DHS Establishes New Security Standards for Chemical Facilities

The U.S. Department of Homeland Security (DHS) recently issued an interim final rule which regulates the security of chemical facilities in the United States. This rule took effect on June 8, 2007. It establishes risk-based performance standards for the security of chemical facilities nationwide. This newsletter gives you a "heads up" concerning this new regulatory program and summarizes its key components for you.

A facility that DHS contacts by letter or through Federal Register notice must complete the Chemical Security Assessment Tool (CSAT) Top Screen. After DHS publishes the final Appendix A listing the regulated chemicals, a facility that has any of these chemicals in quantities at or above the listed screening threshold must complete a CSAT Top Screen.

Which Chemicals Are Regulated?

It is uncertain which chemicals will ultimately be listed in the Appendix A. DHS has listed more than 300 chemicals in the interim rule, including butane, chlorine, hydrogen, methane, nitroglycerine, propane and urea nitrate. Screening threshold quantities range from any amount to 15,000 pounds. Two thousand pounds is the most frequently used threshold. The rule does not address whether the screening threshold quantity is to be based on the presence of raw materials only, or whether it is also to include quantities of listed materials present in mixtures or end use products. Further, it is not clear whether a regulated facility must estimate the quantity based on an average amount of the listed chemical present over time, or the maximum amount of a listed chemical present at any one point in time. However, Appendix A was published as only a proposed list. We do not know when the list will become final.

How Does the Assessment Process Work?

The CSAT Top Screen is an initial screening process from which a regulated chemical facility provides information to the DHS. The Top-Screen asks a series of questions regarding the chemical(s) manufactured, processed, used, stored at or distributed by the facility in order to determine whether the facility is "high risk." A facility that has the requisite quantities of Appendix A chemicals must complete a

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Top Screen within 60 days after DHS publishes Appendix A in final. DHS will then review the Top-Screen submitted by a facility to determine whether it has a high level of security risk.

If DHS determines that a chemical facility is "high risk facility," DHS will so notify the facility in writing. DHS will then place the facility in one of four risk-based tiers, ranging from the highest risk (Tier 1) to the lowest risk (Tier 4). A covered facility must complete and submit a Security Vulnerability Assessment (SVA) to DHS within 90 calendar days after DHS notifies the facility in writing that DHS has designated it as high risk. The SVA identifies possible facility security weaknesses. A covered facility must also complete and submit a Site Security Plan (SSP) to DHS within 120 calendar days after the facility receives the written notification from DHS. The SSP satisfies risk-based performance standards identified by DHS. In addition, the covered facility must implement supporting inspections, audits, recordkeeping and information security systems.

How Are Top-Screens Done?

DHS developed the CSAT to help a covered facility navigate the regulatory process, including conducting a SVA and developing a SSP. CSAT is a secure web-based system that includes:

- Facility registration
- Top-Screen questionnaire
- SVA tool
- SSP template

A chemical facility should register for a user identification and password if it determines it likely is covered by the new rule. Once DHS validates a facility's registration, DHS will notify the facility about how to access the other CSAT tools.

What's Ahead for My Facility?

Top-Screening cannot begin until Appendix A is finalized and posted on the DHS website. However, a prudent facility that thinks it may be covered should review the preliminary Appendix A published by DHS, and consider whether to register for CSAT access.

The level of security required at a given facility will depend on the risk-based tier to which it is assigned by DHS. While the new rule sets forth performance standards that a SSP must address, DHS will further apply these standards to risk-

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based tiers of covered facilities and will define the acceptable measures that a facility can use to meet these standards.

Under the regulation, DHS will review each SVA and SSP. If DHS finds that a covered facility satisfied the SSP, DHS will issue a Letter of Authorization to the facility. DHS will then physically inspect the facility to make sure the facility is complying with the rule.

The interim final rule allows certain covered chemical facilities, in limited specified circumstances, to submit an Alternate Security Programs (ASP) in lieu of a SVA, SSP or both. The DHS is authorized to enforce the interim rule through imposing civil penalties of up to $25,000 per day and possibly closing a noncompliant facility.

The details of the chemical facility security standard are uncertain. Reinhart's Crisis Management and Business Continuity Team will monitor significant developments and update you when warranted. Meanwhile, please contact Jeffrey Clark, the Chair of our Crisis Management and Business Continuity Team, with any questions you might have concerning the new DHS rule. You can reach Clark in our Milwaukee office by telephone at 414-298-8131 or by e-mail at *jclark@reinhartlaw.com*.

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