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U.S. Department of Homeland Security  
National Protection and Programs Directorate  
Office of Infrastructure Protection  
Infrastructure Security Compliance Division  
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Arlington, VA 20528-0610

Via Electronic Submission: <http://regulations.gov>

**Re: Docket No. DHS-2014-0016, Chemical Facility Anti-Terrorism Standards (CFATS)  
Appendix A**

The National Association of Chemical Distributors (NACD) submits the following comments in response to the notice of public meeting published in the October 16, 2015, *Federal Register* issue regarding **Docket Number DHS-2014-0016, Chemical Facility Anti-Terrorism Standards (CFATS) Appendix A.**

#### Introduction

NACD is an international association of nearly 440 chemical distributors and supply-chain partners. NACD's membership comprises businesses representing in total more than 85% of the chemical distribution capacity in the nation and generating 90% of the industry's gross revenue. NACD members, operating in all 50 states through nearly 1,800 facilities, are responsible for more than 155,000 direct and indirect jobs. NACD members are predominantly small regional businesses, many of which are multi-generational and family-owned. The typical chemical distributor has 26 employees and operates under an extremely low margin.

Chemical distributors play a unique and integral role in the supply chain. Manufacturers increasingly rely on chemical distributors to market and sell their products in a variety of packaging sizes to an exceptionally varied customer base. Every seven seconds, an NACD member company moves chemical products to and from their facility. This constant movement of chemicals results in chemicals being added and removed frequently from inventory. Unlike the regular changes in inventory, NACD members' security measures remain the same.

NACD members meet the highest standards in safety and performance through mandatory participation in Responsible Distribution®, NACD's third-party-verified environmental, health, safety, and security (EHS&S) program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous improvement in every phase of handling, transportation, storage, and disposal of chemical products. 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 February 2013, NACD added a specific Security Code that

consolidated many prior requirements and enhanced others. These requirements apply to all NACD members, including those who do not have facilities covered under the CFATS program.

#### Appendix A List of Chemicals of Interest - Topics Raised by DHS

NACD commends the Department of Homeland Security (DHS) for developing a comprehensive, well-thought-out list of chemicals of interest (COI) to include in CFATS Appendix A. As set forth in the November 20, 2007, final rule<sup>1</sup>, DHS carefully considered other programs such as the U.S. Environmental Protection Agency's Risk Management Program (RMP) and the U.S. Department of Commerce's Chemical Weapons Convention regulations and tailored these programs' lists to meet the security needs of CFATS. NACD also appreciates the fact that DHS fully considered comments submitted by NACD and other interested parties and made substantial changes to the original proposal based on this input.

Because DHS took such a thorough approach to develop Appendix A initially, the list has survived the eight-year test of time and requires no major changes to meet the security needs of CFATS.

NACD recommends that no additional chemicals be included in the Appendix A list. In fact, a few chemicals that may be flammable or reactive but are not easily weaponizable could be considered for removal from the list.

Likewise, NACD recommends no changes to the COI screening threshold quantities (STQs). NACD appreciates the fact DHS adopted the recommendation of NACD and others in 2007 to eliminate the "any amount" threshold and replace it with specific quantities for each chemical, based on security issue. This provides needed clarity and a workable approach to the regulated community in understanding CFATS reporting obligations.

The Appendix A concentration and mixtures rules are generally workable. Rather than taking a flawed one-size-fits-all approach, the current rules are tailored to the unique security issues presented by each chemical on the list. The only recommendation NACD has in this area is for DHS to consider replacing the "A Commercial Grade" (ACG) description with specific concentrations and/or to note physical matter (i.e. solid Potassium Permanganate vs liquid). The ACG description causes some uncertainty, especially when dealing with dilutions or compounds. If DHS makes this change, the agency must go through a formal rulemaking with notice and comment to collect data and public input on the proposed specific concentrations.

NACD believes no changes are needed to the format of the Appendix A list of COI, which includes the chemical names, synonyms, CAS#, security issues, and minimum concentrations and STQs for each chemical and security issue. These elements provide facility owners and operators with the information they need to complete their Top Screens.

Additionally, NACD recommends no changes to the classification of COI within different security issues. Changing the COI classifications at this stage could result in numerous facilities needing to rework their site security plans (SSP)/alternative security programs (ASP). The case has not been made regarding how any benefit of these changes would be worth the effort of reworking numerous SSPs.

