TESTIMONY

before the

U. S. SENATE
COMMITTEE ON COMMERCE, SCIENCE AND
TRANSPORTATION

on the

TRANSPORTATION WORKER IDENTIFICATION
CREDENTIAL

by

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DELAWARE RIVER AND BAY

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Good morning, Mr. Chairman and members of the Committee, and thank you for the opportunity to present testimony today. My name is Lisa Himber, and I am Vice President of the Maritime Exchange for the Delaware River and Bay. The Maritime Exchange is a non-profit trade association representing the members of the commercial maritime industry in Southern New Jersey, Southeastern Pennsylvania, and Delaware. Our mission is to promote the safety, security, economic viability and environmental health of the Delaware River port complex. Included among our 300 members are those companies and individuals on the front lines of the international border of the port – such as port authorities and private terminal operators, tug and barge companies, labor organizations, vessel operators and steamship agents, just to name a few.

In addition, I serve as Vice-Chair of the National Maritime Security Advisory Committee (NMSAC), which as you as you are aware was established under the Maritime Transportation Security Act (MTSA) of 2002. I and my fellow NMSAC members are charged to provide advice to the Secretary of the Department of Homeland Security on matters such as national security strategy and policy, actions required to meet current and future security threats, international cooperation on security issues, and security concerns of the maritime transportation industry.

I appreciate this opportunity to discuss the state of the Transportation Worker Identification Credential (TWIC) program, issues which may have prevented TSA from launching this program from a pilot participant perspective, and its future implementation. The TWIC program has been one of the priority federal projects for my organization and its members in the Delaware River maritime community since even before its official inception.

BACKGROUND

The Exchange role in the port – Like most trade associations, the Maritime Exchange is an advocate on issues of concern to its members. However, what sets the Exchange apart is its day-to-day operating role in the port. The Maritime Exchange operates on a 24/7 basis and one of its key responsibilities is to collect, store and disseminate schedule information on all commercial cargo ships arriving or departing the Delaware River. We also serve as a communication and information hub for the tri-state port, distributing messages between ships and their shoreside service providers as well as distributing federal safety, security, operational, and procedural bulletins to the maritime businesses operating throughout the region.

In addition to our traditional Ship Reporting function, which dates back to 1875, in the mid-1980s the Exchange began the development of what is now known as Maritime On-Line (MOL). This system is a community-based information network which provides a mechanism not only to obtain anticipated, current and historical vessel movement information but also offers a tool for steamship carriers and their agents to submit cargo manifest data to U.S. Customs and Border Protection and advance electronic notice of vessel arrival and departure information to the U.S. Coast Guard. Through MOL, the Exchange provides Delaware River port operators

with a cost-effective means to both comply with federal information reporting requirements as well as to share information, such as manifest data or cargo release status, with local partners in the transportation chain through a central community maritime database system.

Development of a regional standard ID – As Maritime On-Line had become a useful tool for doing business at regional ports, and because the Exchange had demonstrated its ability to bring together the various partners in the maritime industry to develop, implement, and use a community information system, several Exchange members approached us in the late 1990s to discuss the feasibility of developing a system under Maritime On-Line which could be used to identify truck drivers accessing the various cargo facilities in the three states.

The Exchange organized a working group of system users – terminal operators, truck drivers, brokers and freight forwarders, steamship agents – and identified the requirements of what would be known as the Electronic Driver Identification (EDID) System. By September of 2001, the system design was complete, and the Exchange was working to identify a means of funding the initial program development. The premise behind this system was a centralized database and the issuance of an ID card that would be accepted at all participating Delaware River maritime terminals.

Immediately after the events of September 11, 2001, Exchange members asked whether the system we had designed to identify truck drivers could be expanded to include anyone requiring access to maritime facilities. Like truck drivers in the state of Florida, those doing business in the Delaware River were required to obtain multiple identification cards, and the maritime community agreed that development of a single, standard ID card would be a critical program under new heightened security programs at maritime facilities.

