



MARITIME EXCHANGE

for the Delaware River and Bay

Leading the Way to Port Progress

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Docket Management Facility
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, DC 20590-0001

RE: USGC-2006-24196

This letter is in formal response to the request for comments to the above-referenced docket. The Maritime Exchange for the Delaware River and Bay is a non-profit trade association representing port operators and maritime businesses throughout Southeastern Pennsylvania, Southern New Jersey and Delaware. As participants in the East Coast TWIC pilot program, we believe the Exchange and its members are uniquely qualified to comment on this docket.

The discussion below reflects the views of the Maritime Exchange as well as the members of the Delaware River TWIC Stakeholder Working Group.

Please allow us to open by stating two overarching principles which must guide the implementation of the TWIC program: First, it is important to remember that TWIC, as originally envisioned, was planned to serve as a tool to facilitate access to secure maritime vessels and facilities for those with both a legitimate need and the right to obtain such access. The lack of TWIC was never intended to deny access. This was the original concept proposed by USDOT, and later the Transportation Security Administration, and it was because of this vision that industry embraced the TWIC concept.

Second, at all levels within the Congress and the Administration, policy makers have repeatedly stated that it is critical that the United States Government must achieve a balance between security and commerce. Simply stated, if the U.S. economy suffers as a result of onerous and expensive security measures which impede trade, we will not have won the battle against those who would seek to do us harm.

It is with those principles in mind that we offer the following specific comments.

V. Analysis of USCG Proposed Rule

Recurring Access: We support this concept and appreciate its inclusion in the proposed rulemaking.

Alternate Badging Systems: We recognize that Coast Guard should not require a vessel/facility to use TWIC as the primary badging system. However we are deeply concerned that if many

vessels/facilities do not elect to use TWIC as the primary system and continue to require individuals to obtain site-specific cards, it will result in significant financial and operational burden on those individuals who require access to multiple facilities to do their jobs. In addition to longshore workers and pilots, this would apply to the whole cadre of individuals who service vessels and their crews while in port, such as steamship agents, tug operators, seafarer organization staff and volunteers, line handlers, surveyors, etc. While we acknowledge that the Coast Guard has no authority, and agree that it should not, to compel an operator to use only the TWIC, it is our hope that Coast Guard could include some incentives for facilities to discontinue the use of site-specific credentials. These incentives might take the form of fewer inspections, reduced penalties if violations are detected, etc.

That being said, it is our understanding that those facilities who do intend to continue to use site-specific cards are doing so because the TWIC does not meet their need to visually identify that an individual has the right or need to be in a certain area once he or she has entered through the main facility gates. Historically, this has been done via color-coded badging systems. This issue arose during the pilot program, and Delaware River port stakeholders informed TSA that this is an important component of their security regimens. TSA offered as a solution an option to utilize colored lanyards or card holders. Needless to say, this potential solution is neither practical nor secure.

Although every port is unique, we believe DHS should attempt to work with industry to determine whether a color-coded standard or other mechanism to address this deficiency in TWIC could reasonably be implemented. We are certain that neither Congress, TSA, nor the regulated public is interested in deploying a system that does not meet facilities' security needs.

CDC Facilities: Coast Guard should not require more stringent processes than those of TWIC at facilities handling Certain Dangerous Cargoes. Facilities such as these have historically self-policed and demonstrated a thorough understanding of what security measures they should implement. Additionally, Coast Guard will dramatically complicate security plan creation and enforcement if it attempts to create tiered requirements. For example, an argument could reasonably be made that a facility handling scrap steel should have fewer restrictions than those handling containers. Ultimately, facility operators have the responsibility to ensure safety and security at their sites, and it is best that Coast Guard allows industry to determine its own needs.

TWIC Exemptions: While we understand the rationale behind the exemption for foreign vessels and crew members, it is important to note that with this exemption, the requirements to implement TWIC as proposed will only pertain to U.S. citizens or legal aliens. Please be aware that 95% of the ships calling the Delaware River – and indeed most vessels calling all U.S. ports – are foreign-flagged. In effect, those about whom we are most concerned – foreigners seeking to enter the United States. – and who comprise the majority of individuals who access our ports via waterside will not undergo the same level of scrutiny.

Part 101.514 – TWIC requirement. We understand and recognize the underlying need to require that individuals who access secure maritime areas undergo security screening. However, any security regimen must allow for the efficient movement of workers, particularly in the maritime environment where a variable workforce is commonplace. There is no doubt that maritime commerce will be severely hindered unless we can find an adequate solution to the issues discussed below.

