested, ensuring that the access control technology required to operate TWIC works effectively in the maritime sector and ensuring that background checks, appeals and waivers for applicants of TWIC cards are processed in a timely manner.

We also reported on problems TSA experienced in planning for and overseeing the contract to test TWIC. Based on our work, we recommended that TSA develop and test solutions to problems identified during initial testing, strengthening contract planning and oversight practices, and improved stakeholder coordination and outreach.

Since our review, TSA has made much progress in addressing our prior recommendations and in meeting legislative requirements to test and implement the program.

For example, TSA reported conducting performance testing of the technologies that will be used to enroll workers and has begun planning a pilot program to test TWIC access control technologies, as required by legislation.

TSA also hired additional staff with program and contract management expertise to help oversee the TWIC enrollment contract and developed additional controls to help ensure that contract requirements are met.

TSA has also taken actions, along with the Coast Guard, to improve communication and coordination with maritime stakeholders.

However, given the complexities of the program in its early stage of implementation, it will be important that TSA and the Coast Guard continue to work with industry stakeholders to test and monitor the program and to effectively address any challenges that arise.

This focus is especially important given that key aspects of the program have not yet been fully tested or implemented. For example, TSA and its contractor will need to transition to full-scale enrollment, covering at least 700,000 workers at about 3,500 maritime facilities and 5,300 vessels.

While TSA and the contractor have begun initial enrollments, it remains to be seen how the TWIC enrollment and card issuance systems will perform during full-scale implementation.

TSA and its enrollment contractor will also need to educate workers on new TWIC requirements and effectively and efficiently process numerous background checks, appeals and waivers.

Finally, TSA and industry stakeholders will need to ensure that TWIC access control technologies will work effectively in the maritime environment, be compatible with TWIC cards that will be issued, and ensure that the facilities and vessels can effectively and economically obtain information on workers that may pose a threat.

In closing, TSA has taken many steps to strengthen the development, implementation and the oversight of the TWIC program and we commend their efforts.

While additional testing and other actions TSA have taken should address the problems we have previously identified, key aspects of the program have not yet been fully tested or implemented and the effectiveness of these efforts will not be known until the program further matures.

Mr. Chairman, this concludes my opening statement. I would be happy to respond to any questions.

[The statement of Ms. Berrick follows:]

United States Government Accountability Office

GAO

Testimony before the Committee on Homeland Security, House of Representatives

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# TRANSPORTATION SECURITY

# TSA Has Made Progress in Implementing the Transportation Worker Identification Credential Program, but Challenges Remain

Statement of Cathleen A. Berrick, Director
Homeland Security and Justice Issues

GAO
Accountability * Integrity * Reliability

GAO-08-133T

Mr. Chairman and Members of the Committee:

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. Ensuring that only workers that do not pose a terrorist threat are allowed access to secure areas of the nation's transportation facilities is a key measure in securing the homeland. The TWIC program was created to help protect these facilities from the threat of terrorism by issuing identification cards only to workers who are not known to pose a terrorist threat, and allow these workers unescorted access to secure areas of the transportation system. To accomplish this objective, the TWIC program will include the collection of personal and biometric information to validate workers' identities, background checks on transportation workers to ensure they do not pose a security threat, issuance of tamper-resistant biometric credentials that cannot be counterfeited, verification of these credentials using biometric access control systems before a worker is granted unescorted access to a secure area, and revocation of credentials if disqualifying information is discovered, or if a card is lost, damaged, or stolen. The TWIC program is ultimately intended to support all modes of transportation, however, TSA, in partnership with the Coast Guard, is focusing initial implementation in the maritime sector.

In December 2004, September 2006, and April 2007, we reported on the status of the development and testing of the TWIC program.[1] Our 2004 report 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 TWIC cards. In our September 2006 report, we identified the challenges that TSA encountered during TWIC program testing, and several problems related to contract planning and oversight. In August 2006, TSA decided that the TWIC program would be implemented in the maritime sector using two separate rules. TSA issued the first rule in January 2007 which requires worker enrollment and card issuance, and plans to issue a proposed rule on

[1]GAO, *Port Security: Better Planning Needed to Develop and Operate Maritime Worker Identification Card Program*, GAO-05-106 (Washington, D.C.: December 2004), GAO, *Transportation Security: DHS Should Address Key Challenges before Implementing the Transportation Worker Identification Credential Program*, GAO-06-982 (Washington, D.C.: September 2006), and GAO, *Transportation Security: TSA has made progress in implementing the Transportation Worker Identification Credential, but Challenges Remain*, GAO-07-681T (Washington, D.C.: April 12, 2007).



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access control technologies in 2008. Since September 2006, Congress passed the Security and Accountability for Every (SAFE) Port Act of 2006, which directed TSA, among other things, to implement the TWIC program at the 10 highest risk ports by July 1, 2007.[2] In January 2007, TSA awarded a $70 million contract to begin enrolling workers and issuing TWIC cards to workers at these 10 ports.

My testimony today focuses on: (1) the progress TSA has made since September 2006 in implementing the TWIC program and addressing GAO recommendations, and (2) some of the remaining challenges that TSA and the maritime industry must overcome to ensure the successful implementation of the program. My comments are based primarily on our September 2006 report on the TWIC program, 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. In addition, in September and October 2007, we interviewed TSA officials regarding the agency's efforts to implement the TWIC program and our prior recommendations. We also interviewed officials at port facilities in Wilmington, Delaware and Los Angeles, California, as well as Maritime Exchange of the Delaware River and Bay officials, in October 2007 to obtain their views on the TWIC program. We conducted our work in accordance with generally accepted government auditing standards.

## Summary

Since we reported on the TWIC program in September 2006, TSA has made progress in implementing the program. Although we have not yet independently assessed the effectiveness of these efforts, TSA has taken actions to address legislative requirements to implement and test the program and our recommendations related to conducting additional systems testing, strengthening contractor oversight, and improving coordination with stakeholders. Specifically, TSA has

- issued a TWIC rule in January 2007 that sets forth the requirements for enrolling maritime workers in the TWIC program and issuing cards to these workers, and awarded a $70 million dollar contract in January 2007 to begin enrolling workers;
- reported conducting performance testing of the technologies that will be used to enroll workers in the TWIC program to ensure that they work effectively before implementation;

[2]Pub. L. No. 109-347, 120 Stat. 1884, 1889 (2006).



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- begun planning a pilot program to test TWIC access control technologies, such as biometric card readers, at 5 maritime locations to address requirements of the SAFE Port Act;
- begun enrolling workers and issuing TWIC cards at the port of Wilmington, Delaware on October 16, 2007, and plans to do so at 11 additional ports by November 2007;
- added staff with program and contract management expertise to help oversee the TWIC enrollment contract, and developed additional controls to help ensure that contract requirements are met; and
- stated that they have taken actions to improve communication and coordination with maritime stakeholders, including plans for conducting public outreach and education efforts.

As TSA moves forward with TWIC, it will be important that it work with maritime industry stakeholders to address the following key challenges that can affect the programs' successful implementation.

- TSA and its enrollment contractor will need to transition from testing of the TWIC program to successful implementation of the program on a much larger scale covering 770,000 workers at about 3,200 maritime facilities and 5,300 vessels. While TSA and the enrollment contractor report conducting performance testing of the TWIC enrollment and card issuance systems, it remains to be seen how these systems will perform during full scale implementation.
- TSA and its enrollment contractor will need to educate workers on new TWIC requirements, ensure that enrollments begin in a timely manner, and effectively and efficiently process background checks, appeals, and waivers.
- TSA and industry stakeholders will need to ensure that TWIC access control technologies will work effectively in the maritime environment, be compatible with TWIC cards that will be issued, ensure that facilities and vessels can effectively and economically obtain information on workers that may post a threat, and balance security requirements while facilitating maritime commerce.

## 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. transportation systems and facilities 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



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of the nation's oceangoing 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 which led to a 10-day shutdown of West Coast port operations cost the nation's economy an estimated $1.5 billion per day.[3] 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 seaports, airports, railroad terminals, mass transit stations, and other transportation facilities. It is estimated that about 6 million workers, including longshoreman, 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. According to TSA and transportation industry stakeholders, many individuals that work in secure areas are currently not required to undergo a background check or a stringent identification process in order to access secure areas. In addition, without a standard credential that is recognized across modes of transportation and facilities, many workers must obtain multiple credentials to access each transportation facility they enter, which could result in the inconvenience and cost of obtaining duplicate credentials.

## TWIC Program History

In the aftermath of the September 11, 2001, terrorist attacks, the Aviation and Transportation Security Act (ATSA) was enacted in November 2001.[4] Among other things, ATSA required TSA to work with airport operators to strengthen access control points in secure areas and consider using biometric access control systems to verify the identity of individuals who seek to enter a secure airport area. In response to ATSA, TSA established

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

[4]Pub. L. No. 107-71, 115 Stat. 597 (2001).



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the TWIC program 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.[5] In November 2002, the Maritime Transportation Security Act of 2002 (MTSA) was enacted and required the Secretary of Homeland Security to issue a maritime worker identification card that uses biometrics, such as fingerprints, to control access to secure areas of seaports and vessels, among other things.[6] In October 2006, the SAFE Port Act was enacted and required, among other things, the issuance of regulations to begin implementing the TWIC program and issuing TWIC cards to workers at the 10 highest-risk ports by July 1, 2007, conduct a pilot program to test TWIC access control technologies in the maritime environment, issue regulations requiring TWIC card readers based on the findings of the pilot, and periodically report to Congress on the status of the program.

The responsibility for securing the nation's transportation system and facilities is shared by federal, state, and local governments, as well as the private sector. At the federal government level, TSA, the agency responsible for the security of all modes of transportation, has taken the lead in developing the TWIC program, while the Coast Guard is responsible for developing maritime security regulations and ensuring that maritime facilities and vessels are in compliance with these regulations. As a result, TSA and the Coast Guard are working together to implement TWIC in the maritime sector. Most seaports, airports, mass transit stations, and other transportation systems and facilities in the United States are owned and operated by state and local government authorities and private companies. As a result, certain components of the TWIC program, such as installing card readers, will be the responsibility of these state and local governments and private industry stakeholders.

TSA—through a private contractor—tested the TWIC program from August 2004 to June 2005 at 28 transportation facilities around the nation, including 22 port facilities, 2 airports, 1 rail facility, 1 maritime exchange, 1 truck stop, and a U.S. postal service facility. In August 2005, TSA and the testing contractor completed a report summarizing the results of the TWIC

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

[6]Pub. L. No. 107-295, 116 Stat. 2064 (2002).



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testing. TSA also hired an independent contractor to assess the performance of the TWIC testing contractor. Specifically, the independent contractor conducted its assessment from March 2005 to January 2006, and evaluated whether the testing contractor met the requirements of the testing contract. The independent contractor issued its final report on January 25, 2006.

Since its creation, the TWIC program has received about $103 million in funding for program development. (See table 1.)

**Table 1: TWIC Program Funding from Fiscal Years 2002 to 2007 (Dollars in millions)**

| Fiscal Year | Appropriated | Reprogramming | Adjustments | Total funding |
|---|---|---|---|---|
| 2002 | 0 | 0 | 0 | 0 |
| 2003 | $5.0 | 0 | $20 | $25.0 |
| 2004 | $49.7 | 0 | 0 | $49.7 |
| 2005 | $5.0 | 0 | 0 | $5.0 |
| 2006 | 0 | $15.0 | 0 | $15.0 |
| 2007 | 0 | $4.0 | $4.7 | $8.7* |
| **Total** | **$59.7** | **$19.0** | **$24.7** | **$103.4** |

Source: TSA.

*According to TSA, the agency has paid the enrollment contractor about $8 million since January 2007. The remainder of the $70 million enrollment contract will be paid in the future through user fees collected from workers that enroll in the TWIC program.

Note: According to TSA, the agency received authority from both the House and Senate Appropriations Committees to reallocate $20 million in unassigned carryover funding to the TWIC program in Fiscal Year 2008. TSA's fiscal year 2008 congressional justification includes $26.5 million in authority to collect fees from transportation workers for TWIC cards.

## Key Components of the TWIC Program

The TWIC program is designed to enhance security using several key components. These include:

- **Enrollment:** Transportation workers will be enrolled in the TWIC program at enrollment centers by providing personal information, such as a social security number 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



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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, workers' immigration status and mental capacity will be checked. Workers will have the opportunity to appeal the results of the threat assessment or request a waiver in certain limited circumstances.

- **TWIC card 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 card will be personalized for the worker, manufactured, and then sent back to the enrollment center.
- **Card issuance:** Transportation workers will be informed when their cards are ready to be picked up at enrollment centers. Once a card has been issued, workers will present their TWIC cards to security officials when they seek to enter a secure area, and in the future will enter secure areas through biometric card readers.

## TSA Has Made Progress Since September 2006 in Implementing the TWIC Program and Addressing GAO Recommendations

Since we reported on the TWIC program in September 2006, TSA has made progress in implementing the program. Although we have not yet independently assessed the effectiveness of these efforts, TSA has taken actions to address legislative requirements to implement and test the program and our recommendations regarding conducting additional systems testing to ensure that TWIC technologies work effectively, strengthening contractor oversight, and improving communication and coordination efforts with maritime stakeholders. In January 2007, TSA and the Coast Guard issued a TWIC rule that sets forth the requirements for enrolling workers and issuing TWIC cards to workers in the maritime sector, and awarded a $70 million contract for enrolling workers in the TWIC program. TSA missed the July 1, 2007, SAFE Port Act deadline to implement the TWIC program at the 10 highest risk ports, citing the need to conduct additional tests to ensure that the enrollment and card issuance systems work effectively. However, TSA recently announced that this testing is complete, and began enrolling and issuing TWIC cards to workers at the port of Wilmington, Delaware on October 16, 2007. TSA also plans to begin enrolling workers at 11 additional ports by November 2007. In addition, TSA has also begun planning a pilot program to test TWIC access control technologies in the maritime environment as required by the SAFE Port Act.



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## TSA Issued a TWIC Rule and Awarded a Contract to Begin Enrolling Workers and Issuing TWIC Cards

On January 25, 2007, TSA and the Coast Guard issued a rule that sets forth the regulatory requirements for enrolling workers and issuing TWIC cards to workers in the maritime sector. Specifically, the TWIC rule provides that workers and merchant mariners requiring unescorted access to secure areas of maritime facilities and vessels must enroll in the TWIC program, undergo a background check, and obtain a TWIC card before such access is granted. In addition, the rule requires owners and operators of maritime facilities and vessels to change their existing access control procedures to ensure that merchant mariners and any other individual seeking unescorted access to a secure area of a facility or vessel has a TWIC. Table 2 describes the specific requirements in the TWIC rule.



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**Table 2: Requirements in the TWIC Rule**

| Requirement | Description of requirement |
|---|---|
| Transportation workers | Individuals who require unescorted access to secure areas of maritime facilities and vessels, and all merchant mariners, must obtain a TWIC card before such access is granted. |
| Fees | All workers applying for a TWIC card 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 card will be $60. |
| Access to secure areas of maritime facilities and vessels | By no later than September 25, 2008, facilities and vessels currently regulated by 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 card. |
| Newly hired workers and escorting procedures | Newly hired workers, who have applied for, but have not received their TWIC card, 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 card. Individuals that need to enter a secure area but do not have a TWIC card must be escorted at all times by individuals with a TWIC card. |
| Background checks | All workers applying for a TWIC card 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 receive a TWIC card, workers must not have been incarcerated or convicted of certain crimes within prescribed time periods, must have legal presence or authorization to work in the United States, must have no known connection to terrorist activity, and cannot have been found 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, 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 card by TSA, or applicants who are disqualified based on connections to terrorism, may seek review by a Coast Guard administrative law judge. |
| Access control systems | The Coast Guard will conduct unannounced checks to confirm the identity of TWIC card holders using hand-held biometric card readers to check the biometric on the TWIC card against the person presenting the card. In addition, security personnel will conduct visual inspections of the TWIC cards 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 TWIC rule does not include requirements for owners and operators of maritime facilities and vessels to purchase and install TWIC access control technologies, such as biometric TWIC card readers. As a result, the TWIC card will initially serve as a visual identity badge until TSA requires that access control technologies be installed to verify the credentials when a worker enters a secure area. According to TSA, during the program's initial implementation, workers will present their TWIC cards to authorized security personnel, who will compare the cardholder to his or



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her photo and inspect the card for signs of tampering. In addition, the Coast Guard will verify TWIC cards when conducting vessel and facility inspections and during spot checks using hand-held biometric card readers to ensure that credentials are valid. According to TSA, the requirements for TWIC access control technologies will be set forth in a second proposed rule to be issued during 2008, at which time TSA will solicit public comments and hold public meetings.

Following the issuance of the TWIC rule in January 2007, TSA awarded a $70 million contract to a private company to enroll the estimated 770,000 workers required to obtain a TWIC card. According to TSA officials, the contract costs include $14 million for the operations and maintenance of the TWIC identity management system that contains information on workers enrolled in the TWIC program, $53 million for the cost of enrolling workers, and $3 million designated to award the enrollment contractor in the event of excellent performance.

## TSA Attributes Missed Deadlines to the Need for Additional Testing and Has Begun Planning a Pilot Program to Test TWIC Access Control Technologies

TSA did not meet the July 1, 2007 deadline in the SAFE Port Act to implement the TWIC program at the 10 highest risk ports. According to TSA officials, the deadline was not met because the agency and the TWIC enrollment contractor needed to conduct additional tests of the software and equipment that will be used to enroll and issue cards to workers to ensure that they work effectively before implementation. In our September 2006 report, we recommended that TSA conduct testing to ensure that the TWIC program will be capable of efficiently enrolling and issuing TWIC cards to large number of workers before proceeding with implementation. TSA officials stated that such testing was needed to ensure that these systems will work effectively when implemented and will be able to handle the capacity of enrolling as many as 5,000 workers per day, conducting background checks on these workers in a timely manner, and efficiently producing TWIC cards for each worker. In October 2007, TSA announced that this testing was complete and began enrolling and issuing TWIC cards to workers at the Port of Wilmington, Delaware on October 16, 2007. TSA also plans to begin implementing TWIC at 11 additional ports by November 2007. In addition, TSA and Port of Wilmington officials stated that the enrollment contractor has already successfully enrolled and issued TWIC cards to those individuals that will be responsible for enrolling port workers as well as certain federal employees, such as TSA and Coast Guard officials.

TSA has also begun planning a pilot to test TWIC access control technologies, such as biometric card readers, in the maritime environment



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as required by the SAFE Port Act. According to TSA, the agency is partnering with the Port Authorities of Los Angeles, Long Beach, Brownsville, and New York and New Jersey, in addition to Watermark Cruises in Annapolis, Maryland, to test the TWIC access control technologies in the maritime environment and is still seeking additional participants. TSA's objective is to include pilot test participants that are representative of a variety of facilities and vessels in different geographic locations and environmental conditions. TSA officials stated that pilot participants will be responsible for paying for the costs of the pilot and will likely use federal port security grant funds for this purpose. According to TSA officials, the agency plans to begin the pilot in conjunction with the issuance of TWIC cards so the access control technologies can be tested with the cards that are issued to workers. In addition, in September 2007, TSA published the TWIC card reader specifications, which outline the requirements for biometric TWIC card readers that will be used by maritime locations participating in pilot testing. These specifications will enable these maritime locations to begin purchasing and installing card readers in preparation for testing. TSA officials stated that the results of the pilot program will help the agency issue future regulations that will require the installation of access control systems necessary to read the TWIC cards.

## TSA Has Taken Steps to Strengthen Contract Planning and Oversight and Better Coordinate with Maritime Industry Stakeholders

Since we issued our report in September 2006, TSA has taken several steps designed to strengthen contract planning and oversight, although we have not yet independently assessed the effectiveness of these efforts. We previously reported in September 2006 that TSA experienced problems in planning for and overseeing the contract to test the TWIC program, which contributed to a doubling of TWIC testing contract costs and a failure to test all key components of the TWIC program. We recommended that TSA strengthen contract planning and oversight before awarding a contract to implement the TWIC program. TSA acknowledged these problems and has taken steps to address our recommendations. Specifically, TSA has taken the following steps designed to strengthen contract planning and oversight:

- Added staff with expertise in technology, acquisitions, and contract and program management to the TWIC program office.
- Established a TWIC program control office to help oversee contract deliverables and performance.
- Established monthly performance management reviews and periodic site visits to TWIC enrollment centers to verify performance data reported by the contractor.



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- Required the enrollment contactor to survey customer satisfaction as part of contract performance.

In addition to these steps, TSA established a TWIC quality assurance surveillance plan that is designed to allow TSA to track the enrollment contractor's performance in comparison to acceptable quality levels. This plan is designed to provide financial incentives for exceeding these quality levels and disincentives, or penalties, if they are not met. According to the plan, the contractor's performance will be measured against established milestones and performance metrics that the contractor must meet for customer satisfaction, enrollment time, number of failures to enroll, and TWIC help desk response times, among others. TSA plans to monitor the contractor's performance through monthly performance reviews and by verifying information on performance metrics provided by the contractor. In addition, TSA officials stated that they have hired an independent contractor to help provide oversight of the enrollment contract and ensure that the enrollment contractor fulfills contract requirements and achieves established performance metrics.

In addition to contract planning and oversight, TSA has also taken steps to address our previous recommendations regarding improving communication and coordination with maritime stakeholders. We previously reported that stakeholders at all 15 TWIC testing locations that we visited cited poor communication and coordination by TSA during testing of the TWIC program. For example, according to stakeholders, TSA never provided the final results or report on TWIC testing to stakeholders that participated in the test. Some stakeholders also stated that communication from TSA would stop for months at a time during testing. We recommended that TSA closely coordinate with maritime industry stakeholders and establish a communication and coordination plan to capture and address the concerns of stakeholders during implementation. TSA acknowledged that the agency could have better communicated with stakeholders at TWIC testing locations and has reported taking several steps to strengthen communication and coordination since September 2006. For example, TSA officials told us that the agency developed a TWIC communication strategy and plan that describes how the agency will communicate with the owners and operators of maritime facilities and vessels, TWIC applicants, unions, industry associations, Coast Guard Captains of the Port, and other interested parties. In addition, TSA required that the enrollment contractor establish a plan for communicating with stakeholders.



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TSA, the Coast Guard, and the enrollment contractor have taken additional steps designed to ensure needed coordination and communication with the maritime industry. These steps include

- posting frequently asked questions on the TSA and Coast Guard Websites;
- participating in maritime stakeholder conferences and briefings.
- working with Coast Guard Captains of the Ports and the National Maritime Security Advisory Committee to communicate with local stakeholders;
- conducting outreach with maritime facility operators and port authorities, including informational bulletins and fliers; and
- creating a TWIC stakeholder communication committee chaired by TSA, the Coast Guard, and enrollment contractor, with members from 15 maritime industry stakeholder groups. According to TSA, this committee will meet twice per month during the TWIC implementation.

Stakeholders from the Ports of Wilmington, Delaware; Los Angeles, California; and the Maritime Exchange of the Delaware River and Bay with whom we spoke in October 2007 stated that TSA and its enrollment contractor have placed a greater emphasis on communicating and coordinating with stakeholders and on correcting past problems. For example, an official from the Port of Wilmington stated that, thus far, communication, coordination, and outreach by TSA and its enrollment contractor have been excellent, and far better than during TWIC testing. In addition, TSA reported that the TWIC enrollment contactor has hired a separate subcontractor to conduct a public outreach campaign to inform and educate the maritime industry and individuals that will be required to obtain a TWIC card about the program. Port of Wilmington officials stated that the subcontractor is developing a list of trucking companies that deliver to the port so that information on the TWIC enrollment requirements can be mailed to truck drivers.



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## TSA and Industry Stakeholders Will Need to Address Challenges to Ensure the TWIC Program Is Implemented Successfully

As we reported in September 2006 and April 2007, TSA and maritime industry stakeholders will need to address several challenges to help ensure that the TWIC program will be implemented successfully. As we reported in September 2006, TSA and its enrollment contractor must transition from testing of the TWIC program to successful implementation of the program on a much larger scale covering 770,000 workers at about 3,200 maritime facilities and 5,300 vessels. While TSA and the enrollment contractor report conducting performance testing of the TWIC enrollment and card issuance systems, it remains to be seen how these systems will perform as TSA begins enrolling large numbers of workers at ports nationwide. In addition, maritime stakeholders with whom we spoke in September and October 2007 identified the need for TSA and its enrollment contractor to educate workers on the new TWIC requirements, ensure that the contractor conducts enrollments in a timely manner, and process numerous background checks, appeals, and waiver applications. Furthermore, TSA and industry stakeholders will need to ensure that TWIC access control technologies work effectively in the maritime environment, will be compatible with TWIC cards that will be issued soon, and balance security requirements while facilitating maritime commerce. As a result, it will be important that TSA's TWIC access control technology pilot comprehensively test the TWIC program in an operational environment to ensure that it works effectively with the least negative impact on maritime commerce.

### TSA and Its Contractor Will Have to Enroll and Issue TWIC Cards to Large Populations of Workers at Numerous Port Facilities and Vessels

In September 2006, we reported that TSA faced the challenge of enrolling and issuing TWIC cards to a significantly larger population of workers in a timely manner than was done during testing of the TWIC program. In testing the TWIC program, TSA enrolled and issued TWIC cards to only about 1,700 workers at 19 facilities, well short of its goal of 75,000. According to TSA and the testing contractor, the lack of volunteers to enroll in the TWIC program testing and technical difficulties in enrolling workers, such as difficulty in obtaining workers' fingerprints to conduct background checks, led to fewer enrollments than expected. TSA reports that it used the testing experience to make improvements to the enrollment and card issuance process and has taken steps to address the challenges that we previously identified. For example, TSA officials stated that the agency will use a faster and easier method of collecting fingerprints than was used during testing, and will enroll workers individually during implementation, as opposed to enrolling in large groups as was done during testing. In addition, the TWIC enrollment contract Statement of Work required the contractor to develop an enrollment test and evaluation program to ensure that enrollment systems



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function as required under the contract. As previously stated, TSA officials reported that the enrollment contractor and the agency have conducted performance testing of the TWIC enrollment systems to ensure that they work effectively and are able to handle the full capacity of enrollments during implementation. In September 2006, we also reported that TSA will need to ensure that workers are not providing false information and counterfeit identification documents when they enroll in the TWIC program. According to TSA, the TWIC enrollment process to be used during implementation will use document scanning and verification software to help determine if identification documents are fraudulent, and personnel responsible for enrolling workers will be trained to identify fraudulent documents.

In March and April 2007, and again in October 2007, we spoke with some maritime stakeholders that participated in TWIC testing and that will be involved in the initial implementation of the program to discuss their views on the enrollment and issuance of TWIC cards to workers. These stakeholders expressed concerns related to the following issues:

**Educating workers:** TSA and its enrollment contractor will need to identify all workers that are required to obtain a TWIC card, educate them about how to enroll and receive a TWIC card, and ensure that they enroll and receive a TWIC card by the deadlines to be established by TSA and the Coast Guard. For example, while longshoremen who work at a port every day may be aware of the new TWIC requirements, truck divers that deliver to the port may be located in different states or countries, and may not be aware of the requirements.

**Timely enrollments:** Maritime stakeholders expressed concern about the ability of the enrollment contactor to enroll workers at his port in a timely manner. For example, at this port, the enrollment contactor has not yet begun to lease space to install enrollment centers—which at this port could be a difficult and time-consuming task due to the shortage of space. Stakeholders with whom we spoke also suggested that until TSA establishes a deadline for when TWIC cards will be required at ports, workers will likely procrastinate in enrolling, which could make it difficult for the contractor to enroll large populations of workers in a timely manner.

**Background checks:** Some maritime organizations are concerned that many of their workers will be disqualified from receiving a TWIC card by the background check. These stakeholders emphasized the importance of TSA establishing a process to ensure timely appeals and waivers processes



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for the potentially large population of workers that do not pass the check. According to TSA, the agency has already established processes for conducting background checks, appeals, and waivers for other background checks of transportation workers. In addition, TSA officials stated that the agency has established agreements with the Coast Guard to use their administrative law judges for appeal and waiver cases, and plans to use these processes for the TWIC background check.

## TSA and Industry Stakeholders Must Ensure That TWIC Access Control Technologies Work Effectively and Balance Security with the Flow of Maritime Commerce

In our September 2006 report, 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 TWIC testing used biometric card readers that will be required to read the TWIC cards in the future. As a result, TSA obtained limited information on the operational effectiveness of biometric card readers, 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. Also, 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, obtaining information from TSA on workers who may pose a threat to security, how biometric card readers would be implemented and used on vessels, and how these vessels would obtain information on workers that may post a threat. For example, in October 2007, we spoke with maritime industry officials from the Port of Wilmington and the Maritime Exchange of the Delaware River and Bay regarding the process for obtaining information from TSA on workers that may pose a threat to security. TSA plans to provide a secure Web site, whereby port officials can log in and obtain the most recent list of workers enrolled in the TWIC program that have been subsequently identified as a threat to security. Maritime industry officials stated that it was not clear how often they will have to access this Web site and whether the list provided by TSA could be efficiently compared to workers with access to secure areas of the port facility or vessel to ensure that none of these workers are granted access to secure areas. Instead, port officials will have to manually compare the list of workers to those at the port or provide the list to security guards to check each worker as they enter secure areas of the port facility or vessel—a labor intensive and potentially costly process. Maritime officials stated that TSA should clarify these requirements and develop a process to allow port facilities and vessels to regularly update their access control



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systems, in an automated fashion, with lists of workers that may pose a threat in the second rule pertaining to TWIC access control technologies.

