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April 24, 2007

The Honorable Joseph I. Lieberman
Chairman

The Honorable Susan M. Collins
Ranking Minority Member

Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Bennie B. Thompson
Chairman

The Honorable Peter T. King
Ranking Minority Member
Committee on Homeland Security
House of Representatives

Subject: *Department of Homeland Security: Chemical Facility Anti-Terrorism Standards*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Homeland Security (DHS), entitled "Chemical Facility Anti-Terrorism Standards" (RIN: 1601-AA41). We received the rule on April 9, 2007. It was published in the *Federal Register* as an interim final rule on April 9, 2007. 72 Fed. Reg. 17,688.

This interim final rule establishes risk-based performance standards for the security of chemical facilities. It requires chemical facilities that pose a high-risk to prepare Security Vulnerability Assessments (SVAs) and to develop and implement Site Security Plans (SSPs). These SSPs must include measures that satisfy the identified risk-based performance standards. In special circumstances, certain chemical facilities may submit Alternative Security Programs (ASPs) in lieu of an SVP, SSP, or both.

Enclosed is our assessment of DHS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule.

If you have any questions about this report, please contact Michael R. Volpe, Assistant General Counsel, at (202) 512-8236. The official responsible for GAO

evaluation work relating to the subject matter of the rule is Norman Rabkin, Managing Director, Homeland Security and Justice. Mr. Rabkin can be reached at (202) 512-8777.

signed

Robert J. Cramer
Associate General Counsel

Enclosure

cc: Dennis Deziel
Chemical Security Compliance Division
Office of Infrastructure Protection
Department of Homeland Security

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY
ENTITLED
"CHEMICAL FACILITY ANTI-TERRORISM STANDARDS"
(RIN: 1601-AA41)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS) conducted a Regulatory Assessment that estimated the costs of this interim final rule. DHS estimates the costs to be \$3.6 billion over the period 2006-2009 and \$8.5 billion over the period 2006-2015. DHS estimates that between 1,500 and 6,500 chemical facilities will be impacted by this interim final rule and uses the estimate of 5,000 impacted facilities to generate the cost estimates. According to DHS, this interim final rule gives chemical facilities considerable flexibility, which will lower compliance costs. The benefit of this interim final rule is decreased vulnerability of high-risk chemical facilities to terrorist attack.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

DHS considered the impact of this interim final rule on small entities. DHS estimated that as many as 41 percent of the chemical facilities impacted by this rule could be small entities. DHS concluded that this interim final rule may have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

According to DHS, it does not have enough information regarding the specific facilities that will be required to comply with the interim final rule to conclude whether this interim final rule will impose an enforceable duty upon state, local, and tribal governments of \$100 million or more. DHS has concluded that this interim final rule may impose costs on some municipalities, but DHS does not know the extent of the financial impact. DHS sought input on this rulemaking from state and local governments during the comment period and hosted a meeting with state and local representatives on February 6, 2007.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

This rulemaking was authorized by the Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, § 550, 120 Stat. 1355, 1388 (Oct. 4, 2006) that required that DHS issue an interim final rule within 6 months. DHS published an advance notice and solicited comments on as much of its rulemaking as was practicable within the statutory timeframe. 71 Fed. Reg. 78,276 (Dec. 28, 2006). DHS received 106 public comments as a result of the advance notice and, because of some comments, reconsidered and modified part of the interim final rule. DHS plans to continue accepting comments on Appendix A to part 27 of the interim final rule until May 9, 2007. 72 Fed. Reg. 17,688 (Apr. 9, 2007).

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The interim final rule contains collection of information requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The interim final rule introduces two new forms: the User Registration and the Top Screen. Both forms have been submitted to OMB for its review and approval. DHS estimates that there will be 40,000 respondents for each. In the first year, User Registration will have an estimated annual burden of 22,250 hours with an average of 44.5 minutes per respondent. Most facilities will only have to file a Top Screen once. Top Screen will have an estimated annual burden in the first year of 1,230,550 hours with varying facility burdens for various types of facilities. The estimated combined annual cost burden for the two forms is \$110,003,900.

Statutory authorization for the rule

This interim final rule is promulgated under the authority found at section 550 of the Department of Homeland Security Appropriations Act, 2007, Pub. L. No. 109-295, § 550, 120 Stat. 1355, 1388 (Oct. 4, 2006).

Executive Order No. 12866

This interim final rule was reviewed by OMB and found to be an “economically significant” regulatory action under the order.

Executive Order No. 13132 (Federalism)

DHS complied with the order in two ways. First, DHS sought public comment on issues involving the preemption of state laws. Second, DHS invited a number of groups representing the interests of states and their legislatures to discuss the proposed interim final rule.

National Environmental Policy Act

DHS concluded that it could not reasonably accomplish an Environmental Impact Statement within the statutory timeframe for this rulemaking.