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May 8, 2007

Mr. Dennis Deziel
Mail Stop 8100
Department of Homeland Security
Washington, DC 20528-8100

Re: Chemical Facility Anti-Terrorism Standard
Final Rule and Proposed Appendix A
April 9, 2007 Federal Register Page 17687-17745

Dear Mr. Deziel:

This letter represents the comments on the Chemical Facility Anti-Terrorism Standard (CFATS) Interim Final Rule and its proposed Appendix A, by our three organizations, U.S. Poultry & Egg Association¹, the National Chicken Council², and the National Turkey Federation³. Please note that even though the Department of Homeland Security (DHS) only requested comments on Appendix A, we have included comments on the CFATS rule as well, since its full implications only become clear when considered jointly with Appendix A. Our comments are as follows:

1. The request for comments on Appendix A requires submission of comments by May 9, 2007. While we understand the urgency of completing this task, we also anticipate that the regulation and Appendix A, as currently written, will require 20,000 – 40,000 poultry farmers – small, individually owned and operated farms – to complete at least the Top Screen notification for propane gas. To provide effective and thorough comments, the industry must accurately assess the impacts on the farmers, as well as hundreds of poultry processing

¹ The U.S. Poultry & Egg Association ("USPOULTRY") is the world's largest poultry organization, whose membership includes producers of broilers, turkeys, ducks, eggs and breeding stock, as well as allied companies. The Association focuses on research and education, as well as communications to keep members of the poultry industry current on important issues.

² The National Chicken Council ("NCC") is a nonprofit member organization representing companies that produce and process over 90 percent of the broiler/fryer chickens marketed in the United States. NCC promotes the production, marketing and consumption of safe, wholesome and nutritious chicken products both domestically and internationally.

³ The National Turkey Federation ("NTF") is the national advocate for all segments of the turkey industry. NTF provides services and conducts activities which increase demand for its members' products by protecting and enhancing their ability to profitably provide wholesome, high-quality, nutritious products.

facilities which may have regulated quantities of ammonia, chlorine, propane and other chemicals. We ask that DHS extend the comment period on Appendix A by an additional 60 days until Monday, July 9, 2007 so that we can appropriately inform DHS on issues important to our industry. This extended comment period would then encompass a total of 90 days, not at all uncommon for a regulatory proposal of this depth and breadth, literally impacting tens of thousands of farms and facilities engaged in US poultry production.

2. Comments made with respect to the proposed Appendix A are integrally tied to the concurrently issued CFATS. Appendix A was not available when CFATS rule was out for public comment, so the impacts of this rule were difficult for potentially regulated entities to assess. Consequently, the request for extension of time for comments is further justified because now, for the first time, the regulated community can begin to assess the impact of this complex rule.
3. The Screening Threshold Quantities (STQ) as listed in Appendix A do not promote any consistency between regulations from the Federal Government. While we realize that many of these regulations are for different purposes, the Chemical Facility Anti-Terrorism Standards (CFATS) regulation and the EPA's Risk Management Program (RMP) both regulate chemicals of concern based on the consequences of a release, both on and offsite. Many of the regulated chemicals of interest in the Appendix A are listed due to their potential use as weapons due to theft or a precursor for an improvised explosive device. However, those chemicals listed because of the threat of a release (i.e. not due to potential use as a weapon) should be regulated at the same threshold as the RMP regulation.

This is particularly true for anhydrous ammonia, which will result in numerous facilities being required to complete the registration and Top-Screen. A threshold of 7,500 pounds appears overly restrictive since the EPA has determined, through much research and consequence modeling, that a threshold of 10,000 pounds is an adequate threshold to minimize offsite consequences from a release. In addition, most ammonia refrigeration facilities have documented whether their inventory is greater than 10,000 pounds (and therefore, regulated by RMP and OSHA's Process Safety Management regulation), but many of these smaller facilities will not know if their inventory is greater than 7,500 pounds. Therefore, these smaller systems will first have to complete detailed inventory calculations just to determine if they meet the threshold, which will take time to complete and potentially require outside consulting assistance increasing the financial burden. Finally, these smaller refrigeration systems, with inventories between 7,500 and 10,000 pounds, typically do not have the staff onsite needed to meet the regulatory burden of a regulation such as this. Other Chemicals of Interest which should also match the RMP threshold are chlorine and the "flammable compounds" such as propane and methane. Propane will be discussed in more detail below.

