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National Grain and Feed Association



North American Export Grain Association

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U.S. Department of Transportation
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RE: TSA Docket Number TSA-2006-24191;
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U.S. DEPARTMENT OF TRANSPORTATION

The National Grain and Feed Association (NGFA) and North American Export Grain Association (NAEGA) appreciate the opportunity to offer these preliminary comments on the proposals to establish and implement a Transportation Worker Identification Credential (TWIC) program in the maritime sector, published in the May 22, 2006 *Federal Register* by the U.S. Homeland Security Department's Transportation Security Administration (TSA) and the U.S. Coast Guard (USCG).

The NGFA, established in 1896, consists of 900 member companies from all sectors of the grain, feed, processing and exporting business that operate about 5,000 facilities that handle more than two-thirds of all U.S. grains and oilseeds. The NGFA's membership includes country, terminal and export elevators; feed manufacturers; cash grain and feed merchants; end users of grain and grain products, including processors, flour millers, and livestock and poultry integrators; commodity futures brokers and commission merchants; and allied industries.

NAEGA, established in 1912, is 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 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 its office in Washington D.C., and in markets throughout the world.

NGFA and NAEGA members are directly and substantially affected by – and have a direct stake in – these proposed rules and proceedings, as well as any actions taken concerning mariner credentials and worker identity security that would result from creation of a TWIC program.

NAEGA and the NGFA on June 29, 2006 jointly submitted a request that TSA and the USCG extend the comment period by an additional 90 days on the above-referenced dockets to provide sufficient time for affected parties to provide additional substantive comments on this complex and far-reaching proposal. Given the lack of collaboration between government and industry in the development of the proposed rule, and given our grave concerns over its appropriateness for our industry sector, we believe such a comment extension is imperative.

However, given the gravity of this proposal, we are providing these preliminary comments focusing on the major concerns our associations have concerning the TWIC proposal.

At the outset, it is important to stress the commitment of NAEGA and the NGFA to enhancing the security of grain-handling, feed manufacturing and grain processing facilities as a critical infrastructure. The NGFA and NAEGA have demonstrated this commitment in tangible and numerous ways:

- First, NAEGA worked cooperatively with USCG to develop and implement a comprehensive Alternative Security Program (ASP) to meet maritime security requirements. Through its strategic alliance with NAEGA, all NGFA members with export grain operations covered by the requirement to develop and implement maritime security plans were eligible to participate in the NAEGA ASP. It is our understanding that all U.S. export grain elevators that would be affected by the TWIC proposal either are participating in the NAEGA ASP or a variation thereof, and have implemented approved facility security plans.
- Second, the NGFA and NAEGA worked jointly with the U.S. Department of Homeland Security, U.S. Department of Agriculture, USCG, U.S. Food and Drug Administration, and the FBI to conduct a facility vulnerability assessment of the export grain industry under the joint Strategic Partnership Program Agroterrorism (SPPA) initiative on Dec. 12-14, 2005. It was the second such SPPA project conducted. This intense exercise, utilizing the CARVER+Shock vulnerability assessment tool, demonstrated that facility-security and operational procedures implemented at U.S. export grain elevators make them a relatively low risk for agroterrorism incidents. While the report emanating from this risk-assessment is a classified security document, it is available for review by TSA and USCG personnel with appropriate security clearance.
- Third, the NGFA has issued facility security guidance for the U.S. grain, feed and processing industry that has been distributed widely to members and non-members alike.
- Fourth, the NGFA was active in the formation of – and is an active participant in – the DHS-initiated Food and Agriculture Sector Coordinating Council (FASCC), which examines joint efforts to prevent agroterrorism-related

incidents and to enhance cooperative efforts. The NGFA serves on four of the FASCC's seven subcouncils.

These and other efforts are indicative of our respective organizations' dedication and commitment to agroterrorism prevention and maintaining a secure maritime and port infrastructure. As such, we are receptive to practical and cost-effective facility security safeguards that address real, rather than theoretical or perceived, risks. But we also share the desire among all those involved in maritime commerce that regulatory requirements be commensurate with risk and not unduly impede commerce or increase costs unnecessarily. Unfortunately, our preliminary assessment is that judging it by that metric, the proposed TWIC requirements would have limited, if any, value in contributing to facility or port security, and would add cumbersome requirements and costs that would undermine the competitiveness of the U.S. export grain sector in global markets. Further, we are concerned that the proposal in many respects contains unfunded mandates and does not provide for an appropriate partnership between government and industry.

