

July 23, 2018

Admiral Karl L. Schultz  
U.S. Coast Guard, Commandant  
U.S. Department of Homeland Security

Via Electronic Filing at <http://www.regulations.gov>

**RE: Docket No. USCG-2017-0711; TWIC - Reader Requirements; Delay of Effective Date**

Dear Admiral Schultz:

The National Association of Chemical Distributors (NACD) appreciates the opportunity to comment on the U.S. Coast Guard notice of proposed rulemaking to delay the effective date for certain facilities affected by the Transportation Worker Identification Credential (TWIC) reader requirements.

#### About NACD

NACD is an international association of nearly 450 chemical distributors and their supply-chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 93 percent of the industry's gross revenue. NACD members, operating in all 50 states through more than 2,800 facilities, are responsible for nearly 130,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational and family owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

While security has always been an inherent element of Responsible Distribution, following the terrorist attacks of September 11, 2001, distributors were the first sector of the chemical industry to mandate security measures for its members. NACD continues to assess Responsible Distribution's security measures against current threats. In 2013, NACD added a specific Security Code to Responsible Distribution that consolidated many prior requirements and enhanced others. These security requirements apply to all NACD members, including those who do not have facilities subject to the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) or Maritime Transportation Security Act (MTSA) regulations. Over the past 16 years, NACD members – both DHS regulated and non-regulated companies – have made substantial investments to make their facilities more secure.

### Effective Date Delay Should Apply to All Facilities

While NACD appreciates the Coast Guard's willingness to delay the TWIC reader rule effective date for some facilities, the association recommends the delay apply to *all* facilities covered by the rule. A full delay is warranted because of the substantial differences between the April 2013 proposed TWIC Reader Rule and the August 2016 final rule, continuing confusion surrounding the rule's requirements and potential benefits, and an inadequate supply of reader machines.

The TWIC reader rule published by the Coast Guard on August 23, 2016, substantially expanded the scope of areas subject to the reader requirements beyond what was included in the April 15, 2013, proposed rule. Regulated facilities did not have the opportunity to comment on this expanded scope, and the Coast Guard did not demonstrate the security benefits that would result from the expansion. In the June 22, 2018, proposed partial delay rule, the agency itself acknowledges there is "room for improvement within certain aspects of" the methodology used in deciding to capture additional areas under the requirements.

The regulated industry raised concerns and questions about the scope expansion soon after the Coast Guard published the final TWIC reader rule in August 2016. Several aspects of the rule are confusing. For example, the methodology defining the risk categories does not include lay-berth or other cargoes contained or not transferred. This is a complex situation that could impact many other facilities where a myriad of scenarios occur. Possible examples include a vessel containing certain dangerous cargoes (CDCs) that moors at a facility where no cargo is offloaded or a vessel offloading cargo other than the particular CDCs on board.

Because of confusion surrounding the rule and the lack of clarity on the scope expansion, several industry groups filed a petition for rulemaking in May 2017 requesting the Coast Guard to address these concerns and take corrective action. Despite early indications that the agency would initiate a rulemaking to extend the compliance date for all affected facilities, this did not occur; and the deadline is now just one month away.

In addition, in December 2016, Congress passed and the president signed legislation requiring DHS to conduct an assessment of the TWIC reader program. This legislation was in response to a Government Accountability Office report questioning the TWIC reader program's effectiveness in enhancing security. DHS has not yet completed its assessment of the TWIC reader program's effectiveness.

Another concern is a lack of TWIC reader capacity as the regulated community and equipment manufacturers had reason to believe the compliance deadline would be extended and the scope of the rule possibly narrowed. To date, many facilities have placed orders for their readers, but the equipment manufacturers have delayed production until there is more certainty on the rule.

### Conclusion

NACD urges the Coast Guard to promptly delay the TWIC reader rule effective date for all facilities until the DHS study on the program's effectiveness is complete and concerns about the methodology used and universe of facilities subject to the requirement are resolved. Once a resolution is reached on these issues, NACD urges the Coast Guard to provide additional time to ensure there is enough TWIC reader capacity available for all facilities to

meet the requirements. Finally, with the August 23, 2018, compliance date just one month away, NACD urges the Coast Guard to act quickly on finalizing the effective date delay.

Thank you for the opportunity to comment. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer C. Gibson". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer C. Gibson  
Vice President, Regulatory Affairs