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**NEW FEDERAL RULE DICTATING  
ANTI-TERRORISM STANDARDS  
FOR CHEMICAL FACILITIES**

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## **INTRODUCTION**

On April 9, 2007, the Department of Homeland Security (DHS) published its Interim Final Rule on Chemical Facility Anti-Terrorism Standards (CFATS or the Rule).<sup>1</sup> This is a significant new security regulation. Because this Rule may become the standard for future security regulation in other industries and critical infrastructures, corporate leaders – regardless of their core business – should monitor its implementation closely. It is conceivable that Congress will begin regulating other high consequence and high vulnerability industries (e.g., rail) in the near future. Learning lessons from the chemical industry’s experience with security regulation may save companies time and money if and when regulation expands to other industries.

Other than Appendix A (discussed below) this Rule took effect on June 8, 2007. The CFATS makes revisions and other policy changes to the proposed rule contained in the Advance Notice of Rulemaking (ANRM or Proposed Rule) published at the end of 2006.<sup>2</sup> The most significant change to the Proposed Rule

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<sup>1</sup>Chemical Facility Anti-Terrorism Standards; Final Rule 72 Fed. R. 17688 (Apr. 9, 2007) (to be codified at 6 CFR Part 27). All capitalized terms shall have the meaning as defined herein or as contained in the Rule.

<sup>2</sup>Chemical Facility Anti-Terrorism Standards; Proposed Rule, 71 Fed. Reg. 78,276 (Dec. 28, 2006). The ANRM is the subject of a previous Alston & Bird advisory *available at* <http://www.alston.com/articles/Chemical%20Facility%20Security010207052424.pdf>.

is the inclusion of a proposed appendix entitled “DHS Chemicals of Interest” (Appendix A).<sup>3</sup> Appendix A addresses a perceived weakness in the ANRM because the Proposed Rule did not specifically identify the chemical substances that DHS considered potentially dangerous. DHS invited comments on Appendix A until the public comment period closed on May 9, 2007.

While Section 550 of the recently passed Department of Homeland Security Appropriations Act of 2007 provides the statutory authority for this Rule, members of the 110<sup>th</sup> Congress have already proposed amending last year’s chemical security legislation.<sup>4</sup> With this significant Congressional interest, it will be important to monitor legislative developments that may impact the Rule as currently drafted. Any amendment to the Act with its aggressive timeline would be extremely disruptive and would hinder DHS from its ability to effectively and thoroughly implement the CFATS program.

## **I. EXECUTIVE SUMMARY**

This Rule<sup>5</sup> establishes risk-based performance standards for the security of high-risk chemical facilities. Chemical facilities that meet the threshold requirements of Appendix A, or are otherwise identified by DHS as potentially high-risk,<sup>6</sup> must complete a questionnaire known as the Top-Screen. The questionnaire elicits information to help DHS determine whether a chemical

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<sup>3</sup>DHS looked to existing sources of information in compiling Appendix A: (1) chemicals contained on the EPA’s RMP list; (2) chemicals from the Chemical Weapons Convention; and (3) Hazardous Materials that the Department of Transportation regulates. Rule at 17696.

<sup>4</sup>Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295, 120 Stat. 1355 (2006); and proposed amendment have also been introduced in the Department of Homeland Security Appropriations Act of 2008.

<sup>5</sup>As with most regulations, in order to understand the Rule, it is essential to know the meaning of certain key terms. Key definitions in the Rule can be found at §27.105. *Id.* at 17730.

