

**STATEMENT FOR THE RECORD
SUBMITTED BY
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ON BEHALF OF

AMERICAN TRUCKING ASSOCIATIONS, INC.

TO THE

UNITED STATES HOUSE OF REPRESENTATIVES

**COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON BORDER, MARITIME AND GLOBAL
COUNTERTERRORISM**

ON

**TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL:
A STATUS UPDATE**

SEPTEMBER 17, 2008



**AMERICAN
TRUCKING
ASSOCIATIONS**

Driving Trucking's Success

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Introduction

Madam Chair and members of the subcommittee, thank you for inviting me testify today on the status of the Transportation Worker Identification Credential, also known as TWIC. My name is Phil Byrd and I am President and CEO of Bulldog Hiway Express, a company based in Charleston, South Carolina. Founded in 1959, Bulldog Hiway Express is an intermodal motor carrier that moved the first container to come off a vessel in the Port of Charleston. The company has approximately 200 power units, 350 trailers and 250 employee-drivers, many of whom will be required to apply and get a TWIC in order to enter the various port facilities where we operate in South Carolina, North Carolina, Florida, Georgia, and Virginia.

Today, I am also testifying on behalf of the American Trucking Associations (ATA). ATA's membership includes more than 2,000 trucking companies and industry suppliers of equipment and services. Directly and through its affiliated organizations, ATA encompasses over 37,000 companies and every type and class of motor carrier operation. As an ATA member, I serve as Chairman of the association's Homeland Security Policy Committee (HSPC) and as Vice Chairman of its Intermodal Motor Carriers Conference (IMCC). Both the HSPC and the IMCC, and their respective members, have been closely following the development of the TWIC since its legislative inception through its present regulatory implementation phase.

Madam Chair, I urge this subcommittee and the Committee on Homeland Security as a whole, to support the SAFE Truckers Act of 2008 and to ensure the following are achieved in the near future:

- Require TSA to immediately recognize U.S. commercial drivers who possess a TWIC as already compliant with the Hazardous Materials Endorsement Security Threat Assessment program, as allowed by statute and as TSA already does for Canadian and Mexican commercial drivers;
- Ensure that the TWIC is used as the single, universally accepted security credential for transportation workers by preempting other security and access control credentials required of motor carriers that operate in multiple jurisdictions.

Background

Almost two years ago, on September 27, 2006, I had the honor of testifying before the Small Business Committee of the U.S. House of Representatives in a hearing focused on striking the right balance between security and commerce at our Nation's ports. In large measure, the hearing discussed the TWIC, which was not yet implemented. During that hearing, I testified that security and commerce are not mutually exclusive goals, not just at our ports, but throughout the entire transportation system and supply chain. Enhancing security without disrupting the flow of commerce can be achieved by implementing risk-based programs in a cost effective and coordinated manner. Although I faced operational challenges in getting my TWIC (requiring multiple visits to the enrollment center in Charleston and waiting a couple of hours each time), the trucking industry believes the TWIC can be such a program if implemented and utilized in an appropriate manner.

ATA has long supported the original concept of the TWIC: one application/enrollment process, one fee, one security threat assessment (STA), and a single credential that transportation workers may carry to demonstrate compliance with multiple access control security requirements. However, commercial drivers today continue to face multiple security credentialing requirements. In addition to the TWIC, drivers must undergo separate STAs for the HME, air cargo and facility access, the Free and Secure Trade (FAST) program for border crossings, access to U.S. Department of Defense (DOD) facilities, and a myriad of State and locally-administered STA programs (i.e. Florida Unified Port Access Card – FUPAC). The cost to drivers of these separate STA and credentialing programs is more than \$400 in fees, not including the costs associated with drivers' lost wages while traveling to and from enrollment centers, fuel costs, and the aggravation of providing fingerprints multiple times for each program.

In January 2003, Admiral Loy, then the second most senior official at TSA, summed up the concept and the purpose of the TWIC, stating:

A fourth initiative also underway is development of a Transportation Worker Identification Credential or TWIC . . . The idea is to have these [transportation] employees undergo only one standard criminal background investigation . . . I've heard that there are some truck drivers currently carrying up to 23 ID cards around their necks. I wouldn't want to pay that chiropractor bill. Under the TWIC program drivers and other transportation workers will only have one card to deal with which would be acceptable across the United States.¹

Unfortunately, the TWIC program/concept has not lived up fully to its promise and has become just another expensive, duplicative security credential that truck drivers must obtain to access port facilities. TWIC works, but the goal of universal acceptance of a single security credential has been discarded by TSA.

