

UNITED STATES OF AMERICA

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U.S. DEPARTMENT OF HOMELAND SECURITY

UNITED STATES COAST GUARD

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TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL
PUBLIC MEETING

+ + + + +

WEDNESDAY
JUNE 7, 2006

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RENAISSANCE LONG BEACH HOTEL
111 EAST OCEAN BOULEVARD
LONG BEACH, CALIFORNIA

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APPEARANCES

FACILITATOR:

CAPTAIN JIM BAMBERGER
Branch Chief of Maritime
Passenger Security
Transportation Security Administration

PANEL:

LUKE HARDEN
Project Manager
Consolidation of Merchant Mariner
Qualification Credentials
Office of Operating and Environmental
Standards
Coast Guard Headquarters
Division of Maritime Personnel

COMMANDER PETE GAUTIER
Chief of Cargo and Facilities Division
Coast Guard Headquarters
Washington, D.C.

CAPTAIN FRANK STURM
Chief of Office of Port and
Facility Activities
Coast Guard Headquarters

JOHN SCHWARTZ
Project Manger
Transportation Worker Identification
Credential
Transportation Security Administration

STEPHEN J. RYBICKI
General Manager, Maritime Security
U.S. Department of Homeland Security

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P-R-O-C-E-E-D-I-N-G-S

(10:00 A.M.)

CAPTAIN BAMBERGER: Thank you. I would like to welcome everybody here today and just start off by saying -- speaking for the Panel -- we really appreciate the distance and the time that everybody has taken off from this busy time of year to get here today. If anybody hasn't done so and can do so quietly because we're going to get going, because we're going to get going, there's a lunch drop off box at the sign in table. There will be box lunches available today between 12:00 and 1:00; and if you haven't done so and you have the desire, there's a drop off box for your lunch orders where you signed in.

My name is Jim Bamberger. I'm the Branch Chief of Maritime Passenger Security for the Transportation Security Administration, and I will be the Facilitator here today. First off, I would just like to say that we are very grateful for your participation; and once again, thank you for your time

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1 and commitment this important process.

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Our focus today -- can everybody hear me in the back? Our focus today is on two Notices of Proposed Rulemakings. First, the Transportation Worker Identification Credential or TWIC. And second, the consolidation of Merchant Mariner Qualification Credentials. These Public Meetings will assist the TSA and the Coast Guard in our effort to gain insight, information and become better informed as decisions are made for the final rulemaking. Today's meeting will be recorded, and the transcript will be submitted to both Coast Guard and TSA dockets for these rulemakings. We also encourage you to submit your own comments to the docket if you have not already done so.

Okay. Let's take a few moments just to review housekeeping and logistics, and then I will provide you with an overview of today's schedule and how we proceed. First of, if you have ordered a box lunch -- and lunch is usually foremost on everybody's

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1 mind -- at least until we get started -- you can pick
2 up those lunches in the lobby bar and use cash or a
3 credit card. Should we need to evacuate this room,
4 proceed through the doors behind you and to the right,
5 and you will see stairs. Right directly behind and to
6 the right, there are stairs to the first floor. The
7 rest rooms are directly out the side right door and to
8 your left.

9
10 Okay. We're going to -- the way we're
11 going to work this is we are going to have a
12 presentation on each one of these Titles and then an
13 hour and 15 minute comment period after those. We are
14 really going to make an effort, judging by the size of
15 the group today, to keep those comments to four
16 minutes. If we don't hear all those comments for that
17 Title in that hour and 15-minute period, we will go on
18 to the next Title; but we will have time at the end of
19 the day for any comments to be heard on any one of the
20 three. So, if we cut it off after an hour and 15 and
21 you're still standing in line and you haven't had your
22 comments heard, at the end of the day, we will open

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1 the floor to comments on any one of those three
2 issues.

3
4 If I could first ask everyone to put
5 their cell phones and/or blackberries to silent, we
6 would really appreciate that. Okay. I would like to
7 announce a few Coast Guard attendees who will not be
8 on the Panel, but are attending this presentation to
9 observe and listen and hear your comments as well.
10 Captain Gough, Chief of Prevention for PAC Area is
11 here today. Captain Swanson, Chief of Prevention,
12 District 11, Captain Wheatenoff, Commanding Officer,
13 Sector Los Angeles and Long Beach, Captain Uverdie,
14 Commanding Officer, Sector San Francisco Bay. Captain
15 Mark Gillary, Captain of the Port of Juneau, and
16 Commander Jason Merriweather, representing the
17 Commanding Officer Sector San Diego. Thank you for
18 being here. I am sure you know these folks on this
19 coast, and those gentlemen will be here to observe and
20 hear your comments and be part of the listening
21 session.

22

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1 Okay. If we could go to Slide 2. This
2 will give you information to the website, how to
3 submit comments to the docket and this entire Power
4 Point Presentation that you will see today is
5 available on this website. So should anybody desire
6 a copy of this slideshow, you can get that from that
7 website as well. So I will just leave that up there
8 for a minute for anybody who wants to copy this
9 information down.

10
11 Okay. Slide 3. Today's meeting covers
12 two significant rulemakings, which would amend three
13 titles. Title 49, which determines the standard for
14 the TWIC Security Threat Assessment Enrollment,
15 Appeals and Waiver Procedures. Title 33, which would
16 amend Coast Security Plan Requirements Under Sub-
17 Chapter H, such as access control measures and other
18 requirements for owners and operators and Title 46,
19 which proposes to consolidate Merchant Mariner
20 Credentials. This is a lot of information to cover in
21 this one meeting; so like I said, we focused our
22 agenda and tried to keep the comment periods for an

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1 hour and 15 minutes to each Title, but should we have
2 happen what we had happened yesterday in St. Louis, we
3 will certainly have time afterwards if we stick to the
4 four-minute comment period to hear any and all
5 comments covering any one of these three titles at the
6 end of today's session.

7
8 For each of these Titles, one of our
9 Panel experts will give a brief overview of the
10 proposed changes. Following each overview, we will
11 open the floor to comments for approximately one hour
12 and 15 minutes. We will begin with an overview of the
13 TWIC Program and changes to Title 49, followed by
14 Title 33 and then 46. And as I said, at the end of the
15 day we will open the floor to any comment related to
16 any of the above Titles. Each commenter will have
17 four minutes to comment. When you comment, what we'd
18 like to have you do is queue up down the side of this
19 wall. There is a wire for the microphone; so, please
20 be careful of that. And when you first come up to the
21 microphone, please state your name and association
22 before you give your comment. Then when you're

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1 finished with your comment, please drop any written
2 comments you have towards the docket in one of these
3 three boxes, each titled for each rulemaking, each
4 Title. And also, there's a white dish on the table
5 next to the court reporter for your business card.
6 And then if you would just file down the center, that
7 would great. While you are speaking, we allow four
8 minutes for each comment. When we get to 30 seconds
9 left or three and a half minutes, I will hold up a
10 yellow card and that will let you know -- I'll put it
11 right here -- and that will let you know you have 30
12 seconds left. When you get to the end of the four
13 minutes, I will hold up a red card, and that will mean
14 that your four minutes are up and we'd appreciate it
15 if you could wrap up at that point. If I have to step
16 in, I'll just say -- you know, I have to cut you off
17 because we have a large line of people. If there is
18 nobody left, you know, we can work with that. But we
19 are really trying to keep it to that because I know we
20 have a lot of people here who would like to have their
21 comments heard, and we want to make sure that we can
22 get through everybody.

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1
2 We're going to take a lunch break from
3 12:00 to 1:00 o'clock, for an hour, and we will take
4 a energy break, if you will, at 2:30 for about 10
5 minutes, and we'll announce those.

6
7 Okay. Can we go to Slide 4? Now I'd
8 like to introduce the Panel of TSA and Coast Guard
9 Experts, and then I'll turn the meeting over to them.
10 For the overviews of their position and what they will
11 be speaking on today, I'd like to start with Mr. Luke
12 Harden.

13
14 LUKE HARDEN: Good morning. My name is
15 Luke Harden. I'm the Project Officer on Consolidation
16 of Merchant Mariner Qualification Credentials. I am
17 assigned to the Office of Operating and Environmental
18 Standards at Coast Guard Headquarters, Division of
19 Maritime Personnel Qualifications. I've been an
20 employee of the United States Coast Guard for 22 years
21 and have been involved with the Commercial Vessel
22 Safety Program since 1988. During that time, I have

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1 been the Chief of the Inspection Department, Chief of
2 Licensing Departments and Senior Investigating
3 Officer. I have been writing Licensing Regulations
4 since 1999. During that time, I have worked on
5 Licensing Rules for Towing Vessel Operators, SPCW, as
6 well as working on U.S. Delegations for the
7 International Maritime Organizations and the
8 International Labor Organizations. My comments on the
9 Combined Credentials will be made this afternoon.
10 Thank you.

11
12 COMMANDER PETE GAUTIER: Good morning,
13 my name is Commander Pete Gautier, and I am the Chief
14 of the Cargo and Facilities Division at Coast Guard
15 Headquarters in Washington. I have 19 years
16 experience in the Coast Guard Marine Safety World, and
17 my prior tours include four years as Chief of Port
18 Operations and Environmental Response at Marine Safety
19 Office, San Francisco Bay. I have prior experience
20 working at Headquarters in the Administration and
21 Regulatory Writing 49 C.F.R.; and also,
22 internationally, with the International Maritime

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1 Organization and the IMDG Code. Some of you may know
2 Commander Cindy Stowe. She held this position until
3 two weeks ago. She has recently been transferred and
4 now works at the White House on the Homeland Security
5 Council. So I recently replaced Cindy. Thank you
6 very much.

7
8 CAPTAIN FRANK STURM: Good morning. I
9 am Captain Frank Sturm, Chief of Office of Port and
10 Facility Activities, Coast Guard Headquarters. We are
11 -- our office is responsible for most of the Coast
12 Guard policies and standard development for pretty
13 much anything safety, security, environmental
14 protection-wise related to ports, facilities and
15 cargo. I've been in the Coast Guard 27 years, and
16 most of that time has been in Marine Safety Field, a
17 variety of jobs in Coast Guard Field Offices, as well
18 as my third go-round in Coast Guard Headquarters now.
19 We are very eager to hear your comments, and I just
20 want to state up front that we are also very
21 interested in getting your written comments and that
22 your verbal comments don't carry any more -- will not

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1 carry any more -- weight than the written comments.
2 So if you feel you have more to say but have run out
3 of time, please put them in writing because they are
4 given just as much consideration as anything you say
5 here. If you have people -- friends, colleagues, co-
6 workers, others -- back in your work place who were
7 not able to travel, please encourage them to send in
8 their written comments to the docket because, again,
9 those carry just as much weight with us as any verbal
10 comments. Thank you.

11
12 JOHN SCHWARTZ: Good morning, my name
13 is John Schwartz. I'm with the Transportation
14 Security Administration, and I am the Transportation
15 Worker Identification Credential Project Manger. I
16 joined TSA in January of 2003 and have been associated
17 with the TWIC Program since I joined TSA. Before
18 coming to TSA, I served 29 years in the United States
19 Coast Guard, retiring as Chief of Staff of the Coast
20 Guard's Mid-Atlantic Region. During my 29 years in
21 the Coast Guard, I served as Commanding Officer of
22 Coast Guard Cutters, as well as a number of tours at

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1 Coast Guard Headquarters -- one of them involving a
2 Project Manager for a major ship acquisition. After
3 I retired from the Coast Guard and before joining TSA,
4 I was in private industry. I was a Project Manager
5 leading a team of Engineering and Logistics
6 professionals in supporting a number of Government
7 contracts. I look forward to
8 hearing your comments today on our proposed Rule.
9 Thank you very much.

10
11 STEVE RYBICKI: Good morning. I'm
12 Steve Rybicki. I'm the General Manager for Maritime
13 Security with TSA. I've got over 25 years of
14 experience in the Maritime industry. I will be
15 listening to Mr. Harden this afternoon, as I am up for
16 renewal of my active Coast Guard License in September,
17 and this will, in fact, be directly.

18
19 CAPTAIN BAMBERGER: Thanks Steve.
20 Before I turn the mic over, I would like to also let
21 you know that we have in our audience a group of TSA
22 and Coast Guard Attorneys, Economists and Subject

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1 Matter Experts from the TWIC Rulemaking Team, and
2 they're here to hear your comments as well. I would
3 now like to turn the mic over to John Schwartz to
4 provide an overview of the TWIC Program and the
5 changes to Title 49. When he is finished, we will
6 open the floor to any related comment on that Title.

7 **TITLE 49: OVERVIEW**

8 **JOHN SCHWARTZ**

9
10 Thanks very much Jim. And good morning
11 once again. I'm going to give you an overview of the
12 TWIC Program, as it stands, and as we have proposed.
13 First of all, the TWIC itself, for those of you who
14 have not seen it, it's a Biometric Identification
15 Credential that will be issued by TSA. The TWIC
16 Program encompasses a number of activities. It can be
17 summarized in saying we will involve workers and then
18 conduct background checks; and upon successful
19 completion of those background checks, TSA will issue
20 a card to those workers. I want to emphasize that
21 while this is a TSA responsibility to issue the cards
22 and conduct the enrollments, it will actually be

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1 conducted by a contractor who will be selected in a
2 competitive process with a contract awarded on the
3 best value to the government. This contractor, among
4 many other duties, will provide trusted agents --
5 those are the people that will be actually conducting
6 the enrollments of workers for the TWIC Cards -- that
7 will have to meet a number of stringent criteria to
8 perform that function. As I mentioned, the issuance
9 of the card will be based on the security threat
10 assessment that will be conducted by TSA, and it must
11 be satisfactorily completed before the card can be
12 issued.

13
14 The TWIC initially is going to be
15 required for individuals who need unescorted access to
16 secure areas of MTSA-regulated facilities. Those
17 facilities include the approximately 3,500 port and
18 maritime facilities that are shore based, as well as
19 over 10,000 vessels and a number of outer-continental
20 shelf structures. We also are including in our
21 proposed Rule the approximately 200,000 Credentialed
22 Merchant Mariners as required by TWIC.

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1
2 The TWIC is designed to be a multi-
3 modal Credential. It could be used for workers in any
4 transportation mode as a secure form of identification
5 and also as an access control tool. The Department is
6 considering follow-on rulemakings for additional modes
7 outside of the Maritime mode; but this Rule concerns
8 itself only with the Maritime Industry and workers in
9 that industry. For the successful conclusion to the
10 rulemaking endeavors, we hope to begin enrollments by
11 the end of this calendar year. Once we do begin
12 enrollments, we project approximately a year and a
13 half to complete the initial enrollment of all workers
14 that will be required to have a TWIC. Enrollment
15 Centers will be located at sites throughout the
16 country.

17
18 This diagram shows you the TWIC
19 process, and I'll run through it quickly, but then
20 describe in a little more detail each element of these
21 processes as we proceed in the briefing. First of
22 all, transportation workers will come to an enrollment

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1 site -- the ones that I mentioned run by a contractor
2 -- where they will complete the enrollment process.
3 Once the enrollment process is complete, the record
4 will be sent electronically to our TSA System, which
5 will conduct the background check and a number of
6 other functions that will result ultimately in the
7 receipt of the card by the individual. Once the
8 background check and vetting is complete, we've done
9 our other matches and things that we need to do, we
10 will send an order for the card to be produced at a
11 centralized card production facility run by the
12 Federal Government. That card facility will then
13 shift the card back to the Enrollment Center where the
14 person enrolled. Upon receipt, the worker will be
15 notified to come back to the Enrollment Center and
16 pick up the completed card. They will go through a
17 process there and be issued the card. At this point,
18 the worker will have the Credential; but what the
19 worker will not have is privileges at any of the MTSA-
20 regulated facilities. In order to do that, he will
21 have to take the card to a MTSA-regulated facility
22 whereby he will prove that the card is his through the

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1 matching of the biometric. The Facility Operator will
2 be responsible for conducting a quick check that the
3 card remains valid; and at that point, he can be
4 granted access -- either a permanent type of access or
5 a one-time visit access. The access part of -- let me
6 state at this point -- TSA and our Rule concerns
7 primarily this part up through the card issuance. The
8 Coast Guard's Rule concerns primarily the interaction
9 between the worker and the facility as far as the
10 rules and regulations for access are concerned.

11

12 The enrollment process can begin with
13 what we call pre-enrollment. This is an optional
14 function that's available to the worker, can be
15 conducted over the internet, and is a recommended
16 thing to do. The reason we recommend this is it gives
17 the worker the time to enter certain personal
18 information. It can be entered by computer -- his
19 name, address, name of employer, etc. But, more
20 importantly, it will also afford the worker the
21 opportunity to schedule an appointment at an
22 Enrollment Center. It will advise him as to where the

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1 nearest Enrollment Centers are to that worker's
2 location and will expedite the enrollment process once
3 he gets to the Enrollment Center. At the Enrollment
4 Center -- as I mentioned -- we will have them located
5 throughout the country -- I can't tell you exactly
6 where they will be at this point; but I can tell you
7 that we have a list of 125 general port locations
8 where we will insure that there are Enrollment Centers
9 at least in those port locations and certain outreach
10 functions. One of the reasons I can't tell you today
11 where exactly those Centers will be located is because
12 it's going to be up to the contractor, the winning
13 contractor, for this Program to recommend to us his
14 strategy for reaching all of the people that require
15 a TWIC in accordance with the criteria that we will
16 provide.

17
18 Once at the Enrollment Center, the
19 applicant is going to provide their biographic
20 information, that I just mentioned, biometric
21 information; that is, we are going to take an image --
22 a scanned image -- of their fingerprints, their ten

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1 prints; and they will also present identity documents,
2 which we will scan into the system and retain as a
3 record of their enrollment.
4

5 Once we've completed the enrollment
6 process, as I mentioned, then we will conduct the
7 security threat assessment. This will be conducted
8 completely by TSA based on information that we receive
9 from all the other Agencies and checks that we will be
10 conducting. At the conclusion of this threat
11 assessment, the applicant will be either notified that
12 the Credential is ready for pick up; or he will be
13 notified that it appears as though there may be a
14 reason to disqualify him for eligibility for a TWIC.
15 In that case, he will be advised of both his appeal
16 rights and his waiver rights, which I will go through
17 in a moment. As I mentioned then, once the Credential
18 is produced, the applicant picks up the Credential at
19 the Enrollment Center, and it's ready for use at MTSA-
20 regulated facilities.
21

22 I have already mentioned TSA's

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1 responsibilities that are outlined here, once again,
2 and the Coast Guard's responsibilities for enforcing
3 the Rule and determining the requirements for the
4 Facility Operators.

5
6 So who must get a TWIC? Well, the
7 technical answer in the Rule is that all individuals
8 who require unescorted access to what are defined as
9 secured areas of MTSA-regulated vessels, facilities,
10 and OCS -- that's the outer-continental shelf
11 facilities, will require a TWIC. However, this is not
12 limited to just people in the following types of
13 occupations -- longshoremen, truck drivers, various
14 vendors that service these facilities. It's not a job
15 category card. It's a card that the determination of
16 who will require it will be of the nature of the job
17 and whether they need to do their job inside a secured
18 area. Once again, also, regardless of their location,
19 all U.S. Coast Guard Credential Merchant Mariners will
20 require a TWIC.

21
22 As Jim mentioned earlier, the CFR's

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1 that we're going to amend or are proposing to amend
2 include those listed here. The first one is the
3 Hazardous Material Endorsement Regulation for truck
4 drivers who currently require a hazmat Endorsement on
5 their driver's license, and TSA already has a program
6 that provides screening and enrollment for those
7 people. And then there are the two Maritime Security
8 Regulations listed.

9
10 TSA's changes to CFR 49 includes the
11 requirement for the security threat assessment, the
12 requirement to obtain the data that I mentioned at
13 enrollments, the requirement for owners and operators
14 also to use equipment such as biometric readers that
15 conform to a federal standard. The federal standard
16 is this FIPS 201. That acronym stands for the Federal
17 Information Processing Standard that is issued by the
18 Department of Commerce through their National
19 Institute of Science and Technology.

20
21 Applicants disqualified due to previous
22 criminal activity or mental incapacity may get a

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1 waiver showing mitigating factors, and that's one of
2 the other inclusions in CFR 41.

3
4 The estimated impact economically of
5 the proposed Rule is shown on this slide. Obviously,
6 in the first year, with all the start-up costs,
7 facility costs and enrollment costs for the workers --
8 that will be the largest cost of the proposed 10-year
9 coverage by this chart. You might also notice that in
10 year 6, there is an additional estimation that there
11 will be increased costs for technology refreshments,
12 plus workers that are coming back in to renew their
13 cards since this is proposed to be a five-year card.

14
15 The second chart or graphic indicates
16 the government's estimate for the specific costs to
17 the various MTSA-regulated facilities. These specific
18 costs are shown here, averaging out -- the average
19 cost estimation for a facility -- although it's a
20 very, very wide range going from very, very small
21 facilities to extremely large complexes -- the average
22 works out to be about \$100,000. And for vessels in

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1 the outer-continental shelf facilities, it works out
2 to be about \$10,000 each. But once again, that's a
3 very wide range depending on the sophistication of the
4 requirements.

5
6 We estimate that the population of
7 workers that will require a TWIC card is approximately
8 750,000 at any one point in time. Once again, this is
9 only workers at MTSA-regulated facilities. And we
10 came up with this estimate based on a number of
11 surveys, as well as interviews with subject matter
12 experts. The survey was performed by both TSA and the
13 Coast Guard.

14
15 The estimated TWIC fees fall in the
16 range -- and once again -- this is a range, which was
17 mentioned in the Rule -- the top range of 149 -- this
18 is the median of the range. But a standard TWIC Card
19 for most workers who have not had previous qualifying
20 background check will be in the range of \$139. Those
21 who have had a comparable background check completed
22 within the appropriate period, we can avoid the costs

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1 of running another background check and simply the
2 enrollment process, which is different for any of the
3 other background checks that they may have received,
4 as well as the costs of producing a card. So this is
5 a \$105 cost for those individuals. Lost and damaged
6 cards, \$36.00. The fees cover -- by law -- the fees
7 collected must fully cover the cost of the Program.
8 So that's how we arrive at these costs.

9
10 This pie chart shows a breakdown of how
11 we arrive at the costs. The most significant cost, of
12 course, whenever you're involving people and
13 activities where there's a one-on-one relationship,
14 and that's the enrollment and issuance processes right
15 here, is the largest cost driver. Everything else is
16 pretty much done through technology. The threat
17 assessment cost includes both the pass through cost
18 that the TSA has to pay to conduct certain of the
19 background checks, as well as the cost to review and
20 adjudicate any waivers that might be required.

21
22 Next slide. If you'll follow me in

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1 reverse order on this slide, I'd like to start at the
2 bottom instead of the top. These are the security
3 threat assessments that TSA will be conducting. First
4 of all, an intelligence or terrorism check of our
5 various data bases that we have, throughout the
6 government, that is. The next check is the legal
7 status of the individuals. An individual -- to get a
8 TWIC Card must either be a U.S. Citizen or must
9 qualify as a lawful resident or someone possessing a
10 right to work in that particular case here in the
11 United States. So a legal presence check will be
12 conducted. And then, finally, the criminal history
13 records check required by the MTSA law will be
14 conducted based on fingerprints, and there are
15 permanent and interim disqualifiers. And the reason
16 I went in reverse order is so we can move into what
17 those disqualifiers are.

18
19 The permanent disqualifying offenses
20 are those criminal offenses that if one is convicted
21 of committing one of those offenses, that we could
22 look back at an unlimited period as to when that

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1 offense was -- when they were convicted -- and that
2 would be then permanently disqualifying. They are
3 listed here. I am not going to list them. And they
4 are listed in the MPR. Hopefully, you all had a chance
5 to pick up a copy.

6
7 The next slide are what we call interim
8 disqualifying criminal offenses. These are for
9 convictions within seven years or an offense for which
10 someone has been released from incarceration within
11 five years of his or her application for a TWIC card.
12 It does include warrants associated with those crimes.
13 Now these crimes can be -- these are the crimes that
14 one can make a waiver request on if there has been a
15 conviction within or release from incarceration in the
16 periods stated.

17
18 So that's pretty much the TWIC Program
19 as we see it and as we have proposed. Once again, we
20 will be inviting comments on this portion of the Rule
21 at this point. I'm going to turn it over to Jim. I
22 will say -- also reiterate that we are primarily in a

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1 listening made. If we can comment on observations of
2 a general nature or clarify something, we will do
3 that; but other than that, we will be primarily
4 listening to your comments. Thank you very much.

5
6 CAPTAIN BAMBERGER: Please announce
7 your name and your affiliation and then give you
8 comment. If you have a business card, please drop it
9 right here at the court reporter's table. If you have
10 written comments, there is box right next to the table
11 for those written comments and then just exit down the
12 center lane, and we will keep the flow working that
13 way. Okay. The floor is yours.

14 **COMMENTS**

15
16 MARC MacDONALD: Good morning. I'm
17 Marc MacDonald, Vice President of the Accident
18 Prevention Department for Pacific Marine Maritime
19 Association. Our Association represents stevedores,
20 terminal operators and shipping companies operating in
21 California, Washington and Oregon that handle
22 essentially all of the maritime container break vault,

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1 dry vault cargo moving in and out of the West Coast
2 ports. Thank you for holding these hearings and
3 allowing us an opportunity to make our comments and
4 ask questions regarding the proposed Regulations. I
5 am here with a number of PMA members and companies
6 today to offer comments. Since the very inception of
7 the concept of the TWIC, PMA and its members have been
8 engaged and supportive. In particular, four of our
9 major terminal operators engaged in the TSA prototype
10 testing of the TWIC in 2004. In addition, we have
11 posted members of the Coast Guard and TSA to enable
12 them to understand the scope of our operations and the
13 criticality of the technology and rapid TWIC
14 verification to through port of the terminals.