Casual Labor: The maritime industry – including both vessels and facilities – is completely reliant on a steady stream of “casual” labor in order to operate effectively and efficiently. These laborers are hired with little advance notice and in some cases, may work in the maritime environment for only one day. It will be difficult, if not impossible, to arrange for these individuals to obtain TWICs or to require they be escorted constantly during the duration of their employment.

For example, one stevedore reports a total payroll of 575 workers during 2005. Of that number, 167 were union employees, and an astounding 408 were casual laborers. As this example illustrates, in many maritime operations, the casual laborers often significantly outnumber permanent employees. As a result, even if it were possible for workers to serve as escorts for non-TWIC holders and continue to perform their own jobs, the sheer numbers involved make this requirement impossible.

Please keep in mind that often casual laborers are not always hired through an agency or hiring center; when work demands, union employees will seek assistance from friends and relatives – any able-bodied individuals who can help ensure the work gets done in a timely manner.

Seasonal Labor: In addition to casual labor, many employers rely on seasonal labor, such as ferry operators and dinner cruise operators. These workers may only be employed for a period of ninety days or less. Often these are high school or college students, and the wages offered these individuals are consistent with typical part-time or seasonal employment. Both the cost of the TWIC and the 30 + day delay between application and TWIC issuance will hamper the ability of employers to fill seasonal job vacancies.

Vendors: During the course of the pilot program, participants on any number of occasions discussed their concerns surrounding office supply delivery personnel, couriers, postal workers and others who must access secure facilities on a regular basis. In many cases, different drivers handle different routes on various days, so there may not be an easy way for these companies to determine who should apply for TWICs. Neither is it practical for all facilities to escort these individuals.

Truck Drivers: While most drivers who haul international cargoes on a regular basis will be included in the TWIC program, there are large numbers of drivers who may need access to secure maritime facilities on a limited basis. For example, a driver from the mid-west, who may

not ordinarily conduct business at ports and would therefore have no reason to possess a TWIC, may on a single occasion find himself contracted to deliver or pick up cargoes from a port. One facility operator estimates that during the month of May, 2006, of 1,400 truck arrivals, approximately 120 drivers were one-time visitors.

Tug boats, certain ferries or barges, and other small craft: While some of these types of vessels may be regulated by the Coast Guard, the reality is that many of these are staffed by very small crews. These individuals work together and know each other, and could easily determine visually whether a stranger were attempting to board or access a secure area. While we believe employees should still be required to undergo security screening and obtain TWICs, we suggest that operators of these craft be exempted from the requirement to have readers on board and access the TSA database periodically. Small boats generally do not have large computer systems nor the capability to store large amounts of data required by the proposed rulemaking. Adding these requirements would dramatically alter business processes, significantly increase costs, and provide no measurable increase in security.

The Maritime Exchange and its members believe the final regulation must allow regulated vessel and facility operators to make their own decisions on how they can best accommodate non-TWIC holders and include the information in their security plans which will be approved by the Coast Guard. These determinations will, as appropriate, be more risk-based, rather than the blanket requirements envisioned by the proposed rule.

Coast Guard should also consider exempting any temporary workers (i.e., those who are contracted for 90 days or less).

In addition, the final rule must provide a mechanism to allow vessels/facilities to grant unescorted access facilities to individuals during the interim between TWIC application and card issuance as well as

From the Analysis of the TSA Proposed Rule

Lead Time: Since TSA cannot guarantee that any threat assessment will be completed in less than 30 days, there must be a mechanism to allow applicants to access vessels/facilities without escort (should the facility/vessel operator agree to grant it) during the application process.

Lost, Stolen, Damaged Cards: Similarly, vessel/facility operators will need a mechanism to grant unescorted access during the interval between reporting a lost, stolen or damaged card and its replacement.

33 CFR)

Part 103.305 – Composition of Area Maritime Security Committees. We do not support the proposal that AMSC members should be required to obtain TWICs. Given that only a small percentage of information discussed during AMSC meetings is security sensitive, and none of it classified, DHS should not implement this requirement. Further, this requirement would dramatically increase costs to AMSC members, potentially discouraging participation. In addition to vessel and facility personnel, AMSC members may include office workers, academics, trade association representatives and others who would not as a rule need access to secure maritime areas. Implementing this requirement will be very difficult for Coast Guard to manage and detract from Coast Guard's ability to focus resources on mission critical activities. FMSCs have already identified certain individuals with whom they wish to share sensitive information, and these individuals have undergone appropriate screening. For the remainder, signing SSI non-disclosure statements should be sufficient.

