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ADVANCING SECURITY AND COMMERCE AT OUR NATION'S PORTS: THE GOALS ARE NOT MUTUALLY EXCLUSIVE

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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ADVANCING SECURITY AND COMMERCE AT OUR NATION'S PORTS: THE GOALS ARE NOT MUTUALLY EXCLUSIVE

WEDNESDAY, SEPTEMBER 27, 2006

HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
Washington, DC

The Committee met, pursuant to call, at 2:00 p.m., inRoom 2360, Rayburn House Office Building, Hon. Donald A. Manzullo [Chairman of the Committee] Presiding.

Present: Representatives Manzullo, Chabot, Poe, Lipinski, and Bordallo.

Chairman MANZULLO. Good afternoon. Today's hearing is about the federal government's compliance with the Regulatory Flexibility Act. In 2002 President Bush spoke to a large audience of women small business owners. At that address he said, "Every agency is required to analyze the impact of new regulations on small businesses before issuing them. That is an important law. The problem is it is often being ignored. The law is on the books; the regulators do not care that the law is on the books. From this day forward they are will care that the law is on the books. We want to enforce the law."

I am tired that all too often the little people of this country are being shoved around by big government because the government doesn't fully follow the RFA. The purpose of this hearing is to make sure that the Regulatory Flexibility Act is fully complied with so that the Department of Homeland Security doesn't go through all this effort in developing the Maritime Transportation Working Identification Credential, or TWIC, only to have the small business community successfully challenge this in court. Securing our homeland is way too important to be left to lawsuits.

Last May, the Transportation Security Administration and the Coast Guard issued proposed regulations to implement the TWIC as required by the Maritime Transportation Security Act of 2002. TWIC is an expensive biometric identification card that is meant to be used in combination with vessel and facility security plans. The regulation is designed to ensure that individuals who pose security risks do not have access to our Nation's ports.

Obtaining a TWIC is the responsibility of the worker. To apply, workers must travel to a remote credentialing facility and submit information for a security background check. Within 60 days, the worker should receive notification of his clearance. Then he can

travel back to the issuing facility to pick up his credential and begin gainful employment.

The rule also requires that facilities and vessels obtain an electronic reader, with equipment cost estimates ranging from $1,000 to $10,000, to verify the worker's TWIC. The reader will be positioned outside of each secure area and will read the information stored on the memory chip contained in the card. The individual will scan a fingerprint and/or enter a numerical code to provide additional verification of his identity. The information scanned into the reader will be sent to the facility's access control system and stored for at least 2 years.

TSA and Coast Guard recognized the potential adverse economic impact of the rule on small businesses and completed Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act. Unfortunately, the IRFA they issued was seriously flawed. Under the RFA, an agency has two choices. It can determine that the rule would have significant economic impact on a substantial number of small entities or certify that it will not. TSA and Coast Guard did neither.

First, the agencies failed to thoroughly examine the economic cost to small businesses of obtaining the card reader. They shifted this analysis on to small businesses.

Second, TSA and Coast Guard failed to examine small businesses' lost opportunity costs. Small businesses will forgo income due to the lack of credentialed workers and there is already a shortage of workers in the maritime industry. The wait time associated with obtaining the TWIC will only exacerbate the problem.

Third, TSA and Coast Guard did not recognize the cost of the TWIC itself, implying that the cost is assigned to the worker and only indirectly impacts small business. This reasoning is flawed because some industries already assume much of the current maritime credentialing cost and will have to pick up this additional cost to attract employees.

Finally, individual States are requiring their own version of a TWIC, which may be inconsistent with the Federal TWIC, thereby seriously interfering with interstate commerce. Florida has its own version and a host of others that are looking at implementing one. The rule should preempt State and local requirements to reduce the economic burdens on small businesses, but the rule does not.

During the comment period, TSA and Coast Guard received nearly 2,000 comments by interested parties. Many of the comments recognized that the law, if properly implemented, provide for an additional layer of safety and security while at the same time improve the flow of people and goods at our Nation's ports. Unfortunately, small businesses and their advocates say that the Maritime Transportation Security Act of 2002 is not being properly implemented based upon these comments. Coast Guard and TSA have made some changes to the proposed rule. The most notable was a decision to split the credential and reader portions of the rule until the reader technology has been properly tested. This hopefully is a step in the right direction.

I scheduled this hearing to provide small businesses the opportunity to voice their concerns to TSA and Coast Guard so that the Department of Homeland Security can craft a well-written final

rule and Final Regulatory Flexibility Analysis. I am glad that DHS has taken steps to secure our ports, but we also want a workable solution for the long term.

I also want to thank Michael Jackson, the Deputy Secretary who gave us the letter. Copies are back there. And the language of the letter recognizes the extent of the costs we have had with them in making sure that the regulatory flexibility analysis in fact does comply with the law, and his promise is that there will be a full and thorough analysis of all of these issues.

Chairman MANZULLO. So we want to thank the witnesses for coming here. We generally have a 5-minute rule. I don't throw the gavel at you if you exceed that. And I want to thank the panels for coming here, especially those who have traveled from great distances.

I must advise you that what we want here is your own story. Some of you may be here on behalf of an association. Those statements prepared by the associations will be made part of the permanent record, but I want your own story, how this law will impact you individually. It is extremely important that you center on and talk about that before you read any of the documents or the background that doesn't impact you personally. I think you understand what we want. And I know some of you have traveled a long distance to come here.

[Chairman Manzullo's opening statement may be found in the appendix.]

Ms. BORDALLO. Mr. Chairman.

Chairman MANZULLO. Yes. I am going to yield.

Ms. BORDALLO. I respectfully request the statement, the opening statement of Mrs. Velazquez, the Ranking Member, to be entered into the record.

Chairman MANZULLO. Without objection, it will be. Did you have anything you want the say yourself?

Ms. BORDALLO. No.

[Ranking Member Velazquez's opening statement may be found in the appendix.]

Chairman MANZULLO. The first witness will be Rear Admiral Brian Salerno, Assistant Commandant for Inspection and Compliance of the U.S. Coast Guard.

Admiral Salerno, we look forward to your testimony and we have given you quite a few questions in advance, mostly talking about the breadth and the scope of the act. If you can pull the microphone a little bit closer to you, it might be easier to hear you.

Admiral SALERNO. With your permission, I would like to ask Mr. Sadler to go first. We have sequenced our presentation and mine builds on his.

Chairman MANZULLO. That is perfectly understandable. Steve Sadler is the Director of Maritime and Surface Credentialing Transportation Threat Assessment Credentialing, and, Mr. Sadler, we look forward to your testimony. Then we will go with you, Admiral, thank you.

STATEMENT OF STEVE SADLER, MARITIME AND SURFACE CREDENTIALING, TRANSPORTATION SECURITY ADMINISTRATION

Mr. SADLER. Good afternoon, Chairman Manzullo, ranking member, members of the Committee. Thank you for this opportunity to speak with you about the effects that the transportation worker identification credentials have on the Nation's small businesses. Specifically, we would like to update the Committee on the efforts of the Transportation Security Administration and the United States Coast Guard in jointly creating a rulemaking that will implement Congress' legislative mandate while advancing the twin objectives of strengthening security and facilitating commerce. This rulemaking is ongoing, and therefore I can not discuss details of the final rule until it is published in the Federal Register.

This is an important requirement established by Congress, and in the past the Secretary is committed to moving it forward in a deliberate but urgent manner. The two agencies designed the proposed regulation to reduce security vulnerabilities through, one, the positive identification of individuals entering secure areas of the maritime transportation system; two, the assessment of an individual's threat to the maritime transportation system; and, three, the establishment of a universal credentialing system which is resistant to fraud.

TSA is responsible for the overall system and management of the system, including hardware and software application as well as card issuance, and the Coast Guard is responsible for implementing TWIC in the maritime environment.

On May 22nd, 2006, we proposed the notice of proposed rulemaking in the Federal Register. This was followed by a public comment period on which nearly 2,000 comments were received. In addition to soliciting comments on the NPRM, TSA and the Coast Guard participated in a number of public meetings as well as specific advisory committees or industry trade group meetings. At many of these meetings, the rule's impact to small businesses was specifically discussed. Four public meetings were held in Newark, Tampa, St. Louis, and Long Beach, California.

Changes to Federal regulations must undergo several economic analyses. One of those is the Regulatory Flexibility Act of 1980, which requires agencies to analyze the economic impact of regulatory changes on small businesses. TSA and the Coast Guard completed the initial regulatory flexibility analysis in support of the TWIC NPRM process. The initial IRFA was included in the more comprehensive regulatory evaluation, which was posted on the public docket. TSA and the Coast Guard solicited and received many comments on this matter.

Generally, it was suggested that the rule imposes a significant burden on small businesses and does not meet the requirements of the RFA. Furthermore, it has been suggested that the rule fails to meet the requirements of MTSA and our previously stated goals. Principal concerns included the expense of the credential, the equipment and systems required for access control and the escorting requirement. Concerns were raised regarding the ability for employees to gain access between the card enrollment and issuance period.

Small businesses asserted that the IRFA failed to include many small businesses in the maritime towing and passenger vessel industries as well as other sectors. It was suggested that the rule exceeds the statutory mandate to create a simple biometric card by requiring a costly complex one, the proposed technology of which has not been fully tested and purchased.

It was further suggested that businesses utilizing seasonal or temporary workers could be significantly impacted by the rule and that many businesses will avoid using TWIC altogether.

Finally, it is feared by some that the rule will exacerbate current labor shortages affecting small businesses.

TSA and the Coast Guard found the comments received to be invaluable in determining the best way forward for this rule. All comments will be addressed specifically in the final rule, and the concerns above are receiving particularly close attention in order to best achieve the goals of enhanced security and facilitation of commerce.

Based on the comments received from all sources, the Department has proposed to bifurcate the rule. In order to address concerns about the adequacy of current reader technology, TSA and the Coast Guard will not require facility and vessel owner operators to purchase and install and maintain card readers in this role. We will address this requirement at a later date and will provide all interested parties ample opportunity to comment on any new proposal.

In addition, TSA is considering any new testing on any technology and equipment within the cost and scheduling constraints of the program. TSA and the Coast Guard continue to reach out to private sector stakeholders in the interest of fashioning a regulation that strengthens America's maritime security while advancing commerce. We are mindful of the very important concerns of small businesses and we will continue to work within the legal parameters of the Administrative Procedures Act.

Accordingly, I would be happy to take any questions you have at this time to the extent that the law allows me to answer.

Thank you.

[Mr. Sadler's testimony may be found in the appendix.]

Chairman MANZULLO. Thank you. Admiral Salerno.

STATEMENT OF REAR ADMIRAL BRIAN SALERNO, INSPECTION AND COMPLIANCE, U.S. COAST GUARD

Admiral SALERNO. Good afternoon, Chairman Manzullo, ranking member, and members of the Committee. I appreciate the opportunity to add to Mr. Sadler's description of the TWIC rulemaking process, and I welcome comments and feedback from small business entities that will be affected by this important security measure.

The Transportation Security Act of 2002 and the Coast Guard's subsequent regulations contained in Title 33, Code of Federal Regulations, subchapter (h), sought to increase the level of security in our ports by requiring that any vessel or facility that could be involved in a transportation security incident perform a vulnerability assessment of their operation and develop mitigation strategies to counter the vulnerability identified. Vessels or facilities would fall

under the applicability of these regulations because, for example, they may handle a large number of passengers or cargos capable of being used to facilitate a transportation security incident. Or they travel on voyages that would expose them to the possibility of being surreptitiously used as conveyances for dangerous devices or people. These regulations apply to facilities and vessels located in, on, under or adjacent to the waters subject to the jurisdiction of the United States.

As you know, the Coast Guard has a longstanding and highly valued relationship with its maritime industry partners, many of which are small businesses. We depend on this relationship to leverage our capability to provide a safe and secure marine transportation system. The industries and individuals that we propose to regulate in the TWIC rule are entities upon whom we depended just a few years ago to help construct and implement the regulatory framework mandated by the Maritime Transportation Security Act to protect people and the commercial interests of the Nation.

Together with TSA, we are again in need of the cooperation and collaboration of our partners to help build on the TSA framework to further reduce the risk of terrorism through the TWIC program. In an effort to construct balanced regulations and the best public interest, TSA and the Coast Guard has engaged industry in the regulated public transportation to hear concerns, collect feedback and examine the best way forward, taking into account the views of those who are most affected by the rule.

In addition to conducting four public meetings, we have engaged in membership of our advisory committees, including the National Maritime Security Advisory Committee, the Merchant Marine Personnel Advisory Committee and the Towing Safety Advisory Committee. Many members of these committees are owners and representatives of small businesses affected by the rule. We have also received feedback from small businesses through the Small Business Administration, and from a number of trade organizations, including the American Association of Port Authorities, the American Chemistry Council and the West Coast Terminal Operators Association, American Water Ways Operators and others who have a deep interest in port security and implementation of the TWIC. In total, this process has garnered nearly 2000 comments in the docket, and TSA and Coast Guard has found this to be invaluable in determining the best way forward for this rule. A number of important adjustments to the rule have been made based on these comments.

Mr. Sadler has discussed some of the most common concerns that we have heard and these are receiving particularly close attention in order to best achieve the goals of enhancement of security and facilitation of commerce. We are mindful of the very important concerns of businesses, and we welcome this hearing today as a continuation of our effort to reach out to the partners that we rely on as a linchpin of the comprehensive maritime system.

Thank you.

[Admiral Salerno's testimony may be found in the appendix.]

Chairman MANZULLO. Thank you, Admiral.

Our next witness is Philip Byrd, Sr., President and CEO of Bulldog Hiway Express. Bulldog Hiway Express. And Mr. Byrd, we thank you. You have come up here from South Carolina; is that right?

Mr. BYRD. I did.

Chairman MANZULLO. As I said in my opening statement, we are really interested in the anecdotal stories and the direct application of these to you individually. We look forward to your testimony.

STATEMENT OF PHILIP L. BYRD, SR., BULLDOG HIWAY EXPRESS

Mr. BYRD. Thank you, Mr. Chairman and members of the Committee. Thank you for inviting me to testify today on behalf of the American Trucking Associations on the subject of security and commerce at our Nation's ports. As stated, my name is Phil Byrd, and I am President and CEO of Bulldog Hiway Express, a trucking company that hauls container freight in and out of seaports in the States of South Carolina, North Carolina, Florida, Georgia and Virginia. I am also Vice Chairman of ATA's Intermodal Motor Carriers Conference. I have submitted my written testimony for inclusion in the record.

Bulldog Hiway Express was founded in 1959 and was there to move the very first container to come off a vessel in the Port of Charleston. We are a company that is dedicated to safety and security, as evidenced by numerous awards. I could not agree more with the title of today's hearing. Advancing security and commerce are both equally important, and I might add not mutually exclusive. I will focus my testimony today on the proposed rule establishing the transportation workers identification credential, TWIC.

As proposed, the rule places significant burdens on commerce, on trucking companies like mine, without commensurate security benefits. With some common sense modifications to the rule and their resulting reduction in cost, we can ensure the title of today's hearing is more than just rhetoric. The TWIC program as currently proposed is needed to provide security screening of personnel with access to secure areas of the maritime ports. Similarly, as part of the U.S. Patriot Act, Congress required security screening of truck drivers licensed to transport HAZMAT, hazardous material. This program, which I will call the HAZMAT background check program, began in full in May of 2005.

The HAZMAT background check was intended to be harmonized with the check required under the Maritime Transportation Security Act, the statute authorizing the TWIC for seaports. In fact, the disqualifying criteria are the same and the enrollment process seemed to be nearly identical. Nevertheless, a driver that has successfully completed the HAZMAT background check will still be required to go through the TWIC enrollment process and pay a proposed additional $105 fee.

The result is not pro commerce nor is it necessary. What does this mean for a company like mine? Bulldog Hiway Express has 250 employee drivers. Fifty of them have their HAZMAT endorsement undergoing the HAZMAT background check. To obtain that costs $88 in South Carolina. This cost is $94 for the 34 jurisdictions that are elected to use the TSA contractors. Under the proposed

TWIC rule, these 50 drivers would incur an additional cost of $105 each to be issued the TWIC credential, not to mention the cost of the time spent to go submit fingerprints and enroll again.

You see the challenge for small businesses like mine. The trucking industry warned of the effects the HAZMAT background check would have on the HAZMAT driver population. At my company, I have seen the number of drivers with or renewing their HAZMAT endorsements go down by roughly 25 percent. At a time when the industry is facing a driver shortage, imposing significant costs that do not achieve significant security benefits is problematic. That is what the TWIC proposal does.

I am similarly concerned about the proposed $135 cost for the TWIC for drivers that have not undergone the HAZMAT background check. The HAZMAT background check program, which does not issue a credential but which does basically everything else, including collecting fingerprints and checking all of the same database, generally charges $94. Should the issuance of a credential cost $41? As I said earlier, I don't think it should cost $105. But I also don't think it should cost $41. The American Trucking Organization has heard from other governmental agencies for their cost meeting the same Federal standard range between 10 and $12.