TSA Must Establish Immediate Recognition of TWIC as Compliant for HME STA

ATA believes that TSA should recognize drivers carrying a valid TWIC as fully compliant with the security requirements for the HME expressed in 49 CFR Parts 1570 and 1572. ATA arrives at such a conclusion based on two key premises:

First, Congress already intended this result by granting TSA the statutory authority to do so under Public Law 110-53 (H.R. 1, Implementing the Recommendations of the 9/11 Commission). Section 1556 states in part, "An individual who has a valid transportation employee identification card issued by the Secretary under section 70105 of title 46, United States Code, shall be deemed to have met the background records check required under section 5103a of title 49, United States Code." The intent behind this provision was to allow a TWIC holder to walk into a state's Department of Motor Vehicles (DMV) office and be legally issued

¹ Remarks of Admiral James M. Loy, Under Secretary of Transportation for Security, Transportation Security Administration, during Transportation Research Board 82nd Annual Meeting Chairman's Luncheon, January 15, 2003.

an HME, assuming the driver passes the hazardous materials (hazmat) knowledge test, without requiring further screening under the HME threat assessment program.² Thus, a TWIC holder should not be subjected to the duplicative STA requirement and fees when applying for an HME.

Second, there is regulatory precedent for compliance with the HME STA through enrollment in the TWIC credentialing program. In its Final Rule on the TWIC, TSA states:

The Secretary may apply TWIC requirements to individuals including those “not otherwise covered by this subsection”. TSA has exercised the discretion by allowing Canadian and Mexican commercial drivers who transport hazardous materials to obtain TWICs, which will allow them to transport hazardous materials in the United States.”³

ATA supports TSA’s solution to allow Canadian and Mexican commercial drivers to be in compliance with the HME STA requirements provided they have a TWIC. We strongly believe that U.S. commercial drivers should be afforded the same flexibility for compliance with the HME STA requirements. In essence, U.S. Commercial Driver’s License (CDL) holders who seek an HME on their license and who hold a TWIC should not be required to undergo the HME STA.

I urge you to require TSA to make such a policy a reality in an expedited manner.

ATA Supports the SAFE Truckers Act of 2008

Shortly after the tragic events of September 11, 2001, Congress passed the USA PATRIOT Act in an effort to better secure the United States against future terrorist attacks. Among its numerous provisions was a requirement that all drivers seeking, renewing, or transferring a HME to their CDL had to undergo an STA. While the provision was no doubt well-intentioned, it was enacted with little debate or discussion. Unfortunately, it has resulted in a driver being subjected to a costly and burdensome STA in order to be authorized to transport such everyday hazmat as paint, perfume and soft drink concentrate (which require an HME when transported above certain threshold quantities). Requiring a STA of individuals that transport paint, perfume and other everyday commodities was an unintended consequence of legislation meant to protect against real risks to homeland security, i.e., transportation of chemicals that could be used as weapons of mass destruction.

On April 29, 2008, the “Screening Applied Fairly and Equitably to Truckers Act of 2008” or the “SAFE Truckers Act of 2008” (H.R. 5915) was introduced in the U.S. House of Representatives and referred to the Committee on Homeland Security’s Subcommittee on Transportation and Infrastructure. The SAFE Truckers Act of 2008 represents an efficient risk-based approach to security, an approach DHS and TSA leadership embrace, by, among other things:

- Directing the Secretary of Homeland Security to establish a list of Security Sensitive Materials, in consultation with the Secretaries of Transportation, and Health and Human

² ATA notes that States will still be the final arbiters of the safety/skills-based portion of HME issuance.

³ 72 *Federal Register* at 3511

Services, distinguishing between materials that could potentially be used as a weapon and those that are not attractive to a terrorist, (e.g., paint, adhesives, food additives);

- Establishing the TWIC as the STA required to transport Security Sensitive Materials, obviating the need to use the HME as a security credential and returning it to its original purpose of establishing an individual's fitness to *safely* operate a commercial vehicle transporting hazmat;
- Requiring DHS to periodically conduct name-based background checks of all CDL holders with an HME, utilizing the integrated and consolidated terrorism watch list; and,
- Including a transition period for drivers who have already undergone a STA under the present HME program before requiring them to get a TWIC

At a time when the public and private sectors alike have limited resources, our security efforts must be focused on the most significant risks. The imposition of burdensome, costly duplicative security programs governing the transportation of hazmat, such as the hazmat background check program, threatens to erode the industry's ability to continue to deliver the goods that the consumer expects.

It is important to highlight the fact that although only drivers transporting Security Sensitive Materials will be required to get a TWIC and thus undergo a fingerprint-based STA, all HME holders, regardless, will undergo a periodic name-based background check. By determining what hazmat truly poses a significant risk and not requiring a fingerprint-based threat assessment for drivers transporting non-threatening hazmat commodities, Congress will be eliminating many of the costs and burdens imposed by the USA PATRIOT Act while still strongly promoting and protecting homeland security.

