

National Maritime Security Advisory Committee
TWIC Working Group
Discussion Items
As amended July 30, 2008

BACKGROUND

The National Maritime Security Advisory Committee (NMSAC) was chartered to advise, consult with, report to, and make recommendations to the Secretary of the Department of Homeland Security (DHS) on matters relating to maritime security. Since its inaugural meeting in March of 2005, NMSAC has repeatedly expressed its support of the Transportation Worker Identification Credential (TWIC) program, and Committee members have dedicated significant time and effort to assisting DHS with the development of policies related to TWIC implementation.

At its April 2008 meeting, NMSAC expressed concerns with the progress of the TWIC issuance process currently underway as well as reiterated questions and concerns regarding the reader pilot program. As a result of those discussions, it became apparent that there is no centralized forum under which questions, comments, concerns and suggestions for improvement are being collected and addressed. Although the TWIC Stakeholder Communications Committee (TSCC) has been helpful, NMSAC suggested that additional opportunities for improved communication exist and perhaps NMSAC should serve as the overarching forum for resolution of outstanding issues.

Subsequent to the April meeting, NMSAC TWG members were solicited for their comments and suggestions. Following is a summary of the items presented. Also included in this document are answers to specific questions regarding railroad crew access to regulated facilities.

Unresolved problems in each of the areas addressed below help to foster the sentiment among stakeholders that the TWIC program is broken. Coast Guard and TSA must address the issues identified in each of these areas if they hope to generate higher rates of enrollment, sustain stakeholder cooperation and meet compliance dates.

Although the list which follows is a fairly lengthy one, it should be noted that NMSAC does recognize and appreciate the improvements made to date, such as the weekly "TWIC Dashboard," additional employment metrics, providing the ability to schedule appointments for card activation and including an on-line card status check. We appreciate the efforts TSA and its contractors have made to accommodate these stakeholder requests.

KEY RECOMMENDATIONS/ACTION REQUIRED

Compliance dates: NMSAC members were surprised that there was no discussion with stakeholders prior to the May 2, 2008 announcement that the final compliance date would be extended until April 15, 2009. While maritime stakeholders repeatedly expressed concerns with a September 08 compliance date given the delayed start, the enrollment center deployment schedule (in which some centers would not begin enrolling until near the original September 2008 compliance date), and alarmingly low initial enrollment numbers, NMSAC feels very strongly that DHS should have consulted with industry before making unilateral decisions regarding the compliance schedule. NMSAC recommends that future policy decisions be made in conjunction with industry.

With the delay until April of next year, NMSAC is also concerned that Coast Guard will be hard pressed to address both TWIC compliance and the five year MTSA security plan re-approvals.

Further, there is a very strong sense among members of the maritime community that those who spent the time, effort and in some cases a significant amount of trouble, to obtain TWICs early in the process are being financially penalized. Specifically, by the time enforcement begins in April, assuming that deadline is met, some individuals will have had their cards for a year and a half. NMSAC strongly recommends that DHS identify a mechanism to compensate these individuals.

For example, everyone who obtains their TWICs prior to the original September 2008 enforcement date should receive a credit for an extra year. An individual who has been issued a TWIC with an expiration date between October 16, 2012 and September 25, 2013 would be granted a new expiration date one year from the original expiration date.

This approach could turn what has become a negative public perception about the program into a positive.

- In short TWIC is a user-funded program; users must not be penalized for working to help TSA meet its goals.

NMSAC recognizes that TSA has consistently stated that early cardholders would in fact realize less benefit than those who waited. However, we believe it is essential that TSA demonstrate a show of good faith to those who supported the program during its kick off, especially in light of numerous delays and failures no reasonable transportation worker in the private sector could expect.

Rail Crews: The question about how the TWICs of rail crews are going to be verified still looms large. Since this is an issue in virtually every port in the country it would be prudent for the Coast Guard to take the lead nationally with the Federal Railroad Administration to develop a workable solution and national guidance (see NMSAC response to RR questions appended to this document). We understand this effort is underway and encourage Coast Guard to work with NMSAC in the development of additional guidance.

Utility Workers: In a similar vein as the rail crews, a national dialogue is required with regard to TWIC cards for utility workers. The population of these workers is far too great and their need for access too infrequent to require a TWIC, however they often need access for emergency repairs. Perhaps a national policy could be established wherein only supervisory personnel might require a TWIC and/or that a work order and corporate ID would be sufficient.

Communications/Outreach: Other than providing updates on when enrollment is beginning in certain ports, the communications team is not particularly visible. Nationwide, there is a concern about both the trucking and merchant mariner communities and whether they are fully aware of the TWIC requirements, especially owner/operators. There should be a concerted effort to blanket state Departments of Motor Vehicles, truck stops and weigh stations throughout the country with TWIC posters and brochures targeted to truckers. NMSAC is also concerned over whether manufacturing facilities are communicating with rail companies regarding whether rail workers who access

manufacturing facilities will need TWICs. Manufacturers should be reminded to contact their rail service providers to inform them if rail workers will need TWICs.

