The Department of Homeland Security was given statutory authority to regulate security at chemical facilities with the passage of the Homeland Security Appropriation Act of 2007 (P.L. 109-295). Section 550 of the Act establishes the basis for the Secretary of Homeland Security to promulgate interim final regulations that define risk-based performance standards for security at chemical facilities which, at the discretion of the Secretary, presents high level security risk.

To fulfill its statutory obligations under the law, DHS issued the interim final rule (IFR) on April 9, 2007 with an effective date of June 8, 2007. DHS also requested in the April 9, 2007 Federal Register public comment on their proposed list of chemicals of interest (COI). The COI list would aid in defining the scope of facilities that would need to comply with the Chemical Facilities Anti-Terrorism Standards (CFATS). After substantial public comment, the COI list was finalized on November 20, 2007. The IFR and the COI list (known as Appendix A) both can be found at the following site: http://www.dhs.gov/xprevprot/laws/gc_1166796969417.shtm.

Chemicals of interest found in Appendix A reflect four broad categories:

- Extremely toxic or highly flammable chemicals covered under the Clean Air Act
- Precursor chemicals defined in the Chemical Weapons Convention
- Gases that are poisonous gases when inhaled
- Department of Transportation Class 1 explosives

CFATS regulates a broadly defined category of facilities, more than a layperson would consider to be a “chemical facility.” The regulation defines chemical facility as: “any facility that possesses or plans to possesses at any relevant point in time a quantity of chemical substance determined by the Secretary to be potentially dangerous or meets other risk related criteria identified by the Department.” There are exemptions from CFATS which include facilities that have been regulated by another entity, such as:

- Facilities regulated under the Maritime Transportation Safety Act (MTSA)
- Public water systems as defined in the Safe Drinking Water Act
- Water treatment facilities as defined by the Federal Water Pollution Control Act
- Facilities owned or operated by the Departments of Defense or Energy
- Facilities subject to regulation by the Nuclear Regulatory Commission
CFATS Implementation: Four Phases

Implementation of CFATS has occurred in four distinct phases, the first phase being the acquisition of information that would allow DHS to determine which facilities are potentially at high risk and thus subject to the regulation. Facilities with one or more chemicals of interest at or above the threshold established in Appendix A were required to submit certain information to DHS. The information collected, also called “top screen,” contains primarily consequence related information.

DHS has completed top screen reviews on information submitted by approximately 32,000 facilities. Just over 7,000 have been identified as preliminarily high risk and have been assigned into one of four tiers. Those facilities falling into one of the four tiers must complete a Site Vulnerability Assessment. Once SVAs are submitted, facilities must develop a Site Security Plan that will be evaluated against 19 risk-based performance standards. DHS chemical inspectors will then do a site inspection, which include meeting with off-site responders organizations that are identified as having response functions in the SSP.

SVA Submissions

- Tier 1 – September 25, 2008
- Tier 2 – October 24, 2008
- Tier 3 – November 24, 2008
- Tier 4 – December 31, 2008

Sharing Chemical-terrorism Vulnerability Information

All information submitted by facilities in compliance with CFATS (top screen, site vulnerability assessments, site security plans) as well as correspondence and reports DHS generates in relation to facility compliance are considered Chemical-terrorism Vulnerability Information (CVI) and subject to secure handling safeguards.

DHS created a process for sharing CVI in consultation with the Chemical Sector Coordinating Council and the SLTTGCC. The process has been published in a procedures manual that can be downloaded from dhs.gov. The process, as currently defined, is a two-pronged approach. State HSAs will receive CVI directly from DHS. Local officials will receive CVI from the owner/operator of the high risk facility.

At the state level, HSAs may request two lists from DHS: 1) a list of facilities that have submitted a CSAT top screen; and 2) a list of facilities that DHS has determined to be “high risk,” and in which tier they have been placed. Only the name, address, county, state, tier ranking, and chemical(s) of interest present for tiered-in facilities will be made available to HSAs. Top screen data for facilities that have not been deemed high risk, or “tiered out,” will not be shared with HSAs. Adjudication of decisions about need-to-know and what portions of CVI can be reviewed can be escalated to ISCD.

At the local level, CVI will be shared directly between the local government entity and the owner/operator of the facility. The local official must have a need-to-know. The determination of the need-to-know CVI for local authorities will be made by the local CFATS Inspector(s), in consultation with the facility at issue.

CVI will initially be passed to HSAs through paper copies that will need to be tracked, safeguarded and accounted for until the IT architecture to support electronic information sharing has been put in place. There has been no date provided when electronic CVI will be available. All government officials seeking access to CVI must first complete the CVI Authorized User training. It is available at: https://csat.dhs.gov/dana/home/index.cgi. This web course takes approximately 25 minutes to complete.
SLTTGCC’s Position on the CVI Sharing Model

Congress included in the CFATS enabling legislation language that directed the Secretary of DHS to share, as he deemed appropriate, CVI with state and local officials. DHS has attempted to formulate a policy for sharing CVI as well as drafting safeguards consistent with the sensitive nature of CVI. CFATS regulations do not differentiate what types of CVI may be shared with state and local officials. Therefore, what CVI will be shared with State Homeland Security Advisors will ultimately be determined by policy. The SLTTGCC has been actively engaged in discussion with DHS regarding the CVI sharing policy and process and takes the position that DHS must share all CVI information with State Homeland Security Advisors.

The SLTTGCC also takes the position that top screen information submitted by facilities determined not to be high risk at this time must also be shared with State Homeland Security Advisors. Even though these facilities are not subject to further CFATS compliance steps, top screen submissions do provide state and local homeland security officials important consequence information necessary for risk management decisions. Furthermore, while these facilities may not be considered high risk from a national perspective, they can still be of relevance from a state and local risk management and planning perspective.

Other positions the SLTTGCC advocates are: HSAs should have access to all CVI, not just the header data; access to CVI through electronic means to avoid costly data handling and security procedures; and identifying a process by which local officials with a need-to-know can access CVI directly with DHS, or at least receive a list of high risk facilities in their jurisdiction that contains the top screen header data.

HSA Action Items Regarding Chemical Security

On July 14 A/S Robert Stephan sent a letter to each HSA informing them about the availability of the top screen submission and the tier determination lists. The letter informed HSAs that they could request these lists. Requests must be in writing and mailed to DHS. In addition, it is advisable to email your request to DHS, direct all emails to Laurie.Boulden@dhs.gov. The request must include the name, address and CVI Authorized User registry number for the person that will be the custodian of the lists. For your convenience a form letter to request your state list from DHS is available at the Homeland Security Information Network’s (HSIN) SLTTGCC community.

If you currently have access to HSIN you can request access to the SLTTGCC community on the HSIN website. If you do not have access to HSIN email SLTTGCC@DHS.GOV to request access.

CVI Working Group Contact Information

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