Because of comments regarding TWIC access control technologies that TSA received from maritime industry stakeholders on the TWIC proposed rule, TSA decided to exclude all access control requirements from the TWIC rule issued in January 2007. Instead, TSA plans to issue a second proposed rule pertaining to access control requirements some time during 2008, which should allow more time for maritime stakeholders to comment on the technology requirements and TSA to address these comments.

In September 2006, we reported 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. 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. For example, if workers or truck drivers have problems with their fingerprint verifications on biometric card readers, they could create long queues delaying other workers or trucks waiting in line to enter secure areas. Such delays could be very costly in terms of time and money to maritime facilities. Some stakeholders we spoke to also expressed concern with applying TWIC access control requirements to small facilities and vessels. For example, smaller vessels could have crews of less than 10 persons, and checking TWIC cards each time a person enters a secure area may not be necessary. TSA acknowledged the potential impact that the TWIC program could have on the flow of commerce, and stated that it plans to obtain additional public comments on this issue from industry stakeholders in the second rulemaking on access control technologies.

In our September 2006 report, we 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. As required by the SAFE Port act, TSA plans to conduct a pilot program to test TWIC access control technologies in the maritime environment. According to TSA, the pilot will test the performance of biometric card readers at various maritime facilities and on vessels, as well as the impact that these access control systems have on facilities and vessel business operations. TSA plans to use the results of this pilot to



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develop the requirements and procedures for implementing and using TWIC access control technologies in the second rulemaking. 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 two years after the initiation of the pilot.

## Concluding Observations

Preventing unauthorized persons from entering secure areas of the nation's ports and other transportation facilities is a key component of securing the homeland. The TWIC program was initiated in December 2001 to mitigate the threat of terrorists accessing secure areas. Since we reported on this program in September 2006, TSA has made progress towards implementing the program, including issuing a TWIC rule, taking steps to implement requirements of the SAFE Port Act, awarding a contract to enroll workers in the program, and beginning to enroll workers in the TWIC program. TSA has also taken actions to address legislative requirements to implement and test the program and our previous recommendations to improve the TWIC program regarding conducting additional testing, strengthening contractor oversight, and improving communication and coordination with maritime stakeholders. While the additional testing that TSA reports conducting and the actions it has taken should help address the problems that we have previously identified, the effectiveness of these efforts will not be clear until the program further matures. In addition, TSA and its contractor must enroll about 770,000 persons at about 3,200 facilities in the TWIC program. As a result, it is important that TSA and the enrollment contractor effectively communicate and coordinate to help ensure that all individuals and organizations affected by the TWIC program are aware of their responsibilities. Finally, it will be critical that TSA ensures that the TWIC access control technology pilot fully tests the TWIC program in an operational maritime environment and the results be used to help ensure a successful implementation of these technologies in the future.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions that you or other members of the committee may have at this time.



Chairman THOMPSON. Thank you very much. I would like to thank all the witnesses for their testimony.

I will remind each member that he or she will have 5 minutes to question the panel.

I now recognize myself for questions.

Mr. Hawley, we have two members from Florida on this committee who have raised, at different points, the issue of access cards and whether or not a policy by the department preempting access cards by states will, in effect, happen.

Are you looking at it? Do you have a position? Can you share the department's position at this point?



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Mr. HAWLEY. Yes, sir. On the issue of federal security requirements, that is what the TWIC card is. It says this individual is—we establish who the individual is by the biometric. We establish that individual is not a security risk for operating in sensitive areas of ports.

That is the federal security requirement and that is sufficient for those purposes.

Other entities, including states, may have other purposes for issuing credentials and the TWIC card does not get into that. So I actually don't think it is a preemption issue. It just is that our TWIC card is a limited purpose card for the purpose of security.

Chairman THOMPSON. But you do understand that, in most instances, that card would also give you access to the facility.

Mr. HAWLEY. Clearly, there are cases, particularly in Florida, where there are other cards that they use for access. One of the opportunities in TWIC is that when the access control portion comes in after the next rulemaking, that that will then unify them together and then they will also be able to be granted access for that purpose.

And specifically with Florida, we are working very closely with them. They took a leadership position a couple of years ago, stepping out on security in their ports and issued identification for that and we want to honor that work and work as closely as we can with them to make the two programs work in concert.

Chairman THOMPSON. But you do understand that a trucker, for instance, might have to have five or six different access cards under this more or less open access rule.

Mr. HAWLEY. Well, not from a security point of view. The point is that for security purposes of granting access, the Coast Guard designates where the secure access part is. We do the background check, issue the card, and then that is it for that trucker or anybody anywhere in the country.

Since they are private entities, the private entities can require perhaps differing things that we don't get into, but for a security purpose, this card does all for all employees at all facilities in the U.S.

Chairman THOMPSON. I will come back to it.

Are you aware that a laptop was stolen from TSA on or about October 18?

Mr. HAWLEY. There was a laptop or laptops(I am not sure whether it was a laptop or a desktop, but that was stolen from a contractor and I believe that that is in the process of notifications being made.

Chairman THOMPSON. I guess my point is that that contractor's job was to credential HAZMAT individuals. Am I correct?

Mr. HAWLEY. Yes, sir.

Chairman THOMPSON. And I guess I am going toward vulnerability. How have you set up a system under TWIC so that these kinds of situations won't happen where laptops or other devices will be stolen and those credentials compromised?

Mr. HAWLEY. Yes, sir. I think that is a critical question and the example you cited, the hard drive on the stolen computer was encrypted, as required by TSA.

From the learnings of previous incidents, we have required all contractors with access to personal data, that those drives be encrypted.

So while there was a criminal act of breaking and entering, stealing the computer, the computer hard drive, the information on it will be useless to them because of the encryption.

And the TWIC program has the most advanced security. It is NSA standard security of encryption across the system. So I think that is one of the things that took so long with TWIC was to get the security requirements very tight so that even in the event of criminal activity, it can't be compromised.

Chairman THOMPSON. You also testified that if, in fact, the number of individuals needing credentials would double or triple, that would not slow down the credentialing process.

Mr. HAWLEY. Well, I can't say that it won't slow it down, but we will meter the rolling out to meet the demand. So we will have the capacity in place.

When we say we are going to show up at your port, we will show up with the required resources to do that. If it is vastly more people than anybody predicted, it could have the effect of lengthening the enrollment period.

But New York–New Jersey, for instance, that enrollment period we are keeping open for 9 months. So I expect that it is just an issue of putting in more enrollment centers and the contractor adding additional enrollment stations to meet the demand.

So the short answer is I don't think it is a capacity problem at all.

Chairman THOMPSON. Just for the record, we asked Ms. Fanguy yesterday to provide us information on who the contractor that the department used to provide these projections that have come in significantly below expectation, and I will have to renew that of you, too.

Mr. HAWLEY. Yes, sir. I can provide you the answer to that and should you wish to do it during the hearing or afterwards, we have that information.

Chairman THOMPSON. Thank you.

I now recognize the ranking member of the full committee, the gentleman from New York, Mr. King, for questions.

Mr. KING. Thank you, Mr. Chairman.

Admiral Salerno, Chairman Thompson, in his opening statement, made reference to the fact that organized crime is now attempting to compromise the TWIC program.

On the one hand, to me, it is a tribute, in a way, that organized crime is that concerned that they want to compromise the system. They realize this is a threat to them.

On the other hand, it would be fatal if they were able to compromise the system, if they were able to produce counterfeits or duplicates.

So is let me ask you a two-part question. One, is there any evidence yet or any instance yet where the program has been compromised and, secondly, how confident are you that this program will be able to resist any attempts by organized crime or other criminal elements to compromise the program?

Admiral SALERNO. Sir, there is no evidence that organized crime has compromised the TWIC program. As far as our ability to prevent that, we would and have anticipated that there would be attempts by criminal elements of society to counterfeit this credential and for that reason, the card is equipped with state-of-the-art tamper-resistant features, holograms, special inks that change color when the card is silted and so forth.

I believe you are referring to a notice sent out by one of our units on the west coast, reporting some information that organized crime may seek to tamper with or counterfeit these cards.

The idea was to give a heads-up to our facilities, our port partners, to be on alert for that and make sure that they check those tamper-resistant features of the cards when they are presented for entry into a facility.

We are very confident that these cards are highly resistant to any type of tampering or counterfeiting and all it will take in the interim is alert security guards to make sure that they do due diligence when they grant access to people who are holding these cards.

Mr. KING. Mr. Hawley, how confident are you?

Mr. HAWLEY. Highly confident. This is the best that we have access to in the U.S. government and I am very confident it will resist attempts by organized crime or anyone else to successfully counterfeit the documents.

Mr. KING. Thank you.

Ms. Berrick, anytime the GAO is here, we have always tried to make parts of their testimony to use to prove a particular point. But I want to thank you for(I think putting this issue in some perspective, even, I guess, the title of your remarks, that TSA has made progress, but challenges remain.

And in your concluding observations of the prepared testimony, you say that since you reported in September of 2006, TSA has made progress toward implementing the program and you list a whole series, including a TWIC rule, implementing requirements of the SAFE Port Act, awarding a contractor to enroll workers in the program, beginning to enroll workers in the program, and also taking actions to implement and test the program, and several other points.

Let me ask you, how do you rate that type of progress? How cooperative do you see the department being and what is your best estimate as to how successful this is going to be and what the timeframe is going to be?

Ms. BERRICK. Sure, sir. In terms of the department's responsiveness to our work, I am pleased with that. We made about five recommendations in our prior work and TSA has taken action to implement those and we are following-up and working with them to assess those actions. So we are pleased with that.

In terms of our forecast on the success of the program, I guess I would characterize it as cautiously optimistic. Again, TSA has taken some good steps in terms of contractor oversight, doing more system testing, reaching out to stakeholders, as well as the Coast Guard.

However, key aspects of the program still haven't yet been fully tested or implemented, the big one being the biometric access card

reader, which will not be implemented probably for another 2 years or longer.

Also, just the need to process background checks quickly, process the waivers, process the appeals can be a challenge given the number of workers.

So I would say cautiously optimistic, good steps so far. We are pleased with their responsiveness to our recommendations, but just that key challenges are still out there, given the stage of this program and until the program further matures, it will be hard to determine whether or not it will be successful.

Mr. KING. One final question. What is your impression of the outreach conducted by TSA and Lockheed Martin to the trucking industry as to what the requirements are and what the trucking industry has to do to comply with those requirements?

Ms. BERRICK. We have actually done some follow-up work where we have contacted some of the ports. We didn't contact the trucking industry specifically recently on that follow-up work.

But during the follow-up work, the ports have been favorable about TSA's and the Coast Guard's outreach with them. We talked to about five additional ports since our work was completed.

When we had done our initial work, we visited 15 port facilities, talked to trucking operators and a lot of other stakeholders, and, universally, they were not pleased with the outreach at that time. This was about a year ago.

But since that time, we have talked about some of the steps TSA and the Coast Guard have taken to strengthen outreach. We have gone back to some of these ports and they have seen an improvement.

But in terms of the trucking industry, we haven't talked to them recently to find out their level of satisfaction.

Mr. KING. Thank you very much.

Chairman THOMPSON. Thank you very much.

The chair now recognizes other members for questions they may wish to ask the witnesses.

In accordance with our committee rules, I will recognize members who were present at the start of the hearing based on seniority on the committee, alternating between majority and minority. Those members arriving later will be recognized in the order of their arrival.

The chair now recognizes for 5 minutes the gentlewoman from California, Ms. Sanchez.

Ms. SANCHEZ. Thank you, Mr. Chairman. And I want to thank all of you for being before us and, in particular, to the administrator, who I think has listened to our recommendations, has been talking to us, and we are all trying to get this done.

Mr. Hawley, do you think that waiting for 2 years to have the readers is going to compromise the card in the sense of—I mean, I had people yesterday come and testify that said when a trucker comes through, the guard at the gate sits there and the guy flashes the card and he doesn't really even look at it and moves on.

Quite frankly, I have seen this at TSA to me, you know. Sometimes the guys really look at what the card is and sometimes the guys never look at the card. They just flash it by them.

So if we don't have the reader, couldn't someone counterfeit a card and we would be compromised?

Mr. HAWLEY. Well, as to the airports, I can't resist and just say that there is a program that the Congress has supported for TSA to take over the document checking at the airports. Those are now TSA——

Ms. SANCHEZ. Yes, I had that done this week.

Mr. HAWLEY. So that is all happening. So on the issue you raise, I think it is an interesting issue and, frankly, when we came out with the proposed rulemaking, we had paired the card reader with the card issuance and it was a result from the stakeholder feedback, which was loud and clear, that we separated the two and then the Congress, in the Safe Port Act, came back and made that part of the law.

So I think it is an interesting issue. I had been personally on the other side of it a year or so ago, but I think when you consider the total risk to the program and rolling out the cards that are now ready to go out and the advanced technology that is required to do the interoperable card reading, that it is, in fact, prudent to not take the technology risk—I mean, not wait to issue the cards for 2 years until the technology risk is done.

So I think that, as Admiral Salerno said, that the Coast Guard enforcement of the NHTSA standards in these ports is an excellent security measure. These are Coast Guard officers going around the ports with biometric readers and that is for people who—there may be people who get in on a flash pass, but they are subject to being arrested by Coast Guard officers if their card——

Mr. DICKS. Would you yield just for 30 seconds?

Ms. SANCHEZ. I will.

Mr. DICKS. You know what? What bothers me is all of our defense bases have gotten into ID checkers. We have it at Andrews Air Force Base, and they work.

Why aren't we using those in the interim so we have some capability?

Mr. HAWLEY. Because this is a vastly different card than that kind of access reader. The TWIC card has more processing power on it than—actually, twice as much processing power as that which the Apollo program used to put a person on the moon and it fits in your shirt pocket.

So that the technology on this thing is extremely advanced, because it has to allow any truck driver anywhere in the United States at any port, any NHTSA facility, to get in.

So that is massive in terms of the flexibility required and the scalability. It is very different from a federal government Trident submarine base card and that is the complexity of the program.

Ms. SANCHEZ. I have two questions I am going to try to get in. The first one is this whole issue of my longshoremen working up and down the state of California, in different ports, coming on at different times, and maybe one of them—you know, they move around quite a bit depending on where the work is.

So the first question I will have is what are you going to do about that. And the second issue has to do directly with the L.A. and Long Beach port, where they have decided to fund—the de-

partment has decided to find the reader pilot program for them through the port security grant.

And the port recently sent a letter to the secretary, to Chertoff, asking him to waive the 25 percent cost-share requirement for the pilot, since all the TWIC pilots were fully funded by the government.

So my question, the second question is, do you know where the secretary is on waiving the 25 percent cost-share for the TWIC reader pilot?

Mr. HAWLEY. The short version on the second part of the question, then Admiral Salerno can do the first part.

We have about $22 million in the port security grants. We are putting that out there to try to provide support to the ports that are doing the implementation. That is enough for about 25 percent.

I should also note that we don't have separate money within TSA to do the port pilots either and we are working within our resources to try to make it happen.

So it is a typical debate about money. They are right, we want to support them as much as we can, but how do you spread the $22 million and it basically is a 25 percent match. That is our view of what the security piece is.

They have got to do access control anyway. So that is the issue and it has not yet been resolved.

Ms. SANCHEZ. Admiral, back to what do you do about my longshoremen? Let us say Long Beach is already credentialed and has everything but—he is coming from, I don't know, Sea–Pac and it hasn't been done yet. Therefore, he comes to the port for 7 days and he doesn't have a card.

Admiral SALERNO. Ma'am, the outreach to that community is to suggest that they obtain the TWIC card earlier than would be required in their home base. Because they are mobile and they will be going to facilities that will have these access controls in place, if they know that that is——

Ms. SANCHEZ. But if you are not going to have something at Sea-Pac for them to be able to do it.

Admiral SALERNO. They would need to enroll and I believe there would be a facility up there for them to do that. I can verify on the locations for you on the west coast.

Ms. SANCHEZ. You really haven't given us an—we haven't gotten a real good indication really of when the start dates are at the different ports, but I can just envision, I mean, that I will have workers who will be—and it is on a weekly basis.

I mean, sometimes they show up and there is no work on Monday and there is work down in Long Beach. So they drive down from Oakland down to Long Beach. So they end up at Long Beach and they don't have the TWIC card.

Mr. HAWLEY. The way the process works is the captain of the port issues a statement saying you have 90 days to comply and they won't do that in a port until they have had significant time to enroll anybody who reasonably is likely to have been there.

So there is the deployment of the enrollment of the cards, which, in Seattle, I just looked up, is also starting this year. But the real teeth to it won't come until a captain of the port issues the require-

ment and says 90 days from now, you have got to have a card to get in here.

So that is exactly what they will be taking into account is the operational feasibility and how many people at a given port have had a chance to get their TWIC card and if they are not able to, either through pre-enrollment or showing up earlier, they will be able to at these large ports, particularly L.A. and Long Beach, for months and months and months going into 2008.

Ms. SANCHEZ. I see that my time has run out. I am sorry, Mr. Chairman, but I want to follow up at some point with that.

Chairman THOMPSON. Okay, thank you very much.

We will now recognize the gentleman from Pennsylvania, Mr. Dent.

Mr. DENT. Thank you, Mr. Chairman.

Mr. Hawley, one of the requirements of the SAFE Port Act that we passed last year was to conduct a threat assessment of all truck drivers entering the port.

We understand that TSA plans on meeting this requirement by doing a check against a terror watchlist and the immigration status database of all commercial driver's license holders.

What is the status of that requirement?

Mr. HAWLEY. We are working out MOUs with the individual states who are the holders of the CDLs and there are different formatting issues and different legal and privacy issues for each of those states.

So we are working that on a parallel track with TWIC and the TWIC card has already got the operational issues worked out, the privacy issues worked out. So that when we go port by port, it will, by definition, pick up the truckers who service those ports.

When we get the MOUs done with a substantial number of states and are able to run the CDLs independently, then we will have a much broader check. So to meet the requirements in the Safe Port Act, I suspect the way this is going to roll out is in accordance with the TWIC rollout.

However, we are cognizant of the larger population of CDLs and wanting to run that as soon as we practically can, given the data.

Mr. DENT. As a follow up, I know my friend, Governor Castle, is here, but what issues have there been in the first 2 weeks of enrollment at the Port of Wilmington and how have you at TSA responded to those challenges?

Mr. HAWLEY. Well, I think the cooperation of the port and local community has been outstanding. All the parties, including the unions, it has so far been successful.

I think there are a lot of miniature issues that show up in terms of the card issuance and technical things that we are working through, but as far as I know, there are not significant issues that have come up to this point.

Mr. DENT. We have been hearing that there have been some difficulties with fingerprints, activating the TWIC card in Wilmington. Is that a minor thing that can be resolved?

Mr. HAWLEY. Yes. A lot of times, it has to do with educating the individuals as to what is required in terms of getting the prints down. My understanding, in some particular cases, that a quick refresher in how to do it have resolved the questions.

There is no technological problem with it. It is the standard user issue.

Mr. DENT. And, finally, as you know, the TWIC card provides an individual with unescorted access to secure areas of the facility. However, an individual adjudicated by TSA to be a threat at the point where a TWIC card is denied, but that person could be escorted by a TWIC'd individual into a secure area.

To what extent would an escort be liable for the non–TWIC'd individual who is entering that secured area?

Mr. HAWLEY. The short is I don't know on the legal liability. So we will check on the answer to that.

I should point out, though, that the FBI has a fairly robust investigatory process. So anybody who is an active terrorist that is known to the U.S. government is already well in the FBI process.

So as soon as one is identified, it would be resolved principally by the FBI.

Mr. DENT. Thank you. I yield back the balance of my time.

Chairman THOMPSON. Thank you very much.

We will now recognize the gentleman from Oregon for 5 minutes, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. And thank Ms. Harman for letting me precede her. I have to go to a markup.

A very quick question regarding the cost, Mr. Hawley. I don't quite understand and they aren't exactly congruent, so it is hard for me to tell, but generally the cost of issuing a background—doing background checks and a card are background checks $27 and a card can be zero to $50 for airport workers, and here we are up to $132.50.

And I guess I am just curious what accounts for the discrepancy, because we have the $43.25 for information collection and credential issuance at Lockheed Martin and then we have the $72 for a complete security threat assessment and card production.

What is different here?

Mr. HAWLEY. It is the biometric and the security measures that are on top of it. The TWIC card is state-of-the-art with——

Mr. DEFAZIO. Right. So we are basically recouping the cost of the physical card and-or taking the photograph and getting the other biometrics into the card and all those sorts of things.

Mr. HAWLEY. Yes, and the contractor cost for doing it.

Mr. DEFAZIO. Right. So the difference might—again, I just would point to the fact that it seems a bit high and I am not quite certain, since the $72.50 then would account for that, but the credential—information collection and credentialing issuance is about 16 bucks more by Lockheed Martin than it is for the airports.

I don't know. I guess that is profit.

Mr. HAWLEY. Well, it is the technology. It is all the sophisticated protection that Admiral Salerno mentioned, plus the technology embedded on the chip.

Mr. DEFAZIO. Okay. I am still not quite certain. But with that, I would yield the balance of my time to Ms. Harman.

But I do think you have managed yourself well and answered a number of questions here today. Thank you.

Ms. HARMAN. Mr. Chairman, what I would prefer is just to ask questions next when you come back to our side.

Chairman THOMPSON. Thank you very much.

We will now recognize the gentleman from Delaware, Mr. Castle.

Mr. CASTLE. Thank you very much, Mr. Chairman. Thank you for the opportunity of being here. I appreciate that and I appreciate the testimony of the witnesses.

We are very concerned at how this is working out at Wilmington. We are the largest banana importer and obviously have a lot of people there with a lot of concerns.

But one of the questions I would like to raise is the card readers, which—did you testify it will not start until next summer? Is that correct?

[Mr. Castle statement follows:]

PREPARED STATEMENT OF THE HONORABLE MICHAEL N. CASTLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF DELAWARE

Thank you chairman Thompson and Ranking Member King for allowing me to join your committee today for this very important hearing on a critical security issue. I would also like to thank Administrator Hawley and the rest of today's panel of distinguished witnesses for appearing before us.

As all of you know, in July of 2004, the 9/11 Commission issued an extensive report detailing the challenges facing our government in the wake of the attacks in New York and Washington, D.C. The 9/11 report contains critical recommendations, and port security has emerged as a significant part of this debate. While the report underscores the importance of securing our nation's airports, the Commission also noted that the increased security efforts around air travel have led to concerns that terrorists may turn their attention to "softer" targets, such as maritime and surface transportation. In fact, the 9/11 Commission identified several chilling scenarios, in which terrorists could exploit holes in our commercial shipping system to smuggle nuclear, chemical, or biological weapons into the country.

On the Delaware River, the Port of Wilmington is among the busiest terminals, handling hundreds of vessels and millions of tons of cargo annually. Wilmington is the world's largest fruit port and with overnight access to one third of all U.S. and Canadian consumers, it is well established a critical source of commerce in the northeast.

Once these ships reach our ports, it is critical that we have effective procedures in place for screening personnel and ensuring the integrity of critical infrastructure. The Transportation Worker Identification Credential program is one such initiative, which will use cutting edge biometric technology to ensure security officials can protect against unauthorized use of our nation's seaports. As a former member of the House Select Committee on Intelligence, I am a firm believer in the potential of TWIC and other biometric technologies to improve security and protect Americans.

In 2002, the Port of Wilmington was one of the locations selected to participate in the TWIC pilot program and this month we became the first port to officially begin TWIC enrollment. This has been a long process and I am extremely thankful to all of the men and women who have taken part in this important testing phase. Over the last several months, my staff has been in close contact with port representatives, industry stakeholders, and local officials to facilitate communication with the Transportation Security Administration (TSA) and to help make certain that employees are provided every opportunity to comply with these new requirements.

As this program moves forward at the Port of Wilmington, it is imperative that TSA work closely with port workers and local leadership to address all possible concerns and questions that may arise during the enrollment process. This is an enormous undertaking and it will take a real team effort to see it through to the finish.

In the end, a truly successful international maritime security strategy will effectively increase security, while minimizing the impact on trade. One key lesson learned from the mass confusion of September 11th and Hurricane Katrina is that our government has a significant information-sharing problem. From the TSA down to state and local security personnel, timely information-sharing and communication with private industry is crucial to improving our ability to accurately identify and respond to threats.

Today's hearing is an important part of this process, and I look forward to hearing from each of our distinguished witnesses. Thank you Mr. Chairman, I yield back my time.

Mr. HAWLEY. The reader pilot is going on in the early part of 2008. There will not be requirements to implement them until probably 2 years after the——

Mr. CASTLE. Could the individual ports do this on their own or does it have to be coordinated through homeland security and if so, could they use homeland grant funds to do so?

Mr. HAWLEY. Access control systems today can be used with TWIC cards, depending on the port and the kind of technology being used.

The key thing that has to wait is the interoperability—we just issued the technical standards in September that will go for interoperability and that won't be available until that final rule is done.

Mr. CASTLE. The chairman mentioned, I think, in his opening statement, the concept of organized crime getting involved with this.

When you have the card readers, would that(it would seem to me that that would reduce the possibility of crime. Just having a card, it could be replicated in some way or another, but it seems to me the card reader would offset that and that you would have to be entered in that.

Am I correct in that assumption?

Mr. HAWLEY. The card reader would definitely be effective, but we also are using, as Admiral Salerno said, handheld card readers by the Coast Guard. So that is effective security and that will be——

Admiral SALERNO. And if I could add to that, sir. The situation today is that a facility can grant access to an individual with a variety of IDs. It could be a driver's license, which, of course, does not have a background check or any biometrics, and any type of photo ID can be used in most cases.

So we are compressing this down from a plethora of cards to one that is standard with features on it that make it tamper-proof. So it is a quantum leap in security just by having this one card, even without the readers.

Mr. CASTLE. In my state of Delaware, at the port of Wilmington, I went down there the first day and learned that enrollment has been fairly high. I thought they were going to try and enroll me at one moment there.

But my concern then, and it was stated by a couple people there, is individuals who might have a background issue and, therefore, may choose to wait or be a little leery about registering or whatever it may be.

What are we doing with respect to those individuals? The statement was made that we are looking for terrorists, not people that may have had a background problem sometime in the distant past.

And what are we doing to accommodate and to give assurance to make sure they are stepping forward so those problems can be resolved and they don't all come upon us at the end of any enrollment period at a particular port?

Mr. HAWLEY. I think hearings like this are excellent at getting the word out. This is not something to be concerned about for all but a very small handful of people.

And the thing I would say is if you get something that indicates there might be a problem, call back and come in and, as the chair-

man mentioned at the beginning, if the data that is in the government system does not include that you have a favorable disposition, just come back and document that and the issue goes away.

So this is really the principal point of trust we have to earn as we go through here that people's experience matches what I just said.

Mr. CASTLE. We have, at our port, and it is probably true of a lot of other ports, too, we have rushes on things. I mentioned food already and during fruit season, we will have casual seasonal labor, which is basically picked up and comes to the port to work.

Will these people need to be escorted or could there be temporary seasonal passes or will they have to go through the full TWIC process? How will that be handled?

Admiral SALERNO. Sir, if they are operating in the secured area of the facility, handing cargo on a regular basis, we would expect them to obtain TWICs. If there are people that are operating maybe on a one time only case, maybe doing repair work at the facility, we can cordon off a portion of that facility and make it nonsecure, in effect.

Mr. CASTLE. So they might be able to work. It is just there is certain access they would not have, because they don't have——

Admiral SALERNO. That is correct.

Mr. CASTLE. —the full TWIC clearance and all of that.

Just very quickly, in just working with the officials at the Port of Wilmington and working with the unions and people there, it seemed to me they had a lot of valuable input in terms of what we are doing.

Do you have a full communications system with them to make sure you are picking up their ideas and concepts and reviewing them?

Mr. HAWLEY. Yes, sir, and that is part of the learning that we use to base the rest of the program on. And, again, they have been really spectacular in terms of working with us and openly engaging.

Admiral SALERNO. And I will add to that, sir, obviously, there is outreach through national level organizations that have constituencies throughout all the states, but, also, at the port level, there are entities we call area maritime security committees, where the people who operate in that particular port get together and they work through security issues, and that is a conduit of information back to our headquarters level.

Mr. CASTLE. I thank the panel and I yield back, Mr. Chairman. Thank you very much.

Chairman THOMPSON. Thank you very much.

We will now recognize the gentlelady from California for 5 minutes, Ms. Harman.

Ms. HARMAN. Thank you, Mr. Chairman, and thank you for this series of hearings, including the one that Ms. Sanchez held yesterday which, unfortunately, I could not attend because I had a markup in another committee.

I want to thank the witnesses, as well, especially Mr. Hawley for his great effort to be responsive to requests, at least from this member, for help and aid and for his risk-based approach to trans-

portation safety, which has made him a target from time to time, but I think he is on the right path.