The TSCC asked TSA to obtain and provide specific information on what outreach measures have been taken, but this has yet to be provided.

Further, we appreciate that Lockheed Martin has been responsive to requests from various port communities to participate in local stakeholder meetings. Some communities may not realize this is available; TSA should ask its contractor(s) to proactively reach out to local stakeholders and offer to support discussions at the port level. Further Lockheed should share the list of local stakeholder primary contacts so that these individuals can get together to share information as needed.

Particularly as phase in for TWIC compliance enforcement begins, joint outreach efforts with TSA, Coast Guard and appropriate contractors/sub-contractors at the local level will be critical to the successful implementation of this program.

Hotlist: The "hotlist" for TWIC cards is published to a web page, which may not be the most efficient manner for security forces/information technology personnel to integrate the hot list data into their access control systems.

There is currently no way to validate the "hotlist" against a TWIC card presented for access. Further, there is no software or description of how to "decode" the "hotlist" of TWIC card information. DHS should provide this information.

Regulated entities must be provided with an electronic access (direct download, searchable database, or telephonic system) to the national database in order to readily verify the validity of a TWIC that is presented for access. The "hotlist" also needs to indicate whether the TWIC has been denied, revoked, suspended lost or stolen so that the owner/operator can make a decision whether or not to allow a person access.

This means that the names and biographical information of anyone who has applied for a TWIC and been denied must be available to all owners/operators on a real time basis so that facilities can choose whether to permit access to these individuals with an escort.

When an individual reports a card as being lost or stolen, it should be so noted on the hotlist. The individual must be issued a receipt (e.g., with printed bar code) that can be presented at the access control point in order to continue to gain unescorted access.

- The process to report a lost/stolen card, including payment for a replacement card and printing of receipt, must be available through a web interface to minimize the number of trips to the enrollment center.

Facilities are still unclear whether unescorted access can be provided to someone who has reported a revoked, suspended, lost or stolen card; this information is necessary for facilities to make risk-based decisions on whether to grant access. We suggest that DHS clarify this in future documentation.

Low Enrollment Numbers: Of major concern to all stakeholders are the low enrollment numbers. The NMSAC suggests that extending the compliance date may not necessarily have helped in this regard and in fact may have provided an additional excuse for those who have purposely delayed enrolling.

TSA and Coast Guard are aware of the low enrollment numbers. Many ports feel strongly that initial population estimates were exceedingly low, which exacerbate concerns about the slow pace of enrollment. Now that the program has been out on the ground for several months, NMSAC recommends that DHS conduct a mid-term review of the population estimates and publish updated information for review by maritime stakeholders. This will enable stakeholders to a) either re-evaluate population estimates and/or b) determine how close to the goal each port is. Second, TSA should ensure that its contractors take those promised proactive measures to identify stakeholders interested in hosting mobile enrollments, increase staffing to maximize the efficiency of the enrollment centers and redouble outreach efforts to port workers. Although enrollment continues to increase, significant improvements in the rates remain to be seen.

Stakeholders have requested additional data from TSA regarding enrollments by occupation/job function to help determine where additional outreach is necessary. Though some information has been provided, its utility is questionable given that the enrollment system does not capture description when “other” is selected and that applicants are allowed to check “no occupation” (which seems to defeat the purpose as applicants are supposed to be maritime workers). NMSAC suggests that the enrollment system immediately be modified to require that specific employment information be entered.

Individual port operators may be able to provide additional information regarding population estimates for their regions.

Finally, and of paramount importance, low enrollment numbers will limit the effectiveness of card reader field testing. As was clearly demonstrated by the initial TWIC pilot program, the validity of the TWIC reader pilot will be close to null if terminals do not have the number of TWIC card carriers sufficient to simulate anticipated use.

ADDITIONAL SUGGESTIONS/RECOMMENDATIONS

TSA/Contractor Performance: NMSAC is concerned that TSA has not met its stated goals for card delivery dates. Though we recognize that steps have been taken to improve card production and delivery times, after nine months of operation, TSA is still not delivering cards within the seven to 10 days after enrollment, which was the time frame industry required and which TSA agreed was a target goal; and the agency is not even reaching the 30 days after enrollment as outlined in the final regulation.

Since February of 2007, stakeholders have repeatedly requested information on the performance measures specified in the TSA contract with Lockheed Martin. Most recently, NMSAC made this request at the April 2008 meeting. The Committee also requested a copy of any TSA evaluations of the contractors success/non-success in achieving the stated measures. This has yet to be provided.