15
16 We were very surprised and dismayed to
17 discover that the standards for hardware and access
18 control for the processes discussed and tested and
19 envisioned during the prototype phase have been
20 completely changed in the Proposed Rules. What really
21 hit home was that the FIPS 201 Standards were being
22 developed by MIST in the Department of Commerce at the

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1 same time that we were conducting the prototype test
2 with TSA at our terminals. We feel that MIST should
3 probably be on the stage as a participant to explain
4 some of the nuances associated with the FIPS. We
5 understand why the government developed this FIPS 201
6 standard. What we do not understand is why the
7 Maritime Industry needs the level of security that has
8 been developed for a DOD Facility.

9
10 What is equally troubling is that no
11 DOD Facility, nor any Coast Guard or TSA Facility that
12 we are aware of is required to use the level of access
13 protocols that are proposed for our facilities for
14 general access. FIPS is a standard in the transition.
15 It's a standard in mid-implementation. Yet it is the
16 standard that was chosen to be used in an outdoor,
17 humid, corrosive, rough maritime environment which has
18 to move massive numbers of personnel as essentially
19 its first venue. The Maritime Industry is essentially
20 paying for the operational testing of this new
21 standard; not only in terms of hardware, which is
22 expensive and unproven, but also in terms of

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1 productivity and congestion.

2
3 Coast Guard Regulations are problematic
4 in that they do not harmonize with the standard.
5 Coast Guard Regulations require a TWIC authorization
6 ramp up at different MARSEC levels. The FIPS standard
7 seems to require a contact reader and a PIN to unlock
8 the biometric on the card to meet any MARSEC level. We
9 would ask the Coast Guard to re-evaluate their
10 requirements in terms of the FIPS standards -- the
11 authentication mechanisms in Section 62. The
12 Regulations should follow one of these mechanisms.
13 The mechanism selected should be realistic for our
14 industry. We should not be subject to higher
15 standards than the federal agencies governing us and
16 for which the standard was designed.

17
18 The industry is completely dependent on
19 TSA to choose a TWIC blank card for the entire
20 maritime sector; however, the card chosen will have a
21 profound effect on an access control system designed
22 in hardware. TSA must be mindful of through put needs

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1 of the terminals and the harsh environment in which
2 the systems will be operating. A card requiring a
3 contact reader and PIN at each entry simply will not
4 work well in the marine terminal environment. We are
5 aware of emerging technology that may meet the FIPS
6 201 standard. A card called a dual interface card has
7 been developed. This card -- in this card --
8 contactless circuitry communicates with the contact
9 circuitry. This card is read by a contactless reader.
10 This card needs to be evaluated. We need to be able
11 to take advantage of any new technology that will
12 speed entry validation and harden the access control
13 system.

14
15 The draft regulations require owners or
16 operators to submit a TWIC Addendum within six months
17 and require the owner or operator to have access
18 control systems and equipment, including card readers,
19 in conjunction with the TWIC that meet TSA Rule
20 Standards within one year to 18 months after the final
21 Rule, depending upon completion of TWIC enrollment.
22 The time line and the requirements in 33 CFR 105, 115-

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1 120 for the access control roll out are totally
2 unrealistic. Operational tests in carefully selected
3 pilot ports and terminals should be concluded and the
4 TSA data interfaces checked and proven before the
5 Access Control System is designed and the TWIC
6 Addendum created. It is unknown if the flexible roll
7 out with the anticipated date to be announced by
8 Notice in the Federal Register apply just to the TWIC
9 roll out or to both the TWIC and the Access Control
10 System. This needs to be clarified and focused, in
11 our opinion, on the Access Control System pilot time
12 line. Again --

13
14 CAPTAIN BAMBERGER: Please wrap it up.

15
16 MARC MacDONALD: Again, please note we
17 are in production testing phase of an access control
18 system required the government facilities even before
19 the government facilities are required to do so.
20 Thank you. I will put my paper in the box.

21
22 JOHN SCHWARTZ: Thank you. I would

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1 like to ask -- we're going to have a lot of commenters
2 today. If you could hold your applause until the end
3 of the day, it will actually let us get more people
4 through. So if we applaud after every speaker, I fear
5 that there are gong to be some people that aren't
6 going to get a chance to speak. Thanks.

7
8 STEVE RUGGIERO: My name is Steve
9 Ruggiero. I'm the Director of Maritime Security at
10 Total Terminals International at the Hanjin Facility,
11 the largest terminal at the Port of Long Beach. With
12 security issues taking such a precedence, our aim is
13 to provide the most effect TWIC without impeding
14 commerce or damaging the environment. The total labor
15 man hours in our facility for 2006 will be 3 million,
16 with our year-end totally 1.2 vessel moves, 1.2
17 million gate moves, in and out of our terminal, and
18 290,000 container moves on and off our on-dock reel.
19 In November 2004, a TWIC Prototype Program was in
20 place at 28 test sites nationwide. As one of these
21 Prototype Facilities, we tested two types of biometric
22 readers that used contactless cards. Both were tested

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1 indoors and outdoors at truck lanes. One of these was
2 only serviced for five days, in which time, it was
3 deemed inoperable due to weather conditions in the
4 maritime environment. The second reader is still in
5 use today and takes approximately three seconds to
6 verify card and biometric identification.

7
8 For those who understand the dire need
9 for infallible security to the terminals, this is my
10 proposal. Our need for contactless readers is to
11 minimize possible damage to the hardware, both
12 unintentional and intentional. Understood that during
13 the initial enrollment verification, something you
14 have -- the card -- something you are -- biometric --
15 and something you know -- a PIN -- will be verified
16 and required. Later entry may be accomplished via a
17 contactless card. Further, this type of reader will
18 make the biometric card verification utilizing a one-
19 to-one match and will be stronger authentication than
20 the FIPS 201 at -- one and two every time through the
21 gate. There are no adverse effects to commerce and
22 labor forces with the contactless portion of the TWIC

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1 card. A contactless card which utilizes a template
2 meets the FIPS 201 standards and even exceeds these
3 standards at a daily level. This is how the prototype
4 functioned. This is how -- this is what has been
5 proven. And this is what we want now.

6
7 We also understand the new Rule has
8 been tested and certified by MIST and the FIPS 140-03,
9 but are there any plans to use this technology in the
10 TWIC roll out? If we weren't able to base the TWIC
11 system on the contact-based card, the card itself
12 would need to have a contact chip in all four corners.
13 This is absolutely necessary so that the card may be
14 read regardless of angle or direction of insert.
15 Blockage at the gate has been verified to take less
16 than five minutes upon entry, resulting in three-hour
17 wait times or more. One driver alone is not our
18 concern, but when you consider several drivers behind
19 him and in turn behind them, you very quickly
20 experience delays.

21
22 Additionally, if it were deemed that

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1 the contact card is the only feasible option, we then
2 must start the process from the beginning and run a
3 prototype, specifically for the maritime environment,
4 further delaying the TWIC system implementation.

5
6 Given that a PIN will be absolutely
7 necessary, we would like for the PIN to be recognized
8 through the contactless card, possibly using that dual
9 interface technology. PINs will be assigned at
10 issuance of the cards and necessary upon initial
11 entry. However, in the event that the biometric check
12 does not function, this would also enable the PIN to
13 be utilized for access.

14
15 FIPS 201 was established for identity
16 verification of federal employees and contractors; not
17 private sector commerce. Does security have precedence
18 over environmental regulations, such as specifically
19 the Senate Bill 1829? If not, then again, we are
20 further binding each terminal to a \$250 per hour for
21 the first 30 minutes of aisle. Again, 300 or 400
22 trucks per aisle per hour for the first hour alone at

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1 our facility.

2

3 Additionally, the PKI Certification
4 expires after three years, and the TWIC has a life
5 span of five years. There is an immediate conflict of
6 the card, which makes it null and void after only
7 three years. Reissuance of the card must occur
8 simultaneously.

9

10 In closing, I suggest an Industry
11 Committee be made up of maritime facilities and others
12 to be put together and put forth for further
13 discussion of this project.

14

15 CAPTAIN BAMBERGER: Thank you.

16

17 PATRICK WILSON: Good morning. My name
18 is Patrick Wilson, and I in no way represent the ILWU,
19 because I am not a registered member yet; but that's
20 my affiliation. And I just have a couple of
21 questions. Am I to understand that this program is
22 not going to come into play until 18 months from the

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1 end of 2006? And if so, what would be the date that
2 you would be using to start looking back for the
3 interim disqualifying offenses? And then another
4 question that I had is if somebody at the time that
5 the TWICs were issued -- like say they had been
6 convicted eight years ago, but have only been out of
7 prison for four and a half years, or had been
8 convicted six and a half years ago, but out of prison
9 for five, would they then be completely disqualified
10 from ever getting a TWIC or would they be able to
11 return to work and return to get a TWIC six months or
12 a year later when they were able to qualify for a
13 TWIC?

14
15 JOHN SCHWARTZ: We can't get into
16 specifics, you know, of individuals, but I will say
17 that the trigger for the look-back periods -- it
18 starts with when the person applies for the TWIC. So
19 when you apply for the TWIC, that's when we look back.
20 Also, I think maybe I can just clarify as to when the
21 program to start the initial enrollments we would hope
22 to start by the end of this calendar year and then we

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1 would proceed for approximately 18 months to reach all
2 750,000 workers.

3

4 PATRICK WILSON: Okay. Thank you.

5

6 CAPTAIN BAMBERGER: Thank you.

7

8 ROB ZIFFNEY: Good morning. My name is
9 Rob Ziffney. I am in Marketing with Hirsch
10 Electronics. We are a supplier and manufacture of
11 physical access control systems for TWIC and FIPS 201.
12 I serve on the Board of Directors of the Security
13 Industry Association. I am the Chair of the BIB
14 working group there. I am also a member of the
15 Interagency Advisory Board of the Physical Access
16 Committee. I recognize the TWIC and FIPS 201 are
17 different; but to the extent they are correlated, I
18 offer the following comments on FIPS 201. My
19 observation is that FIPS 201 is IT driven, and only
20 recently has the physical security industry had a
21 voice. We see that IT understanding of security is
22 basically a desktop card reader, next to a PC, used to

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1 log on while you wait for XP to boot up. As we talk
2 to very intelligent people that have designed a lot of
3 these specifications, we found that there is no real
4 understanding of controllers, outdoor environments or
5 people waiting in line. The Security Industry
6 Association, the Smart Card Alliance, and the
7 International Biometric Industry Association have all
8 petitioned, primarily through the commenting periods
9 on standards, they have all petitioned for allowing
10 the use of biometric with contactless readers. The
11 technology is there, but the specs are committed to
12 contact.

13
14 We have also requested the removal of
15 the requirement for a PIN from the biometric.
16 Historically we haven't used a PIN as a requirement
17 with a biometric. We do know that recently MIST has
18 relaxed the requirement for a PIN with PKI and they
19 removed that. We believe these issues are critical
20 for physical security applications. We need higher
21 resistance to vandalism and weather. We need cost
22 effective solutions. And we need to be able to enroll

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1 both a PIN, as well as the number in the card, into
2 your local access system, physical security system
3 database. If a keypad and a PIN are dedicated just to
4 unlocking the card and not to communicating with our
5 Physical Access Systems as we've done in the past,
6 then you have no local control over being able to use
7 the PIN or the keypad for access. We need secured
8 decision making on the secure side of the protected
9 perimeter instead of just in a card on the attack
10 side.

11
12 We have been told that it is privacy
13 issues, not technology, that is our obstacle. What
14 can we do? Unofficially, FIPS 201 is now open for some
15 final comments until the end of this week. So I
16 request that all in this room please submit your
17 letters to MIST requesting removal of the requirement
18 for PIN with biometric and requesting that we can use
19 biometrics with contactless readers and have that
20 changed in FIPS 201, which is the parent document to
21 many other special publications. Please let them know
22 that physical security is adversely impacted if you do

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1 not do so. Thank you very much.

2

3 CAPTAIN BAMBERGER: Thank you.

4

5 BILL CARSON: Good morning. My name is
6 Bill Carson. I am a Facility Security Office at
7 International Transportation Service, one of the
8 largest container stevedoring facilities in the Port
9 of Long Beach. ITS is the corporate office for two
10 other container facilities in the Port of Oakland and
11 the Port of Tacoma. First I have a concern that I
12 would like to address that is relative to the FIPS 201
13 requirement. This new standard requires a contact
14 reader to identify a TWIC. This type of system will
15 not be functional in the Marine Industry due to the
16 environmental factors and questionable durability.
17 The requirement also has procedures and processes, in
18 addition to presenting the TWIC for each MARSEC level,
19 including the usage of biometrics and entering a PIN
20 number. The implementation of the biometrics and PIN
21 number would add significant delays in employees
22 reporting to work and would also hinder commerce.

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1
2 At all MARSEC levels, a contactless
3 reader without the requirement of biometrics and PIN
4 numbers should be acceptable since these individuals
5 have already been vetted through the TWIC process,
6 which is above and beyond any security level
7 requirement currently.

8
9 As more information becomes available,
10 the cost to implement the TWIC appears to be
11 significant. How does the Coast Guard and TSA plan to
12 minimize these costs to the facilities? Who is
13 responsible for the TWIC equipment, implementation,
14 maintenance, training and personnel to manage the
15 system? We understand that the Port of Los Angeles
16 and Long Beach may be the first site of implementation
17 on the TWIC. This is of concern that the largest port
18 complex will be the test site for the implementation
19 process. Can a much smaller port participate in the
20 initialization of the TWIC before large ports like Los
21 Angeles and Long Beach? With TSA being involved in
22 implementing regulations on waterfront facilities,

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1 will TSA inspect ITS and similar facilities? If so,
2 the TSA will need to become educated about our
3 facilities and operations that another agency is
4 already familiar with, educated on and conducting
5 similar, if not the same, type of inspections. Not
6 only would this type of procedure be counter-
7 productive for the TSA, but it would add another
8 agency inspection, regulation procedures and opinions
9 that the waterfront facilities will be required to
10 endure. Will the Coast Guard conduct the inspections
11 and handle these procedures on behalf of the TSA?

12
13 Thank you for the opportunity to
14 express my comments.

15
16 CAPTAIN BAMBERGER: Thank you.

17
18 JESSE CUEVAS: Good morning. My name
19 is Jesse Cuevas. I am the Facility Security Officer
20 for California Meda Terminal in Long Beach. We are a
21 unique operation in that we consist of break bulk
22 vessels and containerized operations as well. On a

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1 weekly basis, we have 8,800 gate moves and 6,000
2 vessel moves.

3
4 We are in support of the TWIC, but we
5 do have some concerns. Our concerns lie in
6 individuals entering the facility and are delayed or
7 denied for whatever reason -- they don't have their
8 card or the hardware is broken. That's going to cause
9 delays throughout the whole day. When you add that
10 up, it's going to slow down production which is the
11 driving force of our company and potentially affect
12 commerce as well. Thank you.

13

14 CAPTAIN BAMBERGER: Thank you.

15

16 DAVID CONNOLLY: My name is David
17 Connolly. I'm a Vice-President for the Civil Unit
18 Pacific, and I represent unlicensed -- mainly
19 unlicensed -- Merchant Mariners.

20

21 We have mixed feelings about these two
22 rulemakings. Generally, there are many things to like

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1 in the Coast Guard's MMC and most of our objection is
2 focused on the TSA side of the rulemaking. So our
3 objections are many, and I am never going to be able
4 to get it into four minutes, but let me say that we
5 object to the cost of the process. We object to the
6 definitions of mental incapacity. And I want to focus
7 on two areas that I think are most problematic; and
8 that is, the disqualifying criminal offenses and the
9 issue of foreign mariners.

10
11 Taking foreign mariners first, we are
12 doing again, with this rulemaking, what we've done in
13 the past, building up -- when it comes to terrorism
14 security -- building up our defenses where they are
15 already strong. American Merchant Mariners are the
16 most vetted, the most regulated mariners in the world;
17 and yet, 95 percent of the mariners in our ports today
18 are unknown, virtually undocumented. The Rule
19 suggests that the ISTS Code will cover that. But we
20 know that the ISTS Code relies on ILL 185 for
21 documentation of merchant mariners, and there is no
22 background check for the world's merchant mariners.

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1 Most nation's privacy laws forbid that. So we don't
2 have background checks on them; nor do we have
3 positive I.D. -- positive identification. ILL 185
4 does not require that. There is no way for to know
5 who these people are on foreign ships, as long as you
6 are who you say you are, in international maritime
7 waiver. So we think that the Coast Guard and TSA
8 should use its own national security strategy of a
9 risk-based approach to security by doing something
10 about foreign mariners. And I have a simple and
11 feasible suggestion -- require American mariners on
12 every ship, all the time, when the ship is in U.S.
13 Port Authority.

14
15 The other area I won't get into is the
16 very, very dangerous of L&G Ships. There are
17 undocumented mariners on some very, very dangerous
18 vessels and cruise ships where many, many mariners,
19 foreign mariners are employed without the Coast Guard
20 or TSA understanding who is there.

21
22 Let me move quickly because I know I'm

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1 running out of time to the criminal issue. The
2 problem with this rulemaking in the criminal area is
3 that it grafts the hazmat Commercial Driver Rules from
4 the Patriot Act onto the maritime population that gets
5 its statutory authority for the TWIC under the MTSA.
6 So the hazmat Driver Rules were never intended for a
7 maritime population, and they don't fit. It's an
8 imperfect and inappropriate use, and that's where it
9 all starts because in the Patriot Act under hazmat
10 Rules, the disqualifying offenses on the interim
11 level, second tier, are automatic denials, automatic
12 disqualifiers. Not so under the MTSA where the
13 Secretary has to determine that there is a terrorism
14 risk, there is a linkage between criminality and
15 terrorism -- real security under the MTSA. And it is
16 not in the Patriot Act, and there isn't in this
17 rulemaking, and that's the problem.

18
19 Let me quickly move through some
20 recommendations. Connect the felony record to real
21 terrorism security risk. Issue an interim credential
22 for those who have an interim disqualifying offenses.

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1 Remove some felonies from the interim list altogether.
2 Drug distribution or possession of fire arms. The
3 connection between those offenses and terrorism
4 security risk is tenuous, is uncertain and it is not
5 fair to put somebody out of work forever for a mistake
6 that they made many years ago. Remove especially the
7 uncertain disposition of arrests from the threat
8 assessment. Many people have an arrest that is still
9 on their record for which they were never convicted.
10 The Coast Guard definition of conviction is much
11 broader than the criminal courts'. It's any
12 adjudication at all for anything that could have led
13 to a conviction. So if you plea bargain the case --
14 and I have a member who did -- in 1968, a weapons
15 charge down to a drunken disorderly -- but the weapons
16 charge remains on the record. And there is an
17 uncertain disposition of arrest and a denial of a
18 TWIC, and it is wrong. It puts you out of work; and
19 in many cases, it will put people out of work forever.

20
21 Thank you. I will stop here.
22

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1 CAPTAIN BAMBERGER: Thank you.

2

3 MIGUEL LOPEZ: Good morning. My name
4 is Miguel Lopez. I'm here representing the
5 International Brotherhood of Teamsters Port Division.
6 We represent over 5,500 longshoremen, clerks, truck
7 drivers, tug boat deck hands, tow boat captains, and
8 Port Authority employees, guards, service delivery
9 employees and warehousemen who work in our nations'
10 ports. The Teamsters generally support some concept
11 of TWIC. Security at our ports is porous and
12 deficient and is long overdue for repair. The
13 Teamsters have several concerns regarding particular
14 aspects of the proposed Rules. The Teamsters are
15 concerned with the unlimited look-back period, the
16 overly broadness of disqualifying offenses and the
17 viability of those aspects of your plan. The
18 Teamsters believe strongly that there needs to be an
19 Administrative Law Judge to hear appeals of any TSA
20 Determination.

21

22 In addition, the Teamsters are

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1 concerned that most port drivers will be unable to
2 afford the costs of a TWIC card. Though Congress
3 mandated that the TWIC Program be paid by user fees,
4 at no point did Congress say that the fees must be
5 paid by the users who can least afford them; rather
6 than those stakeholders who reap enormous profits from
7 this booming international trade.

8
9 I want to take this opportunity to
10 raise a serious concern with the cost assumptions
11 you've used in developing this Program. According to
12 your figures, you assume a 12 percent annual turn over
13 of the workers covered by this Program. Yet the
14 American Trucking Association indicates that the
15 average turn over rater for non-union truck drivers is
16 over 130 percent. It is their belief that the
17 turnover in the inter-mobile container hauling sector
18 is even higher. This is crucial to the success of
19 this program, since using your figures, TSA estimates
20 a five-year turn over of 410,000 for all port workers.
21 Using ATA figures, you would have a five-year turn
22 over of 572,000 for port truck drivers alone.

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1
2 Why are there are such high turnover
3 rates in port trucking? Port trucking is dominated by
4 hundreds of tiny, under-capitalized motor carriers.
5 There are over 600 motor carriers serving the ports of
6 L.A. and Long Beach alone, which average fewer than 25
7 drives hired as equipment, lease contract drivers.
8 These motor carriers are not accountable for their
9 drivers. They operate without paying FICA taxes,
10 workers compensation, unemployment insurance, and
11 often without truck liability insurance; but they
12 control the access to terminals and the dispatch of
13 their cargo. These abusive working conditions, along
14 with unsustainable compensation, drive inter-mobile
15 container truckers to leave the industry and search
16 for work elsewhere.

17
18 We recognize that addressing the
19 underlying problems of driver abuse is beyond the
20 purview of TSA and the Coast Guard, but we urge you to
21 recognize these issues because they will prevent
22 successful implementation of TWIC. What we believe

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1 TSA and the Coast Guard can do is to work closely with
2 Port Authority and terminal operators while TWIC is
3 being implemented to find ways to help stabilize the
4 port trucking industry so that TWIC can make our ports
5 more secure. Possible bifurcation of the targeted
6 transportation workforce, accessibility to covered
7 facilities, could be a first step. Common sense tells
8 us that the lesser number to secure can be more easily
9 secured.

10
11 Requiring facility staging areas for
12 cargo will remove thousands of drivers from a TWIC
13 process and further secure the port employees' work
14 areas. If drivers do not have access to terminals,
15 they don't need a TWIC. If you have a secure -- if
16 you have staging areas that allow them to access the
17 cargo and move it while the employees who are actually
18 employed to prepare and move the cargo out of the
19 terminals -- which are the longshoremen -- that would
20 be an answer as to reducing the number of people who
21 would be required to submit to TWIC processing.

22

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1 With that, I thank you for your time.
2 This is respectfully submitted by the Teamsters Union.

3
4 CAPTAIN BAMBERGER: Thank you.

5
6 OFFICER OLSON: Good morning. My name
7 is Olson. I'm an officer of Local 13 at the ILWU. I
8 also have the honor or the curse, if you will, of
9 representing perhaps 100,000 workers as the only Labor
10 Representative on our Area Maritime Security
11 Committee. I know the president put in a bulletin, and
12 we have 7,000 members plus, that all the questions
13 regarding homeland security should be addressed to me.
14 The Secure Project hit the fan and three days later,
15 my cell phone messages maxed out at just under 100 a
16 day. They still fill up every night. I have followed
17 your road show. I don't want to ask you questions
18 that you already said you have no answers for. But I
19 would like to field a couple of the things I have to
20 answer on the phone.

21
22 My stock answer for why is this

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1 happening is that the Administration has been getting
2 a lot of flack for lack of port security and we're an
3 easy target, and there is not a whole lot we can do
4 about it. If you have a more accurate or honest
5 assessment, I'd like to hear it. You're in the
6 unfortunate position -- you are poised to enforce
7 security as defined by the individual terminals within
8 your Terminal Security Plans. Now, your directions
9 for filling out these plans encouraged them to
10 designate the entire facility as a secure area. As an
11 example, workers we have in this port -- there is a
12 vessel planner. This man has the power to decree that
13 the can of anthrax powder should be placed directly on
14 top of the can of explosives. We might agree that
15 this guy should be scrutinized.

16
17 On the other hand, there is a guy who
18 is driving a bulldozer on a scrap job where the Union
19 and employer have worked together to waive the
20 California Public Safety Rules because the safest way
21 we find to put this guy on what essentially is a peak
22 of hundreds of tons of razor blades is to lift him

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1 with the gear aboard the ship. Gentlemen, you
2 couldn't design a better principle. You could have
3 Jack the Ripper driving that bulldozer, parade
4 prostitutes around him all night and go to bed secure
5 in the knowledge that you will awake without a hair on
6 anybody harmed, unless poor Jack fell off the
7 bulldozer.

8
9 However, this job and this situation
10 are designated as secure areas. I'd like to know if
11 any one of you on the panel actually believes that
12 simply because this is designed in a plan, that every
13 square inch of the terminal that should be secure or
14 that every job on every terminal involves access to
15 what should be a secure area.

16
17 Longshoremen are in the immediate area
18 of the ports we work, some of us, our situation, have
19 done so for our generations. We are the vulnerable
20 here. The people who should be helping you and the
21 people you should be protecting. We are the guys here
22 24/7. But we are just trying to perpetuate that fifth

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1 generation. I was going to offer to bet my bird
2 against any one of yours that you will not find a
3 registered longshoreman on this post so long as you
4 have them in security threat. Given the careers of
5 the TSA people lately, well they be here any minute,
6 so I won't do that.

7
8 Financially, we have better shape in
9 Vegas than what we got here. At least there, you win
10 sometimes. Here, aside from the tax money you are
11 paying for all of this, you're asking a longshoreman
12 to make a sizeable bet where the gamble is if he hits
13 the jackpot, he loses his job. Thank you.

14
15 MIKE MITRE: Good morning. A hard act
16 to follow. On behalf of the International Long Shore
17 Warehouse Union, I want to thank you for the
18 opportunity to allow us to come here and testify this
19 morning. My name is Mike Mitre. I'm the Director of
20 Port Security for the Coast Wide Union from Canada to
21 Mexico. The ILWU has been directly involved in the
22 TWIC process from the beginning. We've met regularly

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1 with TSA, with Homeland Security, with the Department
2 of Transportation, who originated the process.

3
4 The ILWU, while fully supportive of all
5 actions to create and improve port security, which
6 we've shown, we have grave concerns regarding flaws
7 that may render the whole TWIC Program less than
8 adequate. We understand the TSA has interest in
9 eventually extending the TWIC Program general modes of
10 transportation to other unions directly covered by the
11 MPRM and that's why we are so concerned. This thing
12 can go much further, and you've got to get it right
13 the first time.

