4910-15-U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 101, 104, 105, 106

49 CFR Part 1572

[Docket Nos. TSA-2006-24191; USCG-2006-24196]

RIN 1652-AA41

Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License

AGENCY: United States Coast Guard, Transportation Security Administration; DHS.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Department of Homeland Security (DHS), through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA), issues this final rule to realign the compliance date set forth in the Transportation Worker Identification Credential (TWIC) final rule. Under the new final compliance date mariners must obtain a TWIC no later than April 15, 2009. This final rule also extends to April 15, 2009, the final date by which owners and operators of vessels, facilities, and outer continental shelf facilities, who have not otherwise been required to implement access control procedures utilizing TWIC on an earlier date, must implement those procedures.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.].

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of dockets TSA-2006-24191 and USCG-2006-24196, and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: If you have questions on the TSA portions of this rule, call Christine Beyer, telephone (571) 227-2657. If you have questions on the Coast Guard portions of this rule, call LCDR Jonathan Maiorine, telephone 1-877-687-2243. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-493-0402.

SUPPLEMENTARY INFORMATION:

I. Background and Regulatory History

On May 22, 2006, the Department of Homeland Security (DHS) through the United States Coast Guard (Coast Guard) and the Transportation Security Administration (TSA) published a joint notice of proposed rulemaking (NPRM) entitled "Transportation Worker Identification Credential (TWIC) Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License" in the Federal Register (71 FR 29396) (hereinafter referred to as the "TWIC NPRM"). The TWIC NPRM proposed requirements related to the TWIC program, including compliance dates for mariners to obtain and possess a TWIC, and for vessels, facilities and outer continental shelf facilities to operate in accordance with TWIC provisions. Specifically,

DHS proposed that vessels and facilities would be required to be in compliance with the requirements of a TWIC final rule between twelve (12) and eighteen (18) months following the publication date of the final rule, depending on whether enrollment for the port in which the vessel or facility is operating had been completed. 71 FR at 29409, 29412.

On January 25, 2007, after a 45-day comment period and four public meetings, the Coast Guard and TSA published a joint final rule under the same title (72 FR 3492) (hereinafter referred to as the "TWIC joint final rule"). The TWIC joint final rule discussed the comments received on the proposed rule, including a discussion of all comments related to the proposed TWIC implementation timeline and the requirements for mariners, vessels, facilities and outer continental shelf facilities to comply with TWIC procedures. It also made changes to the rule text in response to those comments. The TWIC joint final rule, at 33 CFR 104.115, revised the compliance dates for vessel owners and operators to provide vessel owners or operators 20 months from the publication date of the final rule, up to and including September 25, 2008, to implement the TWIC access control provisions. 72 FR 3492, 3499. The rule tied the compliance date for facilities and outer continental shelf facilities to completion of the initial enrollment in the Captain of the Port (COTP) zone where the facility is located. See 33 CFR 105.115 and 106.110. This date would vary for each COTP zone as announced by the Coast Guard through publication of a notice in the Federal Register. Under the final rule, the Coast Guard would publish these notices at least 90 days in advance of the compliance date, but the final compliance date for all COTPs would not be later than September 25, 2008. Finally, the latest date by which mariners would be expected to obtain and possess a TWIC, as set

forth in 33 CFR 101.514, would also be September 25, 2008. 72 FR at 3499.

III. Discussion of Change

With this final rule, DHS is realigning the deadline for final compliance with the requirements of the TWIC final rule to provide 18 months from the date the initial enrollment centers became operational for regulated entities to come into compliance with the requirements of the TWIC final rule. As discussed above, when DHS set the final compliance date by the final rule published in January of 2007, the Coast Guard and TSA estimated that all TWIC enrollment centers would be operational within 18 months of the beginning of the enrollment rollout. See 72 FR at 3539. Accordingly, the Coast Guard and TSA set the final compliance date for vessels for 20 months after the publication date of the final rule to allow TSA two months to finalize a contract with the entity that would operate the enrollment centers, as well as to ensure that the underlying TWIC system could operate as intended. This schedule was intended to allow mariners and other regulated entities up to 18 months to enroll before the September 25, 2008 compliance date.

TSA contracted with Lockheed Martin to operate TWIC enrollment centers on January 29, 2007. The first TWIC enrollment center opened in Wilmington, Delaware on October 16, 2007. See 72 FR 57342 (Oct. 9, 2007). Since that time, TSA has opened over 100 TWIC enrollment centers. TSA currently estimates that the final enrollment centers will be opened and operational in September of 2008. Because TSA did not open the initial enrollment centers until approximately six months after the initial estimated start date, TSA and Coast Guard have provided the additional time to allow for the full 18 months of enrollment intended under the TWIC final rule.