The failure to preempt State and local background checks, credential and/or access requirements for the ports is another costly problem. While my driver may obtain the TWIC, the proposed rule allows each port to require an additional credential which would involve additional fees. My company does business at a number of ports in a number of States. If each port takes advantage of the ability to require its own credential, the result will be crippling.

The multiple credential, multiple check scenario is exactly what we thought TWIC was originally intended to prevent. Preemption must be a part of the Federal rule.

There are likely many other areas of potential savings while still achieving the same security objective. However, those savings are hard to pinpoint due to the vagueness of the agency's regulatory flexibility analysis. Costs are grouped in broad categories without sufficient specifics to determine what the costs are actually for. The agency's analysis has the effect of evading Congress' intent to require agencies to review rules from a cost-benefit analysis, determine their impact on small businesses and consider alternatives that do not unnecessarily burden or disadvantage small businesses.

As stated in my testimony today, the trucking industry is concerned about the cost both in terms of pure monetary cost and lost time. Associated with the TWIC proposed rule, these costs when insufficient are even more difficult for small businesses like mine to bear. However, as further detailed in my written testimony, a consolidated TWIC program that results in one background check and one credential would further security and benefit commerce.

I thank you for the opportunity to testify today. I hope Congress and the industry can work together to bring about a rational approach to achieve our shared commerce objectives and prevent me from having to buy organizers for security screening cards for all of my drivers again.

[Mr. Byrd's testimony may be found in the appendix.]

Chairman MANZULLO. You made your point. I appreciate that. That is good testimony. Goes right to the heart. Right to pocketbook.

Next witness is Debbie Gosselin, with Watermark Cruises, and we look forward to your testimony.

STATEMENT OF DEBBIE GOSSELIN, CHESAPEAKE MARINE TOURS

Ms. GOSSELIN. Thank you, Mr. Chairman, and members of the Committee. Thank you very much for the opportunity to address to you my concerns as a small business person regarding the implementation of TWIC. My name is Debbie Gosselin. I am President of Watermark. We have been in operation since March of 1972. We are based in Annapolis, Maryland on a tributary of the Chesapeake Bay. We currently have 11 inspected passenger vessels with capacities ranging from 24 to 297 passengers. I am also a member of the Passenger Vessel Association.

Watermark and PVA understand and support rational security measures. Our vessels operate in compliance with an approved security plan as required by the Maritime Transportation Security Act. Yet this implementation in itself has been very expensive for our small company.

I have hired a company security officer, which is a new position for us, who assisted in the completion of our risk-based threat assessment, identified our vulnerabilities and established procedures to control access to the restricted areas of our vessels.

We have led the industry in our area with our extensive training and drills and we know that we still have to look forward to the costs of TWIC and vessel tracking, automated identification system equipment to pay for.

To date, in the 2 years that the Maritime Transportation Security Act has been implemented, my small company has spent a total of approximately $55,000 just to meet the requirements. That doesn't include lost business. And please understand that my small company, the profit at the end of the year will range anywhere from 100,000 to $400,000. So it is a significant percentage and a big impact on our bottom line.

We at Watermark believe that a small company does not need an electronic TWIC card or a reader for that card to know that Sam and Billy and Carly are who they say they are when they show up to work. They are the same Sam and Billy and Carly that we interviewed, hired and trained. We are there when they show up to work. They can't get on our boats without us being there. I believe there are other methods that can be used to verify the identification that presents little to no cost to the small employer.

We are a 100 percent domestic operation. We are 120 miles from the Atlantic Ocean and 34 miles from the Port of Baltimore. We don't carry overnight passengers. The longest trip we offer is an 8-hour cruise on the Bay, but almost all of our trips are 40 minutes or fewer.

All of our captains and crew are by law U.S. citizens. The proposed rule for TWIC I believe was intended to focus on large ships that operate commercial facilities where the flow of cargo depends on numerous non-vessel, non-facility employees going in and out of

the port. I don't believe that a small passenger vessel operation such as mine as envisioned by Congress to be included in the security concerns of America's ports.

I am here today to ask for your assistance in the modification of these requirements so that they don't cripple my small company and many other small companies like mine.

We are a seasonal operation with a pool of 35 captains, 20 deck hands and 10 bartenders/concession areas. So far this year we have hired a total of 80 seasonal employees who under the proposed regulations would be required to have TWIC. That would cost us just for the background check almost $12,000. And again remember my bottom line.

A total of 28 of these have been hired since May and 7 have been hired in the last 3 weeks. For everyone that gets hired, there are an average of four potential employees that we interview before we hire. All of the potential employees must go through the TWIC process also. That multipliesthe 12,000 by 4.

We compete aggressively with many other businesses for good seasonal employees. We are in the customer service industry. We need good people. Our competitors for employees are hotels, marinas, restaurants, shops not subject to the TWIC rule.

Most of our seasonal employees are college or high school students. They are only available for 90 to 100 days if we are lucky. They cannot apply for the summer employment and then wait 30 to 60 days for an ID card. We can't even have them wait 2 weeks. They also can't afford to pay $150 for a TWIC card. So now I will be forced to have to pay that application fee for these potential employees as we now pay for their pre-employment drug testing, first aid training, CPR training and security training, all required for our employees but not required of the waterfront restaurant next door.

There are other unaccounted for costs of this rule making. One is the cost of transportation for the employees to travel to the enrollment center. We assume that ours will be in Baltimore. That means 2-hour round trips with a cost of gas, taking time away from the job, not once but twice because they have to go back to get the card. For many employees we will have to provide transportation, for these people would have to have mom or dad drive them. This is a roadblock to us for hiring good seasonal employees. My personal concern and belief is that if I ask these employees to make this trip, they simply are not going to do it. They are going to work elsewhere. It is hard to get good employees. They have plenty of opportunities for jobs that pay just as much as I do.

How many TWIC cards will be requested by applicants that change their mind and go to work down the street when they find out that place will put them to work right away? How many TWIC cards will be issued and the applicant never picks up the card because the family decided they were going on vacation instead?

Chairman MANZULLO. How are you doing on time?

Ms. GOSSELIN. I can wrap it up.

These are examples of the unintended cost. The paperwork burden is also very difficult for us. Again, my biggest concern in this is that we will not be able to get the seasonal employees we need, and thank you for the opportunity.

[Ms. Gosselin's testimony may be found in the appendix.]

Chairman MANZULLO. Thank you for coming.

Our next witness is George Leavell. He came here from Memphis, Tennessee, and representing the American Waterways Operators. I look forward to your testimony.

STATEMENT OF GEORGE LEAVELL, WEPFER MARINE, INC.

Mr. LEAVELL. Good afternoon, Mr. Chairman and members of the Committee. My name is George Leavell. I am Executive Vice President of Wepfer Marine. Wepfer Marine is a small harbor and fleeting operation located in Memphis, Tennessee and services six ports on the lower Mississippi River. We operate 20 towboats and employ 150 people. We move coal for the TVA Allen Steam Plant, which is the primary provider of electricity to Memphis Light, Gas and Water. We move chemicals for the farmers in our area, outbound grain for export, and a multitude of products for the construction industry. We move a large volume of petroleum products, including fuel production used at the Memphis International Airport and diesel for the trucking industry.

I am here today on behalf of the Waterway American Operators, the national trade association for the towboat and barge industry. Over 90 percent of the towing companies in our industry are even smaller than Wepfer Marine, according to the United States Corps of Engineers.

Mr. Chairman, Wepfer Marine and the other members of the American Waterways Operators have been and will continue to be partners with Congress and the Department of Homeland Security in ensuring the security of our country. Just weeks after the September 11th attacks, AWO members worked with the Coast Guard to develop security plans for our vessels and ports even before they were required by law. Everyone at Wepford Marine Vessels utilizes an alternative security program developed by AWO and was approved by the Coast Guard. The Coast Guard physically boards every vessel to verify that it complies with its security plan. We take security very seriously.

Nevertheless, we have grave concerns with the proposed TWIC rule. Our biggest concern is that the time and expense involved in obtaining a TWIC card would discourage potential applicants and leave us without necessary crews to man our vessels. The NPRM estimates 30 to 60 days for issuance after TWIC for an applicant to travel twice to a remote enrollment center before they are issued a $149 card. For our industry, this is an extremely high barrier to incur. The individuals who apply for jobs on our boats are like many Americans in today's society. They rely on each paycheck to pay rent, utility, car payments, food, gas and medical bills. Missing one check can result in significant financial hardships on their family. This is a risk that most applicants will not take.

This is not a hypothetical situation. Our industry already faces a critical shortage of vessel personnel. The turnover rate for entry level deck hands is approximately 50 percent and even higher in some areas. I have personally seen individuals decide to seek other employment because of delays to receiving documentation. Just in the past 30 days our company has been forced to tie up boats because there were not enough crew members to man them.

I am very concerned about the impact any delay in issuing TWIC cards will have on our ability to crew our vessels and service our customers.

Simply reducing the length of the delay will not solve this problem. Whether it is 30 days or a week, potential applicants will simply look for employment elsewhere. AWO has suggested that the DHS provide an interim work rule authority which would enable new hires in the industry to begin working immediately once they have completed the TWIC application and passed the initial security screening. This screening process could function much like the immediate background check currently utilized for firearm purchases. A check against the Federal Government terrorist watch list could also be included. Provided the initial screen turns up no disqualifying information, the applicant could then begin to work and earn a paycheck pending the issuance of their TWIC card.

Mr. Chairman, another one of our major concerns with this rulemaking is its one-size-fits-all approach. The TWIC proposal makes no distinction based on operational risk or scale. The risk posed by a towboat moving grain to Cottonwood Point, Missouri is not very high. Neither is the risk presented by a small log tug moving forest products in the Pacific Northwest. The TWIC rule should be modified to better reflect the risk profile and operational realities of towing vessels. The phasing process for ruling out new processes should also be based on risk. The proposed rule would impose significant hardships on small businesses like ours. It would have series implications throughout the towing industry.

AWO has urged DHS to, one, streamline TWIC processing, two, establish procedures that allow new crew members to work on an interim basis pending issuance of a TWIC card, three, reduce the administrative burden associated with the TWIC issuance and, four, eliminate the TWIC card reader requirements for towing vessels.

Mr. Chairman, thank you for the opportunity to appear before you today. AWO and its member company stand ready to work with Congress and DHS to ensure the security of our Nation while keeping mariners working, vessels moving and the commerce of the United States flowing.

[Mr. Leavell's testimony may be found in the appendix.]

Chairman MANZULLO. Well, thank you.

The next witness is Dan Schnautz. Dan is the Operations Manager for Clark Freight Lines, a position he has held since 1990, and we look forward to your testimony.

STATEMENT OF DANNY R. SCHNAUTZ, CLARK FREIGHT LINES

Mr. SCHNAUTZ. Good afternoon, Mr. Chairman, and members of the Committee. I am from Pasadena, Texas, which is right outside of Houston, where we run out of the Port of Houston every day. I am here today on behalf of about 145,000 small business trucking professionals that make up the Owner-Operator Independent Drivers Association.

Trucking has been my life and it is in my bio. My first truck ride was when I was 2 days old. So it is not a passing thing for me. I understand it very thoroughly. I have raised my girls at it. I still move a few loads each year. Last month in fact I hauled a regional

load and took it into the Port of Houston. So I am not relating stories as much as experiences.

At Clark Freight, we have 35 company owned trucks with employee drivers, and the balance of our 205 truck fleet are owner-operators. The owner-operators are the type of small businessmen that make up the Owner-Operator Small Business Association. As a small business, whatever burden that they have is 100 percent upon that one truck, one owner-operator. So that it is not spread out over the rest of the fleet.

We all agree in the room and around the country that we want more security. We have to do it in a way that doesn't slow us down more than it helps us. I really believe that once again what we are seeing with the TWIC rule is a lack of understanding, maybe even an ignorance of how trucking operates. The current circumstances that trucking is working under are to try to continue not only to move freight but to do it profitably so that there is a tomorrow for trucking. Over 90 percent of the loads moved are moved by companies with less than 10 trucks.

I would like the say that trucks move your world and they do. My concern is for a profitable trucking group for term, whether it be a one-truck operator—

Chairman MANZULLO. Why don't you walk us through the impact on your company?

Mr. SCHNAUTZ. Sure.

For an import-export load, which we move about 400 per day, there are usually about seven entities involved. There is a shipper, a broker, a yard, a port, a railroad, a trucking company. All of these companies have to line up all of their information. Whenever one of those does not line up, the load is stopped. Last Thursday, the largest port in the gulf of the U.S. shut down for 6 hours because their computers were down. That is the Port of Houston. They issued an e-mail: Send no more trucks the rest of the day because we are down. What we are seeing is a fear for TWIC that if we limit access based upon this kind of information that we don't have at our fingertips, then we have a lot of potential for stopping shipping like that.

With the HAZMAT, to relate that to TWIC, we used to have almost all of our drivers HAZMAT certified. Easily 90 percent. Now we are down to 44 percent. Most drivers just don't see the use, the gain, the personal advantage to get a HAZMAT endorsement. It is the time, the money, to get the endorsement. All of those things. Truck drivers and trucks are paid by the load, by the mile. Any time the wheels are not turning, you are not making any money. The drivers have a choice and they usually put off getting that HAZMAT endorsement until later, until it is slow, and then it just never happens. Our company drivers, as employees, we force them to get that. We can't enforce nor we cannot force owner-operators to get that. We can make them leave our fleet, but that limits capacity.

We get calls from customers every month and every week looking for a driver to move a HAZMAT load. Whenever I started in the office 16 years ago, that wasn't even an issue. But as we have tightened up the HAZMAT regulations we have seen more and more difficulty for shippers to get HAZMAT loads moved. This

TWIC will further reduce the driver pool. Truck driving is not a sought-after occupation. It is not people lining up wishing they could drive a truck. They have driving because that is all they can do or they really love it. Some of those will—

Chairman MANZULLO. Could you bring in the reader aspect of it where the—when the reader rules go into effect how that would impact you, where would the reader be with all of those?

Mr. SCHNAUTZ. My understanding is at the point—all of the access points to the Port of Houston has about a dozen of those. One of our big contentions that costs us time every day is we have to leave the port, drive on to public highways, re-enter the port, which is sitting in another line and being requalified to reenter if we have a TWIC card. This is going to increase the time that we spend getting from place to place. Once I was in a secure area of this complex, I was not going through security again and again. That is not the way it is at most ports. Most ports are made up of private yards and government yards. As such, there is no passing between them. You have to go outside. So I can see the readers slowing down us exponentially.

[Mr. Schnautz's testimony may be found in the appendix.]

Chairman MANZULLO. Thank you for all of the excellent testimony of the witnesses.

What I would like to do with Mr. Byrd and Ms. Gosselin, Mr. Leavell and Mr. Schnautz is your testimony is very compelling and it will be typed up within what, 2 or 3 weeks? Is that the normal?

Do you have—

The COURT REPORTER. Probably about 3 weeks.

Chairman MANZULLO. We will get you your testimony and then what I would like you to do is prepare a document, doesn't have to be a legal document, and Mr. Leavell, I know you are an attorney, that you can give to these gentlemen here that could give the exact suggestions and recommendations that would go to this rule. For example, Ms. Gosselin, this will be my first question. You said that there are other methods of the TWIC card that could in your case accomplish your purpose. That would go in the document and we would collect it and get it over to these owners. Could you talk about that?

Ms. GOSSELIN. Yes. For our risk level we believe that we already have company produced ID cards that are required by TSA for our risk level and our operation. We believe that those are sufficient and most of our crew members don't have to go into the secure areas. So the concept of secure areas versus passenger area needs to be defined better.

Chairman MANZULLO. And you can work on that in the document that I would like you to—

Ms. GOSSELIN. Right. Our captains would all be required to have TWIC. That is fine. We don't have any issues with that. There has to a licensed master on each vessel, And they would have the TWIC. It is really the seasonal employees. Right now we are required to vet them against a terrorist watch list and we are happy to continue that process. In addition to the security methods that we have ourselves, we have reference checks, our interviews, the preemployment drug testing and again for our risk level and where we are, we believe that those are sufficient.

Chairman MANZULLO. Okay. Admiral, I have got a question. It would be to the jurisdiction of the TWIC card, and what we have talked about on the phone. Let me give you the one example in Lake Geneva, Wisconsin, which is just north of the congressional district that I represent, it is a landlocked lake. It doesn't feed into Lake Michigan or anything like that. I have given you pictures of the excursion boats. I think one has a—the largest has a capacity of 245 people. Could you walk us through the licensing requirements of the drivers and inspection of the boats and who has jurisdiction, who has authority and whether or not the TWIC card would apply in a case like that?

Admiral SALERNO. Yes, Mr. Chairman. Let me start with the question of jurisdiction. In the case you mentioned with Lake Geneva, where it is totally contained within the confines of a single State, that would not come under Federal jurisdiction for a Coast Guard inspection or licensing or for the TWIC card. In waters where the United States Government does exercise jurisdiction, such as bodies of water that span two or more States or are connected to the ocean, we do inspect vessels, commercial passenger vessels, cargo vessels and so forth. In the case of large passenger vessels carrying say over 150 passengers, they would be required or come under the MTSA requirements for security plans and ultimately when the TWIC requirements are published, potentially people working on board would come under the TWIC.