14
15 Again, we thank you for having us here
16 today. Let me clearly state that no one wants to
17 secure our ports more than the ILWU. As I said
18 before, we have a vested interest. We're the front
19 lines. Our guys work here and we live within five
20 miles of a port in most cases. If something happens,
21 we're the ones who are going to get hammered first.
22 We understand that access control procedures,

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1 including tamper-resistant ID cards like the TWIC card
2 are a part of this effort. We understand the need for
3 them, and we support initiatives to identify and to
4 bar individuals who pose a real terrorism security
5 risk. One of our big things is -- who does pose this
6 risk? We really don't feel it's the longshoreman who
7 has been here for 70 and 80 years; and as has been
8 said before, there are three and four generations of
9 longshoremen in this port, as well as in all the ports
10 up and down this coast. And I am sure it's the same
11 on the East Coast with the ILA.

12
13 The TWIC Program has to strike the
14 right balance. It must enhance the security or
15 transportation system while it preserves the rights of
16 all workers and all people. And this all has to be
17 accomplished without unduly infringing on the flow of
18 commerce, which we have just recently seen with all
19 the articles coming out in the newspapers about some
20 ships being warned of inspections and others not in
21 these supposedly random inspections. What we can't be
22 allowed to do is to unjustly punish employees for

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1 decisions that were made years and years ago. On this
2 point, I want to acknowledge the work of the committee
3 when they drafted Section 70105 of the MTSA Act, it
4 established the requirements and limits for a
5 Transportation Security Card. While they weren't
6 perfect, these are important protections and
7 limitations, and I feel that sometimes they are being
8 run over as the TWIC Program goes on because very
9 clearly 70105 said -- individuals that pose
10 transportation security risks on terrorism. And I
11 think we've gone past that. I think that the
12 disqualifiers are too broad. I think some of those
13 things can be let out. And you know, what really can
14 this committee do? Are we beyond that? Is this a
15 congressional problem now? I'm asking that
16 rhetorically. I don't need an answer right now. But
17 I will ask some questions in a minute.

18
19 There is little doubt that TSA and the
20 Coast Guard had a challenging task in drafting this.
21 No doubt. And while we appreciate the fact that in
22 many regards the end results follows the mandates of

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1 70105 and otherwise attempts to put forth a
2 reasonable, workable program, unfortunately, as I
3 said, there are areas where we feel it has fallen
4 short. There are a few other areas that the ILWU is
5 very concerned with. Other than the disqualifying
6 offenses, we are very concerned with the waiver
7 process, including the use of an Administrative Law
8 Judge, also known as ALJ's, and subjective decisions
9 that are incorporated in the process. We are
10 concerned with parts of the document. We are concerned
11 about a Transportation Security Exam and how it is
12 going to be specifically defined and how it is going
13 to be defined in conjunction with the card and with
14 possible people that are considered to be in violation
15 of this. And then we are concerned with privacy
16 rights.

17
18 Before I finish, I'd like to ask a
19 couple of quick questions. Obviously, we just went
20 through a vetting process. And this vetting process
21 was -- to put it real simply -- I may put it in the
22 wrong words -- was comparing individual workers

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1 against the no-fly list or the terrorism list. We
2 were notified that truckers weren't necessarily part
3 of this process at the beginning. Can any of you
4 answer me, were truckers part of the vetting process?

5

6 CAPTAIN FRANK STURM: No, they were
7 not.

8

9 MIKE MITRE: Okay. So --

10

11 CAPTAIN FRANK STURM: We're here to
12 take comments on the TWIC. I don't want to get into
13 the interim vetting processes. I am sure plenty of
14 other people have questions about that.

15

16 MIKE MITRE: Well, let me --

17

18 CAPTAIN FRANK STURM: I don't mean it
19 as a negative. We will be happy to answer your
20 questions at Coast Guard Headquarters.

21

22 MIKE MITRE: Okay. Thank you. The

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1 reason I say this though is this -- once we get into
2 the TWIC process -- okay, we are going to do
3 longshoremen, no problem. But what happens when you
4 get to the truckers? Once again -- and that's why I
5 brought it up -- not in terms of the vetting process,
6 but in the TWIC -- once again, are we going to have a
7 problem that part of the labor force is going to be
8 included? Say, longshoremen and other people and non-
9 union truckers that really make up a lot of the
10 industry, because it's difficult, are they going to be
11 excluded?

12
13 LUKE HARDEN: The proposal is that all
14 individuals who have unescorted access to secured
15 areas would have to have the TWIC Cards. So if that's
16 union truckers, non-union truckers, longshoremen,
17 management, whomever would have access to that area
18 unescorted would have to have the TWIC Card.

19
20 MIKE MITRE: And so this Committee --

21
22 CAPTAIN FRANK STURM: Now, you can --

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MIKE MITRE: Let me ask one question to finish up please? One question. At the end of the 18-month period of the implementation, if there are truckers, non-union truckers that don't have it, they will not be allowed access on the terminal? Is that the thought now so far?

LUKE HARDEN: People how have unescorted access have to have the TWIC Card, and it's left up to the owner and operator to determination the implementation plan for how this is going to be applied. But yes, the intention is for everyone -- everyone is going to have to have a TWIC Card.

MIKE MITRE: Okay. Thank you very much for letting me give comment. I appreciate it.

MARK MENDOZA: First of all, I would like to thank you for allowing us to speak. My name is Mark Mendoza. I am the president of the Long Shore Local 13, Southern Cal. I'd like to speak about the

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1 disqualifying offenses. The Union remains concerned
2 that the list of penalty offenses that will disqualify
3 a worker from holding a Maritime TWIC is too big and
4 not adequately focused on eliminating true security
5 risks. Section 70105 is clear. For penalty
6 convictions, an individual may not be denied a
7 Security Card unless the individual has been convicted
8 within the past seven years or released from
9 incarceration in the last five for a felony that the
10 Secretary believes could cause the individual to be a
11 terrorism security risk to the United States. We
12 maintain that some of the broad descriptions of
13 disqualifying offenses listed in Section 49 CFR go
14 beyond this mandate and its limitation. Again, in
15 looking at criminal records, the Secretary may only
16 deny a card to someone who could impose a terrorism
17 security risk. By way of example, the MPRM says that
18 all felonies involving dishonesty, fraud or
19 misrepresentation make an individual at least an
20 initial terrorism security risk. If a worker is
21 convicted of a felony in writing bad checks, that
22 would appear to qualify as a crime of dishonestly or

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1 fraud. We understand why a financial institution may
2 not want to hire this person. We simply do not
3 understand how that makes an individual a terrorism
4 security risk, unqualified to work in a port. Simply
5 put, there needs to be a cleaner nexus between
6 terrorism security and the crimes that will disqualify
7 an individual from holding a Maritime TWIC.

8
9 The TSA and the Coast Guard note in the
10 MPRM that they are adopting the disqualifying offenses
11 currently in place for the Federal hazmat Programs.
12 While we agree that the two programs should be as
13 similar as possible, it must be remembered that the
14 hazmat Program and the Maritime TWIC Programs are
15 governed by two different statutes. Specifically,
16 Section 1012 of the U.S. Patriot Act, USC 508 (a)
17 grants TSA broader direction in deciding that crimes
18 will disqualify someone from the industry and how far
19 back the criminal records should be examined.
20 Section 70105(c) places more limits on the Secretary
21 for the Maritime Program. Only those crimes that make
22 someone a terrorism security risk to the United States

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1 should be included. We believe that it is critical
2 that the list of criminal offenses be consistent with
3 the MTSA standard. While TSA claimed it was adopting
4 the such an approach, we continue to believe that the
5 crimes adopted for the hazmat Programs and proposed
6 for Maritime TWIC do not, in fact, meet the standards
7 established in Section 70105.

8
9 The union appreciates the inclusions of
10 a waiver process in Section 70105. It should not be
11 used as excuse to adopt an overly broad list of
12 felonies and allow inherent problems to go
13 unaddressed. The union's feeling on a terrorism
14 security risk is not a decision that can be casually
15 rendered. The burden alone should overcome the label
16 from then on will be an onus.

17
18 Furthermore, the TSA will need to
19 review and process the criminal histories of maritime
20 related workers pursuant to this on an extremely tight
21 deadline. As many are saying all over the country, it
22 is obvious that the TWIC Program is now being fast

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1 tracked after years of little to no movement at all.
2 On top of other procedural challenges inherent in this
3 program, it makes no sense to overload the waiver
4 process with the individuals that should never be
5 disqualified in the first place.

6
7 Now listen, I myself am like the
8 military vets up there. I am a military vet. I have
9 numerous of my local that are military vets. I served
10 my -- I am from a family of vets. From my brother to
11 my father-in-law being a colonel. My brother being an
12 officer. My uncles. And now, some of my members that
13 are overseas right now serving in the war, for
14 whatever reason they did, they are going to come back
15 here and now they pose a threat to the United States
16 of America? I've got a problem with that. And I think
17 you need to look a little deeper into what you are
18 trying to impose here. We are the first line of
19 defense. Thank you.

20
21 CAPTAIN BAMBERGER: Than you.

22
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1 DAVID GONZALES: Good morning. My name
2 is David Gonzales. I'm the President of Local 10,
3 Long Shore, up in San Francisco, Oakland Bay Area.
4 I'd like to talk to you about the waiver process and
5 ALJ's. As indicated earlier, the unions talked with
6 members of Congress in negotiations that led to Section
7 70105 and the inclusion of a waiver process was a
8 major priority. We were there when the TSA chose to
9 incorporate the waiver process. We are concerned,
10 however, that the waiver process requires workers to
11 apply back to the very same agency that determined
12 that the individual was a security risk in the first
13 place. Given the public anxiety regarding terrorism
14 and the insular nature of this process, we are
15 concerned the TSA might reject waivers that may have
16 otherwise been meritorious.

17
18 In an attempt to address this problem,
19 we have asked the TSA to allow workers to have their
20 waiver cases heard at some point in the process before
21 an administrative law judge at a hearing on the
22 record. This would allow employees to make their cases

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1 in front of an impartial decision maker not bound by
2 political pressures or subject to agency interference.
3 In addition, ALJ decisions would establish precedent
4 helping to better define what constitutes an actual
5 security risk. This will introduce a level of
6 fairness and consistency to assist in that essential
7 link between employee rights and national security.
8

9 There is currently a rule in Congress
10 to address on this point, including the pending Coast
11 Guard Re-Authorization Congress Report HR-889. While
12 we understand that the Congress Report is being held
13 up for unrelated reasons, the bipartisan support for
14 the introduction of ALJ's into the TWIC process is
15 clear. The ILWU would specifically like to thank
16 Senator Stevens, Republican from Alaska and Senator
17 Inouye, the Democrat from Hawaii, for their help on
18 this issue. Why would we want -- why would we not
19 want to include an ALJ in the TWIC process? Remarks
20 made by the TSA and the Coast Guard stating that they
21 will alter the process if Congress changes the law are
22 all fine and good. However, we're talking here about

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1 possibly taking away a worker's right to feed and
2 support his family. While we have every confidence
3 that Congress will act, it is troubling that the TSA
4 and the Coast Guard will refuse to include ALJ's on a
5 technicality. This is just too serious an issue.
6 While these agencies clearly have the discretion to
7 include ALJ's in the process, their continued
8 resistance raises concern regarding that they
9 implement and incorporate fairness into the system.
10 I should note that the ALJ process, to be effective,
11 cases may be heard and decided as expeditiously as
12 possible so that the employees are not unjustly barred
13 from returning to work. Thank you.

14
15 CAPTAIN BAMBERGER: Thank you.

16
17 MICHAEL BRIAN: Good morning. I am
18 Michael Brian. I am the Port Facilities Security
19 Officer for the Port of Oakland, and I welcome this
20 opportunity to supply comments this morning. The Port
21 of Oakland is the fourth largest, fourth busiest,
22 excuse me, container port in the United States, with

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1 a record of 2.3 billion TEU's through 2005. We
2 anticipate continuing an annual growth of 10 percent
3 for the foreseeable future. While they truly apply to
4 support efforts to insure the port work force is
5 secure and it does not pose a threat to the American
6 transportation system, I am concerned with these
7 proposed access control systems which will very well
8 impede the flow of commerce; and thereby have a
9 negative impact on the regional and national
10 economies.

11
12 First off, I'd like to comment on
13 system costs. As shown earlier in the presentation,
14 the cost to Marine terminal facilities in the U.S. is
15 estimated in the notice to account for 38.9 percent of
16 the \$1.03 billion 10-year cost of the program, which
17 would be about 400 million dollars. With gate readers
18 required at all the pedestrian and truck access
19 control pedestals and all out gates, I think the cost
20 will be much higher. From experience with similar
21 projects through the Port of Oakland and the Security
22 Grant Process, the Port of Oakland received \$2.5

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1 million to install the first round of Automated
2 Pedestrian Access Control System across seven of our
3 marine terminals. The port share in that project was
4 about \$631,000, for a total cost of \$3.13 million. If
5 you do the math, that's about \$430,000 per terminal.
6 Earlier, they said the average was estimated to be
7 about \$100,000 cost per terminal. And this was just
8 for the pedestrian side of the Access Control System
9 that was installed three years ago.

10
11 I believe the TWIC System installation
12 costs across all marine terminals, both pedestrian and
13 truck access, both inbound and outbound, in the Port
14 of Oakland could be between eight and 10 million
15 dollars, which does not include operation, maintenance
16 and technical support of the system. These costs are
17 very significant, and I think they are vastly
18 understated in the notice.

19
20 Regarding enrollment centers, from my
21 understanding, the enrollment center location hasn't
22 been determined, but with 5,000 longshoremen, truckers

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1 and marine terminal workers, the Port of Oakland
2 required plans for access to the marine terminals. I
3 highly recommend that at least one enrollment center
4 be placed in an easily accessible location to Oakland.

5
6 Regarding Coast Guard Verification, I
7 recommend under 49 CFR 1572.41, that the Coast Guard,
8 not TSA, be the agency that evaluates, inspects and
9 tests for compliance with Part 1572. This is
10 consistent with the Coast Guard's responsibility to
11 verify regulated marine facilities that are conducting
12 access control activities in accordance with their
13 approved security facility plans. To add TSA to that
14 mix is potentially confusing to the marine terminal.
15 Access Control procedures at marine terminals should
16 be verified by only one federal agency.

17
18 Regarding lost card procedures, I did
19 not see a policy in the notice about a worker's status
20 who has lost his TWIC card during the time it takes to
21 process and issue a new card. Is he still authorized
22 unescorted access? What are the procedures for this

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1 contingency, which could last three to four days, and
2 I think that's optimistic for getting your card back.
3 Can he be issued a receipt of some sort that shows he
4 lost his card and the process has been initiated to
5 replace his card?

6

7 Thank you.

8

9 CAPTAIN BAMBERGER: Thanks Michael.

10

11 RAY LYMAN: Good morning. Thank you for
12 being here to listen to our comments today. My name
13 is Ray Lyman. I work for Catalina Express, and I'm a
14 board member with the Passenger Vessel Association.
15 Having gone through the document of the proposed Rule,
16 I have far too many concerns to try and comment on
17 them in my allotted amount of time here today.
18 Instead, I wish to try and make you understand a
19 little about our industry and the huge differences
20 between our vessels and facilities and those of the
21 big container, bulk and product facilities moving
22 international trade within the ports. We understand

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1 the enormous political pressure your departments are
2 experiencing to make the ports secure and safe.
3 However, it should be even more important to do it
4 right; not to put industries out of business and bring
5 the U.S. economy to its knees.

6
7 With that said, I'd like to hand each
8 of you a copy of a few photographs that depict our
9 facilities and vessels. I would like to have you look
10 at these photos while I describe their content and the
11 scenarios we work with in the domestic trade of
12 carrying passengers on small passenger vessels. Is it
13 all right if I bring those up? The first photo you
14 see there is our main corporate headquarters under the
15 Vincent Thomas Bridge here at Berth 95 in Los Angeles.
16 Overall, you can see the terminal itself, the parking
17 lots that surround it, which, again, this is a public
18 access area to where all you have to do is take a
19 ticket and promise to pay to leave to get into that
20 area. The next page, if you look at it, an aerial
21 view of that same spot, the bottom part of that is a
22 group of camp kids within our terminal waiting to go

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1 over to one of the youth camps on Catalina Island.
2 Again, public access terminal owned by the Port of
3 L.A. We can't even lock the doors at night because of
4 the public use for the rest rooms and so on and so
5 forth. The next page, if you look at it, it's our
6 Long Beach facility right here in downtown Long Beach.
7 There is a crowd of people waiting to get on the boats
8 in both of those pictures. I'd like you to understand
9 that there's a bike path that goes between our ticket
10 and terminal facility and the dock facility. We
11 cannot block that bike path. That is regulated by the
12 State of California and the Costal Commission. The
13 next page is our Queen Mary facility, again here in
14 Long Beach. That is a mobile unit, trailers that have
15 been put together. Access, once again, through a
16 parking lot for the public use. Again, an aerial
17 photograph of that as well.

18
19 Again, after reading the TWIC proposed
20 rule, I see so many aspects that if enacted without
21 substantial change would handicap our company and the
22 small passenger vessel industry. I will be submitting

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1 a detailed comment to the docket regarding our
2 concerns. At this time, however, I ask that you work
3 with the Passenger Vessel Association to create an
4 alternative plan for identifying our employees. Many
5 of the member companies of PVA operate under an
6 approved ASP, an alternative security plan, which we
7 developed through the Coast Guard for our domestic
8 operating companies. We appreciate our continued
9 working relationship with the Coast Guard, including
10 our partnership action teams, natural working groups
11 that over the years have created regulations or navics
12 that have made our industry safe and secure.

13
14 With the current domestic scenarios,
15 fuel prices and environmental pollution, public
16 transportation needs to be a growing industry that
17 private companies such as Catalina Express can operate
18 within the multitude of regulations, and public
19 passenger vessel operations around the country can
20 operate within a budget that taxpayers will tolerate.

21
22 In closing, I thank you -- I ask you to

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1 realize the enormous differences between passenger
2 vessel operations and the ports of the United States
3 and the international operations moving the world's
4 products in and out of our country. In the small
5 passenger vessel industry, we are spending millions of
6 dollars to market our businesses to bring the public
7 into our facilities and on to our vessels; while the
8 big international product facilities that should be
9 the target industry of your TWIC are spending millions
10 dollars to keep the public out. A one size fits all
11 approach to employee identification and access within
12 the vessel operations in the United States will not be
13 practicable. Again, please work with the passenger
14 vessel industry to develop a program that will be of
15 equivalent value in securing our industry while
16 allowing small businesses to survive the economic
17 challenges of today.

18
19 Thank you.

20
21 CAPTAIN BAMBERGER: Thanks Ray. Based
22 on our time, we are going to have time for four,

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1 possibly five, more at the most. So, we will try to
2 keep it tight, but I'm saying four for sure; maybe
3 five.

4
5 CAPTAIN DAVID BOEDER: Good morning.
6 I'm Captain David Boeder of the Masters, Mates and
7 Pilots. We represent over 6,000 licensed deck
8 officers. Any true, proper examination of security
9 has to be done objectively. We have to remove the
10 rose colored glasses. You can add any requirements
11 you want to American merchant seamen, but will not
12 make these ports appreciably more safe because 95
13 percent of the ships are crewed by foreigners. They
14 are not Americans. They are not subject to anything
15 we're talking about in this room today. So we have a
16 little bit of a difficulty saying the TWIC is that
17 useful. For a merchant mariner, we have one national
18 card now; but the government has not had any federal
19 preemption, so whereas I have a card, which is great,
20 it's a TWIC, but if I go to Miami, I have to have a
21 Port of Miami Card. If I go to Everglades, I have to
22 have a Port of Everglades Card. If I go to a special

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1 terminal here, I may have to have a special terminal
2 card. So I have a whole briefcase full of cards and
3 I get to carry it around and TWIC doesn't help me
4 there.

5
6 Additionally, terminals can add any
7 other type of security they want. In certain cases, in
8 Texas, they are actually charging seamen to go to
9 shore because they have to be escorted by a guard and
10 the seaman has to be paid -- has to pay the guard.
11 This is indirect conflict with the ISPS Code.
12 Foreigners don't have to match the ISPS Code, and
13 we've decided that it's good enough for them; but we
14 have to, as Americans, do more.

15
16 And lastly, I'd like to talk a little
17 bit about due process. The present due process is
18 similar to receiving a traffic ticket from a traffic
19 officer and then having the opportunity to appeal to
20 that traffic officer to rescind the ticket. It really
21 doesn't make a lot of sense. So we do support a TWIC
22 idea, but we would expect to have a little bit longer

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1 comment period and a little more deliberation because,
2 as the gentleman before me said, this is a major
3 thing. We've got to get it right the first time.

4
5 Thank you.

6
7 CAPTAIN BAMBERGER: Thank you.

8
9 MICHAEL LIZATICH: Good morning. My
10 name is Michael Lizatich. I'm with the Marine
11 Engineers Beneficial Association, and I also represent
12 the merchant mariner officers of about 5,000 and plus
13 members on tow boats and other means of maritime
14 transportation through the United States. First
15 thing, I'd like to echo the same sentiment of Captain
16 Dave Boeder and Dave Connolly about the unfairness
17 that falls upon the American Merchant Marine with
18 regards to the ISPI Code and foreign mariners -- that
19 they are not really checked out and they are going to
20 have access in and out of our ports. And at the same
21 time, we go through these extensive background checks,
22 and the same thing. You know, we are going to have to

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1 go through another check, and another card, to have
2 access. And I feel that that is very unfair.

3
4 The Merchant Mariner Document is a
5 document that I feel is a TWIC Card. We have a
6 document that allows us a background check over and
7 over again and vetted. But I understand the necessity
8 of a TWIC Card. Like I said, we are, you know, going
9 in that direction. And I was talking about the TWIC
10 Card is that, you know, as mariners, we see very many
11 ports in the United States. And if we do have a TWIC
12 Card, there is times when a gentleman gets hurt or has
13 a family emergency. He has to leave the ship. They
14 need another crew member within a couple of hours.
15 Now, if we can have a TWIC Card with some type of
16 designation that will allow us to get in and out of
17 ports throughout the country without going through a
18 second check at different ports and could delay the
19 process of crewing a vessel or getting our members to
20 that work, even for the mariner to go to and from the
21 shore, you know. You allow him barge tow up the coast
22 and you want to maybe have some free time.

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1
2 Now, you don't have that particular
3 card for that particular small port, and you might not
4 be denied access. So, if these TWIC cards could have
5 some designation on the level of access throughout the
6 United States, that would really help out the Maritime
7 Merchant Marine.

8
9 But like I say, we have been checked,
10 background checked, through war and peace, and I feel
11 that the Merchant Marine and the Mariners, over
12 200,000 of them, we are the biggest block that is
13 affected by this -- we are not the terrorist threat.
14 We have to look into the foreign sailors side because
15 they are -- from the oceanside access, they have a lot
16 more numbers than American U.S. Merchant Marines.

17
18 Thank you for the comment time -- the
19 time to comment.

20
21 CAPTAIN BAMBERGER: Thank you.

1 CAPTAIN FRANK STURM: Let me just
2 comment real quick. It's been raised a few times now
3 about foreign workers. The TWIC is a card that is
4 designed to entitle people to unescorted access. It
5 is true that foreign workers are not eligible for the
6 TWIC. Therefore, they are not entitled to unescorted
7 access. So, when foreign workers, a foreign Mariner
8 or anyone without a TWIC card is in vision -- when
9 they arrive at a terminal facility or on the ship,
10 they will not be allowed unescorted access.

11
12 ED PASKOVSKIS: Good morning. My name
13 is Ed Paskovskis. I'm the Deputy Director of the Port
14 of Everett. Everett is in the Pacific Northwest, and
15 I want to thank the Panel for the opportunity to speak
16 to you. The Transportation Security Agency and the
17 Coast Guard have been very helpful to us in the port
18 industry. I speak for the Port of Everett. Clearly,
19 looking back on the work that we did with our security
20 planning, it was helpful to have a very dedicated,
21 planned schedule that we could comply with. One of
22 the things I would suggest for the TWIC

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1 implementation, there seems to be a little bit of
2 uncertainty in terms of the schedule. The issue of a
3 TWIC is most complex, as mentioned by the other folks,
4 but our concern in the port industry, at least in
5 Everett, is the issue of what do we do with the folks
6 that don't have the TWIC card and how do we escort
7 them with the limited resource that we have at the
8 gate.

9
10 At the Port of Everett, we are the
11 terminal operator, and it's our responsibility to make
12 sure that we are in compliance with our plan. Many
13 small ports face a tremendous difficulty in doing the
14 people side of security. Now, to have additional
15 people at the gate, it is not uncommon for truck
16 drivers to come in with their families and children.
17 Are we to set up some day care centers up at the gate?

18 You know, we are not prepared for that. There's some
19 issues that we continually try to seek to resolve, and
20 it takes planning in terms of budgetary planning.
21 It's a public agency. We need advance notice to
22 notify our elected officials what the budget is. On

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1 face value, the \$139 TWIC card seems like a nominal
2 fee; but adding it over thousands of people -- and not
3 to mention some technology that is not clear at this
4 point -- we don't know what to ask our elected
5 officials in terms of budgeting needs. So, to comply
6 with your schedule, it would be very helpful to know
7 what is the basis of your phasing. The current
8 information we have read indicates that there is
9 three-group phasing. Is that going to be based on a
10 threat of vulnerability assessment of individual
11 public and private ports? And when will we know so we
12 can start planning?

13
14 One just little suggested idea is --
15 you mention you will have facilities throughout the
16 country for people to get their TWIC card, and you
17 indicate that the employee will be the one going to
18 those sites. That is a tremendous burden on the
19 employer. With respect to lack of productivity, is
20 there an opportunity to have those centers open on
21 weekends or nights so that we can coordinate with our
22 day-to-day work activities? I leave you with that

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1 practical thought. We thank you for your time, and
2 funding is a critical issue for us at the Port of
3 Everett, and I am sure of many of our other fellow
4 ports.

