

**A REVIEW OF THE DELAYS AND PROBLEMS
ASSOCIATED WITH TSA'S TRANSPORTATION
WORKER IDENTIFICATION CREDENTIAL**

(112-91)

HEARING
BEFORE THE
**COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE**
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
SECOND SESSION

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JUNE 28, 2012
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U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

John R. Mica
Chairman

Dick T. Durbin, BB
Ranking Member

June 22, 2012

James W. Cook II, Chief of Staff

James H. Zeala, Deputee Chief of Staff

MEMORANDUM

TO: Members, Committee on Transportation & Infrastructure

FROM: Staff, Committee on Transportation & Infrastructure

RE: Hearing on "A Review of the Delays and Problems Associated with TSA's Transportation Worker Identification Credential"

PURPOSE

On Thursday, June 28, 2012, at 10:00 a.m., in room 2167 of the Rayburn House Office Building, the Committee on Transportation & Infrastructure will meet to review the status of the Transportation Security Administration's (TSA) Transportation Worker Identification Credential (TWIC) program.

BACKGROUND

The TWIC Program

The Maritime Transportation Security Act (MTSA) of 2002 (P.L. 107-295) (section 70105 of title 46, United States Code) requires the Secretary of Homeland Security to prescribe regulations requiring individuals needing unescorted access to secure areas of certain vessels and maritime facilities to be issued a biometric identification. Accordingly, the TWIC program was designed to implement this requirement. The TWIC program aims to meet the following mission requirements:

- Positively identify authorized individuals who require unescorted access to secure areas of the nation's transportation system.
- Determine the eligibility of individuals to be authorized unescorted access to secure areas of the transportation system by conducting a security threat assessment.

- Ensure that unauthorized individuals are not able to defeat or otherwise compromise the access system in order to be granted permissions that have been assigned to an authorized individual.
- Identify individuals who fail to maintain their eligibility requirements subsequent to being permitted unescorted access to secure areas of the nation's transportation system and immediately revoke the individual's permissions.

As of June 1, 2012, the Coast Guard has approved security plans for 2,834 facilities and 13,913 U.S.-flagged vessels which are required to submit such plans under section 70103 of title 46, United States Code. These facilities and vessels must require TWICs for employees needing access to secure areas designated in their security plans. The Security and Accountability for Every (SAFE) Port Act of 2006 (P.L. 109-347) established a deadline of July 1, 2007 for the deployment of TWICs to individuals employed at the 10 largest U.S. ports and then subsequent deadlines for the remaining U.S. ports. The Transportation Security Administration (TSA) began issuing TWICs in October 2007. Credentials have been issued to over 2.1 million workers required to have access to secure areas of MTSA regulated facilities and to all U.S. mariners. To obtain a TWIC, workers are required to undergo background checks and submit fingerprints, which form the credential's biometric identification component. Except for pilot programs of limited scope and duration, TWIC readers (fixed or hand held electronic scanners) have not been put in place to make use of the TWIC's biometric identification capability (see discussion below). TWICs are valid for five years, so the first set of renewals began this year.

Current TWIC Enrollment Statistics

As of May 17, 2012:

- 2,176,274 individuals are enrolled in the TWIC program;
- 2,023,780 TWICs have been activated;
- 105,298 initial disqualification letters have been issued;
- 50,184 appeals requested;
- 48,957 appeals granted;
- 11,826 waivers requested;
- 10,238 waivers granted;
- 2,086 final disqualification letters issued;

Of the 2.1 million individuals enrolled in the TWIC program:

- 805,776 are truck drivers;
- 384,720 are rail workers;
- 316,417 are merchant mariners;
- 267,543 are port workers including terminal employees, longshoremen, and drayage truckers.

Roles of Federal Government Agencies

The TSA and the Coast Guard both play a role in the TWIC program. TSA's responsibilities include enrolling TWIC applicants, conducting background checks to assess the individual's security threat, and issuing TWICs. The Coast Guard is responsible for developing

TWIC-related security regulations and ensuring that MTSA regulated facilities and vessels are in compliance with these regulations.

Cost

The TWIC program is supported mostly through fees imposed on workers applying for a card. In March 2012, the TSA lowered the fee from \$132.50 to \$129.75 per credential. Workers that have previously gone through a federal background check for the purposes of receiving a different federal credential, such as a merchant mariner credential, are only charged \$105.50 for a TWIC. Based on the number of enrollments and the fee structure as it existed prior to March 2012, workers have spent approximately \$229 million to \$288 million to acquire TWICs since the program was implemented.

The Department of Homeland Security (DHS) had previously estimated the TWIC program could cost the federal government and the private sector a combined total of between \$694.3 million and \$3.2 billion over 10 years. This estimate does not include the costs of acquiring and deploying TWIC readers. To date, the Coast Guard has spent \$2 million to acquire and deploy handheld TWIC readers for use by its servicemembers when conducting MTSA enforcement activities at regulated facilities and aboard U.S.-flagged vessels. Congress has appropriated \$67.8 million to the TSA since fiscal year 2003 to implement the program. Total spending by the TSA has not been made available to the Committee. Finally, over \$111 million has been distributed by the Federal Emergency Management Agency to regulated facilities in the form of Port Security Grants to comply with TWIC requirements.

Major Issues Concerning the TWIC Program

TWIC Relief for Individuals Not Needing Unescorted Access to Secure Areas – Section 104 of the SAFE Port Act authorized the Secretary of Homeland Security to process applications for Merchant Mariner Credential (MMC) and TWICs concurrently and to issue TWICs to “other individuals as determined appropriate.” The Coast Guard interpreted section 104 to require all credentialed mariners (those with MMCs) to also carry TWICs. Section 809 of the Coast Guard Authorization Act (CGAA) of 2010 (P.L. 11-281) clarified that the Coast Guard’s interpretation of section 104 was not the intent of Congress and removed the requirement for mariners to purchase and carry a TWIC if they do not need unescorted access to secure areas of vessels or facilities. The Coast Guard and the TSA are developing a regulation to implement this section. In the interim, the Coast Guard released guidance in December 2011 to provide relief to certain mariners. Under the guidance, the Coast Guard is no longer requiring mariners to purchase and carry a TWIC if they are renewing their MMC and do not need unescorted access to secure areas of vessels or facilities. However, such mariners applying for an MMC for the first time must still go through the process to enroll for a TWIC and pay the processing fee for a TWIC even though they are no longer required to carry a TWIC.

Requirement to Appear Twice – Under current policy, individuals applying for a TWIC must appear in person at a TWIC enrollment center twice: once to supply their biometric information and once to receive and activate the credential. The CGAA required the Government Accountability Office (GAO) to report on the possibility of reducing the number of required

visits to one. In April 2011, the GAO reported that in order for TWIC to remain compliant with federal security standards governing identity control, reducing the number of visits is not possible.

TWIC Readers – Section 104 of the SAFE Port Act required the Secretary of Homeland Security to conduct a pilot program to test technology to read TWIC and its biometric identification information and established a deadline of April 13, 2009 to issue final rules for the deployment of TWIC readers. The TSA did not complete the pilot program and issue its program report until February 27, 2012. Shortly thereafter, the Coast Guard began the process of developing a Notice of Proposed Rulemaking (NPRM) for the deployment of TWIC readers. The Coast Guard expects to publish the NPRM in the fall of 2012. The implementation of a final rule could take up to a year after the NPRM is published. A cost estimate of compliance with the reader requirement has not been prepared. Without the readers in place, TWICs are used as a flash pass as workers enter secure areas of facilities and vessels. The biometrics are not read and identities are not verified.

The delay in the implementation of the readers has led TSA to recently announce a program enabling TWIC holders to extend the duration of their TWICs for an additional three years at a reduced \$60 fee. Workers with expiring TWICs could also choose to renew their TWIC for an additional five years at the full \$129.75 fee.

GAO Report – On May 10, 2011, the GAO released a report entitled *TWIC: Internal Control Weaknesses Need to be Corrected to Help Achieve Security Directives* (GAO-11-657). GAO evaluated the extent to which TWIC processes for enrollment, background checking, and use are designed to provide reasonable assurance that access to regulated facilities is only done by qualified individuals. To test the effectiveness of the TWIC program, GAO reviewed program documentation, visited four TWIC enrollment centers, and conducted covert tests at several selected U.S. ports. GAO found the following:

- Internal controls in the enrollment and background check processes are not designed to provide reasonable assurance that (1) only qualified individuals can acquire TWICs; (2) adjudicators follow a uniform process to disqualify applicants found to have extensive criminal convictions; or (3) once issued a TWIC, TWIC-holders maintain their eligibility.
- These internal control weaknesses could have contributed to the breach of MTSA regulated facilities during covert tests conducted by GAO investigators. During covert tests of TWIC use at several selected ports, GAO investigators were successful in accessing ports using counterfeit TWICs, authentic TWICs acquired through fraudulent means, and false business cases.
- DHS has not assessed the TWIC program's effectiveness at enhancing security or reducing risk for MTSA-regulated facilities and vessels. Further, DHS has not demonstrated that TWIC, as currently implemented and planned, is more effective than prior approaches used to limit access to ports and facilities, such as using facility-specific identity credentials with business cases.

- DHS did not conduct a risk-informed cost benefit analysis that considered existing security risks, and it has not yet completed a regulatory analysis for the upcoming rule on using TWIC with card readers.

GAO recommended DHS assess TWIC program internal controls to identify needed corrective actions, assess TWIC's effectiveness at enhancing security, and use the information to identify effective and cost-efficient methods for meeting program objectives. DHS concurred with all of the recommendations.

WITNESSES

Rear Admiral Joseph Servidio
Assistant Commandant for Preparedness
United States Coast Guard

Ms. Kelli Ann Walther
Assistant Secretary
Office of Policy
U.S. Department of Homeland Security

Mr. Stephen Sadler
Assistant Administrator
Transportation Security Administration
Invited

Mr. Joseph Lawless
Director of Maritime Security
Massachusetts Port Authority
Testifying on behalf of:
American Association of Port Authorities (AAPA)

Mr. Robert McEllrath
President
International Longshore and Warehouse Union

**A REVIEW OF THE DELAYS AND PROBLEMS
ASSOCIATED WITH TSA'S TRANSPORTATION
WORKER IDENTIFICATION CREDENTIAL**

THURSDAY, JUNE 28, 2012

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The committee met, pursuant to call, at 10:04 a.m., in Room 2167, Rayburn House Office Building, Hon. John L. Mica (Chairman of the committee) presiding.

Mr. MICA. Good morning. I would like to call the Transportation and Infrastructure Committee of the House to order. Today we are conducting a hearing relating to delays and problems associated with TSA and Department of Homeland Security's Transportation Worker Identification Credentials.

I would like to welcome our witnesses. We have two panels here, I see, and we have quite a busy agenda on a number of fronts today, so we will try to expedite this process and hearing as expeditiously as possible.

The order of business will be opening statements by Members and then we will turn to our witnesses. I will start by beginning with a brief opening statement.

We are here today many years after we have attempted to implement putting into place a transportation worker identification card. This process has gone on since 2002, and, unfortunately, I can't think of too many programs in Government that have had more delays, more costs to the taxpayers, and more incidents of failing to perform than the so-called TWIC effort.

