

## Department of Homeland Security Issues Chemical Security Risk Rankings

*Earlier this week, the Department of Homeland Security (“DHS” or “Department”) issued letters to approximately 7,000 industrial and other sites that have been designated as “high risk” under the Department’s Chemical Security Anti-Terrorism Standards. These facilities have been assigned a chemical security risk level (Tier 1 through Tier 4), which triggers requirements for developing and implementing a security assessment and plan.*

Over 32,000 facilities were required to submit initial disclosures to DHS (“Top Screens”), because, in many cases, the reporting thresholds for a number of the chemicals of concern were rather modest. Upon reviewing these submissions, DHS determined that 7,000 facilities were classifiable in one of four risk tiers: from Tier 1 (highest risk) to Tier 4 (lowest risk). The remaining 25,000 submitters were determined to be non-risk facilities and are expected to receive a letter informing them that they will not incur any obligations under the regulation.

Following notification by the Department, Tier 1 facilities are required to submit a Security Vulnerability Assessment (“SVA”) within 90 days and a Site Security Plan (“SSP”) within 120 days. Lower tiers will have an additional 30–90 days to make their submissions. In addition, facilities included within Tiers 1 and 2 must complete a new Top Screen analysis within two years following Department approval of the SSP. Facilities in Tiers 3 or 4 must submit a new Top Screen analysis within three years following Department approval of the SSP. New analyses also are required any time a facility materially modifies its operations or its site.

DHS published a final rule implementing the Chemical Security Anti-Terrorism Standards on November 20, 2007. Facilities possessing approximately 320 listed chemicals in amounts above stated thresholds were required to submit to DHS the Top Screen disclosure, including information relating to: (1) the specific nature of the business or activities conducted at the facility; (2) the names, nature, and conditions of chemical storage; (3) quantities, volumes, properties, major uses, and other pertinent information about specific chemicals; (4) information concerning facility security, safety, and emergency response practices; and (5) information pertaining to incidents, history, funding, or other matters bearing on the effectiveness of security, safety, and emergency response programs. Top Screen submissions were due January 19, 2008 and DHS has indicated that compliance inspections will begin as soon as February 2009.

### A. Security Vulnerability Assessment

The SVA submission must address five specific areas:

- 1. Asset Characterization:** This includes a review of the critical assets at the facility, identification of hazards and consequences of concern for the facility, and the surrounding assets related to an incident. The Asset Characterization also must include a summary of the infrastructure and the layers of protection provided by the facility.
- 2. Threat Assessment:** The SVA must include a review of internal and external threats and internally-assisted threats.
- 3. Security Vulnerability Analysis:** This analysis reviews the specific vulnerability of the facility to identified potential threats, the availability of countermeasures, and the level of effectiveness of

the countermeasures in reducing the vulnerabilities and meeting the applicable risk-based performance standards.

4. **Risk Assessment.** The risk assessment includes an analysis of the likelihood of the success of a terrorist attack and the potential effects of such an attack on critical assets at the facility.
5. **Countermeasures Analysis:** This analysis reviews strategies to reduce probability of a successful attack, strategies to enhance risk reductions and the reliability and feasibility of countermeasures and mitigation measures.

### B. Site Security Plans

Following notification by the Department, facilities may be required to submit individual SSPs to address specific risk-based performance standards. The performance standards will vary by Tier. SSPs must address each vulnerability identified in the SVA with appropriate security measures. The plans must also identify and explain the appropriate security measures to address each risk-based performance standard and each potential mode of terrorist attack (land, water, air). In addition, the SSP must contain any additional information requested by the Department.

### C. Risk-Based Performance Standards

The regulation contemplates that DHS will issue specific guidance for each applicable Tier of facility risk in the form of Risk-Based Performance Standards. There are a number of standards that are described in the regulation. These standards include:

1. Restrictions for area perimeter (security and monitoring)
2. Securing site assets
3. Screening and controlling access of individuals and vehicles (including identification checks)
4. Deter, detect and delay. (this includes ensuring visible security, barriers and barricades, hardening applicable targets, conducting counter-surveillance,

screening of targets and coordination of response planning)

5. Shipping receipt and storage
6. Theft and diversion
7. Sabotage
8. Cyber security
9. Response planning
10. Monitoring effectiveness of communications and warning systems
11. Training of personnel
12. Personnel surety including background checks and appropriate credentials
13. Elevated threat procedures. (this includes increasing measures when the risk threat level has been elevated)
14. Site-specific threats
15. Reporting of incidents
16. Organizational controls
17. Record keeping

The regulation provides flexibility for facilities to submit an Alternative Security Program (“ASP”), subject to review by the Department. Facilities in Tier 4 may use the ASP in lieu of the SVA and the SSP. Facilities in Tiers 1, 2 and 3 may use an ASP in lieu of the SSP, but must submit the SVA.

DHS will review all SVAs and will provide a list of deficiencies and a date for resubmittal. Similarly, the Department will review each SSP through a two-step process. Step I includes review of the paper submission. If the paper submission is deemed adequate, a Letter of Authorization will follow. Facilities that are required to submit an SSP but fail to have such a plan authorized by the Department are subject to financial penalties of up to \$25,000 per day as well as other sanctions. Step II is a physical inspection of each facility to ensure that the appropriate control measures are in place.

**D. Conclusion**

Facilities that receive a “high risk” notification letter will have a relatively short time frame (90 to 180 days) to complete the SVA and subsequent SSP. Penalties for non-compliance are substantial: up to \$25,000 per day, in addition to possible closure of the facility.

**For more information about this  
Client Advisory, please contact:**

**JOSEPH J. GREEN**

(202) 342-8849

[jgreen@kelleydrye.com](mailto:jgreen@kelleydrye.com)

**WAYNE D'ANGELO**

(202) 342-8642

[wdangelo@kelleydrye.com](mailto:wdangelo@kelleydrye.com)