5

6 CAPTAIN BAMBERGER: Thank you.

7

8 CHRIS GALLUP: Good morning. My name
9 is Chris Gallup. I represent Lake Tahoe Cruises. We
10 operate two boats up there up at Lake Tahoe, and the
11 way that this is written, I believe that we will fall
12 into this category of having TWIC cards. We have two
13 500 passenger boats that primarily make their money in
14 a summer season's three months. We compete with
15 casinos and land-based operations for our guests and
16 our employees as you can see, the cost involved in
17 this. We do all of our hiring in May and lay them all
18 off in September. A large number of those people are
19 K1 Visa or foreign exchange students. I am sure you
20 can see they don't have a detrimental effect on us.
21 And we are just asking for an exemption by water way.
22 I have worked with the PBA to find alternative

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1 solutions. We already do a background check on our
2 employees. A criminal background check that takes
3 about three days, and it goes back 10 years, and it
4 costs about \$15.

5
6 Thank you.

7
8 CAPTAIN BAMBERGER: Thank you.

9
10 MILA PAVEK: Hello. My name is Mila
11 Pavek. I'm a Facility Security Officer for Sea Launch
12 and we are a little unusual in that we're a satellite
13 launch surface provider that just happens to have some
14 vessels. One of the major issues I have is -- we have
15 a lot of foreign partners who come in by a Visa
16 program. So, according to what you have up there,
17 they are not even legal. They don't even have
18 unrestricted access. Legal by the Visa program, but
19 it is an unrestricted work access. Also, they come
20 and go when we need them. So, a delay in their coming
21 could be very detrimental to our service. We have a
22 lot of areas that organize according to the Technology

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1 Control. I have a monitor from the State Department
2 pretty much all the time. There are areas I can't go
3 into for technology control reasons even though I am
4 the Facility Security Officer without escort. So how
5 would I get these people -- how would they be informed
6 if there was a problem. They don't speak English.
7 Our working language is Russian and English. They
8 don't need to speak English. They don't live in the
9 country, and they may come and go rapidly. How would
10 they apply? How would they go for their biometrics?
11 How would they pick it up? It's similar, I think, to
12 the foreign student. That needs to be addressed for
13 some of the unique facilities like us.

14
15 Also with customers. Our U.S.
16 customers, it may be inconvenient. But we have
17 foreign customers that come from all sorts of
18 countries. How would they apply? We already have a
19 problem that firms that deal with technology, due to
20 the technology controls from the State Department
21 there is already a negative view of dealing with the
22 United States because of ITAR. And this is something

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1 that could affect our business. So, if our employees
2 can't even arrive, and we have had Visa issues in the
3 past, and our customers -- they come and they go, but
4 if now it's a controlled area, they take over a
5 controlled area on site, maybe I can work the Coast
6 Guard to redefine my area somehow. But if you're
7 going to stick to the areas I have now, I have major
8 issues in how I am going to do that in a timely manner
9 without chasing away business because the Government
10 has made it too difficult for us to work with foreign
11 partners.

12
13 As for the TWIC readers themselves,
14 there are the issues of marine environment; but we
15 have -- I am still not -- I don't think the definition
16 of secure area is clear. It says where you have
17 access control. Well, we have no public access. And
18 I have 22 doors on my U.S. controlled areas alone. If
19 I go into my Payload Processing Facility, I have to
20 harden them against explosives because of the nature
21 of the nature of the chemicals we deal with. So, the
22 \$8,000 to \$11,000 is completely ridiculous in terms of

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1 what I will have to do to deal with it. So, again, I
2 might be able to work with the Coast Guard and look at
3 my controlled areas or my secure areas and see what we
4 can do. But there are some areas that indicate just
5 to come on the site, some that seem to be at the
6 entrance to each area. So, it could be a little
7 clearer how you expect that to work.

8
9 I know we're not talking about 33 CFR
10 125, but I think you can be clearer on how that is
11 going to evolve into the TWIC. Apparently, the card
12 is going to be a new I.D., but I have people I have to
13 submit for that who I don't necessarily need to get a
14 TWIC. Just how will that relate in the future? Also,
15 you talked about lost cards. If the power goes off,
16 we talked about that in a meeting at port. What are
17 the minimum requirements for an alternate process to
18 let people in?

19
20 Well, I have a lot of others, but I
21 think those are the big ones, and I will put the rest
22 of them right here. Thank you.

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1

2

CAPTAIN BAMBERGER: Thank you.

3

4

5

6

7

8

9

10

11

12

UNIDENTIFIED SPEAKER: Thank you.

13

14

15

16

17

18

19

20

21

22

UNIDENTIFIED SPEAKER: Can you please
-- on the record -- can you please tell exactly what
type of operations you do?

MILA PAVEK: We launch satellites from
a converted crude oil platforms at the Equator. Our
home port is in Long Beach.

CAPTAIN BAMBERGER: Thank you. We are
going to have to cut right there for lunch, but I
would ask that the group, we will certainly try to
remember, but the rest of the group respect the fact
that these gentlemen waited. After lunch, we are
going to start with the next title, but I would ask
that you respect that these gentlemen have waited in
line. When we go to the open session at the end, we
would like to take these guys first.

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1
2 STEPHEN RYBICKI: Good afternoon, and
3 thank you for the thoughtful comments that we heard
4 this morning. Along the lines of the thoughtful and
5 passionate comments, I'd ask that you submit specific
6 examples of some of the topics, whether it's a
7 disqualifying offense, alternative security programs,
8 to the docket, and that you include that. If it
9 includes specific confidential company information or
10 SSI material, there are provisions for including that
11 to another address. The other point I want to make is
12 that, as Jim said, the court reporter is taking
13 verbatim transcript and it should be posted to the
14 docket in about a week. So, if you want to see who is
15 speaking and what was discussed, you can probably read
16 that within a week or so. And we will be back after
17 lunch and we will go into the same thing. But I want
18 to strongly encourage you to submit those comments to
19 the docket, and those comments will be thoroughly
20 reviewed, and we may be changing the Rule based on
21 those comments. So, it's your opportunity to provide
22 those comments in. Thank you.

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1

2

CAPTAIN BAMBERGER: Thanks Steve.

3

Okay, we will be starting back up at 1:00.

4

(OFF THE RECORD FOR LUNCH BREAK)

5

(12:00 P.M. TO 1:00 P.M.)

6

7

CAPTAIN BAMBERGER: I would now like to

8

turn the mic over to Luke Harden to provide an

9

overview of the TWIC Program and the changes to Title

10

33.

11

TITLE 33: OVERVIEW

12

LUKE HARDEN

13

14

Thanks Jim. I just want to make one

15

announcement before I begin. We do get some questions

16

at the lunch time at these public meetings. And we

17

received one about how to submit comments to the

18

docket. And as we stated before, we do highly

19

encourage to put your thoughts in writing and submit

20

them to the docket since the four minutes is somewhat

21

limiting as far as the amount you can communicate. We

22

also encourage you to be very, very specific in your

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1 comments. But essentially I wanted to point out that
2 on the first page of the Federal Register Notice,
3 there are instructions on how to do this, and there
4 are a couple of different ways of doing it. You can
5 do it by snail mail, and you can also do it by e-mail
6 and fax. And I encourage you to read that section
7 because there are specific requirements that we ask
8 you to be specific about. So, take a look at that
9 first page regarding written comments.

10
11 I'd also like to thank again everyone
12 for being here and making your comments. These are
13 actually extraordinarily helpful to us as we consider
14 how we are going to move forward publishing the final
15 rule and how to roll out the TWIC program. So, thanks
16 very much.

17
18 What I would like to do now is take the
19 next 10 minutes and talk about the proposed changes to
20 33 CFR, Parts 101 to 106. These regulations are
21 otherwise known as 33 CFR, subchapter H, and
22 essentially these are more recently written -- or

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1 recently written regulations in order to implement the
2 Maritime Transportation Security Act. They were
3 published and promulgated in 2002. And, essentially,
4 they established a framework for Maritime Security and
5 do things like establish facility and vessel plan
6 requirements and so forth. So, the objection -- one
7 of the objectives of this rule -- was to fold in the
8 TWIC requirements into the already existing framework,
9 regulatory framework for MTSA. It does seem like
10 folks in the room are pretty familiar with this
11 already, judging by the first round of comments. But
12 for the benefit of everyone else, I would just like to
13 give you a broad brush overview of some of the
14 proposed changes.

15
16 Since the purpose of this rule is to
17 enhance port security by requiring a TWIC card for
18 folks who have unescorted access to secured areas in
19 facilities and vessels, some definitions are in order.
20 And you see four basic definitions up on the screen
21 before you. Secure Area is the first one, and that's
22 rather broadly defined. Essentially, this is the area

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1 where the facility or vessel exercises access control.
2 And this is not to be confused with a definition that
3 is already in the regulations called Restricted Areas.
4 The Restricted Area is an infrastructure or location
5 where it is required to have limited access and a
6 higher degree of security. So, the Restricted Area and
7 Secure Area locations could be one and the same, or in
8 a lot of cases, Restricted Area could be a subset of
9 a Secure Area. I'll give you an example. On a
10 vessel, you may have an owner/operator designate his
11 or her restricted areas as places like the engine room
12 or the pilot house where the secure area may be
13 designated by the owner/operator to be the entire
14 vessel because that's where that person exercises
15 access control.

16
17 And I also bring your attention to
18 another definition. Recurring Unescorted Access which
19 is a specific provision for vessels, taking into
20 account the unique environment a vessel is in. Crews
21 know one another, generally, by facial recognition.
22 This provision was written in the regulations in order

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1 to enable folks who are designated in the security
2 plan, as designated by the owner/operator to gain --
3 once they are -- once they check in using a TWIC card
4 -- have one doing biometric match and insure that that
5 TWIC card is valid -- they then are enabled to have
6 recurring access on board that vessel and MARSEC with
7 only facial recognition.

8
9 Another important definition is the
10 Passenger Access Area definition. This applies to the
11 passenger vessels and ferries. This is a voluntary
12 provision that recognizes that oftentimes secure areas
13 will be designated as the entire vessel and the
14 passengers would obviously need to have access to
15 those areas in the course of the vessel being the
16 business. So this enables the owner or operator to
17 designate the locations to be called Passenger Access
18 Areas where passengers can come and go without having
19 to present a TWIC card because obviously that's not
20 the intention of the rule. And I just would also
21 comment that if you have employees who work
22 specifically only these Passenger Access Areas a TWIC

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1 card would not be required for them either.

2
3 Next slide. The notice recognizes that
4 the heaviest burden and the application of the TWIC
5 requirements will fall on the owners and operators to
6 insure that the TWIC program, as defined by them, is
7 properly implemented. We also wish in the notice to
8 write the requirements in a performance-based manner
9 in order to not be overly prescriptive, to insure the
10 greatest amount of flexibility to the owner or
11 operator, who is better able to determine the best way
12 of applying this than the owner or operator. So, for
13 example, it doesn't prescribe exactly where Access
14 Areas will be, what specific readers would need to be
15 applied, etc. It gives them some basic requirements
16 and then leaves it up to the owner/operator to define
17 what those are.

18
19 But I would also just like to mention
20 one other proposed requirement in the rule that not
21 only would folks who have -- who are required to have
22 access to secure areas unescorted -- to have a TWIC --

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1 also it is proposed that other members such as members
2 of the Area Maritime Security Committee or company
3 Security Officers would also be required to have the
4 TWIC Card as well, and that's because of their likely
5 need to have access to sensitive security and
6 information.

7
8 So, recognizing that the owner/operator
9 is crucial in the implementation of this program, the
10 way that this would be done -- at least in written
11 form -- would be through something called the TWIC
12 Addendum. It was decided that rather than having
13 owners and operators re-submit their facility and
14 vessel security plans for consideration and restart
15 your clock on these, that it would be less burdensome
16 for the owners or operators and also for the folks who
17 view these plans to have it merely as an addendum
18 which would be submitted -- would be tagged on to the
19 existing plan -- and would be kept on the vessel with
20 the existing vessel security plan or at the facility
21 with the facility security plan and then at the end of
22 the five-year period for the original security plan,

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1 that information would be folded in by the owner or
2 operator into the updates of the plan which would then
3 be sent to the Coast Guard and approved and have them
4 start the five-year clock again.

5
6 Next slide please. I'm getting ahead
7 of myself. The submission requirements would be the
8 same as the existing MTSA requirements, mainly that if
9 you are a facility owner, then you would submit your
10 plan to the local Coast Guard or captain or port. If
11 you are a vessel owner or operator, that would go to
12 the Coast Guard Maritime Safety Center in Washington.
13 Or if you are an owner/operator for a shell facility,
14 then that would go to the requisite district
15 commander. I also mentioned the Coast Guard now has
16 a system called Home Port. It's a web-based portal
17 that can be used to submit these plans. A couple of
18 important dates on this slide and time lines; you've
19 heard them before in some of the comments, and I'll
20 just bring your attention to them again, that the
21 notice proposes that an owner/operator would have to
22 submit this TWIC Addendum within six months of the

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1 date that the notice -- that the final rule is
2 published. And then the second set of dates is that
3 owner/operator would be required to operate under that
4 plan within 12 to 18 months of the date that the final
5 rule is published. And you see a range there of 12 to
6 18 months, and essentially this hinges on the roll out
7 of the TWIC program in the various ports. So, it's
8 based on when the enrollment has been completed in the
9 port in which the vessel or facility is operating or
10 where it's located.

11
12 Next slide. So, owner/operator has
13 some additional responsibilities, and I draw your
14 attention to a table that is reproduced three times in
15 the notice. And essentially it's a three-fold
16 responsibility. You've heard this mentioned by one of
17 the commenters that the TWIC has really a three-fold
18 security measure. And basically the TWIC is something
19 that you have which is the card itself; something that
20 you know, which is your personal identification
21 number; and then something that you are, which is
22 represented by your fingerprint which is biometrically

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1 included on the TWIC card itself. Not all three of
2 these provisions will be required to be verified and
3 checked upon each entry by a person. And this table
4 explains when those will be required. So, for example,
5 under MARSEC 1, if you are a facility, each time a
6 person who wishes to gain access -- unescorted access
7 -- to a secure area on that facility, they would have
8 to present their TWIC card. That TWIC card would have
9 to be biometrically matched to their fingerprint and
10 then that card would have to be verified as valid with
11 the TSA. Now, that would change under something like
12 MARSEC 3 where that person would have to also input
13 their personal identification number. Now, there is
14 some communication that needs to take place with TSA
15 in this process in order to insure the validity of the
16 card that is being presented. The frequency of that
17 check is listed in that table as well. So, under
18 MARSEC 1 for the facility, it would be weekly. You
19 would have to make sure that you have a list that is
20 validated weekly. And if it is MARSEC 3, that would
21 have to be done daily. And, essentially, there are
22 three readily identifiable ways in which this can be

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1 done. There may be more, but these three come to mind
2 immediately. That vessel or facility owner or
3 operator could download the hot -- what we call the
4 hot list -- or the list of invalidated cards from TSA
5 on that circuit frequency. There could be a live
6 connection that could be established between the
7 equipment that would read the card and the TSA
8 database so that when somebody puts their card in, it
9 would be seen as invalid if it were invalid. And then
10 something else where a facility or vessel may submit
11 a list of its employees who hold TWIC cards to TSA;
12 and then, if one of those individual's cards becomes
13 invalid, TSA would communicate with that owner or
14 operator and then the proper action will be taken.

15
16 Having said that, I think my 10 minutes
17 are up. And I see some commenters who are eagerly
18 awaiting their time at the podium. So, thank you.

19
20 CAPTAIN BAMBERGER: Thanks Commander.
21 Okay, we will begin straight away with the first
22 gentleman.

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COMMENTS

1
2
3 RICH SMITH: My name is Rich Smith.
4 I'm General Manager for West Star Marine Services in
5 San Francisco. I am here today in my capacity as the
6 Pacific Region Chairman of the American Waterways
7 Operators, AWO. AWO is the National Trade Association
8 representing the tug boat, tow boat and barge
9 industry. Our industry is a vital segment of
10 America's transportation system. The fleet consists
11 of near 4,000 tug boats and tow boats and over 27,000
12 barges of all types. Our industry comprises the
13 largest segment, fully 80 percent of the U.S. Flight
14 Fleet, which means that our vessels are American owned
15 and American crewed. And we want the Coast Guard to
16 know that our industry takes security very seriously.

17
18 Domestic Mariners are the eyes and ears
19 on the water, and we are fully committed to protecting
20 the security of our nation. However, the development
21 of the TWIC is a mechanism to improve security that we
22 believe is unnecessarily onerous and will, in its

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1 current form, substantially inhibit domestic commerce.
2 Our industry has not been asked for input in the
3 development of these regulations. As a result, we
4 believe the regulations are impractical for our
5 operations.

6
7 We have a number of fundamental
8 concerns that I'd like to go through quickly. First,
9 there is no provision for new employees to work while
10 they are waiting to receive their TWIC. The towing
11 industry today continues to face a serious challenge
12 in meeting all of its manpower needs. The projected
13 60-day waiting period to obtain a TWIC, which I think
14 is optimistic, based upon my renewing my MMD the last
15 time, will impede the ability of companies to bring
16 the mariners into the industry in an efficient manner.
17 Similarly, the time away from the job to travel to a
18 TWIC Enrollment Location and the cost of travel and
19 application fees poses real burdens on individual
20 mariners.

21
22 Second, the expenses associated with

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1 purchasing and maintaining biometric readers for every
2 vessel and facility will impose enormous costs on our
3 companies, most of which are small businesses. We
4 believe the cost of \$10,000 a vessel is grossly
5 underestimated since it does not include installation
6 or the updating costs. For our industry, which has
7 been in the forefront of proactive development to
8 Alternative Security Program, and the lower risk
9 profile, we believe this is a completely unreasonable
10 requirement. Our vessel crews are small and know one
11 another. For an unknown person to go unnoticed on
12 board a towing vessel is just not possible.

13
14 We have a couple of things that we
15 would like to ask. First, we would like to
16 specifically as for a 90-day extension to the comment
17 period -- at least 90 days. We request more public
18 hearings on the West Coast, including Seattle and San
19 Francisco, and we also ask that you get involved with
20 TSAC -- the Towing Safety Advisory Committee -- to get
21 some input in terms of how this will affect our
22 industry. So, AWO, to sum it up, AWO urges the TSA and

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1 the Coast Guard to make sure the TWIC requirements are
2 implemented in an effective, efficient way that does
3 not impose overwhelming burdens on mariners and their
4 employees and subsequently shut down commerce in our
5 ports.

6
7 Thank you.

8
9 CAPTAIN BAMBERGER: Thank you.

10
11 JOHN PIGOTT: Good afternoon. My name
12 is John Pigott. I'm the General Manager of Tidewater
13 Bare Lines. We're an inland towing company based in
14 Vancouver, Washington. We employ 250 people, and we
15 operate anywhere from Astoria, Oregon, on the Columbia
16 River, to Lewiston, Idaho, on the Snake River. And I
17 am also on the Board of Directors for AWO and will
18 also stand behind the comments of Rich Smith, the
19 previous speaker.

20
21 Additionally, I would just like to say
22 that our company has numerous concerns over the TWIC

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1 program. We are wondering why our industry was never
2 consulted over the impacts the program will generate.
3 It seems that the Towing Safety Advisor Committee
4 should have been consulted. This would have moved
5 things along much more quickly. And as a result of
6 that not being done, we feel some extension of this
7 public hearing process should be granted. And I would
8 also second Rich's comments that some additional
9 locations should be established to ease access to
10 these meetings so that more people could attend.

11
12 And we are also struggling to really
13 see the benefit of requiring these TWIC Cards for
14 employees of the inland towing industry. I mean
15 almost every towing company has a long-standing
16 familiarity with its employees. Requiring screening
17 of well-known employees could be done at great
18 expense, but why would you want to? I mean what
19 additional security benefit would be found by
20 confirming the identity of people you already know?
21 It would seem a better allocation of effort and funds
22 to focus on facilities that truly have some serious

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1 access issues, rather than on a segment of the Marine
2 Transportation Industry that has none.

3
4 So we have concerns over process,
5 technology, cost benefit impacts on our business.
6 Every penny of additional overhead stresses the prices
7 producers of goods and commodities have to set to
8 remain competitive in a global marketplace. And as
9 the cost to move freight increases, exports decrease.

10
11 In conclusion, there is still in my
12 mind many confusing elements of this program that need
13 to be resolved before a final rule should be
14 published. Therefore, we would oppose any
15 implementation of this TWIC program until further
16 study is done, specifically to confirm the risk our
17 industry poses to national security and more public
18 hearings are held with additional opportunities for
19 public comment so that affected parties can develop a
20 better understanding of how this program is going to
21 affect them.

22

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1 Thank you for the opportunity to
2 comment.

3
4 CAPTAIN BAMBERGER: Thank you. And
5 just by way of -- if you do have a business card and
6 you wish to drop it, you can drop it right there at
7 the reporter's table. And also, just as a reminder,
8 I know you were out to lunch, but if you could put the
9 cell phones and/or blackberries on silent. Thank you.

10
11 STEVE NOTT: Good afternoon. My name
12 is Steve Nott. Last name is spelled N-O-T-T -- not to
13 be confused with Berry Farm. I have been the Facility
14 Security Officer for Long Beach Container Program,
15 which is an 105-acre container terminal located at the
16 Port of Long Beach. In 2006, we will handle 390,000
17 container moves on and off vessels. We will handle
18 57,000 on-dock rail containers. We'll have 540,000
19 annual gate moves, which is around 1,500 a day. And
20 our daily head count for all of our terminal ILWU
21 Workers, our office staff, mechanics will average
22 anywhere between 350 and 450 people each day. That

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1 doesn't count the 1,500 trucks daily coming out of the
2 terminal.

3
4 LBTC fully supports the TWIC Program.
5 In fact, we were one of the first terminals in the
6 L.A./Long Beach Ports to be used for the initial
7 prototype TWIC card. And I asked that the next TWIC
8 Credentialing Card System not delay our ability to get
9 workers, employees and truckers in and out of our
10 terminal on a timely basis. Any system and readers
11 that add time to our current access control will delay
12 our entire terminal operations and impede movement of
13 containers.

14
15 Additionally, the MPRM incorporates by
16 reference FIPS 201, the Regulation for Access Control,
17 do not reflect the full requirements of FIPS 201.
18 FIPS 201 is too cumbersome for high volume daily
19 access; so, the final regulations must allow an
20 alternate means of providing daily access control.
21 The preamble contains elements that are not included
22 in the proposed regulations. We don't know how to

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1 comment on these issues and feel that they should be
2 either deleted from the preamble or incorporated in
3 the regulations.

4
5 Thank you.

6
7 CAPTAIN BAMBERGER: Thank you.

8
9 KENNETH KEANE: Good afternoon. My
10 name is Kenneth Keane, and I am the Director of
11 Maritime Safety and Security for Safety in Stevedoring
12 operating marine facilities in the Ports of Los
13 Angeles, Long Beach and other Ports in the U.S. I am
14 also the industry representative on the AMSC.

15
16 I have serious concerns regarding the
17 proposed TWIC Regulations and how they would
18 negatively impact port operations, especially in this
19 port complex and ultimately the national economy. For
20 expediency, I will cover brief points and elaborate in
21 correspondence to the docket. First, the TWIC itself
22 is good, and we should enhance port security. But the

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1 proposed procedures and technology for access control;
2 however, are alarming in their complexity and
3 detachment from reality. The technology and access
4 control requirements, while well intentioned, would
5 ultimately significantly delay or stop the efficient
6 cargo movement if delays caused by system of personnel
7 failure were only minutes per person, which is likely.
8 There are upwards of 20,000 longshoremen working on
9 the west coast; maybe 8,000 to 10,000 in our area and
10 thousands of truckers. All of these people are in
11 different facilities at different times. Truck gate
12 moves are well into the thousands, with drivers lined
13 up for processing early in the morning. These numbers
14 don't include the regular company employees, vendors,
15 shipping, cargo surveyors, agents and various port
16 personnel.

17
18 Facilities in this port operate like
19 one massive factory with precision and time critical
20 coordination between each part of the supply chain --
21 ship, terminal, truck, rail. For example, the weigh-
22 ins and truck operations cause severe road congestion,

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1 delay train operations, block tracks for other cargo
2 moving operations. Labor delays impact all modes of
3 transportation. The consequences are rapid,
4 significant and reach far beyond this port. These are
5 not hypotheses. It has happened here and more than
6 once. Losses could be in the billions of dollars a
7 day. Any component of this precision choreographed
8 system that stalls, delays or fails impacts the entire
9 supply chain. If labor is delayed, the ship can't
10 work. Labor is provided in specified units called
11 gangs with defined numbers and responsibilities, so
12 that if one number is absent, the gang is not required
13 to work until the missing member is replaced. The
14 gang not working the way the ship off-load process may
15 ultimately delay sailing of a vessel and inbound of
16 the next vessel.

17
18 Similarly, a trucker that has
19 difficulty with a card reader, regardless of cause,
20 will rapidly cause the truck queue to back up on the
21 city streets in way that will exceed state law limits
22 and facilities will be fined \$250 per truck per hour.

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1 At a container terminal, this could be hundreds of
2 trucks where there are thousands of truck moves a day
3 at a large terminal.

4
5 Our company handles about one and a
6 quarter million tons of steel cargo annually and
7 employs nearly a million man hours of labor on five
8 separate terminals in this port. We accommodate
9 several hundred independently operated trucks daily
10 that load cargo from our docks for delivery to the
11 consignee. We put about 100 longshoremen to work in
12 approximately 30 minutes. That includes clearing them
13 through a security I.D. check, a safety briefing, job
14 assignments on the ship or in the yard. Then they have
15 to pass the security requirements of the vessel. The
16 longshoremen have an hour lunch that is typically
17 taken off terminal. Other terminals that have
18 cafeterias also have their labor take lunch off
19 terminal from 1,200 to 1,300. That places all the
20 longshoremen at the exit gates at the same time. Under
21 the proposed regulations, the longshoreman would have
22 to swipe a TWIC through a carder with biometrics and

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1 possibly an eight digit PIN before work starts. They
2 would have to swipe out at lunch, swipe in again after
3 lunch and swipe out at the end of the day. Following
4 this process and assuming the electronic system works
5 perfectly every time, might add one minute per person
6 -- much more if anything fails -- like the card, the
7 reader, the PIN, whatever. 100 workers equals 100
8 minutes. That's more than one and a half hours to get
9 people to work. And this is the best case. How can
10 this not impact commerce?