<sup>6</sup>DHS may determine at any time that a chemical facility presents a high level of security based on any information that, in the Secretary’s *discretion*, indicates the potential that a terrorist attack involving the facility could result in significant adverse consequences for human life or health, national security or critical economic assets. *Id.* at 17731 (§27.205).

facility will be covered as high-risk and regulated under the additional requirements of the Rule. As such, it will be referred to as a “Covered Facility,” which the Rule defines as “...a chemical facility determined by the Assistant Secretary to present high levels of security risk, or a facility that the Assistant Secretary has determined is presumptively high risk...”<sup>7</sup>

Depending upon the perceived risk, Covered Facilities will be placed in one of four risk tiers with commensurate security obligations. DHS will provide the general tier criteria to Covered Facilities through forthcoming guidance documents, but the actual determination allocating a covered facility to a tier will be protected information. Covered Facilities will be required to prepare Security Vulnerability Assessments (SVA) and Site Security Plans (SSPs) that must be approved by DHS. In short, the SVA identifies facility security vulnerabilities. The SSP includes measures that satisfy the identified risk-based performance standards. In certain circumstances, Covered Facilities are permitted to submit Alternate Security Programs (ASPs), rather than an SVA or SSP, or both.

The Rule also contains provisions concerning inspections, audits, recordkeeping and the protection of sensitive chemical terrorism vulnerability information. It also provides DHS with the authority to enforce the Rule’s requirements, including assessment of fines and, in extreme cases, the issuance of an order for the cessation of operations. The Rule has a section addressing the issue of review and preemption of state and local law. Finally, the Rule prohibits third party actions; only the Secretary of DHS may seek remedies under the Rule.

## **II. CFATS REQUIREMENTS**

The CFATS describes a regulatory agenda divided among several steps:

- **Chemical Facility:** DHS defines chemical facility as “any establishment that possesses or plans to possess, at any relevant point in

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<sup>7</sup>*Id.* at 17730 (§ 27.105).

time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criterion identified by the Department.”<sup>8</sup>

- **Exemptions:** Pursuant to Section 550, Congress statutorily exempts five types of facilities from this regulatory regime:
  - facilities regulated by the Maritime Transportation Security Act of 2002;
  - Public Water Systems, under section 1401 of the Safe Drinking Water Act;
  - Treatment Works, under section 212 of the Federal Water Pollution Control Act;
  - any Department of Defense or Department of Energy owned or operated facility; and
  - any facility regulated by the Nuclear Regulatory Commission.
- **Implementation:** DHS will implement this regulatory program in phases.<sup>9</sup> A Coordinating Official will be appointed “who will be responsible for ensuring that these regulations are implemented in a uniform, impartial, and fair manner.” The Coordinating Official and the Coordinating Official’s staff will provide guidance to facilities regarding compliance; resources permitting, the Coordinating Official will also provide consultation and technical assistance to Covered Facilities.<sup>10</sup>
- **Initial Screening:** DHS would require non-exempted chemical facilities that *may present* “high levels of security risk” to complete a risk assessment, coined “Top-screen,”<sup>11</sup> which is one part of an overall

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<sup>8</sup>*Id.* at 17730 (§ 27.105).

<sup>9</sup>*Id.* at 17730 (§ 27.115).

<sup>10</sup>*Id.* (§ 27.120).

<sup>11</sup>*Id.* (§ 27.105). Top-screen “is an initial screening process designed by the Assistant Secretary [for Infrastructure Protection] through which chemical facilities provide information to the Department....”

process of collecting data referred to as the Chemical Security Assessment Tool (CSAT).<sup>12</sup>

- **Selection for Top-screen:** The presence or amount of chemicals listed in Appendix A will serve as a baseline threshold to require a facility to complete the Top-screen.<sup>13</sup> However, DHS has been careful to say that the “presence or amount of a particular chemical listed in Appendix A is not the *sole factor* in determining whether a facility presents a high-level of security risk and is *not an indicator* of a facility’s coverage under this rule.”<sup>14</sup> The Department may also notify facilities – either directly or through a *Federal Register* notice – that they need to complete and submit a CSAT Top-screen.<sup>15</sup> Facilities that meet the threshold baseline will have 60 calendar days to complete Top-screen from the effective date of publication of the final Appendix A.<sup>16</sup>
- **Top-screen Questions:** The questions presented by the Top-screen will solicit broad information related to security and emergency preparedness issues, and may include questions such as the “nature of the business and activities conducted at the facility; the names, nature, conditions of storage, quantities, volumes, properties, customers, major uses, and other pertinent information about specific chemicals or chemicals meeting a specific criteria; information concerning facilities’

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<sup>12</sup>According to the CFATS, CSAT it is a suite of four applications, including User Registration, Top-screen, Security Vulnerability Assessment and Site Security Plan, through which DHS collects and analyzes key data from chemical facilities. *Id.* (§27.105). On April 25, 2007, DHS encouraged facilities that *think they* may be covered by CFATS to begin completing the applicable portions of the CSAT early to avoid potential delays or other unforeseen impediments. *See* Notice to Facilities to Begin Registration for Chemical Security Assessment Tool, 72 Fed. Reg. 20423 (Apr. 25, 2007).