My district, as I think most people on this committee know and the panel knows, surrounds the port of L.A. and is adjacent to the port of Long Beach. That port complex is the largest port complex in the country. Almost 50 percent of our container traffic goes through it and we absolutely have to get TWIC right.

I am also a coauthor of the Safe Ports Act with Mr. Lungren. This committee was enormously helpful in moving that legislation, which passed the House 421–2 and the Senate 98–0, which I would call a near miracle in these times.

So the Safe Ports Act connects to TWIC by insisting that it be part of a layered approach to port safety.

Having said all that and having listened to you and listening to the questions by members, my question is, have we made this too complicated? Have we made it too complicated in our legislation or are you making it too complicated in your rollout?

Obviously, all of us agree that we need these cards. I think all of us would agree we need the biometric feature in these cards. All of us agree we need portability.

But is there something now we or you or we and you together could do to make this easier and maybe even less costly?

Mr. HAWLEY. I think that is an excellent question and I think the answer is it is complex and we have paid the price for it in terms of how long it has taken to get it right.

So I think the point is a very strong one and we had this conversation with Secretary Chertoff as we were going through this plan a year ago and that is why we did the watch list checking on all the port workers at that time.

So he asked exactly the question you asked, which is what can we do right now that is simpler and can increase security, and it was the watch list checks. We have also, with the Coast Guard, cooperated with what we call these viper teams, where we have different parts of DHS come in in support of the Coast Guard as they do their NHTSA enforcement.

So these are programs that are ongoing that provide additional security and, frankly, now, we have got the legislative requirements of what the TWIC card has to be. We have gone down the path.

We are not out of the woods yet in terms of particularly on the card reader, what the complexity of that is going to end up being, and we are going to have the same issue again on do we move forward fast or do we take the time and the heat to get the technical issues resolved.

Ms. HARMAN. Well, let me just—we have seen a program done wrong, SBInet. We had a hearing on that a week or so ago, where the contractor took it to the field before it was ready.

But this member is very worried that tomorrow morning we could easily have a major terrorist attack by someone who should not be at one of our ports and if a major port complex like L.A.-Long Beach has an attack and closes, that is a devastating impact on our national economy, not just our local southern California economy.

So we have to be smart about this. Perfection is not an option, but trying to take the right steps quickly is the requirement.

I would like to ask the other witnesses to comment on my question. Are we making this too complicated? Are we making this too complicated or are you making this too complicated?

Ms. BERRICK. Sure, I could start here. I would make two points. One, there are a lot of complexities with this program. Each port is unique, as you very well know, and this is a sophisticated program that involves complexity.

The second point I wanted to make is equally important is the management of the program and our past work has identified that there have been problems in that area.

The contract requirements, at the beginning of this program, weren't fully defined. The contract costs doubled. There was very limited oversight over the contract itself. The prototype testing for TWIC, when this program started, was very limited.

Very little testing had been done. There was virtually on testing of access control technology. So that, I think, is also a problem that needs to be——

Mr. DICKS. If the gentlelady would yield.

Why was that? Why didn't they test access control? It is out there.

Ms. BERRICK. During the prototype testing, the reason that we heard during our site visits was that there weren't a lot of volunteer ports that were signing up to do that during the initial testing.

They didn't want to invest a lot of money not knowing what the final requirements would be. So the testing was really limited on the access controls.

But if I could just add one more point. We made recommendations, based on our work, that TSA go back, do the testing, work with the stakeholders, which was another issue we had identified, and they have taken lots of actions in those areas.

We haven't gone back to assess the effectiveness of those efforts. We have gotten some positive feedback on the coordination side.

Ms. BERRICK. Reclaiming my time, which has expired. I would just like to say to Ms. Berrick, in particular, I know you are a Virginia Tech graduate, therefore, you are very talented.

I think it is important not to point fingers about what went wrong. I think it is very important to take a deep breath, be sensible and get this right as soon as possible.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

We will now yield 5 minutes to the gentlelady from the Virgin Islands, Ms. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. Good morning.

Before I ask a question, I would like to just say to the Coast Guard representative, Admiral Salerno, that I noticed that Saipan, in the Northern Marianas, is one of the enrollment sites scheduled to come online mid next year.

And as chair of the Subcommittee on Insular Affairs and Natural Resources, which is in the process of bringing federal immigration laws to Saipan, I would be very interested in hearing how that process unfolds in Saipan and any issues that may arise or problems that may arise as you do so.

I have a question on this Florida issue, because I am afraid I am not understanding something. It is my understanding that the Department of Homeland Security does not intend to preempt the Florida FUPAC. Yet, there are a number of crimes that disqualify an applicant under TWIC, but do not disqualify under FUPAC, such as sedition, espionage, improper transportation of a hazardous material. Those are not disqualifying in the Florida program, but they are disqualifying in TWIC.

Could you, Mr. Hawley, and maybe, Admiral Salerno, explain why you are not preempting it?

Mr. HAWLEY. The list of crimes is statutorily fixed. So we are set with that. We have the requirement of what we enforce.

So the security requirement for the federal security clearance is set. The issue of preemption is complicated in that there is nothing that prevents Florida or any state from having its own requirements and that is what we are working with the state of Florida on now, and there are some privacy issues and data exchange issues to try to harmonize that.

But we do have the(the federal law is what it is on that and that is what will prevail on the actual convictions. But the card itself, they have the authority to issue cards for a variety of purposes.

Mrs. CHRISTENSEN. But for qualifying to work at the ports, which is going to be required?

Mr. HAWLEY. If you are disqualified——

Mrs. CHRISTENSEN. In Florida.

Mr. HAWLEY. Yes. So if you are disqualified and go through the appeals process and don't make it, then you would not have access to those secure areas.

Mrs. CHRISTENSEN. So having a FUPAC card will not qualify you if you don't qualify under TWIC.

Mr. HAWLEY. The FUPAC card won't replace TWIC. In other words, the TWIC requirements have to go in, but we are very cognizant of the work Florida has already done and, in fact, leading area in many respects and don't want to disincent them or otherwise cause difficulty for them based on their getting out in front.

So we are trying to work with them to get the solution that meets our legislative need or statutory need and their operating need.

Mrs. CHRISTENSEN. Well, we would like to hear when you reach that point how that has happened.

Also, Administrator Hawley, it is my understanding that the homeland security department is considering how to fit TWIC standards into requirements it is developing for the western hemisphere initiative, for people's access security service card.

The commissioner of Customs and Border Protection recently said that CBP sees significant benefits for TWIC card holders to be able to use the credentials to enter the United States.

So is the department going to implement a plan whereby the TWIC card could be used as a credential to enter the United States?

Mr. HAWLEY. I think that that is why we have the screening coordination office at the department and that is one of the things they look at is what—once you have done vetting in one scenario

to make sure you get the same result in all the others, and it deals with the so-called DHS trip, which gets to redress issues.

So the answer is anybody vetted in any one part of DHS, according to what those standards are, would get the benefit of that approval or that consistent answer anywhere else.

Now, there are a lot of operating issues. As we mentioned, TWIC is complicated in and of itself and the WITI is its own issue.

So I think on the threat resolution area, that is the easy part. The hard part would be on aligning the technologies.

Mrs. CHRISTENSEN. I would be interested in hearing how that works out in its final implementation or what the decision is, as well.

Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

We will now recognize the gentleman from Washington for 5 minutes, Mr. Dicks.

Mr. DICKS. I want to go back to the reader aspect of this thing. I happen to have a company in my district called Mobilesa and they are one of a number of companies that does this, and I just—we have been just e-mailing them and they do it for cards of this complexity. They can do the TWIC card.

What I am having a hard time understanding is why would we not want to get the readers as quickly as possible, when there is technology out there that has already been demonstrated at all of our defense bases, Andrews, where the president flies in and out of, Fort Dix didn't have this, now they have got it, West Point.

I mean, this is not rocket science. And they check these things against all of the databases and they can tell whether it is a fake card or a real card.

Why wouldn't we at least go out and get some of this technology and test it? I don't get this. It just seems like a major flaw in what you are doing.

Mr. HAWLEY. That is why the pilot is——

Mr. DICKS. We don't need a pilot.

Mr. HAWLEY. Well, we just had the conversation about the need—one of the requirements and the recommendations of the whole process is that before we issue the technology, we have got to test it to——

Mr. DICKS. Okay. Why don't you test it? Why haven't you done that? You were supposed to have done it by April. April was the deadline in the legislation. It hasn't been done.

Why was it not done? If the technology is out there, this isn't like you have to invent something, Mr. Hawley. It is already there. Why haven't we gotten started?

Can you tell me, Admiral Salerno, why we haven't gotten started on this?

Admiral SALERNO. Well, sir, we have gotten started. We——

Mr. DICKS. Do you know about these companies that are out there that have handheld technology that could check these TWICs right now?

Admiral SALERNO. We do know that there is technology out there. What had to happen was the publication of a standard so that manufacturers can build to that standard.

Mr. DICKS. Wait a minute. Why do you have to—this is a typical military approach to this. Why don't you tell them what you want and let them come back and respond and give you what they have got and you can then see if it is up to your standards?

Admiral SALERNO. Well, that, in effect, is what the publication of the standard does, sir. So it will allow commercial companies to build capability to that standard.

Mr. DICKS. But I am just saying they are already out there. Why don't you have—why haven't you brought them in? Why haven't you talked to them? Why haven't you let them demonstrate their technology already? Why didn't you have a fair—the Defense Department has finally figured this out—and bring all these companies in and see what they have got and see if you can use it right away?

I am with Ms. Harman. I think you guys are making this too complex. Now, I am worried that it is about who pays for it that is the real underlying issue here and that you want them to pay for it, they don't want to pay for it. Therefore, we are not doing it, and that is what is worrisome here to me.

We should be having these readers. This is a major problem with this program, and they are out there.

Admiral SALERNO. Sir, I would just point out that we do have constraints based on the law.

Mr. DICKS. What are the constraints?

Admiral SALERNO. The law requires that we conduct a pilot program, specifically for readers.

Mr. DICKS. Does it tell you exactly how to do it? Why wouldn't you bring them in? Have you had these companies come in and talk to you? Have you interviewed them to see what capabilities currently exist off the shelf that might meet your requirement?

No, you haven't done that, have you?

Mr. HAWLEY. The standards just went out for the first time and this is the leading technology. There is nobody else on earth that has got a program as advanced as this.

So we are absolutely talking to all comers and there are a lot of people who say they have it ready. The answer is show up in the port and demonstrate it that it works, and that is all——

Mr. DICKS. When is that going to be, Mr. Hawley?

Mr. HAWLEY. It will be in early 2008 and——

Mr. DICKS. I think that is way too long. If you could do it now, why wouldn't you do it now?

Mr. HAWLEY. Because it depends on the companies being able to come back and say, "Yes, we can meet these standards." They look at the standards published in September. They have got to do the programming. They have got to do the assembly. They have got to do the testing and they have got to show up.

So it is not the government who is doing this. This is actually the model that you were suggesting.

Mr. DICKS. I think it is the right model, except I think the people are there already and this is a lot of complexity to get started when we could have gotten started already by bringing them and see what they have got and see if they can meet your requirements already, without going through all of that.

I mean, Congress—I think we could reconsider this in either the appropriations bill or in other bills if that is a constraint.

I would rather see you get the(now, Ms. Berrick, do you know anything about this? Are you aware of these companies that are out there that say they have got the technology to do this, to check these cards, these TWIC cards?

Ms. BERRICK. We didn't look at that aspect during our work. We focused on the prototype testing and related to the access control card readers, we said that there was very limited testing during the prototype and we actually recommended that some additional testing be done before implementation.

So we think testing is important. We didn't look at the different ways that TSA and the Coast Guard could approach that, though.

Mr. DICKS. Couldn't they start this right now if they wanted to?

Ms. BERRICK. I am sorry. I really don't know based on the work that we have done.

Mr. DICKS. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

Just for the record, I think, Mr. Dicks, the TWIC card was 5 years in the making. At some point, you would expect, along that 5-year wait, if the reader was also to be a part of it, that you could have had a dual system in place.

And I think the concern of the committee is that the 5-year rollout starts, now we have another 2, 2.5 years before the reader is complete, and so we have probably got an 8-year process before we get——

Mr. DICKS. Would you ask them if they would answer that one, Mr. Chairman, why they didn't do that?

Chairman THOMPSON. Mr. Hawley?

Mr. HAWLEY. Well, it has to do with the government-wide biometric standard that is interoperable, as described, as HIPS–201 and we made the decision that we wanted to abide by the government-wide standards on biometric interoperability.

So that was the first step, that we said that the card has got to be FIPS–201 compliant. Then the next issue is on the readers, whether the reader has got to be compatible just with a contact card or whether you can allow contactless, which is much more efficient, sort of a proximity pass, to speak.

So that we elected to go, based on the comments that we got, to get the contactless cards interoperable. That is what we just published in September. So these are standards that don't exist anywhere in the world. NIST only has come out with the contact ones.

So this is leading edge stuff here, and that is why it is not available off the shelf.

Chairman THOMPSON. Ms. Harman?

Ms. HARMAN. Thank you for yielding to me just for a follow-up question on this.

Did you know, Mr. Hawley, when you made these decisions, that it would take this long to get this implemented? And I am sure you are aware of the threats against us. So I am just wondering if you chose to spend 5 to 7 years trying to get this right.

Mr. HAWLEY. The key point is we are not waiting on TWIC card issuance or reader issuance for port security, and Admiral Salerno can address that.

Admiral SALERNO. I agree with your concerns and sympathize with your concerns, Congresswoman, about port security. That is very much a concern of the Coast Guard, and TWIC is a big part of the solution to that.

But there are certainly other measures that have been in place since MTSA and even prior to MTSA to improve port security. This will be a significant step forward.

Would we have liked to have had it sooner? Absolutely, but getting it right I think is the correct approach.

Chairman THOMPSON. Thank you.

We will yield 5 minutes to the gentleman from Georgia, Mr. Broun.

Mr. BROUN. Thank you, Mr. Chairman.

Just prior to coming over here, I had some folks from Louisiana who are involved in offshore boat operations and they were real concerned about the Baker amendment to the Coast Guard reauthorization bill.

Are you all familiar, Admiral, with this amendment? It has to do with TWIC cards and it has to do with their people, Mr. Secretary, being able to do some private 90-day background checks that I understand are going to go through the same process that the TSA would go through or that our department would go through.

Can you all tell me about that and is there some mechanism of allowing not only them, but other private sources at least to get temporary authorization to allow port security that is going to maintain the port security?

Admiral SALERNO. Yes, sir, I am familiar with the proposal.

Let me back up a little bit, though. The regulations that were published several months ago do contain a new hire provision. So that a new employee, if he applies for a TWIC, will be allowed to go to work on an interim basis. They need to be monitored in the workplace, but can go to work and that was in response to requests from industry to include a provision of that nature.

What Mr. Baker is proposing is somewhat different in that it would allow people to go to work for up to 90 days without having to first apply for a TWIC. So there is no security check pending the issuance of the card itself. He could work for 90 days without any check whatsoever.

We have significant problems with that. It creates a vulnerability that, quite honestly, we have not a good means to address.

Mr. BROUN. Well, from what I understand from the folks that I was just talking to, they do an internal security check. They use the same Internet process of doing it in an internal company base check.

Is there some mechanism of being able to do that for new hires so that if they have some kind of mitigation about these new employees, so that we are absolutely certain that we are not hiring terrorists, we are not hiring thugs, we are hiring people who will be secure, but that they will have 90 days or 60 days or some reasonable period of time that the new hires—that they can see, but we can see, also, from a homeland security perspective, that these people are safe?

Is there some way of working this out so that when industry, whether it is in Louisiana or New York or Los Angeles, can hire

a truck driver or hire an individual, is there some way of having private security background checks that is acceptable to the department that will allow these people to come on board while they are in the process of getting their TWIC card or without having to pay the fee to be able to get the TWIC card over a reasonable period of time, whatever that might be?

Admiral SALERNO. The regs in place now, sir, do, in fact, include a provision where the employer does a background check. That is part of the new hire provision.

But I think the key distinction is that, as currently constructed, there is a requirement to apply for TWIC. The name goes into the federal system. There is a quick check against some databases to make sure that there is no obvious problems, against the terrorist watch list and so forth. And once we have that, which can be accomplished relatively quickly, then the person is allowed to work.

Under this other provision, that federal check does not take place and we do not necessarily have the same visibility of who is actually out there in the workplace.

Mr. BROUN. Excuse me, Admiral, for interrupting you, because my time is about out.

How long does it take you to go through the quick check process and that you can get the information back to the employer about these new hires?

Mr. HAWLEY. I think we are estimating a couple of days. The business that you are referring to I think is contemplated that we can do the terror watch list check that the government has to do and not inhibit the guy starting while that process goes. So they have got some provision for that.

But we do need to run the terror watch list check before having the person——

Mr. BROUN. I certainly want that, too, and it is just—Mr. Chairman, if you don't mind, just a few more seconds here.

But I certainly want anybody who is working in secure areas in ports to make sure—for us to make sure that they are not a hazard to this nation, but I think there may be some reasonable way of doing this and getting people to work, whether they are working offshore boats or whether they are driving a truck or something else.

So I am out of time and I thank you all for coming and I thank you, Mr. Chairman, for giving me a few extra moments.

Chairman THOMPSON. Thank you very much.

We will yield 5 minutes to the gentleman from North Carolina, Mr. Etheridge.

Mr. ETHERIDGE. Thank you, Mr. Chairman. Let me thank you for being here this morning and for your answers.

Mr. Hawley, as you know, there currently is a shortage of labor available at ports, the working ports, as well as in surface transportation.

And as it has been described today in your testimony and others, there are some burdens that we are trying to overcome, this hurdle of TWIC, and let me just go through them very quickly among them and then ask my question.

Number one is the cost, because in the case of some of these people, it may be equivalent to a day's wage. For some of us, that may

not sound like a lot, but for some, it is. You touched on that a little bit earlier.

The shortage of enrollment sites and the staff to process those applications. The underestimating of the number of TWIC cards required and possibly delays due to incorrect information in the criminal database and the watch list.

So my question is, in developing this, did you consider the burden of regulation and the procedure on the industry itself at the port and if you did or didn't, what steps have been taken to mitigate these efforts? Because sometimes you find out you have got a problem and then what have you done to correct that problem as you moved along in the process.

Mr. HAWLEY. Sir, I think those all raise good points. On the issue of the cost, is one of the things clearly that came up early and the mitigation for that is we have, in fact, reduced the cost from when we first came out with it, and it is, I should point out, a 5-year period, which is about 26 bucks a year.

So it is—yes, 132 bucks is not something trivial, but over a 5-year period, it is at least in the ballpark.

On the issue of the enrollments, we covered that a little bit earlier, but essentially the way the contract is written, the cost model incents the provider who is doing the enrollment to get as many enrollments as fast as possible and it can be scaled up because they get paid for the cards. So that is built into the mechanism. And the same thing on the enrollment stations.

As far as the criminal checks, the current process on hazardous material endorsement came through a lot of the credibility problems when that was rolling out. Hey, is this going to slow down the business? And, in fact, it has not and I think it probably is the number one issue for us going forward to demonstrate to particularly this population that getting a TWIC card is not onerous and it is not going to be a problem of people fishing around in your background.

We are basically saying are you a terrorist risk and limited criminal history information and we are not trying to figure out all possible problems.

Mr. ETHERIDGE. Well, turnaround is critical, but at the same time, you need to make sure you have got the information right.

Ms. Berrick, did you, in looking at this, see any evidence that the stakeholder community was involved or had any input in the development of the TWIC requirements that were put in place?

Ms. BERRICK. Sure. And, again, to reiterate, the focus of our review was on the prototype for the TWIC program, which ended about a year ago.

And one of the areas we looked at was stakeholder coordination and outreach. We visited 15 ports, talked to all the involved stakeholders. The message we were getting at that time a year ago was that they wanted more involvement in the requirements. They wanted to work more closely with TSA and the Coast Guard.

So that was their position at that time. Since that time, TSA and the Coast Guard have put in several measures to improve coordination. They established a coordination steering committee. They have frequently asked questions posted, a whole series of actions——

Mr. ETHERIDGE. So the answer is yes.

Ms. BERRICK. Well, we went back to follow up. We spoke with a few ports and they did indeed say they thought stakeholder coordination had improved.

We haven't done a comprehensive review to see how effective all of these procedures were, but the limited input we got was that it was favorable.

Mr. ETHERIDGE. Thank you.

Ports have invested significant resources in developing credential systems over the years and as a result of legislation, both in response to the internal threat assessments and to comply with state, as well as federal regulations.

Mr. Hawley, how has this been taken into consideration with the federal TWIC regulations and requirements and how will that be compatible, if at all possible, with what is already in place or requirements that some of these ports already have and have had for a while?

Mr. HAWLEY. I think your comment is consistent with what we heard from the community during the rulemaking process and we did, in fact, change the whole process to separate out the reader part from the card issuance and the reader part is the substantial cost to the ports as they implement what is required.

So we originally said, "You have got do it at the same time as we issue the cards." Based on the technology issues and the feedback, we separated the two.

Mr. ETHERIDGE. Thank you. Thank you, Mr. Chairman. I yield back.

Chairman THOMPSON. Thank you very much.

We will now recognize the gentleman from Colorado for 5 minutes, Mr. Perlmutter.

Mr. PERLMUTTER. Thanks, Mr. Chair.

And, Mr. Hawley, I won't talk about baseball, since my team didn't fare very well against yours. But I do want to just get some basics again and I am not(I haven't been around here for all of the TWIC discussion for 5 years.

You said that the card has double the information as we had in the Apollo program in terms of the computerized information. What are some of the things that are on that card?

Mr. HAWLEY. It has got a computer chip inside and it has all the identity information and it is storing the biometric information. So it has got the prints, which, as you know, is(if you just have the list of information about somebody, it takes up a tiny amount of computing process.

But having the actual fingerprints in there, as well, takes up a lot of space. So both in terms of the amount of data stored and the quickness with which it can be processed and fed back is principally what is in there.

There is also encryption and security measures that are built on, as well. So there is the chip itself, which is the most expensive part of the technology. Then there are the additional pieces of security on the plastic itself. There are also a mag stripe and a visible barcode on the card.

Mr. PERLMUTTER. And I would assume that, over time, if there are other things that your agency thinks might be appropriate, there is room to add that.

Mr. HAWLEY. Yes, sir. On the mag stripe, I think a third of it is kept empty for use of ports or people who want a dual use. It also is what is called backward compatible, meaning that if things change in the future, it is capable of accommodating that, if that is necessary.

Mr. PERLMUTTER. I know one of the things we have been talking about is how many people are going to be issued these cards. What is the number that the TSA thinks?

And then, Ms. Berrick, what is the number that GAO thinks are going to be using this card and is that just ports or is it ports and airports? Who is it?

Mr. HAWLEY. We have got a range of, low side, 750,000, high side, maybe 1.5 million. But as far as the practical capacity of the program, it is scalable to 1.5 million or higher than that, should that be necessary.

Mr. PERLMUTTER. And is that just seaports?

Mr. HAWLEY. No. That includes the truckers, as well as mariners and the port workers.

Mr. PERLMUTTER. Not airports.

Mr. HAWLEY. Not airports.

Mr. PERLMUTTER. Is it possible that it would be used at airports at some point?

Mr. HAWLEY. It is possible. That is something that we are working with the airports. The question is whether we can accommodate the biometric on the existing CITA badge and whether that is the right business process for doing it.

Mr. PERLMUTTER. Ms. Berrick?

Ms. BERRICK. In terms of the port population, we didn't do an independent assessment of the number. I can say, however, talking to the stakeholders, they did raise some concerns that the population was higher. But we didn't do an independent assessment of how higher that might be or if, in fact, that is true, if it was low.

Mr. PERLMUTTER. I will just change the subject a little bit. This was a question from Mr. Carney and it goes back to the laptop that was taken.

His question was we assume that the encryption software protects, but has the hard drive been recovered and have forensics been done on the hard drive?

Mr. HAWLEY. I don't know, is the short answer. So we will have to get back to you on that.

Mr. PERLMUTTER. Thank you, Mr. Chair. I yield back.

Chairman THOMPSON. Thank you very much.

We have two members left for questions and the plan is to recess for the three votes and reconvene after that.

Ms. Jackson Lee from Texas for 5 minutes.

Ms. JACKSON LEE. I thank the chairman very much.

Let me quickly proceed and say that I know that this scheme is one that Congress gave you, and we know that you are carrying forward a roadmap. So we thank you for your service, but at the same time, we are quite perplexed as to why it is in the state that

it is today, even as you have answered questions on some of our concerns.

My question is whether or not we will, in fact, be ready for the rollout, again, and I will, under that umbrella, ask these questions very quickly.

I am delighted that Houston is one of the selectees, but, in fact, your witness yesterday, Maurine Fanguy, said that this process, with ports like Houston, is to get it right.

So my question is, why is Houston and why are the other ports being used at this stage of the game as a guinea pig?

We are also concerned that a number of the workers mentioned yesterday that they have had no training, particularly ILA workers. They are concerned about the FBI rap sheet and its accuracy.

What has been done to make sure that that occurs?

And we have talked about the state proposals and we have sort of accepted it, but it seems like a double standard. Why do you have—and this is for both Admiral Salerno and Mr. Hawley.

Why do you have this double standard of allowing states to go forward and then allowing TSA or requiring the TSA TWIC card, where then the state, as well, can require additional procedures? It seems like this is a double standard and it is an excessive burden.

Finally, let me note that you suggested there are 750,000 potential enrollees. We have been told by one of your providers or contractors it may be more and, frankly, we don't feel that you are prepared for more, because you haven't acknowledged it.

I also want to thank the Coast Guard for their work on this project, but I ask the question, as TSA rolls this out and the Coast Guard is responsible for enforcement, I don't see why we don't have a relationship with Customs and Border Protection.

In fact, who is going to be the arresting officer, if it is necessary, if it is a terrorist, if you found a terrorist? I don't think you have a coordinated program. I don't know how the Coast Guard, with its basic duties, can be involved in the law enforcement aspect of it and I think that is a major problem.

So we can begin, Mr. Hawley, with you on the double standard question and Admiral Salerno and then the enrollee question, as well as the guinea pig issue and what you are doing about training the employees and helping them, as well.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

"Examinging the TWIC Program is Crucial to Identifying Potential Security Loopholes in Our Nations Airports."

STATEMENT IN REGARDS TO EXAMINING THE TRANSPORTATION SECURITY ADMINISTRATION (TSA) IMPLEMENTING THE TRANSPORTATION WORKER PROGRAM IDENTIFICATION CREDENTIAL (TWIC PROGRAM.

In wake of the horrific events of September 11, 2001, TSA realized that in order to secure the homeland, we must better protect areas of the nation's key transportation facilities. In doing so, the TWIC program was created to ensure the security of these facilities by "issuing identification cards only to workers who are not known to pose a terrorist threat, and allow these workers unescorted access to secure areas of the transportation system.

While the TWIC program is designed to enhance security through the use of components such as enrollment, background checks, TWIC card production, and card issuance, five years and millions of tax-payer dollars later, this card has yet to be

implemented. Furthermore, the Government Accountability Office (GAO) reported on the progress and shortcomings of the TWIC program in December 2004k September 2006, and April 2007. The GAO report states, 'Some maritime organizations are concerned many of their workers will be disqualified from receiving a TWIC card by the background check.

As the Chair of the House Homeland Security subcommittee on Transportation Security and Infrastructure Protection, I will be working to ensure that all concerns surrounding the TWIC Program are being properly addressed by TSA. Five years and millions of tax dollars later, that time and money must be accounted for.

Mr. HAWLEY. On the double standard, on that issue, the state of Florida moved out to put in security measures on its own, while talking to us. They did so knowing that the TWIC program was coming.

They elected to go forward and implement security measures in Florida ports, which is a laudable decision and laudable result.

It did not and does not meet all of the subsequently developed requirements under TWIC. So what we are trying to do—it is not a double standard. There is one standard. It is the TWIC standard.

What we are trying to do is work with Florida to have a common sense solution that recognizes the work they have already put in, but doesn't compromise our statutory responsibility.

Ms. JACKSON LEE. Can I quickly go to Admiral Salerno or either you can continue on about the FBI rap sheet, and if you want to continue, because the time is going.

Mr. HAWLEY. On the FBI rap sheet, that is something that came up a little earlier. The answer is that is why we have the process that the person, if they do get a response back that says there is a problem, they just need to get back to us and say, "But it has been resolved," and this has worked well in the HAZMAT endorsement issue. We expect it to work——

Ms. JACKSON LEE. I think we need to have something more secure than that.

Admiral Salerno, do you have an answer to the question of the double standard and, also, your enforcement ability?

Admiral SALERNO. On the double standard issue, the Coast Guard enforces MTSA on the facilities and what we will enforce on facilities is the TWIC. That is our standard. That is what we will hold the facilities——

Ms. JACKSON LEE. So you have enough resources to have personnel on the ground in these ports across America.

Admiral SALERNO. Not on a continuous presence basis, but on a roaming basis. They will make frequent visits to these ports and spot check.

Ms. JACKSON LEE. I think that is a concern, Mr. Chairman, not because the admiral is not dedicated, but because I don't think there are enough resources, and I don't think that there has been planning for enough resources on this matter.