11

12 Given this information, why would
13 anyone decide to test this access control scenario in
14 the busiest port complex in the country? This system
15 should be required to be installed and operated
16 exactly as written in the Coast Guard Headquarters
17 building at Buzzard Point. All military would get
18 TWIC Cards with eight-digit PINs, swipe in and swipe
19 out every time you enter or leave the building.
20 Escort every visitor. You should be required to know
21 the identity of everyone in your building at all
22 times. You should watch for efficiency at 00:07:45

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1 and at 15:30 daily when everybody is trying to get
2 into a car pool. Do that for a month or two and it if
3 it fails, the nation and the economy won't miss a
4 beat. Probably won't even know you did it. But you
5 certainly won't want to experiment with the commerce
6 in this port complex. You are well advised to deploy
7 the card, but leave the access control technology on
8 a test bench until you're certain it will function
9 without delay or difficulty.

10
11 And the last comment, if I have the
12 time, this morning you said all the information you're
13 going to collect with biometrics - well, the VA has
14 demonstrated extraordinary ineptitude in handling my
15 personal data. And I am really reluctant to give you
16 10 fingerprints, all the stuff to positively identify
17 me, and then have you send it back and forth
18 electronically all over the country. Be careful.

19
20 CAPTAIN BAMBERGER: Thank you.

21
22 JANICE MARIE McCLAIN GARNETT: Hello,

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1 my name is Janice Marie McClain Garnett, and I'm an
2 ILWU Class A Member. On behalf of the union, I stand
3 here humbly addressing you with these issues on the
4 I.D. cards. I don't stand here to say that I
5 understand completely the difference between the I.D.
6 we are using now and the one that is being implemented
7 here. I just want to say I thank you, because we
8 treasure and hold highly safety and security on our
9 job. But I am also here to stand on behalf of each
10 and everyone of my brothers and sisters that have had
11 a mark against them. I can stand here under oath and
12 tell you gentlemen that I have never been inside a
13 police car and I don't plan to, and I know people like
14 that have had a past history of dealing with the
15 certain issues that we are talking about here
16 concerning their jobs. And I'm here to say that I
17 know that so many of these people have changed their
18 lives and they are taking care of their families, like
19 I am myself, and they are sole survivors and hard
20 workers. And for their jobs to be taken from them
21 behind these issues would totally be criminal and
22 terrorism.

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Thank you.

CAPTAIN BAMBERGER: Thank you.

LAWRENCE THIBEAUX: My name is Lawrence Thibeaux, and I'm from the San Francisco area. And one of the concerns we have is privacy of information. The ILWU maintains that privacy and confidentiality of information collected and generated by the TWIC Process is critical. Towards this end, Section 7015(e) includes a specific mandate that "information obtained by the Attorney General or the Secretary under this section may not be made available to the public, including individual employers." Consistent with this requirement, information that is gathered from the use of the card, i.e. when employees enter and leave a port facility must not be shared with employers. The TWIC Program was conceived and mandated by Congress to enhance the security of the nation's seaports. For this effort to succeed, it must remain solely focused on the objective and not be

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1 used for any non-security reasons. We will continue
2 to work with the TSA and the Coast Guard to ensure
3 that this issue is addressed in the final Rules.
4

5 And one of the concerns we have is some
6 of the information we just received from -- I believe
7 it's -- Congressman Benny Thompson on the 12 of May
8 where he says -- "I am disturbed by recent revelations
9 that the non-for profit company that was designated to
10 do the data management may be well turning around and
11 sub-contracting this enormous responsibility to a
12 profit entity that is formed with a foreign company."
13 So when we start giving this information to the
14 contractors and they implement the TWIC card, some of
15 the questions we have from our members is -- do the
16 contractors or trusted agents and employees who will
17 collect this information -- are they required to go
18 through a criminal background check? Number two, what
19 penalties for misuse of our data? Are there fines?
20 Jail? Or disqualification of contractors who misuse
21 information? And number three, if an enrollment
22 contractor no longer is involved in the TWIC Program,

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1 what happens to the data that was collected while the
2 contractor was involved in the program? In other
3 words, when there is a change of control, who owns the
4 information once it's given to the contractor or third
5 party? Does it belong to the government or does it
6 belong to the private contractor? So these are some
7 of the issues that our members are concerned about
8 when we start giving fingerprints and other data about
9 our personal information.

10
11 Thank you.

12
13 CAPTAIN BAMBERGER: Thank you.

14
15 JOHN SCHWARTZ: Yes sir, I'd like to
16 take a moment to respond to those comments and the
17 excellent questions. I apologize that in my
18 presentation this morning that perhaps saying
19 particularly a number of workers that are going to be
20 directly affected, I didn't perhaps spend a little
21 more time on the privacy issues. But since you've
22 raised these general questions, I'd like to respond to

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1 them. First of all, we do have a Privacy Impact
2 Assessment for the Notice of Proposed Rulemaking that
3 was published along with the publishing of the rule.
4 That's a document that is written in fairly plain
5 English and it explains clearly how all data -- all
6 personal data is captured and handled. This document
7 is available through links on the TSA website. So you
8 might check that. It is also available, I believe,
9 through the docket. It is posted on the docket. So
10 the docket is your key to getting additional
11 information. Specific to some of your concerns, did
12 the trusted agents that the contractors will be
13 employing, do they have criminal history record checks
14 requirements? Yes, absolutely. In fact, they will be
15 required to get a TWIC card and meet other conditions
16 before they are allowed to engage in enrolling or
17 collecting any privacy information. And they will
18 have to maintain that status as part of their
19 contract.

20
21 Number two, violations of personal
22 privacy by contractor personnel -- I am not an

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1 attorney -- but the Privacy Act and other Federal
2 Regulations regarding privacy information that do
3 apply in the case of this program. Now, more
4 specifically, what happens -- how is this personal
5 information handled? And it is handled, I think, in an
6 excellent way. Privacy has been one of the three
7 things that we try to maintain focus on as our
8 objective of the program. Number one, for security;
9 number two, to facilitate commerce; but number, three,
10 through all of this to protect personal privacy.

11

12 Number one, when you enroll, this
13 information that is collected, it is bundled into an
14 electronic record. It is encrypted before it is
15 transmitted and it is transmitted to a Department of
16 Homeland Security System that is inside what is called
17 a firewall. So it's inside a government firewall. It
18 is maintained -- its operation -- will be maintained
19 by a contractor; however, this facility will be in a
20 government facility under a government controlled
21 facility and inside a firewall. That will be where
22 this data is received. Once the data is received

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1 inside this government computer system, the data is
2 collected at the enrollment center. Since there is no
3 -- there is hardly any paperwork collected there --
4 that information is going to be deleted from that
5 local enrollment center and no longer reside there.
6 It's automatically deleted. So that means that the
7 personal information that you have will be contained
8 inside this firewall in the government database.
9 Furthermore, it will be compartmented so that there is
10 not just one bundle of information so that people who
11 need to look at, say, fingerprints will be looking at
12 fingerprints and only linked to a file number; not
13 personal information, vice versa, personal information
14 is stored separately.

15
16 Number three, the information in the
17 future when it is transmitted for the different
18 security checks or to print your card, that
19 information also is transmitted in encrypted format.
20 When we print the card that the government facility,
21 even at that government facility, once the card passes
22 the quality control check and is ready for shipment,

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1 that individual data is also forever deleted from that
2 place so that we accumulate the data only in one place
3 and it is stored in an encrypted fashion. I think it
4 is very secure and it must pass the muster of a number
5 of privacy reviews. So in that we do have to collect
6 a great deal of personal information to run this
7 program, it is something we have been very focused on.
8 And if you look at the privacy statement, I think you
9 can use the docket to comment on any of the documents
10 associated with the program and certainly get back to
11 us and let us know if you have any privacy concerns.
12 Thank you.

13
14 CAPTAIN BAMBERGER: Thanks John.

15
16 BILL DeWITT: Good afternoon. My name
17 is Bill DeWitt. I am the Corporate Security Director
18 for SSA Marine. I'm also on the Area Maritime
19 Security Committee in Sector Seattle. And I also
20 represent the National Association of Waterfront
21 Employers. I am the Chairman of the Security
22 Committee. I have a couple of points, and some of

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1 them are repeated, however, we are talking about.
2 NAWE supports the outreach program, which we have
3 talked about, and we continue to support that outreach
4 program. It just makes sense that you take your
5 questions and issues to the people that are actually
6 doing it -- basically the marine terminal operators.

7
8 Another issue is -- and this is for SSA
9 -- SSA is the largest independent terminal operator in
10 the United States. It's based on the west coast, and
11 it additionally is the largest employer of the ILWU.
12 That's our work force. These are the people that we
13 depend upon heavily to do the job -- the important
14 job.

15
16 A point that has been repeated and it
17 talks about the preamble, there are issues in the
18 preamble that are not stated in the actual regulation.

19
20 Another point, MARSEC Level 1, 2 and 3,
21 it discusses that the I.D. card, the TWIC, with the
22 biometric check, scales all the way to a PIN number.

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1 MARSEC Level 1, you need a certain check; 2 is a level
2 increase in security; and 3 a PIN number. In most
3 cases, that PIN number will be the individual's social
4 security number. And if it's not given to them, they
5 won't remember it in the first place. My point is --
6 if the TWIC is valid at a biometric level, why do we
7 need to escalate it at 2 and 3? So we put that
8 forward to you for consideration.

9
10 A point concerning secure areas --
11 often a crew departing a vessel is required to do
12 checks at the vessel at the dockside. Must they be
13 escorted? It should be explicit and identifies that
14 they do not because this is their vessel -- oftentimes
15 their own security on board the vessel. We are not --
16 we are very concerned about the technology. We
17 believe the technology needs to be tested in a marine
18 environment. TSA has worked very hard over a period
19 of time; however, the actual test beds, we believe,
20 the system will not work, particularly, in the marine
21 environment with heat and dirt and those types of
22 things. And we would recommend that you extend those

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1 tests further; that you also extend -- I don't want to
2 use the term delay -- the whole process and phase in
3 the TWIC over a period of time.

4
5 We are concerned about the database.
6 I'm learning more about it. In conversations with my
7 colleagues, we are not sure how that database works.
8 And I know that you have expressed it on several
9 occasions, but a further explanation is local,
10 regional and national, and we would like to know more
11 about it and who manages it.

12
13 It was pointed out earlier that the PKI
14 has a three-year life; where the TWIC has five. And
15 I'm just repeating what is there.

16
17 We also are in support of the Coast
18 Guard being in charge of the TWIC Program and the MPRM
19 talks about TSA moving into our facilities and doing
20 inspections. And that's fine; but this later
21 oversight that we had for marine terminal operators
22 with Customs Border Protection and you know, all of

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1 these organizations, we think that the Coast Guard
2 should be the focal point as we move forward.

3

4 Unescorted access -- this we see for a
5 short term is going to be a challenge and we ask that
6 you take a look at that again.

7

8 With that, I would like to thank you
9 very much for this opportunity. And welcome to the
10 west coast. Thank you.

11

12 CAPTAIN BAMBERGER: Thank you.

13

14 CAPTAIN BAMBERGER: Thank you Mr.
15 DeWitt. Will mentioned one thing regarding this issue
16 -- the technical issue of PKI Certificates. The owner
17 of the database does have the latitude to specify the
18 length of time that the certificate is good, and it is
19 something that we are working on. It's one of those
20 things. But we anticipate that the certificate would
21 have a five-year life span and match the card.

22

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1 CAPTAIN BAMBERGER: Thank you.

2

3 WILLIAM WALKER: Good afternoon. I am
4 William Walker. I'm the General Manager of Safety and
5 Health and the Corporate Security Office for Marine
6 Terminals Corporation. We are a large contract
7 stevedoring and terminal operating company with east
8 and west coast operations. First, we fully support
9 the comments previously submitted of the National
10 Association of Waterfront Employers and the Pacific
11 Maritime Association.

12

13 As we see it, TWIC will have three
14 basic impacts to our facilities. One is to management
15 and approved vendors; secondly to truckers; and
16 thirdly to long shore workers. The key concern to all
17 impact areas -- but particularly for truckers and long
18 shore workers -- is how to implement the technology.
19 This also consists of three elements. First, the TWIC
20 card. This will presumably be managed by the
21 government's vendor and will require cards for our
22 employees, truckers, and long shore workers and card

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1 verification hardware at multiple locations at the
2 facilities.

3
4 Number two, pedestal or in-gate
5 hardware. Hardware will have to be installed at each
6 gate or truck lane pedestal to do the card
7 verification. Our concern is that this will have
8 significant costs for initial purchase and then
9 maintenance. And furthermore, the technology is
10 unproven for the volumes we are dealing with.

11
12 Data interchange. Obviously, the card
13 scan, biometric verification will have to be bounced
14 off of the government database for driver and employee
15 approval. The number one imperative here is
16 timeliness. If it takes more than a second or two per
17 person to do this, it will have very adverse inter-
18 modal operational and economic consequences as have
19 been alluded to by other speakers.

20
21 Marine Terminals Corporation and our
22 joint venture partners have participated in the TWIC

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1 Prototype Program and are supportive of the need for
2 screening and proper access controls for our
3 facilities. We would welcome and support another
4 prototype or test phase of the final TWIC to insure it
5 meets both government and industry needs. Once
6 implemented, any failure in the TWIC system would have
7 unacceptable consequences operationally.

8
9 We will provide written comments in the
10 coming weeks to elaborate on these and other points.
11 Thank you.

12
13 CAPTAIN BAMBERGER: Thank you.

14
15 KEVIN HAYES: Good afternoon. My name
16 is Kevin Hayes. I'm the Vice President of Safety and
17 Security at Long Beach Container Terminal and also the
18 CSO. I am also a member of the Security Committee of
19 the National Association of Waterfront Workers. First
20 I would like to say that I realize we are commenting
21 on regulations that came out of the Maritime
22 Transportation Security Act; not the Maritime

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1 Transportation Anti-Terrorism Act. And I think a lot
2 of us would well to remember that.

3
4 My comments today are only two, and
5 they are not on any dramatic issues. The first is
6 that the MPRM exempts law enforcement personnel from
7 the TWIC requirement. I think we've left out other
8 emergency personnel. The exemption should be extended
9 to the fire, rescue, hazmat responders because it's
10 impractical and unsafe to have them escorted in the
11 event of an emergency.

12
13 And secondly, to echo a comment by
14 Mr. DeWitt, since the TWIC Procedures are incorporated
15 into the FSP, I think it would be counterproductive to
16 have the TSA also providing inspection of these
17 documents when the Coast Guard already does an
18 excellent and intense job of verifying all the
19 information in this case.

20
21 Thank you very much.

22
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1 CAPTAIN BAMBERGER: Thank you.

2

3 MICHAEL BRIAN: Good afternoon.

4 Michael Brian, the Port Facility Security Officer for
5 the Port of Oakland. A couple of comments on 33 CFR.
6 First of all, the security measures for access
7 control. With respect to the changes proposed in 33
8 CFR, 105.255, I believe that scrutiny of the worker
9 credential does not need to change based on the MARSEC
10 Level. The card is designed to be secure and is
11 specifically linked, via the biometric, to the
12 rightful cardholder. If the biometric reader works
13 and the card has been validated with the TSA system on
14 a weekly basis, I see no need to add the requirement
15 for the worker to remember a PIN. Nor is it necessary
16 to validate the card as authentic on a daily basis at
17 the time of check in as is currently proposed at
18 MARSEC 2 and 3. I realize the FIPS 201 is the
19 standard being applied, but these additional checks
20 will provide only a very marginal increase in security
21 -- one that is not worth the time, effort and
22 potential problems that it would create.

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1
2 The focus on scale security at the
3 different MARSEC Levels should be on the other
4 elements of the facility security plan, as is
5 currently in place, including random checks of
6 vehicles and cargo coming into the terminal, increased
7 surveillance of the perimeter and restricted areas in
8 accordance with previously approved facility security
9 plans.

10
11 Therefore, I recommend we take a step
12 back from the rigid conformance with the FIPS 201
13 standard and delete the requirement for a PIN and
14 consistently validate the cards on a weekly basis
15 throughout the MARSEC Levels. This will allow the
16 employment of a simple secure card that will work in
17 a marine environment and allow quick, secure access
18 without delays.

19
20 On system reliability, the draft
21 regulations require the facility owner or operator to
22 have access control systems and equipment, including

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1 card readers in conjunction with TWIC that meet VTSA
2 approved standards. Hardware such as the card,
3 biometric readers, and the PIN pad need to be designed
4 and proven in a maritime environment -- assuming we do
5 that PIN pad. If we follow the model that the TSA and
6 the Coast Guard use when testing explosive detection
7 technology to screen passengers in commuter ferry
8 operations in San Francisco Bay last year during Sale
9 2, there were very controlled prototype tests
10 conducted which yielded significant results about not
11 only the performance of the equipment in a wet, windy,
12 foggy marine environment at Larkspur Landing; but also
13 the impact on -- and the recommended number of
14 processing stations that will be needed. That same
15 principle should be applied to this program. Complete
16 testing of a prototype system, underload and small
17 controlled marine terminals should be a quick phase of
18 the access control system implementation. Otherwise,
19 million of dollars may be wasted by port authorities
20 and facility owner/operators as they rush to install
21 card and biometric readers to be in compliance with
22 this deadline. As much as I'd like to see TWIC

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1 implemented in the Port of Oakland, I also want to
2 insure that the system we install is reliable and
3 efficient.

4
5 My last comment is on FSP approval.
6 New Subpart D, 33 CFR, 105.500 and 510, states that
7 owners/operators may opt to resubmit their entire plan
8 with a list of sections amended as the TWIC Amendment
9 Addendum, but once approved, it would carry the same
10 expiration date as it had prior to the amendment. I
11 recommend that if we revise -- if the revised plan is
12 submitted to the Captain of the Port with a revised
13 facility security assessment, that a new time line
14 should start and the plan should be approved by the
15 Captain of the Port for five years from the date of
16 approval.

17
18 Thank you.

19
20 CAPTAIN BAMBERGER: Thank you.

21
22 JOHN COX: Good afternoon. My name is

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1 John Cox. I'm a coordinator for the Seafarers
2 International Union here in Wilmington, California.
3 Our union is also the largest licensed maritime union
4 in North America.

5
6 I would like to comment mostly on the
7 requirements of the TWIC and the requirements of the
8 industry in general. The Coast Guard mandates that
9 when the members reapply for a document, they do a
10 security check and a background check. That
11 background check has gone sometimes even to take up to
12 18 months to finalize the documentation on this. Case
13 in point, I have one member who has gone for his fifth
14 license reissuance, and the first two issuances, they
15 told him to put information down. The second two, he
16 didn't, and this fifth one he has, but now they want
17 to know why he didn't put information on his last two.
18 And I am sure there are other mitigating circumstances
19 involved, but either the criteria has to be equal and
20 fair for one or you are going to have to amend it so
21 it's easier for everybody involved.

22

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1 Thank you.

2

3 CAPTAIN BAMBERGER: Thank you.

4

5 GARY BROWN: Good afternoon. My name
6 is Gary Brown. I am the union security liaison for
7 the International Longshoremen's Union. I work and
8 live in Puget Sound, Tacoma. I am also a member of
9 the Area Maritime Security Committee up there, as well
10 as several other committees.

11

12 I just want to touch on just a couple
13 of quick subjects here on the cost. Since it's the
14 government that is mandating this threat assessment
15 and background checks for port security to fight
16 terrorism, doing the work and presenting the documents
17 to the terminal operators, if that is the case, then
18 why isn't the government absorbing all the costs? And
19 other than that -- to follow up on that -- under the
20 Department of Homeland Security Appropriations Act, PL
21 108-90, Section 520, directs the TSA to charge a
22 reasonable fee. Nowhere does it require workers to

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1 absorb those costs. And we would like to respectfully
2 ask Congress to lift that appropriations rider.

3
4 One other thing is also that if the --
5 you've got to remember one thing -- is that a lot of
6 the workers are going to have to absorb -- take time
7 off -- as well as costs to apply for the TWIC Card, as
8 well as if they run across a snag, then they've also
9 got to incur the cost of their appeals as well as
10 their waiver. That's something that has to be taken
11 into consideration.

12
13 And just real quick like, I just kind
14 of wondered why the five-year -- where the five-year
15 expiration came up for the TWIC card because your
16 passport is good for ten years. And you kind of got
17 to go through the same background checks for a
18 passport. And maybe you can take that into
19 consideration. And instead of the five years, put the
20 ten years on that.

21
22 That's all I have. Thank you for your

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1 time.

2

3

CAPTAIN BAMBERGER: Thank you.

4

5

6

DAVE CONNOLLY: Dave Connolly. Sailors
Union of the Pacific.

7

8

Two quick points. It's from 33 CFR, I
believe that the language that is now in 46 about the
character, habits and life of merchant seaman derives.
And that is part of the safety and suitability review
that a merchant mariner undergoes. In addition to the
TWIC, a merchant mariner will have another safety and
suitability review including a criminal record review
by the Coast Guard for the longshoremen and the
truckers. Higher standards is nothing new to us, but
what we suggest is that we remove the self-disclosure
aspects from the merchant mariner application,
renewal, duplicate or original application. Remove
the criminal self-disclosure requirement because if we
are doing a criminal check for the TWIC and then we're
doing another criminal check for the safety and

22

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1 suitability review, the only thing that the criminal
2 review -- I mean a self-disclosure review -- does for
3 us is give us an inaccurate test of character, and
4 it's wrong. People shouldn't be caught in a game of
5 "gotcha" with the Coast Guard or the TSA. Let the
6 criminal record review reveal what it will reveal and
7 then if there is going to be a waiver process, let the
8 mariner present his documentation then. He shouldn't
9 be forced into a self-disclosure issue that -- where
10 memories have faded and there may be problems of the
11 understanding about what the actual criminal record
12 is.

13
14 Secondly and finally, I heard the
15 rebuttal to the concerns that we have on privacy, and
16 I recognize that there are firewalls and that there
17 are procedures and that, you know, contractors
18 themselves have security reviews, but you will forgive
19 us if we're a little skeptical. As the gentleman
20 said, the VA lost 26 million records of veterans.
21 We've had databases hacked into at Choice Point and
22 Master Card. They've been -- firewalls do not prevent

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1 access. And so, along with terminal access, we should
2 consider information access and how that access is
3 apportioned out. And especially how it is controlled.

4
5 And finally on access and databases,
6 let's make it transparent. It is not clear at all,
7 although many of the databases are listed in the
8 rulemaking, it is not clear exactly how they are going
9 to be used in the threat assessment. Let's spell that
10 out, and let's also spell out whatever other databases
11 as it says -- I think it's 1572, 103 -- other
12 databases that you may access. What are those other
13 databases? Shouldn't we have a right to refuse the
14 validity of any potential disqualifying information?

15

16 Thank you.

17

18 CAPTAIN BAMBERGER: Thank you.

19

20 CAPTAIN DAVE BOEDER: Captain Dave
21 Boeder, Masters, Mates and Pilots. I feel kind of
22 silly coming up here and asking about record keeping.

1 We discussing such momentous things. I was happy to
2 hear an explanation where there is restricted areas
3 and secure areas. Within the record keeping, it
4 appears that we have to keep track of everybody who is
5 non-TWIC and unescorted or escorted on a vessel and
6 the names of who escorted them. And this seems pretty
7 reasonable when you discuss it in terms of a U.S. port
8 where conceivably everybody is going to have a TWIC.
9 We do have ships -- U.S. ships in foreign trade. I
10 know it's surprising, but there are still a lot of us
11 out there. When we go to Africa, Asia, South America,
12 these people don't TWIC from twinkies. You know. And
13 are we supposed to be like -- I hope I've got this
14 wrong -- but from the brief reading of it -- are we
15 supposed to keep the names of the people who came
16 aboard, the people who escorted these people who came
17 aboard into every secure area of the ship when we just
18 said it's possible that the whole ship could be a
19 secure area. It doesn't seem very realistic to me.

20
21 Thank you.

22
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1 CAPTAIN BAMBERGER: Thank you.

2

3 FRED ROZO: Good afternoon. My name is
4 Fred Rozo. I'm a Certified Entomologist, Technical
5 Trainer and Security Safety Specialist for Western
6 Exterminator Company. I'm speaking for the Pest
7 Management Industry and for the National Pest
8 Management Association. We've discussed this matter at
9 fumigation division meetings where these concerns have
10 been expressed. It is important to note that our
11 industry supports the protection of our country from
12 terrorist threats; however, there are certain concerns
13 that we have in terms of the present program. The HME
14 and the TWIC Credentialing Process will cost our
15 industry significant amount of money due to time delay
16 in getting new hires productive in their jobs and
17 things related to both credentialing. The official
18 delays also in new hire and existing employee
19 productivity could be caused by the appeals and waiver
20 process when background checks uncover criminal
21 offenses that don't automatically disqualify someone
22 from being issued a TWIC or an HME. For instance, you

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1 hire someone who completed the initial background and
2 driver checks and everything comes back clean. At a
3 later date, you move that person into a position
4 requiring either a TWIC or an HME, and uncover a
5 derogatory offense, such as possessing of fireworks,
6 that isn't serious enough that you terminate that
7 employment, but it presents an obstacle in getting
8 credentialed under those Programs. Your only choice
9 is then to appeal and apply for a waiver, which takes
10 time and further delays in moving that individual into
11 the intended position.

12
13 The other issue is delays in responding
14 to customers because of problems with access control
15 systems used with the TWIC Program delegate
16 import/export commodities and other shipping problems
17 requiring fumigation and other services that we can
18 provide at the ports could be affected by delays
19 caused by access control system failures caused either
20 by weather, power failures, connectivity, etc.

21
22 And then the other issue is that this

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1 thing also falls under the Unfunded Mandate Reform Act
2 of 1995 where the Act addresses actions that may
3 result in the expenditure by a state, local or federal
4 government in the aggregate or by the private sector
5 of \$100 million dollars or more in any one year.

