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Guidance Document

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Document Summary: The following document is an advisory opinion that explains the Department's interpretation of 6 CFR 27.204 and Appendix A to the Chemical Facility Anti-Terrorism Standards (CFATS) regulation as requiring facilities to report possession of threshold quantities of theft/diversion mixtures of chemicals of interest (COI) to DHS.

Document Title: Top-Screen Reporting of Theft/Diversion EXP/IEDP Mixtures

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

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Affected parties: Facilities possessing mixtures of COI classified as theft/diversion COI.

Statutory or regulatory provisions interpreted: 6 CFR 27.204 and Appendix A to the CFATS regulation

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CFATS ADVISORY OPINION 2019-001

POSTED: October 5, 2019

TOPIC: Top-Screen Reporting of Theft/Diversions EXP/IEDP Mixtures

ISSUE SUMMARY:

The Department of Homeland Security (DHS) has received multiple inquiries requesting clarification on the appropriate reporting of theft/diversion mixtures under the Chemical Facility Anti-Terrorism Standards (CFATS) regulation. This advisory opinion explains DHS's interpretation of 6 C.F.R. § 27.204 and Appendix A to the CFATS regulation as requiring facilities possessing threshold quantities of theft/diversion mixtures to report those quantities to DHS.

DISCUSSION:

Appendix A lists minimum concentrations for theft/diversion chemicals of interest (COI) via two methods: minimum concentrations listed as "A Commercial Grade," and specific minimum concentration percentages listed by chemical. This Advisory Opinion discusses the second method for deducing whether a COI meets or exceeds the Appendix A numeric minimum concentration. For further information on determining whether a COI consists of "A Commercial Grade," please refer to Advisory Opinion 2016-002.

For the second method, Section 27.204 of the CFATS regulation provides instructions to covered chemical facilities on how to account for a COI that is present in a mixture. This section was specifically written into the CFATS regulation to allow for mixtures containing COI to be reportable without specifically being named. In relevant part, 6 C.F.R. § 27.204(b)(3) specifies that, for each EXP/IEDP COI, the facility shall count the total quantity of the mixture at the specific minimum concentration, as assigned on Appendix A.

Read together, Appendix A and 6 C.F.R. § 27.204(b)(3) require that any mixture containing the COI at the minimum concentration specified must be reported should the facility possess the screening threshold quantity of that total mixture. Reporting of the mixture is required notwithstanding the fact that the exact name of the mixture does not appear on Appendix A with its own unique entry.

As one example, Appendix A does not explicitly list Calcium Ammonium Nitrate (CAN) as a COI. Appendix A does, however, list solid ammonium nitrate, the primary component of CAN for the security issue of Theft – EXP/IEDP. Appendix A provides

that a chemical facility of interest must report a mixture of solid AN if the mixture contains the minimum concentration of 33% AN and the facility possesses the screening threshold quantity of 2,000 pounds.¹ Most formulations of CAN available in commerce meet or exceed the 33% minimum concentration of AN and therefore the majority of CAN formulations would be reportable if they are solid AN and the facility possesses the screening threshold quantity of 2,000 pounds.

To determine whether a mixture is reportable, facilities should review all components of chemical mixtures using Safety Data Sheets (SDS), blend sheets, and chemical formulation analysis to determine if any of the mixture's COI is present at or above the concentration listed on Appendix A which would render the mixture reportable. Any facility that has questions about chemical mixture reportability may consult further with DHS.

¹ Appendix A also contains a separate entry for AN, pertaining to AN with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance." This entry is not applicable to AN solid mixtures and thus is not relevant to this Advisory Opinion.