

A Worker's Guide to the Transportation Worker Identification Credential (TWIC) Application, Appeal and Waiver Process

National Employment Law Project • December 2007



NELP

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Disclaimer:

This guide is intended to provide an overview of the Transportation Security Administration's background check process for the Transportation Worker Identification Credential (TWIC), focusing primarily on the criminal record portion of the background check. It does not constitute legal advice, nor is an attorney-client relationship created by use of this guide. A union representative or attorney should be consulted for more detailed information in individual cases. NELP shall not be liable for the information provided herein, or for the results obtained from the use of such information.

**This guide was made possible
with the generous support of the
National Employment Law Project's
Second Chance Labor Project
by the Open Society Institute
and the JEHT Foundation.**

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I. Introduction

In the effort to identify terrorism risks after the September 11th attacks, Congress passed the Maritime Transportation Security Act (MTSA) of 2002 to mandate that port workers obtain a Transportation Worker Identification Credential (TWIC), which includes criminal background, immigration status, and other security checks. TWIC implementation began in October 2007 in the nation's ports, and the initial enrollment period is scheduled to run through September 2008.

Significantly, the federal law limits the convictions that can disqualify a worker from obtaining a TWIC. In addition, the law includes a process that allows workers to “waive” disqualifying offenses, and an appeal process for challenging the FBI rap sheet or other errors. Appeals and certain waivers are also available for immigration status issues.

This publication is intended to give port workers and their advocates guidance on the TWIC background check process, and how to seek waivers and appeals when necessary to help workers keep their jobs. It is primarily aimed at criminal record issues, but it also includes some additional information on immigration status and other security issues. The guide does not include information on mental capacity, another basis for TWIC denial under the federal law.

Workers should take advantage of the waiver process to stay on the job if they would otherwise be disqualified from receiving a TWIC. The Transportation Security Administration (TSA), the agency in charge of the TWIC process, has made clear that “[i]t is important...that applicants who are disqualified due to a criminal conviction should make every effort to apply for a waiver, assuming the crime is waiver-eligible. TSA has developed the waiver program to ensure that individuals who have a criminal history but no longer pose a threat are not denied...a TWIC.”

Appealing inaccuracies is also critical to obtaining a TWIC and staying on the job. The TWIC appeal process allows workers to challenge errors in their FBI rap sheets and in the federal immigration status database, as well as the TSA's mistaken interpretation of such information. In fact, 99% of the appeals filed by workers in TSA's hazmat driver program, which uses the same background check, were resolved in favor of the worker.

This manual was prepared by the National Employment Law Project (NELP), a non-profit workers' rights organization that has been helping educate transportation workers about their rights when subject to the TSA's background checks so that they do not needlessly lose their jobs. NELP welcomes feedback and stories of workers applying for the TWIC and their experiences with the TSA background checks. NELP's contact information is listed in the guide under “Additional Resources.”

II. The TWIC Enrollment Process

New hires and current workers who need unescorted access to secure areas of port facilities or vessels will be required to obtain a TWIC card. This includes as many as 1.5 million merchant mariners, port truck drivers, longshoremen, administrators, contractors, and rail workers. The initial enrollment period is scheduled to run through September 2008, but notice of the TWIC compliance date for each port will be issued 90 days before workers must have a TWIC card to enter the port.

The TWIC enrollment process consists of the following:

- **Optional Pre-Enrollment** (available by calling 1-866-347-8942 or online at <https://twicprogram.tsa.dhs.gov/TWICWebApp/>). Pre-enrollment is available in English and Spanish.

*** Tip:** Pre-enrollment will allow TWIC applicants to get an appointment, so they don't have to wait in line at the enrollment center. However, creating a login to pre-enroll online can be time-consuming. Workers may want to pre-enroll by phone instead, using the number listed above.

- **Mandatory Enrollment.** Each port is being scheduled by TSA to begin in-person enrollment for the TWIC at designated locations. (A current schedule is attached in Appendix A, for updates see <http://www.tsa.gov/assets/pdf/twicquarterlydeploymentschedule.pdf>) At enrollment, workers provide immigration/identity documentation, they sign a “disclosure form,” provide fingerprints for the background check, and pay the required \$132.50 fee for the TWIC (payable by credit card, money order, or certified check).

*** Tips:**

- ✓ **Answering questions on disclosure form.** Applicants will need to sign a form asking questions about prior convictions and immigration status, among other items. (A copy of the disclosure form is attached in Appendix B.) The disclosure form asks whether the worker intends to file a “waiver” of disqualifying offenses. This means that the worker is acknowledging a prior conviction that meets the definition of a disqualifying offense under the TWIC law, and plans to request a waiver of that disqualification. It is unclear how TSA intends to use this information, but applicants should answer the questions truthfully and completely to the best of their ability and should request a waiver.
- ✓ **Language access.** Unfortunately, most enrollment centers do not have staff who can translate or interpret for non-English speakers or people with limited English proficiency. TSA recommends that workers bring their own translators if they need assistance.
- ✓ **Required identity/immigration documentation** can be found in Appendix C or at http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm#enrollment.
- ✓ **Fingerprints** may need to be taken several times to get a readable print for the FBI background check, especially for truck drivers who may be more difficult to fingerprint.

- **TSA Background Check.** TSA then conducts “security threat assessment” background checks for criminal history, immigration status, and terrorism/intelligence watch lists.
- **TSA Determination.** If a worker is approved after the background check, the worker picks up the TWIC card at the enrollment center. If a worker is potentially disqualified, TSA will send an “Initial Determination of Threat Assessment” and the worker has the right to appeal mistakes and seek waiver of certain disqualifications.

III. Criminal Background and Immigration Status: Who is Eligible to Receive a TWIC?

A. Disqualifying Criminal Offenses

Under the TWIC law, there are “permanent disqualifying criminal offenses” and “interim disqualifying criminal offenses” that can result in the denial of a TWIC. Both types of disqualifying offenses only include felonies, not misdemeanors.

Most of the disqualifying crimes fall into the “interim” category, which means they only prevent someone from obtaining a TWIC if the conviction occurred during the 7-year period before the individual applies for a TWIC card, or if the person was released from incarceration during the 5-year period before the person applies for a TWIC card (whichever is later). All of these offenses can be waived, as described in Section V.

Interim disqualifying felonies (all eligible for a TSA waiver):

- ◆ Weapons offenses, including unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipment, transportation, delivery, import, export, or storage of, or dealing in, a firearm or other weapon
- ◆ Drug offenses, including distribution of, possession with intent to distribute, or importation of a controlled substance
- ◆ “Dishonesty, fraud or misrepresentation” (not including welfare fraud or writing bad checks). Note: This is a broad category that has not been defined, but TSA tends to view these as offenses where dishonesty, fraud or misrepresentation is a central element of the crime, such as identity theft, income tax evasion, etc.
- ◆ Extortion
- ◆ Bribery
- ◆ Smuggling
- ◆ Immigration violations
- ◆ Arson
- ◆ Kidnapping or hostage taking
- ◆ Rape or aggravated sexual abuse
- ◆ Assault with intent to kill
- ◆ Robbery
- ◆ Fraudulent entry into a seaport in violation of 18 U.S.C. § 1036 or comparable state law
- ◆ A violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act or comparable state law, other than a RICO violation based on a predicate act that is one of the permanent disqualifying offenses
- ◆ Conspiracy or attempt to commit any of the above crimes

The list of permanent disqualifying offenses includes four serious security-related crimes that cannot be waived, as well as several offenses that can be waived. “Permanent” means that these offenses could disqualify a worker from receiving a TWIC no matter when the conviction occurred, and regardless of when the worker was released from incarceration. Thus, they are lifetime disqualifications, although most may still be waived. Below are the specific offenses that fall into each category.