Chairman MANZULLO. If I could freeze you right there. What if Lake Geneva were both in the State of Illinois and Wisconsin, if you shifted about 30 miles south?

Admiral SALERNO. In that case if you have a body of water that spans two States there is Federal jurisdiction and vessels operating on those bodies of water if they meet certain criteria would be required to comply with Federal safety and security regulations.

Chairman MANZULLO. Would that necessarily also mean the TWIC card? You understand my question. The same body of water, just shift a little bit south?

Admiral SALERNO. If it becomes a body of water that is under Federal jurisdiction, that—somewhat, yes. Now to the extent to which it would comply with TWIC is dependent on the nature of the operation, but based on the law, the master of the vessel, the licensed operator, would be required to have a TWIC and people who have workers who have access to restricted areas within the vessel would be required to have a TWIC.

Chairman MANZULLO. So that is probably the fault of Congress in using a broad jurisdiction because it is the same body of water, only moved covering two States, would have all of these additional requirements. Like Lake Champlain in New York, for example.

Admiral SALERNO. There are a number of bodies of water like that that span two States and there is Federal jurisdiction there. And it applies not only to the jurisdictional requirements but also to Federal inspection requirements, where we actually examine the vessel for safety reasons.

Chairman MANZULLO. You know what the next question would be. I mean in terms of security, why would a State line going through a body of water necessitate compliance with TWIC and one

that is wholly within one State not require a compliance with TWIC?

Admiral SALERNO. It just gets back to the question of jurisdiction, sir. If the body of water can support commerce between two States, there is Federal jurisdiction. If it cannot do that, then it is solely within the jurisdiction of the individual State.

Chairman MANZULLO. The security risk is not enhanced by moving the State or moving the body of water so that a State goes through it, state line goes through it.

Admiral SALERNO. I understand your point, sir.

Chairman MANZULLO. You can blame Congress.

Admiral SALERNO. I am not going to blame Congress. But we adhere to the statutes and—

Chairman MANZULLO. Are there offhand, do you know, are there many bodies of water within the country that—where you have—where they cover two States?

Admiral SALERNO. Sir—

Chairman MANZULLO. If you know.

Admiral SALERNO. There is one between Texas and Oklahoma that is a landlocked body of water, but it does span two States and the Federal jurisdiction is asserted there. I am sure there are others that I can research for you. That one comes to mind having once spent a tour in Texas.

Chairman MANZULLO. Admiral, if legislation, clarifying legislation were drawn in the scenario that I gave you, would the Coast Guard be able to make the distinction as to which will require TWIC and which would not?

Admiral SALERNO. As far as a landlocked body of water?

Chairman MANZULLO. Yes. That is correct. In the examples I gave you.

Admiral SALERNO. We can make this determination based on the existing statues that contain our jurisdiction.

Chairman MANZULLO. Thank you.

Congresswoman Bordallo.

Ms. BORDALLO. Thank you, Mr. Chairman.

After hearing the testimonies of the witnesses, the TWIC program certainly is a plus for security but not a plus for small business simply because of the reasons stated and most of it is cost. It seems way out of line, Mr. Chairman, from what I am gathering.

I represent Guam. We are a tourist destination. We have all of these excursion dinner boats, sightseeing vessels, tugboats, you name it. And my question, Admiral, is are you considering the Territories with this TWIC program? You know, sometimes we are isolated and we are left out, but I bet in this case we are included.

Admiral SALERNO. Yes, ma'am. That is correct.

Ms. BORDALLO. Have you given any consideration into tailoring the standards of regulations for the TWIC program according to whether an operator is small or large or limited or a greater risk, and the second part of the question is can you provide the Committee a status report on your progress towards implementing Department of Homeland Security port security and specifically TWIC goals? When specifically do you feel that the Department estimates the TWIC system being operational?

Admiral SALERNO. Let me answer the first question, and I may defer to my colleague on the second.

Ms. BORDALLO. Either of you.

Admiral SALERNO. Regarding risk, yes, risk was very much a part of the thinking for the entire Maritime Transportation Security Act. In the preamble to that rule, may have been the interim rule, there was an entire discussion of how risk was addressed. For example, there is about 9,000 waterfront facilities in the U.S. Not all of them are required to comply with MTSA requirements. Only about a third of them, 3,200, to be a little more specific, come under the requirements for MTSA planning and ultimately for TWIC.

Same thing applies to vessels. There is somewhere in the neighborhood of 40,000 commercial vessels that operate in the United States. About 10,000 of that number some under the MTSA requirements. Just to give you some idea, it wasn't just a blanket approach. There was a lot of thought that went in to this. There was also a breakdown of, you know, different risk scenarios whereby we might decide, looking at this very closely, that a passenger vessel would score with a higher risk profile than say a fishing boat.

So all of that was taken into account in the original construct for MTSA and it is translated now into the requirements for TWIC which are derived from the MTSA. I don't know if that answers your question. But as far as time frame.

Mr. SADLER. There are actually two processes that are moving forwards. There is the rulemaking process and the acquisition process. So as I stated in my testimony, we ran the rule in May, the NPRM, we received those comments, we are taking those comments very seriously. We are analyzing those comments now and we are considering what adjustments we can make to the rule to take those comments into account.

The rule is presently in a clearance process, so it is difficult for me to say how long that process is going to take. But it is in the clearance process. We are moving it forward as quickly as we can, and just recently we released a request for proposals for acquisitions to get a provider for enrollment and to operate our system and we are waiting for the responses for those proposals now and then we will evaluate those proposals and make a decision on a provider. And again, we are doing this as quickly as we possibly can.

Ms. BORDALLO. So you don't have a specific date?

Mr. SADLER. I don't have a specific date that I can give you today.

Ms. BORDALLO. Sometime next year.

Mr. SADLER. The current plan was to commence enrollment before the end of this year. That is the current plan.

Ms. BORDALLO. And then—

Mr. SADLER. Excuse me. That is an aggressive plan; that is an aggressive timeline. And also, keep in mind that we bifurcated the rule so we are not requiring the readers at this point with this rule.

Ms. BORDALLO. Okay. Mr. Chairman, I have one more quick question.

Mr. Byrd, I listened very closely, and also to Ms. Debbie Gosselin—yes—your testimony in excessive costs to a small business, you know, and that really, I think, gets all of us here upset, you know, when we hear this kind of a process going on. But in your mind, do you think there are any other licenses, or which licenses and credentials, including the TWIC, could be combined? Do you have any idea on that?

I mean, I think you said that everything was overlapping, and you have to get all of these different—and another question is do you have to have different credentials for every State?

Mr. BYRD. Yes, ma'am. That is part of the problem as we see it is that there is some overlap, as has been mentioned here today, with the CDL licensed drivers having to undergo HAZMAT material endorsements on their CDL which mirror the same sort of criminal history background checks and credentialing that is going to be required with TWIC, and the redundancy of the process gets even more expensive as we go through the same background checks. The same criminal history checks, the same fingerprinting, the same agencies, and databases are being accessed multiple times on the same individual, just different plastic cards that we have to keep up with and maintain.

And in addition to that, each port, maritime port, is on the mandate that they can have their own credentialing process, which most of the ones that I do business in have them already, so it is another card that we have to meet the muster on, pay for it, and those cards—for example, in the Port of Charleston, they have to renew every 2 years, so my entire fleet has to go through that credentialing process every 2 years. The CDL license has a renewing process as well, and every time the endorsement for HAZMAT comes up, then that driver has to again go through that process to be certified for HAZMAT. And there is a driver shortage that is severe within our industry and throughout America, and more and more and fewer and fewer drivers are electing to get this endorsement because of the cost and the lack of benefit to them personally, and it is problematic for our industry.

Ms. BORDALLO. And, Mr. Sadler and Admiral, have you taken these things into account? I mean, are you—

Mr. SADLER. That is a very valid point. We are very sensitive to that. We have had a number of discussions with the association and our stakeholders about this point.

A long-term goal of this agency is to integrate these processes. It is very important to us to try and reduce redundancy in these checks.

I think it is important to note, though, that we have to develop this process in steps, and one of these steps is harmonizing the HME and the TWIC programs and this NPRM that we put out. We will have to work towards integrating these processes in the future. It is not going to come overnight, but we do understand that it is very important.

Another thing we have done is proposed a discount, so when an individual comes in to get a credential from the Federal Government that they don't necessarily get through the HME program, they will get a discount on the security threat assessment portion

of it. So, if they have a security threat assessment already for the HME, as proposed, they would get a discount for the TWIC portion.

Ms. BORDALLO. So these are being considered?

Mr. SADLER. Yes, absolutely. Yes, absolutely.

Ms. BORDALLO. Mr. Chairman, you know, I certainly am all for security, and it is very important particularly in this day and age, but to burden our small businesspeople with these overwhelming costs I just do not agree with. Thank you.

Chairman MANZULLO. My understanding is that the TSA made a decision not to preempt, because TSA refused to access some of the State databases that had more information than the Federal database; is that correct, Mr. Sadler?

Mr. SADLER. On the TWIC proposal, sir?

Chairman MANZULLO. Yes.

Mr. SADLER. I would have to go back and get that information for you. I do know, as proposed, that we are allowing the facilities or vessel, the owner-operators, to have their own credentials in addition to the TWIC card, so the TWIC card is a baseline credential.

Chairman MANZULLO. Can you see any need for somebody to get fingerprinted twice conceivably on the same day?

Mr. SADLER. I am not sure if that is actually going to happen. I do not know if the owner-operators can actually require an individual to get fingerprinted to get a credential from the facility itself. I just do not have that information.

Chairman MANZULLO. Well, you could have a HAZMAT fingerprinting, and you could have a TWIC fingerprinting. I mean, this guy is going to be poison by the time he, you know, does a third fingerprinting for—who is it? Is it South Carolina? North Carolina? Florida and Georgia?

Mr. SADLER. Yes, sir.

Chairman MANZULLO. I think you are moving too quickly on this because I think people like Debbie Gosselin, if you do not have something in effect that allows an interim licensing and screening, she is going to be knocked out of business. I mean, she is going to be history because she is little people. And, George Leavell, you have the same problem; and, Danny, you also.

You know, the theory here is that, you know, somebody comes along; you hire somebody, and you start the credentialing, but before the person is credentialed, they have something else to do during that 60 days.

Well, that is not the case, is it, Danny?

Mr. SCHNAUTZ. It is not the case at all.

Chairman MANZULLO. Because there is nothing for a driver to do, is there?

Mr. SCHNAUTZ. But drive.

Chairman MANZULLO. And Debbie, how many college kids do you hire in the summertime?

Ms. GOSSELIN. I did not break it down between—it is probably—well, it is high school and college. About 30.

Chairman MANZULLO. Okay. Now, tell me about the restaurant next door that does not—let's talk about security, as to why you would need it and why they would not need it.

Ms. GOSSELIN. They do not need it because they are not a passenger vessel that falls under the MTSA.

Chairman MANZULLO. Okay. Let's talk about risk. Where would the—

Ms. GOSSELIN. If you are asking me, I see no difference in risk between my vessel that is docked right next door to Pussers Landing Restaurant and the Marriott Hotel.

Chairman MANZULLO. Unless they serve spinach. Then you have got a problem there.

Admiral, can you help us on this?

Admiral SALERNO. Well, sir, we view the operation of a vessel in a different way, I guess.

Chairman MANZULLO. In a movement that could hit another vessel, that type of thing?

Admiral SALERNO. A vessel is inherently more risky than a short-based operation. It is operating, obviously, out at sea or on the bay in this case. It is a confined environment where the workforce and the people are essentially locked in in the same—

Chairman MANZULLO. What do you do in the case where you have the restaurant here, and here is the wharf, and it is the same wharf that is used to load the people onto your vessel as the people that go into the restaurant?

Are you with me, Admiral, on that or Mr. Sadler?

So what is the secure area there? That was one of your questions, wasn't it?

Ms. GOSSELIN. Yes.

Chairman MANZULLO. What do you do in a case like that?

Admiral SALERNO. As far as the facility itself, there is a term we use called a ″public-access facility″—

Chairman MANZULLO. Okay.

Admiral SALERNO. —and there is some special provisions in MTSA which address that in terms of the security-planning requirements.

Chairman MANZULLO. Okay.

Admiral SALERNO. You will recognize that many of these operations are a little bit different than you may have for a large passenger vessel where you have a fixed terminal, something like you might see in Miami where you have thousands of passengers coming and going. So MTSA does make provision for that.

Chairman MANZULLO. Okay.

Admiral SALERNO. Getting back to your question about dual requirements for fingerprinting and background checks, let me just add something along those lines from a maritime perspective.

The captains of these vessels that are required to be licensed—and the same thing applies, really, for the towing industry—if they have a license, right now, we are currently collecting fingerprints. We are charging for a security background check. We are doing that same type of process in the act of issuing a professional credential.

When the TWIC regulations come into effect, that function will shift to the TWIC process, and the Coast Guard will no longer perform that independent of the TWIC process. So that, you know, we are very sensitive to that concern about dual payment, redundant requirements, so that the intention here is to eliminate that redundancy, to not make it redundant so they only have to do that one time.

Now, I realize this is a smaller population out of the total that we are talking about here, but I thought it an important point to make in that that concern is something we are very sensitive to and, in fact, have made provision for. There is a dual rulemaking specifically addressing themerchant mariner component to this.

Chairman MANZULLO. Mr. Sodrel, do you have any questions?

Mr. SODREL. As probably one of the few holders of a CDL in the room, I probably could make some comments.

I still have a Class A with a P endorsement, and I have heard the same problem from a lot of people that have the operations that sell propane, for example, and that it is seasonal, and they have to go out and hire somebody, and by the time they get clearance, the season is over. You know, it is too long. It is too cumbersome. It takes too much time. There has to be some ability to make a cursory check of the individual and issue some kind of an interim clearance in order for commerce to go on here.

You know, I mean I understand the difficulty people have, but we have had a few folks in our organization that had HAZMAT, and it was 3 months. Like you said, what do you do? You are hiring a new employee. So what do you do with him for 3 months while they are waiting?

So, I mean, I do understand the need for security, the need to keep commerce moving, and somehow we have got to find the proper balance between the two.

Thank you, Mr. Chairman.

Chairman MANZULLO. Okay. Thank you.

Ms. Gosselin, could you walk me through the operation of one of your boats in the morning, then the people coming in and where they load? The usual one is—go ahead.

Ms. GOSSELIN. I brought a picture which perhaps I could pass around. This is the Harbor Queen, which is one of our two vessels that falls under the MTSA requirement. It is a 65-foot-long, double-decker, passenger vessel. It is very basic. It is a steel boat.

Chairman MANZULLO. It holds how many passengers?

Ms. GOSSELIN. This one is what Admiral Salerno would understand as a ″Grandfather T″. It holds 297 passengers. You could not build this today, but because that was the rule then, we can put that many people on. We only do that with fourth-graders for 40 minutes in the field trip season, but she can hold legally up to 297 passengers.

And this is City Dock in Annapolis. If you have ever been down there, this is right at the end of City Dock. It is a public-access facility, which means that it is not regulated. There is no security requirement for the dock area.

What happens is we have our manager. Our director of operations is the first person to show up in the morning—sometimes that is me—and unlocks our little office, which—

Chairman MANZULLO. What time do you show up?

Ms. GOSSELIN. It depends. Our operation—we are like farmers. We start out slowly in March. We operate just this and maybe one other little boat, and then on a weekend—you know, on the Fourth of July weekend, we are operating all 11—thank you—of our vessels, and on a particular day with two shifts per boat on a Saturday, for example, or the Fourth of July.

So it varies, but on a busy Saturday in the summer, we show up at 7:30 in the morning. The director of operations unlocks our little barge, which is our office, which is right next to the Harbor Queen, and starts working, getting ready for the day, and waits for the crew and the captains to come in. The boats cannot operate until those captains and crew come in. The captain and crew cannot get on the boats, they cannot have access to the boats unless that director of operations is present, because he is the one that provides the access.

Chairman MANZULLO. Let me freeze you in time right there. Your boat, because of its location, is within the jurisdiction of the Federal Government, and you are U.S. Coast Guard-inspected; is that correct?

Ms. GOSSELIN. Correct.

Chairman MANZULLO. And the pilot, obviously, has a license issued by the Coast Guard?

Ms. GOSSELIN. Correct.

Chairman MANZULLO. And who is the person who has to be on board? What is he called?

Ms. GOSSELIN. Our director of operations, who is also a licensed mariner as well.

Chairman MANZULLO. Okay. And then tell me about that license.

Ms. GOSSELIN. I do not have—

Chairman MANZULLO. Is it a proficiency license, or is it a security license?

Ms. GOSSELIN. No. It is a proficiency license. It allows them to be the master of the vessel and to take the vessel out with passengers on board.

Chairman MANZULLO. Okay. Now, does anybody else besides the pilot have to get a license?