I am most disappointed that we are here. Time after time, we have been promised in this hearing room and also in Government Reform that the program would put in place measures that would allow us to identify who is going in and out of our ports in a secure manner and that we would have a card, an identification card for those workers that had a biometric capability, both fingerprint and iris, and that we would have readers that could read those cards.

Now, we are faced with cards having been issued—what, 2 million cards?—and at substantial cost to the Federal Government. It is estimated this whole program is going to cost \$3.2 billion over 10 years. We still do not have a completion of the biometric requirements that were asked for years ago, promised to us in a number of hearings. We do have other agencies that help set those standards. However, even having those agencies before us and their commitment to developing some acceptable standards has yet

to result in accomplishment on the side of iris-recognition biometric factors.

So here we are almost on the eve of renewal and now we are going to face again the cost of deploying cards that have become almost a joke with the transportation community. Here is a Federal ID that cost money that is supposed to help us be secure, and it is actually not acceptable; some other form of identification needs to be accompanying that document.

Additionally what baffles me is there are other agencies who have developed identification credentials over a much longer period of time, and so we are somewhat reinventing the wheel and at great public expense and delay in implementing this.

Finally, what it has done is made the whole process, again, I think, a disappointment that we cannot issue, again, the card that would keep us secure, provide adequate identification, and do it in a cost-efficient manner and in a timely manner.

Many questions remain. I have not been pleased with the cooperation of the Department of Homeland Security, but we do have a witness here today. TSA continues to ignore the committee, and I will consult with my colleagues, if necessary, to subpoena witnesses from TSA to get their response, which I think this committee deserves.

So I am not a happy camper this morning with the status, the delays, and, again, the total ineffectiveness of putting a very important program together.

I am pleased that we have a representative of the Coast Guard. They have been cooperative, but I don't want them to be the fall guy for others who are making decisions at a higher level, or should be making decisions at a higher level, taking actions, and having not completed those responsibilities.

So, with that, I will yield to Mr. Larsen.

Mr. LARSEN. Good morning, Mr. Chairman. Thank you for holding this hearing. I am eager to hear from this morning's witnesses, and I will be brief in my opening remarks.

In the relatively short history of the Transportation Worker Identification Credential, or TWIC, it is no understatement to say that the development and implementation of this program has been, at best, dismal and its record of achievement disappointing. These problems transcend Presidential administrations.

Intended by the Congress to be a key element in securing our Nation's maritime transportation infrastructure from terrorist attacks, the TWIC program since its inception has been beset by a litany of problems. Excessive cost, administrative inefficiencies, technical biometric glitches, and confusing or burdensome enrollment requirements routinely surface as common faults expressed by my constituents.

The Government Accountability Office questions whether the TWIC has actually improved the security of our vessels, ports, and maritime infrastructure at all. Indeed, considering the fact that over 2 million TWICs have been issued at a cost to seafarers and other maritime transportation workers of more than \$250 million, this is sad commentary.

Fortunately, recent events reveal that both the administration and Congress are now giving the TWIC program the type of scru-

tiny it deserves. For example, since March, this will be the third TWIC oversight hearing. Additionally, this Tuesday, the House considers legislation to require the Secretary of Homeland Security to reform the TWIC enrollment and renewal processes and to require, in total, only one in-person visit to a designated enrollment center.

The Coast Guard expects to publish regulations in the Federal Register later this year regarding requirements for TWIC electronic readers. Moreover, on June 15th, the administration announced a new policy authorizing 3-year extensions of expiring TWICs at half the cost of a full 5-year renewal. This new extended expiration date, or EED, policy has generally been greeted very positively by mariners and other transportation workers.

Despite these recent helpful steps, much work remains to be done. To that extent, I am optimistic that this morning's hearing will serve up additional recommendations on how the administration and Congress might best address TWIC's remaining flaws. My view is that the Congress and especially this committee shares responsibility with the administration to work collaboratively to finally deliver the type of security program first envisioned when Congress passed the Maritime Transportation Security Act of 2002.

No one contests the underlying security imperative of a nationwide credential. We have invested too much simply to throw up our hands and walk away. We have to get it right. But we do not need an expensive, low-tech flash pass that provides little security. TWIC should be an inexpensive, high-tech security credential that contributes to port security.

We need to set aside differences and work with the administration to finally transform the TWIC program into the type of comprehensive security shield we have long sought. And, to that end, I look forward to hearing from our witnesses today.

And I yield back. Thank you.

Mr. MICA. Do other Members seek recognition?

Ms. Richardson?

Ms. RICHARDSON. Good morning. Thank you, Mr. Chairman and Ranking Member Larsen, who is here instead of Mr. Rahall, for holding this very important hearing.

One of my top priorities since being here in Congress has been to ensure that our country's ability to move goods is second to none and that it is done in an efficient and safe manner. My district serves as a gateway to the country and is home to workers that serve in both the Port of Long Beach and Los Angeles, which are the largest ports in this country and where 40 percent of the Nation's goods travel through.

Recently, this program—and I guess not so recent; it has been over a period of time, as Mr. Larsen said—but the concerns have been heightened into issues of intrusiveness of the process, of the TWIC process; the financial burden that it is unnecessarily placing on the workers; and then, also, what is being done with the information obtained by the TWIC readers. Is that remained exclusively by the Government or shared with companies, as well?

My sister, I won't say which particular company that she works for, but I found it interesting that the TWIC cards expand not only

to the dock workers who are on site but to all of those who are involved in a chain of transportation of goods.

There is really no reason why TWIC readers have not been instituted at this point. I had an opportunity to travel on a CODEL, a Homeland Security CODEL, out of this country, and they had literally the keypads that were where biometrics could be used of fingerprints. And this was well over about 2½ years ago. So why in this country of great technology we have not managed—and that was actually an American company; I looked at the device to see the name of who produced it—why we still can't get to the point that we fulfill the promise that we made to the American people of this investment is disappointing.

Finally, the TWIC card report has found—speaking now off of the readers themselves, but the cardstock is not adequate. The readers are not ready to be deployable. And now we have issues of renewals coming up, where people had to go and apply, then go in person and pick it up, spend all sorts of money for nothing more than a flash card, which is not appropriate for the security that we need in this country.

I look forward to the testimony. And I would urge those who are on behalf of the appropriate agencies that it is imperative that the workers are involved in the process of how we do further implementations forward, whether that is extensions, whether that is deploying of devices, and certainly when we are talking about the use of private information.

With that, I yield back the balance of my time. Thank you, Mr. Chair.

Mr. MICA. Thank you.

Mr. Sires.

Mr. SIRES. Thank you, Mr. Chairman, for holding this meeting.

And it just befuddles me why we go through all this—why we have all these problems for a card. Having worked—well, I represent the ports in New Jersey, the Port of Newark and the Port of Elizabeth, and people are always constantly asking me, are they secure?

But, you know, with this card, I remember working on the New Jersey license years ago when it was a sham, what we had in New Jersey, and finally coming through with a card that—it was an example for the rest of the country. I don't understand why so long, so much money it takes for us to get a TWIC card. And I guess that is just my comment. It just befuddles me.

Thank you.

Mr. MICA. Thank you.

If no other Members seek recognition, then we will turn to our panel of witnesses.

And the first panel is: Rear Admiral Joseph Servidio, and he is assistant commandant for prevention policy in the U.S. Coast Guard. Then we have Ms. Kelli Ann Walther, and she is acting deputy assistant secretary, Screening Coordination Office, Office of Policy at the Department of Homeland Security.

Also, missing—and I will make a note for the record, and, again, I am going to consult with the Democratic leadership on a possible subpoena of this witness who did not appear. Mr. Stephen Sadler,

assistant administrator of the Transportation Security Administration, failed to appear at today's hearing, June 28, 2012.

With that, I will turn first for opening statements to the acting deputy assistant secretary of U.S. Department of Homeland Security, Ms. Walther.

Welcome, and you are recognized.

TESTIMONY OF KELLI ANN WALTHER, ACTING DEPUTY ASSISTANT SECRETARY, SCREENING COORDINATION OFFICE, OFFICE OF POLICY, U.S. DEPARTMENT OF HOMELAND SECURITY; AND REAR ADMIRAL JOSEPH SERVIDIO, ASSISTANT COMMANDANT FOR PREVENTION POLICY, U.S. COAST GUARD

Ms. WALTHER. Thank you, Chairman Mica and distinguished members of the committee. The Department of Homeland Security appreciates the opportunity to appear before the committee to highlight our work on the TWIC program. My testimony will address the role of TWIC as one element of DHS's layered approach to maritime security and our plans for the program's future.

There is no one-size-fits-all solution for maritime security. The maritime environment is complex with many variables. Our approach to maritime security is also complex, with multiple layers in place to mitigate threats.

As authorized by Congress, the mission of the TWIC program is to enable maritime vessel and facility operators to make informed access control decisions for workers seeking unescorted access to secure areas. The program provides the facility or vessel owner and operator with both a means of verifying the worker's identity and evidence that TSA has conducted a robust security threat assessment on the individual presenting a TWIC.

TWIC is a public/private-sector relationship. In most cases, the Federal Government does not own or operate the critical infrastructure and key resources in the maritime domain. Therefore, we work closely with our partners to meet Homeland Security objectives in a manner consistent with our operational needs.

DHS conducts the checks and issues the credentials, while facilities and vessels decide who can access their secure areas. With TWIC, port security officers across the country encounter a single recognizable, tamper-resistant credential rather than hundreds of different identity cards. DHS also partners with the private sector by participating in regular meetings with a TWIC Stakeholder Communication Committee, speaking at conferences, and visiting MTSA regulated sites to see the TWIC program in operation.

TSA began the national deployment of the TWIC program in October 2007. Almost 5 years later, DHS has issued over 2 million TWICs to longshoremen, truckers, merchant mariners, and rail and vessel crewmembers, utilizing 135 enrollment sites nationwide. Never before has the Federal Government attempted to conduct security threat assessments and issue a secure credential on this scale with such a geographically dispersed population of private-sector workers.

From 2008 to 2011, TSA conducted a TWIC reader pilot to inform and support the development of a TWIC reader rule. TSA evaluated the technical performance of the TWIC biometric reader

function at 17 locations across the United States. TSA was able to collect information on reader performance as well as assess the operational and business impacts under diverse field conditions. A final report on the results of this pilot was delivered to Congress in February 2012.

The TWIC program achieves its mission by conducting uniform vetting on maritime workers and issuing a tamper-resistant biometric credential to successful applicants. The actual TWIC cards contain security features not available on standard ID badges, which makes them highly resistant to counterfeiting. The vetting TSA conducts includes checks for ties for terrorism using the terrorist watch list, an immigration status check, and a criminal history records check.

On August 30th of this year, TSA will offer eligible TWIC holders the opportunity to replace their expiring 5-year TWICs with a 3-year extended-expiration-date card. TSA is offering this option at \$60 to make it more cost-effective for eligible workers while the TWIC reader rule is pending. Upon expiration of the 3-year card, all TWIC holders will be required to enroll for a standard 5-year TWIC.

The implementation of TWIC has provided significant improvements to security in the maritime environment. Before TWIC, no standard identity verification or background checks were conducted on individuals prior to entering secure areas of our Nation's port facilities and vessels. Owners and operators had to rely on multiple types of identity documents with wide variations in their security and issuance processes. Today, facility owners and vessel owners and operators can rely on a standardized credential that confirms the holder's identity and shows evidence that he or she successfully completed a security threat assessment.