Permanent disqualifying felonies not eligible for a TSA waiver:

- ◆ Espionage or conspiracy to commit espionage
- ◆ Sedition or conspiracy to commit sedition
- ◆ Treason or conspiracy to commit treason
- ◆ A federal terrorism crime (as defined in 18 U.S.C. § 2332b(g)), a crime under comparable state law, or conspiracy to commit such a crime

Permanent disqualifying felonies eligible for a TSA waiver:

- ◆ A crime involving a “transportation security incident” (under TSA regulations work stoppages or other nonviolent employee-related action resulting from an employer-employee dispute are not “transportation security incidents”)
- ◆ Improper transportation of hazardous material in violation of 49 U.S.C. §5104(b) or comparable state law
- ◆ Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipment, transportation, delivery, import, export, storage of, or dealing in an explosive or explosive device
- ◆ Murder
- ◆ Making any threat or maliciously conveying false information concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or other government facility, a public transportation system, or infrastructure facility
- ◆ A violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act or comparable state law, if one of the predicate acts is one of the permanent disqualifying crimes
- ◆ Conspiracy to commit any of the crimes in this list
- ◆ Attempt to commit any of the permanent disqualifying offenses

*** Tips:**

- ✓ If a worker knows that he or she has one of the disqualifying offenses eligible for waiver, the worker can reduce delays by starting to collect letters of reference from employers, parole and probation officers to support the waiver application (see Section V).
- ✓ If a worker applying for a TWIC knows that he or she has one of the disqualifying offenses, the worker should look into available options for expunging that conviction as soon as possible, without waiting to go through the enrollment process. For state-by-state information on these expungement options, consult <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486>.

How does TSA view an expunged conviction?

Unfortunately, not all expungements erase a criminal conviction for purposes of the TWIC. Under TSA rules, a conviction is only considered expunged (and no longer disqualifying) if it is “removed from the individual's criminal history record and there are no legal disabilities or restrictions” other than the fact that it can still be used for sentencing purposes for subsequent convictions.

The following states have expungement laws that should meet TSA's definition: Idaho; Kentucky; Michigan; Mississippi; Montana; Nevada; New Hampshire; North Carolina; Oklahoma; Oregon;

Pennsylvania; South Carolina; South Dakota; Vermont; and Wisconsin. Even if an expungement does not erase a conviction for TSA purposes, official documentation of the expungement should be submitted as part of a waiver application because it is strong proof that the applicant is rehabilitated and does not pose a security threat (see Section V).

B. Immigration Status Categories

To qualify for a TWIC, a worker must be allowed to work in the U.S. under one of the following categories:

- ◆ U.S. citizen
- ◆ Lawful permanent resident
- ◆ Refugee
- ◆ Asylee
- ◆ Immigrant with unrestricted work authorization (except S-5, S-6, K-1, K-2)
- ◆ Immigrant with certain restricted work authorization (including H-1B, H-1B1, E-1, L-1, O-1 and certain other visas)
- ◆ In some cases, workers with Temporary Protected Status (TPS) may also qualify for a TWIC after applying for a “waiver” (see section V). Currently, TPS is available for Honduras, Nicaragua, El Salvador, Somalia, Sudan, and Burundi.
- ◆ For a complete list of immigration status categories eligible for TWIC, see Appendix D or http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm#eligibility

Caution for Non-Citizens Applying for TWIC:

Non-citizens who otherwise meet the requirements to obtain a TWIC should nevertheless be aware that the background check may bring certain convictions or immigration violations to the attention of the Department of Homeland Security (DHS), which is the parent agency not only of TSA but also of Immigration and Customs Enforcement (ICE). Certain criminal convictions and immigration violations may subject non-citizens to removal proceedings. It is not clear whether the results of the background checks will be shared with ICE. However, as a cautionary measure, non-citizens with criminal or immigration violation convictions should consult with an immigration attorney before applying for a TWIC.

IV. What Should a Worker Do After Receiving an “Initial Determination of Threat Assessment” Based on the Background Check?

If, after conducting the background check (including reviewing any FBI rap sheet and federal immigration database record), TSA identifies any disqualifying offenses or other concerns, TSA will send the worker an “Initial Determination of Threat Assessment” (IDTA) letter. (Copies of this IDTA letter are attached in Appendix E.) This letter explains the basis for the initial determination that the worker is not eligible for a TWIC, and notifies the worker that he or she may request the materials on which TSA relied in making the determination (such as the FBI rap sheet), and may submit an appeal and/or request a waiver. Workers must then decide whether it is appropriate to request a waiver, file an appeal, or perhaps both, depending on the situation.

In most cases, it is advisable to request a copy of the materials TSA relied upon in making its initial determination. This is critical if the IDTA appears to be incorrect, and there is reason to believe that many IDTAs will be incorrect. The FBI criminal history record database contains many errors and often does not contain complete information, such as the result of an arrest or the expungement of a conviction. In fact, the U.S. Attorney General reports that up to 50% of the FBI records are missing information about the outcome of an arrest. In addition, the U.S. Department of Justice has acknowledged that the federal database used to verify immigration status is frequently flawed in content and accuracy. Workers will need to review items such as the FBI rap sheet carefully to see whether they are inaccurate or incomplete in order to decide whether to file an appeal. (For a list of common problems to look out for, see Section VI.)

Unfortunately, requesting a copy of the FBI rap sheet or other documents relied on by TSA may cause a delay because TSA has up to 60 days to provide the materials after receiving a request. If an applicant does not appeal, request materials, or ask for an extension of time from TSA within 60 days of receiving an Initial Determination, the Initial Determination will automatically become a “Final Determination of Threat Assessment,” meaning that a worker can still apply for a waiver but can no longer challenge errors through the appeal process.

In some cases, it may not be necessary to request a copy of the materials relied upon by TSA. For example, if a worker knows that the conviction relied upon by TSA is accurate and is in fact one of the disqualifying offenses, or if the worker has Temporary Protected Status as an immigrant, the worker should prepare to request a waiver of the disqualification.

V. The Waiver Process: How Can a Worker Ask TSA to Waive a Disqualification?

As mentioned earlier, TSA encourages applicants with disqualifying convictions who pose no security threat to apply for a waiver of the disqualification showing that they are not a terrorism risk. Immigrant workers with Temporary Protected Status can also apply for a waiver in order to obtain a TWIC. Workers should routinely seek a TSA waiver in these situations. In fact, TSA granted the majority of waiver applications received under the TSA hazmat driver background check program, and it should be no different with the TWIC program.

- **Who Qualifies for a Waiver?** Workers who have certain “permanent” disqualifying crimes and all “interim” disqualifications (see Section III) can apply for a waiver from TSA, as can immigrant workers with Temporary Protected Status.
- **TSA's Waiver Standard:** TSA will waive a disqualification if the applicant “does not pose a security threat.”
- **Factors Considered in Evaluating the Waiver Application:** For criminal record disqualifications, TSA will primarily look at the length of time the applicant has been out of prison if sentenced to incarceration, the applicant's history since the conviction, the circumstances surrounding the conviction, and references from employers, probation officers, parole officers, clergy and others who know the applicant and can attest to his or her responsibility and good character. For workers with Temporary Protected Status, TSA will look at the applicant's record since arriving in the United States, as well as letters of reference from employers, teachers, religious and spiritual personnel, and others.

When should a worker submit a waiver application? Workers can file a waiver application anytime after receiving an IDTA, but **no later than 60 days after the date of service of a Final Determination of Threat Assessment** unless TSA grants an extension of time for “good cause.”