Ms. GOSSELIN. No.

Chairman MANZULLO. Okay. And then, Admiral, it is at this point where you would be working so that if somebody is applying for a pilot's license, they could also get a TWIC card. Is that correct that your goal is to merge the two?

Admiral SALERNO. Currently, it is somebody applying for a license when we would do a background screening. When the TWIC requirements come into place, the process would be such that we would look to see that they have applied for a TWIC card and had been accepted for issuance of a TWIC card as a precondition for receiving a professional credential.

Chairman MANZULLO. So it is still two separate steps. That person would have to get a TWIC card first and then apply for the pilot's license?

Admiral SALERNO. We want to have a dual-processing capability, including the capability of seeing electronically that the TWIC process is taking place.

Chairman MANZULLO. Okay. So you want to combine those two. All right.

Go ahead. So then I show up with my kids.

Ms. GOSSELIN. Right. You show up with your kids.

Chairman MANZULLO. All right.

Ms. GOSSELIN. Hopefully, you purchase a ticket—

Chairman MANZULLO. Yes.

Ms. GOSSELIN. —and we guide you to the gangway where the crew members are right there at the gangway to take your ticket and make sure you board safely.

Chairman MANZULLO. Okay. And let's say, you know, 100 people show up that morning, including my wife and our three kids and myself. Oh, when do the helpers show up, your helpers?

Ms. GOSSELIN. Well, our deckhands—

Chairman MANZULLO. Your deckhands. Yeah. Right.

Ms. GOSSELIN. Right. They show up an hour before the vessel anywhere—depending upon the vessel, if it isHarbor Queen, they show up 1 hour—

Chairman MANZULLO. There is no license required for the deckhands; is that correct?

Ms. GOSSELIN. That is correct. That is correct.

Chairman MANZULLO. And then you go out to sea for40 minutes and go around the harbor, and—

Ms. GOSSELIN. We go around the harbor for 40 minutes.

Chairman MANZULLO. Now, what would change about that scenario with the TWIC card, and, Admiral or Mr. Sadler, if you want to chime in with Ms. Gosselin, go ahead.

Ms. GOSSELIN. What would change is, from my understanding, our deckhands would now also have to get TWIC cards.

Chairman MANZULLO. Is that correct, Admiral? Mr. Sadler?

Admiral SALERNO. That is what was proposed in the proposed rulemaking.

Chairman MANZULLO. Okay. So that does not have to be part of a rule, of the final rule?

Admiral SALERNO. I think, sir, where we get back to—

Chairman MANZULLO. I know that you cannot comment on it, but the law that we passed and for which I am responsible does not require that that deckhand would have to have a license; is that correct?

Admiral SALERNO. A deckhand does not require a professional credential, that is correct. Yes, sir—

Chairman MANZULLO. Okay. Go ahead.

Admiral SALERNO. —separate and distinct from the TWIC card, which is a separate issue.

Chairman MANZULLO. But my question is, does the law that you are working very diligently to provide the regulations for, mandate that the deckhand have a TWIC card?

Admiral SALERNO. The language of the law is such that it requires employees on the vessel who have access to restricted areas to have a TWIC card.

Chairman MANZULLO. What would be the restricted area, the wharf that is the—is that the common area or the engine room or—

Admiral SALERNO. There is a list of restricted areas in MTSA for vessels—

Chairman MANZULLO. Okay.

Admiral SALERNO. —and I can look that up, or we can maybe provide more additional information.

Chairman MANZULLO. Mr. Sadler, can you help us on that? It is one of the questions that the guys are asking, or, Ms. Gosselin, do you have any idea what that would be, a restricted area?

Ms. GOSSELIN. It is one of the questions that I have as well, which is—

Chairman MANZULLO. Mr. Leavell, do you have any help on that?

Mr. LEAVELL. It is my understanding that it depends on the vessel security plan as to what is a ″restricted area.″ in our case, the whole boat is a restricted area. Therefore, our deckhands would be required to have a TWIC card.

Chairman MANZULLO. Ms. Gosselin, you already have a security plan?

Ms. GOSSELIN. Yes, we do.

Chairman MANZULLO. Okay. And so that plan would identify the secure area; is that correct?

Ms. GOSSELIN. The plan that we have now does identify secure areas, the pilothouse and the engine room primarily—

Chairman MANZULLO. Okay. Okay.

Ms. GOSSELIN. —and our deckhands do have access to the pilothouse at this time.

Chairman MANZULLO. Admiral, that appears to be the answer—

Admiral SALERNO. Yes, sir.

Chairman MANZULLO. —if the deckhands have access to the engine room or the pilothouse.

Admiral SALERNO. There is a list of restricted areas in the MTSA.

Chairman MANZULLO. Okay.

Admiral SALERNO. The pilothouse is listed, the engine room. There are cargo spaces. There is a whole list of spaces, and I can give you a complete listing, if you would like, separately, but that is the general nature of it. There are certain areas on the vessel—

Chairman MANZULLO. So do you secure the pilothouse? I mean, do you lock it?

Ms. GOSSELIN. The pilothouse is capable of securing based upon the risk level at the time, whether it is MARSEC Level 1, 2 or 3. We have to go into different scenarios.

Chairman MANZULLO. Do your deckhands have occasion to go into the pilothouse? Is there any—

Ms. GOSSELIN. Yes.

Chairman MANZULLO. There is?

Ms. GOSSELIN. Yes. First, one reason that they do every time the boat leaves the dock is to report to the captain and let them know how many passengers we have on board—

Chairman MANZULLO. Okay.

Ms. GOSSELIN. —because that has to be called in to shore.

Chairman MANZULLO. Okay.

Ms. GOSSELIN. We feel that it is a safety issue for the deckhands to be familiar with the pilothouse, to communicate with the captain if there are any issues with passengers, any safety issues. We feel that it is necessary for them to be able to communicate with the captain.

Chairman MANZULLO. Okay. And the engine room?

Ms. GOSSELIN. Very rarely would they need to get into the engine room.

Admiral SALERNO. Sir, if I may just for a point of clarification—

Chairman MANZULLO. Yes, of course. Yes, sir.

Admiral SALERNO. The way the MTSA is structured, the TWIC, or the credential, would be required for unescorted access to these restricted areas.

Chairman MANZULLO. Ah, okay.

Admiral SALERNO. They could still enter these areas as long as they were escorted by somebody who had the credential.

Chairman MANZULLO. So, if the pilot is there, and obviously you would have the TWIC card—

Admiral SALERNO. If the pilot is in the pilothouse, and the pilot has the TWIC, then the deckhand can be, yes.

Chairman MANZULLO. So then her deckhands may not need a TWIC card—

Admiral SALERNO. You know—

Chairman MANZULLO. —if they do not have access to the secure area, unescorted access.

Admiral SALERNO. That is, you know, I think, part of the comments that we have received to—

Chairman MANZULLO. I know you cannot. By law, you are forbidden to say what is in that, but you can understand how anxious these folks are because it would be the difference, in your case, of getting your deckhands a TWIC card or not.

Ms. GOSSELIN. Exactly.

Chairman MANZULLO. And I know this begs the question, Mr. Sadler and Admiral, and you can answer it if you feel comfortable. If you do not feel comfortable, I understand, because of the constraints of the law, that you are operating on the proposed regulations, but can you envision a scenario where her deckhands would not have to have the TWIC card?

Mr. SADLER. Well, as proposed now, as the Admiral said, if the deckhand did not enter a secure area, or if it was not unescorted access into a secure area, at this point they would not be required to have a TWIC card.

Chairman MANZULLO. Okay. Can you live with that, Debbie? Did you follow what he said?

Ms. GOSSELIN. If what I understand is—

Chairman MANZULLO. Well, you can ask him.

Ms. GOSSELIN. If he is saying that unescorted access would require a TWIC card, but escorted access would not—

Chairman MANZULLO. You can live with that?

Ms. GOSSELIN. I think I can live with that.

Chairman MANZULLO. All right. That is what I thought I was hearing.

Mr. SADLER. That is as it is proposed today.

Chairman MANZULLO. Okay. All right. Anybody else? This is the opportunity to ask these very direct questions. These two gentlemen are the ones who are in the process of really pulling together all of these comments, et cetera.

Does anybody here have any questions that you want to ask of the Admiral or Mr. Sadler?

Yes, Mr. Schnautz.

Oh, I am sorry. Mr. Akin, do you have any questions?

Mr. AKIN. No.

Chairman MANZULLO. Okay. Fine.

Go ahead, please.

Mr. SCHNAUTZ. The risk at a port is the cargo coming into the port, generally speaking. I mean, a person getting out of the truck is not perceived as the biggest threat, so I do not know if we are really fixing the security problem at a port by making sure that that driver is supposed to be there. It is the cargo, either what he is bringing in, which is less the risk, or what is being imported on the ship. That is the real risk at the port. So is this really necessary for the drivers?

Mr. SADLER. Well, I think that the issue about the cargo coming into the port—the cargo will be brought into the port by a particular driver, and it is important for us to understand who that driver is and what the background of that driver is, and to ensure that that particular individual is not a security threat to any facility.

Mr. SCHNAUTZ. Because of our trade imbalance, most of our ports handle import traffic, so our driver goes in with no load and comes out with a load. So the load was brought in by a vessel, is where I was going toward. Maybe we could distinguish between that. Maybe that could be a quicker process to get a truck in that is only going in empty.

Chairman MANZULLO. You will notice they are taking copious notes. Okay. That is one of the suggestions I want you to make in the papers that you get to us.

Mr. Leavell, did you have a comment or a question, or, Mr. Byrd, we can go on with you. Go ahead.

Mr. BYRD. My question was would the same be applicable if we had support personnel—for example, maintenance people—that would be going into a port, a maritime port facility, to do repair work on a truck while it was at a pickup of a containerized shipment?

Would that individual have to have a TWIC card?

Mr. SADLER. Yes. At this point, as the rule is proposed today, any individual requiring unescorted access into a secure area of a facility or a vessel will require a TWIC.

Mr. BYRD. But if the driver were there with the TWIC card, would that suffice?

Mr. SADLER. I would think that the answer to that would be that that would be up to the facility to determine what the escorting requirements are at that particular facility, because you have to remember that access to the facility and to the vessel and the requirements in that facility and vessel are determined by the vessel or facility security plan, and I am getting into the Coast Guard area of this, but I think that is how I would answer that question.

Mr. BYRD. Thank you.

Chairman MANZULLO. Any other questions from the panel?

Yes, Mr. Leavell.

Mr. LEAVELL. I am curious where we are going with the interim work rule—that is vital to our industry—and what is being done with regards to a risk-based application of TWIC to various ports. I can give you various examples in our operation where it is a low-risk operation, and as they phase it in, we would like to see it on a risk-based application because, just like the other parties here, the cost to our company is going to be astronomical.

If we operate 20 towboats, if the reader is $10,000, and we ultimately end up having to have that, that is $200,000 for our company, not to mention the readers that we are going to have to have on our shoreside facilities. That could be easily another $100,000. So we are a small company, and our P&L is—that comes directly off the bottom line. That does not mention the number of applications we are now having to take, and the application on an annual basis, just the direct cost of the fees for our company, could approach $40,000 if we fund it for the applicants. Further, that does not even take into account the indirect costs of going to and from where we operate and the enrollment centers.

I have got a picture of a boat here. This is one of the boats that we operate. It is a small harbor tug representative of many in our industry. This boat right here would have to have a card reader on it.

Chairman MANZULLO. It would have to have a what?

Mr. LEAVELL. A card reader on it.

Chairman MANZULLO. On the vessel itself?

Mr. LEAVELL. Yes, sir. This is under theAlternative Security Program. Now, this boat operates in a port where there may be fewer than 10 regulated barges that come into this port in a 1-year period, and more than likely, it is more like 5. The captain of this boat, because it is a small port, he was the one that did the hiring process.

Chairman MANZULLO. Could you pull the mic closer to you?

Mr. LEAVELL. Yes, sir.

He was the one that, more than likely, interviewed the deckhand. The other pilots at this port, because we have two boats there, would be involved in the process also.

So we are going to have a card reader on this boat. It is a two-man crew, the pilot that hired the guy, thedeckhand—and the deckhand, so they are going to have to do a reader when they come onto the facility. Then they are going to have to swipe it again when they get on this boat.

Now, we are all for security, but I find it hard to understand where we enhance our security by the readers on this boat.

Chairman MANZULLO. What I do not understand is if he is the only guy getting on the boat, who is going to see him swipe it; and if it does not read it right, who is going to keep him from getting on the boat and going somewhere with it?

Mr. LEAVELL. Well, it would have to be the captain, because he is our senior management in that harbor.

Chairman MANZULLO. Admiral, can you help us on this?

Admiral SALERNO. Yes, sir. Two points. One is that we have split the rule between the card issuance and the reader technology, so the issue of, you know, where the card readers will be will be addressed in a subsequent rule, not in the initial one which addresses just the card itself.

So the second thing is we have heard these comments, and we have received comments to the docket along these lines, certainly from AWO, from TVA and others, and again, I am constrained as to what I can say about it—

Chairman MANZULLO. I understand.

Admiral SALERNO. —but we understand the concern.

Chairman MANZULLO. I appreciate that.

Mr. Leavell, what would be an alternative or an acceptable type of security in your case?

Mr. LEAVELL. Well, the interim work rule would work very well for us.

Chairman MANZULLO. That is, while you are waiting for the final clearance—

Mr. LEAVELL. Yes, sir.

Chairman MANZULLO. —it would be the type of clearance that you would get in a gun check?

Mr. LEAVELL. Yes, sir.

Chairman MANZULLO. All right.

Mr. LEAVELL. And we can match that against the government Terrorist Watch List also, and that would provide the Government with assurance that the people we are putting on these boats have passed a screening test. It would allow us to hire and go in and put these people to work. If we wait even as much as 3 days, I have seen us lose potential applicants because they will go to a nonregulated company to work because they cannot afford to miss a paycheck. A lot of the times we hire people, by the time they get their first paycheck, we have had to loan them money to make ends meet until they get that first check.

Chairman MANZULLO. A ″nonregulated company,″ that would be—

Mr. LEAVELL. McDonald's or any company like that that is not under a TWIC or a security program, that they can just go in and turn in an application and be hired on the spot.

Chairman MANZULLO. But do they do the same thing you do, those unregulated companies, and why would they not be regulated?

Mr. LEAVELL. Well, I am just talking about—when I am talking about ″unregulated,″ I am talking about a hardware store or a department store—

Chairman MANZULLO. Oh, okay.

Mr. LEAVELL. —not industry-related at all. But they will go look for other industries to go and work. And the pilots right now are short, but where we are going to really see the TWIC impact is on the deckhands, because there is such a high turnover in those positions, but it is just like this.

Chairman MANZULLO. But there is a possibility that these deckhands may not have to be regulated, is that correct—

Mr. LEAVELL. It depends on how the final rule looks.

Chairman MANZULLO. —if they are escorted into a secure area.

Mr. LEAVELL. In our application in the marine towing industry, to a large degree that is not going to be feasible for our operations.

Chairman MANZULLO. Now, Mr. Akin, did you have a comment on that? In a tugboat is the whole tugboat itself considered a secure area?

Mr. LEAVELL. I think it just depends on the companies.

Chairman MANZULLO. Admiral, you have got to help us here.

Mr. LEAVELL. There are certain areas that are required to be—

Chairman MANZULLO. Okay.

Mr. LEAVELL. —designated ″restricted areas.″ companies can go beyond that, that limit, but, you know, where Ms. Gosselin's deck-

hands do not have to go in the engine room, our deckhands are in the engine room frequently.

Chairman MANZULLO. Unescorted?

Mr. LEAVELL. Yes, sir.

Chairman MANZULLO. Okay.

Mr. LEAVELL. Yes, sir.

Chairman MANZULLO. Okay.

Mr. LEAVELL. But the turnover in the deckhands—it is just like the boat in the operation I showed you a minute ago. If we have one deckhand working there, and we lose that deckhand, then we cannot as a company afford to wait 30 to 60 days to hire another deckhand. That port will lose the ability to have that boat running, and the customers will simply not be serviced.

Chairman MANZULLO. Okay. Did you have a comment, Admiral?

Admiral SALERNO. Only to say that that is correct. It does vary by vessel and vessel type. There are restricted areas, as we discussed earlier, on each vessel. Each company can further designate restricted areas in their security plan, and those plans are reviewed and approved by the Coast Guard.

Some operations, such as with towing vessels, present a different problem in that the crews are living on that vessel 24 hours a day, and so the problem of having unescorted access is probably somewhat different than where crew members are dayworkers on an excursion boat with short trips.

So I just want to convey that there are differences in operation.

Chairman MANZULLO. I wanted to go back—let's finish the tugs, and then I want to go back to land again.

Go ahead.

Mr. LEAVELL. The majority of our crews, we have some that live on board, but we also have day boats that we do crew change at 6:00 in the morning and 6:00 at night, and still it presents a problem for us because our deckhands have to go in areas that are designated as a restricted area just for the operations of our company and the safety and security of the operation of that boat.