<sup>13</sup>*Id.* at 17731 (§27.200).

<sup>14</sup>*Id.* at 17696.

<sup>15</sup>*Id.* at 17731 (§27.200).

<sup>16</sup>*Id.* (§27.210).

security, safety, and emergency response practices, operations and procedures; information regarding incidents, history, funding, and other matters bearing on the effectiveness of the security and response programs, and other information as necessary.”<sup>17</sup>

- **Submission of Top-screen:** Chemical facilities would submit Top-screen results via a secure Web portal or through other means approved by DHS.<sup>18</sup>
- **Presumption of High-Risk:** Chemical facilities that are required or ordered to provide information or complete the Top-screen – but fail to do so in a timely manner – may be classified as presumptively “high risk” and be subject to civil penalties and ordered to cease operations.<sup>19</sup>
- **Non-High-Risk Facilities:** If, after reviewing the Top-screen results, DHS determines that a particular chemical facility does not present a high level of security risk, then DHS would notify the chemical facility of this finding. The chemical facility would have no further regulatory obligation under this Rule.<sup>20</sup>
- **Covered Facilities:** The Top-screen is only one of several factors that DHS will consider when determining whether a facility is “high-risk” and thus covered by the Rule.<sup>21</sup> If after considering those factors, DHS determines that a chemical facility does present a high level of security risk, then DHS would notify the chemical facility of this finding and may

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<sup>17</sup>*Id.* at 17731 (§27.200).

<sup>18</sup>*Id.* (§27.200).

<sup>19</sup>*Id.*

<sup>20</sup>*Id.*

<sup>21</sup>*Id.* at 17690.

also notify the facility of its preliminary placement in a risk-based tier (highest Tier 1 to lowest Tier 4).

These Covered Facilities would be required to take additional steps pursuant to the CSAT. The Covered Facility must complete and submit: an SVA and an SSP within 90 days and 120 days, respectively, of written notification from DHS or *Federal Register* notice.<sup>22</sup> According to DHS' website, "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."<sup>23</sup>

- **Resubmissions:** Tier 1 and Tier 2 Covered Facilities must resubmit a new Top-screen every 2 years. Tier 3 and Tier 4 Covered Facilities must resubmit a new Top-screen every 3 years. Upon resubmission of the Top-screen, Covered Facilities are also required to resubmit SVAs and SSPs within 90 and 120 days, respectively.<sup>24</sup> Facilities may also have to make a resubmission if there has been a "material modification."
- **Security Vulnerability Assessment:** An SVA evaluates risk by considering diverse factors. An SVA includes features such as asset characterization, threat assessment, security vulnerability analysis, risk assessment, and countermeasure analysis. In the proposed rule, DHS had emphasized the Risk Analysis and Management for Critical Asset Protection (RAMCAP) vulnerability assessment methodology to complete the vulnerability assessment, though alternative vulnerability assessment methodologies (e.g., Alternative Security Programs as

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<sup>22</sup>The 90 and 120 day deadlines may be shortened or extended, if appropriate. *Id.* at 17731 (§27.210).

<sup>23</sup>See [http://www.dhs.gov/xnews/releases/pr\\_1175527925540.shtm](http://www.dhs.gov/xnews/releases/pr_1175527925540.shtm).