As a result, by October of 2001, the Exchange had identified funding to develop a pilot program, and in partnership with the Port of Wilmington, Delaware, had successfully programmed and tested what would become the Delaware River ID (DRID) system by January of 2002. We subsequently received a Port Security grant to continue this program.

It was because of this effort that the agency which would become the Transportation Security Administration (TSA) selected the Delaware River as one of the TWIC pilot program locations. Among the rationale behind this selection was the fact that if such a system could work effectively at Delaware River ports, with three states and multiple private and public port facilities, it would work at all U.S. ports.

TWIC PILOT PROGRAM

Having been involved in the TWIC program even prior to the establishment of the TSA and the August 2002 launch of the east coast TWIC pilot project, my organization and its members have been keenly interested in the successful deployment of this program.

The importance of TWIC to the maritime industry is underscored by the fact that the full NMSAC membership – which includes a diverse cross-section of maritime stakeholders – unanimously concluded that TWIC is among the most important components of the national

maritime security effort. As a result members elected to make TWIC the number one priority on the NMSAC agenda. Last May, the Committee presented DHS with a full set of recommendations for TWIC implementation. We are pleased to see from the draft Notice of Proposed Rulemaking that most of the NMSAC recommendations have been adopted.

Despite the many problems with TWIC over the last several years, we continue to support the idea of a standardized credential to be used at U.S. seaports. In the first phase of the TWIC program, the Planning Phase, TSA did everything right. They visited with a variety of operators at differing types of ports and were thus able to understand the full range of security needs. And they talked with the people who require access to multiple facilities – including pilots and other mariners, steamship operators, trucking companies, vendors and labor – and they met with other local federal, state and municipal agencies to better understand their needs and concerns. And most importantly, TSA communicated openly and frequently with maritime stakeholders during this process. During the Planning Phase of the program, TWIC program staff kept us apprised not only of their progress, but when there were setbacks, TSA explained the reasons and provided stakeholders with the opportunity to provide input into the program development process and assistance in overcoming obstacles.

From that effort, TSA developed what we thought would be an effective plan to move the project forward. That was in May of 2003. At that time, the expectation remained that phases two and three of the program, the Technology Evaluation and Prototype phases, would follow immediately, and the pilot program would be completed by December 0f 2003.

The Technology Evaluation phase ended in October of 2003, slightly behind schedule, and for the most part, we believe it achieved its goals; that is, TSA could issue cards which could be read by scanners at various facilities. At the end of the evaluation TSA determined that the TWIC would need to utilize a variety of technologies – such as smart chip, magnetic stripe and bar code – in order to meet its key mandates: TWIC must be able to integrate seamlessly with facilities' legacy systems to minimize costs and facilitate rapid program deployment; and it must be interoperable among all private and public port facilities.

During the Prototype Phase, TSA and stakeholders were to test the implementation of the technologies identified in phase two, as well as the host of business processes associated with implementing the TWIC program. These included trusted agent training, card application, threat assessment, card production and issuance, revocation, hotlisting, replacement, use of a biometric, and the electronic communications between terminal facilities and the central database. For reasons which were never made entirely clear to pilot program participants, the Prototype Phase of the east coast pilot program did not officially begin until November of 2004. We know that the Request for Proposals was not released until May of 2004, and the contract was not awarded until October of that year. Some of the reasons cited for the delay included the fact that the Technology Evaluation report took longer to review than expected, thus delaying the development and release of the Request for Proposals. There appeared to have been a lengthy delay in the fall of 2004 resulting from a subsequent modification to the contract once it had been awarded. Finally, the fact that the contractor selected for phase three was not the same as that used for phase two undoubtedly contributed to the delay.

The Maritime Exchange office was the first east coast site installed for the third phase test. By November 17, 2004, we had pre-enrolled our ten employees, TSA had installed the biometric readers and cameras. Unfortunately, the enrollment at our site did not go as well as expected. Several members of our staff were required to return multiple times to obtain their cards for a variety of reasons – data was not correctly entered into the system, data was missing, the trusted agent lost connection to the central server, the system would not save data after it had been entered, etc. Whether these were purely technical problems or lack of sufficient trusted agent training is unknown.

