

U.S. Department of Homeland Security
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Arlington, VA 22202-4220



Transportation
Security
Administration

August 12, 2013

Cynthia Hilton
Executive Vice President
Institute of Makers of Explosives
1120 19th Street NW, Suite 310
Washington, DC 20036-3605

Dear Ms. Hilton:

Comment/Question

What process will TSA use to establish and notify populations that are "authorized by TSA" to apply for a TWIC?

TSA has a process in place to consider requests from Federal agencies to permit certain workers or individuals to apply for a TWIC. For instance, the Department of Defense contacted the TWIC Program Office to discuss a small number of commercial drivers who are exempt from the requirement to get a hazardous materials endorsement (HME), but are authorized to haul explosives for DoD. DoD staff was seeking a way for those drivers to undergo the security threat assessment TSA conducts for HME and TWIC, and obtain a TWIC for entrance to certain DoD installations. In considering DoD's request, TSA acknowledged that the individuals clearly fall within the field of transportation and carry security sensitive materials. Thus, they are within TSA's statutory authority to vet and pay user fees for the credentialing costs. As a matter of law and policy, TSA determined that these individuals should be able to apply for and use a TWIC. TSA has notified the pertinent DoD staff of this determination, and DoD will notify the affected drivers that they may apply for the TWIC once the new application has been approved by OMB.

TSA is developing a process to accept applications from other entities who wish to be considered for authorization to apply for TWIC. TSA will likely post that process on the TWIC website and share it with affected stakeholder organizations when finalized. TSA will include the criteria and facts that TSA must consider in order to determine whether new categories of individuals can be authorized to apply for a TWIC. The most important factors are whether the individuals 1) are in the field of transportation; 2) have access to or control over sensitive areas or activities that could be used to adversely impact national or transportation security; and 3) are required by statute or regulation to undergo a security threat assessment or background check. The answer to these questions must be in the affirmative if TSA possesses the authority to conduct the STAs. (Note that TSA may act as a service provider for other Agencies who have the authority to require and conduct STAs of individuals who do not meet these criteria. In such cases, TSA conducts the vetting for the Agency through an Interagency Agreement, and the vetting is done pursuant to that Agency's authority, not TSA's.) TSA will notify affected individuals who are authorized to apply for a TWIC in a variety of

ways, including the TWIC website, stakeholder associations, TSA's Universal Enrollment Centers, and Federal Register notices.

IME Comment on the Collection of Fees from Non-Transportation Workers

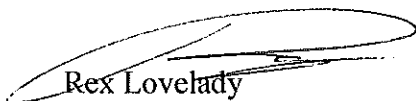
The IME believes that TSA may collect fees from non-transportation workers and asserts that workers at chemical plants should be able to apply for a TWIC and pay the standard user fee for that service. Specifically, IME states:

TSA's reticence is founded in the belief that federal law precludes the agency from assessing fees for TWICs from non-transportation applicants. This is not the case. While federal law requires TSA to collect TWIC application fees from those "in the field of transportation," it does not preclude the agency from collecting the same fees from all who apply for a TWIC.

The pertinent statute requires TSA to "charge reasonable fees for providing credentialing and background investigations in the field of transportation," provided the fees are reasonable and do not exceed TSA's costs. (6 U.S.C. § 469.) The statute does not authorize TSA to collect fees from non-transportation workers, and under legal principles governing authorization and appropriations law, and prohibitions on augmenting the budget, an authorization for such a fee is required. If TSA were to engage in the unauthorized imposition of TWIC fees outside the field of transportation, the agency would be required to deposit any fee collections in the Treasury's General Fund to avert an Antideficiency Act violation. The relevant provision of the Antideficiency Act, 31 U.S.C. § 1301(a), together with the miscellaneous-receipts provision, 31 U.S.C. § 3302(b), prohibits agencies from supplementing an appropriation from outside sources without specific statutory authority.

TSA is sympathetic to IME's view, but is constrained by law from authorizing non-transportation workers to pay a fee for the TWIC security threat assessment and credential.

Sincerely,



Rex Lovelady
TWIC Program Manager