DHS and its partners have taken significant steps to add layers of security to protect our Nation's ports. These steps link together information sharing, security, and law enforcement from across DHS and a multitude of partnerships. Each layer builds upon and complements the others. TWIC is one of those layers.

Thank you for this opportunity to update the committee on this important program. I have submitted written testimony and respectfully request that it be made part of the hearing record. I would be happy to answer any questions you may have.

Mr. MICA. I will withhold questions until we have heard from our other witness.

We will now recognize Rear Admiral Joseph Servidio and welcome him.

You are recognized.

Admiral SERVIDIO. Good morning, Chairman Mica, Ranking Member Larsen, distinguished members of this committee, I am Rear Admiral Joe Servidio, Assistant Commandant for Prevention Policy for the United States Coast Guard. I am honored to have this opportunity to appear before you today to speak about the Coast Guard's role in enforcing compliance of the Transportation Worker Identification Credential within the maritime transportation system and to update you on our ongoing efforts related to the program.

The TWIC program provides a standardized baseline for the determination of an individual's suitability to enter the secure area of a Maritime Transportation Safety Act-regulated vessel or facility. It is only the first half of a two-part process. In addition to possessing a valid TWIC, an individual must be specifically granted access to the secure area by each individual vessel or facility security officer.

To clarify, the possession of a valid TWIC alone is not sufficient to gain the holder of that credential access to the secure areas on vessels or facilities. The TWIC provides a means by which a vessel or facility security officer can determine that an individual has been vetted to an established and accepted standard using a single uniform, tamper-resistant credential that security personnel have been trained to examine. It helps inform the security officer's decision to grant unescorted access to an individual.

To clarify agency roles regarding the TWIC program, TSA is responsible—the Transportation Security Administration—for TWIC enrollment, security threat assessment, adjudication, card production, technology, TWIC issuance, conduct of the TWIC appeals and waiver processes, and management of Government support systems. The Coast Guard is responsible for establishing and enforcing access control requirements at MTSA-regulated vessels and facilities, which include the requirements for TWICs at approximately 2,700 regulated facilities, 12,000 regulated vessels, and 50 regulated Outer Continental Shelf facilities.

The SAFE Port Act mandates that the Coast Guard conduct two security inspections annually at MTSA-regulated facilities, with one inspection being unannounced. During each of these exams, TWICs are checked by Coast Guard personnel either visually or by using biometric hand-held readers. Vessels and facilities within all 42 Captain of the Port zones are in compliance with TWIC requirements and have been since April 15, 2009.

To maximize the security benefits of the TWIC and supplemental enforcement efforts, the Coast Guard has deployed 275 biometric hand-held readers to our field units, and we verified over 230,000 TWICs during our inspections.

The Coast Guard is developing regulations to require the use of readers to verify TWICs at certain MTSA-regulated facilities and vessels. Card readers are viewed as a key step in maximizing security, and we are moving forward as smartly and quickly as possible with the TWIC reader requirements notice of proposed rulemaking.

The proposed rulemaking established risk-based requirements for the enhancement of access control through the use of TWIC readers without unnecessarily impeding commerce or port operations. The notice of proposed rulemaking is of the highest priority to the Coast Guard and DHS and has the personal attention of the Secretary and is in final clearance.

The Coast Guard continues to work diligently to execute our TWIC program responsibility: establishing and enforcing access control requirements at MTSA-regulated vessels and facilities. We continue to work closely with our partners—our partners in DHS and State and local agencies and law enforcement and in the maritime industry—to enhance the TWIC program in a manner that

improves port security while facilitating commerce to the maximum extent possible.

Thank you for the opportunity to speak to you today and for your continued support of the Coast Guard. I look forward to answering your questions.

Mr. MICA. Well, thank you.

And we will start right in with some questions.

First of all, let me go to some of your testimony. You just testified that you are still finalizing the standards for the readers?

Admiral SERVIDIO. Yes, Chairman. We are working as quickly as we can—

Mr. MICA. What is the holdup with it? I mean, first of all, you testified you issued 275 readers that are out there now; is that right?

Admiral SERVIDIO. Yes, Chairman.

Mr. MICA. So we have issued those, and we don't have standards for them fully adopted. Is that also correct?

Admiral SERVIDIO. We do have the capability of using them and checking the biometrics on them—

Mr. MICA. We have readers out there, yet we have not finished adopting the standards that are acceptable; is that correct? Has to be.

Admiral SERVIDIO. Yes, sir.

Mr. MICA. OK. And what timeframe, for the record, would you estimate that we would have those standards adopted?

Admiral SERVIDIO. Well, sir, I can't testify with regards to the standards for the reader. I can talk about the reader—

Mr. MICA. You just said in your testimony that you would have standards for the reader shortly or something?

Admiral SERVIDIO. We are going through the notice of proposed rulemaking process, sir.

Mr. MICA. OK. When—what is that? I mean, let's do the rule-making or whatever. How long will it take?

Admiral SERVIDIO. We are in final clearance, sir. We are informed by the results—

Mr. MICA. You have been in final clearance for years. If this was a plane, we would have run out of fuel and crashed and burned.

Admiral SERVIDIO. I share your concerns, sir. The—

Mr. MICA. OK. For the record, what I am trying to get is some timeframe. Six months, three months, two months, a year? How long before we actually have a standard and complete the rule-making and all the other requirements to have a standard for these readers?

Admiral SERVIDIO. Chairman, the regulatory process requires that we solicit comments, and it is—

Mr. MICA. Yes. I know the process, but I am just saying, give for the record a period of time, because what I am going to do is haul you in here again at the end of that period and ask you. So give me some time definition. Six months?

Admiral SERVIDIO. The Secretary has said that it should be completed by the end of the calendar year. I believe our Commandant has said that it would be done by the summer, sir. We are working as quickly as we can—

[Insert for the record from the United States Coast Guard follows:]

The Commandant of the U.S. Coast Guard, Admiral Robert Papp, testified on March 6, 2012, before the House Appropriations Subcommittee on Homeland Security that “. . . we’re working through the final rule (TWIC Reader Rule). And that process should take about a year to get that completed.”

Mr. MICA. So the Secretary said by the end of the year, and the Commandant said by the end of the summer?

Admiral SERVIDIO. We are working as quickly as possible, and it has the Secretary’s personal attention, sir.

Mr. MICA. Is that Napolitano?

Admiral SERVIDIO. Yes, sir.

Mr. MICA. Well, my role is trying to nail this thing down, see when we are going to have readers.

Now, the card itself—we have had a series of hearings, and the card was supposed to have both thumb and iris capability. And in one of our last hearings over a year ago, we had in the National Institute of Standards and Technology, and they had told me that it would be that fall that they would have the standards for iris. That was over a year ago. Then we asked again in the fall, and they said it would be the beginning of the year—that would be this year, 2012—that we would have the iris standards.

Ms. Walther, where are we with that?

Ms. WALTHER. The Department continues to follow the work of both GSA and NIST on iris as a biometric.

Mr. MICA. But that doesn’t answer my question. They promised us that, again, a year ago the fall, then the end of the year, then the beginning of the year it would be early this year.

This is June. Where are we with the iris? Do you know? Have they given you, the National Institute of Standards and Technology, have you agreed upon a standard for iris?

Ms. WALTHER. Sir, I can’t answer on behalf of NIST as to where they are—

Mr. MICA. No, but you are to fulfill having a card. Now, aren’t we going to start issuing more cards? Were they a 5-year card, Admiral?

Admiral SERVIDIO. Yes, sir.

Mr. MICA. OK, they were a 5-year card. So some of those cards are starting to expire—how soon are they expiring? October? A couple of months.

So we will start issuing more cards again, won’t we, Admiral? What are we going to do? Give them an extension?

Admiral SERVIDIO. I think Kelli Ann is probably better to—

Mr. MICA. OK, Assistant Secretary, are we going to start reissuing cards in October?

Ms. WALTHER. Yes, sir—

Mr. MICA. We have to do something. We have expiring cards, right?

Ms. WALTHER. Yes, sir. The card—

Mr. MICA. And we don’t have an iris standard; is that right?

Ms. WALTHER. That is correct—

Mr. MICA. And we don't have reader standards set—

Ms. WALTHER [continuing]. We do utilize fingerprints.

Mr. MICA [continuing]. Is that right? Yes?

Ms. WALTHER. Yes.

Mr. MICA. Can you see how frustrating this is? And it goes on and on and on. In many instances, the private sector has done this. In some other agencies they have actually completed and have IDs that work.

Now, so at our ports we have issued a card—and there are 275 readers out there. Is that the readers total? Do we know how many ports they are at, Admiral?

Admiral SERVIDIO. Sir, as of May of 2012, our field inspectors have said there is approximately 75 to 100 different port facilities that have implemented readers and have procured them on their own. But the Coast Guard—

Mr. MICA. So how many of the total ports would that be?

Admiral SERVIDIO. There is—well, there is 2,700—

Mr. MICA. Ports?

Admiral SERVIDIO [continuing]. Facilities, sir.

Mr. MICA. And we have gotten how many?

Admiral SERVIDIO. I was told between 75 and 100—

Mr. MICA. Oh, we are really moving down the lane in expedited fashion.

It would seem that this is a spotty deployment and a totally inadequate adoption of standards. And now we are going to start the second phase of issuing cards for which we don't have a reader, we don't have the standards—do we have a deployment schedule?

When would we hope to have, Assistant Secretary, these fully deployed and operating, the TWIC cards and readers? Do you have a plan for that?

Admiral SERVIDIO. I can take that question, sir.

Mr. MICA. OK, we will go back to the Coast Guard.

Admiral SERVIDIO. Sir, I share your concern with the delays in this. We need to get this rulemaking right. We needed to take the lessons learned from the pilot program, and we also need to include the comments that were provided in the advance notice of proposed rulemaking, along with the economic concerns for this risk-based system that we are looking to incorporate in the final rule are there, sir. We need to make sure we are doing it right.

Mr. MICA. Well, again, we are going on 9 years. We are in our second phase of issuing cards. You can get something out of a Cracker Jack box and probably take it to the port and get in, too. We had GAO test what is out there. They found it is very easy to subvert what has been issued, since we don't have a reader, we don't have a full biometric capability in the card. When is the last time you contacted the folks over at National Institute of Standards and Technology to see when they would be ready?

Ms. WALTHER. I can get back to you with that answer.

Mr. MICA. You don't know?

Ms. WALTHER. I don't have that with me, no.

Mr. MICA. Who in your department would deal with actually contacting and dealing with them? Is there a name?

Ms. WALTHER. TSA has been—

Mr. MICA. TSA?

Ms. WALTHER [continuing]. Dealing with them.

Mr. MICA. So TSA is responsible for that? And they won't show up, they will not show up at a hearing here. They refuse to come and answer us. They are the ones responsible. You are testifying under oath that they are responsible for that particular element of getting a TWIC card and its capability, biometric capability, and they will not show up. Is that what you are telling me?

Ms. WALTHER. TSA is responsible—

Mr. MICA. Did the Secretary tell them not to come?

Ms. WALTHER. Sir, the test program—

Mr. MICA. Do you have the ability to ask them to come?