Though we were certainly surprised by the number of problems encountered, the Exchange was pleased to be the first site – better to work through the glitches at an office location rather than at a working maritime facility where moving people quickly through the gates is paramount.

Similar delays in completing the enrollment site installations and beginning the processes to register applicants were reported by the other pilot participant sites.

Although the pilot program was scheduled to terminate on June 30, 2005, card production did not begin in earnest until well into the summer of that year. Some of the technical setbacks included problems with the employer sponsor spreadsheet (an Excel spreadsheet the employers were to complete and return to TSA to upload into the database in advance of enrollment), problems with the TWIC web portal, system shutdowns for undefined upgrades, and the lengthy delay associated with moving the card production facility from Pennsylvania to Kentucky in the middle of the program. At least one TWIC sponsor was notified that data for several employees was lost during this transition. He was subsequently informed that the data was never lost but rather it had been incorrectly entered. In either event, the individuals were required to re-enroll.

Other concerns expressed during the pilot program were poor communications between the trusted agents and the pilot site locations (e.g., schedule of enrollment at the facilities, failure to notify sites of trusted agent employee turnover, no advance notice of installation work, etc.). The TSA and its contractors did not, for example, consult the Delaware River stakeholders in developing the TWIC web portal. As a result, when it was demonstrated at a stakeholder meeting on March of 2004, some key functionality was not included, such as the ability of a sponsor to delete an employee from its roles and request card deactivation.

In some cases, cards were not produced until well after the June 30 program termination. As a result, TSA continued to formally sustain the program at the three Delaware River maritime locations through October 31, 2005. We were also pleased that TSA continued to support the Wilmington, Delaware site, albeit on a limited basis, through March 31, 2006.

In addition to the delays resulting from the technical problems, we believe there were administrative and operational issues as well. Foremost among these, of course, must be the high employee turnover at all levels – DHS, TSA, the TWIC program office staff, and the contractors. In addition to the multiple individuals who held the TSA Administrator post during this period, the TWIC Program Manager changed three times, and there were four project leads for the east coast pilot program between August of 2002 the fall of 2005. At each instance, the incoming

individuals had to be brought up to speed on the program and its participants. Needless to say, there was no clear way to circumvent delays of this nature.

We also believe that the discussion which took place during this period surrounding the question of whether TSA should issue a standard or guideline rather than manage the program served to delay the program significantly.

That being said, in March of 2005, TSA informed the National Maritime Security Advisory Committee that its intentions were to publish a Notice of Proposed Rulemaking by September, 2005. During the subsequent months, particularly when it became apparent that the regulation would not be forthcoming in the immediate future, the NMSAC continued to request a response to the recommendations submitted in May of 2005 and to seek an explanation for the ongoing delays.

In December of 2005, my organization requested a copy of the Prototype Phase evaluation report; however this request was denied.

The TSA and Coast Guard did respond to the NMSAC recommendations on February 23, 2006 via a teleconference, the members were not provided with any explanation for the delay. At that time, we were told the draft regulations had been completed and approved by TSA and the Coast Guard and were awaiting final approval from DHS and the Office of Management and Budget.

MOVING FORWARD

With the release of the draft Notice of Proposed Rulemaking on May 10, 2006 and under the assumption that the formal Notice will not be altered substantially, many of the questions surrounding the implementation of the TWIC program have been answered. The program schedule, of course, remains the pressing question. When will the regulation be published in the *Federal Register*, and what is the implementation schedule at the port level?

Of equal concern as we move to transition TWIC from a pilot program to full implementation is the ability of DHS to put together a team of individuals who will be able to lead the program through completion. Needless to say, while the high employee turnover in both the DHS leadership and within the TWIC program office itself caused significant delays during the pilot, the ability to keep the TWIC program moving along a predetermined timetable once implementation begins will be paramount to its ultimate success.

There were very few surprises in the draft Notice. Most of what TSA had indicated to NMSAC and other stakeholders would be in the final rulemaking is in fact included. From our perspective, the draft rule raises few questions relating to the general program implementation. There are, however, questions and concerns about some of the details not included in the draft and how the answers to those questions will affect deployment. These include:

There does not seem to be a provision for casual longshore labor. While we recognize that it is necessary to screen individuals who will require unescorted access to secure areas at

maritime facilities, it is equally important that this program does not dramatically and adversely affect commerce.

