

**Statement of Bethann Rooney
Manager, Port Security
The Port Authority of New York & New Jersey**

Hearing on “Homeland Security Failures: TWIC Examined”

**The United States House of Representatives
Committee on Homeland Security**

**Washington, DC
October 31, 2007**

Chairman Thompson, Congressman King, members of the Committee, thank you for the opportunity to testify on the importance of maritime and port security and the challenges that industry is facing in implementing the TWIC (Transportation Workers Identification Credential) program. My name is Bethann Rooney and I am the Manager of Port Security for The Port Authority of New York & New Jersey.

Since the attacks of September 11th our collective attention has been focused on the need to protect our borders at major international gateways like the Port of New York and New Jersey and small ports alike. The Maritime Transportation Security Act (MTSA) of 2002 and the Security and Accountability for Every Port (SAFE Port) Act are two pieces of landmark legislation that have had a positive impact on our homeland security. We commend the House of Representatives and this Committee in particular, for its work on ensuring the security of our ports and the people that work in them.

Section 102 of the MTSA requires background checks and the issuance of biometric transportation security cards (TWIC) to all personnel who require unescorted access to secure areas of regulated vessels and port facilities. The SAFE Port Act subsequently required a TWIC technology pilot program and other program milestones. Fundamental to our nation's security is the ability to ensure that individuals who pose a security threat do not gain access to our nation's ports. TWIC helps provide that insurance. Therefore, we fully support TWIC, the need for positive access control at port facilities and the creation of a national identification program.

We also recognize that the TWIC program is one of the world's most ambitious interoperable biometric credentialing programs and that rolling it out in the most complex transportation industry is a monumental undertaking. Therefore, we also commend both the Transportation Security Administration (TSA) and the United States Coast Guard (USCG) for their commitment and dedication to this program and particularly for their willingness to engage industry stakeholders.

Nonetheless, I would like to briefly discuss four broad elements of the TWIC program and a number of outstanding issues and concerns that may unduly impact the objectives of the TWIC program, maritime operations and port security if not implemented in a decisive and thoughtful

manner. These include: 1) enrollment; 2) card reader technology; 3) the pilot program; and 4) enforcement.

OUR NATION'S PORTS ARE VITAL TO THE ECONOMY

Ninety-five percent of the international goods that come into the country come in through our nation's 361 ports; approximately 13% of that volume is handled in the Port of New York and New Jersey alone, the third largest port in the country. The Port generates over 230,000 jobs and \$12.6 billion in wages throughout the region. Additionally, the Port contributes \$2.1 billion in state and local tax revenues and more than \$3.8 billion in federal tax revenues. Cargo that is handled in the Port is valued at over \$150 billion and serves 80 million people, or thirty five percent of the entire US population. In 2005, the port handled over 5,500 ship calls, 86 million tons of general cargo, 852,297 autos, and 2.9 million containers, approximately 8,200 containers each day. Today, international trade accounts for approximately thirty percent of the US economy. Considering all this, it is easy to understand how a terrorist incident in one of our ports would have a devastating effect on our nation and its economy.

TWIC ENROLLMENT

Enrollment Schedule

The Port of New York and New Jersey lies within what is considered the two most dangerous miles in the country and, as such, the implementation of the TWIC in this region is of up-most importance. Therefore we were very disappointed when the Port of New York and New Jersey was not selected as one of the first ports in which enrollment would begin. In fact just a portion of the highest risk Tier I ports in the country are included in the initial enrollment period, while five Tier II and Tier III ports are already scheduled to begin enrollment. It is even more baffling that none of the pilot project locations, all of which require a critical mass of transportation workers to be enrolled before the pilot projects can begin are scheduled for enrollment yet. Not including our facilities as part of the first roll out of the TWIC enrollment does not make sense from a risk based security or program management standpoint.