Chairman MANZULLO. Is there a problem now with unlicensed deckhands? I mean, I do not know of any boats that have been hijacked. I am trying to get the threat assessment here. Can anybody help me here? I mean, I am trying to find where the problem is. I mean, if it is airplanes, we know what happened on 9/11. In terms of boats, the only thing that I can remember right now is what happened in New York on the Staten Island Ferry when the captain must have had some kind of a seizure or some insulin problem or something that happened there.

What is the level of threat that we are dealing with these tugboats, especially with Ms. Gosselin's operation?

Admiral SALERNO. Sir, I will just go back to the initial threat and our risk analysis that was performed when MTSA was being created, and it was scenario-based. There was, essentially, a risk assessment tool that was used that looked at threats and vulnerabilities and consequences. It is a basic risk formula that is fairly standard in all of our risk methodology, and they looked at scenarios of the kinds of things that could go wrong.

For example, a tugboat pushing a barge with a toxic material could potentially be used as a weapon. A passenger vessel with,

you know, hundreds, or a large passenger vessel with thousands of people on board in a fairly confined space, you know, could represent a potential target of opportunity.

These types of considerations were entered into that risk methodology, which resulted in the requirements contained in MTSA.

Chairman MANZULLO. What about foreign flag vessels that use our ports? Will those people need TWICs?

Admiral SALERNO. Sir, foreign mariners will not be required to have TWICs. However, there are restrictions on the ability of foreign mariners to come ashore in the United States. First of all, before a foreign vessel is even granted permission to enter a United States port, it is required 96 hours ahead of time to submit an advance notice of arrival, including information on all passengers and crew on board. That information is then vetted throughnational security filters so that we can identify if there is anybody on board that poses a potential risk, and we can deal with that situation before the vessel even arrives.

Chairman MANZULLO. I guess where I am struggling is, when I talked to—Kip Hawley, right?

Mr. SADLER. Kip Hawley, yes.

Chairman MANZULLO. Kip Hawley.

Now, he is your immediate boss; is that correct?

Mr. SADLER. Well, yes, sir. He is for TSA.

Chairman MANZULLO. Okay. Several months ago when the rule changed about the size of a screwdriver or whatever it was that you could have on board an airplane—and that was grossly misinterpreted as allowing knives, et cetera—but in my conversations with him on that, he did an excellent job of advising Members of Congress as to why there was a change. I could see that they were looking for bombs, and to take the TSA personnel at airports, to spend their precious time away from looking for explosives because it would be easier—even though it is dangerous, it would be easier to deal with a 4-inch screwdriver, or whatever it is, in terms of the risk that is involved.

But I am trying to figure out here exactly where the problem is unless it is just based upon 9/11—not just based—based upon 9/11, thinking of the areas that the terrorists could access this country.

What is to keep somebody from having his card read, getting on the tug, or just stopping by the shoreline and picking up a barrel of dynamite or something? I mean, it is—the problem is that the terrorists that we see, the homegrown ones, can qualify for these cards because they have no background. They have no criminal background. That is what the Canadians experienced recently and also the people in Great Britain. You could only go so far on this because it is looking at past actions of individuals, and I guess that is about as far as you can go, isn't it, Admiral? You cannot predict a person's behavior.

Admiral SALERNO. That is correct, sir. It is a question of risk management.

Chairman MANZULLO. Okay.

Admiral SALERNO. We are looking at backgrounds and known associations, things of that nature which may be indications of what a person might do. It is certainly not an ironclad guarantee that

they will never do anything wrong, but it does drive the risk down, and that is really what this is all about.

Chairman MANZULLO. Well, I want to thank all six of you for coming this afternoon, especially those of you who have come in from great distances. And, Ms. Gosselin, I am going to have to get over there with my kids.

Ms. GOSSELIN. Please do.

Chairman MANZULLO. And we will pay, of course, but I just want to thank you.

Admiral and Mr. Sadler, thank you for spending a tremendous amount of time and walking us through these difficult regulations.

Mr. Sodrel, you had a question, is that correct, or a comment?

Mr. SODREL. Two other comments.

You hear all the time from lower levels of government about unfunded mandates, how we require them to do certain things and we don't pay them, and I told one of them one day I could relate to that because, in private life, every mandate I got was unfunded. Then you look through here at the amount of money that it is going to cost that is being imposed on industry.

But the thing that is more troubling to me is when I read about, you know, the foreign workers. It is really impractical, you know, to go put foreign mariners through the same system or foreign drivers, line foreign drivers, to comply with less costly credentials than Americans. I mean, it kind of reminds me of the Postal Service. They have a policy, and I saw one here about the port in Charleston.

If you come in once in a while, you do not need to register, but if you come in all the time, you do. The Postal Service requires, if you are there every day, you have to have a badge, and if you have been working there 25 years and you show up without a badge, they send you home. But if you have never been there before, they just let you in.

Chairman MANZULLO. This is in Charleston, South Carolina?

Mr. SODREL. No. This was a port, but I am saying that this is the way the bureaucracy works. If you are somebody who is seen every day for 20 years and you do not come in with your badge, you cannot come in. But if you only come once in a while, I will let you in even if I do not know you and I do not know where you came from.

Chairman MANZULLO. That is about as bad as being a Member of Congress for 10 years, and you do not have your pin. The guards do not recognize you.

Mr. SODREL. Yeah. I would like to see all as the standard.

Chairman MANZULLO. It is.

Mr. SODREL. If we are going to screen somebody, let's screen everybody.

Chairman MANZULLO. Oh, I am sorry. Mr. Byrd.

Mr. BYRD. I was just going to comment on what the Congressman said. He is exactly right.

The proposal in the Port of Charleston where my business is domiciled, if you come with the frequency of less than once every 30 days, you are not required to get the credential. However, if you show up twice in a 30-day period, then you have to go through the credentialing process.

Chairman MANZULLO. That does not make sense.

Mr. SODREL. Precisely my point, Mr. Chairman.

Mr. BYRD. In fact, we found a fallacy in it in my company in that when we picked up two 20-foot containers from another port that were being repositioned to the Port of Charleston, two 20-footers moving on one 40-foot chassis required two interchanges, an interchange for each 20-foot container. I was then penalized and sent a fine for that driver being interchanged twice. You can only go into the port on one occasion in that 30-day period. It is just a fallacy in the system, but I agree, it does not make a lot of sense.

Chairman MANZULLO. Yes.

Ms. GOSSELIN. I would like to make one more point quickly. There is a provision in the proposed rule that requires each employer to keep detailed records for 2 years, showing every occasion when an employee enters a secure area, and that is extremely burdensome, and, again, back to my example.

Chairman MANZULLO. Go ahead.

Ms. GOSSELIN. Every time the boat leaves, which is for Harbor Queen once an hour, seven, eight times a day, when at least once in that hour the deckhand has to go up and tell the captain how many passengers are on board, we would be required under the proposed rule to keep track of that on paper and maintain those records for 2 years. So, every time the deckhand sees if the captain wants a cup of coffee or anything else, we would have to enter that in. The paperwork requirement is extremely burdensome.

Chairman MANZULLO. Admiral, if the person is not required to have a TWIC card, then you would not have to keep the record, is that correct, under the proposed rule?

Go ahead.

Admiral SALERNO. That is another comment that we have received to the docket that we are considering as part of the process.

Chairman MANZULLO. Well, you have got your hands full.

Well, I am very much relieved to a great extent that because of the wealth of knowledge that you, Mr. Sadler, and you, Admiral, have in these areas and the obvious sensitivity to what these folks are saying, that you are going to take this into consideration.

My concern is I know you are under the gun to get this done quickly. You know, you might consider, if you do not think you have enough time to get this thing done, to give yourself more time, because the worst thing that could happen is to get a regulation out there and then have these little guys really, really hurt, and at that point, they have no recourse.

I do have one last question. Will comment be allowed once that final regulation has been issued? Sometimes you can allow comment after that.

Mr. SADLER. I would have to get back to you on that, sir.

Chairman MANZULLO. But that is an option?

Mr. SADLER. I would have to go back and ask our Legal department and make sure I was giving you the correct information.

Chairman MANZULLO. Okay. Okay. If that is an option, I would suggest that you at least avail these folks the ability to take a look at the—it would be the second proposed regulation. I would hate to see a final regulation come out that they do not have another opportunity to take a look at it in order to try to refine it.

Mr. SADLER. Are you talking about the first rule that is coming out on the bifurcation?

Chairman MANZULLO. The card rule, that is correct.

Mr. SADLER. Oh, the card rule.

Chairman MANZULLO. The card rule.

Mr. SADLER. Yeah. We will go back, and we will ask legal about that.

Chairman MANZULLO. Okay, and that would be one of the suggestions we would make, and do the four of you understand your assignment? Okay. Do not make a tome, you know, a couple of pages, but make it so that when we give it to these two gentlemen, they can recall the testimony, and that will make it a lot easier for them to try to see where the holes are in possible areas that you may have exceptions.

I appreciate your coming here. This committee is adjourned.

[Whereupon, at 3:45 p.m., the committee was adjourned.]

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States
House of Representatives
109th Congress
Committee on Small Business
2361 Rayburn House Office Building
Washington, DC 20515-6315

OPENING STATEMENT
SMALL BUSINESS COMMITTEE CHAIRMAN DONALD A. MANZULLO

"Advancing Security and Commerce at Our Nation's Ports: The Goals are not Mutually Exclusive"

September 27, 2006 2:00PM in Room 2360 Rayburn HOB

Good afternoon. Today's hearing is all about the federal government complying with the Regulatory Flexibility Act. In 2002, President Bush spoke to a large audience of women small business owners. At that address he said that, "...every agency is required to analyze the impact of new regulations on small businesses before issuing them. That is an important law. The problem is it is often being ignored. The law is on the books; the regulators do not care that the law is on the books. From this day forward they will care that the law is on the books. We want to enforce the law."

I'm tired that all too often the little people in this country are being shoved around by big government, because the government doesn't fully follow the RFA. The purpose of this hearing is to make sure that the RFA is fully complied with, so that the Department of Homeland Security (DHS) doesn't go through all this effort in developing the Maritime Transportation Worker Identification Credential (TWIC) only to have the small business community successfully challenge this in court. Securing our homeland is way too important to be left to lawsuits.

Last May, the Transportation Security Administration (TSA) and the Coast Guard issued proposed regulations to implement the TWIC as required by the *Maritime Transportation Security Act of 2002*. The TWIC is an expensive biometric identification card that is meant to be used in combination with vessel and facility security plans. The regulation is designed to ensure that individuals who could pose security risks do not have access to our nation's ports.

Obtaining a TWIC is the responsibility of the worker. To apply, workers must travel to a remote credentialing facility and submit information for a security background check. Within 60 days, the worker should receive notification of their clearance. They can travel back to the issuing facility to pick up their credential and begin gainful employment.

The rule also requires that facilities and vessels obtain an electronic reader, with equipment cost estimates ranging from $1000 to $10,000, to verify the worker's TWIC. The reader will be positioned outside of each secure area and will read the information stored on the memory chip contained in the TWIC. The individual will scan a fingerprint

and/or enter a numerical code to provide additional verification of their identity. The information scanned into the reader will be sent to the facility's access control system and stored for at least two years.

TSA and Coast Guard recognized the potential adverse economic impact of the rule on small business and completed an Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act. Unfortunately, the IRFA they issued was seriously flawed. Under the Regulatory Flexibility Act, an agency has two choices. They can determine that the rule will have significant economic impact on a substantial number of small entities or certify that it will not. TSA and Coast Guard did neither.

First, the agencies failed to thoroughly examine the economic costs to small businesses of obtaining the card reader. They shifted this analysis on to small businesses. Second, TSA and Coast Guard failed to examine small business's lost opportunity costs. Small businesses will forgo income due to the lack of credentialed workers, and there is already a shortage of workers in the maritime industry. The wait time associated with obtaining a TWIC will only exacerbate this problem. Third, TSA and Coast Guard did not recognize the cost of the TWIC itself, implying that the cost is assigned to the worker and only indirectly impacts small business. This reasoning is flawed because some industries already assume much of the current maritime credentialing costs and will have to pickup this additional cost to attract employees. Finally, individual states are requiring their own version of a TWIC which may be inconsistent with the federal TWIC, thereby seriously interfering with interstate commerce. Florida currently has its own version and a host of others that are looking at implementing one. The rule should preempt state and local requirements to reduce the economic burdens on small business.

During the comment period, TSA and Coast Guard received nearly 2,000 comments by interested parties. Many of the comments recognized that the law, if properly implemented, will provide for an additional layer of safety and security while at the same time improve the flow of people and goods at our nation's ports. Unfortunately, small businesses and their advocates say that the *Maritime Transportation Security Act of 2002* is not being properly implemented.

Based upon these comments, Coast Guard and TSA have made some changes to the proposed rule. The most notable was the decision to split the credential and the reader portions of the rule until the reader technology has been properly tested. This is a step in the right direction.

I scheduled this hearing to provide small business the opportunity to voice their concerns to TSA and Coast Guard, so that the Department of Homeland Security can craft a well-written final rule and Final Regulatory Flexibility Analysis. I'm glad that DHS is taking steps to secure our ports, but I want a workable solution for the long term.

I would like to conclude by thanking our panelists who have traveled some distance to participate in this important hearing. I now yield for an opening statement from the gentlelady from New York, Ms. Velázquez.

STATEMENT
of the
Honorable Nydia M. Velázquez, Ranking Democratic Member
House Committee on Small Business
Hearing on Transportation Workers Identification System (TWIC)
September 27, 2006

Today we are looking at the plans to implement Transportation Workers Identification System, or TWIC, which Congress first authorized nearly 5 years ago. The effort was emphasized again in 2002 in the Marine Transportation Safety Act; but still it remained on the backburner as the attention turned to Iraq.

Finally there was renewed concern earlier this year when it appeared that the administration had approved the sale of a major port operation to the Dubai Port Authority. Port security was quickly moved to center stage.

Unfortunately, the implementation of the TWIC program has been plagued by false starts, missed deadlines and poor planning that has wasted time, money and opportunity. And those aren't just my feelings but they reflect the past findings of the GAO, the Inspector General and hearings held in both the House and Senate. In fact the Senate has gone so far as to try to set a hard deadline when the nation can count on the TWIC program to come on line. Well, it is now over five years since the morning of 9/11.

Today, we see the Department of Homeland Security and its offices starting to do the homework they should have been doing from the very beginning. As we will hear, their *one-size-fits-all* version of the TWIC program is not a good fit for most small businesses. College student deckhands working on excursion boats for the summer will undergo the same checks, pay the same high price and experience the same delays, for a background check as the pilot and crew of a vessel carrying explosive gas.

Owner-operator truck drivers have to pay for a wallet full or licenses, cards, endorsements, from federal, state and local authorities, many of whom ask the same questions. The DHS has announced that when the TWIC program goes into effect, there won't be any card readers to even read them, so the TWIC card will be little more than a $150 photo ID.

What we have seen is that very little effort has been made to identify the most serious threats, and to deploy resources in a way that could result in the most benefit. And I am afraid that it will end up hurting small businesses.

But I am more concerned that this is just the tip of the iceberg – that this *typifies* the kind of work we have seen from DHS and FEMA over the last year. We have entrusted DHS with our safety, and I fear that, once again, not enough is being done.

Congress is now conferencing on the SAFE Ports Act. It is frightening for me to see the things this administration is just now getting around to, and the huge amount that still needs to be done. Last week an amendment offered by our colleague Senator Schumer was opposed by the administration and defeated. This measure would have required us to move *as quickly as possible* to a full screening of shipping containers *while they are overseas*.

I will tell you that if we settle for inspecting those ships and containers once they are *in* our ports… it is too late. It is estimated complete overseas inspection would have cost $8 per container… but the consequences of *not* doing it are, to me, unthinkable.

This administration has left us with a system of random screenings, 'pilot programs' and reliance on the diligence and capabilities of foreign workers in foreign countries. I can assure that many of these workers are not as concerned about our safety as we are.

Indeed improving international cooperation is often said to be the key to addressing terrorist threats, but it is a concern that our diversion with the Iraq war has estranged us from some of the very countries whose help we need.

Port Security is a vitally important area and I believe the administration should be doing a much better job than the one we are seeing today.

Thank you.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY

STATEMENT OF

RDML BRIAN SALERNO
DIRECTOR OF INSPECTIONS AND COMPLIANCE
U.S. COAST GUARD

AND

STEPHEN SADLER
DIRECTOR OF MARITIME AND SURFACE CREDENTIALING
TRANSPORTATION SECURITY ADMINISTRATION

BEFORE THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

SEPTEMBER 27, 2006

Good morning, Mr. Manzullo, Ranking Member Velazquez, and members of the Committee. Thank you for this opportunity to speak with you about the effects that the Transportation Worker Identification Credential (TWIC) will have on the nation's small businesses. Specifically, we would like to update the Committee on the efforts of the Transportation Security Administration (TSA) and the United States Coast Guard (USCG) in jointly creating a rulemaking that will implement Congress's legislative mandates while advancing the twin objectives of strengthening security and facilitating commerce. This rulemaking is ongoing and therefore I can not discuss details of the final rule until it is published in the Federal Register.