Accordingly, to ensure that every individual who requires a TWIC will have the opportunity to enroll for one, and to ensure that TSA will have time to complete the security threat assessments on all applicants, DHS is extending the compliance date from September 25, 2008 to April 15, 2009, to realign the final compliance date with the original intent of the TWIC final rule. Under this final rule, by no later than April 15, 2009, mariners must obtain a TWIC, and owners and operators of vessels, facilities, and outer continental shelf facilities, who have not otherwise been required to implement access control procedures utilizing TWIC, must implement those procedures. Owners and operators of facilities that must comply with 33 CFR part 105 will still be subject to earlier, rolling compliance dates, as laid out in 33 CFR 105.115(e). As provided in that regulation, the Coast Guard will announce those dates at least 90 days in advance via notices published in the Federal Register. The final compliance date will not be later than April 15, 2009. In a separate notice published in today's edition of the Federal Register, we provide this notice for the first three COTP Zones: Boston, Northern New England, and Southeastern New England.

The TWIC final rule also did not require that mariners obtain or possess a TWIC for access to secure areas of vessels, facilities, and OSC facilities until September 25, 2008. With this amendment, mariners holding a Merchant Mariner's License (License), Merchant Mariner's Document (MMD), Certificate of Registry, or an International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Endorsement, will not need to have a TWIC until April 15, 2009. Until that date, they may continue to use their mariner credentials, along with a photo ID, to gain unescorted access to facilities and vessels, per 33 CFR 101.514. Amendments in 46 CFR

10.113, 12.01-11, and 15.415 will also reflect the date change to April 15, 2009. Additionally, owners and operators of vessels and outer continental shelf facilities regulated by 33 CFR parts 104 and 106, respectively, will not need to incorporate TWIC into their security measures for access control until April 15, 2009.

Finally, the applicable dates for mariners wishing to purchase a reduced fee TWIC, by relying upon the security threat assessment done by the Coast Guard when they applied for their License or their MMD has been realigned to cover those mariners who obtain or renew their credential between September 25, 2008 and April 15, 2009.

These amendments may be found at 33 CFR 101.514, 104.115, 105.115, 106.110; 46 CR 10.113, 12.01-11, and 15.415; and 49 CFR 1572.19.

V. Regulatory Requirements

A. Administrative Procedure Act

DHS is issuing this final rule, for immediate implementation, without providing the public prior notice and the opportunity for comment. Sections 553(b) and (d) of the Administrative Procedure Act (APA) (5 U.S.C. 553) authorize agencies to dispense with certain notice procedures for rules when they find good cause to do so. Under section 553(b), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d) allows an agency, upon finding good cause, to make a rule effective immediately upon publication in the Federal Register.

Providing an opportunity for prior notice and public comment on the extensions of the compliance dates in the TWIC final rule would be unnecessary and contrary to the

public interest. As discussed above, without the change in the full compliance date, it would not be possible for all regulated parties to comply with the TWIC regulations. Even if it were possible for all persons to enroll by the current compliance date (which, as noted above, is not realistically possible), it would not be possible for TSA to complete full security threat assessments on all of those individuals in advance of the September 25, 2008 date.

Further, because this final rule relieves a restriction by providing regulated entities more time to comply with the regulatory requirements, DHS finds that this rule shall become effective immediately upon publication of this final rule in the **Federal Register**. 5 U.S.C. 553(d).

B. Executive Order 12866 (Regulatory Planning and Review)

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866. This rule, therefore, is not subject to review by the Office of Management and Budget. We expect the economic impact of this rule to be minimal and a full regulatory analysis unnecessary.

This rule realigns the final compliance date for implementing TWIC. To the extent that deadlines have changed, affected parties may incur some TWIC-related costs later rather than sooner.

We anticipate that these changes will not substantially increase TWIC-related compliance costs to the affected entities and in most cases will provide advantages through deadline extensions.

C. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered

whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We do not expect this rule to substantially increase TWIC-related compliance costs, as it realigns a deadline. The Coast Guard and TSA certify under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

E. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

F. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children

from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

L. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

M. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with

applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Environment

The provisions of this rule have been analyzed under the Department of Homeland Security (DHS) Management Directive (MD) 5100.1, Environmental Planning Program, which is the DHS policy and procedures for implementing the National Environmental Policy Act (NEPA), and related Executive Orders and requirements. The changes being made by this final rule have no effect on the environmental analysis that accompanied the promulgation of the original TWIC final rule. That analysis can be found at 72 FR 3576-3577.

