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Contacts

Washington Office
1900 K Street, NW
Washington, DC 20006-1109

Atlanta Office
Bank of America Plaza
Suite 4100
600 Peachtree Street, NE
Atlanta, Georgia 30308-2216

[Evan D. Wolff](#)
(202) 955-1908
ewolff@hunton.com

[Ian P. Band](#)
(202) 955-1913
iband@hunton.com

[Maida O. Lerner](#)
(202) 955-1590
mlerner@hunton.com

[John W. Woods](#)
(202) 955-1513
jwoods@hunton.com

[Joseph C. Stanko, Jr.](#)
(202) 955-1529
jstanko@hunton.com

[Catherine D. Little](#)
(404) 888-4047
clittle@hunton.com

[Chris M. Amantea](#)
(213) 532-2102
camantea@hunton.com

DHS Seeks Comments on Rules That Should Be Modified, Streamlined, Expanded or Repealed

The Department of Homeland Security (“DHS” or “Department”) announced that it is preparing to undertake a “retrospective analysis” of its significant regulations and is accepting comments from the public on specific existing DHS regulations that the Department should consider as candidates for modification, streamlining, expansion or repeal. DHS stated that these efforts will help ensure that its regulations contain “necessary, properly tailored, and up-to-date requirements that effectively achieve regulatory objectives without imposing unwarranted costs.” 76 Fed. Reg. 13526 (March 14, 2011).

Significant Opportunity to Affected Industry to Highlight DHS Regulations that Impose Parallel or Unnecessarily Costly Burdens on Industry or Are Not Clearly Tailored to Achieve Regulatory Objectives

In its notice, DHS invites the public to respond to a list of preliminary questions to inform the Department’s efforts to identify current regulations for further analysis and potential modification or repeal. DHS asks, for example, whether there are DHS regulations that make no sense or have become unnecessary, ineffective or ill advised; are unnecessarily complicated or could be streamlined to achieve regulatory objectives in more efficient ways; are

not tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and/or create difficulty because of duplication, overlapping or inconsistency of requirements.

Among the wide range of potentially affected provisions are those contained in the DHS Chemical Facility Anti-Terrorism Standards (“CFATS”) and the Maritime Transportation Security Act (“MTSA”) rules. Companies affected by these regulations have recognized that some provisions, including those affecting personnel surety, have the potential to impose parallel and analogous requirements on their facilities. They also have become aware that some provisions, like the CFATS’s so-called mixture rule, may not be necessary to achieve the statutory objectives of the enabling legislation. Finally, companies have struggled with other provisions, like the CFATS’s material modification requirement, that are complicated, difficult to interpret and costly. In addition to the CFATS and MTSA programs, DHS is accepting comments pursuant to this notice on its regulations affecting immigration and citizenship benefits.

DHS is providing a valuable opportunity to affected industry to highlight those specific regulations that would benefit from modification, streamlining,

expansion or repeal. We encourage affected companies to take advantage of this opportunity.

Comments Due on April 13, 2011

Comments are due on or before April 13, 2011. The notice states that DHS will consider late-filed comments to the extent possible. A comment form and instructions for admission are online at www.regulations.gov in docket DHS-2011-0015.

We Can Help

The Hunton & Williams homeland security practice is composed of attorneys with extensive homeland security and federal government regulatory experience, who have long served clients in analyzing and complying with DHS regulations, including CFATS and MTSA. We work with clients seeking to identify the most efficient way to determine corporate compliance with CFATS and MTSA, including internal audit programs. Our team has reviewed site security and vulnerability assessments to ensure

completeness and to identify potential legal issues. If necessary, we can assist in the process of appealing DHS decisions within the agency. If you have questions regarding any aspect of the CFATS or MTSA rules and their potential impact on your business, please contact us.

If you would like more information on how Hunton & Williams can assist with responding to this and other issues, please visit our dedicated pages to [Homeland Security](#) and [Chemical Facility Security Regulation](#).

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