Ms. WALTHER. I believe the Department has reached out to the committee staff on this matter. And I hear your concerns, and I can take that back, as well.

Mr. MICA. You know, I am fed up with this, really, Mr. Larsen. This hearing is in recess.

[Recess.]

Mr. MICA. The Transportation and Infrastructure Committee will come back to order.

We chose to recess both because of my frustration with the Department of Homeland Security and TSA and their inability to respond to the committee. I had an opportunity to consult briefly with the ranking member, and we are going to take the matter under advisement and talk to Mr. Rahall, Mr. LoBiondo, and others, see how we proceed with both TSA and Homeland Security.

In order to be fair and give both sides of the aisle the opportunity to question these witnesses, I will yield now to the ranking member, Mr. Larsen. Thank you.

Mr. LARSEN. Thank you, Mr. Chairman. I, too, share your frustration with the lack of TSA's presence and, some might say, ability to be forthright with this committee in order to have us do an appropriate job of oversight on the TWIC program. So we will be talking with Mr. Rahall, be sure he is aware of the situation, and try to—we will work expeditiously with the majority side to address that concern.

For Ms. Walther, in my opening statement, I said that we do not need an expensive, low-tech flash pass that provides little security. We need an inexpensive, high-tech security credential that contributes to port security.

I am going to ask you the question, what you think we are closer to with regards to the TWIC. And the reason I am going to ask that is because I will ask that of the second panel, as well, to see if we get an answer that is close or the same or very different.

So what would you say the TWIC more equates to: an expensive, low-tech flash pass that provides little security or an inexpensive, high-tech security credential that contributes to port security?

Ms. WALTHER. Sir, the TWIC provides a tamper-resistant credential that is issued to all individuals that need access to secure areas of MTSA-related facilities and vessels. Previously, each port facility owner-operator issued unique identity cards. Now the TWIC makes an easily recognizable credential that is recognizable across the country, east coast or west coast. It also ensures evi-

dence of a security threat assessment on a vetted population that did not exist before.

I believe in the AAPA's submitted written testimony; they also acknowledge the difference of before TWIC and after TWIC, where before TWIC there were unmanned gates and not access control at every access point, and today TWIC provides a value that you know when you see a TWIC that you are seeing evidence of a security threat assessment. And it can be used across the country while facilities and owners and operators maintain the ability to make those actual access decisions.

Mr. LARSEN. As much as I support this new policy that you have to extend the expiration date, if it is possible to extend that expiration date of a TWIC and only require an applicant to visit an enrollment center once, why does it take two visits to an enrollment center for the issuance of a new TWIC or a renewal of an existing TWIC card?

Ms. WALTHER. The extended-expiration-date card is a one-time temporary extension. Knowing that the readers will not be in place at the time TWIC cards begin to expire this coming October, we wanted to provide that additional flexibility to the workers to reduce the cost and have one trip to the enrollment center.

For new applicants, it is important to have those two trips. As GAO noted, that does follow best practices. At the enrollment, we capture the information. That information is used to conduct a full security threat assessment, have the adjudication. If the applicant passes those checks, they are issued and a card is activated.

At that second trip to the enrollment center is where we do a biometric verification of the card to the card holder to ensure we are issuing that card to the rightful owner prior to them going out and back to work.

Mr. LARSEN. So there are more than 2 million transportation workers enrolled in the TWIC program. Do you have an estimate of how many TWIC enrollees, well, TSA expects to have participate in the extended-expiration-date program?

Ms. WALTHER. We estimate 1.3 million workers will be eligible to apply for the extended-expiration-date card.

Mr. LARSEN. Do you have any data to indicate whether or not those who are eligible both will apply and be approved? Is this going to be a fairly perfunctory activity?

Ms. WALTHER. Applying for the EED is not a requirement, so I can't answer whether they will apply for a 3-year card or a 5-year card. That is still an option, and that would be up to that individual.

Mr. LARSEN. And the process of approval, from your perspective, is that going to be fairly routine?

Ms. WALTHER. It will be standardized across all EED applicants, yes, sir.

Mr. LARSEN. Admiral, I understand that—well, Section 809 of the Coast Guard Authorization Act exempts mariners who do not need access to a secure area of a vessel from the requirements that they obtain a TWIC, and the Coast Guard Policy Letter 11-15 implements that section, but still requires those seeking their first mariner credential to visit a TWIC enrollment center essentially to complete the TWIC enrollment process and pay the enrollment fee.

So I understand the TWIC exemption has been estimated by the Coast Guard to apply to potentially 60,000 of 220,000 licensed mariners in the U.S. Is that correct?

Admiral SERVIDIO. I believe so, Ranking Member.

Mr. LARSEN. So, given the policy letter and the impact on folks who fulfill the exemption requirements and yet go through the entire TWIC process, are there steps being taken by the Coast Guard to reduce fees for mariners who do not need TWICs but yet are basically going through this same process?

Admiral SERVIDIO. There is going to be a rulemaking project, sir, to reduce those fees.

What we did as a result of 809 is, via policy, implemented what we could with respect to renewals. About 230 people thus far have been issued merchant mariners credentials without having a valid TWIC. But we believe we have to go through a rulemaking process in order to reexamine those fees.

As part of our merchant mariners credential program, what we have done is we have utilized TSA's enrollment sites to collect the biometrics and, again, to do the threat assessment part of it. Our actual examination of a merchant mariner to look at their character and their habits of life is a separate part. But we have looked to make it as most effective as possible—a single enrollment, single collection of biometrics—for doing that.

Mr. LARSEN. Yeah.

Mr. Chairman, I think that is going to be fine for me. I will have other questions for the record for the witnesses.

Mr. MICA. We will have other questions. We will leave the record open for—I think we will leave it open for 30 days if that is OK.

Mr. LARSEN. Sure.

Mr. MICA. Because I would like to have additional questions submitted to these witnesses.

As you can tell, I am not very pleased with who they sent today from Homeland Security and the lack of preparedness to provide information to this committee and the ignoring of the committee by TSA, which I think we deserve a response from, questions, and full participation, and we will deal with that.

I am going to excuse these witnesses. I just am very frustrated at this point. And we will consult with our colleagues and see how we proceed with the Department of Homeland Security.

TSA, you are excused.

Let's bring the second panel of witnesses up. We have Mr. Joseph Lawless, director of maritime security, Massachusetts Port Authority. He is testifying on behalf of the American Association of Port Authorities. We have Mr. Lindsay McLaughlin, legislative director of the International Longshore and Warehouse Union.

I am pleased to welcome both of the witnesses, and you will be recognized for 5 minutes. If you would like to provide additional testimony to the Transportation and Infrastructure Committee, you are welcome to do so, just by submission.

So we will proceed with these two witnesses, and I will recognize first Mr. Joseph Lawless from the Massachusetts Port Authority, testifying for the American Association of Port Authorities.

Welcome, sir, and you are recognized.

TESTIMONY OF JOSEPH LAWLESS, DIRECTOR OF MARITIME SECURITY, MASSACHUSETTS PORT AUTHORITY, ON BEHALF OF THE AMERICAN ASSOCIATION OF PORT AUTHORITIES (AAPA); AND LINDSAY MCLAUGHLIN, LEGISLATIVE DIRECTOR, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

Mr. LAWLESS. Thank you, Mr. Chairman, distinguished members of the committee. Good morning. My name is Joseph Lawless. I am the director of maritime security at the Massachusetts Port Authority.

I am testifying today on behalf of the American Association of Port Authorities, where I serve as chairman of the AAPA Security Committee. My testimony today is on behalf of AAPA's 81 U.S. port members. All AAPA U.S. maritime port facilities are impacted by the TWIC requirements.

Five years ago, TSA rolled out the requirement that individuals who need unescorted access to Maritime Transportation Security Act-regulated port facilities must obtain a TWIC card. Those original TWICs are expiring, and today TSA has a new contractor to handle the issuance of TWICs. With the new contractor involved, we urge this committee to keep a close eye on the TWIC process. TSA should work closely with the stakeholders in the maritime environment to educate the workforce of these renewal deadlines and requirements.

We are pleased to see that the House Homeland Security Committee approved H.R. 4251, the SMART Port Security Act, which includes necessary and immediate reforms to the TWIC program. The Act provides that not more than one in-person visit to the enrollment center will be necessary to obtain a TWIC. And expiration of TWIC cards shall not occur until full implementation of a final rule for electronic readers, or on June 30, 2014.

We are also pleased to see that the TSA has taken action to address TWICs expiring before the end of 2014. U.S. citizens who have a TWIC that expires before the end of 2014 will have the option of paying \$60 to acquire a 3-year extended-expiration card. While we support these efforts to make the process more efficient, our member ports are concerned that there will not be a new threat assessment conducted for the extended-expiration cards, and we feel this lack of an additional criminal background check could dilute the security of our facilities.

TWIC mandates have changed the way port facilities are run. In addition to the cost of the card, port facilities must now ensure that all gate and entrance points have a way to check TWICs. Massport staffs all of its access points into our facilities with security personnel to verify that the entrants have a TWIC.

Though the TWIC card includes a biometric security feature, due to the delay in the issuance of the final rule, it has not been put into use at most facilities. Therefore, the security features of the card are not being utilized and the TWIC is currently being used as a flash pass. Without these readers, there is no way to automatically check a hot list of revoked or suspended TWICs.

The next phase of TWIC is the reader rule, which has already been delayed for a length of time. The delay in the reader rule has had a large impact on the Port Security Grants Program. Congress

appropriated \$400 million, recognizing the need for Federal funds to help pay for the reader mandate. In order for grantees to begin purchasing readers, TSA published technical specifications for TWIC readers in order for the grantees to begin to buy these readers. While this is much appreciated, these specifications will likely change in response to the final rule. Therefore, those ports are going to be using their grants in installing systems that may require costly changes once the final rule is issued. Until the final reader rule is issued, it is not known if all facilities will be required to have readers.

Finally, AAPA supports congressional proposals to extend the 5-year deadline for when the TWIC grants must be spent in order to allow these funds to be based on the final rule. AAPA is also concerned that the delay in the reader rule comes at a time when port security grant funding is decreasing and the burden of the reader rule will fall on port facilities. While the programs saw a high of \$400 million, its fiscal year 2012 level is \$97.5 million. What funding will be available when the rule goes into effect?

In conclusion, AAPA and its members have worked closely with the TSA and the Coast Guard on implementation of the TWIC requirements. For facilities, the next phase, the reader rule, will be the most expensive. We encourage the Coast Guard to continue their proposed rulemaking process so ports can take advantage of the funds provided for reader implementation.

Thank you.

Mr. MICA. I will withhold questions until we have heard from Mr. Lindsay McLaughlin.

Mr. McLAUGHLIN. Thank you, Chairman Mica—

Mr. MICA. Welcome.

Mr. McLAUGHLIN [continuing]. And Ranking Member Larsen. My name is Lindsay McLaughlin. I am here on behalf of our president, Bob McEllrath, and the 65,000 members of our union. We represent longshore warehouse workers, maritime workers on the west coast—Alaska, Hawaii, Washington State, Oregon, California.