6
7 So that's our point. Thank you very
8 much.

9
10 CAPTAIN BAMBERGER: Thank you.

11
12 HENRY HERNANDO: Good afternoon. I am
13 Father Henry Hernando, Local Director, Maritime
14 Ministry, Los Angeles, formerly Chaplain, now I'm
15 assigned as Deputy Port Chaplain for Long Beach, Los
16 Angeles and Port Hueneme. What we do in our centers
17 -- we have three centers -- we are there to provide or
18 facilitate for the spiritual counseling and many times
19 for foreigners -- translations. So we also provide,
20 of course, religious services, both in our centers and
21 aboard ships. And we work very closely with the other
22 groups, like the IDF, the Merchant Marines, and some

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1 religious groups that we educate and that we have a
2 very good relationship with because we are trying to
3 provide a good spiritual and moral well being for our
4 sea-faring visitors.

5
6 Not 100 percent of this -- we have this
7 Association -- called the AOS USA. And the president
8 tasked me to voice out these three concerns for the
9 AOS USA. First off, the president asks us to fully
10 comply with the letter and spirit of the IDIS code and
11 the CFRs and Regulations for seafarers' access to
12 shore leave and the ability for visitors to enter the
13 facility or the vessels. We are very concerned. The
14 vessels will allow or offer only access to a ship
15 visitor or for whoever is waiting for his or her TWIC.
16 Furthermore, there will be a need for persons or
17 visitors -- the questions is how do we -- how are we
18 able to bring someone in that is still waiting for the
19 TWIC program given that the regulation seem to say
20 that they have escorted access to such visitors and
21 that each person must have a TWIC. There is a vicious
22 circle right here. So that is our concern.

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1
2 Lastly, AOS USA is a business and they
3 should have shore leave probations but the high water
4 taxes or other services at such high and sometimes
5 outrageous rates -- we don't believe that this is
6 complying with the spirit or the letter of the IDIS
7 code. The effective denial of shore leave and
8 essential provisions for visitors or counselors will
9 only continue to be eroded unless the U.S. Coast Guard
10 will be much softer on this. We are generally
11 concerned with the human emotional well being of the
12 sailors who seem to be receiving less concern,
13 interest and intervention. I have 10 volunteers and
14 they need to be guaranteed that they will access. And
15 secondly, of course, that is there anyway for us, the
16 non-profit organizations, basically giving religious
17 services to be given a special access under this TWIC
18 Program? The answer is much appreciated. We hope you
19 can give attention to this and we hope and pray for
20 the well being for sailors and the mission and for us
21 to be an asset for our nation and homeland security
22 and an asset for worldwide peace. God bless you all.

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1 Thank you for your attention. God bless America.

2

3 CAPTAIN BAMBERGER: Thank you.

4

5 LEAL SUNDET: I'm Leal Sundet. I'm
6 President of ILWU Local 8, which is a Portland, Oregon
7 Long Shore Local. It would be nice to have this in
8 Portland, but I understand why it's in Long Beach.

9

10 What I find interesting today is, as I
11 listen to comments so far, there seems to be
12 agreement, if you will, amongst all people that
13 actually work in the trenches in the industry, that we
14 don't think this is going to work very well. I mean
15 the union has gotten up here and talked about it.
16 We're there every day. I can see every single aspect
17 of the employee group, whether it be terminal
18 operators, Pacific maritime itself, or tug boat
19 operators, whatever, are saying this isn't going to
20 work the way you guys have it written up. I think you
21 ought to step back and take a look at that, because
22 it's coming from people who are out there every single

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1 day working in the trenches and really know this
2 business. And I think you need to really pay
3 attention to that.

4
5 One thing about it, I just know
6 thinking about it, realistically, you are going to
7 have -- you've got hundreds and hundreds and hundreds
8 of thousands of longshoremen come to work every single
9 day. They are going to be missing cards. Cards are
10 going to be lost. They are going to be destroyed.
11 Machines aren't going to work. On one vessel alone,
12 you might have 100 people showing up, and they are
13 going to be showing up within 15 minutes of the port
14 start time to go to work and you have to try to figure
15 out how to get them all through the gate. There is
16 going to have to be all kinds of contingency plans.
17 You know what the contingency plans are going to be
18 when things don't work? Open the gates and let them
19 in. That's reality. That's what is going to happen.
20 You got people all over the docks now that aren't even
21 being dealt with under TWIC. Just an example, you've
22 got a lot a largely foreign sailor groups. They get

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1 off the ship and they're on the dock, using the
2 telephones, whatever, trying to call home. They are
3 all over the dock. You've got truck drivers that are
4 all over the dock. We had a meeting in Washington with
5 Mr. Sand -- I think the gentleman on the end was there
6 -- and they used the hazmat experience. They said
7 with the hazmat experience, you didn't have a lot of
8 -- I will use the word -- failure I guess for people
9 who apply under the disqualifying events. I would
10 submit that the people who applied for hazmat were
11 those that chose to apply. It wasn't mandatory in a
12 sense. If you didn't want to have a hazmat
13 endorsement or you knew ahead of time that you would
14 have a disqualifier, then you didn't apply. So the
15 experience, statistics you are getting from hazmat,
16 are not going to apply when you make it mandatory to
17 truck drivers. Because in a time, you pay truck
18 drivers almost nothing -- the industry pays truck
19 drivers almost nothing. I guarantee you under the
20 current disqualifying offenses, you are not going to
21 have very many truck drivers pass.

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1 Now, one of the concerns under the
2 truck driving or under the disqualifying portion that
3 I am particularly concerned about is TSI. It's the
4 permanent disqualifying whatever -- I am not even sure
5 what a TSI is. It's defined as a Transportation
6 Security Incident. It's a security incident resulting
7 in significant loss of life -- it's not an "and" there
8 -- it's a comma -- environmental damage,
9 transportation system disruption, or economic
10 disruption in a particular area, as defined by 46 USC
11 70101. That's extremely broad and could apply to even
12 protests of somebody making just simply a protest in
13 front of an NTSA Facility. So a lot of people are
14 going to get hung up with that.

15
16 The one good thing though -- and I
17 think it should stay in here -- I see a little yellow
18 card out there -- it should stay in there -- this is
19 the first time I've seen it. This is really why I am
20 standing up, because I want to say something positive.
21 I know you haven't heard a lot of that. It's the next
22 sentence. And it says a work stoppage or other non-

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1 violent employee-related action resulting from an
2 employer/employee dispute is not a transportation
3 security concern. I think that's an imperative there.
4 And if for no other reason -- the next time the
5 employers lock out the longshoremen, you wouldn't want
6 them -- you guys can use this to keep them off their
7 own terminals.

8
9 CAPTAIN BAMBERGER: Thank you.

10
11 TOM RUZALA: Good afternoon. My name is
12 Tom Ruzala. I'm the Director of Nautical Operations
13 and the Company Security Officer for the Cruise West
14 which was at one time Alaska Sightseeing. I am not
15 representing any agency, group or affiliation, just
16 one company, one family-owned, American, U.S. flag
17 company, which is going to have operational
18 ramifications if this proposed legislation is passed
19 as is.

20
21 Before I go into it, I have a few
22 comments and a couple of concerns, but before I go

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1 into that, I think it's important that I give you a
2 snapshot of Cruise West because after reading through
3 that legislation, after drying up several highlighters
4 and going through my ibuprofen, one thing is very
5 obvious. I don't think TSA or the Coast Guard really
6 has a very good understanding of the small ship
7 industry. Obviously, you have a great understanding
8 of piers, port facilities, terminals, container
9 operations, and deep sea ships; but I think we are so
10 far under the radar, you are missing us. But the
11 impact of these regulations are not.

12
13 Cruise West, like I mentioned, is
14 family-owned. We are actually the largest small ship
15 -- overnight -- small ship company in the United
16 States and you can say North America for that too. We
17 have eight small vessels. They are Subchapter K.
18 Less than 100 gross tons each. The length varies
19 anywhere between 90 feet and 214 feet; so you're
20 talking small, dominated by anything that is deep sea.
21 Our crews are approximately 28 to 30 aboard each
22 vessel. We carry anywhere from 70 to 100 passengers

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1 depending on which vessel you're talking about. Five
2 of these vessels are 104 compliant. The other two are
3 not. Facilities that we use -- we do use a few 105
4 facilities, but most of them are your mom and pop
5 piers. Your little locations that do landings for
6 passengers or take on logistics, whatever the case may
7 be.

8
9 Four points that I'd like to touch on.
10 One is two comments and I don't mean to sound
11 ungrateful, but two comments. Exemptions, the target
12 of this legislation, and two impacts. One is cost and
13 the biggest one, which I haven't heard too much about,
14 is implementation. Exemption -- in the regulations,
15 I found it to be almost at travesty of security logic
16 where every U.S. American citizen that is manning U.S.
17 flag vessel is going through this extensive background
18 checks, and at the same time, foreign vessels with
19 foreign seamen are basically given back door entry and
20 exemption to pier facilities, shore leave and so
21 forth. There's a disconnect in the logic behind that
22 as far as security goes, from what I can see.

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1
2 The second is the target of the
3 legislation. As I mentioned, the legislation has
4 written -- seems to do a great job in addressing the
5 larger, mega industry, the ports, the facilities; but
6 the smaller industry, it doesn't. I came away after
7 reading the regulations that the way this is being
8 approached is like dragging a bottom trawl through to
9 catch a few lobsters. You'll get the lobsters, but
10 you're going to get everything else in there and what
11 comes up is damage. And we are going to be a damaged
12 company if this goes through as it is.

13
14 Cost -- there is discussion about the
15 individual cost of \$139. In our industry, that's
16 impractical. We are primarily a seasonal operator.
17 Our vessels operate six to eight months out of the
18 year; although we have activity around. Six to eight
19 months out of a year. That means from lay up, we go
20 through an extensive hiring phase, interviewing,
21 background checks and then we then get about 240
22 seamen. The last point I had, and on that point, the

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1 problem is these individuals are not going to pay the
2 \$139. So the company is going to end up paying
3 anywhere from \$40,000 to \$52,000 for the first year of
4 implementation. And \$20,000 to \$26,000 for subsequent
5 years because these crews continually turn over. The
6 crews are made up out of 18 to 22 year olds. They
7 come in; they go. We average actually five new crew
8 members every week that we have to handle.

9
10 And that falls into the fourth point,
11 which is implementation. As it is written, this will
12 not work. It is impossible to hire crews on short
13 notice, get them to vessels within a week to 10 days
14 when you're talking 30 days to 60 days of background
15 checks. It won't work. Will it kill the company? I
16 don't know. I don't think so. Will it cripple us?
17 Yes. So I am asking that you reconsider and possibly
18 consider the fact that maybe vessels that are less
19 than 100 gross tons with undocumented mariners be
20 exempt from these TWIC regulations.

21
22 Thank you.

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22

CAPTAIN BAMBERGER: Thank you.

MR. OLSON: I'm Olson. I'm this area's Labor Representative. I'm on the Area Maritime Security Committee. It's hard to tell on a lot of these issues because so many of them overlap. But again, from the hundreds of thousands that I am concerned with, there are some questions. A little over 50 years ago, during an armed conflict with Korea, my union was protesting background checks. And reviewing that recently, that process included an appeals system with a local board, people familiar with the industry, the operations in the area, including, actually, labor representatives. What on earth has changed in a half a century to make you offer us something far worse than we got out of Joe McCarthy at his worst? We are in the Kangaroo Court now.

Now, another thing that comes up often.
The maritime worker is given the dubious honor of

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1 making an involuntary contribution by all indications
2 right now to the soon to be burgeoning Maritime
3 Security Industry in Kentucky? As a maritime worker
4 who's also somewhat familiar with Kentucky -- I feel
5 obligated to point out that what one might mistake as
6 an ocean there is actually blue grass. And knowing
7 that the current administration has an aversion to
8 knowing what's in certain containers that are
9 designated to be empty, I would like to confirm that
10 we all really do know what is in a pork barrel.
11 Right? Thank you.

12
13 CAPTAIN BAMBERGER: Thank you.

14
15 MAX VEKICH: My name is Max Vekich.
16 I'm a Member of ILAU, Local 52, Seattle, Washington.
17 I would like to thank you gentlemen for being here.
18 I also -- in all the things that were testified here
19 today on, my union brothers and sisters, it perhaps
20 has not come out clearly that we actually asked after
21 9-11 that the U.S. Coast Guard be the lead agency in
22 any efforts to improve port security. So, I think

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1 that's important we say that on the record, because we
2 have a long history and confidence that they will do
3 things right and fairly and our information was kept
4 private and secure. It will not be used as a club by
5 any foreign-owned employers to be beat us in labor
6 relations. And so were there on 9-12-01 in D.C. to
7 talk about the issues and put a plan together we
8 thought was approved for security. We've come a long
9 way since then, and we wish you good luck in doing a
10 fair and adequate job. And we are here to be part of
11 the process. And we are glad you are listening.

12
13 We have a couple of concerns
14 specifically. The ILAU's concern about the certain
15 application of waivers to subjective decisions. We
16 are concerned the waiver process and the MPRM does not
17 apply to security threat assessments made by TSA for
18 subjective reasons under Section 1572.107. Under this
19 section, TSA can disqualify someone for criminal
20 offenses that are not on the disqualifying list if the
21 TSA determines that other convictions are extensive;
22 that the conviction is for a serious crime or the

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1 person was in prison for over one year. Putting aside
2 this very broad and subjective criteria, we don't
3 understand how TSA is implementing this without
4 allowing workers to seek waivers. They do it for
5 other crimes listed in Section 1572.103.
6 Specifically, Section 7015(c)(2) of the MTSA
7 specifically mandates that TSA afford a waiver for all
8 reasons a worker may be disqualified from holding a
9 transportation security card. We understand that TSA
10 does not afford waivers under the hazmat Program for
11 disqualifications for subjective decisions, but we
12 objected at that time also; but this again, this is
13 apples and oranges. This isn't hazmat now. This is
14 the maritime industry. And a Maritime TWIC, it is our
15 interpretation that a waiver is a statutory right and
16 that it cannot be denied by TSA at its discretion.
17 Congress makes laws; agencies implement laws, is our
18 understanding. We hope and expect that TSA will make
19 this change in its final version of these rules.

20
21 We would also like to add that this is
22 the maybe the left coast and comprised of blue states,

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1 but there hasn't been a terrorist incident involving
2 a union worker in the history of our union, which
3 starts back in 1934. Thank you.

4
5 CAPTAIN BAMBERGER: Thank you. I think
6 we have time for two more. Any of the people we don't
7 catch, we will catch at the end of next session.

8
9 ROBERT BORGUS: Good afternoon. My
10 name is Robert Borgus. I've had this Blue Card right
11 here for much too long. In 2004, they sent me for a
12 20-foot container. I found the container and started
13 going back to the ship and it exploded on me. You
14 know, I don't know if anybody else has ever had this
15 happen to them, and you have to just excuse my
16 stuttering, you know. But I think you guys are going
17 about this wrong. I mean there are a lot of people
18 out there that are doing their jobs, days, nights,
19 whatever. But you know we've got families. I am sure
20 you guys love your families. True or not? I have
21 been in the service too. I did my duty. I didn't
22 come home just to get blown up here. I'm sorry to be

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1 so rude, but I'm tired of this. I could have lost my
2 life. I should be dead. I know how the thing feels.
3 I mean it. And you can call me an idiot. I don't
4 care what you call me. But I had to get this out.
5 Because if you guys don't do your jobs right, how can
6 we do our jobs right bringing in your goods?

7

8 That's all I got to say. I got to go
9 work.

10

11 CAPTAIN BAMBERGER: Thank you.

12

13 STEVE RUGGERIO: I'm Steve Ruggerio.
14 Good afternoon. I'm the Director of Maritime Security
15 for Total Terminals International. I'd just like to
16 make one comment on the PIN number that is going to be
17 associated with the PKI Certificate. As an armed
18 forces member, I've been using a CAT Card for about
19 four or five years. Recently, I had to go get my card
20 and my PIN reset because I forgot it. Now, as you
21 heard today through a number of comments of how the
22 impact and how many people come through our facilities

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1 and through our port daily, for me to go through that
2 process to go to another Enrollment Site at DoD to get
3 my card reset, if that is going to be the same process
4 for the TWIC Card if somebody forgets their PIN where
5 they are locked out after three tries, there will be
6 138 test sites nationwide. Is that going to be
7 sufficient for the amount of workers that are here in
8 the Port of Los Angeles or other ports in the nation?
9

10 My proposal is if that's going to be
11 the case where that PIN is going to be required, there
12 be more test sites, they be open 24 hours a day, seven
13 days a week for access for people to go back to get
14 their PIN reset. Furthermore, by doing that, you are
15 also delaying the job site from getting started.
16 You've heard comments from Mr. Keane relating to key
17 individuals about getting the job started at a site
18 that will stop commerce. Please keep that in mind as
19 you're writing these Rules. Thank you.
20

21 CAPTAIN BAMBERGER: Thank you. Let's
22 take these last two. I think we'll just hold off of

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1 the break.

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CAPTAIN RICHARD GOBEN: Thank you for the flexibility. My name is Captain Rich Goben. I'm the Port Captain of Port Loma Cruz in San Diego, also FSO, VSO among the Area Maritime Executive Steering Committee on the Harbor Safety Committee involved in the San Diego Area.

I would just like to reflect on some comments I've already heard from some of the small operators here. We've heard a lot from large companies and unions and truckers and this and that sort of thing, but I'm a small passenger vessel business; and just a few minutes ago, the gentleman who was up here asking you not to forget about us as well, I operate seven vessels down in San Diego, and four of them are regulated vessels. Our facility, to give you an idea, consists of a ticket booth, which is the size of the table you're sitting at and a single dock, which could easily fit length-wise in this room. The dock is entirely visible from the ticket booth.

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1 And one of my comments is -- when the Rules are
2 written and when they are revised, I just want to take
3 into account what the facilities are. For example, if
4 someone has to have escorted or be escorted down to a
5 crew facility, does that mean that a person can't walk
6 down on this dock to repair a fender, so to speak,
7 without having someone take the time out to escort
8 them.

9
10 I think the Rules reflect that it would
11 be a burden to the industry to have to do this in
12 every single case. So I think that we need to have a
13 way to mitigate that so that it is realistic for all
14 sizes, not only just large vessels and facilities, but
15 smaller ones as well. The other thing with the card
16 reader on the vessels, a lot of our vessels do have to
17 go to other facilities, so that would mean that the
18 readers would be on the vessels themselves. And at
19 these facilities, often, if we do an event, there are
20 people that do need access to boat earlier in the day,
21 such as musicians, or vendors or even the clients
22 themselves. And the way it is written, it basically

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1 places a burden on us to escort them basically all the
2 time, meaning payroll hours rise. So I am sure you
3 understand it's a big deal in an industry that is not
4 as rich as everyone seems to think.

5
6 The second thing I'd like to comment on
7 is the burden on individual mariners. As I said,
8 you've heard from the unions; you've heard from lots
9 of groups of people, but what about the people, like
10 me, that are mariners that are not in the large groups
11 that have to absorb these costs myself -- ourselves
12 anyway -- assuming that no one pays for them? For
13 example, to get a license today, you only have to pay
14 for a physical, any license courses. For STCW for the
15 license itself, there is an evaluation, a testing fee,
16 an issuance fee. For an MMD, there is a fee. There
17 is a drug-testing fee. There is radar school. There
18 is fire school. All of these are associated costs.
19 And I think that just automatically assuming that \$139
20 is not going to mean anything to people in the
21 business, I think that's a bad assumption because we
22 are not as rich as we would like to be.

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1
2 The other thing about having the TWIC
3 Card affect all mariners on all vessels, all licensed
4 and rated mariners, the thing that comes to mind as a
5 person not only in Kentucky, but a person that say has
6 a six-passenger license, the person that owns their
7 own small sailboat and legally takes out six
8 passengers miles from any regulated facility, the
9 vision I have is that this person has to have a TWIC
10 Card to look in the mirror and identify themselves
11 every morning before they come to work. And I am not
12 sure that that is exactly what the intent is.

13
14 The other thing that has been mentioned
15 here is some of our workers are temporary. It takes
16 a long process to hire them. We don't have that much
17 time. And especially on some of our vessels, if we
18 have an H-Class Vessel, they are required to be
19 mariners; so they have to get an MMD Card. Now, to
20 have them get a TWIC Card, it is number one, a burden
21 on them or us, especially with the turn around. And
22 number two, it is just the time constraints are

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1 prohibitive.

2

3 Final thing I'd like to say is just
4 keep in mind, we are all working the same industry
5 here. And I'll go back to prevention for people a few
6 years ago, and I believe -- I don't know if it was
7 Admiral Carr -- but the person that was honored, the
8 mariner, respect experience. Thank you.

9

10 CAPTAIN BAMBERGER: Thank you.

11

12 FRANCINE ALVAREZ: Hello. My name is
13 Francine Alvarez. I'm an ILWU Member, and I am also
14 an American. I have just a couple of comments.
15 First, I participated in the TWIC Prototype; and as
16 far as I know, TSA was the one that took my
17 information. I want to know -- because I was
18 understanding that this Card is just -- it is going to
19 expire. It is not going to be good and it is going to
20 have to go through all over. Where is this
21 information? If it is going to be implemented into
22 the new Card or how is that going to work of those of

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1 us that did participate in the prototype. It would
2 seem like a waste of money to do it twice. Now, I
3 don't know how far they went through into this. I
4 know I signed a paper for background check, and I
5 think they should be able to use that information
6 towards this new one, if anything, to save money --
7 for whoever needs to save money.

8
9 The second thing is I had questions
10 regarding the charges or the crimes that people might
11 have if there is -- like they say the appeals process
12 -- but what about expungements. I know under the DRE,
13 like Department of Real Estate and other state
14 organizations, you must disclose something, but if it
15 has been expunged, it's not supposed to be held
16 against you. And if it's been that long that the
17 Judge granted you an expungement, that's another
18 question I have.

19
20 The third thing I'd like to comment on
21 is --I'm a third generation ILWU Member. Even prior to
22 the union being formed, when conditions were at their

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1 worst out there in the harbors, as far as I know,
2 there has never been any ILWU worker that had
3 committed an act of terror or anything else on our own
4 bread and butter -- our jobs that we work every day.

5

6 Thank you very much.

7

8 CAPTAIN BAMBERGER: Thank you.

9

10 JOHN SCHWARTZ: I will answer the
11 questions about the Prototype Cards. There was a
12 general question and some interest here in the Long
13 Beach Area I am sure. The data that we collected as
14 part of the prototype, the personal data from all of
15 the workers remains in TSA's custody. It has not been
16 destroyed or left our custody. And it remains in the
17 encrypted format. The Cards themselves are -- well,
18 they have expired and serve no more purpose other than
19 to demonstrate that you participated in the prototype
20 test, and we appreciate the fact that you did take the
21 time to help us out and be one of the people who gave
22 us the data upon which we could build our decisions

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1 regarding this Rule.

2

3 Regarding the Prototype Card, there was
4 no criminal history records checked, nor was there any
5 legal status checked. We did run the names against a
6 terrorist database, a name-based check for the
7 terrorist database, pretty much the same as the no fly
8 list. So I think that answers -- the cost -- and
9 there was no cost to the Prototype Card to the
10 workers. As far as what will happen with the Rule;
11 and in fact, to establish a fair and level playing
12 field, we will have to involve everybody equally
13 whether they participated in the prototype or not. So
14 you made your contribution to us to help shape this
15 Rule and give us the information, and we appreciate
16 that very much. Thank you.

17

18 CAPTAIN BAMBERGER: Thanks John.

19

20 DOUG MONTGOMERY: Hello. My name is
21 Doug Montgomery, and I am with the Harbor Marine
22 Services. We serve the Pacific Rim providing tanker

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1 escorts and ship assists in commerce as well. The
2 requirement here is a card reader on board every
3 vessel. It is unnecessary. Our vessel crews are
4 small and usually very familiar with each other.
5 Certainly, if there was a stranger on board, we would
6 be able to identify him because the crews are small.
7 The opportunity for an individual to go overlooked is
8 virtually impossible on board one of our vessels.
9 Also, many vessels in the industry do not have
10 internet or satellite services, nor do they access the
11 most accurate records of the TWIC Card holders. The
12 majority of tug vessels do not have access to internet
13 service for extended periods of time. Given that, we
14 wouldn't be able to update our scanners or the card
15 readers on a weekly basis.

16
17 There are currently no provisions to
18 allow the new employees to work while they wait to
19 receive their TWIC. The towing industry continues to
20 face a serious challenge in meeting all of its
21 manpower needs. The extended waiting period to obtain
22 the TWIC is already projected at 60 days and will

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1 impede the ability of companies to bring new mariners
2 into the industry in a quick and efficient manner.
3 This will exacerbate the towing industry's already
4 acute vessel personnel shortage problem. The 60-day
5 wait in itself could be problematic, but the 60-day
6 period has yet to even be shown it can be processed in
7 that time period.

8
9 The time away from the job in order to
10 travel to obtain the TWIC enrollment and the cost of
11 travel and the application fees pose a real burden on
12 the individual mariners, and these further delays and
13 costs could well impact the smooth flow of commerce as
14 vessels are unable to sail because sufficient crews
15 are not available. I'd like to make a suggestion --
16 an alternative procedure -- for newly-hired employees
17 who have completed the initial TWIC Application
18 Process and other companies' internal requirements --
19 in-house we do a background search as well prior to
20 hiring someone -- after that, we would like to allow
21 such an employee to be placed in service on a vessel
22 perhaps on a probationary basis. This would allow us

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1 to hire, train and place in quarters on the vessel
2 during the 60-day waiting period, both addressing our
3 manpower shortage concerns and allowing the new
4 employee to begin earning income. As mentioned prior,
5 all of our crewmembers are U.S. Citizens and this does
6 seem like a reasonable alternative from a security
7 perspective as well.

8
9 Thank you.