How to count time under the TSA rules?

The time deadlines for the TWIC program are all counted by starting with the “date of service,” so it is important to know what the “date of service” means under the TSA rules:

- ✓ The date of personal delivery to the residential address listed in the TWIC application, or
- ✓ If mailed with a certificate of service, the date on the certificate of service, or
- ✓ If mailed with no certificate of service, 10 days from the date mailed to the address designated on the application as the mailing address, or
- ✓ If mailed with no certificate of service or postmark, the date mailed to the address designated on the application as the mailing address, or
- ✓ The date on which an electronic transmission occurs.

What should be included in a worker's waiver application? The waiver application should consist of a letter explaining the reasons why the applicant does not pose a security threat and documents to support the waiver argument. For workers seeking to waive a disqualifying offense, the letter must include the circumstances that led to the conviction (note that expressions of remorse for criminal activity are generally viewed more favorably than a claim that it was the police, a friend, or someone else's fault) and the reasons why the worker is not a security threat. This description should include the length of time since the conviction or release from incarceration and a description of what the worker has done since the conviction/release from incarceration, particularly employment history, community

service activities or other types of rehabilitation.

It is also very important to submit as many of the following documents supporting the waiver application as possible:

- ◆ **Official documentation** showing that the applicant has complied with probation guidelines and all terms of the sentence, paid restitution/fines, and, if applicable, expunged the conviction (see note on page 4 about expungement).
- ◆ **Proof of rehabilitation** such as a certificate of completion from a rehabilitation program, drug treatment program, etc.
- ◆ **Letters of support** from employers, probation/parole officers, clergy, community leaders, elected officials, and family members describing the applicant's good character and the reasons why the applicant is deserving of a waiver. A letter from an employer emphasizing the worker's dedication and rehabilitation is particularly persuasive (see Appendix F for a sample employer letter).
- ◆ **Awards, recognition or positive performance reviews** received since the conviction.
- ◆ **Sentencing report or transcript** that contains favorable information on the circumstances surrounding the crime.
- ◆ **Any other information** that would help TSA determine that the worker does not pose a security threat.

What happens after the worker submits a waiver application to TSA? A TSA Waiver Review Board reviews every application and makes a recommendation to the Director of Security Threat Evaluation, who decides whether to grant the waiver. TSA will send a written decision granting or denying the waiver within 60 days of the applicant's request for a waiver.

If TSA denies the waiver application, what additional steps can a worker take?

The law allows workers to seek independent review of TSA's decision by appealing to an Administrative Law Judge (ALJ). If the waiver is denied, the applicant has 30 days from the date of service of the denial to appeal this decision to an ALJ. Extensions of time may only be granted for "good cause." The request for review must be sent to: ALJ Docketing Center, U.S. Coast Guard, 40 S. Gay Street, Room 412, Baltimore, MD 21202-4022. (It is always a good idea to send it certified mail.)

The appeal request must clearly state the issues to be reviewed, and must include a copy of the waiver application and all documents submitted with the waiver application, as well as a copy of TSA's decision denying the waiver request. When submitting an appeal request, **an applicant may also request an in-person hearing before the ALJ.** If the ALJ grants a hearing request, the hearing will take place within 60 days of receipt of the hearing request.

The ALJ must issue a decision within 30 days after the record is closed. If the ALJ denies the waiver, the worker can appeal to the "TSA Final Decision Maker." This appeal must be filed within 30 days the ALJ's decision, and must be a written request explaining why the ALJ's decision was not supported by substantial evidence. It is not a chance to review all the evidence anew.

The TSA Final Decision Maker then issues a decision within 60 days of receipt of the appeal or, if the government files a response to the appeal, within 30 days after receiving the response. If the TSA Final Decision Maker upholds the denial of the applicant's request for waiver, the applicant can appeal that final order by filing a "petition for review" within 60 days in a United States Court of Appeal. Review should only be sought in the Court of Appeal for exceptional cases where the record reflects problems in the TSA decision-making process.

What does the ALJ consider on appeal and what happens at the hearing?

- ◆ The ALJ will only consider evidence or information that was presented to TSA in the waiver application, new or supplemental information will not be considered.
- ◆ At the hearing, the applicant can present witness testimony and other evidence, submit testimony rebutting TSA's evidence, and cross-examine TSA's witnesses. A transcript of the hearing will be made but the applicant will have to pay to receive a copy.
- ◆ The standard of proof for the ALJ appeal is "substantial evidence," meaning relevant evidence that a reasonable person might accept as adequate to support a conclusion.

VI. The Appeal Process: How Can a Worker Correct Errors in the FBI Rap Sheet, the Immigration Database, or TSA's Analysis?

Very often, the Initial Determination of Threat Assessment (IDTA) is simply inaccurate because the FBI rap sheet has errors, is incomplete, or TSA mistakenly interpreted the rap sheet. In addition, each time an arrest for a potentially disqualifying offense shows up on a rap sheet without showing the outcome of the arrest (whether it was dismissed, charges dropped, acquittal), TSA will issue an IDTA. In these situations, the worker must appeal in order to correct the error with updated information and demonstrate eligibility for a TWIC. Some workers may need to file both an appeal and a waiver application, because there will be inaccuracies on the rap sheet, but even when those are corrected the worker will still need a waiver of a remaining disqualifying offense.

This section addresses how to appeal routine errors that occur with FBI rap sheets. Appeals can and should also be filed to challenge improper denials related to immigration status and other erroneous threat determinations based on intelligence/terrorist watch list information.

When should a worker submit an appeal? Workers must submit an appeal within 60 days of service of the IDTA, within 60 days of service of any materials requested from TSA, or request an extension of time “good cause.” Good cause may include situations where the worker did not receive the IDTA on time through no fault of his or her own, or where the worker has diligently sought the documents needed to prove that the TSA determination was inaccurate but it was not possible to obtain them within 60 days.

What should be included with an appeal? The contents of the appeal vary depending on the error. If a worker believes the criminal record is erroneous, or if the result of an arrest is missing and the worker was not convicted, the worker will generally need to go back to the criminal court where the proceedings took place to obtain a copy of the underlying documentation that would prove that he or she meets the standards for the security threat assessment. The appeal letter should explain clearly why the applicant disputes the TSA's IDTA, and should include all supporting documentation. Only upon receiving the appeal and documentation will TSA withdraw a threat assessment.

Workers should review the FBI rap sheet and the TSA's IDTA very carefully to identify errors in the record or TSA's interpretation of the record.

What happens after submitting an appeal? Within 60 days of receiving the applicant's appeal, TSA will issue a Withdrawal of the Initial Determination if the worker has proven that he or she should not be disqualified. If TSA rejects the appeal and continues to believe that the worker is disqualified, TSA will issue a Final Determination of Threat Assessment.

How can a worker appeal a Final Determination of Threat Assessment denying an appeal? A worker can file a “petition for review” of a Final Determination of Threat Assessment in a United States Court of Appeal. Review should only be sought in the Court of Appeal for exceptional cases where the record reflects problems in the TSA decision-making process. Petitions for review must be filed no later than 60 days after the Final Determination is issued.

Workers appealing a Final Determination of Threat Assessment based on errors related to intelligence databases/terrorist watchlists or other security reasons may use the appeal process described here, and they have the right to request review by an Administrative Law Judge using the same procedure described in Section V regarding criminal record and Temporary Protected Status waiver applications.