Given the TSA history with this program as well as a result of the issues enumerated in this document, NMSAC would like some definitive assurance that there is an oversight process – not only with Lockheed Martin, but with any and all contractors and sub-contractors associated with this project – and

that it is being met. Stakeholders, who are ultimately funding this program, should also have the opportunity to comment on the contract parameters.

We note that Lockheed Martin is an ISO 9001 certified company. That being said, TSA should file any non-conformance reports to the extent Lockheed is not meeting customer expectations.

Use at Airports: Given that TSA has been able to effectively communicate what size plastic bag travelers must use to transport their liquids, it is difficult to understand why TWIC is not universally accepted as an approved federal identification card at all airports. TSA should correct this immediately. There should be a specific deadline date set (and met) after which all airports will accept TWIC as an acceptable form of ID.

It should also be noted that mariners who fly to their assignments are generally scrutinized more thoroughly since their tickets are generally one way. NMSAC strongly believes that TWIC should be recognized as a security card and TWIC holders should have access to expedited screening at airports along the lines of other trusted traveler programs.

Mariner Use of TWIC: TWIC should also be an accepted form of identification for pre-employment or random drug testing at testing centers for mariners.

Who Must Obtain a TWIC: While the intent of Congress in enacting the Maritime Transportation Security Act of 2002 (MTSA) was clear in requiring that individuals who work on regulated vessels or in regulated marine facilities obtain TWICs, current regulations suggest but do not enumerate the specific job titles of individuals that are required to obtain TWICs. The Coast Guard has addressed this in Navigation and Vessel Inspection Circular (NVIC 03-07) wherein the agency provided an illustrative list of ten communities of people that would likely need TWICs. Further, current regulations are clear that it is within the discretion of vessel and facility owners and operators to grant unescorted access to secure areas.

Though there is absolutely no requirement in the regulations that vessel or facility owners or operators provide escorts, it may, however, ease TWIC implementation if the regulations are amended to incorporate the language of NVIC 03-07.

Specific Guidance Needed

1. **Law Enforcement Guidance** – Specific guidance needs to be provided to state and local law enforcement officials on exactly what actions they can and can not take when a fraudulent or tampered with TWIC is presented. Is it a crime to present a fraudulent card and should that individual be detained, or should the TWIC simply be confiscated? And by whom?
2. **TWIC Verification at Non-MTSA Facilities and Vessels** – Equally unclear is what, if any, action a police officer can take if a fraudulent or revoked TWIC is presented as ID at a non-MTSA regulated facility. For example, if a local police officer stops an intermodal container truck at bridge or tunnel, can the officer ask if the driver has a TWIC and if so verify the identity and validity? Similarly, if an individual is questioned at another transportation facility and voluntarily presents a TWIC as a form of ID, can the officer verify the identity and validity of the TWIC? In both cases, if a discrepancy is found (on the “hotlist,” no biometric match, obvious tampering with the TWIC) what action if any

can the officer take? The federal government needs to provide state and local law enforcement officials with additional information and clear guidance on what actions they are permitted to take at both MTSA and non-MTSA facilities.

3. **Failure to Capture Biometric:** As a result of the number of individuals whose fingerprint biometrics are unable to be captured, a software patch to enhance the ability to capture a damaged or otherwise unreadable biometric must be applied to the TWIC enrollment stations. While this will aid in the enrollment process, there remains the concern that TWIC readers, without the same patch, will be unable to read these particular biometrics. Unless this issue is addressed by the reader manufacturers, the USCG and TSA need to assess what the impact on daily operations will be if biometrics are unreadable due to lower quality fingerprint capture.

Escort Requirements: While neither the MTSA, Coast Guard regulations implementing TWIC, nor other general land-based law enumerates any potential liability for a TWIC-holder who acts as an escort for a non-TWIC holder who then engages in a transportation security incident or other prohibited act, there have been indications that such liability is contemplated. It is imperative that this matter be clarified. The answer could impact the willingness of certain individuals to act as an escort.

Additional questions include: does an individual who escorts a ship's visitor through the facility need to remain with that visitor while on board the vessel? Assuming that responsibility can be transferred to a crew member, what liability if any does the facility have if the vessel fails to control the movement of that individual and he/she is on the facility (accessed from the vessel) without an escort?

Card Design: The TWIC program missed an opportunity to provide a visual identifier on the TWIC card for essential non-uniformed port personnel that might require access on local roadways and to the port for critical response and recovery operations. Since it is a well recognized fact the 85% of the nation's critical infrastructure is owned by the private sector, the individuals that work for these private sector businesses will be critical to response, recovery and resiliency activities. However, if these individuals are not able to travel on local roadways because they are shut down for anything other than emergency vehicles, as NY/NJ roadways were for several weeks after 9/11, these individuals would be unable to fulfill essential duties.

The TSA should revisit the physical design of the TWIC card to include an indicator that would designate certain individuals as essential personnel that would require access in an emergency.

