

Rule Establishes Risk-Based Performance Standards for Security of Chemical Facilities

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THE U.S. Department of Homeland Security (DHS) has released an interim final rule that imposes for the first time comprehensive federal security regulations for high risk chemical facilities.

DHS sought and reviewed comments from state and local partners, Congress, private industry, and the public to develop consistent guidelines using a risk-based approach. The new rule gives the department authority to seek compliance through the imposition of civil penalties, of up to \$25,000 per day, and the ability to shut non-compliant facilities down.

"The safety and security measures that we take need to be tough and balanced," said Homeland Security Secretary Michael Chertoff. "We will significantly reduce vulnerability at high-consequence chemical facilities, taking into account important efforts in certain states."

The department will require owners of chemical facilities housing certain quantities of specified chemicals to complete a preliminary screening assessment that determines the level of risk associated with the facility. If a chemical facility preliminarily qualifies as high risk, its owners will be required to prepare and submit a security vulnerability assessment and site security plan. Submissions will be validated through audits and site inspections.

The department will provide technical assistance to facility owners and operators as needed. Security standards will be required to achieve specific outcomes, such as securing the perimeter and critical targets, controlling access, deterring theft of potentially dangerous chemicals, and preventing internal sabotage.

Covered facilities contacted by the department will have 120 days from the publication of the regulation in the Federal Register to provide information for the risk assessment process. Other requirements follow that time period. Additional facilities will follow a similar timeframe after future Federal Register publications.

Some states have existing laws for regulating chemical facilities. Only state laws and requirements that conflict or interfere with these regulations, or the purpose for the regulations, will be preempted. Currently, the department has no reason to conclude that any existing state laws are applied in a way that would impede the federal rule.

American Chemistry Council (ACC) officials praised the interim final rule, stating that the regulations will complement existing state programs and the significant security enhancements already undertaken voluntarily by our members to protect the chemical industry and the nation.

In anticipation of the new requirements, ACC has planned a workshop later this month where DHS will brief the organization's members on their regulatory obligations.

Additional information on the interim final rule is available at http://www.dhs.gov/xprevprot/laws/gc_1166796969417.shtm.