

## *DHS Releases “Chemical Facility Anti-Terrorism Standards” Final Appendix A in Pre-Publication Version*

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On November 2, 2007, the Department of Homeland Security (“DHS”) issued the final version of Appendix A to its Chemical Facility Anti-Terrorism Standards (“CFATS”), which will impose compliance obligations on thousands of business facilities throughout the U.S. CFATS requires every U.S. facility to report to DHS if the facility “possesses,” e.g., manufactures, uses, stores, or distributes certain amounts of specified chemicals. Appendix A lists the regulated chemicals and the Screening Threshold Quantity (“STQ”) which triggers the reporting requirement. At this time, final Appendix A has only been issued in a “pre-publication” version, and it is not legally effective until it is published in the Federal Register. However, DHS announced that the pre-publication version is the final version that will be published in the Federal Register at an unspecified future date. As soon as Appendix A is published in the Federal Register, facilities that possess quantities over the STQ will have only 60 days to report required information

to DHS using the agency’s online assessment tool known as Top-Screen.

Although the CFATS final rule became effective on June 8, 2007, Appendix A was published only in draft form at that time. The pre-publication copy that was issued is significantly different from the draft Appendix A. Note that due to these differences, Top-Screen is currently off-line and unavailable while it is being updated to align with the new Appendix A.

The draft Appendix A provided for just one STQ per chemical of interest (“COI”) and also included STQs of “any amount.” Final Appendix A has created multiple STQs for many chemicals, depending on the security risk associated with each COI. The identified security issues include risk of: (a) release; (b) theft/diversion; and (c) sabotage/contamination. Each security issue has distinct calculation and mixture rules. For example, to calculate the STQ for theft/diversion, only COIs in “transportation packaging” are counted. If any one chemical

exceeds the STQ for any one of the applicable security risk categories, Top-Screen must be completed.

In addition to revising Appendix A, DHS amended the text of the CFATS rule itself. For example, the text of the CFATS rule has been changed to exclude several categories of chemicals and chemical use, including chemicals used in or part of:

- Structural components
- Routine janitorial maintenance
- Food, drugs, cosmetics, or other personal items used by employees
- Process or non-contact cooling water drawn from municipal sources
- Air—either compressed or part of combustion
- Articles, defined by 40 C.F.R. Section 68.3 to mean manufactured items that are formed to a specific shape or design during manufacture, that have end-use functions dependent in whole or in part upon the shape or design during

end use, and that do not release or otherwise result in exposure to a regulated substance under normal conditions of processing and use

- Solid Waste (including hazardous waste) as regulated by the Resource Conservation and Recovery Act, except for discarded commercial chemical products, off-specification species, container residues, and spill-residues thereof (per 40 C.F.R. Section 261.33)

DHS also attempted to address one of the main concerns raised by the regulated community in response to draft Appendix A – the issue of how to account for chemicals in mixtures. In the final Appendix A, COIs in mixtures (in most cases) are only included if the COI exceeds a specified concentration. Furthermore, with some significant exceptions, only the weight of the actual COI in the mixture will be counted toward the COI (e.g., if a mixture has 5% of a COI in 1000 pounds of a mixture, then 50 lbs of that COI is counted toward the STQ). Exceptions to this methodology include: (a) mixtures that have a NFPA

flammability rating of 4; (b) mixtures that include Schedule 1 chemicals that may be used for chemical weapons; and (c) mixtures that include certain explosives. The latter two of these exceptions are noted in Appendix A by either “CUM 100g” or “ACG” in the minimum concentration column.

Another major public criticism to draft Appendix A had been DHS's reliance on COIs in “any amount” as the STQ. In the final Appendix A, DHS has a numerical STQ for every chemical and no longer relies on “any amount” as a STQ. Note, however, that with respect to the sabotage/contamination category of security risk, any COI has met its STQ if (1) a facility ships it and (2) the COI must be placarded under Department of Transportation regulations.

Final Appendix A also has special rules with respect to propane, chlorine, and ammonium nitrate. These COIs remain on the list, but in larger quantities than in the draft Appendix A. Urea and acetone are no longer on Appendix A in any quantity, and hydrogen peroxide is still a COI, but at a higher

concentration than in draft Appendix A.

All businesses need to evaluate CFATS carefully, particularly now that Appendix A is final. CFATS imposes obligations to track chemical inventory; register with DHS electronically; analyze and report to DHS a wide-range of chemical, environmental, security, and financial information; and evaluate, develop and implement security processes and confidentiality programs. Once officially published, businesses will have only 60 days, a brief amount of time, to complete multiple compliance activities imposed by CFATS and final Appendix A. Businesses are well-advised to use the unspecified time before Appendix A is published in the Federal Register to prepare for all necessary compliance activities.

Final (pre-publication) Appendix A can be found at [www.dhs.gov/xlibrary/assets/chemsec\\_appendix\\_a-chemicalofinterestlist.pdf](http://www.dhs.gov/xlibrary/assets/chemsec_appendix_a-chemicalofinterestlist.pdf).

The revised CFATS rule text can be found at [www.dhs.gov/xlibrary/assets/chemsec\\_appendixafinal\\_rule.pdf](http://www.dhs.gov/xlibrary/assets/chemsec_appendixafinal_rule.pdf).

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