*** Tips for common problems that must be appealed:**

- ✓ **Arrests with result not listed on FBI record.** Up to 50% of FBI records are incomplete because they have not been updated by the state or local courts to show the final outcome of the case. Often arrests get inputted when fingerprints are taken, but nothing is reported after on the final outcome of the case. When TSA sees an arrest with no disposition reported, TSA issues an IDTA notifying the applicant that the result of the arrest is unknown, and gives the applicant 60 days to provide TSA with written proof that the arrest did not result in a conviction for the disqualifying criminal offense. If TSA does not receive proof in that time, TSA will notify the applicant that the TWIC is denied.
- ✓ **Convictions that have been pardoned, overturned on appeal, or expunged but this information is not reflected on the FBI record.** Again, because the FBI database is often incomplete, it may not be updated with this type of information and TSA will issue an IDTA. The worker must provide documentation showing what happened subsequently to correct this disqualification.
- ✓ **Convictions listed without the grade of the offense.** FBI rap sheets frequently list a conviction without showing whether it was a felony, misdemeanor, summary offense, or other, but only felony offenses are disqualifying. TSA will often issue an IDTA if any potentially disqualifying offense shows up on the FBI rap sheet, even if it is not listed as a felony.

***Mistaken Felony Example:** The FBI rap sheet showed an assault offense, not indicating whether it was a felony or misdemeanor, which TSA interpreted as a disqualifying felony. The worker obtained the criminal court records showing that this was a misdemeanor assault conviction, not a felony. Upon receipt of the appeal letter and supporting documentation, TSA withdrew the initial determination of threat assessment.*

- ✓ **Missing information on length of incarceration.** The FBI rap sheet will often show the sentence ordered by the criminal court, but it will not show the date of discharge from prison. Most offenses are only disqualifying if the applicant was released from prison less than 5 years before applying for a TWIC, or the conviction is less than 7 years old. TSA will issue an IDTA where it appears from the FBI rap sheet that it has not been 5 years since the applicant's release from incarceration.

***Mistaken Time Frame Example:** The FBI rap sheet showed a conviction for drug trafficking where the worker was sentenced to 10 years' incarceration, and TSA issued an IDTA on the ground that it had not been 5 years since the worker's release from incarceration. The worker submitted his state Department of Corrections discharge notice showing that he was released early, more than 5 years before the date of his application. TSA withdrew the initial determination of threat assessment.*

- ✓ **Mistakes in how a state record shows up on an FBI record.** In the reporting of criminal history record information from the states to the FBI, mistakes can be made and details overlooked when that data is converted to an FBI record. These errors may lead to a worker needing to show that the number of convictions reported is inaccurate, for example. In that case, a worker may need to file an appeal and waiver application.

***Appeal-Waiver Example:** The FBI rap sheet showed two perjury offenses, but in reality there was only one criminal case and conviction that had been given two different criminal court case numbers. The worker submitted the county sheriff's record showing that there was one arrest and prosecution with both case numbers, as well as the district attorney's complaint filed against him referencing both case numbers. The worker also submitted a waiver request for the one perjury offense, including letters of support from his employer, probation officer, and father. Upon receipt of the appeal and waiver request and supporting documentation, TSA granted the waiver and withdrew the initial determination of threat assessment.*

The above examples are in no way a complete list of problems that will arise. Many more mistakes can occur, and unfortunately the burden is on the worker to obtain official documentation proving that the FBI rap sheet or TSA is wrong. An explanation of how to get these documents in every state and locality is beyond the bounds of this guide, but a good place to start is by calling the criminal court clerk's office and explaining the type of documentation needed.

VII. Resources for Additional Assistance

- The regulations pertaining to the appeal and waiver process are located at 49 C.F.R. § 1515 et seq., and the list of disqualifying offenses is located at 49 C.F.R. § 1572.103. These regulations can be viewed at TSA's TWIC website: http://www.tsa.gov/assets/pdf/1652-AA41_twic_fr.pdf.
- A list of “frequently asked questions” is posted on the TSA TWIC website: http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm.
- The TSA TWIC Program Help Desk can be reached at 1-866-DHS-TWIC (1-866-347-8942) and provides assistance in English and Spanish.
- For additional assistance, contact the National Employment Law Project's Second Chance Labor Project: Laura Moskowitz at (510) 663-5705 or lmoskowitz@nelp.org.

Appendix A: TWIC Port Enrollment Schedule as of December 11, 2007

TWIC Quarterly Deployment Plan
As of December 11, 2007

Note: Exact dates provided if announcement has occurred via Federal Register. If formal announcement has not yet occurred, location is listed in alphabetical order by quarter.

4 th Quarter 2007	1 st Quarter 2008	2 nd Quarter 2008	3 rd Quarter 2008
October 16, 2007 November 1, 2007 November 7, 2007	January 4, 2008 January - March 2008	April - June 2008	July - September 2008
Wilmington, DE Corpus Christi, TX Baton Rouge, LA Tacoma, WA Honolulu, HI Oakland, CA Beaumont, TX Houston, TX Providence, RI Chicago, IL Port Arthur, TX Savannah, GA Baltimore/Dundalk, MD Minneapolis, MN St. Paul, MN Lake Charles, LA Charleston, SC Cleveland, OH Detroit, MI Port Fourchon, LA Boston, MA Brownsville, TX Mobile, AL Indiana Harbor, IN Brunswick, GA LA/LB - Long Beach, CA LA/LB - Los Angeles, CA Milwaukee, WI Albany, NY Philadelphia, PA Seattle, WA Tulsa, OK* Joliet, IL Peoria, IL Memphis, TN NY/NJ - New York, NY Wilmington, NC Buffalo, NY Duluth-Superior, MN Jacksonville, FL New Orleans, LA Hilo, HI Kahului, Maui, HI Kauai, HI	NY/NJ - South Hackensack, NJ American Samoa Anacortes, WA Ashabula, OH Bangor, ME Bourne, MA Cincinnati, OH Everett, WA Green Bay, WI Guam Gulfport, MS Huntington, WV International Falls, MN Key West, FL La Plata, MD Lorain, OH Louisville, KY Marine City, MI Miami, FL Morehead City, NC Muskegon, MI Nashville, TN New London, CT Newport News, VA Norfolk, VA Ontonagon, MI Oswego, NY Palm Beach, FL Panama City, FL Pittsburgh, PA Ponce, PR Port Canaveral, FL Port Everglades, FL Portland, ME Portland, OR Richmond, CA Saipan Salisbury, MD San Diego, CA Sault Ste. Marie, MI S. Louisiana (La Place, LA) St. Ignace, MI Tampa, FL Texas City, TX Toledo, OH Traverse City, MI Vicksburg, MS Victoria, TX	Anchorage, AK Bay City, MI Benicia, CA Bridgeport, CT Calicut, MI Camden, NJ Chattanooga, TN Chester, PA Coos Bay, OR Coram, NY Escanaba, MI Freeport, TX Galveston, TX Greenville, MS Guntersville, AL Houma, LA Juneau, AK Kansas City, MO LaPorte, TX Little Rock, AR Longview, WA Marcus Hook, PA Marquette, MI New Castle, DE New Haven, CT Nikiski, AK Paducah, KY Pasco, WA Pausboro, NJ Point Comfort, TX Port Hueneme, CA Port Manatee, FL Portsmouth, NH Rochester, NY Sacramento, CA San Francisco, CA San Juan, PR Sandusky, OH Sandusky, OH St. Croix, USVI St. Thomas, USVI Valdez, AK	Alpena, MI Burlington, VT Eureka, CA Evansville, IN Lafayette, LA Lindenhurst, NY Morgan City, LA Pennsbury Manor, PA Perth Amboy, NJ Riverhead, NY Stockton, CA Vancouver, WA

***NOTE:**
This schedule is as of December 11, 2007.
To view the most up-to-date TWIC Port Enrollment Schedule, please visit <http://www.tsa.gov/assets/pdf/twicquarterly-deploymentschedule.pdf>

*Tulsa had originally been scheduled to begin enrollments on 12/12. Due to severe weather conditions, the revised date is 12/14.