Along these lines, members believe the appearance of the card is too plain. Simply stated, it does not look like a government-issued document. At a minimum, the TSA or DHS logo should be printed on the card. This will undoubtedly go a long way toward ensuring widespread acceptance of the card at airports and other venues where ID is required for access.

Enrollment Center Locations: In far too many port locations, fixed sites are often far removed from the ports they are designed to service, and/or lack sufficient truck access and/or parking. In addition, centers are often difficult to find and signage is generally lacking.

TSA should ensure its contractors work with local stakeholders before making decisions regarding fixed site locations. Several TWG members indicated that they've expressed a willingness to work with Lockheed on this issue, but that the offers have been declined. In one area recently, a "temporary"

enrollment center was established at a hotel two towns away from the port facility because the contractor felt compelled to meet a deadline and the “permanent” site within was not yet operational. This is a gross misuse of program dollars; TWIC applicants will not be inclined to travel to this site when they know the permanent site is forthcoming.

Advance information about enrollment center locations and start up and end dates must be provided to maritime stakeholders; this is particularly relevant given that TSA is not meeting stated advance notice Federal Register publication dates. Information on posters should also contain the address of the enrollment center locations. Providing advance information on enrollment center closure dates may also help spur enrollment in a given area.

Fixed sites should offer weekend or evening hours to accommodate workers’ schedules. More flexible enrollment hours are likely to positively affect enrollment rates.

- **Leasing for sites:** Many ports who have offered to host fixed sites or requested mobile enrollments centers report that communication regarding leasing, start up dates, and other critical information is difficult to obtain. Efforts to identify the status of center startup require multiple phone calls and emails, and individuals are passed from person to person before they can obtain information. It is incumbent upon TSA to police this activity to ensure ports and their respective constituencies are provided with enough advance notice to make appropriate arrangements.

- **Post initial roll-out site locations:** Stakeholders have repeatedly requested information regarding the locations of fixed sites post initial enrollment. TSA has indicated that the decision will be made by its contractor. NMSAC strongly believes this is inappropriate. TWIC is a user-funded program; decisions about its ongoing operation should not be based on the decisions of a for-profit company.

TWIC-holder information changes: The process for renewing the PIN number is unclear. Some stakeholders have been told that if an individual forgets his PIN he must get a new TWIC card. We have also been told that in order to get a new TWIC card, you need to know your PIN number. TSA should provide clarification on this.

Also, there is uncertainty regarding what actions if any does the TWIC holder need to take if his/her name, address, etc. changes during the 5 year validity period. This too should be clarified.

Technical Issues: Even when stakeholders are proactive in encouraging their workers to enroll in TWIC, unresolved technical problems continue to limit the program’s prospects for success. The most pervasive of these was the inability of the biometric scanning equipment to accurately record and process enrollee fingerprint templates. For example:

- The Port of Long Beach recently hosted an on-site mobile enrollment during which over 200 Port employees were enrolled in the TWIC program. Of the attempted enrollments, 3.7% were unsuccessful due to fingerprinting failures.
- Other stakeholders are reportedly tracking up to 8% of their workers whose enrollments cannot be completed due to fingerprinting issues. This number only increases as more workers attempt to enroll.

- There are still individuals who applied at the Port of Wilmington Delaware in October of 2007 who have yet to receive their cards.
- It has been discovered that the encryption of the fingerprints on certain cards was not performed properly which causes the decryption to fail. No one will know the extent of the problem until those cards that have been issued are tested.

It is as yet unclear what impact fingerprinting issues will have on the biometric component of TWIC. It is our understanding that TSA is aware of the fingerprinting issue and plans to deploy more sensitive readers in the hope of reducing the failure rates.

Other technical problems affecting program rollout include:

- Enrollment system failure
- Incorrect name or other information on card
- Photos being processed with darkened photos
- Expiration date errors
- Security features not printing properly
- Many applicants have reported enrollment processing of several hours or more at enrollment centers. There is little confidence in the validity of Lockheed Martin's stated average wait time numbers (e.g., 8 minutes). This lack of confidence is based on anecdotal information as empirical data has not been made available.

Applicants have reported that multiple visits for both enrollment and activation – in some cases as many as six visits – to enrollment centers have been necessary because of various technical or operational difficulties. This is inexcusable.

Reasons for multiple visits include: can't find card; computer is down, internet is down, can't access server, can't write data to card and will have to try again some other day, etc. Extended enrollment times have been provided as: internet slow, system is slow (in several instances, data transfer at activation has taken as long as 1-2 hours), information must be entered into the system at enrollment even though individual had pre-enrolled, camera (fingerprint scanner, workstation, etc) not working properly.

East Coast registrants have noticed significant degradation of speed at around noon time, as West Coast operations are starting up for the day. TSA (Lockheed) should be able to more effectively balance their system/internet/connectivity loads.