Need for Accurate Enrollment Estimates

The initial enrollment phase of the TWIC program is referred to as Phase I. TSA estimates that 750,000 workers will need to obtain a TWIC card in Phase I. Unfortunately, the industry feels that number will be significantly higher and it is concerned about the TWIC contractor's ability to provide the requisite level of enrollment service without increasing the cost of the TWIC card to the end user or creating unnecessary delays in enrollment of processing. In the Port of New York and New Jersey alone, the TSA estimated that there would be 60,256 individuals who would need a TWIC. With just a seventy percent return on a survey of all stakeholders in our port, our population counts are closer to 125,000 people, more than double the TSA's estimates. The disparity in estimates is even more acute in the Port of Houston where the TSA's estimates were off by a factor of twelve (35,000 vs. 435,000)! In Savannah, the TSA's estimates were for 15,000 people and port officials there believe that it is closer to 30,000. Admittedly, Lockheed Martin has been responsive to estimates by the individual ports and has committed to providing

the resources that are necessary to appropriately support TWIC enrollment. However, it is unclear whether the necessary level of service is sustainable within the framework of a fixed-price contract.

Enrollment Locations

An equally significant problem has to do with the ability to locate suitable facilities for fixed enrollment sites in close proximity to the port infrastructure. There are several requirements for these facilities that have proven to be problematic including ensuring sufficient truck parking, an inability or unwillingness to enter into a contract for more than a year and provisions to satisfy the Americans with Disabilities Act (ADA) requirements which are very difficult to find in the aged port infrastructure around the United States. For example, in the Port of New York and New Jersey, Lockheed Martin has yet to find a suitable location that meets the above requirements on the New Jersey side of the Port, where the vast majority of all port activity occurs. While this is being accommodated for the initial enrollment period with mobile enrollment capabilities that will be available to employers with more than fifty employees requiring a TWIC, it does not provide a viable long-term solution. Convenient permanent sites for TWIC enrollment and renewals must be identified and established. The sites should be strategically located in each port region. The Department of Homeland Security must take whatever steps necessary, to ensure that the 146 TWIC enrollment sites around the country continue to be the minimum that are supported after the initial enrollment period is deemed to be completed. If suitable facilities can't be identified, then consideration must be given to make TWIC enrollment available at State Department of Motor Vehicles offices, truck rest stops or US Post Offices.

Liability

While Lockheed will be accommodating initial TWIC enrollment with mobile capabilities, under current plans, the port worker would still need to go to a fixed location in order to pick up and activate his/her TWIC card. While the process of obtaining the TWIC and activating it may only take a few minutes, the reality is that the worker could be unproductive for two to three hours or more as he or she travels to and from the fixed enrollment site. This potential need for extensive travel to complete the TWIC enrollment process has created liability concerns on the part of employers who may face potential tort liability if an employee gets injured in the process of obtaining a TWIC. The government should indemnify employers for any damages that they may incur arising out of an employee's TWIC enrollment process.

Truck Driver Screening & Enrollment

The most difficult population of port workers to enroll in TWIC is going to be the truck drivers. In the Port of New York and New Jersey we have an existing truck driver identification system, called SEA LINK® in which over 25,000 individuals are actively registered to pick up and deliver cargo at our seven container terminals. Due to the general nature of this business, we issue over 400 new SEA LINK® cards a month to drivers that have never hauled cargo to or from our maritime facilities. There are an equally large number of individuals that work in

multiple ports around the country. Therefore, enrollment and enforcement on a port-to-port basis will have severe impacts on port productivity.

Additionally, if a trucker enrolls for a TWIC during his first visit to the Port of New York and New Jersey, the current process requires that he return to the same enrollment site to retrieve and activate his TWIC after the security threat assessment has been completed. It could be weeks or months before the driver is able to return to New York and New Jersey and in the meantime he is unable to access other ports without an escort, which doesn't need to be provided.

We have made a number of suggestions to address this issue including: allowing TWIC applicants to designate that cards be returned to a different enrollment center than that where they originally applied; or a mechanism wherein the TWIC is mailed to an applicant's office or home. Once the applicant has the TWIC card, the individual could return to an enrollment center of his choice anywhere in the country to activate the TWIC.