<sup>24</sup>*Id.* (§27.200).

discussed below) may satisfy the requirement.<sup>25</sup> Under the Rule, DHS has decided to employ a modified version of RAMCAP (i.e. CSAT) and, with limited, exception has made CSAT the preferred methodology.<sup>26</sup>

- **Tiers:** Upon review of information it receives, including Top-screen submissions, DHS will make a preliminary decision regarding placement of each Covered Facility in a risk tier. The risk tier will include Covered Facilities with similar risk profiles. DHS has identified four tiers, with Tier 1 representing the highest-risk facilities. DHS will confirm or alter its preliminary tier decision after reviewing a Covered Facility's SVA. The assigned tier will determine which risk-based performance standards apply.<sup>27</sup>
- **Site Security Plan:** The SSP is a security and emergency preparedness roadmap. Specifically, the SSP must remediate deficiencies identified by the vulnerability assessment and satisfy the applicable risk based performance standard. Because a performance standard, by definition, seeks a specific result or outcome but does not direct the *manner* or *means* to achieve it, precise security measures are not mandated. For example, DHS can mandate that all Tier 1 facilities achieve a required *level* of protection (i.e., meet the risk based performance standard). DHS cannot mandate that all Tier 1 facilities install specific vehicle barricades or perimeter intrusion detection systems to do so. Accordingly, DHS cannot disapprove a SSP based on the presence or absence of a specific security measure. DHS can only disapprove a SSP if

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<sup>25</sup>DHS describes RAMCAP as “an overall strategy and methodology to allow for a more consistent and systematic analysis of the terrorist threat and vulnerabilities against the U.S. infrastructure using a risk-based framework.” *Id.* at 78,303. As such, RAMCAP is a technical, engineering-based application requiring subject matters expertise. DHS provided a detailed RAMCAP overview in Appendix B to the proposed regulation.

<sup>26</sup>CFATS at 17691.

<sup>27</sup>*Id.* at 17732 (§27.220).

the plan, as a whole, fails to satisfy the applicable risk based performance standard.<sup>28</sup>

- **Alternative Security Program:** Many Covered Facilities have enhanced security voluntarily since 9/11. Robust security vulnerability assessments, site security plans, and other preexisting emergency initiatives have resulted in a level of preparedness that, in some cases, meets or exceeds the requirements of the Rule. Additionally, industry associations have undertaken significant efforts to develop security benchmarks unique to the chemical sector (e.g., Responsible Care®) to help member companies increase security and work with DHS and other government departments. Recognizing the progress that has already been made, DHS may accept an ASP as a substitute for some of the mandates proposed by this regulatory scheme. An approved ASP must provide an equivalent level of security as would the requirements of the Rule. Depending upon a Covered Facilities' tier, the Rule permits submission of an ASP for DHS approval in lieu of an SVA or SSP, or both. DHS will *not* accept an ASP in lieu of an SVA for Tiers 1-3 (higher risk facilities), but may accept an ASP as substitute for an SSP for Tiers 1-3. Tier 4 – the lowest risk facilities – may submit an ASP rather than an SVA, SSP, or both.<sup>29</sup> DHS explains its rationale for these distinctions in the Rule.<sup>30</sup>

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<sup>28</sup>*Id.* at 17734 (§27.245).

<sup>29</sup>*Id.* at 17733 (§27.235).

<sup>30</sup>*Id.* at 17692-3.

- **Approvals:** DHS must review and approve all SVAs, SSPs and ASPs. If any submission is deemed inadequate, DHS will notify the Covered Facility of the deficiencies and provide a deadline for resubmission.<sup>31</sup>
- **Material Modifications to Operations or Site:** Because threats, vulnerabilities, and consequences change, Covered Facilities have an affirmative obligation to amend and resubmit SVAs and SSPs, as situations warrant or as required by DHS. A facility will have 60 days from the date of the “material modification” to make its resubmission.<sup>32</sup>
- **Audits and Inspections:** Following initial approval of a Site Security Plan, DHS proposes to ensure compliance through audits and inspections. These audits and inspections will be conducted at a “reasonable time” and in a “reasonable manner” and typically with 24 hour notice. However, in exigent circumstances, DHS may conduct unannounced inspections. DHS will be issuing more guidance regarding inspections.<sup>33</sup> DHS will use its own auditors and inspectors to inspect high-risk tier facilities, but will be issuing a future rulemaking about how it plans to use third-party auditors.<sup>34</sup>
- **Recordkeeping:** Covered Facilities are required to maintain records related to security and emergency preparedness for *three years* (e.g.,

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<sup>31</sup>*Id.* at 17734 (§§ 27.240 & 27.245).

