



Homeland
Security

CFATS ADVISORY OPINION 2016-002

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TOPIC: "A Commercial Grade" Interpretation

ISSUE SUMMARY: Any facility that holds a chemical of interest (COI) listed on Appendix A of the Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR part 27, at or above the specified Screening Threshold Quantity (STQ) and concentration must report these COI to the Department of Homeland Security (DHS) via a Top-Screen Survey. A number of COI listed on Appendix A do not have associated specific, numerical minimum concentrations. In lieu of numerical concentrations, the COI are listed with the qualifier "ACG," which stands for *A Commercial Grade*. DHS has received multiple inquiries from the stakeholder community requesting clarification of the term "A Commercial Grade." This advisory opinion contains DHS's interpretation of the term "A Commercial Grade" as used in CFATS.

DISCUSSION: The definition of A Commercial Grade in the regulation at 6 CFR § 27.105 is "any quality or concentration of a chemical of interest offered for commercial sale that a facility uses, stores, manufactures or ships." The terms "quality" and "concentration" within this definition have two distinct meanings. This Advisory Opinion contains DHS interpretations of what both terms and the broader term "A Commercial Grade" mean in the context of CFATS.

By the term "concentration," DHS is referring to:

- (1) **any concentration of a COI that is available in trade or commerce under the name of that COI.**

By the term "quality," DHS is referring to:

- (2) **any mixture of a COI that poses the same or similar security risks for which the COI is listed in Appendix A.**

By applying both of the above interpretations to the definition of ACG, DHS intends to help facilities determine which substances should be counted towards applicable STQs.

Under the first part of the interpretation, relating to the term "concentration," CFATS captures varying purity levels and concentrations of each ACG COI. A substance may be diluted or contain impurities, but if it is sold or travels in commerce under the name of a relevant COI, it counts as ACG, because it is a "concentration" of that chemical. It is DHS's understanding that this is a common interpretation of the term "a commercial grade" in some parts of the chemical sector.

Under the second part of the interpretation, relating to the term "quality," each facility is responsible for determining whether the facility has a "quality" of a COI, i.e., whether a mixture retains the properties for which the relevant COI is included on Appendix A of CFATS, and therefore whether the mixture poses the same sort of security risks as the pure COI. (Security risks include release, theft, and sabotage security risks, as appropriate.) A mixture of an ACG COI counts as ACG if it poses the same sort of security risks as the pure COI, or if the mixture could be easily reconfigured to pose the same sort of security risks (e.g., by easily isolating the pure COI). DHS's Infrastructure Security Compliance Division (ISCD) will provide technical assistance upon request to assist chemical facilities in making security risk determinations for particular mixtures, to assess whether or not they qualify as ACG.

As expressed in the Preamble to the Appendix A final rule, in creating the list of chemicals and their thresholds for facilities' preliminary screening under CFATS, DHS considered the potential for these

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chemicals, if released, stolen, or diverted and/or contaminated, to cause significant adverse consequences to human life and/or health. This interpretation of ACG has that objective clearly in mind—that concentrations of chemicals of interest sold under the names of chemicals of interest, and mixtures of chemicals of interest that retain the same qualities as chemicals of interest, pose security concerns and could be used or exploited in acts of terrorism to endanger human life.

Accordingly, DHS's holistic interpretation of A Commercial Grade is:

- (1) **any concentration of a COI that is available in trade or commerce under the name of that COI; or**
- (2) **any mixture of a COI that poses the same or similar security risks for which the COI is listed in Appendix A.**

A facility must count a chemical holding toward the applicable STQ if it meets part (1) of this interpretation, or if it meets part (2) of this interpretation, or if it meets both parts (1) and (2) of this interpretation.