Appendix B:

“Disclosure” Form Used During TWIC Enrollment



Transportation
Security
Administration

Transportation Worker Identification Credential (TWIC) Disclosure Form and Certifications

The Transportation Security Administration (TSA), in coordination with the United States Coast Guard, developed the Transportation Worker Identification Credential (TWIC) Program in response to the Maritime Transportation Security Act of 2002 (MTSA). MTSA requires a biometric identification credential for individuals who require unescorted access to secure areas of maritime facilities and vessels. Before issuing a TWIC, TSA must conduct a security threat assessment on the TWIC applicant. An applicant who, as a result of the assessment, is determined to not pose a security threat, will be issued a TWIC.

Each applicant for a TWIC must provide biographic information, identity documents, biometric information including fingerprints and a digital photograph, and pay the established TWIC fee. TSA will send pertinent parts of the enrollment record to the FBI, as well as within the Department of Homeland Security (DHS), so that appropriate terrorist threat, criminal history, and immigration checks can be performed. TSA will review the results of the checks to determine if the person poses a security threat, and will notify the applicant of the results. When TSA determines that an applicant qualifies to receive a TWIC, a credential will be produced and sent to the enrollment center at which the applicant applied. The applicant will return to the enrollment center for issuance and activation of the TWIC. Possession of a TWIC does not guarantee access to secure areas because the owner/operator controls which individuals are granted unescorted access to the facility or vessel. Rather, TWIC is a secure, verified credential that can be used in conjunction with the owner/operator's risk-based security program that is required in security regulations issued by the Coast Guard.

Privacy Act Notice: Authority: The authority for collecting this information is 49 U.S.C.114, 40113, and 5103a. **Purpose:** This information is needed to verify your identity and to conduct a security threat assessment to evaluate your suitability for a Transportation Worker Identification Credential. Furnishing this information, including your SSN or alien registration number, is voluntary; however, failure to provide it will delay and may prevent completion of your security threat assessment. **Routine Uses:** Routine uses of this information include disclosure to the FBI to retrieve your criminal history record; to TSA contractors or other agents who are providing services relating to the security threat assessments; to appropriate governmental agencies for licensing, law enforcement, or security purposes; or in the interests of national security; and to foreign and international governmental authorities in accordance with law and international agreement.

PAPERWORK REDUCTION ACT STATEMENT: Statement of Public Burden: TSA is collecting this information to determine your eligibility for a TWIC. This is a voluntary collection of information but failure to provide the information may result in an inability to approve your eligibility for a TWIC. TSA estimates that the total average burden per response associated with this collection for enrollment is approximately 90 minutes. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The control number assigned to this collection is OMB 1652-0047, which expires 04/05/2008.

Certifications -- (Initial each of the items below)

_____ 1. As part of my employment duties, I am required to have unescorted access to secure areas of maritime facilities or vessels in which a Transportation Worker Identification Credential is required; or, I am now, or I am applying to be, a credentialed merchant mariner; or I am a commercial driver licensed in Canada or Mexico transporting hazardous materials in accordance with 40 CFR 1572.201.

_____ 2. I acknowledge that if TSA determines that I pose a security threat, my employer, as listed on this application, may be notified. If TSA or other law enforcement agency becomes aware of an imminent threat to a maritime facility or vessel, TSA may provide limited information necessary to reduce the risk of injury or damage to the facility or vessel.

_____ 3. You must answer each of the following questions by checking with either the “Yes” or “No” box. If your answer indicates that you intend to request a waiver, the waiver process will not begin until you receive an Initial Determination of Threat Assessment (IDTA). Complete instructions on how to file a waiver request will be provided with the IDTA. If you request it, the Trusted Agent will provide a copy of the applicable TWIC rule sections that are mentioned in the questions and define the disqualifying offenses.

TSA Form 2212, March 2007

OMB 1652-0047, which expires 04/05/2008

Appendix B: (cont'd)



**Transportation
Security
Administration**

a. I was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of a crime listed in 49 CFR 1572.103(a)(1) through (a)(4). Note: If you answer "Yes" to this question, you are ineligible to receive a TWIC and you cannot be granted a waiver. List is available electronically via our web site http://www.tsa.gov/twic under "Eligibility" or on hard copy at our Enrollment Work Centers.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
b. I was convicted, or found not guilty by reason of insanity, in a civilian or military jurisdiction of a crime listed in 49 CFR 1572.103(a)(5) through (a)(12), but, if I am initially denied a TWIC, I intend to request a waiver.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
c. I was convicted, or found not guilty by reason of insanity, of a disqualifying crime listed in 49 CFR 1572.103(b), in a civilian or military jurisdiction, during the seven years before the date of this application, but, if I am initially denied a TWIC, I intend to request a waiver.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
d. I was released from incarceration, in a civilian or military jurisdiction, for committing a disqualifying crime listed in 49 CFR 1572.103(b), during the five years before the date of this application, but, if I am initially denied a TWIC, I intend to request a waiver.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
e. I am wanted or under indictment, in a civilian or military jurisdiction, for a disqualifying criminal offense identified in 49 CFR 1572.103, but, if I am initially denied a TWIC, I intend to request a waiver.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
f. I have been adjudicated as lacking mental capacity, or committed to a mental health facility involuntarily, but, if I am initially denied a TWIC, I intend to request a waiver.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
g. I meet the immigration status requirements described in 49 CFR 1572.105.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
h. I have served in the military. If "yes", provide the following: Branch of service: _____ Date of discharge: _____ Type of discharge: _____	<input type="checkbox"/> Yes	<input type="checkbox"/> No
i. I have been informed that, if I receive a TWIC, Federal regulations at 49 CFR 1572.19 impose on me a continuing obligation to disclose to TSA if I am wanted, under indictment, convicted, or found not guilty by reason of insanity, of a disqualifying crime under 49 CFR 1572.103(a) through (b); adjudicated as lacking mental capacity, or committed to a mental health facility; or no longer meet the immigration standards.	<input type="checkbox"/> Yes	<input type="checkbox"/> No

The information I have provided on this application is true, complete, and correct, to the best of my knowledge and belief, and is provided in good faith. I understand that a knowing and willful false statement, or an omission of a material fact on this application, can be punished by fine or imprisonment or both (see 18 U.S.C. 1001), and may be grounds for denial of a Transportation Worker Identification Credential.

I certify that I assisted in the completion of this form at the request of the applicant named on this TWIC enrollment document, that the responses provided are based on all information of which I have knowledge, or which were provided to me by the applicant, and that the completed enrollment form has been read to the applicant in the language the applicant speaks fluently for verification before he or she signed the application in my presence. I understand that a knowing and willful false statement or an omission of a material fact on this enrollment document can be punished by fine or imprisonment or both, and may be grounds for denial of a TWIC.