Customer Service: In addition to the technical problems associated with enrollment, stakeholders also reported a number of issues regarding both the TWIC website and the TWIC Program Help Desk. NMSAC acknowledges and appreciates the improvements made to the help desk to date; however TSA must continue to monitor progress and performance closely.

The issues range from a lack of usability to experiencing extended hold times when seeking information.

- The TWIC website is frequently down for maintenance
- Enrollees reported frustration at the overly complicated password creation process

- The website is reported difficult to navigate by internet users at all levels of expertise
- Incorrect center address information has been posted
- Fixed site closings/schedule changes not reported on web site
- Unacceptable wait times of 25-40 minutes (and longer) when calling the help desk. Some stakeholders have reported report wait times in excess of three hours.
- Trusted agents are poorly trained, particularly at new centers
- TSA (Lockheed) has failed to meet scheduled card production dates (e.g. within 30 days)
- Many individuals who have received notification that their cards are ready for pick up have arrived at the centers only to be told their cards can't be found.
- Some people have received notification that their cards are ready for pick-up after they have received/activated their cards.
- Some individuals who have not been notified that their cards are available have stopped in to their enrollment centers only to find their cards have been waiting for them.
- Inconsistencies in communication have been reported. Some individuals are told, for example, that if they have a permanent disqualifying offense on their records, they cannot obtain TWICs.
- Some individuals have been told their data has been lost and they must reapply(!).

When problems are reported, there is no mechanism to ensure proper closure. Many individuals who reported problems applying are told someone will check into it and respond back, but weeks and months go by with no further notification.

Frustrations among applicants could be eliminated, or at least minimized, simply by implementing more effective and proactive communications. TSA must ensure its contractors demonstrate their ability to successfully open, resolve, and close trouble tickets in a timely and worker-friendly manner.

Measures might include: those who have made appointments could be proactively notified via email or phone when the centers are experiencing technical problems. In addition, the same outreach mechanisms for "TWIC is coming" information should be used to distribute center technical problems in an effort to reach those whose schedules do now allow them to set appointments.

Stakeholders should be provided with phone numbers to the enrollment centers to determine/verify operating status when technical issues have surfaced.

Those who have not received their notifications that their cards are available within the published time frame (30 days) should receive regular updates on the status of the cards. It should not be incumbent on the applicant to periodically check the web site just in case something might have changed.

Enrollment centers should have web kiosks available for applications to submit customer satisfaction surveys online. There is a concern that since the Trusted Agents may be the cause of an applicant's dissatisfaction, the applicant will not complete the survey, which must be provided to the Trusted Agent.

Similarly, the web site should include a "Report Problems here" feature for applicants (or their trade association representatives who receive many calls from members) to report problems immediately. These reports should be incorporated into a database and tracked to ensure timely resolution.

If the mechanisms for pre-enrollment and information are inaccessible, cumbersome and inefficient, then it follows that individuals will be less likely to pre-enroll. The fewer pre-enrollments, the heavier the burden placed on the fixed site enrollment centers. Additionally, individuals who have been discouraged by negative experiences with either the Help Desk or TWIC website may wait to complete their full enrollment. In order for the program to succeed, the pathways to pre-enrollment and information must be clear, convenient and accessible. To address these problems, we understand that TSA is planning to increase staffing at the Help Desk and to add a West Coast call center. It is hoped that these measures, once implemented, will relieve the long wait times and increase the level of service offered by its representatives.

Alternate Pick Up Location – Well before beginning enrollment, including via comments on the Notice of Proposed Rulemaking published in May of 2006, maritime stakeholders expressed the requirement that some individuals need to be able to pick up their TWICs at a location different from where they originally enrolled. Now that card issuance is well underway, that need has become all the more apparent. NMSAC recommends that TSA and its contractors implement a secure and efficient mechanism to provide this functionality on a case-by-case basis as needed.

ANPRM on the TWIC Readers: By adoption of this document, NMSAC wants to go on record expressing its disappointment that the Committee was not consulted prior to drafting the proposed regulations before they were completed within DHS last year.

Industry had been advised that the draft ANPRM on the TWIC Readers was to be published in October of 2007. It is crucial that the Notice, even in a draft form, be published as soon as possible so that industry has sufficient information for planning purposes, especially with regard to the infrastructure improvements and capital expenditures that will be necessary. The ANPRM must include, as a minimum, guidance on the following issues:

- **Rate of Biometric Verification:** There has been speculation and debate for several months over whether or not the biometric will have to be verified for each access transaction, only at elevated MARSEC levels, or some other frequency. TSA must provide industry with a better sense as to what may be expected of them as the answer could drastically impact both capital and operating decisions.
- **Ingress / Egress Verification:** While certain Coast Guard personnel have verbally indicated that we will not need to verify the TWIC on egress, this needs to be confirmed in writing as this too will have an impact on capital and operating decisions.