There has been significant debate during the last few years about the effect the criminal history background check would have on transportation workers. While a number of maritime interests agree that the standards for the TWIC should be consistent with those of the Hazardous Material Endorsement, a significant majority believe that security regimes at maritime facilities do not dictate such stringent requirements. It will only be upon publication of the Rulemaking that we will be in the position to publicly dialogue on this critical issue.

Since foreign vessels and therefore crewmembers are exempt from the regulation, facilities are concerned about how they will grant access to visitors arriving by water.

Under the draft, terminal/vessel operators are required to know who is on board at all times – and to store the information in a database for not less than two years – and also that federal officials and state/local law enforcement are not included in the TWIC requirement. It appears, therefore, that terminal facilities will be required to manually enter information pertaining to those visitors who are exempt from the TWIC requirement. This may not be practical.

In the event of an incident at a facility, is the TWIC program to be de-activated at the affected site to allow access to first responders? Would we want the program de-activated at such a critical time? If not, how would we validate emergency personnel?

Who will be eligible to serve as trusted agents? We believe contractors should not only undergo the same screening as applicants, but they should be held to even higher scrutiny, such as a financial background checks as well as criminal history. In addition, these agents should undergo general business and customer service training as well as TWIC-specific training.

At both initial implementation and beyond, during the interval between application and response, will applicants be allowed continued unescorted access to facilities/vessels if the operators choose to grant such access?

What is the alignment between TWIC and the recently announced Coast Guard screening program for port employees, long-term contractors and longshoremen?

Other more technical concerns include implementation of those business processes which were never tested during the pilot program:

- **Communication with the central database**. The central database would allow facility operators to provide TSA with the names of individuals to whom they grant access. With this feature, if an individual's card were hotlisted, TSA could proactively notify all facilities where the worker had been granted access.
- **Hotlisting**. Since no connection between a central database and the individual facilities was established, the card hotlisting process could not be tested.

- **Interoperability**. One of the original components of the TWIC vision included its ability to be used with legacy systems and across modes. This test was not fully completed. Additionally, because of the delays in implementing TWIC, many vessel and facility operators have been compelled to implement their own programs in order to comply with Coast Guard security requirements and address internal needs. TSA needs to include a mechanism to phase in the use of TWIC so as to avoid the significant and redundant expenses associated with full replacement of legacy systems. Similarly, it is necessary that the final deployment schedule not only allow sufficient time for facilities to purchase and install equipment, but also to modify software to integrate the card reader technology with their internal access control systems.
- **Web portal**. The web portal was designed and tested using an employer sponsor to input and maintain worker data. Under the draft rule, employer sponsorship is not included and applicants will be required to enter and query data individually. How will TSA establish and validate individual accounts?
- **Use of Biometrics.** The prototype did not test use of biometrics with workers at port facilities. This is a significant concern. Also, the draft rule calls for use of an alternate biometric if an applicant is unable to provide the primary biometric. What will this be, and will separate readers be required?

All of the above notwithstanding, we believe TSA has assembled the basic building blocks to launch a program which will meet the need to validate individuals seeking access to secure maritime facilities. And we appreciate that DHS listened to its stakeholders on such key issues as eliminating the employer sponsor requirement, managing the program versus issuing a standard, and aligning the program with other credentials such as the Merchant Mariner Documentation.

Over the years, the maritime sector perhaps more than any other has recognized the need to implement new programs and practices in an effort enhance the security of our homeland. We have dramatically altered business processes and worked closely with DHS agencies to help them achieve their missions. As with many federal programs, we want to continue to work with TSA on the TWIC program to ensure there are no unintended consequences, such as those which might arise if we are unable to credential casual labor, and that the TWIC will be deployed in the safest, most secure, and efficient manner possible.

We believe that with additional program refinement, the TWIC will ultimately emerge as an invaluable tool to meet the dual goals of improved security and facilitation of commerce.

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