Printed Name of TWIC Applicant

Signature of TWIC Applicant Date

Printed Name Helper/Translator

Signature Date

Daytime Telephone

Address

Appendix C:

Documentation Required for TWIC

Excerpt from TSA's Frequently Asked Questions
(http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtm#enrollment)

What documentation is required for a TWIC? Applicants must provide the appropriate documents in order to verify their identity. They must provide one document from list A, or two from list B, one of which must be a government-issued photo ID:

List A

- ◆ Unexpired passport
- ◆ Unexpired Permanent Resident card or Unexpired Alien Registration Receipt Card with photograph
- ◆ Unexpired foreign passport with one of the following:
 - I-551 Stamp;
 - Attached INS Form I-94 indicating unexpired employment authorization;
 - Unexpired Employment Authorization Document (I-766);
 - Unexpired Employment Authorization Card (INS-688B);
 - OR with one of the following Unexpired Visas: E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, TN, M-1, C-1/D, B1/OCS
- ◆ Free and Secure Trade (FAST) Card
- ◆ Merchant Mariner Document (MMD)

List B

(need two and one must be a government-issued photo ID)

- ◆ U. S. Certificate of Citizenship (N-560, 561)
- ◆ U. S. Certificate of Naturalization (N-550 or 570)
- ◆ Driver's license or ID card issued by a State or outlying possession of the United States
- ◆ Original or certified copy of birth certificate issued by a State, county, municipal authority, or outlying possession of the United States bearing an official seal
- ◆ Voter's registration card
- ◆ U. S. military ID card or U. S. retired military ID
- ◆ U. S. military dependent's card
- ◆ Consular Report of Birth Abroad
- ◆ Expired U. S. passport
- ◆ Native American tribal document
- ◆ U. S. Social Security card
- ◆ U. S. Citizen card I-197
- ◆ U. S. Military discharge papers DD-214
- ◆ Department of Transportation (DOT) medical card
- ◆ Civil marriage certificate
- ◆ MML (Merchant Mariner License) bearing an official raised seal, or a certified copy

Appendix D:

TWIC Immigration Status Eligibility List

Excerpt from TSA's Frequently Asked Questions

(http://www.tsa.gov/what_we_do/layers/twic/twic_faqs.shtml#eligibility)

The following individuals are eligible to apply for a TWIC per 49 CFR 1572.105:

- ◆ A national (includes citizen) of the United States.
- ◆ A lawful permanent resident of the United States.
- ◆ A refugee admitted under 8 U.S.C. 1157.
- ◆ An alien granted asylum under 8 U.S.C. 1158.
- ◆ An alien in valid M-1 nonimmigrant status who is enrolled in the United States Merchant Marine Academy or a comparable State maritime academy. Such individuals may serve as unlicensed mariners on a documented vessel, regardless of their nationality, under 46 U.S.C. 8103.
- ◆ A nonimmigrant alien admitted under the Compact of Free Association between the United States and the Federated States of Micronesia, the United States and the Republic of the Marshall Islands, or the United States and Palau.
- ◆ A commercial driver licensed in Canada or Mexico who is admitted to the United States under 8 CFR 214.2(b)(4)(i)(E) to conduct business in the United States.
- ◆ An alien in lawful nonimmigrant status who has unrestricted authorization to work in the United States, except-
 1. An alien in valid S-5 (informant of criminal organization information) lawful nonimmigrant status;
 2. An alien in valid S-6 (informant of terrorism information) lawful nonimmigrant status;
 3. An alien in valid K-1 Fiancé(e) lawful nonimmigrant status; or
 4. An alien in valid K-2 (Minor child of Fiancé(e)) lawful nonimmigrant status.
- ◆ An alien in the following lawful nonimmigrant status who has restricted authorization to work in the United States-
 1. H-1B Special Occupations;
 2. H-1B1 Free Trade Agreement;
 3. E-1 Treaty Trader;
 4. E-3 Australian in Specialty Occupation;
 5. L-1 Intracompany Executive Transfer;
 6. O-1 Extraordinary Ability;
 7. C-1/D, Crewman Visas;
 8. B1/OCS Business Visitor/Outer Continental Shelf;
 9. TN North American Free Trade Agreement; or
 10. Another authorization that confers legal status, when TSA determines that the legal status is comparable to the legal status set out in paragraphs 1-8.

Appendix E:

Sample “Initial Determination of Security Threat Assessment” Letters (Criminal Offenses and Immigration Status) and Accompanying Appeal, Waiver, and Request for Documentation Information

U.S. Department of Homeland Security

Office of Transportation Threat Assessment and
Credentialing
Arlington, VA 22202



Transportation
Security
Administration

[Date]

Mr. John Doe
12345 Anywhere Lane
Midtown, VA 22202

Re: Initial Determination of Threat Assessment (IDTA)

Dear Mr. Doe:

The Transportation Security Administration (TSA) conducted a security threat assessment pursuant to your application for a Transportation Worker Identification Credential (TWIC). The regulations regarding security threat assessments may be found at Title 49, Code of Federal Regulations (C.F.R.), Section 1572, a copy of which may be located on TSA’s website, www.tsa.gov.

This Initial Determination of Threat Assessment (IDTA) contains information regarding the basis for TSA’s determination and provides directions to respond to and challenge the determination. The IDTA is not a final determination, and you have the option to file an appeal or waiver, seek the materials TSA used as the basis for the initial determination, or file for a time extension to allow for additional time to respond or to gather additional materials for your response.

TSA will not authorize issuance of a TWIC card if TSA determines that an individual does not meet the security threat assessment standards described in Title 49, C.F.R., Section 1572.5. This letter serves as TSA’s initial determination that you pose or are suspected of posing a security threat and may not be eligible for a TWIC card at this time.

BASIS FOR INITIAL DETERMINATION OF THREAT ASSESSMENT

After an initial review of certain records, TSA has determined you may not be qualified to hold a TWIC card because:

Your criminal history record shows that you were convicted of a [permanently] disqualifying criminal offense, [Cite Offense], in [City, State], on or about [Date], [and sentenced to serve [days, months, or years] incarceration.] Under Title 49, C.F.R., Section 1572.103, you are disqualified from holding a TWIC card if the date of your TWIC application is less than seven years from the date of a conviction for a disqualifying offense; or the date of your application is less than five years since you were released from jail, prison, or other correctional institution, if that incarceration was due to a sentence imposed after conviction for a disqualifying offense.

Appendix E: (cont'd)

Please note, convictions for certain offenses will permanently preclude you from holding a TWIC card, while convictions for other offenses will only preclude you from holding a TWIC card for a period of time. Please refer to TSA's website for a complete list of disqualifying criminal offenses which constitute a permanent ban and those offenses which are a temporary ban from holding a TWIC card.

Before TSA makes a final determination in this matter, you may seek releasable materials upon which this initial determination of threat assessment is based, submit an appeal, and/or request a waiver. For information on how to do any of the foregoing, please refer to the enclosure provided with this letter.

If you do not challenge this determination, seek releasable materials, or seek an extension of time to challenge this determination, TSA's security threat assessment will automatically become final 60 days after the date of service of this letter and you will not be permitted to obtain a TWIC card.

INSTRUCTIONS TO SEND CORRESPONDENCE TO TSA

All correspondence to TSA should have the TSA TWIC Request Cover Sheet attached to the front of your correspondence. This cover sheet can be found at the end of this letter and includes your full name and mailing address. Please change any information on this cover sheet that is incorrect. You should check one of the request boxes on this cover sheet and attach it to the front of your correspondence.

Correspondence must be mailed to:

Transportation Security Administration
TSA TWIC Processing Center
P.O. Box 8118
Fredericksburg, VA 22404-8118

You are not required to obtain an attorney to seek releasable documents, dispute this initial determination, or request an appeal, waiver, and/or time extension, but may do so at your own expense.

Sincerely,

Russell Roberts
Deputy Director, Aviation & Analysis
Office of Transportation Threat Assessment and
Credentialing

Enclosure

Appendix E: (cont'd)

U.S. Department of Homeland Security

Office of Transportation Threat Assessment and Credentialing
Arlington, VA 22202



**Transportation
Security
Administration**

[Date]

Mr. John Doe
12345 Anywhere Lane
Midtown, VA 22202

Re: Initial Determination of Threat Assessment (IDTA)

Dear Mr. Doe:

The Transportation Security Administration (TSA) conducted a security threat assessment pursuant to your application for a Transportation Worker Identification Credential (TWIC). The regulations regarding security threat assessments may be found at Title 49, Code of Federal Regulations (C.F.R.), Section 1572, a copy of which may be located on TSA's website, www.tsa.gov.