Pilot Scope: Despite repeated requests, NMSAC has not been provided with the overall test plan and evaluation plan. This has been promised on several occasions and should be made available for comment immediately. Given the lack of information, it appears Coast Guard and TSA are not planning to request industry comments prior to implementation.

NMSAC believes that the early operational assessment period can begin with a limited number of individuals with a TWIC, but the full blown test will require that TWIC enrollment for pilot program locations is at or near 100%. There is really no realistic time estimate as to when a full-blown stress test of readers can begin.

The following italicized text is an extract from an email one stakeholder received from his local Coast Guard.

TWIC cards need to be verified electronically by means of fixed or hand held biometric readers on a daily basis, upon embarkation to the vessel. If a hand held biometric reader is utilized, designated security personnel will validate the TWIC upon embarkation. Essentially this would mean daily the TWIC will be read for the following three components:

(1) Identity verification: a match of the biometric template on the TWIC card to the TWIC-holder's biometric (fingerprint). Additionally, compare the photo to the individual presenting the TWIC.

(2) Card authentication: ensuring that the TWIC being presented is authentic-this will be determined when the TWIC is read and a valid cardholder unique identification (CHID) and digital signature exist on the TWIC.

(3) Card validity: upon being read, the extent to the card being valid, meaning that it is not expired, been reported lost, stolen, or damaged, or revoked by TSA (hot-listed), will be determined.

Furthermore, in alignment with the above, the TSA holist will need to be downloaded daily to carry out the requirement of #3 above.

As the pilot progresses, we will look to lower the number of times a TWIC is read, however, in the initial phases, we want to test upon every entry.

This is a particular concern to NMSAC as it implies that decisions have already made how these readers will work, how and how often the hot list must be checked, where they will be located, etc. We ask that DHS to respond to NMSAC to indicate the authenticity of this communication.

Acceptance of FIPS 201 Cards: TWIC guidance indicates that federal, state and local law enforcement and emergency response officials do not need to have a TWIC for the performance of their duties. In recognition of that and an understanding that they will generally have a FIPS 201 complaint ID card in lieu of a TWIC, is there an expectation that installed reader infrastructure will also need to read a FIPS 201 card, which would dictate the type of reader (i.e. contact and PIN pad)?

Regulations should allow that facilities may accept other Federal ID (e.g., Railroad, or postal workers) or other compatible security-based card in lieu of a TWIC, to the extent that the facility has readers which can read all cards it designates as acceptable under its security plan and appropriate monitoring/escort protocols are in place.

Escort Requirements/Restricted Areas: Some facilities have extensive camera monitoring systems, which can be made available to local USCG or law enforcement for monitoring. NMSAC believes video escorting in restricted areas should be allowed in such circumstances.

Further, there are ongoing problems with the definition of restricted spaces; there are discrepancies in how COTPs are allowing facilities to define their restricted v. secure areas. In addition, some facilities which have very low risk and almost no maritime nexus (e.g., power companies which take a barge once or twice a year) are required to enforce TWIC compliance even when no maritime activities are taking place.

NMSAC appreciates that CG has allowed sufficient flexibility in its rulemaking and policy guidance to accommodate local needs; however we believe additional guidance is necessary, and the NMSAC TWG stands ready to assist CG in its efforts.

CONCLUSION

Despite the fact that initial TWIC roll-out is already halfway complete in terms of estimated timeframe, only approximately 219,000 of the estimated 1.5 million potential TWIC holders, or just over 14%, have received their cards. Clearly, there are a number of issues that need to be addressed even this far into the process.

NMSAC asks Coast Guard and TSA review this document and respond with a recommendation on what actions we can take collectively to address these concerns to ensure a more streamlined process for both the government and regulated population. We would anticipate receiving such a response by the end of August, 2008.

SPECIFIC RR WORKER ACCESS Q&A

1. What are the current procedures for meeting the access control regulations when rail access is required?

It varies; clearly though, there is no satisfactory universal process that works, and the issue needs to be addressed. Generally, rail workers coming on the marine terminal facility by private vehicle are required to show identification and establish business purpose. They are then allowed unescorted access.

Current procedures for physical security/access control lie with the regulated facility. When a train encounters a rail gate, the train crew stops at the gate, the facility is notified of train's presence and sends a guard or other employee to unlock the gate. At some locations the crewmember will have key access. All crewmembers have photograph identification and will produce on demand. Some locations require regular crewmembers who enter a port or regulated facility to obtain port identification badges and undergo security background checks.

Generally, however, identification checks for workers on the train are rare. Currently, terminals assume that if a rail crew shows up on a locomotive with a bunch of cars that the terminal is expecting, those people are who they claim to be.