We recommend that the Screening Threshold Quantities (STQ), specifically for chemicals listed for the threat potential due to an onsite release, be modified to match the thresholds for the Risk Management Program. This is of particular concern for anhydrous ammonia, chlorine and "flammable compounds" such as propane and methane.

4. Most poultry farms in the United States use propane to heat poultry houses. Typically, a poultry farm will have 1,000 gallons of propane for each chicken house or 2,000 gallons of propane for each turkey house. Therefore, a majority of the poultry farms in the United States may have to comply with this regulation and complete a registration and a Top-Screen analysis. We estimate that this will include 20,000 to 40,000 individual family-owned and operated poultry farms. Since the Preamble to the regulation indicated that the Department of Homeland Security (DHS) estimated only 40,000 facilities completing the registration and Top-Screen, we believe the DHS has significantly underestimated the magnitude of the number of facilities which will be required to comply with this regulation and, therefore, the cost of compliance and the impact on small business.

Completing the registration and Top-Screen will be very difficult and costly to these small family owned businesses. Many of these growers may not have access to the internet and will have to travel to a town that may have a library with internet access. Even with access to the internet at a public facility, many of these growers may not have the computer experience or technical skills necessary to complete the registration and Top-Screen. We also assume that the registration may require an e-mail address for the DHS to contact the individual with passwords, etc., and many of these growers may not have an e-mail address. The DHS's estimate of 25 to 30 hours to complete the registration and Top-Screen presents a large burden on these small businesses and is likely to be underestimated for many growers because of travel time and lack of computer experience.

5. As indicated above, we believe the Screening Threshold Quantity (STQ) for propane should be increased. At the proposed level of 7,500 pounds, the number of facilities which will be required to comply with the regulation by completing the registration and Top-screen, will be very large and will impact small family owned farms. Most of the farms will be regulated because of the inclusion of small (500 and 1000 gallon) propane tanks. Many of these facilities have multiple tanks, but generally, they are separated by a significant distance or a building. The worst case scenario of an explosion from a 1,000 gallon tank is only approximately 500 feet for a 1 psi over-pressure condition. This type of incident is enough to break widows and cause injuries due to glass shrapnel at that distance, but is not likely to cause structural damage. The only damage likely to be caused within 500 feet of most of these small farms is to the poultry house itself.

As an absolute minimum, the DHS should increase the threshold to at least the RMP threshold for flammable substances of 10,000 pounds. Note, however, this small increase may not remove many of the regulated small farms, since most of the farms may have 3 or more 1,000 gallon tanks. Therefore, we strongly recommend that the DHS consider adding a footnote to the Appendix A listing for propane indicating that all propane storage tanks of less than 1,200 gallons are considered exempt and should not be counted toward the threshold amount. This change will minimize the number of small facilities that have to comply with the registration and Top-Screen requirements; greatly reducing the burden on small family owned businesses and the Department of Homeland Security. Also, this limitation will not affect the legitimate needs of the DHS because these small vessels do not pose a significant threat due to release or theft. Further, large distributors of propane will not be eliminated by this rule because they will have quantities in storage vessels over

1,200 gallons in either large storage tanks or delivery vehicles. We request the “*de minimus*” level of 1,200 gallons, because 1,150 gallon storage tanks are typically the largest sized tanks marketed to poultry farm owners.