It is interesting you asked in your invitation to us to respond to the question as to whether TWIC significantly enhances the security of U.S. ports or whether the costs the TWIC program imposes on U.S. port workers could be better spent on other port security initiatives. And I think at our—we had a meeting of longshoremen from up and down the coast a couple weeks ago, and there was a resolution that came out of Seattle, Washington, local, and it said we wanted to repeal the TWIC. And so let me just try to make the case as to why TWIC is insignificant in terms of security and poses other problems.

As you know, the MTSAs requires that all people that have access to secure areas of a port to go through the threat assessment and get a TWIC. However, we believe at its core—and you talk to individual longshoremen that just move one box from point A to point B, and they don't know what is in the box. They have no clue what is in the box. They move the box. They say, I mean, what are they worried about? What opportunity do I have to create acts of terrorism? Why should I get a criminal background check?

And in a port area, I mean, if somebody fails the criminal background check—I mean, most ports, I mean, everything is a secure

area. So that person, if for whatever reason they fail the threat assessment, they won't have a job. But, I mean, these containers are locked, they are sealed. And, from our perspective, I mean, the only argument that you could make for a criminal background check for an individual is an individual who knows what is in the can. But most don't. So they don't know whether it is tennis shoes or some kind of material that could be used for terrorism.

Also, we are not really convinced that the TWIC readers will properly function in the maritime environment and increase security. We say that because the GAO report on the TWIC pilot program in February 2012 concluded that, quote, "readers capable of passing all environmental tests would represent a serious business challenge to manufacture in terms of cost per unit." Further, a high number of cards malfunctioned electronically. There were problems with the cardstock itself, I mean, with the fading, peeling, staining that made it difficult to be read by the readers.

And participants in the pilot program, many of them, said that they would get rid of the guards or the clerks that were checking the credentials as people come in, which to us is—you know, these are the people that know you by name, you know, that could tell if you don't belong. I mean, that just doesn't seem to be a good idea, to get rid of these people that are watching you as you come into your workplace.

I mean, you went over the cost, the \$3.2 billion over 10 years. I think that is very expensive.

One of the things that I have worked on the most in terms of port security is to try to get Members of Congress and others to recognize the civil-liberties aspect of port security. Our way of thinking is that, if a person has served time in prison, that does not necessarily make that person a terrorist security risk. They have committed a crime. Denying work opportunities for workers doesn't make sense in terms of concluding, because there is a past, that they must be a terrorist security risk. But it is bad public policy to put people out of work.

Perhaps more disturbing, thousands of workers who do not have a felony conviction at all are denied work opportunities as a result of the TWIC program until they prove their lack of conviction. Unfortunately, the ILW has numerous members who face just these circumstances because of TWIC. And, Congressman Larsen, I included two examples of people from Seattle that did nothing wrong. One had a pending case that was never prosecuted because there was nothing there, and yet when he applied for his TWIC, it took him 6 months to get it, and he exhausted his savings. Another example from a longshoreman from Seattle. He was born on a military base, as I was, and he didn't have records of his birth certificate. So he had to work through the military to get that, and it took him 6 months to get that. And his house—you know, he was close to losing his house. So he exhausted his savings. So these are unfair—this is a very unfair aspect of the TWIC program.

And since implementation of the TWIC program, close to 50,000 workers have filed for appeals after initial determination that they were ineligible to receive a TWIC. An appeal, as you know, is different from a waiver in that an individual who receives this determination was probably never convicted of a felony, but they must

prove that he or she was not convicted by obtaining court and police records and sending them to TSA for their review. That is because the database that they use, the FBI database, many times it doesn't show—it shows that a person was arrested for a particular offense. And if TSA doesn't follow up, it doesn't follow up—I mean, this is the final resolution. The person was charged with something, they may never have been convicted, they may have been convicted of a lesser offense, and it is not followed up on.

Congressman Bobby Scott from Virginia had legislation last Congress that would mandate that the FBI look for the final resolution of the charge to see whether they were convicted before sending it to TSA so that individuals won't get these letters saying that they are, you know, denied a TWIC. And I think that is fair.

So this is a huge problem because a lot of—I mean, I got calls from longshoremen and they said, well, I was convicted of X in year, and I served this amount of in prison; it is all over for me, isn't it? And, you know, they have a union that they can go to say, no, most of these waivers and appeals, they are—I mean, you should be OK, but you have to prove that you have been rehabilitated. But others that don't have a union to go to, I mean, one-quarter of these letters that went out saying you may not be eligible, they didn't even respond. And that is a problem, because I think people are out of their jobs when they could have saved their job had they known the information.

There is a problem here in that we found from the National Employment Law Project that there were serious racial disparities in processing of TWIC applications. On average, white applicants were approved for their TWIC within 6 months; African Americans, 7 months; and Latinos, 8 months. We find that disturbing. The National Employment Law Project speculated that these delays may have been associated with the lack of targeted outreach and education of these communities in the absence of translation and interpreter services. We do think the availability of waivers—am I out of time, or am I OK?

Mr. MICA. You can go on a little bit.

Mr. McLAUGHLIN. OK.

OK—waivers are essential.

There are alternatives. We think Congress is throwing money away on a wasteful program, and we think the wasteful program is the TWIC.

We also—you know, there is some bitterness about how the port security grants have been—some of the port security grants for surveillance equipment that is actually monitoring workers and not looking for terrorists. That is a problem, that workers have been disciplined because of the taxpayer-funded cameras that are going to these ports. And I have another example here.

We think that there must be alternative programs and flexibility built into the TWIC program that would allow a more localized approach. We think that if our union and our employer could work out a system with Federal guidelines for access control, I think we would prefer to do that. TWIC is just too cumbersome, there are too many people involved, and workers fall through the cracks, and we want to make sure that our workers do not.

So, finally, again, I appreciate the opportunity to testify, and I will try to answer any questions that you might have.

Mr. MICA. Thank you.

Thank you, particularly, Mr. McLaughlin. I share some of the commentary and testimony perspective that you have provided the committee and view this as a wasteful program, not that effective.

I am a little bit disappointed that I didn't hear more of that from the association of ports. Are you pleased, Mr. Lawless? Are the ports pleased with the progress of this program?

Mr. LAWLESS. Mr. Chairman, no, we are not pleased. We have been waiting for this final rule to come out on the TWIC implementation for the reader rule. We have port security funds that have been sitting idle while we await that rule to come out. So, no, we are not pleased.

Mr. MICA. And how about on the deployment side? They testified that a small fraction of the ports are covered. We have readers which have not actually been approved as far as standards. Is that acceptable?

Mr. LAWLESS. No, that is not acceptable.

Mr. MICA. OK. And now we are about to re-up issuance of these cards. This has gone on for 9 years. We have actually had cards out there for almost 5 years. Do you see a problem there?

Mr. LAWLESS. I do see a problem. It is being used as a flash pass, a low-tech security item.

Mr. MICA. They probably could have done it at a fraction of the cost and far less hassle, wouldn't you both agree, if you are just going to do a flash pass?

Mr. LAWLESS. Yes, if you are going to do a flash pass, it would be much less.

Mr. MICA. What is disappointing, one of my investigative team showed me that DOD already developed a card that has biometric, it has iris, thumb, it even has palm—very secure. I will submit a little information about it.

Joint Personnel Identification Version 2, it is JPiv2. This is already in use, approved, meets all the criteria that we are looking for. And we are in reinventing the wheel. Well, we aren't reinventing the wheel because we haven't done what we need to do in developing anything that meets this standard. It has already been done.

And we can't even get TSA to come in here. You saw the fiasco in the panel before us.

Mr. McLAUGHLIN. Yes.

Mr. MICA. Doesn't that just destroy your faith in this process? And it is appalling that TSA would thumb their nose at the committee, that they would send a witness who is so unprepared, and then to have the nerve to sit there and say, "Well, TSA has the answer to that," but they won't show them up. And TSA is under that agency, Homeland Security. You know, I just slammed this down in frustration.

And it is just appalling. And it goes on and on, spending hundreds of millions of taxpayer dollars, which, Mr. McLaughlin, you described very well, and we don't have, again, a secure program in place. That is such a disappointment.

Mr. Larsen?

Mr. LARSEN. Mr. Lawless, I read in your statement that your organization is pleased with the recent announcement concerning TSA's extended enrollment date policy. But can you explain why ports are concerned that there will be no additional criminal background checks completed for the EED? How serious of a security threat do you think this is, that they need a new and additional criminal background check?

Mr. LAWLESS. Mr. Larsen, I think in the period of 8 years there is a possibility that a person who has a TWIC could be involved in criminal activity that would therefore disqualify them. And if they are not checking that background and extending the card for 3 years, to me and to my fellow port members, that is a concern.

Mr. LARSEN. With regards to the estimates the AAPA has for how much it will cost the ports to install TWIC card readers, has there been a fully developed estimate for the cost?

Mr. LAWLESS. Not a fully developed estimate, no, sir.

Mr. LARSEN. An estimated estimate?

Mr. LAWLESS. I don't have that information with me, sir, but I can provide it to you, if you would like, to the committee.

Mr. LARSEN. Could you do that for the record, please? It would be very helpful.

Mr. LAWLESS. Yes.

[The information follows:]



Seaports
Deliver
Prosperity

July 12, 2012

The Honorable John Mica
Chairman of Transportation and Infrastructure Committee
United States House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515
c/o Chief of Staff Jim Coon (jim.coon@mail.house.gov)

Chairman Mica:

Thank you for including the American Association of Port Authorities as a witness for the June 28 hearing on "A Review of the Delays and Problems Associated with TSA's Transportation Worker Identification Credential."

During this hearing, Representative Larson asked a question about whether the American Association of Port Authorities (AAPA) has developed a cost-estimate for implementation of the TWIC reader rule. AAPA has relied on the U.S. Coast Guard's estimate that it developed during the original TWIC regulatory proposal. As AAPA does not represent the entire population that would be impacted by the reader rule, any AAPA survey only include costs at public ports and would not be representative of the full impact of the rule. AAPA encourages the U.S. Coast Guard to update their estimate when they release their next proposed rule because the earlier estimate was based on all facilities requiring readers, and presently Coast Guard is leaning toward a more risk-based determination. Also, Coast Guard may now have a better idea of the full cost of installation of a TWIC reader system.

AAPA and its members have worked closely with TSA to implement the Congressional requirements for TWIC. As noted in our testimony, AAPA's biggest concern is the availability of grant money to help implement this new mandate once TSA finally issues its Final Rule.

Sincerely,

Joseph M. Lawless
Chairman, American Association of Port Authorities Security Committee, and
Director of Maritime Security at Massachusetts Port Authority

JML/SB:lsm

Mr. LARSEN. To that point—and I am very, very sympathetic to the point that you have about port security grants, having them, not being able to use them. But I think it is reasonable to ask Congress to know what the expense might be before looking at the Port Security Grant Program. So the sooner, the better on that.

In addition, the port security grants that ports have received for readers, is there any flexibility in those dollars, or are these largely grants that are supposed to be used for readers only?

Mr. LAWLESS. The grant program, you specify how you are going to use those funds when you make an application. So you would specify you are planning to implement a TWIC reader.

Mr. LARSEN. Right.

Mr. LAWLESS. And if the reader specs aren't complete, then—

Mr. LARSEN. Right.

Mr. LAWLESS [continuing]. It doesn't make sense to spend that money.

Mr. LARSEN. Right. OK.