It is important that DHS understand the processes for crewing a train. Under union contracts, train crew employees "bid" on assignments, so there is a fairly consistent set of employees on these trains. However, due to vacation, illness or unscheduled absence, employees may be temporarily assigned to work a regulated maritime facility on a day-to-day basis. Replacement crew members are drawn from a list of eligible employees (per labor contracts) called "extra boards." These extra board employees are contacted to fill in for vacancies on two hours' notice. The employees on the extra boards work on a first-in, first-out basis. Therefore, at certain locations, arrangements have been made in cooperation with the COTP to have regular crewmembers assigned to work at the port or facility undergo the badging process, but not those on the "extra board."

Extra boards contain many employees. Some extra boards will protect both maritime and non-maritime assignments. As a result, some employees on these extra boards may never service a TWIC-covered maritime facility while others may service these maritime facilities only on rare occasions. Due to labor contract restrictions, the identity of which extra board employees will service a TWIC covered maritime facility is unknown.

2. Is there a feeling among NMSAC TWG members/stakeholders that there should be modal differentiation regarding TWIC applicants and enforcement? (e.g., should truckers be required to obtain TWICs but rail workers not necessarily)

Anyone requiring unescorted access to a regulated facility should be required to obtain a TWIC; there should be no distinction between truckers, rail workers, or any other workers who require access to a regulated facility, emergencies excepted, as proscribed by regulation and described in this document.

Enforcement, however, must take into account the near impossibility of compliance at access control points. Unlike truck gates, which can readily adopt TWIC readers, etc., RR access control points really can't be expected to 'read' TWICs as trains pass. Perhaps one day reliable reader technology will exist; it

presently does not. And any regulation requiring that trains be stopped to physically check the TWICs of each RR crewmember makes little sense, as a crewman without a TWIC can easily hide on the train. MTSA covered facilities have no ability to search trains for any such crewmember.

Checking TWICs in trains and/or escorting crewmembers would be difficult to near impossible as workers are distributed throughout the train and it might require that the train stop at several locations to check each worker's TWIC. Currently, port workers traditionally do not enter the train to do a complete security check. In fact, there are some labor concerns on the West Coast where labor, for safety reasons, does not approach the train at all, even to check IDs. Trains also often cross the boundary of the entrance gate multiple times as they load and move cargo around. Multiple checks as a train comes in and out of the facility would be cumbersome with no enhancement of security.

Therefore, NMSAC recommends that rail entry should be treated similar to that of vessels, as the workers have received criminal background checks by the industry (and/or undergone advance CBP vetting), and the trains cannot be driven around the facilities.

Like U.S. mariners, everyone on the train would be required to have TWICs, but facilities would only check the TWIC if a rail worker leaves the immediate area of the train. As with ship's crew, train crew do not have vehicles that can be driven around the facility. Therefore, U.S. Coast Guard should regulate checks on train workers similar to the manner for vessel crew. For the immediate area next to the train or within the train, TWIC checks would not be required. If a worker needs to leave this immediate area, his or her TWIC must be checked first. Facilities that select this option would be required to monitor access through cameras or sensors close to the train tracks, and they would send security staff to check on a rail worker that leaves the area close to the train. Facilities that choose this option could also be required under their facility security plans to periodically check rail workers to make sure they have TWICs. Coast Guard may also require any facility that selects this option to have an agreement with rail lines regarding security that outlines the requirements of each party to maintain security.

3. If not, who should bear the cost of compliance—facility or railroad?

The cost of TWIC should be absorbed by the railroad employee or the railroad. The requirement to have a TWIC for unescorted access is mandated by the Federal Government and not by the marine terminal operator ("MTO"). The MTO is not expected to absorb the cost of the TWIC for truckers or longshore labor nor should they be expected to absorb it for railroad workers.

The cost of obtaining the TWIC should be similar to other employees. It is a contractual relationship between the employee and employer.

4. Is there a feeling among NMSAC TWG members/stakeholders that there should be a difference in rail TWIC applicants between short line and long haul rail line workers?

There should be no difference between the two. This has the same applicability as long haul truckers and local draymen. The MTO should expect both categories of truckers and railroad workers to have TWIC for unescorted access to the facility.

Though there should be no difference between trip lengths, CG must give consideration to those "extra board" members of the railroad described above. It would be an undue financial and logistical hardship

and burden to require all transportation engineers and conductors (for example) to obtain a TWIC – only those crewmembers that are part of the “regular” crews requiring entry should be subject to the TWIC requirement.

5. Is it the NMSAC TWG’s feeling that there is enough uniqueness in rail gate access and operations that facilities cannot/should not duplicate the trucker gate guard TWIC check process? If so, what alternate process (prior to reader installation) by the facility would give an equivalent level of security?

