

## Department of Homeland Security Chemical Facility Anti-Terrorism Standards Became Effective November 20, 2007

### The Real Estate Group

On November 20, 2007, the United States Department of Homeland Security ("DHS") regulations promulgated pursuant to its authority under the Homeland Security Appropriations Act of 2007 regulating chemical facilities became effective. These regulations, entitled "Chemical Facility Anti-Terrorism Standards" are 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 regulations apply to any facility (a) that possesses (or later comes into possession of) so-called "chemicals of interest" in amounts exceeding "screening threshold quantities", or STQs, or (b) receives a written request from DHS to participate in the evaluation process based on the Department's determination that such facility presents a high level of security risk. The chemicals of interest and STQs are listed on Appendix A to the regulations.

Chemicals of interest include, by way of demonstration only as the list contains over 200 chemicals, (a) ammonium nitrate, a refrigerant often used at industrial scale facilities such as a perishable food warehouse, (b) hydrogen peroxide and potassium permanganate at levels that may be typical at a site where groundwater is being treated for contamination by an environmental consultant, and (c) propane in excess of 10,000 pounds. More common refrigerants typical in office and retail facilities are not listed on Appendix A.

All covered facilities are required to register on-line with the Department and complete an initial questionnaire called the "Top Screen Survey" on DHS's Chemical Security Assessment Tool ("CSAT"), a web-based resource used to evaluate the risk associated with each facility. Based on the results of the Top Screen Survey, DHS will assign each facility to a risk-based tier. Facilities in the high-risk tiers will be required to continue through CSAT to a security vulnerability assessment, and possibly development of a site security plan. A Top-Screen must be submitted even if the facility currently files under the Emergency Planning and Community Right to Know (EPCRTK).

Facilities have sixty (60) days from the date the facility comes into possession of the chemical of interest, or within the time frame provided in any written notification from the Department to complete the Top Screen Survey. For example, if a facility possessed a chemical of interest at STQ on November 20, 2007, the facility would be required to complete the Top Screen Survey by January 19, 2007. Note, DHS also requires new owners of covered facilities to file a revised Top Screen Survey within sixty (60) days of the transfer.

We encourage you to contact us with any questions or concerns you may have relating to these new rules.

The regulated community, and the regulators themselves, are still sorting out the specifics of the regulations and their applicability. For instance, the regulations fail to directly address the definition of "possess". This leaves open the question as to who is responsible for completing the Top Screen Survey in cases where the chemical of interest is located at a property, but controlled by a person other than the owner of the property, i.e., in a landlord/tenant relationship or an owner/contractor relationship. (Based on our review of the regulations, DHS literature and direct conversations with the Department, we have found that DHS interprets "possession" of a chemical to mean "being responsible for the security" of a chemical, and will look to the operational and contractual relationship between the parties to make such a determination.)

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