



National Grain and Feed
Association



North American Export
Grain Association

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Docket Management Facility
U.S. Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Ave., S.E.
Washington, D.C., 20590-0001

Dear Sirs/Madams:

The National Grain and Feed Association (NGFA) and North American Export Grain Association (NAEGA) submit this joint statement in response to the advance notice of proposed rulemaking published in the March 27, 2009 *Federal Register* concerning the U.S. Coast Guard's preliminary thoughts on potential requirements for owners and operators of certain vessels and facilities regulated under the Maritime Transportation Security Act (MTSA) to utilize electronic readers designed to work with Transportation Worker Identification Card (TWIC) readers.

The NGFA, established in 1896, consists of more than 1,000 grain elevators, feed and feed ingredient manufacturers, grain and oilseed processors, grain exporters, biofuels manufacturers, livestock and poultry integrators and other grain-related companies that operate about 6,000 facilities that handle more than 70 percent of all U.S. grains and oilseeds. The NGFA also consists of 35 affiliated state and regional grain and feed associations, as well as two international affiliated associations. The NGFA also has strategic alliances with the Pet Food Institute and the Grain Elevator and Processing Society, and has a joint operating and services agreement with NAEGA.

NAEGA, established in 1912, is a not-for-profit trade association comprised of private and publicly owned companies and farmer-owned cooperatives involved in and providing services to the bulk grain and oilseed exporting industry. NAEGA-member companies ship practically all of the bulk grains and oilseeds, and their primary products, exported each year from the United States. The Association's mission is to promote and sustain the development of commercial export of grain and oilseed trade from the United States. NAEGA acts to accomplish this mission from offices in Washington D.C., and in markets throughout the world.

The NGFA and NAEGA commend and support the U.S. Coast Guard's decision to utilize risk-assessment and risk-management principles in its regulatory concepts concerning whether to require TWIC card readers and associated recordkeeping and other requirements at MTSA-regulated facilities and vessels. We conceptually support the U.S. Coast Guard creating a classification system that differentiates facilities and vessels based upon risk and applies distinctly different TWIC card requirements on such a basis. We also believe that the agency has identified the three relevant factors that should be used to determine risk and upon which to apply risk-management principles. Those three factors are: 1) the maximum consequence that could result from a terrorist attack; 2) the criticality of the facility or vessel type to the nation's health, economy and national security, although we would suggest adding to this specific factor the concepts of redundancy and *resiliency* (e.g., *the availability of similar facilities within a particular industry sector capable of temporarily compensating for an incapacitated facility without demonstrably harming the nation's health, economy or national security, such as exists within the agricultural sector*); and 3) the degree to which TWIC cards and TWIC card readers would be effective in reducing such risk.

Further, we believe there is ample evidence to support classifying as low risk – as the agency preliminarily designates as Group C – MTSA-regulated export and barge-loading grain- and oilseed-handling facilities, as well as vessels serving such facilities. These facilities, and the vessels serving them, handle and transport non-hazardous cargoes, and should not be required to obtain, install or have access to TWIC card readers. Therefore, we urge the U.S. Coast Guard to expressly exempt such low-risk facilities and vessels from the requirement to buy or have access to a card reader in any subsequent proposed rule issued by the agency. Consistent with this recommendation, the NGFA and NAEGA would oppose requiring the use of TWIC card readers at low-risk facilities or vessels (contrary to the suggestion found on page 13362 of the *Federal Register* notice).

The NGFA and NAEGA also concur that at facilities and vessels in the lowest risk group, the principal value of TWIC cards is to serve as a visual identity badge only, at all maritime security (MARSEC) levels. We understand, and do not disagree, with the U.S. Coast Guard's concept of subjecting TWIC cards to electronic verification during inspections and spot checks as currently required in the TWIC final rule. We do believe that in any subsequently proposed rule, the U.S. Coast Guard should clarify that this electronic verification (which at a minimum would require a hand-held TWIC card reader) would be done by its personnel, and would not be a responsibility or obligation of facilities or vessels in the lowest risk category that are expressly exempted from the requirement to obtain and install TWIC card readers.

