



The American Waterways Operators

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Jennifer A. Carpenter
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June 10, 2013

Docket Management Facility (M-30)
U.S. Department of Transportation
West Building Ground Floor, Room W12-140
1200 New Jersey Ave., SE
Washington, DC 20590

Re: Transportation Worker Identification
Credential (TWIC) – Reader Requirements
(USCG-2007-28915)

Dear Sir or Madam:

The American Waterways Operators is the national trade association for the tugboat, towboat and barge industry. AWO's members account for more than 80 percent of the barge tonnage and two-thirds of the towing vessel horsepower in this critical industry segment, moving cargoes essential to the American economy on the inland rivers, the Atlantic, Pacific, and Gulf coasts, and the Great Lakes. Thank you for the opportunity to comment on the U.S. Coast Guard's notice of proposed rulemaking on Transportation Worker Identification Credential reader requirements.

AWO is committed to working in partnership with the Coast Guard to ensure high standards of maritime domain awareness and security. Immediately after September 11, 2001, AWO began working with the Coast Guard and the U.S. Army Corps of Engineers to develop a Model Vessel Security Plan for towing vessels, more than a year before such plans were required by law. When the Maritime Transportation Security Act was enacted in November 2002, AWO worked with the Coast Guard to transform the Model Vessel Security Plan into one of the first Coast Guard-approved Alternative Security Programs. AWO members work hard to transport our nation's cargo safely and securely, and we take pride in the fact that our American-owned, American-crewed, American-built vessels are the "eyes and ears on the waterways" for the Coast Guard.

AWO commends the Coast Guard for the pragmatic approach it has taken to this rulemaking. TWIC readers have been highly controversial since proposed reader requirements were first included in the May 2006 notice of proposed rulemaking for the TWIC program. AWO was a strong supporter of the August 2006 decision by the Coast Guard and the Transportation Security Administration to separate the reader issue from the

rest of the TWIC rulemaking and reconsider it in a fresh light. The Coast Guard's decision to publish the 2009 advance notice of proposed rulemaking rather than proceeding directly to an NPRM was also a positive step. It is clear that the Coast Guard has used the public comment it received on the ANPRM to refine its approach and develop a proposal that better reflects genuine security needs and risks and fits the operational realities of different types of marine transportation workplaces.

In AWO's May 2009 comments on the ANPRM, we urged the Coast Guard to take a risk-based approach to the establishment of TWIC reader requirements. We emphasized the need to consider not only the nature of the marine workplace (i.e., the physical and operational characteristics that affect the risk profile of a given vessel or facility type), but also the other security measures currently in place. AWO believes that the NPRM reflects the appropriate risk calculation with respect to vessels, correctly exempting those with 14 or fewer crewmembers from the reader requirements, but misses the mark with respect to barge fleeting facilities. We expand on these perspectives below.

Exempting Vessels with Limited Crew Sizes is the Right Approach

AWO appreciates the fact that the NPRM, like the ANPRM before it, recognizes that electronic card readers add no security value for vessels with small crew sizes. This is consistent with the requirements of the SAFE Port Act of 2006, which directs the Coast Guard not to establish reader requirements for smaller vessels. It is also in keeping with the Towing Safety Advisory Committee's 2007 recommendation that "no vessel with a required crew of 14 or fewer... should ever be required to have a card reader on board."

Rather than taking a "one size fits all approach" to TWIC reader implementation, the NPRM recognizes that not every vessel has the same risk profile. Towing vessels are typically crewed by three to ten individuals depending on the type of operation, and there are never more than a few crewmembers seeking access to the vessel at any given time. AWO member Steve Golding, President & CEO of Golding Barge Line, testified in 2008 before the House Homeland Security Subcommittee on Border, Maritime and Global Counterterrorism that requiring mariners to interface with a card reader in order to be granted access to a towing vessel would be tantamount to requiring individuals to use a card reader to enter their living room. There is simply no value to card readers in such circumstances.

The Coast Guard's decision to exempt smaller vessels from TWIC reader requirements is also appropriate given the array of risk-reduction measures that have been implemented by vessel owners pursuant to MTSA and the SAFE Port Act. Vessels with Coast Guard-approved security plans (including towing vessels and barges using the AWO Alternative Security Program) are already subject to a large number of risk-based security measures, including requirements for personnel training, drills and exercises, security communications, and access control, as well as special provisions for restricted areas, monitoring, cargo handling, and delivery of stores and supplies. In addition, any

crewmember or other individual requiring unescorted access to a towing vessel or barge is subject to the rigorous security threat assessment required to obtain a TWIC.

The Coast Guard's decision to exempt vessels with 14 or fewer crewmembers from the card reader requirement is consistent with Congressional direction and with the advice of TSAC and other industry stakeholders; it recognizes the operational reality and negligible security value to be gained by requiring readers on small vessels; and it takes into account the array of existing security risk-reduction measures already in place. For all of these reasons, AWO urges the Coast Guard to maintain this exemption in the final rule on TWIC reader requirements.

Barge Fleeting Facilities Should Also Be Exempted from TWIC Reader Requirements

The NPRM does not, by contrast, reflect the appropriate risk-benefit calculus with respect to reader requirements at barge fleeting facilities. Under the proposed rule, any facility or fleeting area that ever receives barges carrying certain dangerous cargo would be required to install card readers. As most barge fleeting facilities service CDC barges occasionally, the vast majority of fleeting facility operators would be required to install readers.

