

Food Industry Environmental Council ● 2000 Corporate Ridge, Ste. 1000 ● McLean, VA 22102

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May 9, 2007

IP/CSCD/  
Mr. Dennis Deziel  
Mail Stop 8100  
Department of Homeland Security  
Washington, D.C. 20528-8100

**RE: Department of Homeland Security Interim Final Rule: Chemical Facility Anti-Terrorism Standards; DHS-2006-0073**

Dear Mr. Deziel:

The Food Industry Environmental Council (FIEC) is pleased to submit these comments on Appendix A of the Department of Homeland Security (DHS)'s interim final rule on chemical security. See 72 Fed. Reg. 17688 (April 9, 2007). FIEC is a coalition of over fifty national food trade associations and companies that together represent more than 15,000 facilities across the country, employing approximately 1.5 million people. FIEC members represent a large number of facilities nationwide that utilize anhydrous ammonia in their refrigeration systems. Because anhydrous ammonia is listed as a chemical of interest in the proposed Appendix A to the interim final rule, and because other aspects of Appendix A and the rule are of concern to FIEC members, FIEC has a strong continuing interest in DHS's chemical security rulemaking.

**I. The Threshold Amounts in Appendix A are Too Low and Will Incorporate an Excessive Number of Facilities Into the Screening Process**

FIEC strongly believes that Appendix A, the DHS Chemicals of Interest, is overly inclusive in terms of both the chemicals listed and the threshold quantities for screening. As a result, many more facilities than DHS anticipates will be pulled into the screening process, and FIEC questions whether DHS has the resources to handle this result. FIEC is particularly concerned about the screening threshold quantity (STQ) for ammonia, and about the use of "any amount" as a STQ for many chemicals. In addition, for the food industry in particular, FIEC believes that facilities should be allowed to concentrate their efforts on the important work they are already doing to protect the nation's food supply.

**A. The Threshold Quantity for Ammonia is Too Low**

DHS has proposed a STQ for anhydrous ammonia of 7,500 pounds. FIEC strongly believes that this threshold is far too low given the insignificant potential terrorist threat posed by the presence of anhydrous ammonia, particularly in refrigeration systems. As FIEC detailed in its earlier comments on the advance notice of rulemaking, anhydrous ammonia in refrigeration systems does not present the type of security risk that Congress sought to address in enacting chemical security legislation. First, to the best of FIEC's knowledge, there have been no offsite releases of anhydrous ammonia from such systems resulting in fatalities or other significant health, security or economic consequences of national significance due to exposure to ammonia. Furthermore, the anhydrous ammonia at food facilities such as those operated by FIEC members is typically located in tanks and piping covering a wide area; it is not present in sufficient quantity in one place so as to pose a threat through theft, sabotage or other misuse by terrorists. Moreover, even if a portion of the ammonia in a refrigeration system were to be released, the ammonia would dissipate into the air rather than causing the types of consequences that the chemical security rules are meant to address. For all of these reasons, FIEC believes that the threat posed by anhydrous ammonia in refrigeration systems is minimal, and urges DHS to either exempt anhydrous ammonia in refrigeration systems from coverage of the rule, or significantly increase the STQ in Appendix A.

**B. The "Any Amount" Thresholds are Overly Inclusive**

Appendix A lists "any amount" as the STQ for a number of chemicals. FIEC is deeply concerned about the broadly inclusive impact of these thresholds, and the resulting strain on limited DHS resources. FIEC also questions whether including "any amount" of certain chemicals accurately reflects Congress's intent to focus the chemical security program on high-risk facilities. For example, one chemical with a STQ of "any amount" is sulfur dioxide, which is used by many food industry facilities to process dried fruit, and which is likely to be present in residual amounts following such processing. Another example is methyl bromide, which is used as a fumigant in food plants.

Under the proposed "any amount" thresholds, facilities that use very limited amounts of these chemicals will be pulled into the screening process. FIEC believes that the number of facilities covered under these proposed STQs is extremely large and could well overwhelm DHS's risk screening process. FIEC urges DHS to eliminate the use of "any amount" thresholds for chemicals that are routinely used by the food industry and to establish some type of *de minimis* level that must be present in order for the chemical security rules to apply. In setting the *de minimis* levels, FIEC recommends that DHS analyze the specific chemical amounts that represent a threat to security, and that DHS consider existing thresholds in other safety and security regulations, such as OSHA's process safety management rule and EPA's risk management program. In addition, DHS should provide the basis for the thresholds as part of the final rule implementing Appendix A.