Once the Coast Guard completes its rulemaking, how confident are you that the TWIC readers that ports purchase and install will be reliable and durable? We have heard testimony from Mr. McLaughlin about concerns about the actual durability not just of the reader but of the card itself.

Mr. LAWLESS. I have faith in the Coast Guard that they are going to look at the durability issues. And that is part of the rulemaking when they issue those final specifications.

Mr. LARSEN. Well, we will certainly be exploring that faith. Nothing against the Coast Guard, but durability of the readers and the cards has been an issue in the pilot, and that is going to have to be addressed.

Mr. McLAUGHLIN. Congressman Larsen?

Mr. LARSEN. Yeah, Mr. McLaughlin.

Mr. McLAUGHLIN. Right now, I mean, if a card is not working with the reader because it is faded or peeling, they blame the worker and they say, you have to get a replacement. So, right now, if a person's card is damaged somehow, you know, faded or it is just not working well, they say, you have to pay for the replacement; you did something.

So, I mean, my point is that they don't even have the durability of the card right, because we can't—I mean, that is not fair.

Mr. LARSEN. And then the cost sits on you.

Mr. McLAUGHLIN. Pardon me?

Mr. LARSEN. And then the cost sits on you, the worker.

Mr. McLAUGHLIN. Yeah. Right. Exactly.

Mr. LARSEN. In your statement, Mr. McLaughlin, you expressed concern with the TWIC appeals process, about its timeliness and efficiency. Do your concerns focus more on appeals that were filed over the first couple of years after TSA started enrolling workers, or are these concerns about the appeals process as it exists today? Have there been any improvements in the appeals process?

Mr. McLAUGHLIN. Yeah, we passed a law that said you have 30 days to process an application and 30 days for the appeal. So my concern is that, you know, when we have this stampede to, again, get these cards renewed, that the same problems will happen again. So that is my concern.

And my second concern is, I don't want people getting letters saying they might not be eligible for TWIC when they haven't done anything wrong, when the information, you know, is just spotty that they may have been arrested for a certain, you know, activity but they were never convicted. I don't want—I mean, those people did nothing wrong, and yet they are waiting the 6 months, 7 months, 8 months to get their card, while they exhaust their savings. That, I think, needs to be fixed.

Mr. LARSEN. Yeah. What specific actions, then, would be taken to fix those specific problems?

Mr. McLAUGHLIN. Well, without legislation, we would ask the TSA to do due diligence in working with the FBI to find the final result of a particular arrest. Because if you are arrested for, you know, a drug crime, of possession with intent to distribute, then you are sent a letter saying you may not be eligible for a TWIC. But I think it is incumbent on them to do their homework to say, you know, OK, the final disposition was that this person was not convicted. It may have been a possession charge; it may have been dismissed.

That work is not being done, so thousands of workers are getting these letters saying that you may not be eligible for a TWIC. I mean, like I said, those people without a union to educate them, or organization, I mean, thousands of people didn't even, you know, didn't even do their appeal or waiver. And I just wonder why there wasn't more outreach to those people, because I worry that they lost their livelihoods.

Mr. LARSEN. Yeah. Well, I would be hopeful that somehow TSA was listening right now, but I am not convinced that is the case.

With regards to your testimony on regional or local strategies, are you suggesting that the entire concept of a TWIC is flawed and should be scrapped? Or are you suggesting that the TWIC program can be changed, augmented, tailored for regional or local approaches?

Mr. McLAUGHLIN. Well, the resolution that was passed by the longshoremen said we want it repealed.

Mr. LARSEN. Right.

Mr. McLAUGHLIN. In the testimony, I offered a solution, that if a major employer like Pacific Maritime Association and the ILWU could work out with some Federal guidelines a way to have access control and to ensure that only people that need to be there are there, with the due process protections that we worked so hard for in Congress, then that is an option, some flexibility that would allow us to do that, and take some pressure off the TSA, with the millions of workers that they have to deal with today.

Mr. LARSEN. OK.

Mr. Chairman, I asked these specific questions to kind of give us some further direction to look into. And it is a lot of food for thought, and I appreciate the opportunity to question the witnesses. I yield back.

Mr. MICA. Well, thank you. And, Mr. Larsen, again, we have got to convene a meeting with the leadership of the committee and take under advisement some action, I think, to bring TSA or the Department of Homeland Security, at least someone who can an-

swer our questions, in. And I think it is incumbent on us to make this work if we are going to put such a program in place.

We have heard the frustration of both labor and also our ports, the association that runs the ports throughout—and represents the ports throughout the Nation. What we have in place is not acceptable. The delays are just beyond comprehension. The inability to put this program together is startling. And then the cost to the taxpayers in financing this entire fiasco is just totally unacceptable—a \$3.2 billion program which is rife with problems and does not secure our ports.

So I am extremely frustrated by all this. I want to thank both of you for coming in, particularly Mr. Lawless from Massachusetts, and being with us today. We are going to leave the record open for 30 days. We may have additional questions we will submit to you.

But we appreciate your cooperation, your suggestions and recommendations as we move forward. If we don't have TWIC or TWIC doesn't work, we need to make certain we have something positive in place that does work and secures our ports and our country.

So, with that, there being no further business at this time before the committee, I will thank our witnesses, excuse them, and I will call this meeting and hearing of the Transportation and Infrastructure Committee to a conclusion. This adjourns the meeting. Thank you.

[Whereupon, at 11:35 a.m., the committee was adjourned.]



JOINT WRITTEN STATEMENT OF

**KELLI ANN WALTHER, ACTING DEPUTY ASSISTANT SECRETARY, SCREENING
COORDINATION OFFICE, OFFICE OF POLICY**

**REAR ADMIRAL JOSEPH SERVIDIO, ASSISTANT COMMANDANT FOR PREVENTION
POLICY, U.S. COAST GUARD**

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

JUNE 28, 2012

The Department of Homeland Security (DHS) appreciates the opportunity to appear before the Committee to highlight our work on the Transportation Worker Identification Credential (TWIC) Program, including how it fits into the larger DHS maritime security strategy, its progress to-date in enhancing security, and plans for the future.

DHS understands that there is no one-size-fits-all maritime security solution. The maritime environment is a complicated one, and like our land and air borders, a layered approach offers the best defense. In the maritime domain, these layers look at our U.S. ports and waterways, coastal zone, the open ocean, as well as foreign ports. To fulfill a security mission of such scale, DHS leveraged the expertise of its components to develop an awareness of the different potential targets that comprise the maritime domain and to design security measures to counter potential threats.

For example, the U.S. Coast Guard uses Port Security Assessments and requires Facility and Vessel Security Plans to identify and mitigate vulnerabilities of maritime assets. In addition, the Coast Guard requires 96-hour advance notice of arrival for foreign flag vessels and all commercial vessels (foreign or domestic) entering a U.S. port, to have a better understanding of what and whom to expect and when they will arrive.

Coordination across DHS and intelligence organizations, domestic port security assessments, and critical infrastructure protection plans are all layers to protect U.S. ports and waterways. Along the coastal zone, Coast Guard has stations and response boats, and the National Vessel Movement Center and Deepwater Program. In the open ocean, the U.S. conducts long range vessel tracking and the Coast Guard continues joint efforts with NORTHCOM. Overseas we continue our Container Security Initiative and C-TPAT.

In pursuit of security solutions, the Department has developed strong partnerships with the private sector, as these partnerships are critical to maritime security measures and to protecting our ports. In most cases, the Federal Government does not own or operate the many assets that comprise the maritime domain, including critical infrastructure and key resources. Therefore, we work closely with our partners to meet homeland security objectives in a manner consistent with their operational needs.

The role of TWIC

The TWIC program, authorized by the Maritime Transportation Security Act of 2002 (MTSA) and the SAFE Port Act, strengthens the security of our nation's ports while facilitating trade through the provision of a tamper-resistant biometric credential to all port workers requiring unescorted access to secure areas of MTSA-regulated port facilities and vessels. The mission of

the TWIC program is to provide a means of positively verifying the identity of those seeking access to secure areas and to conduct security threat assessments, enabling maritime vessel and facility operators to make informed access control decisions. TWIC is a minimum requirement prior to a port facility or vessel regulated by MTSA making an access decision. The Federal government is not making those access decisions, and in that respect, this program offers a good example of a strategic security partnership among the Coast Guard, the Transportation Security Administration (TSA), and the private sector. TWIC is one layer, within the array of maritime security measures mentioned above, that enhances port facility and vessel security.

The TWIC Program provides a tamper-resistant biometric credential to eligible maritime workers requiring unescorted access to secure areas of port facilities and vessels regulated under the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. No. 107-295). TSA and the Coast Guard jointly administer the TWIC Program. TSA is responsible for enrollment, security threat assessments, and systems operations and maintenance related to TWICs, and the Coast Guard is responsible for enforcement of regulations governing the use of TWICs at MTSA-regulated facilities and vessels. The DHS Policy Screening Coordination Office serves as a coordinator in support of these efforts.

DHS's approach to TWIC has been to address immediate security needs while simultaneously building toward the end-state solution. Never before has the Federal Government attempted to conduct security threat assessments and issue a credential on this scale with such a geographically dispersed population of private sector workers. To meet this challenge, we had to plan carefully, consult, incorporate feedback, and adapt to evolving needs: our work is still ongoing.

TWIC Enrollment and Issuance

TSA began the national deployment of the TWIC program on October 16, 2007, with the enrollment of maritime workers at the Port of Wilmington, Delaware. A nationwide requirement for individuals to hold a TWIC in order to access MTSA-regulated facilities and vessels went into effect in April 2009, and TSA continues to operate approximately 135 enrollment centers in ports and in areas where there are concentrations of maritime activity throughout the United States and its territories.

Almost five years later, DHS has enrolled over two million TWICs to longshoremen, truckers, merchant mariners, and rail and vessel crew members nationwide. TSA-issued TWICs are visually inspected by port and vessel guards, for visual identity checks before a facility or vessel owner/operator grants unescorted access to secure areas. A visual inspection must include, at a minimum, a match of the photo on the TWIC to the individual presenting it; verification that the TWIC has not expired; and a visual check of the various security features present on the card to determine whether the TWIC has been tampered with or forged.

For the first time in the maritime environment, TWIC established uniform vetting of maritime workers based on recognized standards. These standards include a check for ties to terrorism, an immigration status check, and a criminal history records check. TSA conducts recurrent vetting

for ties to terrorism using the Terrorist Screening Database and other data to which only the Federal government has access. With TWIC, port security officers across the country encounter a single, recognizable, tamper-resistant credential, rather than hundreds of different identity cards, thus allowing them to make more informed access control decisions than was ever-before possible. TSA also created a canceled card list that is accessible by port and vessel owners and operators to inform them when a TWIC card has been revoked.

Security Enhancements

As of April 15, 2009, TWICs were required to be presented upon entry to MTSA-regulated facilities nationwide. This requirement provides a significant maritime security benefit by demonstrating to facility and vessel security operators that the TWIC holder, seeking access to a MTSA-regulated facility or vessel, has successfully passed the security threat assessment. The Coast Guard uses a scalable and progressive enforcement approach to ensure compliance, starting with on-site education and correction and elevating up to, and including, civil or criminal penalties.

