



October 1, 2020

Commandant (CG-6P)
Attn: Paperwork Reduction Act Manager
U.S. Coast Guard
2703 Martin Luther King Jr. Ave SE, Stop 7710
Washington, DC 20593-7710.

Attention: Docket Number USCG-2020-0484
Submitted electronically to regulations.gov

Re: **Comments on 60-Day Notice re ICR for Updating the Risk Analysis for TWIC Readers at Maritime Facilities**

Dear Sir or Madam:

The American Chemistry Council (“ACC”), the American Fuel & Petrochemical Manufacturers (“AFPM”), and the International Liquid Terminals Association (“ILTA”) (collectively, the “Associations”) appreciate this opportunity to provide comments on the Information Collection Request (“ICR”) that will enable the U.S. Coast Guard (“USCG”) to update the risk analysis supporting the TWIC Reader Rule.¹

Summary

The Associations welcome the Coast Guard’s commitment to updating the risk analysis underlying the TWIC Reader Rule – and we support this ICR. We strongly urge USCG to engage with regulated facilities in an open, interactive fashion, just as the Homeland Security Operational Analysis Center (HSOAC) did when it developed its assessment of the risk mitigation value of the TWIC program.² We pledge to facilitate this process in the same way that we did in assisting HSOAC previously.

¹ 85 Fed. Reg. 46684 (Aug. 3, 2020) (“the Notice”). The TWIC Reader Rule was published at 81 Fed. Reg. 57652 (Aug. 23, 2016).

² HSOAC, “The Risk Mitigation Value of the Transportation Worker Identification Credential” (2019).

At the same time, the Associations urge USCG to move expeditiously. As USCG knows, “HSOAC doubt[ed] the benefits of the [TWIC] program would exceed the costs,” but proposed that “[a] more favorable break-even point could be achieved by . . . reduc[ing] the number of facilities that are subject to the TWIC Reader Rule.”³ This update should, therefore, lead to changes in the scope of the TWIC Reader Rule. But that prospect creates significant uncertainty regarding regulated facilities’ compliance obligations, which confounds the Associations’ members’ ability to make prudent technical and capital investment decisions. The TWIC Reader Rule is now scheduled to go into effect in May 2023 – 31 months from now. Typically, facilities need 18-24 months to plan, purchase and implement capital-intensive measures to meet compliance obligations. Therefore, the regulated community needs to understand its compliance obligations clearly as soon as practically possible, but no later than May 2021. The Coast Guard should promptly develop and publish a timetable for the risk analysis, including when it would make any determinations that will affect compliance obligations.

Statement of Interest

ACC represents the leading companies engaged in the business of chemistry, which is a \$797 billion enterprise and the nation’s largest exporter, accounting for 14 percent of all U.S. exports. AFPM is a national trade association whose members comprise most U.S. refining and petrochemical manufacturing capacity. ILTA represents more than 85 companies operating liquid terminals in all 50 states and in over 40 countries that handle liquid commodities, such as crude oil, petroleum products, chemicals, renewable fuels, fertilizers, vegetable oils and other food-grade materials that are central to the U.S. economy.

ACC, AFPM, and ILTA members work closely with USCG and the Department of Homeland Security (“DHS”) in strengthening facility security under the Maritime Transportation Security Act (“MTSA”) and more broadly. The Associations’ members are the owners or operators of MTSA-regulated facilities in practically every Captain of the Port Sector. For this reason, MTSA requirements, particularly involving the use of TWIC readers, are important to the Associations. The Associations commented on both of the ICR notices associated with the HSOAC assessment.

³ DHS, “Results from the Assessment of the Risk Mitigation Value of the Transportation Worker Identification Credential” (Feb. 28, 2020), at vi, 16.

Discussion

The Associations support the basic premise of the TWIC Reader Rule. But they have challenged the way the final rule dramatically expanded the universe of covered facilities. The impact of that change, as the Associations estimated, was to:

- Increase the number of facilities subject to the rule from slightly over 500 to potentially as many as 2,000;
- Increase the number of entry points subject to the rule's biometric access control requirements at covered facilities—thus increasing the per-facility costs; and
- As a result of both factors, increase the annualized cost of the rule over 10 years from \$26.5 million to over \$100 million—thus making the rule an economically significant rule under Executive Order 12866.

Since 2016, the Associations have worked to get USCG to understand the significant economic and operational impacts caused by this expansion in scope. The HSOAC assessment, and USCG's summary Report to Congress,⁴ took the first step. These documents recognized that:

- “[T]he lack of clarity regarding the definition of CDC facility could increase the number of facilities potentially subject to the final reader rule. We estimated that up to three times as many facilities could fall under the broader definition of CDC facility. . . . Using these criteria, we estimated that about 1,500 facilities could fall under the broader definition of CDC facility and therefore be subject to the TWIC-reader rule.”⁵
- “We assess . . . that the 2015 regulatory analysis underestimated the average number of readers required per facility for compliance.”⁶
- TWIC compliance costs would exceed \$100 million in each of the first two years of implementation, for total undiscounted costs of \$321 million over ten years.⁷

⁴ *Id.*

⁵ HSOAC Report at 165.

