



## **Guidance Document**

**The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.**

Document Summary: In July 2015, DHS clarified to the California Department of Fish and Wildlife that fisheries and hatcheries do not qualify for the agricultural facilities time extension issued by DHS in 73 Fed. Reg. 1640 (Jan 8, 2008). DHS published a redacted version of this letter to ensure that other fisheries and hatcheries properly report any threshold quantities of chemicals of interest (COI) that they possess.

Document Title: Hatcheries Not Eligible for Agricultural Extension Letter

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

Date of Issuance/Revision: July 24, 2015

Affected parties: Owners and operators of fish farms and fish hatcheries

Statutory or regulatory provisions interpreted: 6 CFR 27.210

Document Identification Number: CISA-ADV-2020-001

Link: [www.cisa.gov/publication/cfats-ao-2020-001](http://www.cisa.gov/publication/cfats-ao-2020-001)



## CFATS ADVISORY OPINION 2020-001

**POSTED:** February 13, 2020

**TOPIC:** Clarifying Agricultural Extension for Fisheries and Hatcheries

### ISSUE SUMMARY:

In July 2015, DHS clarified to the California Department of Fish and Wildlife that fisheries and hatcheries do not qualify for the agricultural facilities time extension issued by DHS in 73 Fed. Reg. 1640 (Jan. 8, 2008). DHS is publishing a redacted version of this letter to ensure that other fisheries and hatcheries properly report any threshold quantities of chemicals of interest that they possess.

**ATTACHMENT:** Letter from the Department of Homeland Security to the California Department of Fish and Wildlife, dated July 24, 2015 (Redacted)



# Homeland Security

July 24, 2015

[REDACTED]  
Senior Environmental Scientist  
California Department of Fish and Wildlife  
830 S. Street  
Sacramento, CA 95811

Dear [REDACTED]

Thank you for your March 26, 2015, letter on behalf of California Department of Fish and Wildlife (CDFW), in which you expressed your belief “that all [CDFW] facilities fall under the Agriculture extension” for filing a Top Screen under the Chemical Facility Anti-terrorism Standards (CFATS) regulations; and therefore requested that CDFW facilities not be required to submit a Top Screen. The Department does not interpret your letter as a petition under the Administrative Procedure Act to modify CFATS (*see* 5 U.S.C. § 553(e)), although please inform us if that was your intention.

In December 2007, DHS exercised its discretion under 6 C.F.R. 27.210 to extend the Top-Screen submission deadline for agricultural facilities that use chemicals of interest (COI) and COI-containing products for specified agricultural production purposes. The agricultural facilities time extension (73 Fed. Reg. 1640) states that a facility is not required to submit a Top-Screen solely because it possesses COI, at or above the applicable screening threshold quantity (STQ), for use—“(a) in preparation for the treatment of crops, feed, land, livestock (including poultry) or other areas of an agricultural production facility; or (b) during application to or treatment of crops, feed, land, livestock (including poultry) or other areas of an agricultural production facility.” The extension applies to facilities such as “farms (e.g., crop, fruit, nut, and vegetable); ranches and rangeland; poultry, dairy, and equine facilities; turfgrass growers; golf courses; nurseries; floricultural operations; and public and private parks.” 73 Fed. Reg. 1640 (January 9, 2008).

Your letter argues that all CDFW facilities should fall under the agricultural facilities time extension because the facilities are considered agricultural—“[t]he CDFW hatcheries meet the definition of cold water Concentrated Aquatic Animal Production (CAAP) facility as defined in Title 40 Code of Federal Regulations (40 CFR) 122.24”—and because the facilities’ COI is used “in preparation and application of disease treatment of the fish.”

The CDFW fish hatcheries and fish farms are not eligible for the CFATS agricultural facilities time extension because the CDFW facilities do not use their COI holdings in preparation for the treatment of, or during application to or treatment of, “crops, feed, land, livestock (including poultry) or other areas of an agricultural production facility.” The COI used

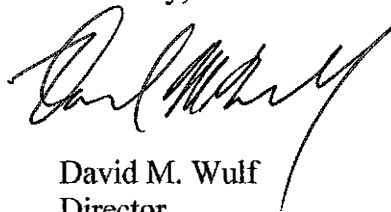
for the treatment or in preparation for the treatment of fish do not qualify under the agricultural facilities time extension. COI used in preparation and application of disease treatment of *livestock* do fall under the extension, but under the ordinary meaning of the word, fish are not livestock. *See Dunkly v. Erich*, 158 F.2d 1, (9<sup>th</sup> Cir. 1946) (“Livestock is an ordinary word and should be given its ordinary meaning, and ordinarily fish are not considered livestock. . . . We hold that fish are not livestock.”). If DHS had intended to include fish farms and hatcheries in the agricultural facilities time extension, it would have specifically enumerated fish as livestock as it did for poultry.

In your letter, you highlighted that at most of your facilities “the COI [REDACTED] is temporarily possessed” and is used “within several days.” The Department understands that most CDFW facilities hold the COI for a short duration; however the amount of time a facility holds the chemical(s) is irrelevant to the determination of whether a facility is required to submit a Top-Screen under CFATS. The submission schedule in 6 CFR 27.210(a)(1)(i) states that a Top-Screen is required “within 60 calendar days for facilities that come into possession of any of the chemicals listed in Appendix A at or above the STQ for any applicable Security issue.” As stated in the preamble to the final rule, “DHS has not established a ‘holding-time’ threshold for chemicals. If terrorists have a reason to know that an attractive chemical is present at a facility, the duration for which it is present is largely irrelevant. As a result, a facility must submit and complete a Top-Screen if it possesses chemicals of interest in a quantity that at any time meets the STQ.” 72 Fed. Reg. 65396, 65417 (Nov. 20, 2007).

A facility can submit a revised Top-Screen within 60 days of material modification, such as removal of the COI from the site, as per 6 C.F.R. §27.210(d). Additionally, we will be pleased to work with the CDFW facilities to address submission schedules for required filings if a facility has fluctuating quantities of COI or has known future COI holdings. *See* 6 C.F.R. 27.210(c).

Thank you for your continued interest in the Department of Homeland Security and the CFATS program. Should you need additional assistance, please feel free to reach out to me [REDACTED]  
[REDACTED]

Sincerely,



David M. Wulf  
Director