

## ***Advocacy Recommends that DHS Assess Small Business Impacts of Proposed Chemical Facility Rule***

On February 7, 2007, the U.S. Small Business Administration's (SBA) Office of Advocacy (Advocacy) submitted comments to the Department of Homeland Security (DHS) on its *Proposed Chemical Facility Anti-Terrorism Standards Rule*. [71 Fed. Reg. 78726 (December 28, 2006)]. The draft interim final rule would implement Section 550 of the Homeland Security Appropriations Act of 2007, which requires DHS to promulgate interim final regulations for the security of certain chemical facilities in the United States within six months of its passage. DHS has worked closely with private sector entities in the chemical industry as well as state and local government entities and other interested stakeholders and has published a draft rule that utilizes risk assessment, performance standards, and flexibility in allowing chemical facilities to tailor their security plans to their individual circumstances. Many chemical facilities have already developed and implemented voluntary security programs.

A complete copy of Advocacy's letter to FAA is available at: [www.sba.gov/advo/laws/comments/](http://www.sba.gov/advo/laws/comments/).

- Federal regulations must generally undergo certain regulatory analyses and review before they are finalized, including an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act (RFA). An IRFA is required whenever a federal rule is expected to “have a significant economic impact on a substantial number of small entities.”
- DHS did not assess the impact of this proposed rule on small entities or prepare an IRFA because Congress directed it to issue “interim final regulations.” While Congress did not specifically instruct the agency to bypass the proposed rule stage, the short timeframe and “interim final” language arguably gave the agency good cause to bypass the traditional notice and comment rulemaking process and the RFA.
- DHS should prepare an IRFA upon issuance of its interim final rule and publish it for public comment. Likewise, DHS should follow the Administrative Procedure Act and the RFA if it issues subsequent revisions to the interim final rule.
- Because small businesses bear a disproportionate share of the regulatory burden, DHS should consider issuing small business compliance guides, conducting small business outreach, and developing flexible enforcement strategies to assist small businesses in complying with the interim final rule.
- Advocacy commends DHS for issuing its proposed rule on such a tight schedule and for providing flexibility to the regulated community. The recognition that “one-size-fits-all” regulations in this area would be difficult to implement, and the reliance on risk assessment, performance standards, and flexibility, appears to be a sound approach.

For more information about rule, please visit Advocacy's Web page at [www.sba.gov/advo](http://www.sba.gov/advo) or contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 (or [bruce.lundegren@sba.gov](mailto:bruce.lundegren@sba.gov)).