For instance:

- The TWIC proposal fails to differentiate between different industry sectors, geographical areas or business sizes, and fails to calculate potential risk of terrorist incidents at various ports.
- The TWIC proposal is sufficiently broad in scope to apply to all grain export facility employees with unescorted access to secure areas of any USCG-regulated facility operating at U.S. ports that currently are required to implement maritime-related facility security plans or alternative security programs like the one developed by NAEGA. This would subject to the TWIC requirement export grain elevator personnel, truck drivers and rail carriers delivering inbound grain, and others unrelated to vessel personnel – an overly expansive coverage that is unrelated to the actual risk posed by these personnel to maritime security. These costs have not been adequately accounted for in the proposed rule.
- The TWIC proposal would require employers to incur costs, travel time and other expenses necessary to obtain TWIC cards for personnel. This would impose additional hardships on personnel who pose no security threat, making it more difficult for companies to hire and retain employees.
- The TWIC proposal also would subject employers to the cost of purchasing TWIC card readers, at an approximate cost of \$3,200 to \$5,000 each – just for hardware and installation costs. If opting to use escorts in lieu of TWIC cards, employers would be responsible for the additional cost of such escorts.
- The TWIC proposal contains extensive recordkeeping requirements for employers of all persons granted access to designated secure areas of ports and facilities at ports, regardless of whether the person was escorted or had a

TWIC card. For those escorted, the proposal would require the firm to record each date the individual is escorted and the name of the escort.

The aforementioned issues of concern are not intended to be comprehensive. But they illustrate just a few of the major problems posed under this proposal.

NAEGA and the NGFA have not had sufficient time to definitively determine the cost of the TWIC proposal for the grain export industry, which contributes upwards of \$20 billion annually to the U.S. economy. However, we do have sufficient information to estimate that direct costs to bulk grain export elevators alone could exceed \$5 million annually. When added to the cost of the transportation industry that supplies products to U.S. export grain facilities, the cost estimate expands several fold. Under the highly prescriptive TWIC proposal, these unfunded mandates must be absorbed or passed on; in the grain export industry, the costs would be translated into lower prices for U.S. farmers, since those costs cannot be passed on to foreign buyers in the highly competitive international marketplace in which U.S. grain exports operate.

NAEGA and the NGFA wish to recommend an alternative approach for providing optimal investment in, and operation of, a secure maritime infrastructure.

First, to provide for an optimal investment in, and operation of, a secure maritime infrastructure, NGFA and NAEGA suggest facility- or industry-specific programs can and should be developed to meet the agencies' goals. Such facility or industry programs could accommodate modifications to proposed transportation worker credentialing requirements.

For example the bulk grain export industry is served by a wide variety of facilities, small businesses included, some of which operate only on a seasonal basis. In all cases it has been established that these operations represent a very limited security risk. In addition, as noted previously, the industry in cooperation with DHS, USCG, USDA and FDA have implemented controls and reporting that may be sufficient in many respects to meet the objectives of the TWIC initiative. Facility vulnerability risk assessments have been conducted of the export grain sector under both USCG and DHS-FDA-USDA-FBI applications (as noted in the previous reference to the SPPA initiative and NAEGA ASP with the USCG).

Second it follows that the term "secure area" be changed to "Restricted Access Areas" as defined by 33 CFR Part 101.105. This change would mean that access control will not be applied to the entire area at an export grain facility.

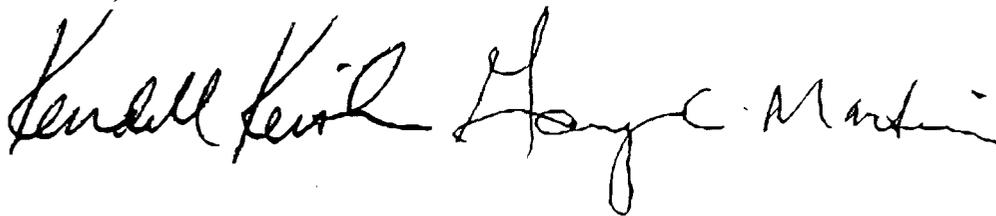
Ultimately, we believe TSA and USCG may find that compliance of the U.S. export grain industry with existing regulatory requirements – including USCG maritime facility security requirements, FDA's bioterrorism regulations – combined with joint government-industry initiatives like the SPPA – are sufficient to modify part or all of the proposed TWIC requirements for personnel at bulk grain export facilities. NAEGA and the NGFA offer to work in partnership with TSA and USCG to examine this potential further, in the same spirit with which we have worked with USCG, DHS, FDA, USDA, FBI and other federal agencies on previous facility-security initiatives. As part of this

process, we suggest 33 CFR Part 105.255 – regulations implemented by the USCG that implement the Maritime Transportation Security Act – be reviewed to examine how they may be used to address the same security concerns.

Finally, and most importantly, we believe it is imperative that TSA and USCG not develop an interim final rule on the TWIC initiative until these alternative options are fully evaluated in partnership with industry.

We appreciate your consideration of our comments.

Sincerely,



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Gary C. Martin
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