The Coast Guard began supplementing its visual inspection activities with spot checks using hand-held card readers to ensure that workers' credentials are valid and that each identity is verified. The Coast Guard has deployed over 275 mobile readers that are capable of validating TWICs and other credentials during facility and vessel inspections and law enforcement boardings. Persons accessing secure areas of MTSA-regulated vessels and facilities are subject to electronic verification of their TWICs on a random basis using portable TWIC readers. To date, Coast Guard has verified approximately 220,000 TWICs using hand-held readers and visual inspections.

DHS has also pursued the re-use of security threat assessment results, where appropriate, to reduce costs for the TWIC holder. Based on public comments to the TWIC Notice of Proposed Rulemaking (NPRM), the 2007 TWIC Final Rule included the ability to provide a reduced fee for documented merchant mariners, as well as CBP's Free and Secure Trade (FAST) driver program members, and truckers with a hazmat material endorsement (HME) to their commercial driver's licenses.

TWIC Readers

The Coast Guard is in the process of drafting a NPRM for TWIC reader use, based on the results of the TWIC Reader Pilot, which was required by the SAFE Port Act of 2006 to be completed before the final rule.

DHS has been laying the groundwork for the rulemaking since separating it from TWIC enrollment and issuance. In 2009, the Coast Guard published an Advance Notice of Proposed Rulemaking (ANPRM) to describe its proposed risk-based framework and to solicit comments from the public. The ANPRM also described potential costs and benefits from the deployment of TWIC readers. In response, the Coast Guard received and considered approximately 100 comment letters in response to the TWIC Reader Advanced Notice of Proposed Rulemaking,

and comments received at the public meeting aligned into approximately 20 categories, which the Coast Guard used to inform its continuing development of the NPRM.

Concurrently, TSA conducted the TWIC Reader Pilot Program to support the development of the TWIC reader rule. From 2008 through 2011, TSA evaluated the technical performance of the TWIC biometric reader function at a sample population of maritime facilities. TSA was able to gather valuable data on reader performance, as well as assess the operational and business process impacts of conducting biometric verification of identity under diverse field conditions. A final report on the results of the TWIC Reader Pilot Program was delivered to Congress in February 2012.

Initial development and deployment of the pilot program among the TWIC reader pilot sites presented several challenges, and valuable lessons learned. From the outset of the pilot, for example, maritime stakeholders requested that card readers be capable of conducting a biometric match, without requiring the workers to enter their personal identification number or inserting their card into the reader.

Other challenges emerged in execution, due to the voluntary nature of the pilot, which allowed participants to proceed at their own pace. At some facilities, timelines for technical and physical infrastructure modifications were extensive and the government did not position itself to enforce a project plan. Furthermore, the recession had a tremendous impact on commercial operators, which meant reductions in staff and financial reserves across the board. This translated into real concerns from ports and facilities about matching grant funds in general, and specifically whether the grant funding received was sufficient enough to support technical and physical modifications. TSA offered general guidance to ports and facilities, but could not provide a “one-size-fits-all” reader template due to the unique nature of each regulated facility and vessel operation.

The pilot operation also highlighted security and operational benefits associated with readers including the automation of access control, so that regular users could use their TWICs for quick and easy processing into a port. In turn, participating pilot port security officers gained integrated access control systems resulting in more efficient and effective processing of workers entering secure areas.

Despite all the challenges associated with the pilot, several key factors were identified in the final report – such as business impact, technology, infrastructure requirements, environmental considerations, costs, and benefits – that could be incorporated into the TWIC reader rule. DHS anticipates that the TWIC reader rule NPRM will be published later this year. The Coast Guard will carefully review all public comments submitted through the docket and those received at any public meetings Coast Guard holds while drafting the final rule.

Recent Announcement

On June 15, 2012, DHS announced that beginning August 30, 2012, DHS will offer eligible TWIC holders the opportunity to replace their expiring TWICs with a three-year extended expiration date (EED) card for \$60.00. DHS is offering the three-year option to make the re-

enrollment process more cost-effective for eligible workers while the TWIC reader rule is still pending. DHS considers the EED card equivalent to a standard TWIC and will allow port and vessel operators to accept EED cards as they accept standard TWICs.

DHS is offering the EED TWIC option to make the re-enrollment process more cost-effective for those individuals who are U.S. citizens or U.S. nationals and whose TWICs will *expire on or before December 31, 2014*. Those TWIC holders who are not U.S. citizens or U.S. nationals or who are eligible but do not wish to use the EED TWIC option may renew their expiring TWICs by completing the standard enrollment process for a five-year TWIC, which includes an enrollment fee of \$129.75. The EED TWIC is a one-time temporary extension of the current TWIC; upon the expiration of this three-year EED TWIC, all TWIC holders will be required to enroll for a standard five-year TWIC.

Conclusion

Prior to the TWIC Program, there was no standard identity verification or background check policy for entrance to a port facility or vessel. This created vast opportunities for fraud and risk. Today, facility and vessel owners and operators look for one standard identification document that confirms the holder's identity, and verifies that he or she successfully completed a security threat assessment. TWIC cards contain security features that make the card highly resistant to counterfeiting. When biometric verification becomes a requirement and readers are in use, we will further enhance security at port facilities and vessels regulated by MTSA.

DHS and its partners have taken significant steps to add layers of security to protect our nation's port facilities and vessels. These steps link together information sharing, security, and law enforcement from across DHS and a multitude of partnerships. Each security layer builds upon and complements the others. TWIC is one of those layers. Thank you for this opportunity to update the Committee on this important link in DHS's maritime security strategy.



Alliance of the Ports of Canada, the Caribbean, Latin America and the United States

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Testimony of Joseph Lawless
Director of Maritime Security at
Massachusetts Port Authority
On Behalf of the
American Association of Port Authorities

Before the
The United States House of Representatives
Committee on Transportation & Infrastructure
2167 Rayburn House Office Building
Washington, D.C. 20515

**Hearing: "A Review of the Delays and Problems Associated With TSA's
Transportation Worker Identification Credentials"**

June 28, 2012
10:00 a.m.

Good morning. I am Joe Lawless, Director of Maritime Security at the Massachusetts Port Authority. I am testifying today on behalf of the American Association of Port Authorities (AAPA), where I serve as Chairman of the AAPA Security Committee. The testimony today is on behalf of AAPA's 81 U.S. members. AAPA port members are public entities, divisions or agents of State and local government mandated by law to serve public purposes. Essentially, we are public agencies charged with developing port facilities and facilities of commerce.

We are pleased to see that House Homeland Security Committee approved H.R. 4251, the SMART (Securing Maritime Activities through Risk-based Targeting) Port Security Act. Transportation Worker Identification Credential (TWIC) immediate reform is needed. The reform provides that not more than one in-person visit to an enrollment center will be necessary to obtain a TWIC, and expiration of TWIC cards shall not occur until full implementation of a final rule for electronic readers, or on June 30, 2014.

We are also pleased to see that TSA has taken action to address TWICs expiring before the end of 2014. U.S. citizens who have a TWIC that expires before the end of 2014 will have the option of paying \$60 to acquire a three-year Extended Expiration Date (EED) card, instead of a new standard five-year TWIC card. Additionally, workers who opt for the EED will only have to make one trip to the enrollment center – to pick up and activate their card.

However, our member ports are concerned that there will not be a new threat assessment (i.e., criminal background check) conducted for the EED. We feel the lack of an additional criminal background check could dilute the security of our facilities.

All AAPA U.S. member maritime port facilities are impacted by the Transportation Worker Identification Credentials (TWIC) requirements. Five years ago, TSA rolled out the requirement that individuals who need unescorted access to Maritime Transportation Security Act-regulated facilities must obtain a Transportation Worker Identification Credential (TWIC). AAPA members worked closely with TSA and its contractors to educate the maritime workforce about the legal requirement to obtain a TWIC and encouraged a registration process that was convenient and run efficiently. We hope the renewal or extension phases of the card, which will begin later this year, will go smoothly. TSA does have a new contractor to handle the issuance of TWICs and EEDs. With a new contractor involved, we urge this Committee to keep a close eye on the TWIC and EED process. TSA should again work closely with stakeholders in the maritime environment to educate the workforce regarding these renewal deadlines and requirements.

TWIC mandates have changed the way port facilities are run. In addition to the cost of the card, port facilities must now ensure that all gates and entrance points have a way to check TWICs. Prior to this requirement, port facilities varied in their level of security and the type of identification needed. Some facilities had unmanned gates, but now all facilities have some type of physical access control system to check TWICs. Massport staffs all of the access points into its facilities with security personnel to verify that all entrants have a TWIC.

The TWIC card includes a biometric security feature that has yet to be used at most facilities due to the lack of a reader rule. Therefore, the security features in the card are not being utilized, with falsified I.D.s harder to identify. Instead, the TWIC is currently being used as a flash pass where the individual simply shows the TWIC to the guard who visually checks the picture on the card against the individual seeking access. Without readers, there is no way to automatically check a "Hot List" of revoked or suspended TWICs.

The next phase of TWIC will be the reader rule, and there are concerns about who will be covered, the cost and whether readers will work efficiently. Originally, all port facilities thought they would need a reader and many port facilities applied for Port Security Grants for this purpose. Subsequently, Coast Guard proposed only requiring facilities that handle hazardous and dangerous cargo use readers. While AAPA was happy to learn of a more modest proposal, this caused some confusion in the industry, as the final regulations were put on hold for several years. Ports with grants were unsure what to do with the money. Some reprogrammed the

money and others decided to install the infrastructure, without knowing what the final requirements would be. AAPA is also concerned that the TWIC reader pilot identified the biometric reader as having some problems, and we do not know the full impact on facility operations.

The delay in the reader rule has had a large impact on the Port Security Grants. Congress appropriated \$400 million based in part on the need to help pay for the mandate that port facilities purchase readers. To aide grantees, TSA did publish technical specifications for TWICs in order for grantees to begin to buy readers, but these specifications could change. In the meantime, ports with grants are installing system that may require costly changes or are unnecessary once the final rule is issued. In anticipation of the final reader rule being published several years ago, Massport was awarded a port security grant to install readers at our facilities. We are still awaiting the final rule and have not moved to install these readers. The deadline for the expiration of this grant award is fast approaching.

AAPA supports congressional proposals to extend the five-year deadline for when TWIC grants must be spent in order to allow these funds to be based on the final rule. AAPA is also concerned that the delay in the reader rule comes at a time when port security grant funding is decreasing and the burden of the reader rule will fall on port facilities. While the program saw a high of \$400 million, its FY 2012 level is \$97.5 million. What funding will be available when the rule goes into effect?

In relation to the final reader rule, it is not known yet if all facilities will be required to have readers. AAPA has stated in public comments that the Coast Guard should not require readers at all facilities, rather the requirement should be performance- and risk-based. A facility's risk and associated reader requirements should be based on a variety of risk factors, not just what type of vessels call on it or the type of cargo that it handles. Coast Guard should first aggregate risks to the port area, followed by a second layer of risk at the facility level, including an evaluation of what other facilities are in close proximity. Therefore, low-risk facilities next to high-risk ones may need readers.

In conclusion, AAPA and its members have worked closely with TSA and Coast Guard on implementation of the TWIC requirements. For facilities, the next phase, the reader rule, will be the most expensive. We encourage Coast Guard to continue their proposed rulemaking process so ports can take advantage of the port security grant funds provided for reader implementation. Further delay will result in transferring the bulk of this federal mandate to the facilities rather than the shared process envisioned when the Port Security Grant program was established.