Under the SAFE Port Act, DHS was required to implement a threat assessment screening for all port truck drivers with access to secure areas of a port and who possess a commercial driver's license but not a hazardous materials endorsement. This program would be very similar to the interim-screening program in which all facility owners and operators were required to participate in early 2006. Although this program hasn't been rolled out yet, we feel strongly that DHS comply with this requirement so that industry has a better understanding of what the impact of TWIC might be on the truck driver community. Current estimates indicate that anywhere from 10-40% of truck drivers may not be eligible for a TWIC, which could seriously impact port productivity and ultimately security.

CARD READER TECHNOLOGY

Earlier this year, the TSA and USCG decided to break the implementation of the TWIC program into two phases; the enrollment phase, Phase I, which I have discussed and which is beginning in the Port of Wilmington this week and Phase II which requires the installation and use of biometric card reader technology at both the truck and pedestrian gates of regulated facilities and at ingress to regulated vessels. Throughout the course of the past ten months, we and several of our industry partners, through participation in the National Maritime Security Advisory Committee (NMSAC) TWIC Working Group, have been working with the federal government and biometric technology industry to develop the functional requirements for these biometric card readers. This has culminated with the publication of the TWIC Biometric Reader Specification last month. While this is a "working draft" that may be updated once the pilot projects have been completed, it begins to answer a number of the questions that facility and vessel owners and operators have.

However, as with the implementation of any technology, it is important to understand how the technology will be deployed and what the government's concept of operations is before the technology solution is identified. Regrettably, the Coast Guard still hasn't answered a number of critical policy questions, the answers to which could have a significant impact on port operations,

our cost to implement the TWIC program and the card reader manufacturers' willingness to participate in the program.

The two most significant questions that haven't been answered yet are "how often will the biometric need to be verified?" and "is positive access control required?" These policy decisions must be made before the pilot projects begin so that they can be adequately tested and evaluated during the pilot projects.

Biometric Verification

In June 2007, the Coast Guard asked the NMSAC TWIC Working Group to assist with the development of the draft Notice of Proposed Rulemaking for the TWIC Biometric Reader Requirements. To assist with this effort, they provided a set of specific questions that they wanted answered. After reviewing the totality of those questions, it has been suggested that the Coast Guard may not require that the biometric data stored within the TWIC be verified for every access control transaction regardless of the MARSEC level. While this may be the minority opinion, the Port Authority views the failure to verify the biometric 100% of the time as a point which would defeat the purpose of a biometric-based credential and would do little to ensure that we can positively identify an individual seeking to gain access to a secure area of our port facilities and vessels.

100% biometric verification is the only way to ensure identity of the individual. If the ultimate decision is to require biometric verification at elevated MARSEC levels only, then the rate of verification should be consistent with the additional screening and inspection rates that are already required, a random 25%-50% at MARSEC II. That way, facility operators would not be required to purchase and maintain biometric readers at access points that are rarely used. Rather, during heightened security levels, security guards could verify biometrics using handheld readers at those access control points. This would reduce the need for significant capital expenses for component equipment that would rarely, if ever be used. In the Port of New York and New Jersey for example, we have been at an elevated MARSEC level for just twelve hours in the six years since 9/11. It would make little sense to invest in approximately \$10 million in infrastructure that might not ever get used, as opposed to \$50,000 in handheld card readers.

Positive Access Control

An equally important policy decision that must be made is whether or not "positive access control" is required. Positive access control means that you know who is on your facility or vessel at all times. This would require the owner/operator to have two readers at each access control point, one each on both the secure and non-secure side.