6. The CFATS regulation does not adequately define the term “possess” and this has created much misunderstanding as to how to apply the Screening Threshold Quantities (STQ). We request the Department clarify the term and provide guidance on how materials are to be aggregated throughout a facility. For example, is there any exemption for not including quantities for different vessels that are separated by a significant distance, such that a release from one vessel would not impact another vessel? Also, in relation to the family farms discussed earlier, would the amount of propane stored at the onsite residence have to be added to the propane used at the farming operation?
7. The CFATS regulation does not discuss how facilities are to handle mixtures that contain a Chemical of Interest. Many other Federal regulations require mixtures to be calculated by determining the weight of the compound within the mixture. However, this method must be clearly delineated in the regulation. From our inquiries to DHS technical assistance, it is our understanding that mixtures are not to be counted in determining threshold quantities and only pure or neat chemicals shall be considered. This requirement should also be clearly defined in the final published regulation or at least in the published preamble. Also, this definition creates additional concerns and questions. For example, anhydrous ammonia in a refrigeration system is not in a pure or neat form. Rather it is actually a mixture of refrigeration grade ammonia (which has some impurities by definition) and small amounts of oil, water, and air. Is this mixture of ammonia and other material to be considered and regulated?
8. There are instances where a Chemical of Interest may be continuously generated on-site and used or consumed as it is manufactured. The method of use changes the form of the chemical such that the Chemical of Interest no longer exists. One example is the use of chlorine dioxide. Many facilities may generate chlorine dioxide onsite, but immediately use it as an oxidizer. This process oxidizes the chlorine dioxide to simple chloride compounds, which are no longer hazardous. No significant amount of chlorine dioxide is ever present or possessed by the facility as it is used as quickly as it is manufactured. It is our understanding that this type of “possession” would not trigger the Screening Threshold Quantity (STQ) since the facility does not possess greater than the threshold quantity at any one time although over the course of a day, for example, the quantity generated may exceed the threshold quantity. However, we request that the DHS publish guidance in the final published regulation to clarify the definition of “possess” and if the quantity manufactured at a facility should be considered in any way.
9. The CFATS regulation lists specific facilities that are exempt from these regulations. These exemptions include “Public Water Systems” (as defined under Section 1401 of the Safe Drinking Water Act) and “Treatment Works” (i.e., as defined in Section 212 of the Federal Water Pollution Control Act.) Many of our member facilities operate food processing plants which may have a drinking water supply system and/ or a wastewater treatment system which meets the above definitions and are regulated by the Acts cited in the definitions. It

is our understanding then, that these systems (or parts of a larger facility) are therefore exempt and the chemicals used solely for these systems are not to be included in these regulatory threshold determinations.

We request that the Department publish guidance to clarify this exemption, as it relates to water treatment or wastewater treatment systems, regulated by the listed Acts, and are operated at a larger industrial facility.

10. The CFATS regulation indicate that if a facility is determined to be "high risk" by the Department, that the facility will be notified and will have to complete both a Security Vulnerability Analysis (SVA) and a Site Security Plan (SSP). However, it is not clear if the SVA must include all chemicals at the facility or only the Chemical(s) of Interest that triggered the threshold quantities and therefore required reporting or alternately, just the Chemical(s) of Interest that were used to determine that a facility presents a "high risk." Likewise, it is unclear if only the Chemical(s) of Interest which exceeded the threshold quantities must be considered in the SSP. Finally, it is also unclear if a "high risk" facility must include chemicals which are only associated with the exempt water treatment or wastewater treatment portions of the facility.

If other chemicals besides the Chemical(s) of Interest over the STQ are required to be included in the SVA and SSP, this will significantly increase the burden for complying with this regulation. In addition, we believe this requirement would exceed the statutory authority of the Department since Section 550 of the Homeland Security Appropriations Act of 2007 required the regulation to be "risk based" and requiring a SVA or SSP for other chemicals below the established thresholds would not be risk based.

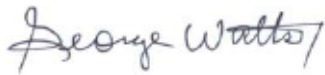
We request that the Department clarify that the requirements for the SVA and SSP are limited to the Chemical(s) of Interest at a facility which were above the STQ AND used by the Department to determine that a facility presents a "high risk." In addition, we request that the Department clarify if a facility determined to be "high risk" must include chemicals associated with the exempt water treatment or wastewater treatment facilities, located on-site.

11. The CFATS regulation states that the SVA must be submitted "within 90 calendar days of written notification from the Department..." and the SSP must be submitted "within 120 calendar days of written notification from the Department...". However, it does not specify if these time periods are both measured from the same written notification from the Department after the submission of the Top-Screen indicating the facility is "high risk." If this is the case, then the facility will have to submit the SSP before it gets a response as to the adequacy of their SVA. We do not believe this is the intent of the Department, and therefore request clarification that the SVA is to be completed within 90 days of a written request from the Department for the SVA, and the SSP is to be submitted within 120 days of a written request from the Department for the SSP.

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We appreciate the opportunity to make these comments. Should you have any questions, or need more specific information on any of the above, please contact John Starkey at U.S. Poultry & Egg Association (jstarkey@poultryegg.org, 770.493.9401).

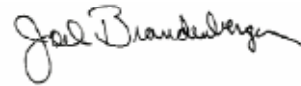
Sincerely,



George Watts, President
National Chicken Council



Don Dalton, President
U.S. Poultry & Egg Assn.



Joel Brandenberger, President
National Turkey Federation