

Chemical Facility Anti-Terrorism Standards

An Overview of the Regulation

EXECUTIVE SUMMARY

On October 4, 2006, President Bush signed Public Law 109-295, the Chemical Facility Anti-Terrorism Standards (CFATS). The CFATS Interim Final Rule (IFR) was published on April 7, 2007. CFATS is intended to enhance the security of US Chemical plants against terrorist attacks that potentially could affect the public safety and health, result in debilitating consequences for the U.S. economy or one of its sectors, and diminish the mission of government. The rule became effective June 8, 2007 and Appendix A (Chemicals of Concern List) was finalized on November 20, 2007. The publishing of Appendix A triggered a 60-day window for DHS defined chemical facilities to complete and submit a Top-Screen.

CFATS gives the post-911 formed Department of Homeland Security (DHS) the authority to regulate the security of “high-risk” DHS defined chemical facilities. The term “chemical facility”, as defined in 27.105, means “any establishment that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined to be potentially dangerous or that meets other risk-related criteria identified by the Department”. CFATS requires chemical facilities currently “possessing or planning to possess” specific quantities of chemicals listed in Final Appendix A to register, and complete and submit a preliminary screening assessment (Top-Screen) to DHS that will be used to determine the associated level of risk. Chemical facilities determined by the Top-Screen to be “high risk” will perform site vulnerabilities assessments (SVA) that will be used to develop and implement site security plans (SSP) to thwart terrorist attacks.

It would be prudent and beneficial for all potential chemical facilities to read the full text of CFATS and closely examine the Final Appendix A to determine if any DHS defined “chemicals of interest” (COI) in corresponding “screening threshold quantities” (STQ) are currently possessed or will be possessed. If any facility possesses or is planning to possess any COI in the corresponding STQ, then it is mandatory to register on line with DHS, and subsequently complete and submit a Top-Screen. Be advised that there are stiff civil penalties for non-compliance with CFATS, including fines up to \$25,000 per day and

shutdown of operations. Top Screen is used by DHS to rank chemical facilities in risk tiers from 1 to 4, where tier 1 is highest risk and tier 4 is the lowest risk. The DHS approach allows chemical facilities to develop their own comprehensive SSP based on their SVA. Each site security plan is unique based each facility's own unique vulnerabilities and tier ranking. A chemical facility's SSP must address site vulnerabilities using 19 DHS risk-based performance standards. Once approved, the SSP becomes the security rule for the site against which DHS will measure compliance and, if necessary, impose penalties.

CHEMICAL SECURITY ASSESSMENT TOOLS (CSAT)

Chemical Security Assessment Tools (CSAT) are defined as " a suite of four applications, including User Registration, Top-Screen, Security Vulnerability Assessment (SVA), and Site Security Plan (SSP) through which (DHS) will collect and analyze key data from chemical facilities".

A. User Registration

The initial step in the CSAT process is User Registration. DHS strongly recommends not delaying registration pending the final publication of Appendix A because facilities will lose time from the full 60-day window to complete the Top-Screen. Why? Although the initial User Registration begins electronically using CSAT, it is subsequently followed by a fax to DHS, and a response from DHS in the mail--this may take several days.

Early registration doesn't mean that a Top-Screen will automatically be required to be performed. Rather, it assures a potential DHS defined chemical facility that the full 60-day window is available starting with the publishing date of the Final Appendix A. To register, DHS requires that a computer's security settings exceed the default settings found in Internet Explorer. Go to <http://www.dhs.gov/chemicalsecurity>, the DHS website, to get the "how to" instructions. DHS requires a registrant to designate several CSAT access-roles. The first CSAT access-role, the "Preparer", is an authorized person who enters the required DHS data using the on-line screening tool. The Preparer is not authorized to submit the registration, unless the Preparer and Submitter are the same person. Another access-role, the "Submitter", must be an individual domiciled in the U.S., and a person certified by the company or corporation to submit the required regulatory data to DHS. To gain

user access, a third access-role, the “Authorizer”, must approve both the Preparer and the Submitter. The Authorizer is a person empowered by the chemical facility parent company to provide assurance that the User Account request for the Preparer and Submitter is valid. One person may assume all three access-user roles: Preparer, Submitter and Authorizer. After completing registration, the DHS instructions direct the registrant to print out the completed registration pdf, sign it, and fax it to DHS. After submission via fax, the registrant must wait until DHS forwards (by mail) a user name and password. The user name and password provide secure access to the Top-Screen.

