

Testimony of

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*Before the*

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Subcommittee on Transportation Security and Infrastructure Protection

*On behalf of*

American Council on Education  
Association of American Universities  
Campus Safety, Health and Environmental Management Association  
Council on Governmental Relations  
National Association of College and University Business Officers  
National Association of State Universities and Land-Grant Colleges

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I appreciate the opportunity to testify here today on behalf of the American Council on Education and several other higher education associations and the more than 2,100 colleges and universities that are their members. These institutions are a diverse group, public and private, small and large, offering associate's degrees through doctorate degrees as well as professional and post-doctoral research programs.

I am the Associate Vice President for Research Compliance at Boston University and Boston Medical Center and am responsible for all non-financial research-related compliance issues at both institutions. The university and its medical center have approximately 600 labs spread over 25 buildings on two campuses separated by approximately two miles.

Before I explain some of the challenges universities and colleges face implementing the current Chemical Facilities Anti-Terrorism Standards, I am pleased to inform the committee that the Department of Homeland Security has been responsive to our concerns and has established a working group with experts from the higher education community to consider strategies for securing chemicals on our campuses in a reasonable and effective way. This partnership is in the early stages and discussions will continue throughout the summer to reach a consensus on how best to get the job done. We are very encouraged by these discussions and the Department's recognition that college and university campuses confront unique challenges in meeting the Department's goals.

Colleges and universities are committed to the safe conduct of research and teaching on their campuses. Many colleges and universities function as small cities, complete with security forces and emergency response capabilities. They have long been subject to federal regulation governing health, safety, and security in research under the auspices of Occupational Safety and Health Administration, Centers for Disease Control, Environmental Protection Agency, Department of Agriculture, and the Nuclear Regulatory Commission. To meet the requirements of these agencies, institutions have to perform a risk-based analysis of the chemicals being used and the general type of procedures being performed in order to determine the safety measures required for the protection of employees and the environment. These measures include requirements such as training, protective personal clothing and disposal methods. Extensive new regulations for the management of select agents, radioisotopes, and visa requirements for international students have been introduced since 9-11, and have expanded the requirements for physical security of certain campus labs. Congress and the administration have recognized in recent years that a thriving university-based research enterprise is critical to national and economic security. We anticipate that the Department of Homeland Security will take a similar approach to the chemical facilities rule and find an approach that does not inadvertently weaken national security by hindering science and engineering education and research on college and university campuses.

Admittedly, the higher education community was taken aback when the Department published its interim final rule on Chemical Facility Anti-Terrorism Standards in April. Not that we hadn't read the December notice of proposed

rulemaking—we had, and concluded that universities would not be considered “chemical facilities” under the rule. The proposed rule seemed to be clearly designed to address security at chemical manufacturers and large industrial facilities that possess large amounts of hazardous chemicals. College and university laboratories do use chemicals, but under the control of faculty and investigators and in small quantities dispersed over many laboratories in numerous buildings. We were surprised to discover that the list of chemicals of interest published as Appendix A to the interim final rule in April included a number of compounds that are quite common in laboratories, often with a threshold of “any amount.” In our estimation, as originally published, the rule would have applied to virtually every college and university in the country, and probably to many hospitals, doctors’ offices, and secondary schools as well.

The Department consulted with some sectors of industry in developing the regulations, but it did not consult with colleges and universities about the level of risk and the best way to ensure security while avoiding any disruption of teaching and research. It is therefore not surprising that the rule and associated questionnaire (the Chemical Security Assessment (CSAT) Top-Screen) are ambiguous in several places if applied to the academic environment.

The rule presents several serious concerns, which we hope to resolve with the Department over the next few months.

First, completing the Top-Screen as it is now designed would be challenging for colleges and universities, especially within the short, 60-day deadline. The research environment is decentralized, complex, and most importantly, dynamic. Some institutions have more than 1,000 individual laboratories. Our research endeavors are not static but constantly changing as researchers adjust their approach and explore new questions. On any given day, some portion of the chemicals housed in these laboratories is consumed in experiments and others are purchased or prepared as mixtures. Most of these chemicals are stored in small containers, typically ranging in size from tiny vials holding a few milliliters up to five-gallon bottles. Unlike other types of industrial facilities, few institutions have centralized inventory or purchasing controls in place. Colleges and universities need sufficient time to set up systems to track specific items, if they are expected to meet new regulatory requirements.

We have been assured that the Department is revising the list in Appendix A in response to comments and consultations, but we have not yet seen the results. Depending on the specifics, this may very well resolve a number of issues and provide relief for many smaller institutions of higher education. Because of the nature of our research facilities, we still need lead time after the list of chemicals of concern is finalized to put proper tracking systems in place.

Our preliminary discussions with Department officials have indicated their willingness to consider the design of the Top Screen and the best way to collect useful information from colleges and universities.

Second, once an entity has completed the Top Screen process, it may be required to undertake a vulnerability assessment and prepare a security plan. Most of us expect that some universities will be asked to develop a security plan. We appreciate the Department's performance-based approach to the requirements for such plans but would like to see revised criteria for higher education institutions. We are encouraged that DHS has said the requirements for security plans will reflect the level of risk of attack, sabotage, or theft at a particular institution.

We hope that we can work with the Department to develop a framework for university security plans that reflects an understanding of certain factors that are common across colleges and universities. Universities present a low risk for toxic release through theft, sabotage, or attack. The distribution pattern of chemicals across many laboratories on a campus reduces the risk of a toxic release on a significant scale. We are aware of the need to ensure the safety and security of our campuses and we have instituted appropriate measures.

However, we also encourage a policy of open access to campus laboratories. We want all students, not just chemistry majors and doctoral students, to have hands-on research experience. At a time when there is a national concern about the availability of highly trained, creative scientists and engineers to lead our high-tech industries, we should do all we can to promote undergraduates especially to seek out research opportunities. Locking laboratory doors or limiting access to entire buildings may have

the unintended effect of discouraging students from getting those first-hand experiences that at a minimum promote scientific literacy and, in some cases, may prompt a student to specialize in science.

We hope that DHS will take a broad view of risk in its assessments of risk (or undertake a cost-benefit analysis) and will consider the potential effects on science and engineering education and the productivity of university research groups.

As I said at the outset, we are pleased that the lines of communication with DHS are open. We are grateful that the Department of Homeland Security is willing to recognize the special circumstance of the education sector. Additional time for consultation about the level of risk on college and university campuses and the ways in which chemicals are handled, used, and stored will result in a better rule and greater compliance. We hope to reach agreement about the collection of relevant information about chemical inventories at colleges and universities and on common elements of security plans. Colleges and universities are committed to ensuring the safety of education and research on campus; we are grateful that Congress and the administration appreciate the importance of balancing security with the needs of education and research.