FIEC urges DHS to undertake a thorough and careful review of the list of chemicals and thresholds in Appendix A. Such a review should aim to ensure that laboratory reagents and cleaning chemicals such as those referenced above have specific numerical thresholds established. This review also can help to address inconsistencies in Appendix A, such as the duplicate entry for phosphorous trichloride, which is listed once with an “any amount” STQ and once with a 2,000 pound STQ.

### **C. The Food Industry Should Focus on Food Defense**

As noted above, FIEC is concerned that Appendix A’s extremely low coverage threshold for anhydrous ammonia and the “any amount” thresholds for many chemicals will result in a great number of facilities being covered by the chemical security rule. Consequently, FIEC is concerned that this overly expansive coverage will compel food industry facilities to focus on chemical security compliance efforts when the proper focus of the industry’s efforts should continue to be food defense. FIEC’s comments on the advance notice of rulemaking detailed the food industry’s numerous efforts to protect the safety of the nation’s food supply, and FIEC continues to believe that potential threats to the food supply, not chemical security, should be the major terrorism concern of the food industry.

## **II. DHS Must Clarify the Treatment of Mixtures**

Several of the chemicals listed in Appendix A are commonly found in mixtures, and many food companies use mixtures in their processes. For instance, peracetic acid and nitric acid are typical components of cleaning solutions; however, these components are present at low concentrations that would not appear to pose a chemical security concern. The presence of these chemicals on the List of Chemicals of Interest raises the question whether a facility must possess the STQ of the pure substance in order to be covered by the rule’s screening requirements, or whether DHS envisions that facilities will undertake calculations to determine the overall amount of a listed chemical found in a variety of solutions or mixtures at a facility. FIEC notes that in some cases, Appendix A lists a particular concentration of a chemical, such as hydrochloric acid, for which a concentration of 37% or greater is specified. Since DHS has specified a particular concentration where it has deemed that appropriate, it appears that for other cases, where no concentration is specified, DHS only seeks to regulate the pure version of the chemical. For example, the 2,000 pound STQ for nitric acid, for which no concentration is listed, would refer to the quantity of pure nitric acid only, and not the amount of nitric acid found in mixtures or compounds (such as in a sanitation chemical mixture). FIEC requests that DHS confirm that this interpretation is correct, and that where no concentration is specified, mixtures are not covered by Appendix A.

## **III. Chemical Quantities Should Not Be Aggregated Across a Facility**

Certain chemicals included in Appendix A may be found in very limited quantities in a number of locations at a facility. For example, propane may be used in lift trucks and acetylene may be found in tanks or bottles in a variety of locations at a plant. While the combination of these very small amounts may trigger the STQ, FIEC questions whether these are the types of chemical use scenarios that the rule is intended to cover. Rather, the threat of terrorist attack or misuse stems from the availability of a sufficient quantity of a chemical in a single location. FIEC proposes that the STQ refer to the presence of the listed chemical in a single location or in interconnected vessels. Such an approach is much more consistent with the intended coverage of the rule.

#### **IV. Clarification of Instructor Qualifications for Training Purposes is Needed**

Under the recordkeeping provisions of the interim final rule, training records must be kept including “the name and qualifications of the instructor.” See 72 Fed. Reg. at 17734 (to be codified at 6 C.F.R. § 27.255). FIEC requests clarification as to the necessary qualifications of the instructor, and suggests that DHS might further delineate a qualified individual for training purposes in its forthcoming guidance on the chemical security rule.

#### **V. Conclusion**

For all of the reasons discussed above, FIEC strongly believes that the chemical security rules are overly broad and, as currently written, will encompass far more facilities than either Congress intended or DHS has the resources to regulate. FIEC urges DHS to reconsider the thresholds in Appendix A with these concerns in mind, particularly the threshold for anhydrous ammonia and the “any amount” thresholds. FIEC also recommends that DHS clarify that listed chemicals are intended to be covered in pure form only, unless concentrations are specified, and that chemical quantities should not be aggregated unless present in a single location or located in interconnected vessels. Finally, FIEC requests guidance on the nature of the instructor qualifications needed for training.

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FIEC appreciates having the opportunity to comment on these very important chemical security issues. If you have any questions, please call Robert Garfield at (703) 821-0770.

Sincerely,

American Bakers Association  
American Feed Industry Association  
American Frozen Food Institute  
American Meat Institute  
Grocery Manufacturers Association/  
Food Processors Association  
Independent Bakers Association

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Institute of Shortening and Edible Oils  
International Dairy Foods Association  
International Institute of Ammonia Refrigeration  
Midwest Food Processors Association  
National Institute of Oilseed Products  
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National Renders Association  
North American Millers' Association  
Snack Food Association