



Guidance Document

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Document Summary: The following document is an advisory opinion that clarifies the term “Transportation Packaging” as used in the Chemical Facility Anti-Terrorism Standards (CFATS) regulations. This advisory opinion contains the Agency’s interpretation of the term as it is used in the CFATS regulations.

Document Title: “Transportation Packaging” Interpretation

Issued by: Infrastructure Security Chemical Division, Cybersecurity and Infrastructure Security Agency

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Affected parties: Chemical facilities possessing theft/diversion chemicals of interest (COIs).

Statutory or regulatory provisions interpreted: 6 CFR 27.203(c)

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CFATS ADVISORY OPINION 2016-003

POSTED: October 10, 2016

TOPIC: "Transportation Packaging" Interpretation

ISSUE SUMMARY:

6 CFR § 27.203(c) requires facilities to include only theft/diversion (T/D) chemicals of interest (COI) that are in transportation packaging, as defined in 49 CFR § 171.8, when determining whether their holdings and COI are at or above the screening threshold quantity (STQ). The Department of Homeland Security (DHS) has received multiple inquiries from the stakeholder community requesting clarification of the term "transportation packaging." This advisory opinion contains DHS's interpretation of the term as it is used in the CFATS regulations, and is not intended to impact the meaning or applicability of any other regulation.¹

DISCUSSION:

49 CFR § 171.8 is part of the Hazardous Materials Regulations (HMR; 49 CFR §§ 171-180) issued by the U.S. Department of Transportation. The term "transportation packaging" is not defined in the HMR; however, the Preamble to Appendix A of the CFATS Final Rule states that DHS adopted the Department of Transportation (DOT) definition of "packaging." 72 Fed. Reg. 65396, 65399 (Nov. 20, 2007). 49 CFR § 171.8 defines the term "packaging" as "a receptacle and any other components or materials necessary for the receptacle to perform its containment function in conformance with the minimum packing requirements of [DOT's Hazardous Materials Regulations]."

There is no explicit definition of the term "minimum packing requirements" in the HMR, but 49 CFR § 173.24(b) contains a list of general requirements that DOT applies to all hazardous material packaging, regardless of the particular hazardous material the packaging contains. Under these general requirements, a package used for the shipment of hazardous materials must be designed, constructed, maintained, filled, its contents so limited, and closed, so that under conditions normally incident to transportation:

- (1) There will be no identifiable (without the use of instruments) release of hazardous materials to the environment;²
- (2) The effectiveness of the package will not be substantially reduced; for example, impact resistance, strength, packaging compatibility, etc. must be maintained for the minimum and maximum temperatures, changes in humidity and pressure, and shocks, loadings and vibrations, normally encountered during transportation;
- (3) There will be no mixture of gases or vapors in the package which could, through any credible spontaneous increase of heat or pressure, significantly reduce the effectiveness of the packaging;
- (4) There will be no hazardous material residue adhering to the outside of the package during transport.

DHS interprets the term "transportation packaging" in the CFATS regulations to mean packaging that meets these general requirements of 49 CFR § 173.24(b) under conditions normally incident to

¹ This is DHS's interpretation of the term "transportation packaging" in the context of its use in the CFATS program. This interpretation is not intended to be used in the context of any other regulation, including the HMR.

² Except as otherwise provided for by 49 CFR §§ 171-180.

transportation. Facilities are required to count T/D COI even when minor modifications are made to packaging that would otherwise meet the 49 CFR § 173.24(b) requirements. For example, if a lid was removed from a package so that it was no longer closed, but could easily be closed, the facility must count T/D COI contained therein if the package would otherwise meet the general requirements of 49 CFR § 173.24(b).

This interpretation is consistent with the descriptive language and the security concern included in the Preamble to Appendix A, which stated as follows with regard to the adoption of the DOT definition of packaging: "This includes, but is not limited to, cylinders, bulk bags, bottles inside or outside of a box, cargo tanks, and tank cars. DHS has focused the universe of theft/diversion chemicals of interest in this fashion because the theft/diversion security issue revolves around portable and transportable amounts of certain chemicals. DHS is concerned about both the theft of portable amounts of these chemicals and the diversion of shipments of these chemicals." 72 Fed. Reg. 65396, 65399 (Nov. 20, 2007).