

June 13, 2013

U.S. Department of Transportation
Docket Management Facility (M-30)
West Building Ground Floor, Room W12-140
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

RE: Comments of the American Association of Port Authorities on the NPRM,
Transportation Worker Identification Credential (TWIC) Reader Requirements
Docket: USCG- 2007-28915

Dear Sir/Madam:

Seaports deliver prosperity by serving as critical links for access to the global marketplace. Safe and secure seaport facilities are fundamental to both protecting our borders and moving goods. The American Association of Port Authorities (AAPA), on behalf of its U.S. members, welcomes this opportunity to comment on the Coast Guard's (USCG) Notice of Proposed Rulemaking (NPRM) related to the Transportation Worker Identification Credential (TWIC) Reader Requirements. Our U.S. members handle containers, auto and ro/ro cargo, cruise passengers, as well as many bulk and breakbulk cargos, all of which would be impacted by this rule.

While the comments below address specific issues raised in the NPRM, AAPA is concerned about the findings in the recent Government Accountability Office (GAO) May 8, 2013 report, ***Transportation Worker Identification Credential: Card Reader Pilot Results Are Unreliable; Security Benefits Need to Be Reassessed GAO-13-198***. GAO recommended that Congress halt DHS's efforts to promulgate a final regulation until the successful completion of a security assessment of the effectiveness of using TWIC readers. While we understand that there may be some disagreements over these findings, we do ask the Department to consider delaying the implementation date of the rule, and we stand ready to assist in further analysis of TWIC reader operational problems identified in the report.

Below are specific recommendations related to the NPRM.

In the final rule, USCG should be more specific in defining what are considered TIER A, B, and C facilities and utilize a risk-based approach to reader requirements that more clearly addresses the particular circumstances of each port area and the facilities that fall within the category requiring readers.

As noted in AAPA's May 13, 2009, comments on the TWIC rule, we support the Maritime Transportation Security Act (MTSA) regulatory system that is performance- and risk-based. Unlike earlier TWIC proposals, the NPRM proposes a risk-based approach. While this is an improvement from the previous proposal, we do not believe the system as proposed should be adopted. We are concerned that the three categories for TWIC reader use are based upon the passenger capacity of vessels, bulk of hazardous material, and the facilities that they use, rather than taking an approach that is more specific to the individual circumstances of each facility. (It is unclear, for example, how Strategic Ports will be classified based on the criteria listed.)

AAPA recommends that USCG expand the risk-based concept and include a more performance-based and flexible system as reflected in other MTSA regulations. Every port is different and in making evaluations about risk, USCG should aggregate risks to the port area first, followed by a second layer of risk at the facility level using a Maritime Security Risk Analysis Model (MSRAM), including an evaluation of what other facilities are in close proximity. This would result in a flexible, but risk-based system. Therefore, a facility's risk and associated reader requirements should be based on a variety of risk factors, not just what type of vessels call on it or the type of cargo that it handles.

At certain facilities, TWIC should be checked by electronic reader at the beginning of a shift but then afterward and for the duration of the shift employees should be able to walk into and out of the secure area only having to flash their card or show some other identification to the guard. At cruise terminals, for example, porters walk into and out of the secure area 25-30 times during their shifts. Having to stop and use the reader every time that movement into the secure area is made could well create an unnecessary burden, delay work, impact vessel schedule, and result in unnecessary expenses. While it is true that, according to the NPRM, the Captain of the Port (COTP) has the power to suspend the reader requirement if it is unduly holding up cargo or passenger processing, this particular exception to the rule should be codified before the fact and not reliant upon an after-the-fact assessment. Differing assessments by individual COTP's could inequitably impact inter-port competitiveness.

According to the NPRM, the Captain of the Port is authorized to suspend the reader requirement in the event that a reader malfunctions or some other event transpires that makes the reader requirement unduly onerous. AAPA recommends that in the event of a minor occurrence, such as a reader malfunction, the port should immediately be able to continue to process workers using an alternative means that has previously been identified in the approved Facility Security Plan. Rather than being required to contact USCG for approval to resort to the previously-approved alternate plan, the port should be able to resort to the plan and then log the occurrence for review by USCG after the fact. USCG will be able to monitor how frequently or infrequently the alternate plan is used and address irregularities without holding up the process at the time.

The NPRM requires that ports submit an updated Facility Security Plan describing what procedures will be used to comply with the new reader requirement, once it goes into effect. AAPA recommends that ports be permitted to submit TWIC updates within the five-year plan resubmission, rather than be required to submit immediate amendments to already-existing security plans.

Sincerely yours,



Kurt J. Nagle
President and CEO
KJN:kp/lsm