Operationally this is also very difficult to achieve in several port activities in which personnel regularly move between a secure and non-secure area numerous times during a typical work period. An example of this can be seen at a cruise terminal. The porter may come in and out of the baggage claim area (secure) to help passengers move luggage to a waiting vehicle (non-secure). The same is true for Roll On/Roll Off operations, where longshoremen exit the secure

area with a vehicle that they have driven off of the ship and return to the secure area in a passenger van with a dozen of their colleagues. Requiring these workers to scan in and out of the secure area, thus establishing positive access control would be a significant barrier in terms of efficiency with little buy down in risk. In fact in the aviation environment, which is arguably higher risk than the maritime industry, positive access control is not currently a regulatory requirement.

“Hotlist” Verification

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 at our facilities. The “hotlist” also needs to be able to indicate whether the TWIC has been revoked, lost or stolen so that the owner/operator can make a decision whether or not to allow a person access. Additionally, when an individual reports his/her card as being lost or stolen, they must be issued a receipt that can be presented at the access control point in order to continue to gain unescorted access.

In addition to the “hotlist” provisions, we also need a provision that prohibits an individual that has been determined to pose a security threat from gaining access to a restricted area, even with an escort. To do otherwise would undermine the purpose and intent of the TWIC program. Provisions must be made to prohibit any and all individuals that pose a security threat from gaining access to a restricted area regardless of whether or not there is an escort. This means that the names and biographical information of anybody that has applied for a TWIC and been denied, must be available to all owners/operators on a real time basis so that we don’t permit access to these individuals with an escort.

ENFORCEMENT

TWIC Applicability

Current regulations fail to appropriately and clearly enumerate the specific types of individuals that are required to obtain a TWIC. Thus, significant populations of individuals needing TWICs will not have appropriate notice of their need to obtain one. The Coast Guard attempted to address this in their Navigation and Vessel Inspection Circular (NVIC 03-07) wherein they provided an illustrative list of ten communities of people that would likely need a TWIC. The problem is that the NVIC is a Coast Guard guidance document only and it is not enforceable by law. Similarly, it is likely that some individuals, perhaps those who aren’t able to get a TWIC because of a disqualifying event in their background, may expect to be provided an escort. This will place the owners and operators in a difficult position and could lead to disputes. Congress should amend the SAFE Port Act to clearly enumerate the class of workers that must obtain and use a TWIC.

Non-MTSA Facilities

The Port Authority operates numerous transportation facilities in the New York and New Jersey region including all of the tunnels and bridges that connect the two states, an interstate passenger rail system and five airports. The Port Authority Police Department has 1,600 sworn officers who have jurisdiction in both states and provide 24/7 law enforcement for some of the nation's most critical and iconic transportation systems. The actions that a law enforcement officer can take at an MTSA facility if a fraudulent, tampered with or revoked TWIC is presented are clear. What is not clear, however, is what if any action a police office can take if a fraudulent or revoked TWIC is presented at a non-MTSA regulated facility. For example, if a Port Authority Police Officer stops an intermodal container truck at one of our bridges, can the office ask if the driver has a TWIC and if so verify the identity and validity? Similarly, if someone is questioned at one of the airports 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 action they are permitted to take at both MTSA and non-MTSA facilities.

Escort Requirements

In addition to an owner/operator's liability if an employee is involved in an accident while going to and from the TWIC enrollment site, there are additional concerns about an escort's liability and responsibility that must be addressed before the enforcement period begins. If an individual under escort causes a Transportation Security Incident or violates other regulations and laws, what are the consequences for the escort? The answer could impact the willingness of certain individuals to act as an escort.

Emergency Access

The Coast Guards Navigation and Vessel Inspection Circular adequately addresses the TWIC requirements for uniformed law enforcement and emergency response personnel. However, the entire 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. For example, in the Port of New York and New Jersey, we have established a Recovery Advisory Unit (RAU) that is made up of senior level industry stakeholders that would advise the Captain of the Port on critical issues in the aftermath of a transportation security incident. Nonetheless, if these individuals weren't able to travel on a portion of the New Jersey Turnpike because it is shut down for anything other than emergency vehicles, as it was for several weeks after 9/11, these individuals would be unable to fulfill their essential recovery 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.