<sup>32</sup>*Id.* at 17732 (§27.210). DHS admits that it is difficult to provide an “exhaustive list” of what constitutes a “material modification,” but expects that it would include changes at a facility to chemical holdings (including the presence of a new chemical, increased amount of an existing chemical or the modified use of a given chemical) or to site physical configuration that may (1) substantially increase the level of consequence should a terrorist attack or incident occur; (2) substantially increase a facility’s vulnerabilities from those identified in the facility’s SVA; (3) substantially effect the information already provided in the facility’s Top-screen submission; or (4) substantially effect the measures contained in the facility’s SSP. *Id.* at 17702.

<sup>33</sup>*Id.* at 17734 (§27.250).

<sup>34</sup>*Id.* at 17712.

Training, Drills and Exercises, Incidents and Breaches of Security, Maintenance Records regarding Security Equipment, Audits, Letters of Authorization and Approval).<sup>35</sup>

- **Orders and Adjudications:** If facilities are found in violation of the Rule, DHS may assess fines (up to \$25,000 per day) or require the cessation of operations.<sup>36</sup> A Covered Facility has a right to seek administrative review of such determinations. The Assistant Secretary who took the administrative action under adjudicated will bear the initial burden of proving the facts supporting the administrative action in dispute.<sup>37</sup>
- **Chemical-terrorism Vulnerability Information:** Chemical facility security information (“CVI”) – such as SVAs, SSPs, Alternative Security Programs and inspections and audits – is sensitive. It may be characterized not only as national security information but also as proprietary and confidential business information. Current law protects both from unauthorized disclosure.<sup>38</sup> Because of the security concerns regarding the types of information developed, maintained, and submitted in compliance with this new Rule, DHS has developed a new form of protected information. Only individuals with a need to know will have access to or otherwise obtain Chemical-terrorism Vulnerability Information. CVI is intended to protect the most sensitive information exchanged between DHS and Covered Facilities, including documentation regarding: (1) SVAs; (2) SSPs; (3) DHS’ review or

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<sup>35</sup>*Id.* at 17734-5 (§27.255).

<sup>36</sup>*Id.* at 17735 (§27.300).

<sup>37</sup>*Id.* at 17736 (§27.325).

<sup>38</sup>*See, e.g.*, 5 U.S.C. § 552, which includes exemptions to the Freedom of Information Act (FOIA) for national security information and proprietary information.

approval of SVAs or SSPs; (4) Alternate Security Programs; (5) Inspections or Audits; (6) Recordkeeping Requirements; (7) sensitive portions of orders, notices or letters; (8) Top-screen or other similar documents related to tier determination; (9) other sensitive information. CVI has specific access, marking, handling, and destruction requirements; CVI disclosure is further limited in administrative and judicial proceedings.<sup>39</sup>

- **Preemption:** While Section 550 of the Homeland Security Appropriations Act does not contain an express preemption provision, well established principles of federalism preempt state or local laws that conflict with or frustrate the purpose of DHS’ proposed regulatory scheme. DHS proposes to permit any Covered Facility or any State to “petition the Department by submitting a copy of a State law, regulation, or administrative action, or decision or order...” for a DHS-authored preemption opinion.<sup>40</sup>
- **Third Party Actions:** Only the Secretary has a right of action under this Rule. There is no private right of action.<sup>41</sup>

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<sup>39</sup>*Id.* at 17737 (§27.400).

<sup>40</sup>*Id.* at 17739 (§27.405).

<sup>41</sup>*Id.* (§27.410).