If crew members with TWICs are not available and trains cannot bring cargo to and from the ports, ships will be delayed and port congestion will be aggravated. We must not create a system that disrupts the flow of commerce. Rail gates do present some unique challenges for card readers. This needs to be studied as part of the process of finalizing the card reader rules. Anything like a "drive up" contact reader would be subject to minimum separation from track centerline (in California, per PUC regulations). A device for security guards like mobile credit card scanners used at rental car return lanes is one option that's been suggested. However, what to do when the train is being shoved into the terminal is an issue, because the conductor will meet the facility guard at the rail gate and can easily be TWIC-scanned there, but the engineer is on the locomotive, which may be 6,000 ft away. Do you make him stop, dismount, and scan in with the guard when the locomotive reaches the rail gate? That carries big productivity negatives. Adding in the locomotive engineer problem, contactless card reading technology (RFID?) might be the best at rail gates, if general issues with contactless readers are solved.

Although it is not impossible, it is certainly impractical (and unsafe) for a MTO to stop trains at the rail entrance to the facility to check workers' credentials. Random checks of the TWIC credential by the facility security officers should suffice.

A MOU could be established between the MTO and the railroad operator (similar to a DOS between MTO and vessel operator) that establishes the accountability of the railroad operator to ensure that all its personnel entering the marine facility by rail either have a TWIC or are being escorted by a rail employee with a TWIC (if allowable under the facility security plan). All other railroad employees associated with the on-dock rail operation requiring unescorted access to the facility would be required to have TWICs and enter through a controlled access point at the marine facility.

To be clear: it is not a question of railroad workers obtaining their TWICs but rather who is required to verify.

We further note that any solution requiring regulatory action beyond a PAC could be made a part of TSA’s proposed rule on rail transportation security, Docket No. TSA—2006—26514. Ports need a legal presumption that rail crew members have TWICs before they are assigned to a train. NMSAC recommends that CG work with railroads to identify an appropriate solution to rail crewing issues before a regulation is finalized.

6. Would rail employees more readily sign up for TWIC if TSA and its contractor established remote enrollment stations at rail yards or other equivalent sites? Is something like this worth the expense?

Most MTO employees reacted positively when given the opportunity to enroll at mobile enrollment stations, and we would expect railroad workers to have a similar response to mobile stations at rail yards or other equivalent sites. We believe mobile TWIC enrollment would be a big help to railroad companies because of the 24/7 nature of their shift start times, and because of union rules. The question that TSA would have to ponder would be what if any minimum number of workers would justify a mobile enrollment station.

There appears to be differences in understanding within the rail industry regarding whether rail employees must get TWICs. In areas where U.S. Coast Guard has reached out to the individual railroads in port areas, for example Southern California, rail is working to get their employees TWICs. In other areas, this does not appear to be the case. Outreach should especially focus on long-haul rail, since most short-rails that access MTSA facilities are more familiar with the TWIC requirements.

7. Does the rail worker train assignment process by railroads (differentiate between short line and long haul) provide logical support for TWIC enrollment by workers? (e.g., do the same employees typically ride maritime facility trains or do they mix and match with overland trips?)

The line haul and switching operations are provided by two different railroad operators and the employees of one do not work for the other.

Line haul crew consists of two people: a conductor and an engineer. The switch crew has three people: an engineer, a foreman and a foreman helper. In most cases with the line haul crews, the train will be waiting outside the marine facility so the crew will never enter the facility. It is possible that a conductor will have to get off the train when the train has to be built on the facility.

If due to hours of service, a long haul crew needs to be replaced, they may be driven off the facility by a member of the facility security force to wait outside for the railroad van bringing replacements. The security guard would check the replacements' credentials and drive them onto the facility and to the train.

The switch crew engineer never leaves the engine on the marine facility, the foreman will be on foot, and the helper stays outside of the facility to throw switches.

Shift assignments are by seniority and covered in union contracts. A requirement to have a TWIC in order to work on a crew that visits marine terminals is a crew management problem for large railroads that have large seniority districts. It shouldn't have much effect on short lines. The large railroads already have to deal with job qualification prerequisites within seniority rules, though. Good examples are remote control locomotive operations and territory qualification requirements. Conductors can't bid onto a remote control conductor's position unless they are remote control qualified, and crewmembers cannot take on a new assignment solo until they are qualified on the geographic area.

8. Could railroad police be engaged in the TWIC enforcement process? (e.g., validation/verification of crew at unmanned facility gates)

It is possible, but in addition to the safety concern mentioned earlier in regard to checking credentials at the rail gate access, there are several other issues. The railroad police are already stretched to provide

security for cargo on the line of road. The USCG would have to approve the concept of having a third party, not under the direction of the MTO, controlling access to the marine facility.

Although railroad police could have a role in TWIC enforcement (e.g., to aid in spot checking their crews) NMSAC recommends that the primary responsibility remain with facility security forces.

Railroad police have jurisdiction on railroad owned property and should be engaged in the TWIC credential checks at unmanned facilities. RR police forces can help police any TWIC requirement placed on RR crewman from originating rail yards.