Part 104/105 SubPart B – Vessel/Facility Security Requirements.

Part 104.200(14)/105.200(15). Because no technology will work at all times, we appreciate the inclusion of language which allows operators to include protocols for responding to TWIC holders who cannot electronically verify a match between themselves and the information stored in the cards. Similarly, it is necessary to allow operators to grant unescorted access to individuals who may have simply forgotten their cards on a given day. This can be accomplished through visual identification, ensuring the name is on a gate list, a PIN, or potentially matching the individual's biometric with a database rather than the card.

Part 104.235/105.225 – Recordkeeping Requirements. Under the proposed rule, terminal/vessel operators are required to know who is on board at all times – and to store the information for not less than two years. It is also proposed that neither foreign vessel crew nor federal officials and state/local law enforcement are 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.

Part 104.265. Biometric validation should not be required at MARSEC 1. This requirement will unduly hamper commerce during normal operations and it should only be required when threat levels are elevated.

Part 105.280 – Security Incident Procedures. In the event of a security incident, it is likely that emergency responders will be required on scene. These individuals may not be TWIC cardholders. Facilities must be allowed a mechanism to grant the necessary unescorted access to emergency responders as required by any given incident situation.

VII. Rulemaking Analyses and Notices

Impact on Small Business: We believe the fact that TSA and Coast Guard have yet to determine the impact on small business is significant. If such impact were known, it is likely that some of the processes and requirements outlined in the proposed regulation would demand modification.

We believe the initial costs are significantly understated. For example, the card reader installation costs are estimated at \$200 (at all ranges). In the Philadelphia area, technicians generally charge between \$150 and \$200 per hour, depending on the level of complexity. This estimate would not come anywhere near actual installation, configuration and testing expenses for the card readers. In addition, since readers will be required on both inbound and outbound lanes at facilities, as well as at some areas within the vessels/facilities, or portable readers to be used at waterside access sites, we believe the card reader purchase expense estimate is far too low. The increase in costs associated with the recordkeeping requirement of \$2,709 will not cover the purchase of additional primary and backup storage devices, necessary database development, or operations personnel expenses. In addition, the estimate does not include: programming costs, which can be significant, to integrate the readers with internal access control systems; ongoing equipment maintenance costs; and increased telecommunications expenses resulting from the interaction with the TSA database.

The proposed regulation assumes that some port facilities will be in the position to provide space and utilities for TWIC enrollment centers for an unspecified period of time, some potentially permanently. The direct costs and opportunity costs for these facilities are not included in the estimate.

Other costs: DHS must consider the integration of TWIC with other requirements, such as port authorities who also operate mass transit systems or airports. These agencies may potentially be required to replace large legacy systems to incorporate the TWIC in order to maintain internal consistency and eliminate the expensive redundancy associated with credentialing their own workers.

Port Worker Screening: With the publication of the TWIC proposed rulemaking, we believe the screening program for port employees, longshore workers and contractors announced by the Coast Guard on April 28 should be discontinued immediately. This is a program that is completely redundant to TWIC and its continuation will unnecessarily consume sorely-needed resources for both the government and the regulated public.

Once the rule is finalized and implemented, it will be essential that Coast Guard establish a program to ensure consistency in enforcement of the regulations and processes mandated by TWIC. A program of this magnitude will by its very nature decrease efficiencies in port and vessel operations. Therefore, inconsistencies across ports or across regions will make it extremely difficult for vessels calling multiple facilities to comply as well as have the potential to create economic advantages/disadvantages.

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Finally, because the implementation of TWIC represents such a sea change in the way maritime commerce is conducted, we believe the Coast Guard and TSA should extend the comment period by an additional 45 days and host further public meetings. The program and its inherent requirements are complex, and even those of us who participated in the pilot program are having difficulty assessing its full ramifications. There are large numbers of international transportation organizations who do not have an understanding of what the program entails or how it may affect their operations; these organizations should be provided with additional information and additional time to complete their assessments.

The Maritime Exchange for the Delaware River and Bay appreciates the opportunity to provide comments to this docket. We look forward to working with both TSA and the Coast Guard to meeting the challenges addressed in this letter and helping achieve the dual goals of meeting security needs and fostering a healthy commercial environment.

Sincerely,

A handwritten signature in black ink that reads "Dennis Rochford". The signature is written in a cursive style with a long, sweeping horizontal stroke at the end.

Dennis Rochford
President