PILOT PROJECT

The SAFE Port Act requires DHS to establish a pilot program to test TWIC card readers at five geographic locations in order to evaluate business processes, technology and operational impacts. As we understand it, the pilot project will be conducted in three to four phases and include both laboratory bench tests and field-based tests.

Veil of Secrecy

The Port Authority as well as other port authorities and vessel operators have agreed to participate in these pilot programs. Unfortunately, there has been what I call a “veil of secrecy” over the details of the pilot program that make it very difficult for the Port Authority to make risk based decisions on which of our facilities will be used for the pilot and the finances, personnel and infrastructure that we need to support the pilot project. Our offer to have staff involved in discussions with TSA and USCG to sign a Non-Disclosure Agreement (NDA) have been turned down, citing an inability to discuss details with even the pilot project participants while the rulemaking process is underway. It is critical that the Testing and Evaluation Master Plan and pilot project schedule be shared with the pilot project participants as early as possible so that we have sufficient time to plan.

Cost Share

While the SAFE Port Act mandated these pilot projects, the Department has not funded them. We and other port authorities and vessel operators are committed to assisting the Department in achieving its goals relative to the implementation and deployment of TWIC in the maritime industry. Accordingly, we have agreed to work with TSA to use our facilities and vessels, as well as use a portion of our federal grant monies (FY 2006 and FY 2007), to test the equipment that will be used to read the TWIC cards. The federal grant monies, however, require a 25% cash match.

In order to devise a meaningful pilot project, considerable initial disruption will occur at each participating facility and vessel and both capital and operating funds will be expended that will not be recoverable at the end of the pilot, whether or not it is successful. We would suggest that the cost to the participants to plan, manage and implement this program already represents a significant contribution, even without an obligation for a cash match. Therefore, mandating a 25% cash match for purchase of infrastructure and equipment required for participation in the pilot project will place an undue burden on us, and will only serve to reduce the amount of resources we will have at our disposal to ensure that a complete implementation of TWIC is a success. We have therefore requested that Secretary Chertoff recognize the in-kind contribution that our organizations will be making and waive the cash match requirement pursuant to his authority under 46 USC 70107, section (c), (2), (b). We would appreciate the Committee’s support of this request as well. All previous TWIC pilot projects were fully funded by the TSA, and the pilot project required under the SAFE Port Act should receive the same level of support.

Biometric Technology Performance Requirements

Finally, it is absolutely essential that the card reader and biometric authentication capabilities be tested and proven to meet or exceed the TWIC Reader Hardware and Card Application Specifications during the TWIC pilot projects before deployment can begin in the maritime environment. In the Port Authority of New York and New Jersey we just completed a one-year Limited Early Deployment (LED) of fingerprint biometric technology. In the outdoor environment we experienced a false rejection rate of 9.5% as opposed to 1% that is called for in the TWIC Specifications. We also experienced an average transaction time of 6 seconds, which is twice as long as the maximum transaction time that is required in the maritime industry. Additionally, despite manufacturers published environmental requirements, biometric reader performance suffered greatly in both the rain and severe cold and 71% of the readers needed to be replaced within a year due to hardware and display failures. Our experience with this project clearly indicates that fingerprint biometric technology simply does not perform as well as advertised in an outdoor environment. The fingerprint reader manufacturers must improve the design to include protection against harsh weather environments and further field verification must be conducted.

CONCLUSION

Addressing the issue of port and maritime security is an enormous challenge given the complexity of the international transportation network. The implementation of a robust credentialing program at maritime facilities remains critical to the security of our nation's ports. We are encouraged by the start of TWIC enrollment earlier this week and the publishing of the card reader specification but much more remains to be done.

I hope my comments today have provided some helpful insight into this complex matter. The Port Authority of New York & New Jersey is prepared to offer any additional assistance that you may require. Thank you.