Background and Authority

Pursuant to section 201 of the Maritime Transportation Security Act (MTSA), the Coast Guard developed regulations establishing security requirements for maritime vessels and facilities that posed a high risk of being involved in a transportation security incident. As part of these regulations, these vessels and facilities were required to conduct detailed security assessments and in turn, develop security plans under which owners and operators have been required to operate since July 1, 2004. The Coast Guard has been responsible for implementing and ensuring compliance with MTSA.

Section 102 of MTSA requires the Secretary to issue a biometric transportation security card to those individuals who satisfactorily pass a security threat assessment in order to be granted unescorted access to secure areas of vessels and facilities. TSA was assigned this responsibility. As a result, TSA and the Coast Guard have proposed an amendment to the MTSA regulations to build upon the existing maritime security framework to incorporate the TWIC.

Joint Rulemaking by TSA and the USCG

The two agencies designed the proposed regulation to reduce security vulnerabilities through: 1) the positive identification of individuals entering secure areas of the maritime transportation system; 2) the assessment of an individual's threat to the maritime transportation system; and 3) the establishment of a universal credentialing system which is resistant to fraud. TSA is responsible for the overall system and management of the system including hardware and software application, as well as card issuance, and the Coast Guard is responsible for implementing TWIC in the maritime environment.

On May 22, 2006, we published the Notice of Proposed Rulemaking (NPRM) in the Federal Register. This was followed by a public comment period in which nearly 2000 comments were received. In addition to soliciting comments on the NPRM, TSA and the Coast Guard participated in a number of public meetings, as well as specific advisory committees or industry trade groups meetings. At many of these meetings, the rule's impact to small businesses was specifically discussed. Four public meetings were held in Newark, NJ; Tampa, FL; St. Louis, MO; and Long Beach, CA. Hundreds of business owners and representatives of the maritime industry's workforce attended and submitted statements or spoke at these meetings. Hundreds of others have submitted written comments directly into the docket. TSA and the USCG also participated in meetings with the Small Business Administration, the Merchant Marine Personnel Advisory Committee, the Towing Safety Advisory Committee, the National Maritime Security Advisory Committee, the National Offshore Safety Advisory Committee, the American Association of Port Authorities, the American Chemistry Council, the West Coast Terminal Operators Association, the Synthetic Organic Chemical Manufacturing Association, as well as others.

Initial Regulatory Flexibility Analysis

Changes to Federal regulations must undergo several economic analysis. One of those is the Regulatory Flexibility Act of 1980 (RFA) which requires agencies to analyze the economic impact of regulatory changes on small businesses. TSA and the Coast Guard completed an Initial Regulatory Flexibility Analysis (IRFA) in support of the TWIC NPRM process. The IRFA was included in the more comprehensive regulatory evaluation, which was posted on the public docket. TSA and the Coast Guard solicited, and received many comments on this matter.

Public Comments and Concerns

TSA and the Coast Guard received a number of comments from small businesses on the TWIC NPRM and the IRFA. Generally, it was suggested that the rule imposes a significant burden on small businesses and does not meet the requirements of the RFA. Furthermore, it has been suggested that the rule fails to meet the requirements of the MTSA and our previously stated goals. Principal concerns included the expense of the credential, the equipment and systems required for access control and the escorting requirement. Concerns were raised regarding the ability for employees to gain access between the card enrollment and issuance period. Additionally, some small businesses asserted that the IRFA failed to include many small businesses in the maritime towing and passenger vessel industries, as well as other sectors. It was suggested that the rule exceeds the statutory mandate to create a 'simple biometric card' by requiring a costly and complex one, the proposed technology of which has not been fully tested and perfected. It was further suggested that businesses utilizing seasonal or temporary workers could be significantly impacted by the rule and that many businesses will avoid using TWIC altogether. Finally, it is feared by some that the rule will exacerbate current labor shortages affecting small businesses.

TSA and the Coast Guard found the comments received to be invaluable in determining the best way forward for this rule. All comments will be addressed specifically in the final rule, and the concerns above are receiving particularly close attention in order to best achieve the goals of enhanced security and facilitation of commerce.

Based on the comments received from all sources, the Department has proposed to bifurcate the rule. In order to address concerns about the adequacy of current reader technology, TSA and the Coast Guard will not require facility and vessel owner operators to purchase, install, and maintain card readers in this rule. We will address this requirement at a later date and will provide all interested parties ample opportunity to comment on any new proposals. In addition, TSA will test proposed card reader technology and equipment, as appropriate and within the program's cost and schedule perimeters. As part of this effort, TSA and the Coast Guard are working with the Ports of Los Angeles and Long Beach, which have received a $12 million Port Security Grant to field test the use of card readers for access control to inform a follow on rulemaking. This will examine cost concerns with respect to the cost of card readers and we will evaluate the issue of reliability of the readers in a commercial and/or marine environment during this testing.

TSA and the USCG continue to reach out to our private sector stakeholders, especially small business organizations, in the interest of fashioning a regulation that strengthens America's maritime security while advancing commerce. We are mindful of the very important concerns of small businesses and we will continue to work within the legal parameters of the Administrative Procedures Act of 1946. Accordingly, I would happy to take any questions you have at this time to the extent that that law allows me to answer.

Mr. Chairman and members of the Committee, thank you for inviting me to testify today on behalf of American Trucking Associations, Inc. ("ATA") on the subject of advancing commerce and security at our Nation's ports and the Transportation Worker Identification Credential ("TWIC"). My name is Phil Byrd. I am President and CEO of Bulldog Hiway Express, headquartered in Charleston, South Carolina, an intermodal carrier with approximately 200 power units, 350 trailers and 250 employee-drivers. I am also a Vice Chairman of ATA's Intermodal Motor Carriers Conference. Of particular relevance to this Committee, my company is a small business per the Small Business Administration definition. I am here on behalf of ATA, a federation of motor carriers, state trucking associations, and national trucking conferences created to promote and protect the interests of the trucking industry. ATA's membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 34,000 companies and every type and class of motor carrier operation.

The trucking industry is the one mode of transportation that connects all the other modes of the supply chain. My company, on a daily basis, transports containers in and out of the seaports in South Carolina, North Carolina, Florida, Georgia, and Virginia. My company, which was founded in 1959, moved the first container to come off a vessel in the Port of Charleston. My fellow ATA motor carrier members transport containers in and out of all of our Nation's seaports, rail terminals, and airports. The screening of individuals involved in the transportation of goods is important to my company and to the trucking industry.

Any discussion of the TWIC should start with the underlying concept of the TWIC and why it was deemed necessary. In January 2003, Admiral Loy, then the second most senior official at the Transportation Security Administration ("TSA"), summed it up best, stating:

> A fourth initiative also underway is development of a Transportation Worker Identification Credential or TWIC . . . The idea is to have these [transportation] employees undergo only one standard criminal background investigation . . . I've heard that there are some truck drivers currently carrying up to 23 ID cards around their necks. I wouldn't want to pay that chiropractor bill. Under the TWIC program drivers and other transportation workers will only have one card to deal with which would be acceptable across the United States. -- Remarks of Admiral James M. Loy, Under Secretary of Transportation for Security, Transportation Security Administration, before the Transportation Research Board 82nd Annual Meeting Chairman's Luncheon, January 15, 2003.

As the representatives of the trucking industry, ATA supported this concept of a single background assessment and the issuance of a single security credential. However, since Admiral Loy's speech in January 2003, the trucking industry has witnessed the implementation of a background check process for individuals obtaining hazmat endorsements ("HME"), a different background check requirement for truckers going to secure areas of airports, and now the implementation of yet another background check process for truckers transporting cargo in and out of the seaports. To obtain these different credentials, applicants must appear at different

enrollment facilities, adapt to different administrative procedures, and pay steep "user fees" for each process required. The chiropractor bill is not the only hefty bill the trucker is paying. The bad news is that TSA has not been faithful to its vision of the TWIC. The good news is that it is not too late to get it right.

ATA urges this Committee and TSA to return the TWIC to its initial moorings. We believe the following principles will facilitate achieving the original, laudable goal: 1) the current multitude of federally-mandated background checks should be consolidated into one check that evidences an individual's privileges, from a security standpoint, to access areas or goods in the transportation supply chain; 2) the TWIC should serve not only as the one background check but also the one credential for access from a security perspective – this means the states should not be allowed, without demonstrating some compelling need, to add additional security checks and/or credentials; and 3) the system should be designed so that costs are minimized and evenly spread over all users. Adhering to these principles, a system can be implemented which truly will enhance the security of our country, while minimizing the cost of discovering the few bad apples in the large barrel of patriotic individuals who make their livings on our Nation's highways.

In developing the HME background check, TSA intended to harmonize the HME check with the check required under the Maritime Transportation Security Act of 2002 (MTSA), the law authorizing use of TWIC in the seaports.[1] Under the HME check, a driver submits fingerprints and biographical information and is checked against multiple criminal history, intelligence, terrorist, and immigration databases. Under the proposed TWIC rule, an individual requiring unescorted access to secure areas of the seaport (e.g. a truck driver) would submit fingerprints and biographical information and be checked against the same databases. Furthermore, the disqualifying criteria for TWIC is the same as the criteria for HME. Although these portions seem to have been harmonized, they were not consolidated. An individual who has successfully cleared the HME background check still has to undergo a costly "enrollment" process for issuance of the TWIC (while the individual saves some money on the threat assessment portion, the cost is still expected to be $105[2]). Conversely, ATA can think of no reason why an individual who cleared the TWIC background check should not be deemed to have met the HME background check. That individual should not have to undergo any additional process from a security perspective.[3]

ATA continues to share Admiral Loy's concern for the well-being of truck drivers weighed down by a multiplicity of cards. The proposed TWIC rule, by allowing state authorities to impose additional requirements for access to the ports, is an invitation for each port authority to issue its own credential on top of the TWIC. The state of Florida is already doing so at its seaports. In my home state of South Carolina, the trucking industry has had to counter several

[1] "[T]he agency plans to harmonize, to the extent possible, all of the various background checks that are required by statute, and so elements of MTSA appear in this rule." 68 Fed. Reg. 23852, 23853 (2003); "TSA intends to maintain as much consistency as possible between the current hazmat driver and future maritime programs." 69 Fed. Reg. 68720, 68726.

[2] The proposed rule provides for the costs to these individuals for enrollment to range from $95-$115; however, TSA has specified the $105 amount in several presentations, including a summary of highlights of the proposed rule.

[3] ATA agrees that the individual should still have to meet all the knowledge, skills and safety requirements for issuance of the HME.

proposals to impose additional background check and credentialing requirements for access to the South Carolina ports. The regulations issued by the Coast Guard under MTSA properly claimed the need for national standards of security and claimed preemption. ATA supported this eminently sensible position. ATA is disappointed that TSA has not adopted a similar approach, as the need for national standards of security remains equally applicable.

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

Other than the differences between the criminal history databases, it is difficult to conceive of scenarios where a state's judgment on security of the Nation's supply chain should supplant the federal government's considered judgment. If such a scenario exists, however, the state should have to make the case to federal authorities on a case-by-case basis. Otherwise, the federal standards should be controlling. This, and the consolidation discussed earlier, would help return the TWIC to being the "one card to deal with which would be acceptable across the United States."

Finally, the trucking industry understands that securing the Nation's supply chain involves costs. Motor carriers like mine are likely more willing to bear the cost of one – but not multiple – background checks and security credentials. The stovepipe approach to security programs taken by TSA has resulted in the unnecessary imposition of wasteful costs. As a small business, Bulldog Hiway Express's continued viability depends on achieving efficiencies and cost reductions. It is frustrating for us in the private sector to work so hard to develop efficient businesses when the government turns around and imposes extraordinarily high costs – both monetary and lost time – without any rational need to so.

As discussed above, the processes for submission of fingerprint and biographical data for the HME background check and the TWIC background check are essentially the same. The main difference is that, under TWIC, the individual has a photograph taken and ultimately receives a security credential. A driver that has undergone the HME background check process pays a fee of $94 in 34 states (including D.C.) that use the TSA contractor for information collection. This fee included paying for nearly $4.8 million to set up the TSA Screening Gateway. Under the proposed TWIC rule and TSA briefings on the rule, that same driver will be asked to pay another $105 for the TWIC process. While the cost justification in the proposed TWIC rule is sufficiently vague to prevent us from knowing what the categories of costs are covering, ATA finds it hard to believe that the cost for taking a digital photo and producing a biometric card

amounts to $105 – particularly when a cost estimate from another government agency for the production of similar biometric cards is in the $10-12 range. In justifying this $105 cost, TSA has stated that $45-65 is for information collection, i.e., the same fingerprints and biographical information already submitted for the HME process plus a digital photograph.

Since the HME background check rule was promulgated after passage of the MTSA requirement, it seems that reasonable forethought would have suggested storing the fingerprints and biographical information of HME driver-applicants. This would have meant the only information collection cost would have been the capture of a digital photograph. Surely, that would not cost between $45 and $65. However, TSA chose a non-uniform approach to information collection, allowing states to elect to conduct the information themselves or use a TSA contractor. In the 17 states electing to conduct information collection themselves, TSA has no control over what happens to the fingerprints. ATA hopes that TSA will address these types of self-erected hurdles that simply add to the costs borne by the trucking industry.

ATA believes there are likely other potential cost savings. However, as noted earlier, the regulatory flexibility analysis ("RFA") conducted for the TWIC proposed rule, which was intended to determine the true costs of regulations and weigh their benefits, is too vague to be subject to reasonable outside scrutiny. Congress has explicitly recognized the need to take into account the effect of proposed regulations on the small business community. Without adequately conducting RFAs, TSA is able to skirt the concerns about the impact on small businesses.

The consideration of the TWIC concept transportation-wide began as early as December 2001. Its implementation has been marred by numerous delays. Admittedly, there are a number of issues to consider and get right. ATA is alarmed that, rather than building a scalable program that is true to the concept laid out by Admiral Loy and his predecessors, TSA is simply building another stovepipe program to screen workers at the seaports. ATA urges appropriate Congressional oversight to get a single, consolidated approach to personnel security back on track in a timely manner.

ATA does not oppose background checks of individuals in the trucking industry. ATA *does* oppose the wasteful expenditure of resources – both government and private sector – that comes with conducting multiple background checks of the same individual against the same databases. The trucking industry has consistently demonstrated its willingness to contribute to the security of the homeland and its willingness to pay certain costs related to driver screening. In return, ATA simply asks that these costs be reasonable and part of an efficient process. ATA supports an approach that is good for security – and good for commerce.

STATEMENT BY DEBBIE GOSSELIN

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COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

HEARING ON
TRANSPORTATION WORKER IDENTIFICATION
CREDENTIALS

September 27, 2006

Mr. Chairman and Members of the Committee:

Thank you for the invitation to address you today about my concerns as a small business person regarding the implementation of the Transportation Worker Identification Credential, or TWIC. I am Debbie Gosselin, President of Chesapeake Marine Tours Inc. dba Watermark.

Watermark has been in operations since March of 1972. We are based in Annapolis, Maryland, on a tributary of the Chesapeake Bay. We currently have 11 inspected passenger vessels, with capacities ranging from 297 to 24 passengers.

I am also a member of the Passenger Vessel Association (PVA), and an active member of the PVA Legislative Committee. PVA is the trade association for the U.S.-flag, U.S. Coast Guard-inspected, and Canadian Coast Guard-inspected and state inspected passenger vessel fleet. The Association has approximately 415 vessel member companies which operate passenger vessels and approximately 175 associate member companies providing products and services to the passenger vessel industry.

PVA vessel members are diverse. These companies operate a variety of vessels including vehicle and passenger-only ferries, dinner cruise vessels, excursion boats, sightseeing, whale watch and eco-tourism vessels, overnight cruise vessels, water taxis and amphibious DUKW. They provide these services across the length and breadth of the United States. They operate in the major ports, river systems, lakes, bays and sounds including headwaters and remote waterways.

Watermark and PVA understand and support rational security measures. Our vessels operate in compliance with an approved security plan, as required by the Marine Transportation Security Act. Yet, this implementation has been very expensive for our small company, and for many other passenger vessel companies nationwide. I have hired a Company Security Officer, a new position for us, who assisted in the completion of our risk-based threat assessment, identified our vulnerabilities and established procedures to control access to the restricted areas of our vessels. We have led the industry in our area with our extensive training and drills and we know that we still have the costs of TWIC cards and an Automatic Identification System (AIS) to pay for.

As a small, hands-on company, we, at Watermark, believe that we do not need a electronic TWIC card or a reader for that card to know that Sam and Karly or Bill are who they say they are when they show up to work each day. They are the same Sam and Karly and Bill that we interviewed, hired and trained.

We are a 100% domestic operation, located 120 miles from the Atlantic Ocean. We do not carry overnight passengers. The longest trip we offer is an 8 hours tour of Chesapeake Bay. Most trips are 40 minute tours of the Annapolis area. Some of our vessels only provide water-taxi service, transporting boat owners from the shore to their boats moored in the harbor. All of our Captains and crew are, by law, U.S. citizens.