10
11 CAPTAIN BAMBERGER: Thank you. Okay.
12 We can break. I've got 10 of 3:00 just about. So
13 let's say -- let's try to start promptly at 3:00
14 o'clock. We've got a lot more to go over. I think we
15 did have a couple of people who didn't get to comment
16 on the first round. So let's star back up at 3:00.
17 Thank you.

18 (WHEREUPON, A RECESS WAS TAKEN.)

19 **OVERVIEW: TITLE 46**

20 **LUKE HARDEN**

21
22 LUKE HARDEN: I would like to provide

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1 you a brief Overview of the information within the
2 Notice of Proposed Rulemaking regarding the Proposed
3 Rulemaking on Consolidation of Merchant Mariner
4 Qualification Credentials. This Rule seeks to
5 streamline our Merchant Marine Credentialing Program,
6 to minimize requirements and to simplify the program.
7 As part of the streamlining, we are combining the four
8 credentials we currently issue into a single
9 qualification document, which we will call the
10 Merchant Mariner Credential. This single document
11 will then carry all the qualifications that a mariner
12 holds, whether it be Master, Life Boat, and STCW or
13 any of the STCW Endorsements. The TWIC then would
14 serve as the identity document for a mariner, removing
15 the need for a Document Card Key to be used as an
16 identity document.

17
18 Next slide. As part of the
19 reorganization of such efforts, of Title 46 of Code of
20 Federal Regulations, we revised certain portions of
21 each part and created an entirely new part. Those
22 items listed in red have the most extensive revisions.

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1 Although this Notice of Proposed Rulemaking is
2 lengthy, it does not make substantial changes to the
3 Regulation regarding credentialing of merchant
4 mariners. Within the new proposed Part 10, which
5 formerly dealt with officers, we have retained that
6 information which is general in nature as it regarded
7 the credentialing of maritime personnel, whether an
8 officer or a rating -- rating being the term that we
9 will use for those who were formerly considered
10 unlicensed personnel. Additionally, this part will
11 contain all the definitions for the sub-chapter and
12 the medical requirements for those holding Merchant
13 Mariner Credentials.

14
15 Part 11, the new part, was developed
16 from those sections within the former Part 10 that
17 dealt specifically with the credentialing of officers.
18 This Part will also contain information regarding the
19 training course and program requirements. We didn't
20 change those requirements. We just moved them
21 consistent with the Officer qualifications.

22

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1 Part 12 now retains only that
2 information that is specific to the qualification of
3 ratings. Parts 13, 14, and 16 were revised only to
4 insure consistency of the terminology and also to move
5 the definitions to Part 10. Part 15 added a new
6 requirement that each mariner hold a TWIC before he
7 was allowed to serve on board a vessel.

8
9 Next slide please. Our proposed
10 provisions are for the application process and will
11 not revise the current qualification requirements for
12 mariners. Specific changes include each credentialed
13 mariner must hold a TWIC before they apply for a
14 credential, whether original, upgrade or renewal.
15 There will be no need to visit the Regional
16 Examination Centers because fingerprints and proofs of
17 identification will be provided at the TWIC Enrollment
18 Centers and then transmitted to the Coast Guard. This
19 will allow the application process to be completed
20 completely through the mail, removing the requirement
21 for an in-person visit unless the individual requires
22 examination. As you've heard previously, the TSA will

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1 be conducting security threat assessments. The Coast
2 Guard will continue to conduct the Safety Suitability
3 Assessments before issuing a Merchant Mariner
4 Credential. However, that check will be conducted
5 based upon the information transmitted by the TSA to
6 the Coast Guard. The Coast Guard will also use the
7 photographic image that the TSA obtains during the
8 enrollment process. The Coast Guard fee structure
9 will remain the same. We will still charge for
10 evaluations, examinations, as well as issuance.
11 However, instead of charging you for the issuance of
12 four different credentials, we will only charge you
13 for the issuance of the one credential we will now
14 issue. The appeal process remains the same. If the
15 Coast Guard issues you a credential, we will deal with
16 that appeal. And if the TSA issues a credential, then
17 the TSA will handle that appeal.

18
19 Next slide please. The Coast Guard
20 will begin issuing the Merchant Mariner Credential 18
21 months after the TWIC final Rule goes into effect.
22 During that 18-month period, the TWIC will be rolled

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1 out and this will allow all mariners the opportunity
2 to obtain a TWIC before it becomes mandatory for the
3 Merchant Mariner Credential and mandatory for service
4 on board vessels. Mariners are encouraged to obtain
5 the Merchant Mariner Credential as soon as it becomes
6 available, because failing to obtain the TWIC will
7 result in slowing the process to renew or upgrade your
8 credential. We are extremely conscious of the concern
9 of the protection of personal identity information,
10 and this 18-month period also supplies to the Coast
11 Guard and TSA time to establish a secure system for
12 transferring identify information.

13
14 Next slide please. As is our routine,
15 when we were revise the requirements of credentials we
16 issue to merchant mariners, we will be providing a
17 five-year phase in period. This period will begin 18
18 months after the effective date of the final Rule.
19 This will allow us to gradually increase Merchant
20 Mariner Credentials and replace the qualification
21 documents that we currently issue. As a mariner seeks
22 renewal or upgrade of their current license, the

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1 Merchant Mariner Document or Certificate of Registry,
2 we will issue their first Merchant Mariner Credential.
3 This credential will be issued listing all the
4 qualifications they currently hold. The MMC will be
5 valid for a five-year period. Meaning new
6 endorsements for the MMC after the initial issuance
7 will be issued with the same expiration date unless
8 all endorsements are renewed.

9
10 Next slide please. The initial TWIC
11 issued to the merchant mariner may be based on the
12 threat assessment that we have previously conducted.
13 This will cover only those individuals who obtain a
14 Merchant Mariner Document after January 3, 2003, and
15 those who obtain the license after January 13, 2006.
16 These dates are based upon the publication of
17 revisions to our current Regulations. Those mariners
18 will still have to appear at the TWIC Enrollment
19 Center, but none of the criminal history check will be
20 required. The TWIC that is issued will expire on the
21 same date as the MMD or license that the mariner
22 currently holds. The cost for the TWIC would be

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1 issued at a reduced rate, as we previously mentioned.
2 If the mariner opts to undergo the full security
3 threat assessment, they then receive a five-year TWIC.
4

5 Thank you very much.
6

7 CAPTAIN BAMBERGER: Thanks Luke. Okay.
8 I'd like to start the comment process. So when you're
9 ready.

10 **COMMENTS**
11

12 CAPTAIN DAVID BOEDER: Again, Captain
13 David Boeder. Masters, Mates and Pilots. And in this
14 instance, I am also appearing before you as the South
15 Pacific Regional Vice President of the Council of
16 Master Mariners, a group that has over 2,000 licensed
17 masters who are either retired or active, and are Ship
18 Captains of vessels.
19

20 We have some questions. The Federal
21 Register was not very clear on how some of the
22 licensing issues were going to be portrayed on this

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1 new Rule that I am seeing. Is it going to be a
2 license to serve as a Master? Before I went to sea,
3 I had a lot of education and then I was examined by
4 the Coast Guard. My license says that I have been
5 examined and found competent to serve as a Master for
6 unlimited times on any ocean. This is done by the
7 U.S. Coast Guard. This is probably the most -- until
8 I got married and had a family -- this was the most
9 important thing in my life. I was a Ship Captain for
10 13 years. To eliminate a license, which is a license
11 to serve, goes against hundreds and hundreds of years
12 of tradition. It can have all sorts of impact with
13 maritime law that, you know, cannot be determined and
14 goes to the Courts. So we have a question -- a
15 question that is -- is the MMC going to return the
16 word license? Are you going to be licensed to serve
17 as Master. Licensed to serve as Chief Mate. Because
18 you are a servant of the vessel. And that's very
19 important to all our members.

20
21 Also, we now have a credential and not
22 a license apparently. And it poses a question -- does

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1 a Merchant Marine Credential remain the property of
2 the holder? What sort of due process is involved for
3 revocation? To just say that there is no change --
4 well, that could be fine among Coast Guard
5 Regulations, but again, in other areas of the law,
6 it's no longer a license. It's a credential, which
7 may not hold the same value and require the same
8 extraordinary proceedings that are required. The
9 Coast Guard has spent a lot of time -- a lot of effort
10 -- determining whether I was competent. I think they
11 should have to spend a like amount of time to
12 determine if I am not competent. So what I'm telling
13 you is -- especially all the Coast Guard officers here
14 -- our license is the same thing as your commission.
15 When you change it, it's not just a change in paper.
16 It's just not a qualification. It's a change in
17 something that is very near and dear to every license
18 holder, and we hope that you don't just run off and
19 change this willy-nilly because it's expedient or
20 because you want to have one card instead of another.
21 Most licensed officers don't mind carrying an extra
22 piece of paper.

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And I see I have the yellow card; so I will stop there before I get too emotional. But I've got to be very honest with you, this is a big issue for every Officer in the Merchant Marines right now.

CAPTAIN BAMBERGER: Thank you.

LUKE HARDEN: Captain, as far as your question regarding the MMC, the Merchant Mariner Credential will still specifically say you are a Master. You will still retain your current -- all of your current endorsements. So you know, if you are a Master with all your Title Endorsements, those would still be retained on that document and you would have an Officer Endorsement.

CAPTAIN BOEDER: Would it say licensed?

LUKE HARDEN: As far as the specific format, that hasn't been determined.

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1 ELIZABETH GEDNEY: Good afternoon.
2 Beth Gedney with the Passenger Vessel Association. My
3 concerns today are -- as it relates to time line and
4 issuance of credentials -- you stated that the TWIC
5 will need to be presented and I have been told by the
6 MMC that you will need to present your TWIC to get in
7 the front door of the REC. I know there have been
8 colorful discussions there, but we have been spending
9 a lot of time. Industry has invested a lot of effort
10 with the Coast Guard to try to speed up the licensing
11 and documentation process. It continues to get
12 slower. And in the recommendations for the Coast Guard
13 to reorganize to a centralized MMC and restructure the
14 REC's, the goal was to speed up the process, not to
15 slow it down. I believe if we have to wait for our
16 TWIC Card to be issued before we can even attempt to
17 apply for a license or renewal, that that is just
18 going add 30 to 60 days to the process. I'm a little
19 bit sensitive on the subject because my last renewal
20 took nine months. I guess 10 months is relative to
21 nine months.

22

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1 I am also concerned that you have
2 written yourself into a corner in terms of your time
3 line that you put up there. The Rulemaking states
4 that implementation will be done in terms of the
5 largest ports first, moving down to the smaller ports.
6 I don't believe it says that mariners will be put to
7 the front of the line. I am concerned mariners will
8 be waiting for their TWIC in the 750,000 that need to
9 be processed and their license will expire or document
10 will expire while waiting for the issuance of their
11 TWIC. So I hope that you will look into some way
12 where the two processes can be conducted concurrently
13 and one won't have to wait for the other.

14
15 Thank you.

16
17 CAPTAIN BAMBERGER: Thank you.

18
19 MARC BISSONETTE: Good afternoon. My
20 name is Marc Bissonette, and I am the Director of
21 Marine Operations for Clipper Navigation Incorporated
22 of Seattle, Washington. We're a small business that

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1 has been supplying ferry transportation services
2 between various ports between Puget Sound and British
3 Columbia for approximately 20 years. We strongly
4 believe in risk based security measures. We dedicated
5 precious resources, over a half a million dollars,
6 developing our 105 facility, and this includes full
7 coverage, CTTUE, a biometric access system, full
8 passenger screening equipment, and we have secured our
9 vessels, and we've provided training for 200
10 employees. We are also Sub-Chapter H.

11
12 So all of our on-board employees have
13 to have Z-Cards. The expense and the 30 to 45-day --
14 we are finding that it's 45 days a lot of the time --
15 to get the Z-Cards is a big burden on us because we
16 deal -- as you've heard from other small vessel
17 operators -- we hire seasonal help, about 60 per
18 season. We also hire about 30 seasonal terminal
19 employees. These are all in the age group of late
20 high school to college employees. We have over 100
21 percent turnover from year to year in these employees.
22 The terminal employees, I have just been informed,

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1 it's just over 200 percent, which far exceeds the 12
2 percent that I read. We would like to propose that
3 only employees that have access to restricted areas on
4 board the vessel or in the passenger terminal be
5 required to have a TWIC. Besides the Z-Card, we are
6 a border state, and our employees are going to be
7 required to have a passport also. So we are at the
8 point now where if you add a TWIC to it, our entry-
9 level employee is going to have to have three forms of
10 Federal I.D. That's an entry-level employee.

11
12 Surely, there must be some way to
13 combine these I.D.s. An entry-level Z-Card does not
14 indicate any proficiency -- any job proficiency -- and
15 it is just a secure I.D. like a TWIC. Could the
16 entry-level MMC employee be eliminated and be combined
17 with a TWIC? Likewise, could TWIC information be
18 embedded into a Passport? If one could imagine
19 usefulness in such a document, especially from
20 somebody that lives in border States, if you could
21 have both of those documents in one.

22

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1 The last 10 years have been a perfect
2 storm for international ferry operators. Rising fuel
3 costs, medical costs, and the growing shortage of
4 qualified workers have a significant impact on us.
5 And now we are facing a passport requirement, which is
6 going to significantly reduce the amount of our
7 potential customers. Add to this a regulatory burden,
8 which has included -- pardon the acronyms -- ISM,
9 STCW, MTSA, GMBSS, AIS, VDR and the lists goes on. We
10 are suffering from what I call regulatory exhaustion.
11 There is a point at which we can't pass these costs
12 along to our customers. What can we do? Number one,
13 we can reduce the number of employees, which decreases
14 our service levels and then also decreases safety and
15 security on our vessels and in our terminals. We have
16 the option of out flying our vessels also, and we can
17 do that and use foreign workers. Is that going to
18 increase security? I would think not. And then I
19 guess the last alternative would be to just end the
20 service altogether, and this is something that all the
21 international operators are facing here. So when you
22 do look at those costs, and the costs in slowing down

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1 ports. And the economists will tell you that there is
2 a multiplier effect when you take away jobs on the
3 waterfront, it results in a lot of jobs being lost
4 inland.

5
6 Thank you.

7
8 CAPTAIN BAMBERGER: Thank you.

9
10 JEFF BROWNING: Good afternoon. Jeff
11 Browning from Sause Brothers Ocean Towing. We are an
12 American family-owned tug-boat operator on the West
13 Coast. We also operate on the East Coast. We support
14 the streamlining of the MMD and the TWIC Card, but we
15 -- and like many before me -- would like to see some
16 alternate plan to let people come in. Our industry --
17 our manpower shortage -- I am not very good at numbers
18 here -- but it's there and there needs to be a way to
19 have mariner come on board without having to wait for
20 a Card.

21
22 Some of the expenses associated with

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1 this, I have heard a lot of numbers today. I listened
2 to what's going on. We have a medium-size fleet. It
3 is going to cost us somewhere between a million and a
4 million and a half dollars to do this -- to put the
5 readers on. I haven't heard much good about the
6 readers. Tug boats -- everything is outside. Some of
7 our tug boats, the wheel house is about twice the size
8 of this podium. They don't fit well in this Program.
9 There is going to be a lot of problems. I am not
10 saying it's impossible. It's a cost, and it is going
11 to be very hard to implement. Also, I heard about
12 networking issues on that. That will be another cost
13 for us.

14
15 I also want to echo the regulatory
16 exhaustion. We have been through OPA 90. We've been
17 through -- our company in particular -- RCP, ISM, ISO.
18 Those were voluntary. We had this alternate security
19 plan. I am sure this will fit in with that somehow.
20 But it's going to be a big cost as well.

21
22 I would like to recommend that TSA

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1 looks at giving us a 90-day extension. This came
2 fast. If you weren't involved in the process, it's
3 hitting us hard, and we are a medium-sized company;
4 but there's a hundredfold tug companies out there like
5 us that probably don't even know about this. And it's
6 going to hit them even harder.

7
8 We do support AWO's comments as well.
9 Thank you.

10
11 CAPTAIN BAMBERGER: Thank you.

12
13 DAVID SELGA: Good afternoon. My name
14 is David Selga and I am a Regional Director of the
15 Boston Maritime Company based here in Long Beach. I'm
16 here as a Member of American Waterways Operators, and
17 American Waterway Operators have very serious concerns
18 with two disconcerting provisions of the NPRM on the
19 Merchant Mariner Credentials.

20
21 Mariners are already required to
22 undergo stringent medical examinations, including

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1 vision and hearing tests. Medical professionals are
2 well aware of the physical requirements needed in
3 order to perform the duties aboard a vessel. However,
4 Section 10.215(b) seems to suggest that a physician
5 must now document the physical ability of the mariner
6 to do his or her job. The implication that a mariner
7 in his or her position must travel to the vessel in
8 order to validate the American physical disabilities
9 is unnecessary, and it is a real burden on both the
10 mariner and the attending physician. Similarly, the
11 medical professional should be able to determine a
12 mariner's ability to perform his or her function
13 without overly constrictive standards. Inclusion of
14 additional hearing standards in Section 10.215(c) is
15 unnecessary. That's with respect to my membership in
16 American Waterways Operators.

17
18 Now, as a local operator, I have a
19 couple of concerns that I would point out and that is
20 our inability to cover the function in our primary
21 mission, which is to assist ships in our port. Under
22 the program, as I've heard, there seems to me that

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1 there is a failure with the lost card, a failed card,
2 a failed reader. If we are going to be in a
3 situation, since we have a call-in crew compliment, we
4 are going to be forced to find a replacement crewman
5 on the spot, within a matter of 10 to 15 minutes. We
6 compete with many of the other terminal operators for
7 essentially the same labor pool, which is a skilled
8 labor pool, documented labor pool, and I think that's
9 an unreasonable call. I don't think that's
10 manageable. I don't think it would be effective, and
11 I really don't think it would work at all. I think
12 that as a result of that in the potentially
13 temporarily prohibitive work opportunity for that
14 employee, I think ultimately that would result in a
15 problematic collective bargaining process, wherein an
16 affected employee would be replaced by somebody else
17 -- grievance process -- probably not going to come to
18 see the Coast Guard or TSA. So I think that those
19 costs will ultimately be buried under the ripple
20 effect of the collective bargaining agreement wherein
21 employees will fight for whatever they can get to
22 protect their own families. So I would just offer

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1 that while we are here as a unit, calling ourselves
2 the industry, that we need to find a mechanism to
3 maintain a consolidated front to work interactively
4 with you folks to find a solution. To that end, I
5 support the extension of the 90-day comment period to
6 allow the rest of the industry to get up to speed on
7 this issue and to invite their conversation into this
8 serious issue.

9
10 Thank you.

11
12 CAPTAIN BAMBERGER: Thank you. If we
13 don't have any more comments on this last Title, then
14 we would like to open the floor at the microphone to
15 comments on any of the three presentations today. I'd
16 like to invite up here first the gentleman who was
17 waiting in line, and we didn't get a chance to hear
18 from -- Fred Willis are you still here?

19
20 FRED WILLIS: No, I got it.

21
22 CAPTAIN BAMBERGER: You got it? Okay.

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1 Then have at it. Thanks Fred.

2 **TITLES 46, 33 AND 49**

3 **FURTHER COMMENTS**

4

5 KATHLEEN HOLLINGSWORTH: I'm Kathleen

6 Hollingsworth. I'm Congress Dana Rohrabacher's

7 District Director. Welcome to the 46th Congressional

8 District where we are gathered here today. Along with

9 the critical infrastructure that are located in the

10 46th District are the Ports of Los Angeles and Long

11 Beach. I work at the interesting juncture where one

12 is academia and theoretical and one is policy and one

13 is boots on the ground come together. I am involved

14 to some extent with one that is tactical in terms of

15 security. One is operational, and one is strategic.

16 I sit on the Area Maritime Security Committee

17 reporting to the Captain of the Port. Representing

18 the seat I occupy, is sort of a generic elected

19 official. So I give time to whichever one of the

20 state, local or Federal. It's an odd seat to occupy

21 because most of those elected people have very

22 different views on what constitutes security,

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1 especially in the maritime domain. I would say,
2 however, something as amorphous as security -- what
3 does it look like? How do you know you have it? How
4 do you know you don't have it? Last year, I took the
5 Congressman to Mr. Ruggerio's terminal for a full
6 briefing on what was then the TWIC Prototype. The
7 Congressman spent about three hours on site, and today
8 we find out that the briefing that we had -- the
9 prototype that we studied that day -- does not at all
10 resemble what it is we are looking at today. So now,
11 I have the interesting responsibility to go back to
12 the Congressman, telling him it's not what we saw.
13 It's something very different.

14
15 Our concern here is -- and believe me
16 the Congressman is very much in support of security
17 tools and designs so that we know who is where at any
18 given time -- but for the sort of tools that have to
19 be efficient. And I would just offer on his behalf
20 that the most peremptory gap analysis of the
21 information -- whether it's anecdotal or evidential --
22 that you've heard today -- would yield that what we

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1 have produced in lieu of the prototype that we were
2 introduced to about a year ago -- is not at all user
3 friendly. It appears that what we've come up with now
4 is something that is system driven rather than people
5 driven. And I would respectfully ask you to really
6 take into account the information -- again whether it
7 is anecdotal or whether you have been given
8 quantitative analysis in the written submissions --
9 that you really take it into account. I spent 30
10 percent of my time on port business, and I think I
11 know the arena rather well, and many -- if not most --
12 of the stakeholders. And I have yet to see one issue
13 that has so united and often conflicted group of
14 people. You don't find these people voicing a common
15 frame of reference on many issues, and I almost
16 astounded here today to hear a choir singing in
17 unison. It's splendid, to say the least; or perhaps
18 it's one of the more positive outcomes of our efforts
19 together today. So on behalf of Congressman on
20 Rohrabacher. Thank you for your hard work here, to
21 all of you. It's arduous. We all feel like we spent
22 the last eight hours on a transatlantic flight in

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1 coach. Thank you.

2

3 CAPTAIN BAMBERGER: Thank you.

4

5 MARC McDONALD: Marc McDonald, again.

6 The VP for Accident and Prevention for Pacific
7 Maritime Association. I just wanted to try to finish
8 up on the comments that I was not able to make this
9 morning, adding a couple of thoughts as I was sitting
10 out in the audience. So if I may -- just as a
11 summary, you've heard a lot of comments today -- and
12 let me say I hope they've helped you to understand our
13 concerns. Certainly, this Rulemaking is complicated
14 by the elements of underlying laws that were
15 highlighted today and the adopted FIPS Standard.

16

17 While the comment process is clear for
18 us, what is not so clear is our ability to affect the
19 FIPS standard and to get any changes in this standard
20 or regulation. For us, the FIPS Standard is of
21 critical concern as neither the TWIC issuance, nor the
22 access control design, can go forward without our

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1 better understanding of the standard, its application
2 and the requirements. And maybe you can take these
3 comments or questions back.

4
5 For TSA, how much flexibility do you
6 feel that you have to deviate from this standard? How
7 flexible do you think NIST will be to modify or amend
8 the standard for commercial, that is non-governmental
9 applications. And thirdly, how many of the supporting
10 NIST Documents will also be included when adopting the
11 FIPS. There are three different documents that are
12 listed in the Regulation; but if you read the FIPS
13 standard, they refer to four other documents that
14 either amend, modify or explain the standard.

15
16 Getting back to what I was trying to
17 finish up this morning, the proposed Rules outline
18 \$1,028,000 or one billion in 10-year costs. We think
19 that's low, but it's some big number. The timing of
20 these costs predominantly in the first year of
21 implementation, again because of the TWIC start-up
22 issuance and also the hardware for the access control.

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1 Our facilities are expected to shoulder about 39
2 percent of these costs, a huge cost. To be sure, we
3 don't want any false starts that would double the
4 costs on the software or hardware that, because it
5 doesn't work or because it becomes prematurely
6 obsolete. But I want to leave you with this -- we
7 stand ready to make the access control systems work
8 right and efficiently, and we want to do that from day
9 one. Again, we want to emphasize our full support and
10 desire to work closely with both the Coast Guard and
11 TSA implementing this important program in the
12 national interest.

13
14 Thank you.

15
16 CAPTAIN BAMBERGER: Thank you.

17
18 CAPTAIN MICHAEL JONES: Good afternoon.
19 My name is Captain Michael Jones. I am the Director
20 of Marine Operations for Midland Expeditions. We have
21 two U.S. flight vessels that operate through Alaska
22 and British Columbia and the West Coast of the United

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1 States. In Mexico, we have two U.S. vessels and we
2 also have some four other vessels for foreign flight
3 that do not come to the United States.

4
5 I'd like to comment on some of the
6 questions that you had. One thing within the document
7 was that the impact study on small businesses wasn't
8 quite completed. So I wanted to add that we are
9 getting estimates on the costs of the readers and
10 getting the cards themselves and sending people who
11 really has to pay for that is really grossly
12 underestimated for small vessels like ourselves.
13 Those two vessels are 152 people and we carry only 60
14 passengers, 25 in crew. I actually have a 200 percent
15 turnover each year. So I am conflicted because we
16 only hire people for six months in 12 positions that
17 we do that. These people -- it is not a career
18 position -- they come, they work for us and then they
19 go on to something else. So there is quite a bit of
20 a large turnover that may have some ramifications
21 depending upon what we actually define as secure areas
22 versus restricted areas versus whether all the crew

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1 need to have TWICs or not.

2

3 I would also like to comment on it that
4 I think we've done quite a bit actually with the MTSA
5 and ISPS. I have foreign -- so I have to do the ISPS
6 -- in the way of doing our risk assessment. And I
7 think it has been wonderful working with the Coast
8 Guard in identifying our plans and getting those
9 approved. We are required to do I-9 Forms to make
10 sure we have U.S. citizens working on our vessels to
11 begin with. It sounds like there is some redundancy
12 there. Our crewmembers are required to have passports
13 because we do go foreign. It seems to be, again,
14 maybe some things there that maybe you have already
15 looked into, possibly recreating the wheel on some of
16 these issues. I know we send in our Notice of Arrivals
17 and Notice of Departures through Canada, and it will
18 get back to us within a number of hours -- sometimes
19 definitely within 24 hours -- to let us know through
20 the background checks that they are using -- they are
21 digging up guys that protested the nuclear power plant
22 back in '79 and they want to talk to them about it.