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TESTIMONY OF LINDSAY MCLAUGHLIN

LEGISLATIVE DIRECTOR, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

BEFORE THE

HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

JUNE 28, 2012

Thank you Chairman Mica and members of the Committee for inviting the International Longshore and Warehouse Union (ILWU) to testify today on problems associated with the Transportation Worker Identification Card (TWIC) program. I am here today on behalf of ILWU International President Robert McEllrath and the 65,000 members our union. The ILWU represents longshore workers, warehouse workers, and maritime workers in the states of Washington, Oregon, California, Hawaii, and Alaska who are required to undergo a threat assessment and hold a TWIC card to gain access to their jobsite.

In your letter requesting our testimony, you asked our views on whether TWIC significantly enhances the security of U.S. seaports, or whether the costs the TWIC program imposes on U.S. port workers could be better spent on other port security initiatives. The members of the ILWU believe that TWIC offers very little to no benefits and feel it would be wiser to spend this money on other port security initiatives. In fact, representatives of longshore locals met two weeks ago and unanimously passed a resolution offered by ILWU Local 52 (Seattle, Washington) supporting the repeal of TWIC. The reasons for our opposition to the program are outlined below:

TWIC does nothing significant to increase security

The Maritime Transportation Security Act (MTSA) of 2002 mandates that all workers who require unescorted access to “secure” areas of the ports obtain a TWIC. Workers are subjected to a criminal background check for felony convictions that in most cases do not have any relevance to terrorism using the FBI’s database, known to be error-ridden and incomplete verification of the worker’s immigration status, and other security checks.

At its core, conducting background checks of port workers in order to combat terrorism is misguided and based on erroneous notions about how modern port facilities operate. It is difficult to comprehend what particular access longshore workers have that warrants the TWIC program’s extreme degree of scrutiny and public expense. In a modern container facility, the longshore worker has no access to the cargo because it is sealed or locked in a container. Nor does a longshore worker know what any particular container holds.

Documentation showing the container’s contents is not available to most of the workers. A container could hold potentially dangerous cargo or it could hold tennis shoes. Thus, longshore workers have no meaningful way of determining which containers could be used to commit acts of terrorism and which ones could not. Only workers with access to information about containers’ contents should ever be required to undergo background checks. The vast majority of longshore workers do not possess this information. They pose no greater ability to use a container to commit an act of terrorism than someone driving near a truck carrying a container on a public highway. The credentialing system is a diversion from a real port security plan to require closer inspection of the containers themselves moving in and out of our ports.

We are not convinced that the TWIC readers will properly function in a maritime environment and increase security. The GAO report on the TWIC pilot report released in February 2012 concluded that “readers capable of passing all environmental tests would represent a serious business challenge to manufacture in terms of cost per unit.” Further, a high number of cards malfunctioned electronically. Durability of the card stock is a serious issue. Sun, wind, grime, dust on cards caused fading, stained and peeling cards that have difficulty being read by TWIC readers. Participants in the pilot program said they would reduce the number of guards when TWIC was implemented. However, these guards are the people who know the names and faces of individuals and would be able to recognize when an individual has no business on the docks.

In 2007, the Department of Homeland Security (DHS) estimated that the combined cost to the federal government and the private sector may reach \$3.2 billion over a ten-year period – not taking into account the full cost of implementing and operating readers. A serious cost/benefit analysis should be conducted that takes into account that most port related workers do not possess the knowledge or the opportunity to conduct subversive activities.

TWIC seriously undermines the civil liberties of port workers

If a port worker has a criminal record, that only shows he or she may have served time in jail or prison or perhaps performed community service. None of these circumstances indicates that he or she is a terrorist threat. Denying work opportunity for that individual constitutes double jeopardy. In addition, it is bad public policy. Denying people good, paying jobs because of poor choices they made in the past is only likely to encourage people to reoffend and to destabilize families. Perhaps more disturbing, thousands of workers who do not have a felony conviction at all are denied work opportunities as a result of the TWIC program

until they prove their lack of a conviction. Unfortunately, the ILWU has numerous members who faced just these circumstances because of TWIC.

In 2009 when Washington state port workers were required to get a security clearance, ILWU member William Ericson was unable to obtain it; a background check wrongly showed that there was a pending case of forgery against him. Ericson had worked at the Port of Seattle for 12 years. Mr. Ericson was out of work for 6 months, had exhausted his savings, and came very close to having his house foreclosed upon even though he had done nothing wrong. Another longshoreman from Seattle was unlucky enough to have been born on a military base overseas and did not have his birth certificate to prove that he was an American citizen. He also exhausted his life savings while waiting for his documentation from the military to meet the immigration requirements in the law. He too had done nothing wrong. The income losses and emotional suffering that TWIC caused these workers and others like them and their families cannot be remedied.

Since implementation of the TWIC program, close to 50,000 workers have filed for appeals after an initial determination by TSA that they were ineligible to receive a TWIC. An appeal is different from a waiver in that an individual who receives this determination was probably never convicted of a felony and must prove that he or she was not convicted by obtaining court and police records and sending them to the TSA for their review. TSA issues interim denials in all cases when the record on file with the FBI is an open arrest for a potentially disqualifying offense, even if the arrest has been dismissed or otherwise disposed of by local enforcement. The processing of TWIC appeals and waivers at one time took over 6 months in many cases while the worker was struggling to survive without a livelihood and was unable to obtain unemployment insurance. While we strongly support the existence of the

appeal process, the fact that TSA granted approximately 99% of all such appeals shows that TSA wrongly denied TWICs to almost 50,000 American workers, forcing them to prove their innocence on pain of losing their jobs.

Our members who filed their appeals and waited months, missing mortgage payments while TSA decided their fate, are the lucky ones. About 25 percent of workers who received an initial denial of a TWIC card never contested the denial even though most waivers and appeals are granted. These are generally workers who have no union or organization to educate them on the process and probably give up after receiving the letter. These workers have given up their livelihoods due to a nonexistent outreach to properly educate them on the process of filing TWIC waivers or appeals.

According to a report published by the National Employment Law Project, there were serious racial disparities in the processing of TWIC applications and the waiver and appeal process. On average white applicants were approved for their TWIC within six months. That compares with almost seven months for African Americans and over eight months for Latino workers. NELP speculated that these delays may have been associated with the lack of targeted outreach and education to these communities and the absence of translation and interpreter services.

The availability of a waiver for workers who do have disqualifying offenses is essential. The statutory option to seek a waiver and appeal a final determination by the TSA before an independent law judge has saved jobs. These due process protections were put into law on a non-partisan basis, and we believe strongly that these protections should be afforded to other workers at the local, state, or federal level.

Finally, I want to acknowledge members of Congress who support the Smart Port Security Act, H.R. 4251. This legislation would spare workers the financial and procedural burden of renewing their application until DHS puts the infrastructure in place to make the program fully functional. This legislation was a product of non partisan work by Homeland Security Chairman Peter King, Ranking member Bennie Thompson, Subcommittee Chair Candice Miller and Ranking Subcommittee Member, Henry Cuellar.

There are alternatives that provide significant port security benefits

- We strongly encourage Congress to stop throwing money at ineffective programs. A wiser approach to port security would be to invest these federal dollars into Customs, the Coast Guard and other federal agencies to implement container security and intelligence programs rather than spending billions more on TWIC. Furthermore, more money for these agencies can be found from wasteful port security grants. How many more cameras and fences are needed? Instead of mounting cameras for the purpose of monitoring the perimeter for illegal entry, employers are using these taxpayer funded cameras to monitor workers' activities. The Port of Stockton used port security grant to place a fence in a narrower space than necessary which adversely impacted the conditions at work. Ironically, this plan was put in place so that other workers who process fertilizer (which could be used as an explosive) would not have to apply for a TWIC. Despite the objections of Congressman Jerry McNerney, the Coast Guard took no action to reverse this plan. If these ports need more security cameras and fences, then it's time for them to take the responsibility and pay for it.

- There must be alternative programs and flexibility built into the TWIC program that would allow a more localized approach. There is no reason that the ILWU and our employer, the Pacific Maritime Association (PMA), could not negotiate a more efficient, cost effective way to ensure that unauthorized persons are not allowed access to the docks. The TWIC program is too large and too cumbersome to guarantee that workers do not fall through the cracks. Allowing flexible, localized programs with the same due process protections under the TWIC program is fairer to workers and accomplishes the same goal to control access to our nation's ports.

Finally, I want to acknowledge members of Congress who voted in favor of the Smart Port Security Act. This legislation would spare workers the financial and procedural burden of renewing their application until DHS puts the infrastructure in place to make the program fully functional. This legislation was a product of non partisan work by Homeland Security Chairman Peter King, Ranking member Bennie Thompson, Subcommittee Chair Candice Miller and Ranking Subcommittee Member, Henry Cuellar.

Thank you for allowing me to testify today before the Committee.

LM/lm

cwa39521

CAJ DOOLEY
MEMBER AND CEO



July 18, 2012

The Honorable John L. Mica
Member, U.S. House of Representatives
7th Congressional District, Florida
Chairman, Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20515-6256

Dear Chairman Mica:

The American Chemistry Council (ACC) thanks the Transportation & Infrastructure Committee for holding its June 28 hearing on the Transportation Security Administration's (TSA) Transportation Worker Identification Credential (TWIC) program and submits this letter to the hearing record.

ACC is the primary trade association representing the business of chemistry in the United States – an enterprise that employs nearly 800,000 American workers and is helping solve some of the biggest challenges facing our nation. As such, we are committed to working with our members and all stakeholders to ensure the safety and security of our operations and to protect the people and the environment in which we work and live.

ACC members must require and utilize the Transportation Workers Identification Credential (TWIC) program which covers workers who require access into restricted areas designated under the Maritime Transportation Safety Act of 2002 (MTSA). In addition to providing a positive means of identification, the TWIC card ensures that holders of such credentials have legal authority to work in the U. S., have not been convicted of a disqualifying offense (or have been issued a waiver by TSA) and are vetted against the Terrorist Screening Database. This last item in particular, terrorist screening, is of significant value to the industry although it is an inherently governmental function and can only be performed by the U. S. Department of Homeland Security (DHS). It is the position of the ACC that the proper operation and implementation of the TWIC program is critical to ensure the security of chemical facilities at all major ports in the United States.

The TWIC program encompasses millions of workers and is used at thousands of port facilities across the U. S. The safe, secure, and timely transport of materials into and from the ports is critical to our industry and our customers. In addition, several of our members manufacturing sites are "waterfront facilities", which are also governed by the TWIC program. Unfortunately there have been a host of challenges with its implementation. Some issues of concern to ACC members include, but are not limited to, delays in implementation

of card readers, simplification of the application process and the criminal background portion of the vetting process.

ACC and its members would welcome the opportunity work with you and the Members of the Transportation and Infrastructure Committee, DHS and TSA to identify and offer our industry expertise to help address the implementation challenges, correct these issues and improve the program. ACC looks forward to assisting the House Committee on Transportation and Infrastructure with this very important challenge of getting the TWIC program right and advancing security within the chemical industry.

Sincerely yours,

A handwritten signature in black ink that reads "Cal Dooley". The signature is written in a cursive, slightly slanted style.

Cal Dooley