

Advocacy Recommends That DHS Consider Changes to Proposed Ammonium Nitrate Security Program Rule Reduce Burdens on Small Business

On December 1, 2011, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submitted comments to the Department of Homeland Security (DHS) on DHS' *Proposed Ammonium Nitrate Security Program Rule*. [76 Fed. Reg. 46908 (August 3, 2011)]. DHS' proposed rule would regulate the sale and transfer of ammonium nitrate pursuant to section 563 of the Fiscal Year 2008 Department of Homeland Security Appropriations Act, which seeks to prevent the use of ammonium nitrate in an act of terrorism. Ammonium nitrate is a chemical used primarily in fertilizers and explosives, but can also be mixed with fuel oil to create a bomb like that used in the 1995 Oklahoma City bombing that killed 168 people. DHS's proposed rule would establish a program to register and vet ammonium nitrate sellers and purchasers, verify and approve transfers of ammonium nitrate, require reporting of theft or loss, and provide for inspections/audits, civil penalties, and adjudications and appeals.

Following publication of DHS' proposed rule, a number of small business representatives contacted Advocacy and expressed concerns with various aspects of the proposed rule. In response, Advocacy hosted a small business roundtable on November 22, 2011 to discuss the proposed rule and to obtain small business input on it. Representatives from DHS attended the meeting and provided a background briefing on the proposed rule.

- Small business representatives at the meeting included a number of industries involved with ammonium nitrate, including agriculture, transportation, mining, and explosives. While the attendees were supportive of the need for an ammonium nitrate security program, many expressed concern about various aspects of the proposed rule.
- Small business representatives indicated that they would like DHS to better align the proposed rule with existing security programs under DHS, the U.S. Coast Guard, the Transportation Security Administration, the Department of Transportation, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives.
- Small business representatives also expressed concern that the proposed rule would be unduly burdensome and complex, and could inhibit the transport of ammonium nitrate for legitimate purposes. The attendees were also concerned that the proposed rule would result in redundant background checks and overlapping security programs.
- Advocacy's comments recommend that DHS reassess the impact of the proposed rule on small entities and consider alternative approaches that would meet DHS' regulatory objectives in a less burdensome manner.

A complete copy of Advocacy's letter to DHS is available at: <http://www.sba.gov/advocacy/816>. For more information please contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 or bruce.lundegren@sba.gov.