This Initial Determination of Threat Assessment (IDTA) contains information regarding the basis for TSA's determination and provides directions to respond to and challenge the determination. The IDTA is not a final determination, and you have the option to file an appeal or waiver, seek the materials TSA used as the basis for the initial determination, or file for a time extension to allow for additional time to respond or to gather additional materials for your response.

TSA will not authorize issuance of a TWIC card if TSA determines that an individual does not meet the security threat assessment standards described in Title 49, C.F.R., Section 1572.5. This letter serves as TSA's initial determination that you pose or are suspected of posing a security threat and may not be eligible for a TWIC card at this time.

BASIS FOR INITIAL DETERMINATION OF THREAT ASSESSMENT

After an initial review of certain records, TSA has determined or suspects that you may pose a security threat because:

You do not meet the immigration status requirements described in Title 49, C.F.R., Section 1572.105. On your application you indicated you were born in [insert Country], however, TSA was unable to verify your immigration status from the information you provided.

You do not meet the immigration status requirements described in Title 49, C.F.R., Section 1572.105. On your application you did not list your complete place of birth, to include

Appendix E: (cont'd)

city and state, therefore, TSA has been unable to verify your immigration/citizenship status in the United States.

You do not meet the immigration status requirements described in Title 49, C.F.R., Section 1572.105. On your application you indicated you were born in the United States, however, other records available to TSA indicate that you may have been born in [insert Country]. TSA has been unable to verify your immigration/citizenship status in the United States based on the information reviewed.

Your immigration status in the United States and your authorization for unrestricted employment may preclude you from receiving a TWIC card. You may submit any evidence or information regarding your legal status in the United States and your authorization for unrestricted employment to TSA that you believe should be considered in reviewing the basis for the security threat assessment. For example, you may submit a copy of your latest immigration document, such as a duplicate of your Permanent Resident Card (Form I-551), Employment Authorization (Form I-776), or Naturalization Certificate. While providing TSA with this additional information is not mandatory, your failure to do so may limit TSA's ability to fully and completely review this matter.

Before TSA makes a final determination in this matter, you may seek releasable materials upon which this initial determination of threat assessment is based or submit an appeal. If you are an alien under temporary protected status, as described in Title 49, C.F.R., Section 1572.105, you may also request a waiver. For information on how to do any of the foregoing, please refer to the enclosure provided with this letter.

If you do not challenge this determination, seek releasable materials, or seek an extension of time to challenge this determination, TSA's security threat assessment will automatically become final 60 days after the date of service of this letter and you will not be permitted to obtain a TWIC card.

INSTRUCTIONS TO SEND CORRESPONDENCE TO TSA

All correspondence to TSA should have the TSA TWIC Request Cover Sheet attached to the front of your correspondence. This cover sheet can be found at the end of this letter and includes your full name and mailing address. Please change any information on this cover sheet that is incorrect. You should check one of the request boxes on this cover sheet and attach it to the front of your correspondence.

Correspondence must be mailed to:

Transportation Security Administration
TSA TWIC Processing Center
P.O. Box 8118
Fredericksburg, VA 22404-8118

Appendix E: (cont'd)

You are not required to obtain an attorney to seek releasable documents, dispute this initial determination, or request an appeal and/or time extension, but may do so at your own expense.

Sincerely,

Russell Roberts
Deputy Director, Aviation & Analysis
Office of Transportation Threat Assessment and
Credentialing

Enclosure

Appendix E: (cont'd)

HOW TO REQUEST RELEASABLE MATERIALS, APPEAL A SECURITY THREAT ASSESSMENT, OR APPLY FOR A WAIVER

CAN I REQUEST MATERIALS UPON WHICH THE THREAT ASSESSMENT IS BASED?

You may submit a request (typed or legibly written) to the Transportation Security Administration (TSA) seeking releasable materials within 60 days from the date of service of the initial determination of security threat assessment (IDTA) indicating that you may pose a security threat. TSA will serve you with copies of the releasable materials no later than 60 days after receiving your request. TSA does not disclose classified information, as defined in Executive Order 12968, Section 1.1(d), and TSA reserves the right not to disclose any other information or material not warranting disclosure or protected from disclosure under law.

CAN I APPEAL THE THREAT ASSESSMENT?

You may submit an appeal request (typed or legibly written) disputing TSA's initial determination of threat assessment. This appeal request must include the reason(s) why you dispute TSA's determination and be supported by documentation. For example, you must be able to demonstrate that:

- You no longer have an open warrant for a disqualifying criminal offense;
- You are no longer under indictment for a disqualifying criminal offense;
- You were not convicted of the disqualifying criminal offense referenced in the initial determination of threat assessment;
- You received a pardon for the criminal conviction referenced in the initial determination of threat assessment, the conviction was expunged, or the conviction was overturned;
- You are:
 - (1) A lawful permanent resident of the United States;
 - (2) A refugee admitted under Title 8, U.S.C., Section 1157;
 - (3) An alien granted asylum under Title 8, U.S.C., Section 1158;
 - (4) An alien in valid M-1 nonimmigrant status who is enrolled in the United States Merchant Marine Academy or a comparable state maritime academy;
 - (5) A nonimmigrant alien admitted under the Compact of Free Association between the United States and the Federated States of Micronesia, the Republic of the Marshall Islands, or Palau;
 - (6) An alien in lawful nonimmigrant status who has unrestricted authorization to work in the United States, except an alien:
 - (i) In valid S-5 (informant of criminal organization information);
 - (ii) In valid S-6 (informant of terrorism information);
 - (iii) In valid K-1 (Fiancé(e)); or
 - (iv) In valid K-2 (Minor child of Fiancé(e));
 - (7) An alien in the following lawful nonimmigrant status who has restricted authorization to work in the United States:
 - (i) C-1/D Crewman Visa;
 - (ii) H-1B Special Occupations;
 - (iii) H-1B1 Free Trade Agreement;
 - (iv) E-1 Treaty Trader;
 - (v) E-3 Australian in Specialty Occupation;
 - (vi) L-1 Intracompany Executive Transfer;
 - (vii) O-1 Extraordinary Ability; or
 - (viii) TN North American Free Trade Agreement;

Appendix E: (cont'd)

(8) A commercial driver licensed in Canada or Mexico who is admitted to the United States under Title 8, C.F.R., Section 214.2(b)(4)(i)(E) to conduct business in the United States;

- You were not adjudicated as lacking mental capacity or committed to a mental health facility;
- You do not pose a threat to national security, to transportation security, or to terrorism;
- You do not have extensive foreign or domestic criminal convictions; or
- You were not convicted of a serious offense that is not otherwise listed as a disqualifying criminal conviction in Title 49, C.F.R., Section 1572.103.

WHAT IS THE TIME FRAME FOR AN APPEAL?

You must send your appeal request to TSA within 60 days of service of:

- TSA's initial determination of threat assessment; or
- TSA's response to your request for releasable materials, if such a request was made.

Within 60 calendar days of receipt of your appeal request, TSA will notify you whether or not your appeal request has been granted. Please note that for good cause, TSA may take longer than 60 days to effect notification.

CAN I REQUEST A WAIVER?