B. Top-Screen

Top-Screen is the second part of the CSAT process. After User Registration is completed, DHS will forward a security access code (user name and password) to the chemical facility that will permit a secure entry into the Top-Screen key data gathering process. Remember that there is a maximum of sixty calendar days (60) from the published date of the Final Appendix A to complete and submit the Top-Screen. Once submitted, the Top-Screen data will be used by DHS to eliminate (screen-out) a chemical facility or to “preliminarily” classify a chemical facility as a “high risk” and rank it into one of four risk-based tiers. As previously stated, tier 1 is the highest risk based tier, while tier 4 is the lowest risk-based tier. DHS will contact each chemical facility individually regarding this ranking. This information is CVI protected.

C. Security Vulnerability Assessment (SVA)

SVA is the third part of the CSAT process. “Unless otherwise notified, a tier ranked chemical facility will have a maximum of ninety (90) calendar days to submit the SVA based on written notification by DHS, or within the timeframe specified in any subsequent Federal Register”. Section 215, states “if the Assistant Secretary (DHS) determines that a chemical facility is high-risk, the chemical facility must complete the SVA.

The term “high-risk” is exclusively referred to in Section 27.105—“Present high levels of security risk and high risk shall refer to a chemical facility that, in the discretion of (DHS), presents a high risk of significant adverse consequences for human life or health, national security and/or critical economic

assets if subjected to terrorist attacks, compromise, infiltration or exploitation". The term "Terrorist Attack" in that definition is furthermore defined in Section 27.105 as "any incident or attempt that constitutes terrorism or terrorist activities...including the theft, misappropriation or misuses of a dangerous quantity of chemicals." The SVA includes an asset characterization, a threat assessment, a security vulnerability analysis, a risk assessment, and a countermeasures analysis. A covered chemical facility "must update and revise its SVA to account for new or differing modes of potential terrorist attacks or for other security-related reasons, if requested by (DHS)".

D. Site Security Plan (SSP)

The fourth and final part of CSAT process is the SSP. After DHS accepts the chemical facility's SVA, that facility will have one hundred and twenty (120) calendar days to submit its SSP to DHS for "authorization". The SSP identifies and describes the security measures that a chemical facility will perform to address vulnerabilities identified in the SVA. Tier 4 ranked chemical facilities may submit an Alternate Security Program (ASP) in lieu of the DHS prescribed SVA, SSP or both. Tier 1, 2 and 3 ranked chemical facilities may only submit an ASP in lieu of a SSP. DHS must approve any ASP. Once the SSP is submitted, and DHS is satisfied that the chemical facility has met all of the SSP requirements; DHS will forward a Letter of Authorization to the submitting chemical facility. The Letter of Authorization is an important document. DHS "certification" and "approval" will be performed at a later date, when the chemical facility is inspected by DHS. Tier 1 and 2 ranked chemical facilities must update Top Screen, SVA and SSP every two (2) years, while Tier 3 and 4 ranked chemical facilities must update Top Screen, SVA and SSP every three (3) years.

AUDIT/TRAINING/RECORDKEEPING/DRILLS

By regulation, each chemical facility must train its employees on its SSP, and conduct a documented annual, internal audit of its SSP to determine compliance with CFATS. Drills and exercises will also be required. These provisions are outlined in Section 27.255 of the regulation. Coordination with local law enforcement and first responders is necessary. Specific documents required for retention include, but are not limited to, Top-Screen, SVA, SSP, ASP, and all related correspondence with DHS for six (6) years.

Training and internal audits, drills, etc., along with the Top-Screen, SVA, SSP, ASP, etc., are "Information Protected" under CVI.

The CVI program is more restrictive than the Security Sensitive Information (SSI) program operated by the USCG under the Maritime Transportation Security Act. The CVI provisions limit the dissemination of facility security information to individuals on a need-to-know basis. Penalties exist for non-compliance. Training on CVI is available on at: http://www.dhs.gov/xprevprot/programs/gc_1181835547413.shtm. CVI covers disclosure of facility information generated by facilities for the CFATS program, including disclosure to states and localities unless DHS approved. (Currently, Congress is considering legislation to weaken the CVI program by substituting SSI protections.)

INSPECTION AND CERTIFICATION

DHS inspectors see their roles as "partners" against the same enemy - domestic and international terrorism. DHS has stated publicly that they will announce inspections and disclose information about the team that will inspect to assist with entry validation of credentials. All inspectors have extensive Federal security experience, and were given hundreds of hours of training in all aspects of chemical inspection. DHS is given authority to inspect each chemical facility in order to certify it. The DHS inspection will include the SSP, document security, training, drills, internal audits and recordkeeping. DHS is expected to perform these inspections in teams. The team size will vary depending on the scale of the chemical facility. DHS inspectors may have chemical or process experts accompanying them to handle the technical aspects of the inspection. The chemical facility's SSP will be measured against the DHS's 19 Risk-Based Performance Standards. Certification comes in the form of a Letter of Approval (as opposed to the Letter of Authorization previously discussed). DHS reserves the right to inspect at any time in the future, without notice, if there is reason to believe that such facility is not in compliance.