

REAL ESTATE CLIENT ALERT

New Department of Homeland Security Chemical Facility Anti-Terrorism Standards

Overview

Congress recently passed the Homeland Security Appropriations Act of 2007, authorizing the Department of Homeland Security (“DHS”) to regulate chemical facilities. On April 9, 2007 the DHS issued Chemical Facility Anti-Terrorism Standards designed to (i) identify facilities that possess chemicals, (ii) determine the risk level that such facilities present, and (iii) plan for and ensure the security of such facilities. The new DHS regulation went into effect June 8, 2007.

The DHS will use the Chemical Security Assessment Tool (“CSAT”), a web-based resource, to perform the evaluation. The CSAT is composed of three levels of questionnaires and plans. The levels are in ascending order of complexity: (1) the initial questionnaire called the “Top Screen Survey”; (2) Security Vulnerability Assessment; and (3) Site Security Plan. Facilities may be asked by the DHS to fill out a CSAT Top-Screen, and are required to fill out a CSAT Top-Screen if they possess any of the DHS “Chemicals of Interest” listed in Appendix A of the Anti-Terrorism Standards in amounts at or above the Screening Threshold Quantities (“STQ”). Appendix A of the Anti-Terrorism Standards lists ammonium nitrate (with nitrogen concentration of 28-34%) at a quantity equal to or a greater than 2,000 lbs as a Chemical of Interest, however this concentration of nitrogen is much higher than would be found in most consumer fertilizer products. A Top-Screen must be submitted even if the facility currently files under the Emergency Planning and Community Right to Know (EPCRTK).

Facilities are required to complete CSAT Top-Screen within sixty days of the finalization of Appendix A, which has not yet been released, though DHS expects that it will be finalized shortly. Monitor www.dhs.gov/chemicalsecurity for updates.

Applicability

Facilities are defined under CFATS as an “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.” The CFATS further states that the term facility “shall refer to the owner or operator of the chemical facility. Where multiple owners and/or operators function within a common infrastructure or within a single fenced area, the Assistant Secretary may determine that such owners and/or operators constitute a single chemical facility or multiple chemical facilities depending on the circumstances.”

Facilities must complete and submit a CSAT Top-Screen if:

- the facility possesses any of the chemicals listed in Appendix A at the specified amount, or
- the facility receives notice from DHS directly or through a *Federal Register* notice.

Exemptions:

- Facilities regulated pursuant to the Maritime Transportation Safety Act (MTSA).
- Public Water Systems, as defined in the Safe Drinking Water Act.
- Sewage Treatment Works, as defined in the Federal Water Pollution Control Act.
- Facilities owned or operated by the Department of Defense or the Department of Energy.
- Facilities subject to regulation by the Nuclear Regulatory Commission (NRC).

The Top-Screen

The facility must register online to gain access to CSAT and the Top-Screen. The CSAT Top-Screen, like the Security Vulnerability Assessment and the Site Security Plan, must be completed online. The Top-Screen seeks information pertaining to the chemical(s) that are manufactured, possessed, used, stored at or distributed by the facility. This evaluation will be used to determine whether the facility is “high risk.” “High risk” facilities will be placed into four tiers. Only tiers 1-3 will be required to submit a CSAT Security Vulnerability Assessment.

Failure to submit a Top Screen within 60 days of Appendix A’s effective date may result in civil penalties, an order to cease operations, or an audit and inspection.

If you have any questions about the required reporting process, or need further information, please contact Ronald Ruth, chair of Real Estate Group, at rwruth@sherin.com or 617.646.2000

Resources

CSAT Top-Screen Questions

www.dhs.gov/xlibrary/assets/chemsec_csattopscreenquestions

CSAT Registration

www.dhs.gov/xprevprot/programs/gc_1169503302924

CSAT Top-Screen User Manual

www.dhs.gov/xlibrary/assets/chemsec_csattopscreenusersmanual

Proposed Appendix A

www.dhs.gov/xprevprot/laws/gc_1175537180929

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