

## SUMMARY OF DHS INTERIM FINAL RULE ON CHEMICAL SECURITY

The Department of Homeland Security (DHS) released its interim final rule on chemical security on April 2. The rule is expected to be published imminently in the Federal Register, and will become effective 60 days after publication. DHS also proposed a list of chemicals to be covered by the chemical security rule and corresponding applicability thresholds. There is a 30-day comment period for the chemicals list.

Key aspects of the final rule and proposed chemical list include the following:

- Risk Tiers. The rule maintains the risk-based approach outlined in DHS' advance notice of rulemaking, establishing four tiers of covered facilities ranging from high (Tier 1) to low (Tier 4). The higher a facility's risk tier, the greater the applicable requirements.
- Ammonia Threshold. Ammonia is listed on the DHS list of "chemicals of interest" with a 7,500 pound screening threshold quantity. If this proposed threshold is finalized, any facility that possesses 7,500 pounds of ammonia will be required to comply with the rule's screening requirements.
- Risk Analysis. Any facility that possesses a "chemical of interest" on the DHS list at the designated threshold quantity (which in some cases is any amount) must complete and submit a "top screen" consequence analysis. Results of this analysis will determine a facility's risk tier and whether additional requirements apply. DHS also retains the authority to require other facilities without threshold amounts of listed chemicals to complete the top screen analysis.
- Security Vulnerability Assessments. Facilities determined to be high risk must complete a vulnerability assessment, including asset characterization, threat assessment and countermeasures analysis.
- Site Security Plans. High risk facilities also must prepare and implement site security plans. The types and intensity of security measures required in the plans will depend on a facility's risk tier.
- Timing. The final rule sets time frames for submission of required information: 60 days from the date of finalization of the chemicals list for the top screen analysis; 90 days from the date of notification by DHS for the security vulnerability assessment; and 120 days from the date of DHS notification for the site security plan. In addition, for facilities in the highest risk tiers (1 and 2), the required information will have to be updated every two years, and for facilities in lower risk tiers (3 and 4), it will have to be updated every three years.

- Technology. Inherently safer technologies are not required, although facilities are free to consider them as security measures.
- Alternative security measures. The final rule retains the provision allowing use of alternate security programs, but specifies that DHS must find that the alternate program “provides an equivalent level of security” to that required under the regulations. In addition, low-risk facilities (those in Tier 4) may rely on alternate programs in lieu of vulnerability assessments or site security plans, while those in higher tiers may only use alternate programs for their site security plans.
- Enforcement. The final rule maintains DHS’ ability to issue orders for any noncompliance with the regulations, and adds a provision allowing for adjudication of certain DHS determinations, such as disapproval of a site security plan or issuance of an order.
- Preemption. The rule only preempts state laws that directly conflict with federal requirements, and DHS does not believe that any currently applicable state measures present such a conflict.
- Fees. Although the rule does not impose fees, DHS states in the preamble that it is considering fees for filing, inspections and screening, and may propose such fees in a future rulemaking.
- Guidance. DHS intends to issue guidance on risk based performance standards, inspections and recordkeeping in the near future.