### **III. CONGRESSIONAL ROLE IN CHEMICAL SECURITY REGULATION AND PROPOSED CHANGES TO SECTION 550**

The 109<sup>th</sup> Congress, with the support of Secretary Chertoff,<sup>42</sup> determined that only a legislative solution could address security deficiencies and provide uniform standards in the chemical industry. Despite stand-alone legislative proposals in 2005 and 2006 (most notably S. 2145 and H.R. 5695), DHS' authority to regulate chemical security originates in the Department of Homeland Security Appropriations Act of 2007.<sup>43</sup> Section 550 of the act required DHS to implement chemical security regulations no later than April 4, 2007.<sup>44</sup> The publication of the Rule on April 9, 2007 represents DHS' effort to meet its statutory mandate.<sup>45</sup> However, some members of Congress are already considering making changes to Section 550. DHS has raised concerns about the proposed changes.

On March 27, 2007, Secretary Chertoff wrote Senator Byrd about the war supplemental bills pending in both houses that contain language affecting Section 550: Section 1502 of the Senate War Supplemental, S. 965 (Section 1502) and Section 1501 of the House War Supplemental, H. 1591 (Section 1501). The letter raises several key concerns:

- strong opposition to Section 1502 and Section 1501 because both seek “to modify the concept of conflict preemption founded on the Supremacy Clause of the U.S. Constitution.”

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<sup>42</sup>See [http://www.dhs.gov/xnews/speeches/sp\\_1158335789871.shtm](http://www.dhs.gov/xnews/speeches/sp_1158335789871.shtm).

<sup>43</sup>Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295, 120 Stat. 1355 (2006).

<sup>44</sup>Section 550 is two pages in length and offers little guidance regarding basic definitions, protection measures, and administrative law considerations.

<sup>45</sup>Although DHS elected to publish an Advance Notice of Rulemaking seeking comments on the proposed text for interim final regulations as well as related policy considerations for chemical facility security, the Administrative Procedure Act does not require DHS to do so in this instance.

- Section 1501 weakens DHS' ability to protect sensitive vulnerability information.
- Section 1501 "leaves the door open for third-party lawsuits."

President Bush vetoed the first war supplemental and the war supplement bill approved by the President did not contain any amending language.<sup>46</sup> Yet, it is anticipated that changes to Section 550 will continue to be discussed and likely will be included again in future legislation. DHS appropriations language under consideration for 2008, for example, would permit state and local governments to enact chemical security rules that are more stringent than those required by CFATS.

Also, it should be noted that DHS' power to regulate chemical facilities is not absolute: assuming no further congressional action, Section 550(b) sunsets DHS' authority at the three year anniversary. The impact of the sunset on DHS' regulatory authority to implement CFATS is uncertain, and the failure to extend DHS' authority would compromise and potentially deleteriously undermine all the efforts DHS has taken to regulate the chemical sector.

## **CONCLUSION**

This Rule is a major homeland security development. For the first time, it imposes comprehensive federal security regulations for high risk chemical facilities. Rather than being prescriptive (i.e., requiring that facilities take specific security measures), the Rule establishes risk-based performance standards.

- It requires chemical facilities that meet certain threshold requirements to submit answers to a questionnaire that helps DHS assess and categorize the risk level for each facility;

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<sup>46</sup> See <http://www.whitehouse.gov/news/releases/2007/03/20070323-1.html>.

- If designated a Covered Facility, the Rule requires the preparation of an SVA, which identifies facility security vulnerabilities;
- Covered Facilities must also implement an SSP, which include measures that satisfy the identified risk-based performance standards; and
- The Rule does allow certain Covered Facilities, in specific circumstances, to submit ASPs in lieu of an SVA, SSP or both.

Companies should keep a careful eye on this new Rule and the resulting regulatory regime, as it may serve as the template for regulating security in other industries and critical infrastructure.