I believe that the proposed rule for a TWIC was intended to focus on the movement of cargo aboard large ships that operate at large port facilities. The TWIC was designed to address the port safety problem where the flow of cargo depends on a large flow of non-vessel, non-facility employees in and out of cargo facilities. I do not believe that a small passenger operation such as mine was ever envisioned by Congress to be included in the security concerns of America's ports. I am here today to ask your assistance in the modification of these requirements so that they do not cripple my small company and many other small companies like mine.

We Need to Put Individuals to Work Promptly

The proposed rule needs to be modified to allow a worker who clears an initial background check at the time and place of the TWIC application to go to work right away while any additional, more complex background review is undertaken for final TWIC approval.

We are a seasonal operation with a pool of 30 to 35 captains, 20 deckhands and 10 concessionaires/bartenders. So far, in 2006, we have hired a total of 80 *seasonal* employees who, under the proposed regulations, would have to have TWIC. A total of 28 of these have been hired since May and seven have been hired in the last three weeks. Almost always, but particularly in May and September, there is no turn-around time from hiring to working.

We compete aggressively with many other businesses for good seasonal employees. Most of the other businesses in our area are not passenger vessels. They are hotels, marinas and restaurants. Most of our seasonal employees are college or high school students who want to find a job when school gets out and make the money they need for the next school year. This generally means they are available to the employer for approximately 90 – 100 days. They cannot apply for this summer employment and then wait 30 days for an ID card. They cannot even wait 2 weeks.

Recently, the Senate passed the Safe Ports Act. Senator Vitter of Louisiana successfully added an amendment to address this problem. I urge the House Conferees to accept the Vitter amendment.

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

We believe that the federal government has a responsibility to its maritime workers and companies to ensure that direct costs for TWIC and other federal credentials are not duplicative and are kept to the minimum.

Our applicants cannot afford to pay $150 for a TWIC card. So, now, small marine employers like me will be forced to pay the application fee for their employees, as we now pay for their pre-employ drug test, first-aid training and security training; all currently required for our employees, but not required of the waterfront restaurant or the marina up the street.

I am also concerned that there are other, unaccounted for costs of this rulemaking. One example would be transportation costs for the employee to travel to the enrollment center. We still don't know where these centers might be, but can assume they will be in large port cities. In our case, it would probably mean traveling to Baltimore. That means two, two-hour round trips, costing gas, parking, and time away from the job. Not once, but twice. For many employees, we the small employer will have to provide this transportation when employees either don't drive or don't have transportation. Many would have to borrow Mom or Dad's car for the trip or have Mom or Dad drive them. This requirement is a roadblock to hiring good seasonal employees. If asked to make this trip, no matter who pays for it, most will simply chose to work elsewhere. It's just too much trouble for a summer job.

How many TWIC cards will be requested by applicants who change their mind and go to work at the restaurant down the street when they find out that the restaurant will put them to work right away? How many TWIC cards will be issued, and the applicant never picks up the card, because Mom decided the family was going on vacation instead? How many applicants will find out they get seasick, and quit after the first day? These are the unintended costs for the employer that we are concerned about, and a reality for those of us that are small marine employers.

We are pleased that we will have a second opportunity to comment on the rulemaking addressing readers for the TWIC card. We hope that regulators will listen to the concerns of small businesses like mine when we say that we don't need readers to recognize our employees. I believe that there are other methods that can be used to verify the status of identification that present little or no cost to the small employer. We do not believe that we should spend hard earned money on readers that we believe will be difficult and expensive to install and maintain on small vessels such as ours.

We also object to the provision in the proposed rule that requires each employer to keep detailed records for two years, which show every occasion of which an employee enters a secure area. This does nothing to prevent security incidents, but does impose a huge paper work burden on a small business.

We are already required to maintain proof of employment, and payroll information for all of our employees for seven years. These records include who worked on which vessel, on which day. This should sufficiently document the employees' movements and should alleviate the need in the Notice of Proposed Rulemaking (NPRM) for a record to be kept of each time a crew member enters a secure area. This requirement, as written in the proposed rule, is redundant and extremely burdensome for small businesses.

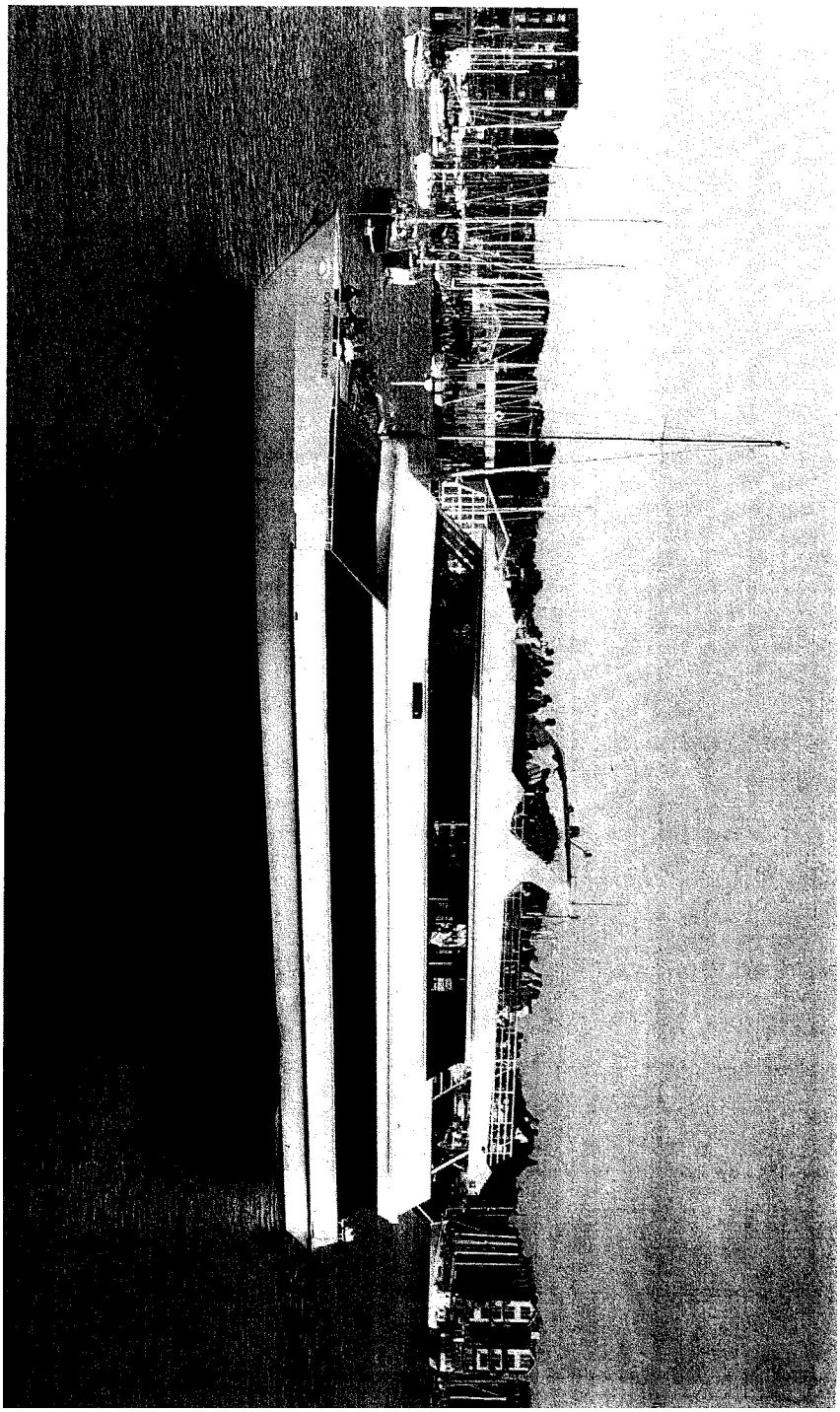
Allow Employers to Define the Correct Secure Areas

The premise of the NPRM is that an individual must possess a valid TWIC to enter a secure area of a transportation conveyance or facility. A rational determination of risk will ensure that the marine employer is guarding against terrorism in the right locations

without indiscriminately applying a TWIC requirement to locations where it is not justified. Adhering to this concept will make the TWIC rule more manageable for small businesses.

Most of our seasonal employees will not have access to sensitive security information and will not access the restricted areas of the vessels. Our vessels frequently depart from designated public access facilities, where the public has free and open access to the public park or city dock that we depart from, and there is no facility staff and there will not be a reader for a TWIC.

Thank you for allowing me to come here today to ask your assistance in assuring that this rule, in its final version, is modified to address the concerns of small businesses such as mine. Our concerns were submitted to the official docket, along with some 1600 other comments. We believe that an appropriate level of security can be achieved without unnecessarily harming American small businesses. A reasonable and balanced approach to this rulemaking can advance both security *and* commerce.



Good afternoon, Mr. Chairman, I am George Leavell, Executive Vice President and one of the owners of Wepfer Marine in Memphis, Tennessee. I want to thank you for holding this hearing and for the concern you have shown for our industry.

Our company is a small harbor and fleeting operation servicing six ports on the Mississippi River. We operate approximately 20 boats. We also operate a small shipyard in Memphis providing maintenance and repair to inland towboats and barges and Coast Guard buoy tenders. We employ approximately 150 people on our vessels and in our shoreside facilities.

Wepfer Marine moves a variety of commodities up and down the river. These commodities include coal for the TVA Allen Steam Plant, which furnishes electricity to Memphis Light, Gas and Water. We also move chemical feedstocks for manufacturing; agricultural chemicals for the farmers in our area; outbound grain for export; steel for construction and manufacturing; and cement, gypsum, stone, sand and gravel for construction. We move petroleum products of all kinds, including jet fuel for the Memphis airport, diesel fuel for trucks and buses, gasoline, lube oil and asphalt for paving roads. Our company contributes in many ways to the economy of Memphis and the Mid-South region.

I am appearing before the committee today as a member of and on behalf of The American Waterways Operators. AWO is the national trade association for the tugboat, towboat, and barge industry. The industry AWO represents is the largest segment of the U.S.-flag domestic fleet and a vital part of America's transportation system. The industry safely and efficiently moves over 800 million tons of cargo each year with a fleet that consists of nearly 4,000 tugboats and towboats, and over 27,000 barges. Our industry employs more than 30,000 mariners as crewmembers on our vessels. Some of the companies in the towing industry are relatively large, but, according to the U.S. Army Corps of Engineers, over 90 percent of towing companies are actually smaller than Wepfer Marine.

Mr. Chairman, Wepfer Marine and the other members of The American Waterways Operators have been, and will continue to be, partners with Congress and the Department of Homeland Security in ensuring the security of our country. Immediately after the September 11, 2001

attacks, the members of AWO worked in cooperation with the Coast Guard to develop security plans for our vessels, even before they were required by the Maritime Transportation Security Act of 2002. We take security seriously, and we are proud of the fact that our vessels and their crews are considered to be the "eyes and ears" for the Coast Guard on our nation's waterways.

Nevertheless, we have serious concerns with the proposed rule for the Transportation Worker Identification Credential (TWIC), as set out by the Transportation Security Administration (TSA) and the Coast Guard in the Notice of Proposed Rulemaking (NPRM) earlier this year. AWO has called the TWIC proposal in its current form a "blunt instrument" that will impose substantial hardships on mariners and the tugboat, towboat, and barge companies that employ them, establishing a complex, expensive, one-size-fits-all process that is simply not necessary to ensure high levels of vessel and maritime facility security. The burdens and delays that the proposed requirements will cause threaten to undermine our nation's economic health and security by impeding the efficient flow of vital commodities by water throughout the domestic transportation system. AWO has urged that the proposal be substantially revised to establish more practical, cost-effective procedures that can be successfully implemented by the wide range of entities to which the TWIC regulations will apply, and not geared exclusively to large, complex, high-technology operations.

Mr. Chairman, our operation is certainly not large or complex or high tech. We employ about 150 employees in all of our operations, and only a handful of these have college degrees. Even without the TWIC rule, we are struggling with a chronic shortage of personnel to man our vessels. AWO estimates that the annual turnover of entry level personnel in the towing industry is 50 percent. From my experience, and my conversations with others in the industry, I believe that it is often higher than that.

My company, and companies like mine, provide entry level opportunities for high school graduates to begin a career in the marine industry as deckhands on our vessels and workers in our shipyard. Our applicants are typical of many Americans. They rely on each paycheck to pay their rent, mortgages, utilities, car payments, insurance, medical expenses and other routine bills. Missing one check can result in significant financial hardship. This is a risk that applicants

cannot take. I have personally witnessed potential employees decide to go elsewhere when faced with even slight delays in the hiring process. My company has been forced to tie up vessels when delays in issuing currently required Coast Guard documentation have blocked the availability of a full crew complement.

In this environment, we are very concerned that the requirements for obtaining a TWIC card will exacerbate the current personnel shortage and could even force companies like ours to tie up boats for lack of crewmembers to operate them. Such an outcome would have a very negative impact on our ability to deliver the commodities that are the building blocks of the economy in the Mid-South region in which we operate, and would have the same negative impact on the national economy by affecting hundreds of towing companies around the country that also deliver the goods that are essential to maintain America's economic vitality.

TSA and the Coast Guard have estimated a 30-60 day waiting period for the issuance of a TWIC card once an application has been made. In order to apply for a TWIC card, potential employees will be required to go to a TWIC "enrollment center" to make application and will also be required to pay a $149 user fee at the time of application. They will then be required to return to the center when the processing of the card is complete. Faced with such a series of obstacles, many individuals will simply opt for employment elsewhere. Even if the TWIC processing time were to be reduced significantly -- say to a week or two -- many potential applicants will no doubt look elsewhere for employment.

To avoid this unacceptable outcome, AWO and many of the 2,000 other organizations and individuals commenting on the NPRM have suggested that the Department of Homeland Security include an interim work authority provision in the TWIC rule which would enable new hires in the industry to begin working immediately once they have completed the application process and passed an initial security screening. This initial screening process could function much like the background check currently utilized for firearms purchases, which provides an almost immediate response. A check against the federal government's terrorist watch list could also be included. Provided the initial screen turns up no disqualifying information, the applicant

could then be allowed to begin work and earn a paycheck pending the issuance of his or her TWIC card.

Mr. Chairman, one of our industry's major concerns with this rulemaking is its one-size-fits-all nature. Unlike other Administration-promulgated security regulations for the maritime industry, the TWIC proposal makes no distinctions based on operational risk or scale. Requirements developed with high-traffic, highly security-sensitive operations in mind (such as public ports) have been extended to small vessels and facilities with a very different risk profile. The risk posed by a towboat moving grain from Cottonwood Point, Missouri, is certainly not very high. Neither is the risk presented by small log tow moving forest products in the Pacific Northwest. This complex, expensive, one-size-fits-all approach is not necessary to ensure high levels of maritime security or to meet the TWIC mandate of the Maritime Transportation Security Act.

The Coast Guard has already recognized the need for and value of a more nuanced approach to maritime security in its vessel and facility security plan regulations, by allowing for the development and approval of Alternative Security Programs (ASPs). Alternative Security Programs such as the AWO ASP balance the imperatives of security and facilitation of commerce by tailoring a standard set of performance-based requirements to fit the risk profile and operational characteristics of a specific industry. The TWIC proposal, on the other hand, would require the same technology on a four-person inland towboat as at the gates of a major public port facility! This is unnecessary and unworkable. The TWIC rule should be modified to better reflect the risk profile and the operational realities of towing vessels, and the phase-in process for rolling out the new requirements should also be based on risk. We would argue that this kind of risk-based approach will actually lead to a higher level of security than attempting to do everything at once, which is likely to strain government and industry resources to the breaking point.

The TWIC proposal is not only cumbersome, it is costly, both for individuals employed in the towing industry and for the companies that employ them. One of the most significant costs would have come from the proposed requirement that card readers be placed on every vessel at a cost of approximately $10,000 for each reader. The Department has subsequently announced

that the card reader requirement will not be implemented as part of the initial TWIC rule and will be considered further as part of a separate rulemaking. This is a proper response to the many comments that were received about the card reader requirement, but the issue has not been laid to rest yet. We understand that DHS still plans to proceed with some sort of proposal on card readers. When it does, we believe it is essential that such requirements not be imposed on towing vessels and small marine facilities.

The proposal also imposes substantial direct and indirect costs on the individuals who are required to obtain a TWIC card. Foremost is the cost of the card itself. For initial applicants, the user fee to be required with the application is estimated at $149. This cost will be a burden on the typical entry level applicant. A $149 out of pocket expense before these applicants even see their first paycheck may well force them to look elsewhere for employment.

On top of the direct costs imposed by the proposed rule, applicants also face substantial indirect costs. The most significant of these is the requirement to make two trips in person to the TWIC "enrollment center" to receive their cards. Even when there is an enrollment center nearby, the need to take time off to apply and return to pick up the card, and the cost of travel, are a significant factor. Moreover, in some areas and especially in some inland areas, the TWIC enrollment centers are not going to be situated nearby. The proposed rule would leave large distances between enrollment centers that would impose substantial travel time and expense on applicants. These direct and indirect costs would be a further deterrent to individuals considering employment in the towing industry.