⁶ *Id.* at 151.

⁷ *Id.* at 154.

USCG also conceded then that the “confusion among commenters” caused by the uncertain scope of the rule “may have affected the ability of some facility operators to effectively comment on the full costs of the rule.”⁸

To its credit, USCG further delayed the effective date of the TWIC Reader Rule until May 2023, in part to “allow us to develop a more precise risk-analysis methodology that would better identify which of these facilities . . . would benefit from the electronic TWIC inspection requirements.”⁹ This will include “attempt[ing] to get a much fuller estimate of the [regulated] population. . . .”¹⁰ The Associations commend USCG for undertaking this work – which could ultimately result in a future rulemaking to narrow the scope of the rule, as DHS originally promised in 2013.¹¹

A key goal of the Paperwork Reduction Act is to “maximize the practical utility” of the information collected.¹² Here, a risk analysis update would have tremendous utility. As just noted, the HSOAC report confirmed that the expanded scope of the TWIC Reader Rule also roughly quadrupled its overall, annualized compliance costs. The updated risk analysis could easily save the regulated community tens of millions of dollars if it results in a risk-based right-sizing of the TWIC reader requirements. As HSOAC concluded, the TWIC Reader Rule likely cannot be cost-justified, but would be more cost-effective if restored to the scope of the proposed rule:

HSOAC’s analysis suggests the benefits of the TWIC Reader Rule are unlikely to exceed the associated costs of the regulation as proposed. A more favorable break-even point could be achieved by . . . changing the regulation to reduce the number of facilities that are subject to the TWIC Reader Rule.¹³

The Notice asks how USCG can enhance the quality and utility of the planned collection. The answer is simple: USCG should follow the same approach as was followed by the RAND Corporation, which operates the HSOAC, in its earlier study. RAND’s approach was inclusive, thorough and objective. Their staff reached out to

⁸ 85 Fed. Reg. 13493, 13498 (March 9, 2020). *See also* DHS, “Corrective Action Plan from the Assessment of the Risk Mitigation Value of the Transportation Worker Identification Credential” (June 2020).

⁹ 85 Fed. Reg. at 13495.

¹⁰ *Id.* at 13502.

¹¹ *See* 78 Fed. Reg. 17782, 17811 (March 22, 2013) (“As noted earlier, if USCG changes the risk groupings, it will be done through rulemaking and the public will have an opportunity to comment.”).

¹² 44 U.S.C. § 3504(c)(4).

¹³ Report to Congress at 16.

the Associations and our members early and often. We coordinated numerous site visits during the latter half of 2018. These typically lasted 1-2 days, with follow-up communications. Our members have learned even more over the past two years about how to manage and reduce security risks associated with the presence of CDCs at their facilities – as well as the relative security benefits provided (or not provided) by TWIC readers. Our members have also learned just how challenging implementing a TWIC reader compliance program has been (or will be). They are eager to present those learnings to USCG or its contractors.

We urge USCG to move very expeditiously, however. In its current form, the TWIC Reader Rule will have a profound negative impact on the regulated community. But the updated risk analysis has the potential to lessen that impact by narrowing the scope of the TWIC reader requirement. The Coast Guard should develop and publish a timetable for the risk analysis, including when it would make determinations that will affect compliance obligations. That timetable should conclude no later than May 2021. Otherwise, USCG should exercise its enforcement discretion to ensure that companies have 24 months to comply after conclusion of the risk analysis.

Once again, we reiterate our support for the TWIC program overall, and we welcome USCG's updated risk analysis. We stand ready to assist that process in any way we can, and look forward to a successful collaboration.

Sincerely,

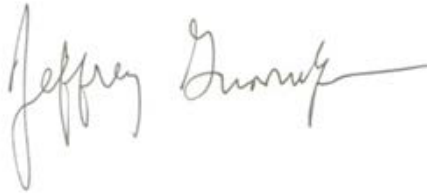
A handwritten signature in black ink, appearing to read "William Erny". The signature is fluid and cursive, with a large initial "W" and "E".

William Erny
Senior Director

American Chemistry Council

Bill_Erny@americanchemistry.com

(202) 249-6412



Jeff Gunnulfsen
Senior Director, Security and Risk Management
American Fuel & Petrochemical Manufacturers
JGunnulfsen@afpm.org
(202) 844-5483



Kathryn Clay
President
International Liquid Terminals Association
Kclay@ilta.org
(703) 875-2011

cc: P. Ray, OMB/OIRA
S. Thallam, OMB/OIRA
R. Palmieri, OMB/OIRA
B. Clare, DHS/USCG/PFC