**APPENDIX: SECURITY OUTCOMES TO SATISFY RISK  
BASED PERFORMANCE STANDARDS<sup>47</sup>**

<b>Security Outcome</b>	<b>Manner to Achieve Security Outcome</b>
Secure and monitor the perimeter of the facility	To be determined by each covered chemical facility
Secure and monitor restricted areas or potentially critical targets within the facility	To be determined by each covered chemical facility
<p>Control access to the facility and to restricted areas within the facility by screening and/or inspecting individuals, deliveries and vehicles as they enter; including:</p> <ul style="list-style-type: none"> <li>• measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate an attack or actions having serious negative consequences for the population surrounding the facility; and</li> <li>• measures implementing a regularly updated identification system that checks the identification of facility personnel and other persons seeking access to the facility and that discourages abuse through established disciplinary measures</li> </ul>	To be determined by each covered chemical facility
Deter, detect and delay an attack, creating sufficient time between detection of an attack and the point at which the attack becomes successful,	To be determined by each covered chemical facility

<sup>47</sup>CFATS at 17739-44. This table includes *all* proposed security outcomes to satisfy risk based performance standards. A facility's tier categorization (e.g., Tier 1 Facility, Tier 2 Facility etc.) will determine a facility's applicable risk based performance standard, and therefore which security outcome, drawn from the list above, must be achieved. For example, Tier 1 facilities may have to satisfy *all* of the proposed security outcomes while Tier 4 facilities may have to satisfy only a subset of them.

<p>including measures to:</p> <ul style="list-style-type: none"> <li>• deter vehicles from penetrating the facility perimeter, gaining unauthorized access to restricted areas or otherwise presenting a hazard to potentially critical targets</li> <li>• deter attacks through visible, professional, well maintained security measures and systems, including security personnel, detection systems, barriers and barricades and hardened or reduced value targets</li> <li>• detect attacks at early stages, through counter-surveillance, frustration of opportunity to observe potential targets, surveillance and sensing systems and barriers and barricades</li> <li>• delay an attack for a sufficient period of time so to allow appropriate response through on-site response barriers and barricades, and hardened or reduced value targets and well-coordinated response planning</li> </ul>	
<p>Secure and monitor the shipping, receipt and storage of hazardous materials for the facility</p>	<p>To be determined by each covered chemical facility</p>
<p>Deter theft or diversion of potentially dangerous chemicals</p>	<p>To be determined by each covered chemical facility</p>
<p>Deter insider sabotage</p>	<p>To be determined by each covered chemical facility</p>
<p>Deter cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, Supervisory Control And Data Acquisition (SCADA) systems, Distributed Control Systems (DCS), Process Control Systems (PCS), Industrial Control Systems (ICS), critical business systems and other</p>	<p>To be determined by each covered chemical facility</p>

sensitive computerized systems	
Develop and exercise an emergency plan to respond to security incidents internally and with assistance of local law enforcement and first responders	To be determined by each covered chemical facility
Maintain effective monitoring, communications and warning systems, including: <ul style="list-style-type: none"> <li>• measures designed to ensure that security systems and equipment are in good working order and inspected, tested, calibrated, and otherwise maintained</li> <li>• measures designed to regularly test security systems, note deficiencies, correct for detected deficiencies, and record results so that they are available for inspection by the Department</li> <li>• measures to allow the facility to promptly identify and respond to security system and equipment failures or malfunctions</li> </ul>	To be determined by each covered chemical facility
Ensure proper security training, exercises, and drills of facility personnel	To be determined by each covered chemical facility
Perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or critical assets, including, <ul style="list-style-type: none"> <li>• measures designed to verify and validate identity</li> <li>• measures designed to check criminal history</li> <li>• measures designed to verify and validate legal authorization to work</li> <li>• measures designed to identify people with terrorist ties</li> </ul>	To be determined by each covered chemical facility
Escalate the level of protective measures for period of elevated threat	To be determined by each covered chemical facility
Address specific threats, vulnerabilities	To be determined by each covered

or risks identified by the Assistant Secretary for the particular facility at issue	chemical facility
Report significant security incidents to the Department and to local law enforcement officials	To be determined by each covered chemical facility
Identify, investigate, report and maintain records of significant security incidents and suspicious activities in or near the site	To be determined by each covered chemical facility
Establish official(s) and an organization responsible for security and for compliance with these standards	To be determined by each covered chemical facility
Maintain appropriate records	To be determined by each covered chemical facility
Address any additional performance standards the Assistant Secretary may specify	To be determined by each covered chemical facility