Such a requirement is neither practical nor justified. While the TWIC reader requirement was conceived with the scenario of a busy public port in mind – with hundreds of longshoremen, truckers, and other personnel pouring through the gates at shift change – barge fleeting facilities are very different from large marine terminals, refineries, and chemical plants in terms of infrastructure, activity, manning, and associated security risks. Many fleeting facilities are located in rural areas isolated from major population centers. Only a very small percentage of fleeting facilities have shoreside access; the vast majority are accessible only by vessel. The makeup of barge fleeting facilities is also very fluid: CDC barges are moored there for a limited period of time and then moved. Unlike fixed maritime facilities, barge fleets have no permanent infrastructure, and as such provide a less plausible target for a terrorist attack.

Unlike many fixed maritime facilities, barge fleets are not subject to a regular flow of traffic from individuals needing unescorted access to secure areas. Instead, barge fleets are covered by security protocols to ensure that access is granted only to personnel such as vessel crewmembers, mechanics, and surveyors who have a specific duty to perform at the fleet at an agreed-upon time. The pre-screening process for individuals seeking access to a barge fleeting facility is extensive. Companies that operate fleets typically require that individuals seeking access to the fleet present a valid TWIC and driver's license and provide verifiable information on why the individual needs access to the barge fleeting facility. Once an individual has been cleared to enter the fleeting area, the only access point for the vast majority of fleets is via a towing vessel with the dedicated purpose of guarding the fleet and providing access to and from the moored barges. In order to gain access to the towing vessel, vessel owners, consistent with the AWO ASP, require their personnel to conduct a visual inspection of the individual's TWIC.

These multiple layers of TWIC verification are in addition to the constant monitoring and other security measures companies have in place to ensure the security of barge fleeting facilities. As noted above, the same towing vessels that transport individuals needing access to barges moored at a fleet are also responsible for monitoring the security of the fleeting area. Because barges in a fleet are unmanned, the presence of any unauthorized individual on or near a barge in the fleet would be immediately suspicious.

If TWIC readers are required for any fleeting facility that ever handles barges carrying CDCs, AWO believes that many fleets will simply elect not to service such barges rather than comply with onerous reader requirements. The Coast Guard does not include the cost of installing TWIC readers at barge fleeting facilities in the NPRM's economic analysis, but most fleeting areas do not have the physical infrastructure necessary to support card readers. Such infrastructure would include, at a minimum, electricity, internet access, and a facility to protect the reader, and outfitting barge fleets with these capabilities in a way that is safe for personnel working at the fleet would be impractical. Few fleet operators would deem these costs justified given the minimal security enhancement that a reader would provide. Paradoxically, imposing a reader requirement that results in a large number of fleet owners making the decision not to service CDC barges could be not only unhelpful, but actually detrimental to maritime security, as a smaller number of fleets would then be required to accommodate a larger concentration of CDC barges, increasing the risk profile of those fleets that do service CDC barges.

Given the physical characteristics and operational profile of barge fleeting areas and the existing security measures in place to control access to moored barges, AWO does not believe that a TWIC reader requirement is any more appropriate for a barge fleeting area than for a vessel with 14 or fewer crewmembers. We urge the Coast Guard to exempt barge fleeting areas from reader requirements in the forthcoming final rule.

Additional Comments

In addition to our primary comments above, AWO would like to comment briefly on two other aspects of the NPRM.

- **Clarification of the definition of a crewmember:** The NPRM exempts vessels with 14 or fewer TWIC-holding crewmembers from the requirement to have a TWIC reader. However, the NPRM does not define "crewmember," nor is there an overarching definition of "crewmember" for the purposes of the MTSA regulations. Providing a clear definition of crewmember is important because there are certain instances (for example, emergency response) in which a vessel could be required to carry personnel in addition to its crew, resulting in the temporary carriage of more than 14 TWIC-holding individuals. AWO recommends that the Coast Guard clarify, consistent with TSAC's 2007 recommendation and with the language in Navigation Vessel Inspection Circular 03-07, that for a vessel with a Certificate of Inspection, "crewmembers" or "required crew" includes all personnel in the required manning

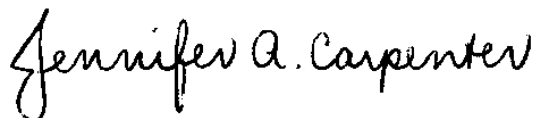
section of the COI; for uninspected vessels, “required crew” includes all personnel assigned to the vessel performing navigation, safety, and security functions.

- **Clarification of unescorted access rule for lost, damaged, or stolen TWICs:**
Coast Guard Policy Letter 12-04 states that “OCS facilities may authorize access to an individual who has reported their TWIC to TSA as lost, damaged, or stolen and has yet to receive a replacement TWIC within 7 calendar days, an additional 30 calendar days for a total of 37 calendar days.” The policy letter states that in order to receive 37 days unescorted access, the individual must provide proof that a replacement TWIC has been ordered and provide the Vessel Security Officer or Facility Security Officer with his or her first name, last name, and application identification.

Consistent with Policy Letter 12-04, the NPRM states that “individuals following prescribed procedures may be granted unescorted access for no longer than 7 consecutive days. (Additional 30-day extension may be granted per Coast Guard guidance.)” However, the NPRM later states that “an owner or operator would be permitted to grant the individual unescorted access to secure areas for a period of no longer than 7 consecutive days” with no mention of the 30-day extension. The Coast Guard should clarify that up to 37 days of unescorted access is allowed, as outlined in Policy Letter 12-04.

Thank you for the opportunity to comment. We would be pleased to answer any questions or provide further information to assist the Coast Guard in the development of a final rule.

Sincerely,

A handwritten signature in black ink that reads "Jennifer A. Carpenter". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Jennifer A. Carpenter