Accordingly, there are no extraordinary circumstances presented by this rule that would limit the use of a CATEX under MD 5100.1, Appendix A, paragraph 3.2. The implementation of this rule, like the implementation of the original TWIC final rule, is categorically excluded under the following categorical exclusions (CATEX) listed in MD 5100.1, Appendix A, Table 1: CATEX A1 (personnel, fiscal, management and administrative activities); CATEX A3 (promulgation of rules, issuance of rulings or interpretations); and CATEX A4 (information gathering, data analysis and processing, information dissemination, review, interpretation and development of documents). CATEX B3 (proposed activities and operations to be conducted in an existing structure

that would be compatible with and similar in scope to ongoing functional uses) and CATEX B 11 (routine monitoring and surveillance activities that support law enforcement or homeland security and defense operations) would also be applicable.

List of Subjects

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 104

Incorporation by reference, Maritime security, Reporting and Recordkeeping requirements, Security measures, Vessels.

33 CFR Part 105

Facilities, Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 106

Facilities, Maritime security, Outer Continental Shelf, Reporting and recordkeeping requirements, Security measures.

46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

49 CFR Part 1572

Appeals, Commercial drivers license, Criminal history background checks, Explosives, Facilities, Hazardous materials, Incorporation by reference, Maritime security, Motor carriers, Motor vehicle carriers, Ports, Seamen, Security measures, Security threat assessment, Vessels, Waivers.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 101, 104, 105, and 106, and 46 CFR parts 10, 12, and 15 and the Transportation Security Administration amends 49 CFR part 1572 as follows:

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD

PART 101—MARITIME SECURITY: GENERAL

1. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 101.514 [Revised]

2. Revise § 101.514(e) by removing the date "September 25, 2008" and adding in its place the date "April 15, 2009".

PART 104—MARITIME SECURITY: VESSELS

3. The authority citation for part 104 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 104.115 [Revised]

4. Revise § 104.115(d) by removing the date "September 25, 2008" and adding in its

place the date "April 15, 2009".

PART 105—MARITIME SECURITY: FACILITIES

5. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04– 11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No, 0170.1.

§ 105.115 [Revised]

6. Revise § 105.115(e) by removing the date "September 25, 2008" and adding in its place the date "April 15, 2009".

PART 106—MARITIME SECURITY: OUTER CONTINENTAL SHELF (OCS) FACILITIES

7. The authority citation for part 106 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department Of Homeland Security Delegation No. 0170.1.

§ 106.110 [Revised]

8. Revise § 106.110(e) by removing the date "September 25, 2008" and adding in its place the date "April 15, 2009".

Title 46—Shipping

CHAPTER I—COAST GUARD

Subchapter B—Merchant Marine Officers and Seamen

PART 10—LICENSING OF MARITIME PERSONNEL

9. The authority citation for part 10 continues to read as follows:

Authority: 14 U.S.C. 633; 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, and 2110; 46 U.S.C. chapter 71; 46 U.S.C. 7502, 7505, 7701, and 8906; Executive Order 10173; Department of Homeland Security Delegation No. 0170.1. Section 10.107 is also issued under the authority of 44 U.S.C. 3507.

§ 10.113 [Revised]

10. Revise § 10.113 by removing the date "September 25, 2008" and adding in its place the date "April 15, 2009".

PART 12—CERTIFICATION OF SEAMEN

11. The authority citation for part 12 continues to read as follows:

Authority: 31 U.S.C. 9701; 46 U.S.C. 2101, 2103, 2110, 7301, 7302, 7503, 7505, 7701, and 70105; Department of Homeland Security Delegation No. 0170.1.

§12.01-11 [Revised]

12. Revise §12.01-11 by removing the date "September 25, 2008" and adding in its place the date "April 15, 2009".

PART 15—MANNING REQUIREMENTS

13. The authority citation for part 15 continues to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 8906, 9102, and 8103; and Department of Homeland Security Delegation No. 0170.1.

§ 15.415 [Revised]

14. Revise §15.415 by removing the date "September 25, 2008" and adding in its place the date "April 15, 2009".

Title 49—Transportation

CHAPTER XII—TRANSPORTATION SECURITY ADMINISTRATION

Subchapter D—Maritime and Land Transportation Security

PART 1572—CREDENTIALING AND SECURITY THREAT ASSESSMENTS

15. The authority citation for part 1572 continues to read as follows:

Authority: 46 U.S.C. 70105; 49 U.S.C. 114, 5103a, 40113, and 46105; 18 U.S.C. 842, 845; 6 U.S.C. 469.

§ 1572.19 [Revised]

16. Revise § 1572.19(b) by removing the date "September 25, 2008" in the two places where it appears, and adding in each place the date "April 15, 2009".

Dated: 2 MAY 08

Brian M. Salerno

Rear Admiral, U.S. Coast Guard

Assistant Commandant for Marine Safety,

Security & Stewardship

Gale Rossides

Deputy Administrator,

Transportation Security

Administration

KMC
5-2-08