Admiral SALERNO. If I might add, ma'am, you asked a question, too, about arrests and so forth.

Ms. JACKSON LEE. Yes.

Admiral SALERNO. We are working with other law enforcement agencies to establish agreements, memorandums of understanding so that we can leverage this requirement out across the board, including with local law enforcement authorities, as well.

So there may, in fact, be a law enforcement presence from other agencies there that can act if the Coast Guard is not present.

Ms. JACKSON LEE. We will get a briefing on that. Thank you very much, Mr. Chairman.

Chairman THOMPSON. If you have more questions, Ms. Jackson Lee, if you submit them, we would be happy to get them answered.

Ms. JACKSON LEE. Thank you.

Chairman THOMPSON. The gentlelady from New York, Ms. Lowey, for 5 minutes.

Mrs. LOWEY. Thank you, Mr. Chairman. And I will be brief, because I know we have the votes waiting.

Before I get to my question, I just want to ask Administrator Hawley, I am puzzled. You keep saying as an excuse for the delays that there is twice as much technology in a TWIC card than the Apollo mission.

The Apollo mission was 40 years ago. I would hope that there is a lot more technology today that you would have access to and that the technology would have improved. So I don't think that is a good excuse.

But let me go to the question that I have. With regard to the ports of New York, New Jersey, Long Beach and Los Angeles, as part of the initial rollout of the TWIC program, if the overall purpose, Administrator Hawley, of the TWIC program is to secure our ports, why was the decision made to exclude the ports servicing New York and Los Angeles during the initial rollout? And could you detail the risk factors used to identify the ten priority ports?

And, Ms. Berrick, do you believe the country would be substantially safer had the initial TWIC rollout included the largest and highest risk ports in the country?

Since I have 3 minutes and 46 seconds, perhaps we will begin with Administrator Hawley and then if Ms Berrick has time, you can respond.

Mr. HAWLEY. Sure. The answer is on the importance of New York, New Jersey and L.A.–Long Beach, we announced yesterday the 147 port schedule and, as you may have seen, New York–New Jersey is scheduled to begin this year.

The risk factor is there are also program risks. We talked about some of the learnings we are having in the port of Wilmington and we don't want to start out in the toughest of the environments, the largest scale of the environments. We want to learn as we go and control the program so that when we get at the major largely scalable ports, we have worked out the——

Mrs. LOWEY. If I could just interrupt for 1 second, because I noticed your schedule. It is scheduled for a partial rollout at the end of the year. The full rollout will not be complete in the region until the start of spring 2008.

I don't get it. Isn't there an inherent security risk by having part of the port system involved in the program while the other parts of the same port operations are not bound by similar procedures?

Mr. HAWLEY. We talked earlier in the hearing on the issue of we have already run the terror watch list checks on all those ports and we have also—the existing security measures that are in place. So from the real world of security, the security measures are in place. Now we are locking it down with the biometric credential.

Ms. BERRICK. Thank you. I will just add that in our work of looking at the development of similar systems, we have always concluded that testing upfront, having a prototype phase is very important, where all the key elements are tested.

And, typically, we find it is reasonable that that is done at easier locations. So the problems, if you will, can be worked out before it is implemented on a wide-scale basis.

And I would also add that if initial testing were to be done at a large more complex port, where difficulties could surface maybe more easily, it could be difficult to address those in that kind of environment and, as a result, it could result in the program being further delayed.

So we think that more diligent work up front is important so you can maybe avoid that down the line when you have bigger challenges with some of these larger ports.

Mrs. LOWEY. Let me just say this, because we are running out of time. So perhaps Administrator Hawley could provide me in writing the risk factors used to identify the ten priority ports.

And I would also like to say that you and I have had many discussions about a card such as this at the airports and you feel it would impede commerce, et cetera.

I wonder if you have done some analysis of the lost labor time and lost revenue as a result of the potential delays this system will cause. Right now, instead of being able to take a card and swipe it, they have to look at the card, and you know that is not accurate.

This TWIC card is what is going to work. So I wonder if you can give me some information about all the delays and what it means in lost revenue, not necessarily at the airports, but for this program.

And the time is up. Maybe you can let me know about it.

Thank you very much.

Chairman THOMPSON. And we will definitely pay you back for releasing your time early.

We want to thank this panel of witnesses. The committee will recess for votes and we will return 5 minutes after the last vote for the second panel.

Thank you very much.

[Recess.]

SANCHEZ [Presiding.]: The committee will come to order.

As you can see, my colleagues are all currently involved in markups or, unfortunately, on the House floor, as we have some important bills there. And so we were not able to round up any other members, and I apologize to our witnesses.

But in order for us to hear your testimony, we must have more than just me. I am not enough.

So I want to thank the witnesses for their time. I know many of you traveled pretty far to come here.

I will tell you that your written statements will be included in the record of this hearing, and the members of the committee will probably have additional questions for the witnesses, and we will send it to you in writing, and you will have 10 days to submit in writing your answers.

Having no further members and hearing no further business, the committee stands adjourned. My apologies. Thank you.

[Whereupon, at 1:05 p.m., the subcommittee was adjourned.]

# For the Record

PREPARED STATEMENT OF MAURICE EMSELLEM

Chairman Thompson and members of the Committee, thank you for this opportunity to testify on the subject of the new Transportation Worker Identification Credential (TWIC) required of the nation's port workers and the background checks which began earlier this month.

My name is Maurice Emsellem, and I am the Policy Director for 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. Over the past two years, NELP has been training truck drivers subject to the Transportation Security Administration's (TSA) hazmat background checks and helping them access the appeal and waiver process. In recent months, we have also been reaching out to port workers to apply the experience with the hazmat program to help port workers negotiate the TWIC process.

At this critical stage in the TWIC program, when especially large numbers of port workers and truck drivers will begin enrollment all across the country, it is important to evaluate TSA's implementation of the key worker protections of the Maritime Transportation Security Act of 2002 (MTSA) (46 U.S.C. Section 70105). While we applaud TSA for taking seriously their responsibility to implement these worker protections, there are several key areas that fall short of the law's spirit and intent. Our testimony includes a description of the following key concerns and several recommendations for reform of the TWIC process.

- By failing to adequately verify the accuracy of the FBI's rap sheet *before* issuing an initial threat assessment, TSA is disqualifying large numbers of workers based solely on old arrests that have never led to a conviction (TSA's determination relies primarily on the FBI rap sheets, which the Attorney General has reported are 50% incomplete due to the failure of the states to update their arrest records after the disposition of the case).
- Given the limited number of "waivers" filed under the hazmat program, TSA and Lockheed Martin should do more to promote the TWIC waiver process. The TWIC waiver is the core feature of the MTSA that protects those workers who have turned their lives around from being unfairly designated as a terrorism security risk due to an isolated drug offense or other disqualifying crime.
- TSA and Lockheed Martin have not complied with federal safeguards that provide meaningful access to the ethnically diverse workforce whose limited-English proficiency requires translation and interpretive services to negotiate the criminal record and immigration background checks which are so critical the TWIC process.

**I. The Basics of the TWIC Background Check Process**

Like the TSA criminal background check now required to qualify for a hazmat endorsement, the TWIC process described below incorporates several procedural protections required by the MTSA to ensure that workers are treated fairly as part of the background check.

In addition, the federal law sets forth the 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 seven years from the date of the application, or five years from when the individual was released from incarceration (whichever is the more recent event).

1. *TWIC Pre-Enrollment:* TSA has created an optional pre-enrollment process (available by phone or on-line) which allows the worker to enter his or her basic biographical information with TSA before officially enrolling in-person at the designated port facility. The pre-enrollment process is intended to help save time by providing the individual with an appointment for the in-person enrollment.



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2. *Enrollment at Designated Locations:* On October 16th, TSA and its contractor Lockheed Martin began enrolling individuals at the Wilmington port for the TWIC. Upon enrollment, all the necessary information is collected on the individual to qualify for the TWIC, including the fingerprints required to generate an FBI rap sheet. Under penalty of perjury, the applicants must sign a disclosure form (attached) indicating that they have accurately responded to a series of questions related to their criminal history, their immigration status and any adjudication or commitment due to mental capacity. Depending on the size of the port, TWIC enrollment will take several weeks or months to process all those determined to require unescorted access to secured areas of the ports. TSA will maintain an additional presence after the initial process to enroll new applicants.

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:* If TSA fails to identify any disqualifying information, the individual is notified that he or she qualifies for a TWIC, usually within 5 to 10 days according to TSA.

b. *Interim Denials Subject to "Appeal:"* When TSA makes a determination that the individual has committed a disqualifying offense set forth in the SAFE Port Act, he or she receives an "Initial Determination of Threat Assessment" (IDTA) listing the disqualifying crime. If the information reported by TSA is incorrect, the individual can "appeal" the case within 60 days by providing the official court documentation to correct the information. If the FBI rap sheet is incomplete due to an arrest where the disposition has not been reported, then the individual must provide the missing information to TSA or their application will be automatically denied after 60 days. The individual is not provided a copy of their FBI rap sheet along with the IDTA, although her or she may request a copy before appealing.

c. *Interim Denials Subject to "Waiver":* If the individual has a disqualifying criminal record that is accurate and complete, then he or she can seek a "waiver" of the initial threat assessment determination based on evidence of rehabilitation, a solid work history and other relevant factors. Selected "permanent" disqualifying offenses are not subject to the waiver process.[1] If the waiver request is denied by TSA, the worker has the right to review of the decision by an administrative law judge.

Currently, the optional TWIC pre-enrollment process is the only stage where information is to be made available in any language other than English (Spanish). There are apparently no plans to provide interpreter services at the time of actual enrollment at the ports, nor are any materials to be translated as part of the interim determination or the waiver or appeal process. TSA has authorized the family and friends of applicants to serve as translators during the enrollment process, requiring them to also be signatories under penalty of perjury to the TWIC application.[2]

As distinct from the TWIC enrollment deadlines recently published by TSA,[3] TSA has not indicated when the ports will have to actually start using the TWIC cards. Presumably, that will follow sequentially from when the TSA set up the enrollment process at each of the ports. The regulations require at least 90 days notice for the port to start implementing the TWIC.

**II. The Serious Limitations of the FBI's Rap Sheets Undermine the Integrity of the TWIC Process**

The TWIC criminal background check is dependent on the rap sheet provided by the FBI, which is an accumulation of the criminal records generated by the states.

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[1] The offenses that are not subject to waiver include espionage, sedition, treason, terrorism, or conspiracy to commit these crimes. (49 C.F.R. Sections 1515.7, 1515.103(a)(1)–(a)(4)).

[2] Specifically, the "Helper/Translator" must sign the following statement contained on the enrollment form: "I certify that I assisted in the completion of this form at the request of the applicant named on this TWIC enrollment document, that the responses provided are based on all information which I have knowledge, or which were provided to me by the applicant, and that the completed enrollment form has been read to the applicant in the language the applicant speaks fluently for verification before he or she signed the application in my presence. I understand that a knowing and willful false statement or an omission of a material fact on this enrollment document can be punished by fine or imprisonment or both, and may be grounds for denial of a TWIC."

[3] U.S. Department of Homeland Security, "DHS Agencies Announce Progress on TWIC Program" (October 3, 2007).

However, there are serious flaws in the FBI's rap sheet that threaten to deny employment to large numbers of law-abiding workers and undermine the integrity of the criminal background check process.

*Incomplete State Arrest Records:* Of special concern to TWIC applicants, the FBI rap sheets are routinely out-of-date and incomplete. Indeed, according to the U.S. Attorney General, the FBI's rap sheets are "still missing final disposition information for approximately 50% of its records."[4] Mostly, that includes arrest information which is never updated electronically by the states to reflect whether the charges have dropped, dismissed, or successfully prosecuted.

Indeed, 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 five 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.[5] That includes large port states like Florida, where 40% of the arrests in the state's system do not include the final disposition. Only nine states have more than 90% of the arrests in their databases updated to reflect the final outcome of the case.

*Non-Felony Offenses:* In addition, 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 specific offense as expressed in the state's penal code without characterizing the severity of the crime. For example, we handled the case of hazmat driver who was disqualified when his FBI rap sheet indicated he was convicted in California of "Charge 245A1 PC-FORCE ADW-NOT FIREARM," meaning assault with a deadly weapon not involving a firearm. Based on the FBI's rap sheet, TSA wrongly concluded that this was a felony offense when, in fact, it was a misdemeanor based on an assault involving a fingernail clipper.

*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 seven years before the application or more than five 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 will incorrectly show up as having been incarcerated within the five-year period based on the original sentence entered on the rap sheet. That is what happened to hazmat driver we represented, who received a 10-year sentence although he was released more than five years before the date of his hazmat endorsement application.

**III. Priorities for Reform of TWIC Background Check Process**

Based on our experience representing workers negotiating the TSA hazmat endorsement program and our understanding of the new TWIC process, several key reforms would substantially improve the integrity of the TWIC and protect large numbers of hard-working employees against unfair denials and the loss of quality jobs in their community.

1. *TSA Should Verify Incomplete & Unreliable Records Before Denying the TWIC*

Under the current TWIC and hazmat criminal background check, the workers end up paying the price for the routine failure of the FBI's rap sheets to provide complete information on old arrests. That is because the policy of TSA (49 C.F.R. Section 1572.103(d)) is 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 in 60 days. Because literally 50% of the FBI's records are incomplete, we are concerned that very large numbers of workers fall in this situation of receiving an initial threat assessment based solely on the fact that they have an arrest, not a conviction as required by the MTSA.

When the burden to fill the gaps in the FBI's rap sheet falls almost entirely on the TWIC applicant in such significant numbers, far too many innocent workers will fall through the cracks of the system, especially in states like Florida where the state records are most often incomplete. In order to provide the complete or up-to-date arrest information required by TSA, workers have to navigate the court system where the judgment was entered, typically requiring the individual to appear in person at a local court that could be located in another state or county. In contrast, a call to the local courts by TSA or an on-line inquiry will often be enough for TSA

[4] U.S. Attorney General, *The Attorney General's Report on Criminal History Background Checks* (June 2006), at page 3.

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

to verify that the charge has been dismissed, thus precluding the need to require actual court documents from the applicant.

In addition, many hazmat endorsement applicants have been issued an initial threat assessment simply because TSA has not adequately verified that their offense rises to the level of a felony versus a non-disqualifying misdemeanor. It is not clear that TSA has devoted sufficient attention to identifying and correcting these cases before issuing an IDTA. Similarly, there is the problem of the FBI rap sheet's failure to indicate the date of release from incarceration, which often results in an initial threat assessment when the individual was released prior to the full sentence listed on the rap sheet. While the hazmat and TWIC enrollment forms include a space for the individual to indicate when he or she was released from prison, it is not clear that TSA adequately incorporates this information into the TWIC background check process.

According to TSA, literally 99% of the appeals filed under the hazmat program have *successfully* documented that the initial threat assessment was based on incomplete or incorrect information. One-third of the over 10,000 successful appeals were related to incorrect criminal records and the other two-thirds were attributed to immigration status issues. The overwhelming rate of success on appeal is a sure sign that there is a serious problem with the FBI's rap sheets and TSA's current policy, which puts the burden on the worker to track down the missing information. However, because of the problems described above, these 3,000 to 4,000 successful criminal record cases are probably just the tip of the iceberg. To determine the true magnitude of the problem, it is necessary for TSA to provide more complete data documenting the total number of IDTAs issued due to the absence of complete arrest information and the other routine errors described above.

*Recommendations:* TSA and Lockheed Martin can take several significant steps to produce a determination that is based on accurate information and protect the rights of TWIC applicants.

a. *Track Down Missing Arrest Dispositions:* The first priority should be for TSA and Lockheed Martin to track down missing dispositions before issuing an initial determination of threat assessment. In the case of federal gun checks required by the Brady Act, the FBI tracks down 65% of the missing dispositions within three days rather than simply denying the license based on old arrest information.[6] Similarly, in California, the law precludes the state criminal records repository from releasing state rap sheets for employment and licensing purposes unless it has been verified within the past 30 days that the case is still active in the courts or in the local District Attorney's office.

Here too, when there is a potentially disqualifying offense that lacks a disposition, TSA and Lockheed Martin should make a serious effort to determine the outcome of the case before issuing an initial determination. For example, any case that has been pending in the court system for more than one or two years without a disposition is far more likely to have been dismissed, thus such cases should be prioritized for follow-up inquiries by TSA. 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 and Incarceration Release Dates:* Prior to issuing an IDTA, TSA should prioritize those cases like drug offenses, weapons charges, and robberies, which will routinely result in non-felony convictions that are often presumed to be felonies by TSA. TSA should develop specific contacts with each state criminal history repository to clarify questions regarding offense levels reported on the FBI rap sheets. Similarly, in all cases where an applicant has indicated on the enrollment form that he or she has been released from incarceration more than five years before the date of the TWIC application, TSA and Lockheed Martin should verify the release date with the state corrections authorities, not deny the application based on the original sentence imposed.

c. *Provide a Copy of the Rap Sheet with the IDTA:* To help applicants evaluate the merits of their appeal and prevent unnecessary delays, all those who are issued an initial threat assessment based on a potential disqualifying criminal record should receive a copy of their FBI rap sheet when they receive the IDTA. This proposal corresponds to the protections of the Fair Credit Reporting Act which apply to private screening firms that conduct criminal background checks for employers (15 U.S.C. Section 1681b(b)(3)(A)).

Although the FBI rap sheet has already been paid for as part of the TWIC application, it is still not available to the workers unless they request a copy *after* the IDTA is issued, which makes it more difficult to evaluate the merits of the appeal thus creating unnecessary and prejudicial appeal delays. Not unlike a credit check

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

report, TWIC applicants should be automatically provided a copy of the rap sheet to immediately verify that the information is complete and accurate. Accordingly, TSA should continue to identify the disqualifying offense in the IDTA, while also providing the FBI rap sheet if authorized by the individual when he or she enrolls for the TWIC. The limited costs associated with this process, including copying and additional postage, should not be prohibitive.

d. *Evaluate the Immigration Status Appeals Generated by the "SAVE" System:* As part of the TWIC process, TSA must verify the immigration status of applicants to determine if they are lawfully present in the United States according to specific criteria (49 C.F.R. Section 1572.105).

In addition to the immigration documentation provided when they enroll, we are told by TSA that the applicant's immigration status is checked against a federal database called the Systematic Alien Verification for Entitlements (SAVE) system, which is used by the Department of Human Services to verify eligibility for various benefit programs. However, the SAVE systems relies on automated data from immigration authorities which the U.S. Department of Justice has characterized as "flawed in content and accuracy." [7]

Given the serious concerns with the accuracy of the SAVE system and the fact that two-thirds of successful hazmat endorsement appeals were the product of errors related to immigration status, we urge TSA to evaluate the source of the errors identified on appeal and adopt alternative procedures, if necessary, to verify immigration status under the TWIC program.

2. *TSA Should More Actively Publicize the TWIC Waiver Process*

When Congress adopted the waiver process in the MTSA for workers who have been convicted of a disqualifying crime, it created a promising model for all federal and state employment screening laws to follow to promote and reward rehabilitation. Indeed, for thousands of current workers with a criminal record who pose no terrorism security threat, the MTSA waiver is the only protection that keeps them employed in a good job after turning their lives around. Absent an effective waiver process, they risk being kicked back out on the streets where it is becoming harder and harder to find quality work with a criminal record.

To fully appreciate the significance of the TWIC waiver process, consider the impact of the record rates of incarceration of the past two decades on local communities, especially many urban communities where the ports employ large numbers of workers. For example, a record 700,000 people were released from U.S. prisons last year, and three out of four them served time for non-violent offenses.[8] Of special significance, drug sales, a TWIC disqualifying offense, represents over 20% of all the felony convictions handed down by the state courts each year.[9]

Nearly half of all non-violent offenders are African American (48%) and another 25% are Latino.[10] Indeed, one-third of African-American men (32%) are likely to serve a prison sentence according to the Bureau of Justice Statistics, which is six times the rate of white men.[11] Large numbers of these men of color are struggling to turn their lives around and find work in the urban communities where major ports are located, including Los Angeles, Oakland, New York, Miami and elsewhere. For example, in Oakland, where our offices are located, African Americans account for 40% of the maritime workforce and another 22% are Latino.[12]

Finally, the significance of the TWIC waiver process is underscored by the latest research documenting that those with a criminal record who have found steady work are especially unlikely to commit another crime. For example, a recent study found that people with a prior record who have not been arrested over a period of five years are statistically no more likely than someone with no prior record to commit a crime.[13] The likelihood of committing a terrorist act is even more remote, especially for port worker who are paid good union wages and have successfully turned their lives around despite the serious challenges in their communities.

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[7] Office of Inspector General, U.S. Department of Justice, *Immigration and Naturalization Service's Ability to Provide Timely and Accurate Alien Information to the Social Security Administration,* Report No. 1–2003–001 (November 2002), at page 25.

[8] Bureau of Justice Statistics, *Probation and Parole in the United States, 2005* (2007).

[9] Bureau of Justice Statistics, *Felony Sentences in State Courts, 2002 (December 2004),* Table 1.

[10] Bureau of Justice Statistics, *Prevalence of Imprisonment in the United States, 1974–2001* (August 2005), Table 1.

[11] *Id.*

[12] Carol Zabin, et al., *Living Wages at the Port of Oakland* (Center for Labor Research & Education, December 1999), at page 45, Table 3.3b.

[13] Kurlycheck, et al., "Scarlet Letters & Recidivism: Does An Old Criminal Record Predict Future Criminal Behavior?" (2006).

To its credit, TSA has granted 92% of the waiver requests submitted under the hazmat program, thus recognizing the large numbers of workers with a disqualifying offense who have an isolated felony that often dates back several years and a solid work history. However, we are concerned that the absolute number of waivers granted (about 1,000) is quite low compared to the likely number of deserving workers (of the 700,000 drivers screened by TSA) who have waivable disqualifying offenses. As applied to the TWIC program, with so many major ports located near urban areas where more workers may have drug convictions and other crimes common to the city streets, many more workers may have a disqualifying criminal record who would be serious candidates for a TWIC waiver.

*Recommendations:* We urge TSA to adopt the following measures to promote and clarify the TWIC waiver process.

*Expand the Waiver Outreach & Education Process:* To significantly expand the number of TWIC waiver requests, TSA and Lockheed Martin should do far more to publicize the process. For example, the various fact sheets designed to publicize the TWIC program at the ports ("TWIC is Coming," "TWIC is Here," "Enroll for TWIC Today") only make a casual reference to the appeal and waiver process (one sentence), including the specific fact sheet listing all the disqualifying offenses. We urge TSA to distribute a "know your rights" fact sheet at the ports that specifically describes the waiver process and the key considerations that argue in favor of a waiver. TSA should also urge the ports to partner with local non-profit organizations that can help deserving workers prepare the TSA waiver application.

In addition, more can be done to help workers prepare the waiver applications at the critical stage when they are notified of the interim threat assessment. To TSA's credit, the IDTA now comes with a four-page fact sheet ("How to Request Releasable Materials, Appeal a Security Threat Assessment, and File a Waiver") which is especially helpful in describing the waiver process and the material necessary to support the waiver applications. In addition, we have urged TSA to adopt a checklist as part of the cover sheet that accompanies the waiver request, allowing the worker to readily identify the major arguments favoring a waiver in their case.

3. *TSA Should Provide Translation and Interpreter Services for the Diverse Population of Limited-English Speaking Port Workers*

Today's workforce 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. Accordingly, the TWIC process should embrace this diversity by taking reasonable measures to accommodate the language needs of port workers.

To appreciate the special need for TWIC translation and interpreter services, consider the ethnic diversity of the West Coast port workers, especially those who drive trucks in and out of the ports. In the Port of Seattle, 54% of the drivers are foreign born, and 44% speak a language other than English at home (mostly a combination of Southeast Asian languages and Spanish predominantly).[14] In the Los Angeles and Long Beach ports, more than 90% of the truck drivers were born outside the U.S., mostly from Spanish-speaking countries.[15] In the Port of Oakland, 93% of the truck drivers were born outside the U.S., typically from Southeast Asian, South Asian and Latin American countries.[16]

According to Executive Order 13166 and a U.S. Department of Justice (DOJ) guidance, all federal agencies, including TSA, are expected to "take reasonable steps to ensure meaningful access to the programs and activities by limited-English proficient (LEP) persons."[17] Each program is called on to undertake a specific analysis

[14] Port Jobs, "Big Rig, Short Haul: A Study of Port Truckers in Seattle" (2007), at page 19.

[15] 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 17.

[16] East Bay Alliance for a Sustainable Economy, "Taking the Low Road: How Independent Contracting at the Port of Oakland Endangers Public Health, Truck Driver, & Economic Growth" (September 2007), at page 25.

[17] Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency" (August 11, 2000), at page 1 (requiring all federal agencies to develop a plan "to improve access to its federally conducted programs and activities by eligible LEP persons."); 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, 41459, n.4, June 18, 2002) (The DOJ directive applies the Title VI standards to Federal agencies, as follows: "Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulation 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, including the Department of Justice.")

of the following factors to determine the level of required services: (1) the number or proportion of LEP persons to be served or likely to be encountered; (2) the frequency with which LEP individuals come in contact with the program; (3) that nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs.[18]

We not aware of a specific analysis by TSA or Lockheed Martin of the TWIC program based on the factors described in the DOJ guidance. However, it is clear that the TWIC program satisfies the first three factors given the importance of the TWIC to the future likelihood of the workers, the large numbers of LEP workers employed in major U.S. ports, and the resulting frequency that LEP persons must apply for the TWIC. As described in the recommendations below and the DOJ guidance, the costs of providing the necessary TWIC translation and interpreter services can be minimized with adequate planning and current technologies.

Other federal agencies, including the Social Security Administration (SSA), routinely provide a broad range of translation and interpreter services to access their programs. For example, SSA's "Multilanguage Gateway" (http://www.ssa.gov/multilanguage/) includes scores of forms and documents required to access SSI benefits, Social Security numbers, and other critical materials that are available on-line in 15 languages (Spanish, Portuguese, Polish, Korean, Italian, Haitian-Creole, Greek, French, Farsi, Chinese, Armenian, Arabic, Vietnamese, Tagalog, Russian). SSA also provides free interpreter services where necessary to help workers access these programs, using a nationwide contract for telephone interpreter services in more than 150 languages and dialects.[19]

*Recommendations:* Thus far, the only LEP services made available by TSA and Lockheed Martin include the optional pre-enrollment form (available on-line in Spanish) and outreach material translated only in Spanish to help publicize the TWIC program at the ports. We believe these policies are insufficient to meet TSA obligations to provide LEP services. Thus, we urge TSA to adopt several cost effective LEP services to help port workers navigate the TWIC enrollment, appeal and waiver process.

a. *Oral Interpretation at TWIC Enrollment:* The ability to negotiate the TWIC enrollment process at the ports—requiring the applicant to provide criminal history record, immigration documentation and other technical information—will often determine the fate of the worker's future employment. Rather than provide professional interpreter services at this critical stage in the process, TSA has authorized workers to bring family or friends (called "helpers" on the TWIC disclosure form) to provide translation services.

Studies have shown that the reliance on family members and other informal interpreters is detrimental to the LEP person's ability to obtain services.[20] Indeed, 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 be 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. (Emphasis added).[21]

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. Family and friends are rarely qualified to translate this technical and sensitive information, including the following questions required by the TWIC disclosure form: "I meet the immigration status requirements described in 49 CFR 1572.105," "I have been adjudicated as lacking mental capacity, or committed to a mental health facility involuntarily," and I was con-

[18] 67 Fed. Reg. at 41459.

[19] Social Security Administration, DI 230490.001 (January 31, 2006), DI 33010,030 (June, 9, 2004), DHU & DSS Directives, "Interpreters for Individuals with Limited English Proficiency (LEP) or Individuals Requiring Language Assistance." In addition to providing access to SSI benefits and Social Security documents, SSA translates key documents that explain the forms required to access the Medicare Prescription Drug Program (www.ssa.gov/prescription help/). For more detail on other federal agency policies, see the Limited English Proficiency Federal Interagency Website which is specifically devoted to federal agency compliance with Executive Order 13166 (www.lep.gov).

[20] For a helpful summary of the research, see National Health Law Program, "Why Relying on Family Members, Friends and Children as Interpreters is Dangerous and Should be Discouraged" (undated).

[21] 67 Fed. Reg. at 41462.

victed, or found not guilty by reason of insanity, of a disqualifying crime listed in 49 CFR 1572.103(b)."

Indeed, TSA's decision compromises the TWIC process further by requiring the applicant's family and friends to verify under penalty of perjury that they have provided all the information they know about the individual, not just the relevant information that they have been specifically asked to translate. Specifically, as set forth in the TWIC disclosure form signed by the translators, they must verify that "the responses provided are based on all information of which I have knowledge, or which were provided to me by the applicant."

Recognizing the inherent limitations of family and friends serving as interpreters, DOJ recommends that competent interpreter services be provided free of charge to persons with limited-English proficiency. According to the DOJ guidance, "when particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical options."[22] Other federal agencies, including the Social Security Administration, also require professional translators while only authorizing family and friends to interpret when specifically requested as an alternative by the applicant.