A waiver process is available to applicants who are denied a TWIC card and can show that they no longer pose a security threat. You are eligible to apply for a waiver if the TWIC card was denied based on a finding that you lack mental capacity, you are an alien under Temporary Protected Status, or you have a criminal conviction described in Title 49, C.F.R., Sections 1572.103(a)(5) through (a)(12) or 1572.103(b). This includes the following crimes:

- Arson;
- Assault with intent to kill;
- Bribery;
- Dishonesty, fraud, or misrepresentation, including identity fraud and money laundering where the money laundering is related to a crime listed above. However, welfare fraud and passing bad checks do not constitute dishonesty, fraud, or misrepresentation for purposes of disqualification;
- Distribution of, possession with intent to distribute, or importation of a controlled substance;
- Extortion;
- Fraudulent entry into a seaport as described in Title 18, U.S.C., Section 1036, or a comparable state law;
- Immigration violations;
- Improper transportation of a hazardous material under Title 49, U.S.C., Section 5124, or a comparable state law;
- Kidnapping or hostage taking;
- Making any threat, or maliciously conveying false information knowing the same to be false, concerning the deliverance, placement, or detonation of an explosive or other lethal device in or against a place of public use, a state or government facility, a public transportation system, or an infrastructure facility;
- Murder;
- Rape or aggravated sexual abuse;

Appendix E: (cont'd)

- Robbery;
- Smuggling;
- Transportation security incident;
- Unlawful possession, use, sale, distribution, manufacture, purchase, receipt, transfer, shipping, transporting, import, export, storage of, or dealing in an explosive or explosive device;
- Unlawful possession, use, sale, manufacture, purchase, distribution, receipt, transfer, shipping, transporting, delivery, import, export of, or dealing in a firearm or other weapon;
- Violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), Title 18, U.S.C., Section 1961, *et seq.*, or a comparable state law;
- Conspiracy or attempt to commit the above listed crimes; or
- Attempted espionage, attempted sedition, attempted treason; or attempt to commit a federal crime of terrorism or a comparable state law.

A Waiver Request may NOT be requested if you were convicted of the following offenses:

- Espionage or conspiracy to commit espionage;
- Sedition or conspiracy to commit sedition;
- Treason or conspiracy to commit treason;
- A federal crime of Terrorism, as defined in Title 18, U.S. Code, Section 2332b(g), or comparable state law, or conspiracy to commit such a crime.

HOW DO I REQUEST A WAIVER?

You may provide any information in your waiver request that you believe will be helpful to TSA in making a final determination in this matter. In determining whether to grant a waiver, TSA will consider the following:

- The circumstances of the disqualifying act or offense;
- Official court documents that show the disposition of your case;
- Any Federal or state mitigation remedies;
- Official proof of restitution;
- Official documentation demonstrating the completion of all terms of your sentence (time served, probation, community service, etc.);
- A letter from your probation officer and/or a certificate of completion from a rehabilitation program;
- Court records or official medical release documents indicating that you no longer lack mental capacity;
- Any other information you believe would aid TSA in making a determination on your eligibility for a waiver; and
- Other factors which indicate that you do not pose a security threat warranting denial of your request for a TWIC card.

Appendix E: (cont'd)

To request a waiver, you must send a letter to TSA (typed or legibly written) that includes **all** of the following information:

- Full name
- Home address
- Day time phone number
- Date of birth
- Place of birth (city, state, country)
- Alien registration number, if applicable, or social security number (submission of your social security number is voluntary, although failure to provide it may delay or prevent completion of the threat assessment)
- Employment authorization documents (if applicable)
- Explanation of the circumstances of the disqualifying offense(s) and any factors applicant believes are mitigating.

WHAT IS THE TIME FRAME FOR A WAIVER?

You must apply for a waiver after the initial determination of security threat assessment is issued and no later than 60 days after the threat assessment becomes final.

TSA will notify you by mail when it reaches a decision on your waiver request. If your waiver request is denied, you may seek review of the waiver denial by an Administrative Law Judge or submit another waiver request, no later than 60 days after the security threat assessment becomes final.

CAN I APPLY FOR A WAIVER BEFORE I ENROLL IN TWIC AND COMPLETE THE SECURITY THREAT ASSESSMENT?

No. If you know that you are disqualified from holding a TWIC card based upon your criminal record or other condition, you must first enroll for a TWIC card, pay the associated fees, and complete the security threat assessment before seeking a waiver. TSA will send you an initial determination of threat assessment pinpointing the disqualifying event and provide instructions on how to apply for a waiver. After receiving the initial determination of threat assessment, you may apply for a waiver any time, as long as it does not exceed 60 days from the date on which the initial determination of threat assessment becomes final.

CAN I GET AN EXTENSION OF TIME?

If you need additional time in which to submit a request for documents, materials, information, a waiver, and/or an appeal, you may seek an extension of time by submitting a written request to the address below within a reasonable time prior to the date that such is due. An extension of time will be granted if good cause is shown.

WHERE DO I SEND MY REQUEST FOR DOCUMENTS, APPEAL, AND/OR WAIVER?

All requests to TSA should have the TSA TWIC Request Cover Sheet attached to the front of your correspondence. This cover sheet can be found at the end of this letter and includes your full name and mailing address. Please change any information on this cover sheet that is incorrect. You should check one of the request boxes on this cover sheet and attach it to the front of your correspondence.

Appendix E: (cont'd)

Correspondence must be mailed to:

Transportation Security Administration
TSA TWIC Processing Center
P.O. Box 8118
Fredericksburg, VA 22404-8118

WHAT WILL HAPPEN IF I DO NOT REQUEST DOCUMENTS, APPEAL, OR APPLY FOR A WAIVER?

If you take no further action, TSA's security threat assessment will automatically become final 60 days after you received the initial determination of threat assessment and you will not be permitted to obtain a TWIC card. For purposes of judicial review, the final determination constitutes a final TSA order pursuant to Title 49, U.S.C., Section 46110.

Appendix E: (cont'd)

TSA TWIC REQUEST COVER SHEET

FROM: JOHN DOE
12345 ANYWHERE LANE
MIDTOWN, VA 22202

DIRECTIONS FOR THE APPLICANT

Please correct any error in the above identifying information about yourself. You should include this cover sheet at the front of your request. Make your selection below to complete this cover sheet.

- APPEAL (Disputing the initial determination)
- WAIVER (Exclusion for extraordinary cause)
- TIME EXTENSION
- RELEASE OF INFORMATION

Correspondence must be mailed to:

**Transportation Security Administration
TSA TWIC Processing Center
P.O. Box 8118
Fredericksburg, VA 22404-8118**

Please ensure that all documents provided for TSA's reconsideration of the initial determination are attached. Closely following these directions will help ensure expedited processing of your request.

Appendix F:

Sample Employer Letter in Support of Waiver Application

Sample Employer Letter in Support of Worker's TWIC Waiver Application
(printed on employer's letterhead)

[Date]

Re: TWIC Waiver Application of [Employee First and Last Name]

To Whom It May Concern:

I am a [job title] with [company name]. I have supervised [employee] since [start date] in his position as [job title] where he [brief description of job duties]. During the time I have known [employee], he has been a model employee. He is hard working, honest, respectful, courteous, and well-liked by his co-workers and management. He has never been subject to any discipline or reprimands by the company, nor have any complaints been made about him by the customers he comes into contact with every day. We do not believe that he poses any kind of security risk.

[Employee] is the kind of reliable and motivated employee whom we value very much at [company name]. Therefore, we respectfully ask that TSA withdraw its Initial Determination of Threat Assessment and grant him a TWIC so that he can continue working with our company.

Sincerely,

[Name]

[Address]

[Phone Number]

NELP

National Employment Law Project

405 14th Street, Suite 1400, Oakland, CA 94612
www.nelp.org • (510) 663-5705