

Got Chemicals?

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The new, **Chemical Facility Anti-Terrorism Standards (CFATS)**--with mandatory legal requirements, imminent deadlines, \$25,000 per day penalty provisions and governmental authority to shut down non-compliant facilities--mark the first comprehensive federal security regulations aimed at identifying and securing high-risk U.S. chemical facilities.

Depending upon the Chemical(s) of Interest and related security risk(s), a few drums or less may trigger CFATS application.

On November 20, 2007, backed by a Congressional mandate, the Department of Homeland Security (DHS) published Appendix A to finalize this unprecedented effort. By **January 22, 2008**, chemical facilities must submit online to DHS a lengthy Chemical Security Assessment Tool (the so called "Top Screen"). The term chemical facility broadly covers:

...any establishment that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criteria identified by the Department.

Applying Appendix A, if a facility possesses a Chemical of Interest above the Screening Threshold Quantity (STQ) it must submit a Top Screen. Appendix A establishes the STQ for over 300 chemical types based upon quantity and three security risks (1) release, (2) theft or diversion, and (3) sabotage or contamination. DHS will review all the Top Screens submitted and in its broad discretion decide whether the respective facility is a high-level security risk.

Not all facilities that submit a Top Screen will be considered high risk and subject to further DHS involvement. If found to be high risk; however, DHS will assign a risk level ranging from the highest level of Tier 1 to the lowest level of Tier 4. Covered facilities must take action within short timeframes that may include a Security Vulnerability Assessment, Alternative Security Program and Site Security Plan. Covered facilities must meet site-specific, risk-based performance standards addressing nearly 20 separate potential security concerns. Strict record keeping requirements are imposed as well.

It is conservatively estimated that 15,000 chemical facilities may be regulated by these new legal requirements, costing the industry at least \$8.5 billion over the next 10 years. Chemical facilities that fail to act are advised that DHS is authorized to make direct contact to assess risk profiles and in turn may impose harsh consequences.

Got chemicals? Please call our experienced environmental and regulatory team to discuss your legal obligations and options in detail.

For more information, please contact the author, environmental and regulatory attorney Gregory J. Parry at 248.267.3207.

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