Thus, in the case of Spanish and the languages most commonly spoken by port workers, an adequate number of staff employed by the TSA/Lockheed Martin enrollment centers should be bilingual in those languages. Of course, these enrollment staff will also be qualified to process English-speaking workers when necessary. 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. Where necessary due to more limited demand and to save costs, the DOJ guidance also recommends contracting with professional interpreters and using telephone interpretation lines provided by AT&T and other major contractors.

b. *Translation of "Vital" TWIC Documents:* The TWIC program should include written translation of critical documents, including the TWIC disclosure forms, the form consenting to the FBI criminal background check and the Initial Determination of Threat Assessment (IDTA), which includes the description of the TWIC appeal and waiver rights. To our knowledge, none of these documents have been translated by TSA.

The DOJ guidance recommends that such "vital" written material be translated where each LEP language group constitutes 5% of the population served or 1,000 people, whichever is less.[23] Given the large numbers of foreign-born workers employed in many of the nation's largest ports, the TWIC forms clearly rise to the level of DOJ's recommended thresholds for multiple languages, not just Spanish.

Accordingly, TSA should take the following specific steps to translate vital TWIC documents:

1. TSA should undertake an analysis of the languages spoken most often by port workers and truck drivers servicing the ports.
2. TSA should translate the TWIC enrollment and consent forms in multiple languages before enrolling individuals at the ports where the largest population of LEP workers are employed.
3. Without delay, TSA should prepare "know your rights" flyers in multiple languages containing information on the waiver and appeal process to distribute when applicants enroll for the TWIC.
4. TSA should translate the IDTAs and match them when issued with the language spoken by the applicant as determined upon enrollment.
5. Once translated, the IDTAs should be made immediately available on the Internet with other translated material as part of a "Multilanguage Gateway" to the TWIC program.
6. Finally, all IDTAs issued in the interim should include a "tag line" in multiple languages directing the individual to the translated material on the TSA website.

These are mostly one-time investments that will go a long way to create a more fair and accurate TWIC process for the diverse population of U.S. port workers.

* * *

Thank you again for the opportunity to testify on this critical issue of concern to thousands of port workers and truck drivers and their communities. We looking forward to working with the Committee to help workers access the rights guaranteed by the MTSA and to ensure a more fair and effective TWIC process.

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[22] 67 Fed. Reg. at 41461.
[23] 67 Fed. Reg. at 41464.

PREPARED STATEMENT OF LISA B. HIMBER

Good Morning Mr. Chairman, Congressman King, and members of the Committee, and thank you for the opportunity to testify on the importance of the Transportation Worker Identification Credential (TIC) program. My name is Lisa Himber, and I am Vice President of the Maritime Exchange for the Delaware River and Bay, a non-profit trade association representing the Delaware Valley port community. I am also a member of the National Maritime Security Advisory Committee (NMSAC) and have chaired its TWIC working group since the committee's inception in March of 2005.

Having been involved with the program since February of 2002, my organization and its members are all too keenly aware of the massive challenges facing our ports as we seek to implement the TWIC related provisions of the Maritime Transportation Security the Security and Accountability for Every Port Acts. We appreciate this Committee's understanding of this important program and its efforts toward keeping TWIC in the public spotlight.

Congress and the Department of Homeland Security (DHS) have created any number of programs since the events of 9/11 forced us to re-examine our approach to border security. MTSA required security plans which have hardened our vessels and facilities, and the Trade Act and Bioterrorism Acts of 2002 spawned programs such as the 24-hour advance cargo manifest rule and advance electronic notice of food imports, which have provided greater visibility into the cargo supply chain. And while both the maritime industry and the government agencies which regulate it were forced to make radical changes in their business processes to successfully implement these far-reaching programs, none of these so dramatically changed the landscape as TWIC has the potential to do. With the implementation of the TWIC program, we will begin to focus on that last component of maritime security: the people who work on our vessels and piers.

Our industry has long supported the TWIC concept, and we have continued to demonstrate that support over the last five years. Undoubtedly, it has been a long and hard road to get us to where we are today, and as we stand on the brink of bringing the program from the pilot stage to a full production environment, it is paramount that we learn from the mistakes of the past and take all conceivable steps to ensure the program is implemented in such a way as to meet all its stated goals.

We fully understand the difficulties Transportation Security Administration is facing as it seeks to deploy a program of this complexity and magnitude. And it is our sincere hope that the agency will not only listen to the concerns of its stakeholders—those very people who have the most to gain from a more secure maritime environment—but that they will act on the recommendations of the many maritime professionals who have dedicated their time, resources, and expertise to making this program a success.

So while we look forward to working with TSA and its contractors to resolve the unexpected bumps in the road we are certain to encounter, we believe it is appropriate to highlight those concerns that, if not addressed, may unnecessarily impede our progress.

I will focus my comments today in two key areas. The Phase I/Card Issuance and Phase II/Reader Deployment.

***PHASE I/CARD ISSUANCE***

Let me begin by saying that since the October startup in Wilmington, Delaware, the initial TWIC deployment appears to be going fairly well. Though there have been a few minor complications, these were not unexpected, and we remain confident that TSA and its contractors will quickly resolve issues as they arise. One issue which has surfaced as having the potential to cause significant problems relates to the capture and verification of the biometric, which I will discuss shortly.

That being said, there are several specific areas which we believe need further attention.

***Communication***—Throughout the pilot program, both Congress maritime stakeholders expressed their belief that TSA had done a poor job of communicating information and project status. We were pleased when TSA and Lockheed Martin announced the formation of a TWIC Stakeholder Communication Committee which would serve as a forum for TWIC managers to provide information and obtain industry feedback. The Committee has met many times since its formation last spring, yet unfortunately it has not served its purpose. For example, when TSA announced it would not start program rollout in March as planned, stakeholders were not provided with information as to the cause of the delay or provided with updates over the intervening months.

We do not understand why information such as the deployment schedule, enrollment center locations, and other important information concerning the TWIC rollout must remain a secret from those who will be affected by decisions TSA makes. As the agency should have learned, failure to provide timely and relevant information only leads to speculation, poor planning, and an overall inability for stakeholders to help TSA achieve success.

In addition, many port operators and others remain concerned that many truck drivers and other workers are largely unaware of the requirement. We acknowledge that TSA and its contractors have worked to broaden outreach and awareness efforts, but it appears more needs to be done in this area.

***The Enrollment Process***—For reasons which were never made entirely clear, the third phase of the TWIC pilot program, which was designed to test the business processes of applying for, obtaining, and using the TWIC, was severely abbreviated. In addition to issuing only a limited number of cards, only about 2,000 cards were produced in the East Coast Pilot program, very few of the actual processes to be followed to obtain a TWIC were tested in the field. Most of these related to the use of the card readers, however neither were several of the enrollment and card issuance processes fully examined.

Having been through the process, I can attest to the fact that, while it could be streamlined somewhat, overall the experience was not overly burdensome. I applied for my card on Monday, October 15, and received notification that my card was available for pick up within five days. The pre-enrollment, enrollment and card activation processes were fairly simple and took only about 45 minutes in total.

*Impact on the Workforce*—Foremost among the open questions relates to the lack of a background check for the volunteer pilot program participants. We were told that TSA did not have the regulatory authority to conduct a background check during the pilot program; as a result no empirical data are available to determine what, if any, impact this program will have on the workforce. What we do know is that there are maritime workers who have disqualifying criminal offenses in their backgrounds, yet we do not know their numbers or whether those workers will be able to obtain the necessary waivers.

We are heartened by the statistics provided by TSA regarding the number of individuals who have successfully applied for waivers in the Hazardous Materials endorsement program. Yet we are concerned that TSA has indicated that the majority of people who were initially disqualified from receiving a Hazmat endorsement did not apply for waivers. Whether this is because they were unaware of the opportunity, intimidated by or unable to understand the process, or felt they would not be eligible is unknown. It is clear, however, that TSA must do all it can to help these individuals through the process. No one wants to see a qualified maritime worker deprived of his or her livelihood.

*The Casual Worker*—Over the last five years, there has been a great deal of concern and discussion surrounding how ports and vessels will accommodate the need to hire casual workers to process cargoes during peak operating times. While the regulation allows for workers without TWICs to enter under escort, a practical method to implement an escort program has yet to be developed.

First, there are safety concerns that must be addressed to effectively implement an escort program. Certainly, a worker cannot effectively monitor both his own work and the activities of others. In addition, the physical layout of the facility or type of cargo being moved (such as automobiles, which are driven onto the port) may prevent the implementation of an escort policy. It is certainly easy enough to stipulate as policy that all workers must have TWICs—until there is a shortage of eligible workers and cargo does not move.

Some believe ports should be allowed to create a program to grandfather casual workers if they so choose. For example, eligibility could be restricted to individuals who have a history of working at a given port, and a ceiling set on number of hours worked prior to requiring a TWIC. Facilities could be given the option to create a "temporary" credential or visitor's pass in lieu of requiring escorts. If appropriate, when the individual's identification documentation is validated, his photograph could be taken and other information entered into the facility access control system. If necessary, this information could be submitted to DHS for recordkeeping purposes.

While some believe this would circumvent the TWIC process, and certainly such concerns are legitimate, allowing a program of this nature in the short term would ensure a more smooth transition to the new requirements. The ultimate outcome of TWIC, for better or worse, will be a change in maritime industry hiring practices. We must take advantage of the opportunity TWIC will afford to "professionalize" the workforce, as we anticipate that various trade and other unions will develop a cadre

of members "certified" to work on regulated areas. At the same time, however, it is necessary that we take measures to ensure commerce can continue to flow smoothly in the interim.

Use of Biometrics—The prototype did not test use of biometrics with workers at port facilities. This is a significant concern as there is no evidence that the fingerprint will suffice as a biometric in a maritime environment. Although the potential adverse impact is less severe than it will be after use of card readers is phased in, there are still unanswered policy questions. For example, how will TSA issue a credential to an individual whose biometric cannot be captured? What will be used for verification of such individual during a random spot check by the Coast Guard?

Of the 16 people who applied for their TWICs at Wilmington on Monday October 15, at least three of those encountered problems in activating the cards because the biometric verification failed. This is an alarmingly high percentage and could point to a significant flaw in the system that must be contained before the program is expanded. It is important to note that this was in an office environment where conditions are fairly clean and could be more problematic in a weather-exposed port or vessel environment.

This is particularly puzzling since each enrollee was able to successfully scan their two index fingers immediately after enrollment of their ten fingerprints. As a result of the initial problems observed during card activation, I'm concerned that there could be a technical issue with the method used by the contractor for generating the fingerprint data stored on the TWIC card and how that data is being verified at activation. We hope that TSA will investigate this matter and take corrective action before they issue a significant volume of TWIC cards that might result in excessive biometric verification failures for legitimate card holders.

*Phase-In Schedule*—When the final TWIC rulemaking was promulgated in January of this year, TSA anticipated a late March startup and mandated that initial rollout must be completed by September of 2008, an 18-month schedule we believed was ambitious at the outset. Yet enrollment did not begin until October, leaving only an 11-month window to complete the initial enrollment process. While we applaud TSA's desire to complete the process quickly based on the original schedule, we do not believe this timetable is realistic and suggest consideration be given to planning for an extension. Without proper planning, making the decision at a later date could create real problems for both the contractors and for maritime workers.

In addition, we recommend that TSA and Coast Guard begin compliance at all ports simultaneously. First, staggering TWIC compliance dates can cause competitive disadvantages for those areas which have earlier dates—as can any program which makes it more difficult, costly or cumbersome to move cargo through one port over another. In addition, because the maritime worker population is largely mobile, it will be difficult for the ports where TWIC has been declared mandatory to escort mariners, or truck drivers arriving from areas where TWIC is not yet available or mandatory.

In any event, it is crucial that there is concurrence between the Captains of the Port and and key port stakeholders when the decision is made to begin to enforce compliance in any given region.

*Enrollment Center Locations*—A sufficient number and convenient locations of TWIC enrollment centers will be critical to successful program deployment. While TSA has guaranteed there will be enrollment sites in at least 140 port cities, we have yet to learn the number of locations within those ports, nor how long they those sites will be operational. Further, we have not been provided with any information on the locations of centers beyond September of 2008.

Decisions on locations of enrollment centers beyond the initial rollout should not be left to the contractor's discretion but must be a cooperative agreement between TSA and the maritime community to facilitate the TWIC enrollment and card replacement processes.

Further, the enrollment process is not geared toward mobile populations, particularly truck drivers. The program is designed in such a way that individuals must retrieve their TWICs after production at the same location as they applied. Many drivers arrive at Delaware River ports from other parts of the country. Until the program is fully implemented, these drivers will not have their TWIC cards. With the sheer volume of trucks moving through facility gates every day, it is not feasible that facilities, importers, or others could provide resources to escort these individuals.

*Trusted Agents*—Because of the sensitive nature of the data these individuals have access to, we have suggested that TWIC trusted agents be subject to higher scrutiny than TWIC applicants. In addition to undergoing the same threat assessment procedure as a potential TWIC holder, we have recommended that trusted

agents also be subject to financial history and other relevant background checks. To date, we have not received any assurances in this regard.

Based on our experience during the pilot program, we also recommended that trusted agents receive relevant customer service and "business" training, such as how to appropriately swipe a credit card, as well as comport themselves in a professional manner. The Trusted Agents I have encountered in Wilmington have certainly been friendly and polite. However, when I arrived at the enrollment center after completing the pre-enrollment process, the Trusted Agent could not access my information. As it turned out, there was not a system problem, but rather it was a training issue with that particular Agent. Further, when I went to retrieve my card, there was a lengthy process while information was uploaded from the system to the card. The Agent was unable to answer my questions regarding what information was being encoded into the card.

Needless to say, it is critical that Trusted Agents receive thorough training on the TWIC program itself. While we recognize that it is still early in the process, given that the Trusted Agents have been onsite and undergoing training in Wilmington for several months, we are extremely concerned to hear that there are training problems right out of the gate. If indeed the population estimate of 750,000 workers is as understated as many port officials believe, and Lockheed Martin is compelled to quickly fill Trusted Agent positions to accommodate a greater than anticipated demand, how will these issues be handled?

Applying for an obtaining TWICs will take time and will cost, in some cases, a great deal of money. It is incumbent upon TSA to ensure these issues are anticipated and addressed.

*Use of Readers During Phase I*—The TWIC regulations require that individuals seeking unescorted access to a restricted area present their cards for visual inspection. Many facilities have invested in electronic card readers which allow access through automated gates. In addition to the increased throughput time and personnel costs associated with visually inspecting each card, many believe that eliminating the electronic read in favor of the human review is in fact taking a step backwards in terms of security.

The TWIC cards being issued today are machine readable. We have suggested to TSA and Coast Guard that the visual inspection should be considered a minimum standard; vessels and facilities should have the option to exceed that standard by using TWIC readers for access during Phase I, even though readers are not yet required.

*Lost or Stolen Credentials*—We appreciate that TSA has provided a mechanism to accommodate access for workers whose cards may have been lost or stolen. Yet this mechanism is only available to direct employees of a facility or vessel, and it should be made available to all credentialed workers. Further, the process to verify/enforce this provision is unclear. While the request for a replacement card can be made on-line, ostensibly eliminating the need to make two trips to the enrollment center, the guidance provided stipulates that proof during the 7-day grace period must be provided in the form of a receipt, which can only be obtained by visiting the enrollment center. Further, since TSA cannot guarantee that a replacement card will be issued in the 7-day time frame, we suggest the guidance be modified to allow for a 30-day grace period.

These are just a few of the outstanding concerns related to the TWIC issuance process. Others include questions about liability—to the vessel or facility operator, to a TWIC holding escort, to companies whose employees may be injured while en route to or from an enrollment center—to a lack of "batch enrollment" capability—to concerns about protecting the data collected and stored during enrollment—to the lack of integration between TWIC and merchant mariner and other existing credentials—or questions surrounding access for law enforcement or emergency personnel.

There are a similar number of open issues and questions surrounding the use of card readers when Phase II of the program begins.

***PHASE II/READER DEPLOYMENT***

Most maritime professionals applauded the TSA and Coast Guard decision to segregate the rulemaking processes related to card issuance and reader usage. Taken separately, each of these components of the TWIC program is extremely intricate and creates multiple possibilities to unduly hamper maritime operations if not implemented in a thoughtful and deliberate manner. We appreciate that DHS is allowing sufficient time to address the challenges of card issuance prior to introducing the reader component. This is particularly relevant given that many of the critical technologies, such as communication with the central database, use of biometric readers, or using the "hotlist" were not tested, or were tested insufficiently, during the original TWIC pilot program.

We are pleased that DHS, as required by the SafePort Act, will conduct a separate TWIC pilot program to test reader technology and processes. It is our understanding that Coast Guard will publish a proposed rule prior to commencement of the pilot program, and we appreciate the opportunity to provide early comment. And while we recognize that TSA and Coast Guard must complete their planning well in advance of pilot startup, policy decisions must be made prior to choosing technology solutions to be tested. Further it is absolutely crucial that policy decisions are made in concert with maritime stakeholders and that the maritime industry has a voice in the design and development of the pilot program—particularly those ports and vessels who will be participating.

At this point there are two primary concerns technology to be used. The first involves the encryption of the biometric as it is validated during an access request.

*Contactless Biometric Read*—The Notice of Proposed Rulemaking published in May of 2006 regarding reader usage dictated that contact cards would be used in the TWIC program. Requiring that a card be swiped at a TWIC reader would not only significantly delay maritime operations, but contact readers are more susceptible to failure and present an easy and attractive target to vandals. In response to stakeholder comments, DHS agreed to utilize a contactless card and asked the National Maritime Security Advisory Committee to develop recommendations for a contactless reader specification which could be used at ports and on vessels.

The NMSAC completed its work in February of 2007, and in September DHS published the technical specification for the reader it selected. Despite the fact that the recommendation of its advisory committee, which was supported by a large majority of the comments to the public docket, that the fingerprint template not be encrypted, DHS elected to require such encryption. This is one of the single most important issues DHS will have to address as it enters the second phase of the TWIC rulemaking process.

**A. Privacy and Security Considerations**—We support the inclusion of measures to protect individual privacy and acknowledge that this prerequisite is as critical to the success of TWIC as are the need to enhance commerce and improve transportation security. It is our understanding that all personally identifiable information about an individual gathered during enrollment will be retained by TSA in its central data bank. The card itself is expected to show and/or contain a photo, a unique cardholder identification number, and the individual's biometric fingerprint template only.

In its design, TSA wisely elected to utilize the fingerprint template rather than a full fingerprint image specifically to address both privacy and operational efficiency concerns. Since only a fingerprint template will be passed between the card and the TWIC reader, the information cannot be reverse-engineered to a full fingerprint image.

Even if the template were "stolen" during contactless transmission to a TWIC reader, and even if somehow it could be used to replicate the original fingerprint, for which we understand no technology currently exists, the "thief" would not be able to use this illegal TWIC as the fingerprint image would not match his own when presented to a biometric reader in conjunction with a TWIC. In addition, an individual interested in "stealing" a fingerprint would meet much less technical resistance and obtain a more accurate representation by lifting it from an object in a public place such as a car door, window or drinking glass.

**B. Operational Considerations**—There are several concerns with encrypting the fingerprint template. First, every transaction will require encryption and decryption, each of which takes time and affords an opportunity for problems to arise. In addition, prior to encryption and decryption, some form of authentication or "handshake" between the card and reader is necessary to validate that the transaction about to take place is legitimate. In order for such authentication to take place, some form of key management must be in place. Thus, if a key is compromised at one instance, it affects every reader in that "key community."

In summary,

- Adding encryption generally makes the TWIC system more complex and therefore more difficult to develop, use, manage, and maintain.
- Adding encryption will slow processing time to read cards at vessels/facilities.
- The use of keys places an administrative burden and certain liabilities (e.g., responsibility to ensure the key is not compromised) on those charged with key management. Vessel and facility operators are neither prepared nor able to accept these responsibilities.
- Adding encryption will increase TWIC costs.

The NMSAC TWIC Working Group closely studied the issue and as a group concluded that the operational complexities increase by a level of magnitude and to the point where they are not proportionate with any perceived benefit of encrypting the biometric template. In short, there is no empirical evidence that encrypting the fingerprint template affords any additional protection of personal privacy. Despite this, TSA plans to require that the template be encrypted.

This is an area where industry and government are clearly not in agreement. Prior to finalizing this policy decision, TSA and Coast Guard should revisit this issue with industry stakeholders to determine a mutually acceptable solution.

*Use of the "Hot List"*—To date, TSA has not provided any information on the hotlist to port and vessel operators. Several questions, such as what data will be provided, file transfer protocols, frequency of updates, and method of system query should be discussed well in advance of the pilot program start up.

*Reader Manufacturing*—One of my members is a manufacturer of card readers and shared the following concerns. "Meeting policy requirements and TWIC technical reader requirements as published means manufacturers and integrators must create a custom product; there is no off the shelf product that meets the control requirements, environmental requirements and system requirements specified. As a result:

a. Manufacturers and integrators have to evaluate the Return on Investment that can be predicted for expending engineering and manufacturing resources to rework existing products to meet the requirements as stated. The fact is that most manufacturing plants require sales in the amounts of 50,000 or more to cost justify the re-engineering and re-tooling effort. There are no guarantees that purchases made by maritime operators and the Coast Guard will reach these volumes, thus cost justifying the customization of product to meet the specified TWIC requirements.

b. The Personal Identity Verification requirements and the TWIC policies continue to be modified, posing additional challenges to engineering efforts both on the software side and the firmware side to meet the TWIC control requirements."

The concern for the maritime industry is of course that readers will be difficult to obtain, and those which may be available will be priced unnecessarily high such that manufacturers can recoup their engineering costs.

There are several other outstanding questions and concerns surrounding the selection and use of card reader technology. These include where readers will be required (e.g., on all vessels or just those meeting certain criteria), the use of a PIN during the TWIC verification procedures, integration with legacy access control systems, whether positive access control will be required, and future expansion of the card.

These are all important issues and it is unclear how DHS plans to work with stakeholders to address them in advance of and during the pilot program.

***CONCLUSION***

Several years from now, obtaining a TWIC will be standard operating procedure, and its issuance and use will be a matter of routine. But it is clear the next few years will be challenging ones. Now that the process is underway, successful implementation will be dependent on a great deal of communication, understanding, and patience. There is a lot yet to be done, and we must work together to address the many outstanding issues.

Over the years, the maritime sector has implemented new programs and practices in an effort to enhance the security of our homeland. We look forward to continuing to work with TSA and Coast Guard on the TWIC program to ensure there are no unintended consequences and that the TWIC will be deployed in the most secure and efficient manner possible.

Thank you for the opportunity to speak today. I will be happy to answer any questions you may have.

## PREPARED STATEMENT OF JUDITH MARKS

Chairman Thompson, Ranking Member King and Members of the Committee:

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. This testimony will provide a background on the TWIC program, the Lockheed Martin contract and the steps we have taken to begin enrollment of the maritime community.

The Transportation Worker Identification Credential (TWIC) is a Transportation Security Administration and U.S. Coast Guard 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, and vessels regulated under the Maritime Transportation Security Act, or MTSA, and to all U.S. Coast Guard credentialed merchant mariners. An estimated 750,000 individuals will require TWICs. Enrollment and issuance will take place over a 13-month period beginning in October 2007. To obtain a TWIC, an individual must provide biographic and biometric information (such as fingerprints), sit for a digital photograph, and successfully pass a security threat assessment conducted by TSA.

The TWIC final rule, published in the Federal Register January 25, 2007, reflects input obtained through four public meetings and over 1,900 comments from the maritime industry. While TWIC may be implemented across other transportation modes in the future, the TWIC Final Rule sets forth regulatory requirements to implement this program in the maritime mode first. This rule does not require maritime owners and operators to purchase or install card readers compatible with TWIC at this time. A second rulemaking is anticipated in calendar year 2007 and will propose additional access control requirements and the use of electronic readers. The public will have opportunities to comment on the proposed standards.

The program's goals are:

- Positively identify authorized individuals who require unescorted access to secure areas of the nation's maritime transportation system;
- Determine the eligibility of an individual to be granted unescorted access to secure areas of the maritime transportation system;
- Enhance security by ensuring that unauthorized individuals are denied unescorted access to secure areas of the nation's maritime transportation system; and,
- Identify individuals who fail to maintain their eligibility qualifications after being permitted unescorted access to secure areas of the nation's maritime transportation system and revoke these individuals' permissions.

***TIMELINE***

The TWIC program began in the Spring of 2002 with Phase I, which was a planning phase conducted by TSA personnel. This phase concluded in Spring of 2003. Phase II was the technology evaluation phase, performed by Maximus, Inc. under contract to TSA. Phase II ran from Fall 2003 to Fall 2004. Phase III of the TWIC program was the prototype phase, performed by BearingPoint under contract to TSA. Phase III began in the Fall of 2004 and concluded with the prototype report which was issued in the Fall of 2005.

The current phase of the TWIC program, the production phase, was competitively awarded to Lockheed Martin in January of 2007 and is currently underway.

Relevant legislation includes the Maritime Transportation Security Act (MTSA) of 2002 and the Security and Accountability for Every (SAFE) Port Act of 2006.

## *LOCKHEED MARTIN'S PHASE IV CONTRACT AND TSA OVERSIGHT*

Lockheed Martin was awarded the TWIC Phase IV contract on January, 29, 2007. The initial task order, Task Order 1, provides for initial enrollment of the maritime population, as well as support of the Information Technology (IT) system that collects applicant information and manages the lifecycle of the TWIC Credentials. The term of the initial contract award is through October of 2008. Four additional options, if exercised, would extend the contract to a total of five years to January 2012.

The TWIC Phase IV contract is performance-based, with financial incentives and disincentives tied to measurable performance goals. Lockheed Martin developed a Quality Assurance Surveillance Plan (QASP) which contains specific metrics negotiated with TSA. As part of our contract, these metrics will be used to determine whether we are meeting the performance goals and whether we receive award fees or if we must remit penalties. TSA has identified a specific quality assurance monitor to track the following key performance parameters:

- On-time Port Mobilization
- On-Time Completion of Maritime Population Enrollment
- Customer Satisfaction
- Enrollment Wait Time
- Enrollment Processing Time
- Fingerprint Reject Rates
- Helpdesk Response Time
- Helpdesk Resolution Time
- Enrollment Failure Rate (Enrollments that Fail to Process)

The TWIC fee, as of October 1st, 2007, is $132.50 for a new credential, for an applicant who does not possess a current qualifying background investigation. This fee breaks down as follows:

- $43.25 for Information Collection / Credential Issuance (Lockheed Martin)
- $72 for Complete Security Threat Assessment (STA) and Card Production (TSA)
- $17.25 FBI Criminal History Records Check

The $43.25 collected by Lockheed Martin covers the cost of enrollment facilities, personnel, travel, and fixed and mobile enrollment equipment. This fee also covers the cost of the card stock, which is delivered by Lockheed Martin to TSA's card printing facility in Corbin, KY. This card production operation is run by the US Customs and Immigration Service (USCIS) and is outside the scope of Lockheed Martin's contract. In addition, the background vetting of TWIC applicants, selection and schedule of port enrollments, the Consolidated Screening Gateway (CSG), adjudication of eligibility, appeals, and the card readers are also outside the scope of Lockheed Martin's contract; the responsibility for these activities rests with TSA.

Lockheed Martin brings a number of relevant strengths to the Phase IV contract. The two most significant challenges that we face are as follows:

(1) Rapid deployment of personnel and equipment to facilities that we must locate and secure on a very tight timeline, and,

(2) Support, maintenance, and evolution of a complex information technology system involving advanced biometric identification systems and protection of sensitive personal information.

Lockheed Martin is fortunate to have had significant experience in dealing with large rapid-deployment projects. One of the most relevant is our leadership of the Strategic Airport Security Rollout (SASR) program undertaken for TSA in 2002. The SASR program involved deployment of 2,900 personnel, to 429 US airports, in just three months. These personnel facilitated the transition to the federal passenger screening workforce, and also undertook the responsibility to survey and redesign over 1500 passenger security screening lanes.

We have also spent many years evolving our biometric and credentialing expertise. Dating back to the 1980's when Lockheed Martin began development of the FBI's Integrated Automated Fingerprint Identification System (IAFIS), we have had decades of experience in the biometric field. Over the past five years we have supported the federal government in advancing their HSPD–12 employee credentialing activities, including collaborative work with DHS, HHS, and GSA to name a few. As the lead systems integrator, we also provide core technology to the Registered Traveler initiative.

***LEADERSHIP AND OUTREACH***

Our leadership team has been carefully selected to include individuals with extensive experience and understanding of TSA, the Coast Guard, the port environment, and biometric credentialing technology. Key program personnel are as follows:

**Jon Rambeau—TWIC Program Executive, Lockheed Martin**

As Program Executive, Jon has the primary responsibility for management of Lockheed Martin's relationship with TSA and the Coast Guard, and for ensuring that the mission objectives of the program are satisfied. Jon has managed Lockheed Martin's credentialing business since 2005, and has been involved in the TWIC program since that time. Jon was a program manager for a portion of the field operations on TSA's SASR program in 2002 and 2003, and has also managed Lockheed Martin's Physical Access Control business, lending direct experience to TSA's next focus area of integrating TWIC with port access control systems.