In addition, we support the U.S. Coast Guard's view that recordkeeping associated with the use of TWIC card readers should not be required for facilities or vessels in the lowest risk category.

However, the NGFA and NAEGA have two major concerns with the regulatory approach outlined for low-risk facilities by the U.S. Coast Guard in its advance notice of proposed rulemaking:

1. First, and foremost, the NGFA and NAEGA strongly urge the U.S. Coast Guard to reverse its current thinking with respect to requiring facilities in the lowest risk group to visually authenticate the security features and validate the expiration date on TWIC cards possessed by employees for each entry into secure areas of the facility under all three MARSEC levels. For such low-risk facilities, we believe such a requirement would be onerous, unnecessary and costly, requiring the stationing of facility security personnel on a continuous basis to visually check TWIC cards each and every time a TWIC-card-carrying employee enters a secure area. We believe such a requirement would represent regulatory overkill, offering little commensurate security benefit, making it inconsistent with the risk-based principles articulated elsewhere in the advance notice of proposed rulemaking.
2. Second, with respect to the U.S. Coast Guard's consideration of allowing facilities or vessels at each risk level to register with the agency a specific number of persons to be granted recurring unescorted access under a concept it calls "privilege-granting," the NGFA and NAEGA offer the following comments:
 - First, we believe that limiting to 14 the number of persons at facilities or vessels in each risk group is too low. Consistent with the risk-based principles espoused in the advance notice of proposed rulemaking, we suggest that this number should be increased, particularly for low-risk facilities.
 - Second, as an alternative to requiring that all TWIC card holders employed by low-risk land-based facilities have their TWIC cards authenticated and validated at each entry into a secure area (which we recommend be eliminated in item #1 above), we recommend that the U.S. Coast Guard consider allowing TWIC card holders to also qualify to be registered for "recurring unescorted access" at such facilities. Under this concept, TWIC card holders who are not part of the facility's staff either would need to be escorted or have their TWIC cards authenticated and the expiration date validated prior to entering designated secure areas at the facility.

The NGFA and NAEGA also offer these additional comments:

- Any forthcoming proposed rule requiring amendments to existing facility security plans or Alternative Security Plans that include TWIC card reader requirements and protocols should be delayed until the next scheduled substantive modification of the security plan. This would avoid necessitating

a massive number of security plan modifications right after the five-year plan letters have been received.

- While we do not object to the flexibility of allowing vessel owners to seek to use TWIC card readers, if available, at MTSA-regulated facilities, we urge the U.S. Coast Guard to expressly state in any forthcoming proposed rule that there is no requirement nor obligation for a facility to grant access to such TWIC card readers, nor to obtain one if the facility is not required to do so. Specifically, no TWIC card readers should be required for low-risk or other facilities for the purpose of validating vessel TWIC cards.
- When promulgating proposed regulations, we recommend that flexibility be provided for facilities to handle higher-risk cargoes or vessels in unusual circumstances. Such regulations could set a time limit for providing advance notice that would not require amending the facility security plan. For special situations that do not allow the advance-notice time limit to be met, the regulations could require that the facility submit a notification letter that includes a listing of the proposed security measures that would be implemented for the duration. For these emergency situations, the notification letter or message essentially would be a request for security assistance from the Captain of the Port.
- We recommend that TSA “Hot List” checks be done by Internet query, not by downloading a list every seven days. Any requirement to check a “Hot List” should be delayed until such time as reasonable technology is available to permit such a list to be accessible.

The NGFA and NAEGA appreciate this opportunity to provide our collective views to the U.S. Coast Guard on this important matter, and would be pleased to respond to any questions the agency may have.

Sincerely,

Handwritten signatures of Kendell W. Keith and Gary C. Martin. The signature of Kendell W. Keith is on the left, and the signature of Gary C. Martin is on the right.

Kendell W. Keith
President
National Grain and Feed Association

Gary C. Martin
President and Chief Executive Officer
North American Export Grain Association