Mr. Chairman, these problems with the proposed rule on the TWIC cards are very significant for small businesses like ours. They also have serious implications for companies throughout the towing industry and for the economy we serve. AWO has urged TSA and the Coast Guard to modify the proposed rule to address these problems. The following suggestions were echoed by virtually every maritime employer who submitted comments on the proposed rules:

- First, streamline TWIC processing and establish procedures that allow new crewmembers to work on an interim basis pending the issuance of a TWIC card;

- Second, reduce the financial and administrative burden associated with TWIC issuance; and,
- Third, eliminate the TWIC card reader requirements for towing vessels.

Only this last suggestion has been addressed at all, and that is only a temporary postponement of consideration of the card reader requirement.

Mr. Chairman, these changes must be incorporated into any final rule on the TWIC cards to avoid a severe negative impact on individual mariners and the towing companies that employ them. Failure to do so will have a significant negative impact on the ability of vessel operators to attract and retain the individuals necessary to crew their boats, and could force boats to be tied up for lack of crew. Ultimately, this will limit the ability of the towing industry to move the commodities necessary for our national commerce, and could undermine our national economy and economic health as well.

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

Testimony of

DANNY R. SCHNAUTZ
OPERATIONS MANAGER, CLARK FREIGHT LINES INC.
PASADENA, TEXAS

Before the

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS

Regarding

ADVANCING SECURITY & COMMERCE
AT OUR NATION'S PORTS:
THE GOALS ARE NOT MUTUALLY EXCLUSIVE

SEPTEMBER 27, 2006

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Submitted by

Owner-Operator Independent Drivers Association
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I. Introduction

Good afternoon Chairman Manzullo, Congresswoman Velazquez, and members of the Committee. My name is Danny Schnautz. I am the Operations Manager of Clark Freight Lines in Pasadena, Texas. It is my privilege to be here today on behalf of the Owner-Operator Independent Drivers Association (OOIDA).

OOIDA is a not-for-profit corporation established in 1973, with its principal place of business in Grain Valley, Missouri. OOIDA is the national trade association representing the interests of independent owner-operators and professional drivers on all issues that affect small business truckers. The more than 145,000 members of OOIDA are small-business men and women in all 50 states who collectively own and operate more than 240,000 individual heavy-duty trucks. Owner-operators represent nearly half of the total number of Class 7 and 8 trucks operated in the United States.

The Association actively promotes the views of small business truckers through its interaction with state and federal government agencies, legislatures, the courts, other trade associations, and private businesses to advance an equitable business environment and safe working conditions for commercial drivers. The TSA's Notice of Proposed Rulemaking (NPRM) on the Transportation Worker Identification Credential (TWIC) program directly affects owner-operators, motor carriers and professional drivers, including many members of OOIDA.

I like to say that I have been in the trucking business since 1967, with my first truck ride at two days of age. In high school I drove a truck in the Texas oilfields, I've driven long haul trucks for several years, and since 1990 I have been the Operations Manager for Clark Freight Lines in Pasadena, Texas. At Clark we run 205 trucks. Thirty-five of these trucks are our own company trucks, and the remaining balance are Owner-Operators. We primarily operate dry vans and container trucks, but have some flatbed operations. I oversee an operation that hauls approximately 400 international containers per day out of our Pasadena (Houston-area) and Memphis locations.

II. Summary

- OOIDA believes that DHS is attempting to address its mission to improve security at our nation's secure transportation facilities. But the policy choices and fees outlined in the NPRM seem, at times, more the product of DHS contractors than that of an agency that has heeded the request of Congress to maximize efficiency and reduce duplicative processes and fees.

- OOIDA does not believe that DHS has adequately assessed the number of truck drivers who currently access the ports or the total economic burden they will face under the TWIC rule.

- OOIDA believes that the cost of the rule may discourage many truck drivers from obtaining an HME or TWIC. The reduction in available drivers with such credentials may have a significant impact on commerce in our country.

- OOIDA is very concerned for what appears to be a far less than complete application of the proposed requirements on foreign workers. The exceptions to the TWIC requirements for foreign workers seems incompatible with DHS' other efforts to strengthen immigration and foreign visitor rules.

- OOIDA has appreciated the Small Business Administration, Office of Advocacy's involvement in this Rulemaking, and certainly appreciates the Committees action to hold this hearing today

- OOIDA is also concerned that the employer notification provisions will lead to drivers being effectively blackballed from the industry, not just denied work requiring a TWIC.

- OOIDA shares the concern raised by the NPRM that the descriptions of different crimes vary from state to state. OOIDA encourages TSA to revise its list of disqualifying offenses to be a disqualifying list of elements of crimes that have a well-established connection to terrorist activity.

III. The Financial Burden of DHS Background Checks

In a new rule published in August, Homeland Security announced its determination that the security threat assessment of foreign drivers who participate in the FAST program to be equivalent to that required of U.S. drivers undergoing a Hazardous Material Endorsement threat assessment. The FAST card, however, only costs $50 to obtain, rather than the $94 for the HME. Thousands of U.S. drivers already have a FAST credential and use it to facilitate border crossings. The fact that a $50 existing credential has been approved by DHS as sufficient for foreign drivers, and a $94 new credential is necessary for U.S. drivers, demonstrates something is very wrong with efforts of DHS. The interests supporting cross border traffic and foreign drivers must have more influence at DHS than U.S. drivers. They certainly have achieved a far better arrangement than that given to U.S. drivers. Their threat assessment is cheaper and does not require an additional cost or effort for thousands of drivers who already have a FAST card. I think that this calls into question the efforts at DHS to minimize the burden and cost of its background check programs to drivers, and also gives the appearance that contractors who stand to gain from fees also have a great deal of influence.

This FAST card proposal comes on the heals of a TSA proposal to charge HME holders an additional $95 for the additional TWIC. For a driver with an Hazardous Materials Endorsement ("HME"), TSA will already have a driver's previous HME application, the results of the attendant background checks, and even the driver's fingerprints. The NPRM suggests that a driver will have to submit a new application, provide new biometric data for the TWIC card, and pay for additional bureaucratic processing by federal contractors. Why does TSA propose that drivers who need both credentials must apply for and pay for these functions twice?

For owner-operators and those who own their own business, the cost of having to take time away from work to go through the TWIC application process has a greater economic impact

than the proposed fees. OOIDA member and owner-operator Mr. Michael Laizure testified before Congress in November 2005 about the external costs of obtaining an HME. He had to travel 340 miles round-trip from his home in Washington State to the nearest facility taking HME applications and fingerprints. He lost approximately $1,000 in gross income on each of the two days it took to travel to and complete an HME application. To many drivers, the cost of obtaining the HME and TWIC is prohibitive.

IV. Expected Reduction in the Numbers of Credentialed Drivers

OOIDA expects that the financial burden alone will cause a significant number of drivers to decline obtaining such credentials. The results of a survey conducted by OOIDA of its members indicate that upwards of three-fourths of owner-operators will decline to obtain or renew an HME under the new background check requirements. OOIDA fears similar results with the more costly TWIC. This will have a negative impact on commerce by reducing the pool of properly credentialed drivers to serve the needs of hazmat producers and port operators.

In my company, only 44% of our drivers are hazmat certified now. In years past it was easily double that. It is a real challenge to get drivers to renew hazmat endorsement. The burdens exceed the benefits perceived by drivers. Such burdens include the expense, studying for the hazmat test; and the increased likelihood of a roadside inspection of a truck and trailer/container with hazmat placards. When handling import/export loads, required hazmat declarations, or 'decs,' greatly increases the amount of a driver's paperwork - causing additional delays when a driver returning an export to a rail or port. We get calls from new customers monthly saying "are your drivers hazmat?" It isn't as easy as it once was for them to find hazmat drivers when nearly everyone had the endorsement.

The TWIC NPRM estimates the number of workers affected by the rule to be 750,000, with an increase of 202,257 in the next the next two years. OOIDA believes that this number greatly underestimates the number of truck drivers who currently gain access to secure transportation facilities on a regular basis. The NPRM states that there are 110,000 port drivers who will be affected. Many different types of drivers access the ports, however. OOIDA believes that more regional and long-haul drivers gain access to the ports than so-called "port drivers." A significant percentage of the produce received at our nation's ports is picked up by long haul drivers. Just as drivers who rarely haul hazardous materials nevertheless obtain a hazmat endorsement to be able to take the occasional hazmat load, OOIDA believes that some drivers will consider obtaining a TWIC card to maintain their availability to pick up or deliver the occasional load to the ports. Therefore, the TWIC card may become, like the HME, a requirement for a truck driving job at many motor carriers.

Currently, OOIDA can only estimate that it is likely, if not probable, that between 500,000 and one million truckers currently access the ports, regularly or occasionally. TSA should be able to easily obtain the data necessary for a better estimate of this number from the ports themselves. The ports regularly collect the name, CDL number, and motor carrier of every driver who enters their gates. The TSA should be able to use this data to perform a better estimate of the number of unique visitors to the ports each year. It is important for TSA to make

an accurate estimate of this population for its Paperwork Reduction Act analysis, but also to estimate the number of persons who may demand a TWIC when it is implemented.

Small businesses comprise the vast majority of motor carriers in the trucking industry. Truck owner-operators are small entities that are independently owned and operated and are not dominant in their field under the Regulatory Flexibility Act. These small business entities play a significant role at the ports and an accurate analysis of the cost of the TWIC proposal to them is an important component of this rulemaking.

V. Fewer Rules on Foreign Drivers?

In addition to allowing foreign drivers to comply with HME requirement with a less costly credential, OOIDA is concerned that the TWIC card will impose a higher security standard on U.S. citizens for access to secure transportation areas than on some foreign citizens. In other regulatory areas under DHS, the rules for the entry of foreign nationals into our country have been greatly tightened. In the area of transportation workers, however, where burdensome and costly rules are being created for American workers, exceptions have been created for certain foreign nationals. OOIDA sees such exceptions to the rules as loopholes that undermine the transportation security system. These loopholes create frustration and distrust among U.S. drivers who are subject to the cost and burden of such credentials.

For example, in the proposed revision of 49 C.F.R. 104.105, foreign vessels will be exempted from the TWIC program. The explanation of this rule states that the crews of foreign ship crews that comply with SOLAS or ISPS programs are now permitted under other rules to traverse facilities in order to change crews or take shore leave. In other words, foreign transportation workers are allowed to enter otherwise secure port facilities and will continue to do so without a TWIC.

TSA acknowledges in the NPRM that no part of the law exempts foreign mariners who do not participate in SOLAS or ISPS from the TWIC requirement, but it then declines to impose the TWIC upon them because it is "impractical" to do so. But TSA has done no analysis as to whether such mariners are homeland security threats or not. Who makes up that population of mariners? Do any of them come from countries that sponsor terrorism? Shouldn't TSA consider these ships and workers on a case-by-case basis instead of providing a blanketing exemption to them because requiring a TWIC is "impractical"?

The TWIC NPRM also proposes that foreign persons permitted to operate trucks within the United States under NAFTA be considered qualified for the immigration standards of TWIC. But TSA must take into consideration that this legal status is strictly tied to the load being hauled, where it came from, and where it is going. Once that driver is no longer hauling a load coming from another country to the United States, picking up a load from the United States for delivery to another country, or returning to their country unloaded, then they *do not* have legal status to work within the United States. OOIDA members have reported, as has the Department of Transportation's Inspector General, that foreign drivers and trucks have been operating outside of NAFTA commerce, i.e. hauling freight in violation of immigration and cabotage rules between two points within the United States, for many years. This problem will only grow worse as the United States prepares to open our highways to Mexican motors carriers. OOIDA encourages DHS to amend its proposed rules so that a foreign driver who obtains a TWIC may only enter secure transportation facilities if they can demonstrate that they are hauling freight from another country to that facility or that the truck is empty and he is picking up a load for delivery to another country. Those are the only circumstances when such a driver may operate legally outside of our immigration laws in the United States.

OOIDA has been describing for years the problem of foreign drivers operating illegally in the United States. Persons who are willing to flaunt immigration rules, especially those who may look at the proposed rule as a loophole in the TWIC requirement, should be of considerable security concern to DHS. A requirement that a foreign person operating under NAFTA must present evidence that the load they are hauling is within NAFTA commerce would allow DHS to enforce, for the first time, existing immigration and cabotage laws. This is an important function of DHS and a prerequisite to accepting those operating in NAFTA commerce as having fulfilled the immigration requirement of the TWIC.

OOIDA believes that the concessions made to foreign persons entering the United States and entering our secure transportation facilities is the largest loophole in the proposed rules. OOIDA members question whether homeland security is really the focus of these rules when it appears American drivers face stricter rules and higher costs than foreign drivers. According to the Canadian FAST website, driver qualification under their system costs only 50 U.S. dollars. These are serious issues. OOIDA urges DHS, in the strongest possible terms, to address them in this rulemaking.

VI. The TWIC Will Not Guarantee Efficient Entry to Secure Transportation Facilities

Much has been said about the TWIC credential becoming the one form of identification a driver will need to gain entry to multiple secure transportation facilities. But both Congress and the regulators need to recognize, that it does not replace multiple different requirements set by the individual ports for entry by truck drivers. For example:

- The ports of LA, Long Beach, and NY require prior registration of drivers.
- Other ports that we go to (New Orleans, Miami, Charleston, Savannah, Norfolk) do not.

- Charleston has a rule that only requires a driver to preregister only after visiting the port a certain number of times within a certain period of time. In other words, the driver has to be registered if he wants to enter often, but not if he wants to enter seldom. Once one of our drivers, unknowingly exceeded the maximum number of entries, my company had to pay another trucking company to take the load in for us.
- UIIA/IANA keeps a database of drivers that must be registered to enter railroads. Truckers pay approximately $250 per year to 'subscribe' to the UIIA.
- The port of Houston has no such database registry of drivers.

I share these observations with you so that it is clear to you as policymakers that while HME endorsements and the TWIC card are designed to be national credentials, they are not a substitute for, but are in addition to, different and varied rules and requirements imposed by various secure transportation facilities.

VII. The Use of a Biometric Identifier

Finally, the proposal for the use of a biometric identifier remains vague in the TWIC NPRM. There are many different biometric technologies being created. They each have their strengths and weaknesses, depending on the use. OOIDA does not believe that the notice has provided enough information in order to solicit meaningful public comments. It would, however, make a great deal of sense to incorporate the use the fingerprints already collected as part of the HME in the TWIC process to improve efficiency and reduce costs to drivers and the Agency.

VIII. Conclusion

Chairman Manzullo, Congresswoman Velazquez, and members of the Committee, thank you for providing me with this opportunity to testify on behalf of the members of the Owner-Operator Independent Drivers Association. As you can appreciate, OOIDA and the truckers they represent want to support a robust national security, but they expect the Federal Government to implement regulations with some level of common sense and fairness, and take into consideration the tremendous economic impact, time considerations, and numerous other burdens described here when implementing such regulations on small businesses that drive our economy.

I look forward to answering questions from the members of the Committee and providing you with the perspective of a small businessman and driver behind the wheel.

Deputy Secretary
U.S. Department of Homeland Security
Washington, DC 20528

September 27, 2006

The Honorable Donald A. Manzullo
United States House of Representatives
2228 Rayburn House Office Building
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your continued leadership working with the U.S Department of Homeland Security and the small business community on important homeland security issues.

I appreciated meeting with you in person last week to discuss your concerns relating to our implementation of the Transportation Worker Identification Card (TWIC) legislation. As we discussed, the needs of the small business community are a high priority for this Department, every day -- but particularly important at this moment as DHS works for a successful and fair implementation of TWIC.

Today's hearing before your Committee on the TWIC program will provide a valuable forum for the small business community. I would like to thank you for inviting Coast Guard Admiral Brian Salerno and Steve Sadler, TSA's TWIC program manager, to be a part of your hearing and to have the opportunity to testify and listen to the recommendations raised by Members and those testifying. It will be helpful to DHS to have this additional input to our rulemaking, and we plan to docket our summary of the proceedings.

At your recommendation, and in preparation for our final rulemaking, DHS will complete a very thorough analysis of small-business related issues for TWIC that have been raised by the SBA's Chief Counsel for Advocacy. In addition, I have asked the DHS General Counsel to arrange a meeting with the Small Business Administration's Office of Advocacy to discuss their views. In preparing the revised Regulatory Flexibility Analysis, the Department will certainly consider the issues and concerns regarding TWIC raised by SBA and all the specific docket submissions, which include small and large businesses from the maritime sector.

As you know, we have already divided the initial larger TWIC rulemaking into two parts, and are committed to a further formal solicitation of views regarding the card-reader implementation plan in the months ahead. I will personally review and approve the path forward for this important homeland security program.

I look forward to future discussion with both you and the small business community about this important topic.

Sincerely,

Michael

Michael P. Jackson