**Richard Hatton—TWIC Deputy Program Manager for Field Operations, Lockheed Martin**

As Deputy Program Manager, Richard is responsible for managing our field staff of more than 400 trusted agents and supervisory personnel, as well as our field office facilities, equipment, and logistics network. A retired US Coast Guard Captain, Richard brings a wealth of experience spanning policy development, operations management, and emergency preparedness.

**Cliff Link—Manager for Stakeholder Outreach and Communications, Deloitte Consulting**

As lead for Stakeholder Outreach, Cliff provides the critical interface point for a diverse community of national, regional and local port stakeholders all of whom are eager for information on this important program. Cliff's selection for this position was based largely on his extensive maritime experience, which includes over 26 years as a Special Agent and Executive with the Naval Criminal Investigative Service, during which Cliff executed missions and assignments at ports throughout the nation and the world.

While TWIC is a complex logistical undertaking and an advanced technology activity, we recognize that it is more than just another large, complex project management task. This is a program that will touch hundreds of thousands of Americans'

lives, and we have taken steps to ensure that the experience is as positive as possible for those affected. We have included, as part of our rollout strategy a Communications and Stakeholder Outreach Team led by Deloitte Consulting, LLP. There are two key elements to this team's strategy as follows:

**(1) National-Level Stakeholder Leadership Communications and Feedback**—As part of the Lockheed Martin proposal to TSA, we recognized that effective stakeholder outreach and communications would be critical for success. This activity is facilitated primarily through the formation of 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 allows an opportunity for stakeholders to provide feedback and voice concerns. Each TSCC meeting features at least one special topic, such as an overview of the TWIC technology, or a briefing from an Administrative Law Judge (ALJ) on the Appeals & Waivers Process. Each meeting covers rollout status, review of action items, and an open forum for members to ask questions on topic of interest. The TSCC is an important channel for dissemination of information to the maritime population.

(2) **Local Port Outreach—At the local level, the Outreach Team has been working since the Phase** IV contract was awarded to meet directly with local stakeholders either by telephone or in person. The purpose of these meetings is to educate the local population on the key elements of the TWIC program, and to obtain their support in communicating with the local population. Where possible, these outreach sessions are a collaborative effort between the Lockheed Martin Team, TSA, and the Coast Guard. We begin the outreach process by working through the Coast Guard Captains of the Port, and attempt to reach all key stakeholders. We provide leave-behind materials in the form of flyers and posters, so that local stakeholders can continue to act as a—communications force multiplier" with the local population.

***ENROLLMENT POPULATION***

One of our key focus areas as we begin deployment operations 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 indicate an estimated 750,000 applicants will be enrolled during the initial 16-month 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 are responding to these concerns in two ways:

(1) Under the leadership of the Coast Guard, TSA and Lockheed Martin have participated in a series of conference calls with each Coast Guard District to discuss specific population discrepancies and to request data that would support increased estimates at specific ports. As of October 10th, all of these conference calls have taken place. Once we have obtained any revised population figures, facilities, equipment, and personnel will be adjusted as appropriate in our deployment plans. It should be noted however, that the results of this recent round of calls have not yielded any significant data in terms of specific population count, but we do continue to hear concerns that the current population projections are low in some areas. Lockheed Martin will continue to follow up with each port's stakeholder community as launch dates approach and ensure that we have surge capacity on hand to respond to greater than expected turnout.

(2) Because we will always have some level of uncertainty in the anticipated enrollment population, we have taken a very flexible approach to planning our operations. We will focus first and foremost on use of mobile enrollment workstations that can be taken directly to stakeholder facilities. This provides an additional level of convenience for the individual workers, and also allows for more effective management of applicant throughput, by minimizing lines at fixed facilities and easing the burden on major employers. In addition to use of mobile units, we have developed a national surge plan that will allow for rapid expansion of capacity at any of the 147 port locations. The first step would be to extend the hours or add additional work shifts with our existing enrollment staff. Second, we would add additional staff and increase hours and shifts. The third step would be to increase the number of enrollment stations by bringing in mobile enrollment stations. Lastly, Lockheed Martin would secure addi-

tional fixed facility space. We have already taken steps to prepare for these potential events.

### *PRIVACY AND DATA SECURITY*

We recognize that the information provided by TWIC applicants is personal in nature and subject to privacy restrictions. TWIC program processes of both physical and IT handling of personal data are designed around privacy. We have engaged Deloitte Consulting's Privacy Practice to review the data handling of the TWIC program and design and document a comprehensive privacy system for TWIC. Deloitte is recognized as a leading global provider of privacy and data protection services, having privacy practitioners around the globe. Deloitte employs over 185 privacy professionals in the US and Canada, over 30% of whom are Certified Information Protection Professionals (CIPPs).

The TWIC Privacy System addresses the following:

- Transparency in privacy practices to the applicants for the TWIC program in the handling of applicant's Personally Identifiable information (PII);
- Outlines the individual rights and privileges of applicants and card holders;
- Supports applicant's consent for collection, use, and disclosure of PII;
- Outlines acceptable use and handling of applicant and card holder's PII by the TWIC Program;
- Identifies the key security safeguards to support the privacy and confidentiality of PII; and,
- Enables change management for the privacy system to reflect changes in laws, regulations or TWIC program requirements.

The TWIC program has applied the preceding features across four key elements of the overall program:

- *IT Security*—All TWIC applicant data is protected electronically from the moment it is obtained. All of our data communications are processed over secure network connections and all data is encrypted, both in transit and at rest. Applicant data is only stored on a local enrollment station until it is transmitted to the central database. Provided a secure connection exists at the time of enrollment, the applicant's data is erased from the local machine immediately upon completion of the transaction. For added security and accountability, all persons processing a system transaction must digitally sign that transaction using a digital certificate from their own TWIC credential.
- *Physical Security*—The central TWIC system is housed in a secure government facility, and can only be accessed by individuals possessing a TSA security clearance and a demonstrated need for system access. Our enrollment facilities are secured after hours, and any TWIC credentials located on premise are stored in a GSA-rated safe when the center is not open for business. When enrolling a TWIC applicant, we ensure that a physical barrier exists between enrollment stations and the waiting area, so that applicant data is kept confidential to the applicant and the trusted agent performing the enrollment.
- *Privacy Officer*—We have identified an individual who is the privacy advocate for the Lockheed Martin elements of the TWIC program. This person will act as an advisor for disposition of issues raised by any TWIC applicant who has concerns about Lockheed Martin's handling of their personal information. This person has extensive privacy experience, having dispositioned legal matters related to legislation such as the Driver's Privacy Protection Act (DPPA) and the Health Insurance Portability and Accountability Act (HIPPA), as well as providing counsel on privacy matters to a number of DHS programs.
- *Helpdesk Security*—When an applicant calls our helpdesk, it is important that they quickly obtain useful information about the status of their account. Equally important, however, is verifying the caller's identity, before any personal data is divulged. For this reason, our privacy program includes helpdesk authentication procedures for validation of identity during helpdesk calls.

### *STAFFING*

We anticipate employing over 400 field personnel at the peak of the maritime population enrollment period. The selection and training of these personnel is of paramount importance to our success. We are selecting personnel local to each port enrollment location to maximize local familiarity and to provide for a long-term base of trained personnel after the initial enrollment period. Our personnel are selected based on behavioral interviewing techniques focused on the capability to perform a customer service-oriented function. Once hired, our personnel must complete the TWIC credentialing process, including the same Security Threat Assessment (STA)

that a transportation worker must undergo. No access to the TWIC system is granted without the STA being successfully completed. All of our personnel must successfully complete 40 hours of classroom training. This includes technical training and customer service training. We deliver both lecture course materials and scenario-based role-playing techniques. Of the 40 hours of classroom training, 21 hours are dedicated to customer service-related topics.

### *MINIMIZING INCONVENIENCE*

As we recognize that the TWIC credentialing process will be an added burden on a population that is already working hard to support a constantly-growing maritime transportation system, we have taken steps to make this process as convenient as possible. Features of the TWIC deployment approach include:

(1) **Mobile Enrollment and Card Issuance**—As mentioned earlier in this document, we will 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, or industry association offices. We will also coordinate the issuance of cards at these locations wherever possible, again to provide convenience.

(2) *Pre-Enrollment Options*—To minimize the time a worker must be onsite at an enrollment location, we offer multiple pre-enrollment options. Pre-enrollment involves 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 laptop-based 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.

(3) *Multilingual Support*—We recognize that certain parts of the country have significant populations of non-native English speakers. In these locations we will have trusted agents who speak other languages. Our pre-enrollment website and helpdesk are both bilingual (English/Spanish), as is our enrollment center workstation software.

(4) **Fingerprint Rejects**—As with any FBI background fingerprint check, a percentage of the population will have their fingerprints rejected by the FBI as unreadable. This represents an inconvenience for the applicant because, in this scenario, another set of prints must be collected. While we cannot eliminate this situation, we can minimize and educate in the process. To minimize the number of rejects, we are applying 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, the applicant can be educated at the time of enrollment on the possibility of an FBI rejection, and can plan in advance for a possible resubmission. The use of the advance quality check on other programs, specifically the TSA HAZMAT driver endorsement program, has kept FBI rejects to 1.5–2% of the applicant population, less than half of the 4% average seen by the FBI.

### *PORT OF WILMINGTON, DELAWARE*

As you know, our first enrollment activity began at the Port of Wilmington in Delaware two weeks ago. We expect that we will enroll 5000—6000 individuals at this location. Prior to this official enrollment date, the maritime community was able to pre-enroll on the TWIC website, *www.tsa.gov/twic.* In the first two days of online pre-enrollment, we had over 550 individuals begin the enrollment process online. To date, more than 3000 people have utilized the pre-enrollment option. In Wilmington, we have a fixed enrollment location, near the entry to the port, with four enrollment stations. In addition, in an effort to make enrollment as convenient as possible, we will be taking mobile enrollment stations to the offices of thirteen stakeholders, including Valero Oil and ILA Locals 1694–1 and 1883, to enroll their employees and members on site. We are also in discussions with Chiquita about a similar approach for their employees. With these mobile enrollment activities, we hope to cover roughly 3,700 people.

### *PORT OF CORPUS CHRISTI, TEXAS*

Tomorrow, we will begin enrollment activity in Corpus Christi, Texas. At this port, TSA's estimates indicate we will enroll roughly 6000—7000 individuals. In Corpus Christi, we have both fixed and mobile enrollment capability. As we ramp

up local operations, we will be working with local stakeholders to schedule onsite enrollments similar to those planned in Wilmington. We look forward to the next 10 locations going "live" in November and working towards beginning enrollment at all 147 locations identified by TSA.

***CONCLUSION***

Mr. Chairman, as you know, Lockheed Martin is involved with a number of homeland security programs. With each of these, the goal of a less vulnerable, more secure nation gives us true purpose; it drives our every action. With TWIC, we are particularly proud to have the opportunity to work on a program that will protect the engine of America's economy: her ports. In so doing, and in strong partnership with TSA, we bring to bear our technical skill and resources to implement this initiative in a manner that is both secure and convenient. We will continue to serve our customer with pride and dedication, doing all that we can to minimize inconvenience to port workers while striving for the best in maritime security.

Thank you for the opportunity to submit this testimony for the record.

PREPARED STATEMENT OF GEORGE QUICK

Mr. Chairman and Members of the Committee:

My name is George Quick. I am Vice President of the Pilot Membership Group of the International Organization of Masters, Mates & Pilots (MM&P) and a member of the MM&P's General Executive Board. The MM&P represents Ships' Masters, Licensed Deck Officers and unlicensed mariners working aboard United States-flag commercial vessels operating in the foreign and domestic trades and on the inland waterways. We also represent mariners working aboard civilian crewed ships in the government's Ready Reserve and Military Sealift Command fleets, as well as harbor pilots in ports throughout the United States. The seafaring and pilot members of the MM&P are among those who are required to obtain a Transportation Worker Identification Credential (TWIC). As such, we have a direct interest in the implementation of this program and the effect it will have on the ability of our members and all maritime labor to continue to do their jobs.

There should be no question that the MM&P and all the American seafaring and longshore unions have a vital interest in, and an unwavering commitment to, the enhancement of America's maritime security. America's maritime workforce is on the front lines in the war against maritime-related terrorism. It is American maritime workers who will almost certainly be among the first American citizens directly affected, injured and killed in the event of such an incident or breach of maritime security. It is America's maritime workforce which should therefore be regarded by our government as an ally here at home, in the same way that we sail and work in support of our armed forces overseas in the war against terror.

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

***Interoperability with International Standards***

We have consistently argued that there is a simpler, quicker and more efficient way to implement a TWIC program than the way currently proposed. After the terrorist attacks against our country on September 11, 2001, government, industry and labor turned their attention to ways to prevent maritime-related terrorist incidents. The United States, recognizing the international nature of maritime commerce, looked to the International Maritime Organization (IMO), the United Nations body that regulates international shipping, for support. In 2002, the IMO, relying most heavily on principles put forward by the United States, developed an international maritime security regime that applies to ships and ports.

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

The IMO member states collectively realized that identity documents and access control are essential elements of an effective maritime security system. They requested that the International Labor Organization (ILO), another United Nation's body, develop a uniform international standard for a seafarer's identity document

to be used for access control in conjunction with the ISPS Code. With the participation of the United States, the ILO adopted the Seafarers' Identity Document (SID) Convention (C–185) in June 2003.

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

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

We wish to point out that Congress has strongly suggested the use of an international standard for transportation worker identity cards. For example, the MTSA encouraged the U.S. Coast Guard to:

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

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

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

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

The ICAO standards are a proven and internationally accepted technology for identity documents. The readers and other supporting hardware have also been proven at airports around the world. We believe TWIC should start with this established system and build upon it as technology advances and new capabilities emerge. By starting from a straightforward and uncomplicated foundation—by adopting the same proven technology that is widely used for access control of foreign visitors to the United States as well as at international airports and in foreign ports—we can dramatically reduce the problems with the present TWIC program and increase the ease and speed of implementation of the TWIC.

***Federal Preemption***

There is another aspect of the current TWIC program that we believe must be addressed if the TWIC program is to achieve its maritime security objectives without unnecessarily disrupting and impeding the flow of commerce. Specifically, we believe that the Federally-issued TWIC must take precedence over all other state, local and private identification card requirements for maritime workers. It is, in our opinion, critical that state and local and private entities no longer be able to subject our nation's U.S. citizen maritime workforce to additional application requirements, background checks and fees or to demand that our nation's workforce obtain multiple and duplicative maritime port and vessel access control credentials.

We believe it is possible under a properly structured and implemented TWIC program to enhance security within America's ports and aboard vessels in such a way that there is a minimal disruption to the movement of goods in domestic and foreign commerce and the rights of transportation workers are protected. Unfortunately, un-

less the Congress acts to ensure that the Federally-mandated TWIC program preempts all other state and local and private entity access control procedures and requirements, our maritime workforce and transportation system and our national economy will be adversely affected without any corresponding increase in national security benefits. Equally important, unless Congress acts our nation's security may be weakened as Americans are discouraged by excessive regulatory burdens from entering and remaining in the maritime industry, reducing the civilian maritime manpower base relied upon by the Department of Defense.

Maritime workers are a mobile workforce, moving between different states, ports and facilities. The imposition of multiple additional requirements beyond those mandated by the Federal TWIC program will force maritime transportation workers to file numerous applications, undergo repetitive, time-consuming background checks and pay all the fees associated with possibly dozens of identification credentials. If Congress does not act, and the TWIC regulations continue to allow each state and local government and port and maritime facility to develop and implement its own access control system above and beyond what the Federal government has deemed necessary to protect the national interest, then the access control identification credential system as a whole will become an unjustifiably burdensome and costly administrative impediment to the efficient flow of commerce.

America's maritime workforce must have an access control identification credential that they can present at every state, port or facility their employment takes them. If they do not, and if our government allows numerous additional requirements to be imposed, America's maritime workforce will be unduly and unfairly burdened, America's efficient and reliable waterborne transportation systems will be undermined, and America's commercial seapower capability will be weakened. In addition, in the absence of a national TWIC program that supersedes all others, mariners who do not also possess an identity card issued by a particular state, port or facility may find themselves forbidden to take shore leave or prohibited from transiting between vessels without first paying "escort" fees. The result will be American citizen mariners imprisoned aboard their vessels in American ports.

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

***Disqualifying Crimes***

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

Our concerns about the background check process are fueled by problems encountered by workers who requested a HAZMAT endorsement. In her October 4 Senate Commerce Committee testimony, TWIC Program Director Maurine Fanguy stated, "On the HAZMAT program, we have processed over 10,000 appeals, and [in] 99 percent of them. . .we've discovered that we had incorrect information and we gave the person their endorsement." While we commend TSA's HAZMAT appeal process, which obviously looked at workers' appeals without prejudice, we would note that over 10,000 people were initially denied an endorsement because of errors or omis-

sions in the initial determination of security threat assessment (IDTA). Obviously, this aspect of the TWIC program warrants careful oversight.

***Competitiveness Issues***

It is also important to note that approximately 95 percent of all the cargo entering and leaving the United States is carried aboard foreign flag vessels operated by foreign crews. What is even more important is that none of these vessels and none of these foreign crews are subject to the same requirements as those imposed by our government on U.S.-flag vessels and their American crews. Foreign crews are not covered by the TWIC program. Foreign crews operating vessels in and out of American ports are not subject to U.S. government imposed background checks. Consequently, the overwhelming majority of maritime personnel responsible for the carriage of hazardous and other cargoes in and out of our country will not have to obtain a TWIC or obtain an access control credential issued by American states, ports and facilities—only American mariners will be subjected to these numerous and onerous requirements.

***Combining the Merchant Mariner Credential and TWIC***

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

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

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

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

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

***Conclusion***

We thank you again, Mr. Chairman, for the opportunity to present our comments on the TWIC program. We stand ready to work with you and your colleagues and

with other concerned and affected parties to achieve a safer and more secure maritime transportation network.

PREPARED STATEMENT OF BETHANN ROONEY

Chairman Thompson, Congressman King, members of the Committee, thank you for the opportunity to testify on the importance of maritime and port security and the challenges that industry is facing in implementing the TWIC (Transportation Workers Identification Credential) program. My name is Bethann Rooney and I am the Manager of Port Security for The Port Authority of New York & New Jersey.

Since the attacks of September 11th our collective attention has been focused on the need to protect our borders at major international gateways like the Port of New York and New Jersey and small ports alike. The Maritime Transportation Security Act (MTSA) of 2002 and the Security and Accountability for Every Port (SAFE Port) Act are two pieces of landmark legislation that have had a positive impact on our homeland security. We commend the House of Representatives and this Committee in particular, for its work on ensuring the security of our ports and the people that work in them.

Section 102 of the MTSA requires background checks and the issuance of biometric transportation security cards (TWIC) to all personnel who require unescorted access to secure areas of regulated vessels and port facilities. The SAFE Port Act subsequently required a TWIC technology pilot program and other program milestones. Fundamental to our nation's security is the ability to ensure that individuals who pose a security threat do not gain access to our nation's ports. TWIC helps provide that insurance. Therefore, we fully support TWIC, the need for positive access control at port facilities and the creation of a national identification program.

We also recognize that the TWIC program is one of the world's most ambitious interoperable biometric credentialing programs and that rolling it out in the most complex transportation industry is a monumental undertaking. Therefore, we also commend both the Transportation Security Administration (TSA) and the United States Coast Guard (USCG) for their commitment and dedication to this program and particularly for their willingness to engage industry stakeholders.

Nonetheless, I would like to briefly discuss four broad elements of the TWIC program and a number of outstanding issues and concerns that may unduly impact the objectives of the TWIC program, maritime operations and port security if not implemented in a decisive and thoughtful manner. These include: (1) enrollment; (2) card reader technology; (3) the pilot program; and (4) enforcement.

**OUR NATION'S PORT ARE VITAL TO THE ECONOMY**

Ninety-five percent of the international goods that come into the country come in through our nation's 361 ports; approximately 13% of that volume is handled in the Port of New York and New Jersey alone, the third largest port in the country. The Port generates over 230,000 jobs and $12.6 billion in wages throughout the region. Additionally, the Port contributes $2.1 billion in state and local tax revenues and more than $3.8 billion in federal tax revenues. Cargo that is handled in the Port is valued at over $150 billion and serves 80 million people, or thirty five percent of the entire US population. In 2005, the port handled over 5,500 ship calls, 86 million tons of general cargo, 852,297 autos, and 2.9 million containers, approximately 8,200 containers each day. Today, international trade accounts for approximately thirty percent of the US economy. Considering all this, it is easy to understand how a terrorist incident in one of our ports would have a devastating effect on our nation and its economy.

**TWIC ENROLLMENT**

*Enrollment Schedule*

The Port of New York and New Jersey lies within what is considered the two most dangerous miles in the country and, as such, the implementation of the TWIC in this region is of up-most importance. Therefore we were very disappointed when the Port of New York and New Jersey was not selected as one of the first ports in which enrollment would begin. In fact just a portion of the highest risk Tier I ports in the country are included in the initial enrollment period, while five Tier II and Tier III ports are already scheduled to begin enrollment. It is even more baffling that none of the pilot project locations, all of which require a critical mass of transportation workers to be enrolled before the pilot projects can begin are scheduled for enrollment yet. Not including our facilities as part of the first roll out of the TWIC enrollment does not make sense from a risk based security or program management standpoint.

*Need for Accurate Enrollment Estimates*

The initial enrollment phase of the TWIC program is referred to as Phase I. TSA estimates that 750,000 workers will need to obtain a TWIC card in Phase I. Unfortunately, the industry feels that number will be significantly higher and it is concerned about the TWIC contractor's ability to provide the requisite level of enrollment service without increasing the cost of the TWIC card to the end user or creating unnecessary delays in enrollment of processing. In the Port of New York and New Jersey alone, the TSA estimated that there would be 60,256 individuals who would need a TWIC. With just a seventy percent return on a survey of all stakeholders in our port, our population counts are closer to 125,000 people, more than double the TSA's estimates. The disparity in estimates is even more acute in the Port of Houston where the TSA's estimates were off by a factor of twelve (35,000 vs. 435,000)! In Savannah, the TSA's estimates were for 15,000 people and port officials there believe that it is closer to 30,000. Admittedly, Lockheed Martin has been responsive to estimates by the individual ports and has committed to providing the resources that are necessary to appropriately support TWIC enrollment. However, it is unclear whether the necessary level of service is sustainable within the framework of a fixed-price contract.

*Enrollment Locations*

An equally significant problem has to do with the ability to locate suitable facilities for fixed enrollment sites in close proximity to the port infrastructure. There are several requirements for these facilities that have proven to be problematic including ensuring sufficient truck parking, an inability or unwillingness to enter into a contract for more than a year and provisions to satisfy the Americans with Disabilities Act (ADA) requirements which are very difficult to find in the aged port infrastructure around the United States. For example, in the Port of New York and New Jersey, Lockheed Martin has yet to find a suitable location that meets the above requirements on the New Jersey side of the Port, where the vast majority of all port activity occurs. While this is being accommodated for the initial enrollment period with mobile enrollment capabilities that will be available to employers with more than fifty employees requiring a TWIC, it does not provide a viable long-term solution Convenient permanent sites for TWIC enrollment and renewals must be identified and established. The sites should be strategically located in each port region. The Department of Homeland Security must take whatever steps necessary, to the ensure that the 146 TWIC enrollment sites around the country continue to be the minimum that are supported after the initial enrollment period is deemed to be completed. If suitable facilities can't be identified, then consideration must be given to make TWIC enrollment available at State Department of Motor Vehicles offices, truck rest stops or US Post Offices.

*Liability*

While Lockheed will be accommodating initial TWIC enrollment with mobile capabilities, under current plans, the port worker would still need to go to a fixed location in order to pick up and activate his/her TWIC card. While the process of obtaining the TWIC and activating it may only take a few minutes, the reality is that the worker could be unproductive for two to three hours or more as he or she travels to and from the fixed enrollment site. This potential need for extensive travel to complete the TWIC enrollment process has created liability concerns on the port of employers who may face potential tort liability if an employee gets injured in the process of obtaining a TWIC. The government should indemnify employers for any damages that the may incur arising out of an employee's TWIC enrollment process.

*Truck Driver Screening & Enrollment*

The most difficult population of port workers to enroll in TWIC is going to be the truck drivers. In the Port of New York and New Jersey we have an existing truck driver identification system, called SEA LINK__ in which over 25,000 individuals are actively registered to pick up and deliver cargo at our seven container terminals. Due to the general nature of this business, we issue over 400 new SEA LINK__ cards a month to drivers that have never hauled cargo to or from our maritime facilities. There are an equally large number of individuals that work in multiple ports around the country. Therefore, enrollment and enforcement on a port-to-port basis will have severe impacts on port productivity.

Additionally, if a trucker enrolls for a TWIC during his first visit to the Port of New York and New Jersey, the current process requires that he return to the same enrollment site to retrieve and activate his TWIC after the security threat assessment has been completed. It could be weeks or months before the driver is able to return to New York and New Jersey and in the meantime he is unable to access other ports without an escort, which doesn't need to be provided.

We have made a number of suggestions to address this issue including: allowing TWIC applicants to designate that cards be returned to a different enrollment center than that where they originally applied; or a mechanism wherein the TWIC is mailed to an applicant's office or home. Once the applicant has the TWIC card, the individual could return to an enrollment center of his choice anywhere in the country to activate the TWIC.

Under the SAFE Port Act, DHS was required to implement a threat assessment screening for all port truck drivers with access to secure areas of a port and who possess a commercial driver's license but not a hazardous materials endorsement. This program would be very similar to the interim-screening program in which all facility owners and operators were required to participate in early 2006. Although this program hasn't been rolled out yet, we feel strongly that DHS comply with this requirement so that industry has a better understanding of what the impact of TWIC might be on the truck driver community. Current estimates indicate that anywhere from 10–40% of truck drivers may not be eligible for a TWIC, which could seriously impact port productivity and ultimately security.

**CARD READER TECHNOLOGY**

Earlier this year, the TSA and USCG decided to break the implementation of the TWIC program into two phases; the enrollment phase, Phase I, which I have discussed and which is beginning in the Port of Wilmington this week and Phase II which requires the installation and use of biometric card reader technology at both the truck and pedestrian gates of regulated facilities and at ingress to regulated vessels. Throughout the course of the past ten months, we and several of our industry partners, through participation in the National Maritime Security Advisory Committee (NMSAC) TWIC Working Group, have been working with the federal government and biometric technology industry to develop the functional requirements for these biometric card readers. This has culminated with the publication of the TWIC Biometric Reader Specification last month. While this is a "working draft" that may be updated once the pilot projects have been completed, it begins to answer a number of the questions that facility and vessel owners and operators have.

However, as with the implementation of any technology, it is important to understand how the technology will be deployed and what the government's concept of operations is before the technology solution is identified. Regrettably, the Coast Guard still hasn't answered a number of critical policy questions, the answers to which could have a significant impact on port operations, our cost to implement the TWIC program and the card reader manufacturers' willingness to participate in the program.

The two most significant questions that haven't been answered yet are "how often will the biometric need to be verified?" and "is positive access control required?" These policy decisions must be made before the pilot projects begin so that they can be adequately tested and evaluated during the pilot projects.

*Biometric Verification*

In June 2007, the Coast Guard asked the NMSAC TWIC Working Group to assist with the development of the draft Notice of Proposed Rulemaking for the TWIC Biometric Reader Requirements. To assist with this effort, they provided a set of specific questions that they wanted answered. After reviewing the totality of those questions, it has been suggested that the Coast Guard may not require that the biometric data stored within the TWIC be verified for every access control transaction regardless of the MARSEC level. While this may be the minority opinion, the Port Authority views the failure to verify the biometric 100% of the time as a point which would defeat the purpose of a biometric-based credential and would do little to ensure that we can positively identify an individual seeking to gain access to a secure area of our port facilities and vessels.

100% biometric verification is the only way to ensure identity of the individual. If the ultimate decision is to require biometric verification at elevated MARSEC levels only, then the rate of verification should be consistent with the additional screening and inspection rates that are already required, a random 25%–50% at MARSEC II. That way, facility operators would not be required to purchase and maintain biometric readers at access points that are rarely used. Rather, during heightened security levels, security guards could verify biometrics using handheld readers at those access control points. This would reduce the need for significant capital expenses for component equipment that would rarely, if ever be used. In the Port of New York and New Jersey for example, we have been at an elevated MARSEC level for just twelve hours in the six years since 9/11. It would make little sense to invest in approximately $10 million in infrastructure that might not ever get used, as opposed to $50,000 in handheld card readers.

*Positive Access Control*

An equally important policy decision that must be made is whether or not "positive access control" is required. Positive access control means that you know who is on your facility or vessel at all times. This would require the owner/operator to have two readers at each access control point, one each on both the secure and non-secure side.

Operationally this is also very difficult to achieve in several port activities in which personnel regularly move between a secure and non-secure area numerous times during a typical work period. An example of this can be seen at a cruise terminal. The porter may come in and out of the baggage claim area (secure) to help passengers move luggage to a waiting vehicle (non-secure). The same is true for Roll On/Roll Off operations, where longshoremen exit the secure area with a vehicle that they have driven off of the ship and return to the secure area in a passenger van with a dozen of their colleagues. Requiring these workers to scan in and out of the secure area, thus establishing positive access control would be a significant barrier in terms of efficiency with little buy down in risk. In fact in the aviation environment, which is arguably higher risk than the maritime industry, positive access control is not currently a regulatory requirement.