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1 So in some way, already working through the passport
2 system databases or something else there as somebody
3 else mentioned earlier, it is a 10-year document. Now
4 we've got a five-year, you know, on the TWIC -- they
5 have proposed. You know, maybe we should require all
6 U.S. Citizens to get passports and incorporate your
7 TWIC information and background checks into that. It
8 sounds like there is a system already in place and
9 some of the breakdowns in the system -- I don't know
10 how -- you know, maybe it's just a great alias -- Mike
11 Jones -- but I've been on a no-fly list and hassled
12 for years. And I don't really understand it. You
13 know, you get to the database -- all right he is
14 cleared -- but something is going wrong with the
15 system there.

16
17 The other thing with this is IT and --
18 even more so on the cutting edge, the leading edge of
19 technology at the time -- and it is just incredible
20 costs that are associated with this; so I'd like to
21 comment on the prototype tests. We have heard a lot
22 from the other commenters. You know, you really have

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1 to have that down pat and tested. Just make sure that
2 it really, really truly is working because it is going
3 to be nothing but a headache for everyone and those
4 costs. Just know we are in here -- estimated at the
5 head agency -- in personnel the delays and all that it
6 is going to add to this.

7
8 Thank you very much for allowing me to
9 comment.

10
11 CAPTAIN BAMBERGER: Thank you.

12
13 BRENDEN GERRITTY: Good morning. My
14 name is Brenden Gerritty. I am the Southern
15 California Operations Specialist for the California
16 State Lands Commission Marine Facilities Division. We
17 were involved in the prototype tests and we fully see
18 a need and the reasoning behind the TWIC Card.

19
20 The only comment I have to make is
21 quick. In the Rulemaking, the regulatory community
22 really is not addressed in any way as far as requiring

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1 for TWIC Card and not requiring for a TWIC Card. We
2 would just like some clarification on our part to
3 continue doing our job under our mandated operations
4 that we perform all across the State of California.
5 So just some clarification on that part and that's all
6 we need.

7
8 Thank you very much.

9
10 CAPTAIN BAMBERGER: Thank you.

11
12 BETH GEDNEY: Beth Gedney, Passenger
13 Vessel Association. And the way I figure it, I got an
14 hour. I can stand up here. I can't believe it's only
15 4:00 o'clock and you guys are wrapping up.

16
17 CAPTAIN BAMBERGER: We expect you to
18 get back in line.

19
20 BETH GEDNEY: There you go. Every four
21 minutes, I've got to go stand against the wall again.
22 As other presenters today have said, thank you for

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1 coming today. I know we all asked for extra hearings
2 and extra comments and extra time, but this is not an
3 easy process and I appreciate all the hard work that
4 you have done. And I certainly appreciate your
5 listening to my members of the small passenger vessels
6 and taking their comments really seriously.

7
8 I think that we are unique for a number
9 of reasons, and you've heard most of them, but the one
10 I don't think you have heard is I believe we are the
11 only branch of the industry that has had a direct loss
12 of revenue to date from security measures. We have
13 had customers choose other venues because they don't
14 choose to have their wedding or their Bar Mitzvah on
15 a vessel where there are security measures. They go
16 to a hotel instead. We've been locked out of
17 facilities that we have used for years and years, and
18 we have lost very important revenue because of the
19 lack of an available facility. For one of our members
20 to lose a wedding or a big function could be as much
21 as \$25,000 for a one-day function. And to lose that
22 because they are locked out of a facility is very

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1 painful, and I think that makes us very unique today.
2 I don't know that anybody else has had that
3 experience.

4
5 A number of -- I started with three
6 really simple points this morning that I was going to
7 make and lo and behold as the day goes on, the list
8 got a lot longer. But I'd like to talk to the
9 definition of a secure area for our members, and I
10 certainly appreciate Commander Gautier's clarification
11 for us that a passenger vessel area is not a secure
12 area. But I think I need to say that that's not
13 enough. We need a third area, which is an employee
14 area. We have places on the vessel where we don't
15 want a passenger to go to, but if we found one there,
16 it would not be a transportation security incident.
17 And I think that that's an important distinction. I'm
18 concerned that if it was left as described now -- I
19 know you don't know this happens -- but sometimes the
20 Captain of the Port Zone's interpretation of the
21 Regulations is a little different than it is at
22 headquarters. And I am worried that the vessel

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1 operator is going to say that that's a passenger
2 access area and the local inspector is going to say
3 no. The dressing room of the hula dancer or the
4 galley is not a passenger area; that clearly you don't
5 let passengers go in there. And again, I stress that
6 if a passenger were to go in there that it certainly
7 could lead to a transportation security incident. And
8 I really think that is the goal -- as I said -- I
9 think the solution for us is either the creation of an
10 employee area or it's to go back to the concept that
11 a secure area is exactly the same as a restricted
12 area. Certainly in the creation of a restricted area,
13 what we were told to look at was those areas where, if
14 we were to find someone in there, we could assume that
15 they were up to no good. It could lead to a TSI. For
16 most of our vessels, the secure area and the
17 restricted area would be exactly the same. And I
18 believe where the conflict is, in spite of what they
19 said, is that when you pass the point of access
20 control, you are now in a secure area. And obviously,
21 for a passenger vessel, access control happens before
22 the vessel gangway or at the vessel gangway. And

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1 again, when we get into actual advocacy, there is no
2 way to separate them as written currently.

3
4 I also think that we have a lot of
5 confusion on what a reader is. I appreciate the
6 comments today, and I was beating myself up why I
7 didn't know what the standard was that everybody was
8 talking about, and I remembered I only had the Rule
9 for two weeks. And the point I want to make is that
10 in the prototype testing -- actually I have a lot of
11 comments on prototype testing -- but one thing that
12 wasn't included were any passenger vessels. And in
13 fact, excuse me, there were cruise ships -- not small
14 passenger vessels -- and in fact, in the entire
15 rulemaking, I find an absence of reference to the
16 domestic passenger fleet. And I think you need to, in
17 addition, just some of the other things, go back to
18 the assessments, the assumption of turn over -- you've
19 heard some of my members talk to turn over today --
20 costs, economic impact without including the vessels
21 that make up the domestic passenger fleet, you have a
22 false representation of the costs and the impact. And

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1 I don't believe any of our vessels are in there. I
2 think there are about 650 small passenger vessels with
3 a security plan, and if you add them into the 3,500
4 vessels already called out, that is a significant
5 change.

6
7 To go back to the reader, up until this
8 morning, I think if you -- certainly I was at the New
9 Jersey hearing -- I had the impression if I asked 10
10 people what a reader was, I would get 10 different
11 answers. I heard they open gates. I heard that they
12 record entries into secure areas. I heard that they
13 record exits from secure areas. I heard they were
14 tied to a database that collected information and
15 helped with the record keeping. I don't believe the
16 rulemaking intended for any of those things, and I
17 don't believe that the costs called out for a reader
18 at \$2,000 -- \$1,500 to \$2,000 -- certainly doesn't
19 include the database that tracks entry and exit.

20
21 And again, none of our vessels -- none
22 of our members -- I don't get the red flag -- I've got

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1 an hour -- I feel the pain of those who need to go
2 back and incorporate all these comments, and I think
3 that the rulemaking reflects a concurrent clearance
4 process that was rushed. I think they are direct
5 conflicts and I have three examples. Do you want me
6 to go to the end of the line and start again? Or can
7 I keep going? Three examples of where the Rule
8 contradicts itself within the document and sometimes
9 within a certain paragraph, it contradicts itself.
10 One example -- and I have three -- is Social Security
11 Number use. In the 49 section, it says that the
12 applicant can voluntarily give their Social Security
13 Number to the person doing their background check.
14 However, in Part 46, on MMC's, it says that when the
15 applicant pays with their check or money order, which
16 are the only two acceptable forms of payment in the
17 rulemaking, that their Social Security Number will be
18 written. And it actually spells out that the employee
19 will write their Security Number on the front of their
20 form of payment. So I think that's an example of a
21 direct conflict and causes confusion amongst those of
22 us in industry. I think access and readers is very

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1 confused amongst those of us in industry. At one
2 point, the rulemaking says that a small company can
3 have one reader, conveniently located. Yet other
4 places in the rulemaking, it implies that there is a
5 reader at every point of access. We certainly hear
6 that in the comments today. But these don't add up.
7 Frequently referenced throughout is \$139 for the fee;
8 yet on page 29430, if you add up the individual fees
9 as called out, and there is a range, it adds up to
10 somewhere between \$155 and \$185 -- a long way from
11 \$139. And you've heard today that mariners can't
12 afford that.

13
14 And last, I would encourage -- because
15 I am way past my four minutes -- that you work
16 together with our industry through the ASP. I think
17 the Alternate Security Program was very successful in
18 the implementation of the facility and the vessel
19 plans, and I think it was successful for both you and
20 us. Once again, we are faced with a very short time
21 line, a very short implementation period. The ASP was
22 very successful and helped both of us meet that time

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1 line, not just industry. And while I'd like to say I
2 am going to suggest an alternative to all of the
3 problems that I brought up today, I don't have one.
4 I wasn't able to develop one in the short time that we
5 were given before these hearings commenced, but I
6 think as the ASP's were developed, in a working group
7 between industry and government and Coast Guard, an
8 alternative, if that is appropriate, could be
9 developed in that forum as well.

10
11 So thank you for listening again and
12 thank you.

13
14 CAPTAIN BAMBERGER: Thank you.

15
16 FRANK PONCE DE LEON: Good afternoon.
17 My name is Frank Ponce de Leon. I am the current
18 Secretary/Treasurer of ILWU 13 and today you have
19 heard a lot from the union's standpoint on the
20 implementation of TWIC. We were fortunate enough to
21 be here to talk about the TWIC and the implementation
22 of the TWIC Card, the technology involved in the

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1 implementation of the TWIC and the major cost factors
2 they see contributing prohibiting implantation on a
3 one shoe fits all type of technology or whether it is
4 going to be some type of individual implementation and
5 different for each facility. But my question to your
6 Panel today is that how realistic is the schedule of
7 the year and a half that you guys projected for the
8 TWIC to impact our work force. And we've got 7,000
9 registered and about 9,000 casual workers, and we are
10 still growing. And as we continue to grow, what is
11 going to be the ongoing process for the implementation
12 of the first phase of the vetting process and then
13 continue on to TWIC? How is that going to be
14 monitored? What is going to be the responsibility of
15 those that have to submit information as such?

16
17 But again, the feasibility factor of a
18 year and a half, as we stand here today, and we talk
19 about - our employer group talks about costs and what
20 is the cost of -- we're looking at implementation of
21 the TWIC Card as a way to secure the facilities from
22 individuals that are entering and exiting and you

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1 know, going to work and returning home to their
2 families. However, you guys have been implementing
3 rules since 2002 that haven't been implemented. And
4 surely there is no cost to the employer group today.
5 You heard one of our individual workers come up today
6 and he was the one that was carrying the container
7 that had the explosive in it. There was a Rule in
8 2002, I believe, that was implemented that required
9 the verification of seals. This container did not
10 have a seal. It had a lock. That is, it could have
11 been -- that incident could have been avoided at all
12 costs had it been stopped at the gate. There were
13 about seven other regulations that have been passed in
14 2002 that we have been asking our employer group to
15 address. Don't get me wrong. We've come along way
16 with the ports and some of the other technology that
17 has been done on the docks. But there are few rules
18 and regulations that don't cost for the safety of the
19 individuals working on the docks. And if it is not
20 TSA and it is not the Coast Guard, then who is the
21 regulatory agency that is going to be looking at
22 employers who don't implement rules that have been

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1 passed down since 2002. I am sure glad to see that
2 Mr. McDonald is in the group because he can show --
3 there has been dialogue with our local labor relations
4 committees on implementation of those rules. And we
5 don't have answers today, and we are not going to get
6 answers tomorrow, and we want to know what we are
7 going to do about those rules because those rules have
8 been in place for four years now. You're asking to
9 implement something within the next 18 months.
10 Surely, if we can't implement and regulate the Rules
11 that were passed down four years ago, how can we get
12 to this next step and insure that, number one, it is
13 implemented fairly; and that it is implemented
14 correctly and that we can continue to go to work and
15 return home to our families after each day. And
16 that's the major question I pose to you guys.

17
18 I appreciate the comments. Thank you.

19
20 STEPHEN RYBICKI: Before you sit down,
21 sir, are you able to expand on the story of the
22 exploding container for those of us who are not

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1 familiar with that for the docket?

2

3 FRANK PONCE DE LEON: The -- for the
4 docket -- we can submit all of the documentation on
5 that -- on that incident. But as far as that, I
6 wasn't the Secretary/Treasurer at that time. My
7 understanding of the incident is that number one, it
8 didn't have a container seal. I have been trying to
9 obtain the manifest from the facility. It wasn't --
10 we weren't able to get it within five minutes, 10
11 minutes, one hour, two hours. It took, I believe,
12 getting the ship to find out exactly what was
13 contained in that container. Had it been visually
14 checked at the gate; had it been verified against the
15 seal, against the manifest, they would have found out
16 there would have been a problem from the get-go. But
17 no, that container went through the facility because
18 Trade Back has implemented the most technology on
19 behalf of the employer group, and that container went
20 right through the gate, right into a parking spot and
21 lo and behold sat there for a few days and got nice
22 and hot and ripe. And that gentleman you see here

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1 today, picked up that container on his way to the
2 ship, and it exploded. So you know, again, if we can
3 get the -- if we have -- we had some confusion on the
4 implementation of the emergency security plan. Some
5 individuals on the terminal continue to work in
6 different areas, although there was an explosion. By
7 the time the word got out to the rest of the facility
8 that something happened, there was mass confusion on
9 what was going down. And you know, absent emergency
10 plans being readily accessible to the workers that
11 work there everyday, we have even asked to give us the
12 real Plans and the Lock Out/Tag Out things at each
13 facility because we have casuals that go to work and
14 they don't work at the facility every day. If they
15 had some type of card where they can refer to, not
16 only do they know the facilities, now they know the
17 emergency response and what that response would be and
18 what area you should be reporting to. Who you should
19 be reporting to and people will be accountable for it.
20 Those systems don't exist. We are letting you know
21 from, you know, they are supposed to be there, just
22 like those regulations from 2002, and we documented it

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1 and we have asked for answers, and we don't get any
2 answers. But again, you know, if we are really
3 looking at port security and making it safe for the
4 people that work there everyday, because we are the
5 ones that are the front line for the people, we need
6 to really try to sit down and say -- okay, yes. These
7 are the things that are going to work. These are how
8 we would like them implemented. And yes, these are
9 the workers that are going to carry out those
10 functions on a daily basis.

11
12 STEPHEN RYBICKI: Thank you very much.

13
14 FRANK PONCE DE LEON: Thank you sir.

15
16 CAPTAIN BAMBERGER: Okay. We have a
17 few closing comments from the Panel. Oh, I'm sorry.
18 Okay.

19
20 FRANK NORTH: Frank North, former
21 Junior Local 94 ILWU. As noted by Dana Rohrabacher's
22 assistant, it is an unusual moment when the employers

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1 and their workers have a little moment in heaven
2 together, we do it for different reasons. Primarily,
3 the employer, the interest for them is commerce, which
4 is also in our interest because the more work there is
5 and the faster it's done and the better it's done, the
6 more people are employed to do that job. For us, the
7 interest is, as exemplified in the statutes, it's
8 about security, and we are all good with security in
9 regards specifically to the bonds between commerce and
10 security is understood. There is generally a shared
11 position between the employers who are known as the
12 owner/operators and the work force, the ILWU, but our
13 concerns have more regard for worker protection than
14 the employers' interests. They always have worker
15 protection in mind, but their comment have been
16 generally focused on commerce, maintenance of the
17 hardware and the way to most efficiently move cargo,
18 which is what we do. We execute their plan of moving
19 cargo as best we can. But what is lacking in the
20 statutes, I am noting that at CFR 1572103,
21 Disqualifying Criminal Offenses, it was regarding a
22 TWIC definition of a transportation security incident

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1 and I'm quoting here: "The language concerning the
2 kind of activity that constitutes a transportation
3 security incident as required in Safety LU, the
4 definition now makes it clear that no-violent
5 labor/management activity is not considered a
6 disqualifying offense." Moving away from offense and
7 into the area of commerce, Mr. McDonald happened to
8 raise the issue about how TWIC will be applied simply
9 for security and governmental purposes, and I believe
10 I understood him to say what are the parameters of its
11 commercial application? And one of the problems we
12 have right now -- we have CT Pat. We have ways of
13 expediting the cargo and some of the transmission of
14 that information circumvents, we believe, the
15 collective bargaining agreement, by moving information
16 past the work force that exists there. And in our
17 contract, technology that replaces the function of a
18 worker is legitimate. Now, my question is -- is it
19 permissible in the regs to allow the TWIC Card to be
20 utilized as a payroll spreadsheet? Are there
21 limitations on the utilization of the TWIC Card in its
22 application to commercial purposes not related to

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1 security. And I hope that the rules as you write them
2 will take that into consideration.

3

4 Thank you.

5

6 CAPTAIN BAMBERGER: Thank you.

7

8 MARC McDONALD: Marc McDonald, PMA --
9 and I don't know how far afield you want to get -- I'm
10 up here to respond to Mr. Rybicki's question regarding
11 the container. Obviously, we have rules on the TWIC
12 and the TWIC application and implementation. Other
13 comments seem to spread that in other ways, and I
14 don't want to expand this hearing if you don't want to
15 expand this hearing.

16

17 STEPHEN RYBICKI: The only question I
18 was asking Marc was if that was the propane tank?

19

20 MARC McDONALD: No. The container in
21 question was an outbound container going to the Island
22 of Quadlin. It was loaded with general cargo that was

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1 not properly stowed, nor man tested. And it heated
2 up. There was a pick-up truck in there. There were
3 batteries in there. There were butane tanks in there.
4 And it set off an explosion. And there was some
5 difficulty in getting the manifest that was associated
6 with that container so that the responding agencies --
7 the Fire Department -- could make their approach and
8 safely take care of the situation.

9
10 STEPHEN RYBICKI: Thank you. I do
11 recall the incident. I just wanted to -- the first
12 gentleman took to the microphone and described it, and
13 I was having trouble connecting the dots about which
14 incident it was. Thank you.

15
16 CAPTAIN BAMBERGER: Thank you.

17
18 BILL DeWITT: My name is Bill DeWitt
19 with SSA Marine and as in Tampa, I wanted to point out
20 another issue with regard to the actual plans,
21 facilities security plans and as we view writing those
22 plans. SSA is in about 150 locations throughout the

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1 world. And I personally have been involved with
2 writing and reviewing over 130 plans at various SSA
3 facilities and partners. In developing those plans,
4 we took into consideration those specific parts in 101
5 where you can have alternatives, equivalencies, and
6 those types of things. In writing those plans, we
7 also took into consideration those facilities that
8 were designated as a lesser threat. An example would
9 be a facility in Portland versus the operations in
10 L.A. or Long Beach, facilities of lesser consequences,
11 if you will. In writing the Plans, they are not the
12 same. And those plans were appropriately identified
13 as SSI. In developing those plans, those people with
14 the need to know by definition of SSI will be kept in
15 that way. We need to continue that way. What causes
16 a problem or a misunderstanding probably more
17 appropriate is where an individual or a group of
18 individuals will pull out the CFR and think that's the
19 way we are doing business. And that's not necessarily
20 the case. And as in Tampa, I mentioned that as the
21 changes are happening with the TWIC and the changes of
22 33 CFR, as we incorporate the changes in 49 and 46,

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1 that those are going to be incorporated in the plans
2 as amendments. It is very difficult sometime for
3 people to understand that it may not specifically
4 reflect what the CFR says. There are alternatives and
5 there are solutions. So, I just wanted to point that
6 out. You know, some people may be of the
7 misunderstanding that that is -- that that yellow book
8 is the way to do business.

9
10 Thank you.

11
12 CAPTAIN BAMBERGER: Thank you. Okay.
13 Anything else? Anybody else? All right. The Panel
14 has some closing remarks.

15 **CLOSING REMARKS**

16 **STEPHEN RYBICKI**

17
18 STEPHEN RYBICKI: Thanks Jim. First
19 off, on behalf of all of my colleagues here on the
20 Panel and Jim Bamberger, our Facilitator today, our
21 Moderator, I want to thank you for your attendance
22 today and the time you took to put to prose, clear,

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1 concise and lucid prose, that I heard. There are some
2 comments that I'd like to reflect upon that I took
3 down that are by no means exhaustive of every single
4 comment that was made at the podium today. There are
5 a few comments that I think are worth repeating. Some
6 of these are issues. Some of them are questions.
7 Some of them are things to take back for the
8 rulemaking, the reg writing team, back in D.C.

9
10 Some of them, in no particular order,
11 include the level of access for commercial maritime
12 operations versus Federal Government facilities, a
13 higher level versus a lower level. Request for pilot
14 technology and access controls before a national roll
15 out of the program. A request to use a contactless
16 card that exceeds the FIPS Standards. Questions on
17 the PKI certifications. Privacy concerns. Open
18 comment period for the FIPS 201 is continuing this
19 week. Who is going to enforce these requirements?
20 The definitions of -- a definition of mental
21 incapacity. The use of administrative law judges.
22 The cost assumptions used in the Notice of Proposed

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1 Rulemaking. An idea for facility staging areas. A
2 definition for a TSI, a more narrow definition for a
3 TSI. Provisions for individuals who lose their TWIC
4 and the ability to continue working while waiting for
5 a replacement. The use of alternative security plans.
6 The impact on small vessel operators. Federal
7 preemption. The extension of the comment period. I
8 heard a number of people talk about that up to 90
9 days. I heard others extending it 90 days. Need to
10 have a published schedule for phase in before we go to
11 the final Rule. The impact on seasonal cruise
12 operators. The impact on foreign technical workers
13 with visas, and the ability for those people to come
14 and go. Provisions for new employees to work while
15 waiting -- initially waiting for their TWIC. There is
16 a continuing shortage of qualified personnel.
17 Additional public meetings, I heard today, Seattle and
18 San Francisco were two that I heard. Engagement with
19 the TSAC and some other Coast Guard advisory
20 committees. Questions on technology and costs. Delay
21 in the access controls for facilities. Delay in the
22 access control for facilities -- what will the impact

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1 be? Swiping out on a TWIC card while exiting the
2 facility. Prototypes should be used at Coast Guard
3 Headquarters before developed in the ports. I took
4 particular mention that it didn't mention TSA, thank
5 you. Contractors that misuse data and the chain of
6 custody. Privacy concerns, specifically on 70105(e).
7 Additional outreach efforts. Questions on the
8 database. The technology is not proven in the
9 maritime environment and at what point do you agree
10 that it's ready for prime time? Should we have
11 another pilot before we roll out? It kind of rolls in
12 together. The exemption of law enforcement officials
13 now should lead to all emergencies workers. The
14 pilot, again, on the TSA, the Sail 2 that was held up
15 in San Francisco and the patent after the Sail 2
16 pilot. The removal of a criminal self-disclosure
17 report. A list of all the databases that will be used
18 to check for TWIC -- during the TWIC application
19 process. A record keeping of U.S. flag vessels in
20 foreign trade. The need to keep records for all
21 visitors and escorts. The availability of grant
22 funding. The unfunded mandates of 1995 as we exceed

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1 the \$100 million that has been reached. The impact on
2 seafarers' shore leave. The provisions for non-profit
3 organizations and port chaplains. Experience in the
4 Hazardous Material endorsements is voluntary and TWIC
5 will be mandatory. The possible exemptions for small
6 vessels. Appeals -- a lock out after three ties on a
7 PIN. Escorts for small vessels. Escorts of people on
8 small vessels. The Coast Guard's preventions for
9 people initiative. The use of expungements or non-use
10 of expungements. The time lost to get a card. The
11 impact on the business and on the employee. Questions
12 about the wording in the document for a license -- the
13 word license. And that's particular to me because I
14 have a license and I would like to see it continue.
15 I want the record to reflect that is my comment
16 personally. The costs. The regulatory exhaustion.
17 The medical requirements for mariners. The impact on
18 collective bargaining agreements. The difference
19 between is proposed during the prototype. The impact
20 on small business. The loss of income on small vessel
21 operators due to the extra security measures. The
22 possibility of adding employee areas. The impact on

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1 the small domestic passenger fleet. I think the
2 question was about 650 vessels and that they are MTSA
3 regulated and they are included in the count. The use
4 of Social Security Numbers. The alignment of fees be
5 estimates used by the TWIC on commercial. The one
6 size fits all approach. And those are some of the
7 highlights. I have other pages.

8
9 I have a few comments I'd like to make.
10 Some housekeeping things first. The Power Point you
11 saw today is in the docket. You can -- if you really
12 want to see it -- there was a difference. We posted
13 four of them for each city so you will be able to see
14 that we are keeping it -- we didn't change it from
15 city to city. The docket is currently open until July
16 6th. There has been a request for an extension. I am
17 not -- we are taking that into consideration. When
18 people make comments to the docket in writing, as I
19 said this morning, the idea is to put in specific
20 examples, including the time, materials, costs, wages,
21 lost opportunity and the like. That would go a long
22 way to help the people that are actually reviewing

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1 this. Questions or comments like -- I don't like it
2 -- it's not going to be good -- although they are nice
3 to read, they are not going to add value to the
4 overall.

5
6 The court reporter is collecting the
7 business cards with the correct spelling of your
8 names, the commenters. The transcript will be posted
9 to the docket within a week or in about a week. And
10 we are going to consider all of the information we
11 received. And as Captain Sturm started this morning
12 with -- we don't give any particular added or less
13 emphasis to people that make oral statements than what
14 is in writing. We appreciate the passion, the
15 thoughtfulness of the comments that were made today,
16 and we really appreciate you taking the time out of
17 your day and coming to spend some time with us. On
18 behalf of the entire Panel up here, I thank you again
19 for coming today and look forward to working with you
20 in the future. Thank you again.

21 (WHEREUPON, THE MEETING ADJOURNED AT
22 4:50 P.M.)

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1323 RHODE ISLAND AVE., N.W.
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