ATA fully supports the SAFE Truckers Act of 2008 and urges members of this subcommittee to support and co-sponsor this legislation.

Establishing Federal Preemption for the TWIC

The trucking industry believes that the TWIC should serve not only as the one STA but also as a uniform, nationwide secure access control credential. This means the states and thousands of local jurisdictions should not be allowed, without demonstrating some compelling need, to require additional security checks and/or credentials for individuals that have a federally-issued TWIC.

The TWIC Final Rule allows state authorities to impose additional requirements for access to the ports, potentially allowing each port authority to issue its own credential on top of the TWIC. The state of Florida is already doing so at its seaports, through the FUPAC. In my home state of South Carolina, the trucking industry has had to counter several proposals to impose additional background check and credentialing requirements for access to the South Carolina ports. The regulations issued by the Coast Guard under the Maritime Transportation Security Act (MTSA) properly claimed the need for national standards of security and claimed preemption. ATA supported this eminently sensible position. ATA is disappointed that TSA has not fully embraced this approach, as the absence of national standards and a single universally accepted

security credential has amounted to a huge expenditure of resources with no corresponding security benefit.

One rationale frequently proffered by states that require additional checks of their state criminal history databases is that their state databases are more comprehensive or fully populated. The failure of states to upload criminal history information to the FBI's national databases actually creates a security loophole rather than bolstering security. For example, an individual may commit a disqualifying offense in Florida that is only in the Florida database but has not been uploaded into the FBI's database. That individual would not be able to pass a Florida-specific STA but he/she could pass a STA in South Carolina, because the check against the FBI's database would not reveal the disqualifying offense in Florida. If the disqualifying offense indicates that the individual is a threat in Florida (which purportedly is the rationale for having a list of disqualifying offenses), then that same individual is also a threat in South Carolina. The failure to upload state data in a timely manner is a security problem that needs to be addressed.

Other than the differences between the criminal history databases, it is difficult to conceive of scenarios where a state's judgment on security of the Nation's supply chain should supplant the federal government's considered judgment. If such a scenario exists, however, the state should request a waiver from preemption after demonstrating some unique security concern that is not addressed by the federal program.

There is an additional area of interest for federal and state governments to consider the TWIC as a coordinated credentialing access process: Emergency response and relief operations. The trucking industry is primarily responsible for transporting relief supplies into areas affected by a natural disaster. Relief efforts required by Hurricane Katrina, Gustav and most recently Ike serve as reminders of the critical role that trucking plays in responding to these emergencies. The timing of this hearing coincides with one of the most active hurricane seasons in recent memory. Truck drivers transporting and providing relief supplies face challenges in accessing disaster areas due to differing federal, state and local access control policies. Such challenges were evident during our response to Katrina. But the recent relief efforts in response to Gustav, though of a much smaller scale, allowed DHS agencies to coordinate access protocols with state and local officials. The standards established under the access protocols recognized the TWIC as a valid access credential. If each state and local government established separate access control protocols, our industry's ability to respond and provide relief supplies to areas affected by such disasters would be greatly diminished.

ATA urges members of this subcommittee to preempt states from establishing additional screening requirements where the federal government has already set in place a program such as the TWIC.

Conclusion

The screening of individuals involved in the transportation of goods is important to my company and to the trucking industry. Our industry has long sought and supported a national, uniform process to check a commercial driver's criminal history due to issues related to cargo theft. However, as the leader of a trucking company, the present STA environment of multiple checks

does not bode well for my drivers' morale and, worst yet, creates a significant challenge for retention and recruitment of qualified drivers that may seek gainful employment elsewhere to avoid such a costly and cumbersome work environment.

In order to bring some common sense relief to our drivers while still promoting supply chain security, I again urge members of this subcommittee to:

- Require TSA to immediately recognize U.S. commercial drivers who possess a TWIC as compliant with the HME background check program;
- Support and co-sponsor the Safe Truckers Act of 2008; and,
- Ensure that the TWIC is used as the single, universally accepted security credential for transportation workers by preempting other security credentials required of motor carriers that operate in multiple jurisdictions.

As addressed in this testimony, ATA supports background checks of individuals in the trucking industry. However, ATA opposes the wasteful expenditure of resources – both government and private sector – that comes with conducting multiple background checks of the same individual against the same databases. Even with the very high cost of the TWIC, at \$132.50, it is a more cost-efficient scenario rather than paying multiple fees and undergoing multiple enrollment and fingerprinting processes. The trucking industry simply asks that these costs be reasonable and part of an efficient, risk-based process. ATA supports an approach that is good for security – and good for commerce.

Again, I thank you for inviting me to come here today and share some thoughts on the TWIC program, and I look forward to answering any questions you may have.