*"Hotlist" Verification*

Regulated entities must be provided with an electronic access (direct download, searchable database or telephonic system) to the national database in order to readily verify the validity of a TWIC that is presented at our facilities. The "hotlist" also needs to be able to indicate whether the TWIC has been revoked, lost or stolen so that the owner/operator can make a decision whether or not to allow a person access. Additionally, when an individual reports his/her card as being lost or stolen, they must be issued a receipt that can be presented at the access control point in order to continue to gain unescorted access.

In addition to the "hotlist" provisions, we also need a provision that prohibits an individual that has been determined to pose a security threat from gaining access to a restricted area, even with an escort. To do otherwise would undermine the purpose and intent of the TWIC program. Provisions must be made to prohibit any and all individuals that pose a security threat from gaining access to a restricted area regardless of whether or not there is an escort. This means that the names and biographical information of anybody that has applied for a TWIC and been denied, must be available to all owners/operators on a real time basis so that we don't permit access to these individuals with an escort.

**ENFORCEMENT**

*TWIC Applicability*

Current regulations fail to appropriately and clearly enumerate the specific types of individuals that are required to obtain a TWIC. Thus, significant populations of individuals needing TWICs will not have appropriate notice of their need to obtain one. The Coast Guard attempted to address this in their Navigation and Vessel Inspection Circular (NVIC 03–07) wherein they provided an illustrative list of ten communities of people that would likely need a TWIC. The problem is that the NVIC is a Coast Guard guidance document only and it is not enforceable by law. Similarly, it is likely that some individuals, perhaps those who aren't able to get a TWIC because of a disqualifying event in their background, may expect to be provided an escort. This will place the owners and operators in a difficult position and could lead to disputes. Congress should amend the SAFE Port Act to clearly enumerate the class of workers that must obtain and use a TWIC.

*Non-MTSA Facilities*

The Port Authority operates numerous transportation facilities in the New York and New Jersey region including all of the tunnels and bridges that connect the two states, an interstate passenger rail system and five airports. The Port Authority Police Department has 1,600 sworn officers who have jurisdiction in both states and provide 24/7 law enforcement for some of the nation's most critical and iconic transportation systems. The actions that a law enforcement officer can take at an MTSA facility if a fraudulent, tampered with or revoked TWIC is presented are clear. What is not clear, however, is what if any action a police office can take if a fraudulent or revoked TWIC is presented at a non-MTSA regulated facility. For example, if a Port Authority Police Officer stops an intermodal container truck at one of our bridges, can the office ask if the driver has a TWIC and if so verify the identity and validity? Similarly, if someone is questioned at one of the airports and voluntarily presents a TWIC as a form of ID, can the officer verify the identity and validity of the TWIC? In both cases, if a discrepancy is found (on the "hotlist", no biometric match, obvious tampering with the TWIC) what action if any can the officer

take? The federal government needs to provide state and local law enforcement officials with additional information and clear guidance on what action they are permitted to take at both MTSA and non-MTSA facilities.

*Escort Requirements*

In addition to an owner/operator's liability if an employee is involved in an accident while going to and from the TWIC enrollment site, there are additional concerns about an escort's liability and responsibility that must be addressed before the enforcement period begins. If an individual under escort causes a Transportation Security Incident or violates other regulations and laws, what are the consequences for the escort? The answer could impact the willingness of certain individuals to act as an escort.

Emergency Access

The Coast Guards Navigation and Vessel Inspection Circular adequately addresses the TWIC requirements for uniformed law enforcement and emergency response personnel. However, the entire TWIC program missed an opportunity to provide a visual identifier on the TWIC card for essential non-uniformed port personnel that might require access on local roadways and to the port for critical response and recovery operations. For example, in the Port of New York and New Jersey, we have established a Recovery Advisory Unit (RAU) that is made up of senior level industry stakeholders that would advise the Captain of the Port on critical issues in the aftermath of a transportation security incident. Nonetheless, if these individuals weren't able to travel on a portion of the New Jersey Turnpike because it is shut down for anything other than emergency vehicles, as it was for several weeks after 9/11, these individuals would be unable to fulfill their essential recovery duties. The TSA should revisit the physical design of the TWIC card to include an indicator that would designate certain individuals as essential personnel that would require access.

**PILOT PROJECT**

The SAFE Port Act requires DHS to establish a pilot program to test TWIC card readers at five geographic locations in order to evaluate business processes, technology and operational impacts. As we understand it, the pilot project will be conducted in three to four phases and include both laboratory bench tests and field-based tests.

*Veil of Secrecy*

The Port Authority as well as other port authorities and vessel operators have agreed to participate in these pilot programs. Unfortunately, there has been what I call a "veil of secrecy" over the details of the pilot program that make it very difficult for the Port Authority to make risk based decisions on which of our facilities will be used for the pilot and the finances, personnel and infrastructure that we need to support the pilot project. Our offer to have staff involved in discussions with TSA and USCG to sign a Non-Disclosure Agreement (NDA) have been turned down, citing an inability to discuss details with even the pilot project participants while the rulemaking process is underway. It is critical that the Testing and Evaluation Master Plan and pilot project schedule be shared with the pilot project participants as early as possible so that we have sufficient time to plan.

*Cost Share*

While the SAFE Port Act mandated these pilot projects, the Department has not funded them. We and other port authorities and vessel operators are committed to assisting the Department in achieving its goals relative to the implementation and deployment of TWIC in the maritime industry. Accordingly, we have agreed to work with TSA to use our facilities and vessels, as well as use a portion of our federal grant monies (FY 2006 and FY 2007), to test the equipment that will be used to read the TWIC cards. The federal grant monies, however, require a 25% cash match.

In order to devise a meaningful pilot project, considerable initial disruption will occur at each participating facility and vessel and both capital and operating funds will be expended that will not be recoverable at the end of the pilot, whether or not it is successful. We would suggest that the cost to the participants to plan, manage and implement this program already represents a significant contribution, even without an obligation for a cash match. Therefore, mandating a 25% cash match for purchase of infrastructure and equipment required for participation in the pilot project will place an undue burden on us, and will only serve to reduce the amount of resources we will have at our disposal to ensure that a complete implementation of TWIC is a success. We have therefore requested that Secretary Chertoff recognize the in-kind contribution that our organizations will be making and waive the cash match requirement pursuant to his authority under 46 USC 70107, section (c), (2), (b). We would appreciate the Committee's support of this request as well. All pre-

vious TWIC pilot projects were fully funded by the TSA, and the pilot project required under the SAFE Port Act should receive the same level of support.

*Biometric Technology Performance Requirements*

Finally, it is absolutely essential that the card reader and biometric authentication capabilities be tested and proven to meet or exceed the TWIC Reader Hardware and Card Application Specifications during the TWIC pilot projects before deployment can begin in the maritime environment. In the Port Authority of New York and New Jersey we just completed a one-year Limited Early Deployment (LED) of fingerprint biometric technology. In the outdoor environment we experienced a false rejection rate of 9.5% as opposed to 1% that is called for in the TWIC Specifications. We also experienced an average transaction time of 6 seconds, which is twice as long as the maximum transaction time that is required in the maritime industry. Additionally, despite manufacturers published environmental requirements, biometric reader performance suffered greatly in both the rain and severe cold and 71% of the readers needed to be replaced within a year due to hardware and display failures. Our experience with this project clearly indicates that fingerprint biometric technology simply does not perform as well as advertised in an outdoor environment. The fingerprint reader manufacturers must improve the design to include protection against harsh weather environments and further field verification must be conducted.

**CONCLUSION**

Addressing the issue of port and maritime security is an enormous challenge given the complexity of the international transportation network. The implementation of a robust credentialing program at maritime facilities remains critical to the security of our nation's ports. We are encouraged by the start of TWIC enrollment earlier this week and the publishing of the card reader specification but much more remains to be done.

I hope my comments today have provided some helpful insight into this complex matter. The Port Authority of New York & New Jersey is prepared to offer any additional assistance that you may require. Thank you.

# **Appendix:** Additional Questions and Responses

QUESTIONS FROM THE HONORABLE BENNIE G. THOMPSON, CHAIRMAN, COMMITTEE ON HOMELAND SECURITY

RESPONSES FROM CATHLEEN A. BERRICK

**Questions 1.: GAO has completed several reports on TWIC, please provide us with information on some of the challenges faced by the Administration in implementing this program.**

**Response:** We have reported that TSA and maritime industry stakeholders will face several challenges in their efforts to successfully implement the TWIC program. First, TSA and the enrollment contractor will need to transition from limited testing of the TWIC program to successful implementation of the program on a much larger scale covering an estimated 770,000 workers at about 3,200 maritime facilities and 5,300 vessels. We previously reported that TSA enrolled and issued TWIC cards to only about 1,700 workers at 19 maritime facilities during program testing. TSA and industry stakeholders must also ensure that TWIC access control technologies, such as biometric TWIC card readers, will work effectively in the maritime environment, be compatible with TWIC cards that are currently being issued, ensure that facilities and vessels can effectively and economically obtain information on workers who may pose a threat to security, and balance security requirements with facilitating maritime commerce. We previously reported that TSA conducted limited testing of biometric TWIC card readers and obtained limited information on their effectiveness, particularly when these readers are used in the harsh maritime environment. In addition, TSA did not test the use of biometric card readers on vessels. TSA is currently planning a pilot program to test TWIC access control technologies, such as biometric card readers, at 5 maritime locations to address requirements of the SAFE Port Act. It will be critical that TSA ensure that this pilot program tests all aspects of the TWIC program in the maritime environment and that the results be used to help ensure a successful implementation of these technologies in the future. It will also be important that the pilot measure the impact that the TWIC program may have on the flow of maritime commerce and use this information in developing future program requirements.

**Question 2.: Has TSA fully addressed the recommendations in your September 2006 report on the TWIC program?**

**Response:** TSA recognized many of the problems we highlighted in our September 2006 report and reported that they have initiated actions to address our recommendations. For example, we previously reported that TSA enrolled and issued TWIC cards to only about 1,700 workers at 19 facilities during testing—well short of its goal of 75,000—due to technical problems in enrolling workers. We recommended that TSA conduct additional testing to ensure that the TWIC program will be able to efficiently enroll and issue TWIC cards to large numbers of workers. TSA has since reported that it and its contractor conducted performance testing of the systems and software that will be used to enroll workers in the TWIC program and issue TWIC cards to these workers. According to TSA officials, such testing helped to ensure that these systems will work effectively when implemented and will be able to handle the capacity of enrolling as many as 5,000 workers per day, conducting background checks on these workers in a timely manner, and efficiently producing TWIC cards for each worker. We have not independently verified or assessed TSA and its contractor's testing efforts.

TSA has also taken actions to address our recommendation regarding contract oversight and stakeholder communication and coordination. Specifically, TSA added additional staff with program and contract management expertise to help oversee the TWIC enrollment contract, and developed additional controls to help ensure that contract requirements are met, such as a TWIC quality assurance surveillance plan, which includes contractor performance metrics. In addition, TSA has taken actions



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to address our recommendation that it more closely coordinate with the maritime industry and establish communication and coordination plans. Specifically, TSA has established a TWIC stakeholder communication committee and has also required the TWIC contractor to develop a plan for communicating and coordinating with maritime stakeholders and educating workers regarding TWIC requirements. In addition, some maritime industry stakeholders with whom we spoke identified that communication and coordination with TSA regarding the program has improved. While these actions are steps in the right direction, TSA and the TWIC contractor must transition from limited testing to successful implementation of the program on a much larger scale, covering 770,000 workers at about 3,200 maritime facilities and 5,300 vessels.

**Question 3.: How confident are you that, six years after the TWIC program was initiated and repeated delays, the program is now on its way toward successful implementation?**

**Response:** We are cautiously optimistic. Over the last year, we have seen a gradual shifting in TSA's approach regarding the management of this program in an effort to correct past problems. For example, although TSA missed the July 1, 2007 SAFE Port Act deadline to begin implementing the program at the 10 highest risk ports because of the need to conduct additional testing, it is important that the TSA test the TWIC technologies to ensure that they work effectively before they are implemented across the maritime sector.

Although we have not yet evaluated TSA and its contractors' testing of the enrollment and card issuance systems, such testing may help to ensure a smoother implementation and could help to avoid problems that occurred in the past. TSA has also taken action to implement our recommendations regarding contract oversight and stakeholders coordination. Nevertheless, enrolling workers and issuing TWIC cards is only the first component of the TWIC program. TSA, Coast Guard, and the maritime industry face another major challenge in ensuring that TWIC access control technologies that will be installed throughout the maritime sector, such as biometric card readers, will work effectively in the marine environment and will be compatible with TWIC cards that are currently being issued. TSA must also ensure that facilities and vessels can effectively and economically obtain information on workers that may pose a threat, and balance security requirements while facilitating maritime commerce. As a result, it is critical that TSA's TWIC access control pilot program, which TSA has begun planning, test all key aspects of TWIC access controls to ensure that they work effectively before the program is implemented.

**Question 4.: What assurances are there that TSA will more effectively monitor the performance of the TWIC implementation contractor than was done during TWIC prototype testing?**

**Response:** Although we have not independently assessed the effectiveness of TSA's efforts to strengthen contractor oversight since prototype testing, TSA has taken actions that should help to address the contract oversight problems that we previously identified. For example, TSA added staff to the TWIC program office with expertise in technology, acquisitions, and contract and program management, and plans to conduct monthly performance reviews and periodic site visits to TWIC enrollment centers to verify performance data reported by the contractor. In addition, TSA developed a TWIC quality assurance surveillance plan that allows TSA to track contractor performance in comparison to acceptable quality levels. Further, TSA plans to provide financial incentives to the TWIC contractor for exceeding acceptable quality levels and disincentives for not meeting these levels, and is requiring the contractor to survey customer satisfaction as part of contract performance. While the steps that TSA has taken should help to address the contract planning and oversight problems that we have previously identified, since we have not independently evaluated these actions, we cannot comment regarding assurances that these steps will result in more effective monitoring of the TWIC contractor as the program moves forward.

**Question 5.: GAO previously reported that TSA did not effectively communicate and coordinate with stakeholders during TWIC program testing. What steps, if any, has TSA taken to fix these problems?**

**Response:** During our prior work, stakeholders we spoke with at all 15 maritime locations that tested the TWIC program told us that TSA did not effectively communicate and coordinate with them during prototype testing of the program. TSA acknowledged that the agency could have better communicated with stakeholders and has since reported taking actions to strengthen communication and coordination. For example, TSA officials reported that the agency developed a TWIC communication strategy and plan that describes how the agency will communicate with mari-

time industry stakeholders, and required the TWIC contractor to establish a plan for communicating with stakeholders. In addition, TSA, Coast Guard, and contractor officials are taking other steps to strengthen communication and coordination with stakeholders, including participating in maritime stakeholder conferences and briefings and creating a TWIC stakeholder communication committee comprised of members from 15 maritime industry groups that will meet twice per month. While we have not assessed TSA's efforts to coordinate with the maritime industry since our review of TWIC prototype testing, stakeholders from three port facilities with whom we recently spoke told us that TSA and contractor officials have placed a greater emphasis on communicating and coordinating with stakeholders. It will be important that TSA and contractor officials continue to make communication and coordination a priority to ensure that all individuals and organizations affected by the TWIC program are aware of program requirements and their responsibilities.

**Question 6.: GAO reported in September 2006 and again in April 2007 that TSA and maritime industry stakeholders faced significant challenges in ensuring that TWIC access control technologies work effectively in the maritime sector. What steps is TSA taking to address these challenges?**

**Response:** TSA is currently planning a pilot program to test TWIC access control technologies, such as biometric card readers, at 5 maritime locations to address our prior recommendation and requirements in the SAFE Port Act. It will be critical that TSA ensure that this pilot program tests all key aspects of the TWIC program in the maritime environment, including how facilities and vessels will obtain information on workers that may pose a threat to security, and ensure that the results of the pilot are used to help ensure the successful implementation of these technologies in the future. It will also be important that the pilot measure the impact that the TWIC program may have on the flow of maritime commerce and consider this information in developing future program requirements.

**Question 7.: Since September 2006, has GAO identified additional challenges to implementing the TWIC program?**

**Response:** Although we have not conducted a follow-on review of challenges currently facing the TWIC program, during recent discussions with stakeholders from 3 port facilities, stakeholders raised some additional challenges they foresaw in implementing the TWIC program. For example, these stakeholders told us that TSA and contractor officials must ensure that they appropriately identify the entire population of workers that are required to obtain a TWIC card, educate these workers about how to enroll and receive a TWIC card, and ensure that the workers enroll and receive a TWIC card by the deadlines to be established by TSA and the Coast Guard. In addition, as we have previously reported, these stakeholders remain concerned that some of their workers may be disqualified from receiving a TWIC card by the background check, and that TSA and Coast Guard may not be able to ensure that appeals and waivers for the potentially large population of workers that do not pass the check are processed in a timely manner. TSA officials told us that they believe that their efforts to educate and inform workers of their responsibilities related to obtaining a TWIC card will be successful in reaching the worker population, and that they have the capacity to handle all enrollments, appeals, and waivers. While the effect of these challenges remains to be seen, it will be important for TSA and its contractor to ensure that they have developed strategies for addressing these issues as the program moves forward.

QUESTION FROM THE HONORABLE PAUL BROUN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

RESPONSES FROM CATHLEEN A. BERRICK

**Question 8: Does GAO have any upcoming reports or studies planned on TWIC implementation? Will there be a status report on the enrollment process midway?**

**Response:** GAO has not yet been requested or mandated to conduct a follow-on review of the TWIC program.

QUESTIONS FROM THE HONORABLE BENNIE G. THOMPSON, CHAIRMAN, COMMITTEE ON HOMELAND SECURITY

RESPONSES FROM THE HONORABLE EDMOND "KIP" HAWLEY, ASSISTANT SECRETARY, TRANSPORTATION SECURITY ADMINISTRATION

**Question 1.: According to Ms. Himber's written testimony, the TWIC Stakeholder Communication Committee is not doing its job—it is not promoting the sharing of information. Why has the communication between TSA and the maritime community been so limited?**

**Response:** The Transportation Worker Identification Credential (TWIC) Stakeholder Communications Committee is comprised of approximately 35 industry and labor representatives and has held 6 meetings to date. These meetings are well attended, useful information is presented and distributed to the membership and valuable feedback is received from the membership. To illustrate the effectiveness of this committee, membership requests continue to be received from stakeholders interested in participating. We are very pleased with the workings of this committee, the two way flow of information it fosters, and participation from industry.

Additionally, as cited in recent Government Accountability Office (GAO) testimony (October 31, 2007 to the Committee on Homeland Security, House of Representatives), the Transportation Security Administration (TSA) has taken steps to address previous GAO recommendations regarding improving communications and coordination with maritime stakeholders, including posting frequently asked questions, participating in numerous conferences and briefings, conducting outreach with maritime facility operators and port authorities, and disseminating informational bulletins and fliers. The testimony states that stakeholders from the Ports of Wilmington, Delaware, Los Angeles, California and the Maritime Exchange of the Delaware River and Bay Authority, with whom GAO spoke in October 2007, stated that TSA and its enrollment contractor have placed a greater emphasis on communicating and coordinating with stakeholders and on correcting past problems. An official from the Port of Wilmington stated that, thus far, communication, coordination, and outreach by TSA and its enrollment contractor have been excellent and far better than during TWIC testing.

**Question 2.: I have heard repeatedly that many truck drivers and other workers are still largely unaware of the TWIC requirement. Why are they still unaware of a program that you rolled out two weeks ago?**

**Response:** The Transportation Security Administration has made a concerted effort to educate maritime stakeholders and industry through the creation of the Transportation Worker Identification Credential Stakeholder Communication Committee which includes representatives from the American Trucking Association, Owner-Operator Independent Drivers Association, American Federation of Labor and Congress of Industrial Organizations, International Brotherhood of Teamsters, facility operators, and other interested stakeholders. TSA has also posted frequently asked questions, participated in numerous conferences and briefings, conducted outreach with maritime facility operators and port authorities, and disseminated informational bulletins and fliers, all in an effort to increase awareness of the program and participation.

**Question 3.: Why is the TWIC card so expensive? Why does it cost more than $100 dollars to attain this card?**

**Response:** The Transportation Worker Identification Credential program is a fully fee funded program that provides an interoperable smart card valid for a period of five years that can be used by the holder at 3,200 Maritime Transportation Security Act (MTSA)-regulated facilities and on board over 10,000 MTSA-regulated vessels. The fee provides for pre-enrollment and enrollment capability, a security threat assessment and redress process, card production and personalization, card activation and issuance, help desk services, and program expenses. The cost of the credential compares favorably to other credentials such merchant mariner documents. We have made every effort to balance the costs of the card with our security objectives and programmatic costs.

**Question 4.:** We have heard from numerous stakeholders that as many as 35–40% of truck drivers nationwide might not qualify for a TWIC card because of either their criminal background or immigration status. For this reason, we required that the TSA conduct a threat assessment screening for all port truck drivers that have a Commercial Drivers License within 90 days of the SAFE Port being enacted so that we might all understand the potential impact this might have on the maritime transportation system. **What is the status of that pre screening program and when do you expect that it will be competed?**

**Response:** The Transportation Security Administration (TSA) anticipates completion of the threat assessments for port truck drivers by summer 2008. Collection of driver information from all state motor vehicle licensing agencies is underway at this time. There is substantial variation in the technological capabilities of the states, leading some to respond to TSA's request earlier than others. Also, as the Transportation Worker Identification Credential is deployed across the country we will enroll these drivers and they will go through a much more thorough check than the name-based check, and it will be done perpetually.

**Question 5.:** According to Ms. Rooney's written testimony, Lockheed Martin has not found a suitable enrollment location on the New Jersey side of the Port. **How do you expect to roll-out the Port of New York and New Jersey if you haven't found a suitable location?**

**Response:** All locations in New York have been identified. A facility in South Hackensack, New Jersey has been identified and other locations are being worked as well.

**Question 6.:** I am very concerned about the limited number of enrollment sites. TSA only plans on rolling out the TWIC at 146 locations around the country. I have heard repeatedly from constituents that this number will not be sufficient. Do to the limited number of sites, many port workers will have to drive hours each way to apply for a TWIC card. This is unacceptable. **What steps are you going to take to minimize the impact on our nation's port workers?**

**Response:** The Transportation Security Administration (TSA) originally released a list of 134 enrollment sites that was expanded to 147 enrollment sites based on stakeholder input. When TSA and the United States Coast Guard established its overall deployment plan we took into account a number of factors, including security risk, population estimates, and geographic distribution of this population, logistics, program risk, and operational efficiencies. These are all important factors TSA must consider in order to minimize program costs and inconvenience to applicants.

Although we originally only planned for 'fixed' enrollment capability, as an added feature to the contract, Lockheed Martin offered 'mobile' enrollment capability. While the detailed process for this capability is being finalized, it is designed to be adjustable based on enrollment surges and owner/operator demands.

**Question 7.:** In addition to the limited number of enrollment sites, I am also concerned about the limited number of employees that Lockheed Martin hired. Lockheed has hired only 400 employees. Four hundred employees for 146 locations averages out to little more than two employees per site. **Do you find this an acceptable average?**

**Response:** The projected staff is over 400 and is more than adequate for the current phases as well as future phases of the rollout. The rollout utilizes a phased approach across the Nation. Lockheed Martin's staffing plan to support the Transportation Worker Identification Credential rollout is designed to have a Full–Time Equivalent employee available to operate each enrollment workstation located at the enrollment centers during all hours of operations. Lockheed Martin has developed an escalation plan to address greater than anticipated demand at any given location that allows for an immediate surge capacity to 60 hours of enrollments per workstation per week. Further, Lockheed Martin has identified prospective reserve labor pools that can be utilized to staff each site and to further expand the operating hours of an enrollment center to meet the demand of the local population.

**Question 8.: Please provide us with information on the rollout—specifically, we are interested in learning more about the roll-out centers. I've been told that many people will have to drive several hours in order to reach these centers. What methodology did TSA use when determining the location of these roll-out centers?**

**Response:** All ports are important to us from both a commercial and security standpoint. Ports were chosen based on the need to balance our security goals with our need to minimize the impact of the program on workers and commerce. When the Transportation Security Administration (TSA) and the United States Coast Guard established its overall deployment plan we took into account a number of factors, including security risk, population estimates, and geographic distribution of this population, logistics, program risk, and operational efficiencies. These are all important factors TSA must consider in order to minimize program costs and inconvenience to applicants.

**Question 9.: Why do transportation workers have to pick up the TWIC at the same place that they applied for it? Our nation's transportation workers, including those in the trucking and barge industries move around fre-**

**quently. It could be many weeks or months before they are able to return to that one location. Why can't they pick up their TWICs at different location?**

**Response:** In order to minimize the cost to the individual, the Transportation Worker Identification Credential (TWIC) is produced and shipped in a batch process that requires the shipment of the credential to the original site of enrollment. Although the Transportation Security Administration (TSA) is considering the shipment of the credential to locations other than that of the original enrollment, this process would increase costs due to required software and system changes, as well as an increase in processing and shipping costs. Shipping a credential to an enrollment center other than the one at which enrollment took place was considered during the planning stages of the program. Mailing cards directly to the applicant was also considered. Mailing cards directly to the individual raised security concerns as the TSA would not be able to ensure the individual receiving the card was in fact the individual that applied for the card. Although these methods were excluded as part of our original business plan, TSA may reconsider these options as experience is gained with the current system and processes in order to reduce the burden on the affected population.

**Question 10.:** TWIC applicants are still not receiving adequate information. At a recent rollout meeting, Lockheed Martin representatives recommended that TWIC applicants pre-enroll. However, the Lockheed Martin was unsure whether or not a pre-enrollee could choose their own appointment time. **What is the answer to this basic question?**

**Response:** Pre-enrollment is a very important part of the Transportation Worker Identification Credential program that reduces the time required to enroll, thereby reducing the burden on the applicant. An applicant can pre-enroll at anytime. Applicants can schedule an in-person enrollment time at a particular port (on the pre-enrollment website) after the Transportation Security Administration announces the start of enrollment at that port via a Federal Register Notice.

**Question 11.:** Many maritime facilities run on a shift basis. **Will enrollment centers be open to accommodate those individuals who do not work from 9am–5pm?**

**Response:** The Transportation Security Administration continues to monitor enrollment services provided to applicants and will adjust these services as appropriate.

**Question 12.:** It is my understanding that TSA has woefully underestimated the number of TWIC applicants. In Houston alone, the estimation was off by more than 320,000. **Who came up with the 750,000 and how much were they paid to come up with this blatantly incorrect number?**

**Response:** The Transportation Security Administration (TSA) Office of Finance and Administration led the effort to develop the original population estimates, with contractor support from International Business Machines Corporation (IBM). The estimated cost for this support is $48,000. In developing this estimate, TSA consulted with the following government and industry authorities: United States (US) Department of Transportation / US Maritime Administration, Army Corps of Engineers (Waterborne Commerce), Journal of Commerce, American Association of Port Authorities, Bureau of Transportation Statistics, A. Strauss-Wieder Inc., Martin Associates, Economic Research Associates, International Longshoremen's Association, International Longshore and Warehouse Union, United States Maritime Alliance, Pacific Maritime Association, American Waterways Operators, Maersk, Wallenius-Wilhemsen, American Trucking Association, Owner-Operator Independent Drivers Association, International Brotherhood of Teamsters (Port Division), US Census (Vehicle Information), University of Michigan, University of Minnesota, California State University at Long Beach, University of Central Florida, American Shipbuilding Association, Shipbuilders Council of America, Cruise Industry News, International Council of Cruise Lines, Minerals Management Service, National Ocean Industries Association, Independent Petroleum Association of America, American Petroleum Institute, and the National Petrochemical and Refiners Association.

TSA is continually working with the United States Coast Guard and industry stakeholders to gather additional data on the maritime population. However, there is sufficient flexibility and capacity in the system to accommodate unforeseen fluctuations in the population.

**Question 13.: Do you know how many current port workers will be disqualified from getting a TWIC because they are illegal?**

**Response:** The Transportation Security Administration does not have data on the number of individuals that may be disqualified from holding a Transportation Worker Identification Credential because of their citizenship or immigrant status.

**Question 14.:** Ms. Fanguy told us that the Department was not going to pre-empt State access cards such as those issued in Florida. **Why not? Why are you going to force truckers and others to pay more money and undergo the same background checks?**

**Response:** Under this rulemaking, States will not be preempted from instituting their own background checks or badging systems in addition to the TWIC. We note that a State may be the proprietor of ports or port facilities, and as the proprietor is free to set standards for who may enter onto their facilities, as does any other proprietor. In addition, States may have set standards for reasons other than guarding against the threat of terrorism, such as to combat drug smuggling or organized crime. As such they are not regulating in the areas that DHS is regulating.