Regarding the criteria for counting rules to include clarification on how to determine if a COI is in transportation, NACD believes it would be beneficial for DHS to allow for a "pass-

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<sup>1</sup> Department of Homeland Security, 6 CFR Part 27, Appendix to Chemical Facility Anti-Terrorism Standards; Final Rule, *Federal Register*, November 20, 2007

through” situation on the Top Screen or Security Vulnerability Assessment (SVA). A pass-through would be defined as a COI coming in one truck and leaving on another the same day. The product would be considered under “transportation” the entire time by other regulatory agencies, but DHS currently does not take these non-storage situations into consideration. The “receipt” in a regulated facility for book-keeping purposes is currently enough to trigger a Top Screen. Otherwise, the current rules are consistent with EPA’s definition of transportation regarding truck terminals and rail facilities. Further, chemicals in transportation are regulated under the U.S. Department of Transportation and/or Transportation Security Administration security regulations. Changing these criteria beyond allowing for pass-through situations could lead to regulatory confusion and duplication.

#### Appendix A List of Chemicals of Interest - Additional NACD Comments

**Transitory Inventory** - An issue involving Appendix A and Top Screen submissions that has caused substantial challenges for chemical distributors is that of transitory inventory. It is the nature of the chemical distribution business for products to move in and out of facilities constantly, depending on customers’ needs. NACD strongly recommends that if a facility makes a minor change that will not alter its security posture or tiering there should be a simple way for that facility to inform DHS rather than going through the entire Top Screen, SVA, and SSP resubmission process. For example, if a facility has one theft and diversion COI on site, acquires a similar theft and diversion COI, and stores the new COI in the same area as the original COI with the appropriate security measures in place, that facility should be able to inform DHS of this addition through a simple letter or online update. There is precedent for this in the U.S. Drug Enforcement Administration Chemical Control Regulations.<sup>2</sup> On the other hand, if the same facility adds a release COI, which would likely substantially change that site’s security posture, it is reasonable for that site to submit a new Top Screen, SVA, and SSP/ASP.

Likewise, the redetermination process is far too difficult, particularly if a company is removing a COI from the site. Rather than requiring such a company to go through the entire Top Screen process, DHS should allow any facility that removes a COI to submit a simple one-page document stating that the chemical is no longer on site.

**Top Screen Release Scenario** - The Top Screen requires facilities to “Enter the total on-site quantity of the release toxic COI in pounds. Enter the quantity of the release toxic COI in the Area of Highest Quantity (AHQ) in pounds. Enter the distance of concern reported by RMP\*Comp for each AHQ in miles.” This reported “distance” far exceeds that of the release amount and distance calculated under the EPA’s RMP process. This would appear to have certain facilities “tiered” at a higher level than the amount of risk actually warrants.

**Rulemaking for Appendix A Changes** - NACD commends DHS for seeking public comment and committing to make any changes to Appendix A only through full rulemaking with notice and comment. Because changes to Appendix A could have a major impact on chemical facility operations, full rulemaking is the appropriate method for considering these changes. The October 16 *Federal Register* notice regarding the October 27 public meeting and invitation to submit written comments only provided a list of topics rather than actual proposals. This format has made it challenging for the regulated community to provide meaningful comment. If DHS decides to make changes to Appendix A in any of the areas listed in the October 16 notice, NACD strongly urges the agency to present specific potential changes clearly in a

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<sup>2</sup> DEA Chemical Handler’s Manual, 2013 Edition, pp. 17-18, Modification of Registration

separate proposed rule that includes DHS's rationale for proposing them and provides interested parties with the opportunity to comment on each specific proposal. For example, if DHS seeks to add new chemicals to the Appendix A list, NACD urges DHS to list each chemical and the reason for its inclusion and allow the public adequate time to provide data and comment on why that particular chemical should or should not be added to the list.

#### Conclusion

Because DHS so diligently developed the Appendix A list by considering other regulations and security programs and by soliciting and adopting practical suggestions from impacted parties, it has proven to be an appropriate and workable list over the past eight years. DHS and the regulated community have made tremendous progress in improving the security posture of chemical facilities in recent years. Major changes in any of the topic areas presented in the October 16 *Federal Register* notice could result in facilities being required to make substantial changes to their SSPs and ASPs, which would set back the progress made to date. Therefore, NACD urges DHS to make changes to Appendix A only after presenting specific proposals for which compelling rationale is provided and after giving interested parties the opportunity to comment on their potential impacts.

Thank you for the opportunity to provide these comments. If you have questions or require additional information, please do not hesitate to contact me.

Sincerely,



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