**Question 15.:** On October 15th, TSA began notifying Hazardous Materials Endorsement (HME) applicants (via letter) that two enrollment work station laptop computers used process applications of drivers applying for the TSA security threat assessment were stolen in separate incidents from a TSA contractor. 3,930 applicants were notified. **What assurances can you give the Committee that this will not happen with the TWIC computers?**

**Response:** Transportation Security Administration (TSA) takes data security very seriously. TSA and its contractors are committed to maintaining the privacy of personal information and take many precautions to protect it. The Transportation Worker Identification Credential (TWIC) system incorporates a 256-bit Advanced Encryption Standard for whole disk encryption on all enrollment workstations, encryption of the enrollment package during transmission through a virtual private network, and encryption of the data in the TWIC system, which is located at a secure government facility. This standard is a National Institute of Standards and Technology standard that is approved by the National Security Agency for the transmission of Top Secret information and reflects Federal Information Processing Standard 197. TSA recognizes that data security is an ongoing process, and will continue to monitor our systems and practices to enhance the security of personal information.

**Question 16.:** We learned at an earlier hearing exactly how easy it will be to attain a fake TWIC—a card that could be used fraudulently until the readers are put in place. **When are you going to implement the TWIC reader pilot? How long will the pilot run? What is your tentative schedule for deployment of readers?**

**Response:** Vendors are currently developing contactless readers to operate with the Transportation Worker Identification Credential. After independently testing the readers for compliance with the specification, we plan to deploy readers at test sites early in calendar year 2008 and begin gathering test data. Delivery of the final pilot test report is scheduled for the end of 2008. The test will extend through 2008 to achieve all test objectives. However, the test is structured to provide data early in the pilot and throughout the test.

As required under the SAFE Ports Act, DHS will implement final reader requirements through a rulemaking action and will take into consideration the data obtained during the pilot tests in development of those requirements.

**Question 17.:** According to Ms. Marks testimony, TSA is going to release the TWIC reader regulation this year. **Is she correct? When is TSA going to rollout the reader pilot?**

**Response:** Vendors are currently developing contactless readers to operate with the Transportation Worker Identification Credential. After independently testing the readers for compliance with the specification, we plan to deploy readers at test sites early in calendar year 2008 and begin gathering test data. Delivery of the final pilot test report is scheduled for December 2008. The test will extend through 2008 to achieve all test objectives. However, the test is structured to provide data early in the pilot and throughout the test. Once all pilot test data has been reviewed, we will finalize the rulemaking on reader requirements. We anticipate that the regulation to establish the requirements for TWIC reader will be promulgated to meet the Security and Accountability For Every Port Act deadline of April 2009.

**Question 18.:** According to Ms. Rooney's testimony, TSA has maintained a "veil of secrecy" around the pilot program. **How can you expect the Port of New York and New Jersey to adequately participate in the pilot if TSA is talking to them?**

**Response:** The Transportation Security Administration strives to maintain good communications with the Port Authority of New York/New Jersey (PANYNJ). During our conversations with PANYNJ, we confirmed their willingness to participate in the pilot, identified Port Security Grant funds to support testing and focused on the first phase of the pilot program consisting of technical testing of readers. Through our Independent Test Agent, the Space and Naval Warfare Systems Center Charleston, we are reaching out to our pilot participants to develop site-specific test plans and gather site-specific baseline data.

**Question 19.:** According to Ms. Rooney's testimony, the false rejection rate for the readers if 9.5 % and 71% of the readers need to be replaced within a year due to hardware and display features. **It has been five years since TWIC was mandated, why does the program continue to suffer from such significant flaws?**

**Response:** The Transportation Worker Identification Credential (TWIC) Final Rule does not require owner/operators to purchase, install, or maintain card readers. Industry is currently developing readers for use in the TWIC pilots where these parameters will be tested in the maritime environment.

**Question 20.:** The SAFE Port Act required a pilot program on the TWIC readers. The Department has decided to fund this program through the Port Security Grant program, although this was not required in the law. The pilot participants recently sent Mr. Chertoff a letter asking him to waive the 25% cost-share requirement for the pilots since all other TWIC pilots were fully funded by the government and he has the authority under MTSA to waive the cost-share. **What is Mr. Chertoff's position on waiving the 25% cost-share on TWIC reader pilots?7**

**Response:** The Security and Accountability For Every Port Act of 2006 (SAFE Port Act) instructed the Department of Homeland Security to conduct a pilot program to test the business processes, technology, and operational impacts required to deploy transportation security card readers at secure areas or the marine transportation system. The overall Transportation Worker Identification Credential (TWIC) program and this TWIC Pilot Program are managed by TSA. However, the Pilot Program is funded through the Port Security Grant Program (PSGP); therefore all of the requirements of PSGP must be met, including the 25 percent match. Waiver requests for these projects have been submitted to the Secretary; however, no decision has been made to date.

**Question 21.:** The Port Security Grant program is already providing funds for TWIC implementation. One key problem in determining costs is the fact that DHS has failed to make certain policy decisions **(1) will all facilities be required to have use TWIC card reader; (2) At what MARSEC level and rates will facilities be required to have biometric checks, and (3) Will facilities be required to conduct PIN verifications and at what MARSEC levels? What is DHS' timeframe for making some of these policy decisions in light of the funding from the Port Security Grant program?**

**Response:** Currently, there are no regulatory requirements pertaining to the use of TWIC readers. However, initial testing and evaluation of TWIC readers is expected to begin in calendar year 2008 as part of our pilot phase. Data from the pilot tests will be used to inform the second rulemaking which is intended to propose regulations related to the use of readers aboard MTSA-regulated vessels and facilities.

DHS intends to complete the TWIC pilot tests and final rule by April 2009, which is consistent with the Safe Port Act deadline for implementation of a final rule no later than two years after commencement of the pilot program that initially was scheduled for April 2007.

**Question 22.:** We have heard from the biometric card reader manufacturers that virtually none of them have commercial off the shelf readers that currently meet the TWIC Specifications that were published last month and that it could take an average of 3 months for them to re-engineer their products. We have also heard claims that the pilot projects would not be completed to mid–2009 which would leave us to believe that port workers would be using a very expensive ID card as nothing more than a flash pass for at least the next 3 years. **What is the schedule for all phases of the pilot project and what is the latest that you expect biometric readers to be deployed in ports?**

**Response:** Currently reader vendors are developing contactless readers to operate with the Transportation Worker Identification Credential (TWIC). After independently testing the readers for compliance with the specification, we plan to deploy readers at test sites early in calendar year 2008 and begin gathering test data. Delivery of the final pilot test report is scheduled for December 2008. We anticipate that DHS will issue a rulemaking action to establish the requirements for TWIC

reader; and that DHS anticipates promulgating a final rule implanting the reader requirements by April 2009 consistent with the Security and Accountability For Every Port Act of 2006 requirements.

**Question 23.:** TWIC was originally required by the Maritime Transportation Security Act of 2002. **Why did it take 5 years and a Congressional mandate in the SAFE Port Act before TSA finally rolled-out the TWIC program?**

**Response:** While we are anxious to deploy the Transportation Worker Identification Credential (TWIC) program quickly, we are doing so carefully in order to provide assurance that each element of the program meets our security goals while minimizing the impact on individuals and industry.

TWIC is one component of the comprehensive port security enhancements put into place by the Department of Homeland Security. TWIC implementation has presented unique challenges, which have been compounded by a rapidly changing technology landscape and the added demands of operating in the maritime environment.

During the past three years, the Transportation Security Administration (TSA) developed technology and tested the processes to collect and protect personal data, conduct security threat assessments, issue credentials, and provide for sustained screening operations. In May 2006, TSA and the United States Coast Guard began the rulemaking process by laying out the government's proposal for how the program would be administered. Over 1,900 comments were received and while the process traditionally takes more than a year, the final rule was issued in just eight months.

It is important to note that the maritime environment is very different from other modes of transportation. There is no central owner, and there are diverse employee populations, multiple points of access, and extreme working environments.

**Question 24.:** It is my understanding that at least four different individuals—Elaine Charney, Justin Oberman, Lolie Kull, and now Maurine Fanguy have been in charge of the program. This averages out to little over a year per person. **Is the high rate of turnover the cause of the delay?**

**Response:** The Transportation Security Administration (TSA) has provided strong, consistent leadership during the development and implementation of the Transportation Worker Identification Credential (TWIC) program and continues to do so, in what is a challenging and complex program.

While we are anxious to deploy the TWIC program quickly, we are doing so carefully in order to provide assurance that each element of the program meets our security goals while minimizing the impact on individuals and industry.

TWIC is one component of the comprehensive port security enhancements put into place by the Department of Homeland Security. TWIC implementation has presented unique challenges, which have been compounded by a rapidly changing technology landscape and the added demands of operating in the maritime environment.

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It is important to note that the maritime environment is very different from other modes of transportation. There is no central owner, and there are diverse employee populations, multiple points of access, and extreme working environments.

**Question 25.:** In the SAFE Port Act, Congress mandated that TSA roll-out the TWIC program at the top ten ports. I have seen your list and I do not think that it meets the Congressional mandates? **How did TSA select the first 10 ports for the rollout? What roll did contractor resources play in this decision?**

**Response:** All ports are important to us from both a commercial and security standpoint. Ports were chosen based on the need to balance our security goals with our need to minimize the impact of the program on workers and commerce. When the Transportation Security Administration (TSA) and the United States Coast Guard established its overall deployment plan we took into account a number of factors, including security risk, population estimates, and geographic distribution of this population, logistics, program risk, and operational efficiencies. These are all important factors TSA must consider in order to minimize program costs and inconvenience to applicants.

**Question 26.: Please provide us with information on how TSA selected Lockheed as the prime contractor.**

**Response:** The Transportation Security Administration selected the prime contractor through an open, competitive process that included a solicitation for qualified vendors, a down select of those qualified vendors, and a technical and cost evaluation of submitted proposals by teams that included personnel from various Federal agencies.

**Question 27.: Has TSA hired the administrative judges that will be needed to adjudicate waivers and appeals?**

**Response:** The United States Coast Guard's (USCG) Administrative Law Judges (ALJs) hear administrative matters for the Transportation Security Administration (TSA), and pursuant to a Memorandum of Understanding between TSA and the Coast Guard, will review denials of Transportation Worker Identification Credential (TWIC) appeals and waivers.

The USCG ALJ Docketing Center assigns ALJs to cases based on geographic areas of responsibility and caseload. While the USCG recently hired two additional ALJs, all seven ALJs are available to preside. USCG ALJs have been hearing TSA civil penalty cases and airman certificate revocation cases for several years and have begun reviewing denials of Hazardous Material Endorsements for Commercial Drivers Licenses under the same rules that will be used for review of TWIC appeal and waiver denials.

**Question 28.:** According to a recent report by the U.S. Attorney General, the FBI's rap sheets are "still missing final disposition information for approximately 50% of its records." As a result, the rap sheets used by TSA to assess the criminal history record of TWIC applicants routinely fail to include critical information like the results of arrests and dismissals of charges. And, in contrast to other federal agencies, TSA does relatively little to track down the information. The incomplete nature of FBI rap sheets is an area of special concern, especially as it impacts large numbers of workers who receive an initial negative determination by TSA based on incomplete information.

• **Is it true that large numbers of workers are initially disqualified based on incomplete information on the FBI rap sheet, like the disposition of an arrest?**

**Response:** Only a small number of workers should be affected by this issue. It is TSA's experience working with HME drivers that less than 2 percent of all cases received required further information from the applicant based on an open disposition for a potentially disqualifying offense(s).

• **Can TSA tell us how many initial determinations of security threat assessment (IDA) were based on old arrest information that had not resulted in a conviction? And how many of these cases were appealed and then reversed by TSA?**

**Response:** The Transportation Security Administration (TSA) does not specially track the number of initial determination of threat assessments (Iotas) that were issued based on old arrest information that had not resulted in a conviction; however it does track the total number of IDTAs issued. As of November 25, 2007, TSA has issued 21,197 Hazardous Materials Endorsement IDTAs for a total population of over 700,000 applicants. As a result of the IDTAs issued, TSA has received 11,622 appeal requests, of which 11,513 were granted and 109 were denied, and 1,104 waiver requests, of which 902 were granted and 78 were denied.

• **Is it true that the FBI rap sheets often do not say when someone was released from incarceration, which means they may have been disqualified even thought they were released more than five years from when they applied for the TWIC contrary to the federal law? Can you tell us how many initial determinations were reversed on appeal based on information indicating that the individual was released from incarceration outside the required 5-year time period?**

**Response:** The Transportation Security Administration does not specifically track the released from incarceration date. Appeals are granted when an applicant provides valid documentation showing that their potentially disqualifying offense was dismissed, reduced from a felony to a misdemeanor, did not result in a disqualifying offense, was expunged, and/or falls outside of the 5 year time period.

• **How often was an initial determination reversed on appeal based on information indicating that the individual was convicted of a misdemeanor, not a felony?**

**Response:** The Transportation Security Administration does not specifically track convictions that were initially adjudicated based on a felony conviction but later determined to be misdemeanor convictions.

**• Question: If nearly all the appeals being filed with TSA are resolved in favor of the workers because the information from the FBI raps sheets is inaccurate or incomplete, what can TSA do to change its process to reduce the burden on workers to file appeals and go to great lengths to provide copies of relevant court information? Has TSA looked at the process required by the Brady Act, where the FBI tracks down most missing dispositions before making a gun check determination? [Note: TSA/Lockheed Martin could call the local courts or the state criminal records agencies for the missing records, they could call state departments of correction to find out date of release from incarceration for people who indicate they were released more than 5 years before the date of the application, calling state criminal record repository staff to ascertain the level of offenses listed on the FBI rap sheet.]**

**Response:** The Transportation Security Administration (TSA) participates in a working group created to identify national solutions to facilitate the more efficient and complete uploading of state criminal history records to the Federal Bureau of Investigation (FBI), thereby improving the quality and quantity of records that can be accessed through one consolidated national data set in order to reduce the burden on the applicant. This working group includes the Compact Council, FBI–CJIS (Criminal Justice Information Services), TSA and various state representatives.

TSA makes every effort to contact applicants and collect information in a timely fashion being mindful of overall program costs on the entire applicant population and not just those utilizing the appeals and waiver process.

**Question 29.:** Large numbers of workers employed at the ports may have a criminal record, like a drug offense, dating back to when they were young and were not employed. The federal law provides that they may qualify for a "waiver" of the disqualifying crime if they can show they have been rehabilitated, they have a strong work history and no record of other major crimes. In fact, most of the waivers submitted to TSA are granted, but the number of requests under the hazmat program has been very low compared to the legitimate need.

**• What has been TSA's experience with the hazmat program with workers who have applied for waivers after receiving an initial threat assessment based on a showing that they have been rehabilitated as authorized by the federal law?**

**Response:** When applying for a waiver, applicants are asked to provide documentation that demonstrates their rehabilitation including certificates from drug/alcohol treatment facilities, certificates from anger management courses, certificates from sex offender treatment programs, letters of recommendation from probation/parole officers, and/or lack of further criminal activity.

The Transportation Security Administration (TSA) has received 1,104 waiver requests from the applicants in the hazmat program of which, 902 were granted and 78 were denied.

**• Is it true that most waivers are decided in favor of the workers based on their work history and an isolated or older criminal record?**

**Response:** When applying for a waiver, applicants are asked to provide documentation that demonstrates their rehabilitation, including certificates from drug/alcohol treatment facilities, certificates from anger management courses, certificates from sex offender treatment programs, letter of recommendation from probation/parole officers, and/or lack of further criminal activity.

The Transportation Security Administration (TSA) has received 1,104 waiver requests from the applicants in the hazmat program of which, 902 were granted and 78 were denied.

**• Do you think that the number of waiver requests coming in to TSA accurately reflects the potential number of candidates who likely qualify for a waiver? Is there more that could be done by TSA, Lockheed Martin or others to help promote the waiver process?**

**Response:** The Transportation Security Administration (TSA) does not have data on the number of potential candidates who likely qualify for a waiver versus the number that have actually applied. TSA has, and continues, to work with industry stakeholders to provide information and education on the appeals and waivers process. Information is provided on our website, during meetings and briefings, and the corresponding letters and informational materials provided with the letters are clear and concise.

**Question 30.:** There are federal policies and procedures regarding the need to provide meaningful access to services for persons with limited English proficiency (LEP). These are governed by Executive Order 13166 and the Department of Justice

(DOJ) guidance that carries out the Executive Order, DOJ Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (2002). As DOJ has explained, these polices apply to the Department of Homeland Security and TSA: "Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulation and the . . . analysis set forth in the DOJ LEP Guidance are to additionally apply to the programs and activities of Federal agencies, including the Department of Justice." DOJ Guidance, 67 Fed. Reg. at 41459 n.4. Appropriate language access is a serious concern for the TWIC application, waiver and appeal processes given that immigrants make up a large segment of the port and trucking workforce, especially in major port states like California, Texas, Florida, and New Jersey/New York.

**Has TSA looked at Executive Order 13166 and the Department of Justice guidance that lays out the translation and interpreter services to be provided by federal agencies, like TSA, when they implement activities like the TWIC program?**

**Response:** Yes. 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 language proficiency (LEP) have meaningful access to the agency's programs and activities. The Department of Justice guidance on the Executive Order (Limited English Proficient (LEP Guidance)) 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. In the Transportation Worker Identification Credential (TWIC) program both of these suggested tools have been incorporated into the enrollment process. The TWIC program provides communications materials in Spanish and English. Our pre-enrollment website and our help desk services are offered in Spanish and English. The TWIC Disclosure Form accommodates the use of a translator in order to assist individuals who are not proficient in English. The LEP Guidance does not require the use of government interpreters, and because the TWIC program is entirely fee-based, we do not believe that hiring interpreters to work at enrollment sites is advisable at this time. Such services would be costly and would undoubtedly increase the cost of the credential for all TWIC applicants.

**Question: Has TSA surveyed the number of potential number of TWIC applicants employed in any of the ports who are likely limited English proficiency?** If so, can you tell us the results of these efforts? [Note: The DOJ guidance contains a "safe harbor" provision which requires written translation of any "vital" documents for limited English proficiency language groups that constitute either 5% or 1,000, whichever is less, of the population affected.]

• **What translation or interpreter services, if any, are provided by TSA when workers appear in person to enroll for a TWIC or when they seek to negotiate the appeal or waiver process?**

**Response:** The Transportation Worker Identification Credential (TWIC) Program provides communications materials in Spanish and in English. Our pre-enrollment website and our help desk services are offered in Spanish and in English. The TWIC Disclosure Form accommodates the use of a translator in order to account for individuals who are not proficient in English.

Additional translation and/or interpreter services would subject the program to additional costs, and would, since the TWIC Program is fee-based, increase the cost of the credential.

• **Is it TSA's position that family members and friends are qualified to translate for workers as part of the TWIC enrollment process? Has that been communicated to the ports or the workers? Is that position consistent with the Department of Justice guidance on federal activities regulating limited English speakers? [Note: DOJ Guidance recommends that professional interpreters be provided free of charge rather than having friends and family members interpret because friends and family are "not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may arise. LEP individuals may be 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."]**

**Response:** We permit any Transportation Worker Identification Credential (TWIC) applicant to use an interpreter in the pre-enrollment and enrollment processes, and do not place restrictions on who the interpreter must be. In addition to the Limited English Proficiency (LEP) Guidance language you cite in your question,

the LEP Guidance also states that where LEP persons desire, they should have the discretion to use friends or family members as interpreters because LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter.

The TWIC Program provides communications materials in Spanish and in English. Our pre-enrollment website and our help desk services are offered in Spanish and in English. The TWIC Disclosure Form accommodates the use of a translator in order to account for individuals who are not proficient in English.

Additional translation and/or interpreter services would subject the program to additional costs, and since the TWIC Program is fee-based, would increase the cost of the credential.

**Question 32.:** It is my understanding that the Homeland Security Department is considering how to fit TWIC standards into the requirements it is developing for the Western Hemisphere Travel Initiative's People Access Security Service card. Ralph Basham, Commissioner of DHS' Customs and Border Protection agency, recently said that his directorate sees significant benefit for TWIC card holders to be able to use the credentials to enter the United States. **When is the Department going to implement this new plan?**

**Response:** The Western Hemisphere Travel Initiative (WHTI) is the plan to require all travelers, U.S. citizens and foreign nationals alike, to present a passport or other secure document or combination of documents that denote identity and citizenship when entering or reentering the United States.

The Department has selected Vicinity RFID technology for its land border management system, believing that it affords the most benefits for travelers while balancing security. Vicinity RFID technology will be incorporated into new WHTI-compliant documents, such as the Passport Card issued by the Department of State and the Enhanced Driver's License issued by the States. The Border Crossing Card will also be upgraded to include vicinity RFID technology.

DHS is looking and will continue to look at harmonizing programs and identification documents used by its agencies in their various missions. However, at present, the Department does not believe that the TWIC card would be suitable as an alternative to the passport because it does not denote citizenship and is not intended as a travel document. Accordingly, CBP has no current plans to accept the TSA-issued TWIC cards as a secure WHTI-compliant document for entry through a port of entry.

A media report of Commissioner Basham's remarks slightly misconstrued his response about looking at future harmonization of the Department's secure documents and trusted traveler programs as an eventual goal and instead portrayed it as a statement that TWIC cards would or could be used as WHTI compliant documents.

QUESTION FROM THE HONORABLE PAUL C. BROUN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

RESPONSES FROM THE HONORABLE EDMIND "KIP" HAWLEY, ASSISTANT SECRETARY, TRANSPORTATION SECURITY ADMINISTRATION

**Question 33.:** One of the requirements of the SAFE Port Act was to conduct a threat assessment of all truck drivers entering a port. We understand that TSA plans on meeting this requirement by doing a check against the terrorist watchlist and the immigration status database of all CDL holders. **What is the status of this requirement?**

**Response:** The Transportation Security Administration (TSA) anticipates completion of the threat assessments for port truck drivers by summer 2008. Collection of driver information from all state motor vehicle licensing agencies is underway at this time. There is substantial variation in the technological capabilities of the states, leading some to respond to TSA's request earlier than others. Also, as the Transportation Worker Identification Credential is deployed across the country we will enroll these drivers and they will go through a much more thorough check than the name-based check, and it will be done perpetually.

QUESTIONS FROM THE HONORABLE BENNIE G. THOMPSON, CHAIRMAN, COMMITTEE ON HOMELAND SECURITY

RESPONSES FROM ADMIRAL BRIAN SALERNO

**Question 1.:** It is my understanding that the enforcement of TWIC is going to be delegated to each Captain of the Port—setting up a patchwork quilt of enforcement. **Why did you make this decision?**

**Response:** Section 70103 of the Maritime Transportation Security Act of 2002 (MTSA) required the Secretary to prepare a National Maritime Transportation Security Plan (NMTSP). MTSA required the NMTSP to, among other things, designate "a Coast Guard official who shall be the Federal Maritime Security Coordinator for each such area". The NMTSP met this requirement by designating 45 Coast Guard Captains of the Port (COTP) as the Federal Maritime Security Coordinator (FMSC) for their areas of responsibility. The FMSC is required to enforce all MTSA regulations (Title 33, Code of Federal Regulations, Subchapter H.), which include vessel and facility security requirements. TWIC implementation will modify these requirements, and Coast Guard COTP/FMSCs will continue to be responsible for their oversight and enforcement throughout their local areas of responsibility. When coupled with nationwide enforcement guidance and standards from Coast Guard headquarters, this system in fact creates not a patchwork quilt, but a robust web of enforcement.

**Question 2.: When is the Coast Guard going to begin enforcing the TWIC card?**

**Response:** The Coast Guard will begin enforcing the TWIC regulations for regulated facilities after the compliance date is announced for each Captain of the Port zone. Currently, enforcement is expected to begin for regulated vessels and all Coast Guard credentialed mariners nationwide on September 25, 2008.

**Question: Absent readers, does the Coast Guard currently have the technology to differentiate between real and fake TWICs?**

**Response:** Absent readers, the Coast Guard and other Federal agencies, security personnel, and owners/operators of regulated facilities and vessels will rely upon physical inspection of the TWIC's state-of-the-art, tamper-resistant, security features to determine a TWIC's authenticity.

**Question 4.:** The Coast Guard issued an advisory notice to the maritime community last week notifying them that criminal elements were trying to attain information that could be used to create fake TWICs in the Ports of Long Beach and Los Angeles. **What steps have you taken to minimize this possibility?**

**Do you know if criminal elements are trying to obtain information at other ports around the nation? If so, which ones?**

**Response:** The Transportation Security Administration has designed, developed and produced TWICs to minimize the possibility of counterfeiting. In addition to incorporating physical security features, color shifting ink, holograms, micro-text, fluorescent markings, and other state-of-the-art, tamper-resistant features into the TWIC card and laminate, the TWIC system incorporates a chain-of-trust that addresses multiple levels of security throughout the application, vetting, production, issuance, and data maintenance phases. These are all based on existing Federal credentialing standards. Beyond the instance cited in the advisory notice, the Coast Guard is unaware of any organized attempt to obtain information for counterfeiting the TWIC.

**Question:** We understand that there are critical policy questions like how often the biometric must be verified and whether or not port workers will need to scan in and out of a secure area, that haven't yet been addressed yet, which arguably should have been done before the technical solution was identified. **What is your timeframe and plan for addressing these critical issues with industry?**

**Response:** The Coast Guard is conducting a risk assessment to determine whether and how often ports workers would need to scan in or out of secure areas and will include that assessment in its future rulemaking action to implement the TWIC reader requirements. The Coast Guard will continue to engage industry and labor throughout this rulemaking process. DHS is also conducting SAFE Port Act-required pilot tests of electronic TWIC readers, which involves implementation of readers with industry to test business processes, technology, and operational impacts. As required under the SAFE Ports Act, the final TWIC reader regulations will consider the information obtained from these pilot tests.

**Question:** I am concerned about the recommendations recently submitted to the Coast Guard by the Maritime Transportation Security Advisory Committee (NMSAC) that suggest that the biometric verification feature of the card should only be required at elevated maritime security (MARSEC) threat levels. If the TWIC is not used for biometric verification 100% of the time on a routine basis to verify identity, then the whole purpose of a biometric credential is undermined. Any one can pick up a card and flash it to gain access to secure areas. Biometric verification is the only way to ensure that the person presenting a credential is the person to whom it was issued. Congress did not authorize this program and the resource in-

vestment only to create an expensive flash card that does not enhance security. **Do the Coast Guard and TSA TWIC Program Office agree that they will perform biometric verification on a day-to-day basis as part of normal operations—subject of course, to validation of the effectiveness of the technology during the pilot test?**

**Response:** The Coast Guard is considering a variety of options for use of TWIC readers and will propose specific requirements in a future rulemaking action. DHS intends to test a number of TWIC reader scenarios during the pilot, including biometric verification on a day-to-day basis as part of normal operations. The results of these tests and associated lessons-learned will be used to inform rulemaking policy before any rule is finalized.

**Question 7.:** You mention that facilities will be able to redefine their secure areas, limiting the number of employees that would be required to have a TWIC (as an employee is only required to have a TWIC to gain access to secure areas).

**Can you give some examples of where this is appropriate? Who makes the ultimate decision as to what the secure area is?**

**Can a facility completely eliminate all secure areas (and thus the need for TWICs)? Doesn't this undermine the intent of the Maritime Transportation Security Act of 2002?**

**Response:** When the Maritime Transportation Security Act (MTSA) regulations were first implemented, many facility owners/operators defined the regulated area of their facilities based on pre-existing infrastructure. For instance, a large facility with an existing perimeter fence may have defined the entire area inside the fence as the MTSA regulated area, and wouldn't, in turn, have to buy additional fencing. They did so even though significant portions of the facility may not have had a marine transportation nexus. Now that TWIC is being implemented, some facility owners, (i.e. facilities with significant non-transportation related manufacturing or processing operations), have the opportunity to refine their original definitions of the MTSA-regulated areas and establish secure areas where the TWIC will be required for employees with maritime transportation job functions. Redefining secure areas for the purposes of the TWIC will bring many facilities closer to the original intent of the MTSA regulations by identifying those areas specific to maritime transportation. The existing regulated areas defined in the Facility Security Plans will continue to be governed by the requirements of 33 CFR 105, but TWIC access will be required only for the transportation-related operations areas as are being defined by the facilities.

As such, in accordance with regulation and policy, owners or operators with significant non-maritime related portions of their facility have the option of requesting a redefinition of their secure areas (where the TWIC will be required) to include only the maritime transportation-related portions of the facility. The local Coast Guard Captain of the Port reviews (and approves or disapproves) requests to redefine secure areas in their zone. Since facilities cannot eliminate all secure areas under this provision, the act of redefining secure areas does not undermine the intent of MTSA.

QUESTIONS FROM THE HONORABLE PAUL BROUN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

RESPONSES FROM ADMIRAL BRIAN SALERNO

**Question 8.: What role does the Coast Guard have in the Card Reader pilot?**

**Response:** The Coast Guard is assisting TSA with the planning, scenario development and execution of pilot tests. The Coast Guard will use the pilot results to inform the second rulemaking which is planned to propose the use of readers for owners and operators of regulated vessels and facilities. The Coast Guard and TSA formally joined efforts to carry out the TWIC program in November 2004. In this partnership, TSA is responsible for TWIC enrollment, security threat assessment and adjudication, card production, TWIC issuance, conduct of the TWIC appeal and waiver process, and management of government support systems. The Coast Guard is responsible for establishing and enforcing TWIC access control requirements at regulated vessels and facilities. Both agencies partner daily to make sure that our collective efforts achieve the increased security objectives which MTSA intended.

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