

CLIENT ALERT

Got Chemicals? The State of Play on Chemical Security Regulations

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Recent chemical facility incidents in the United States prompted President Obama to issue Executive Order 13650 in August 2013 – "Improving Chemical Facility Safety and Security." The Order directed federal agencies to consider enhancements to their respective chemical safety and security programs. In response, the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and the Department of Homeland Security (DHS), are pursuing regulatory changes that could have far-reaching impacts not only on chemical companies but also on a broad array of entities that store, use, possess, or handle high-risk chemicals. Also, at the end of 2014, President Obama put the DHS chemical security program on more permanent footing when he signed into law H.R. 4007, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, which reauthorizes the program for four years.

Crowell & Moring recently presented a Webinar on these important administrative proceedings and a preview of what may be in store for affected stakeholders, including utilities, hospitals, universities, manufacturers, oil and gas producers, and pipelines concerning their storage and use of chemical stockpiles.

For OSHA's part, it issued a request for information (RFI) in 2014 on updates to its Process Safety Management (PSM) standard. OSHA is considering numerous PSM changes, and to that end solicited information on updating its list of highly hazardous chemicals, applying PSM requirements to upstream oil and gas drilling, servicing, and production, requiring third-party audits, and managing organizational changes as part of PSM. In press statements and congressional testimony, OSHA leaders have indicated the PSM rulemaking will likely take five to seven years to complete. EPA acted similarly, issuing an RFI on potential revisions to its Risk Management Program (RMP) regulations. Like the PSM standard, EPA's RMP regulations are focused on process safety. But whereas OSHA's focus is on workplace safety, EPA's focus is on lowering the risk of chemical releases that can make their way outside of the workplace, affecting public health and the environment. Of the three agencies, DHS is the only one who has initiated actual rulemaking, publishing an Advanced Notice of Proposed Rulemaking (ANPRM) seeking comments on modifications to its Chemical Facility Anti-Terrorism Standards (CFATS). Whereas OSHA's and EPA's programs focus on process safety, DHS's CFATS program is focused on reducing risks associated with the mere presence of chemical stockpiles at facilities. DHS is reviewing stakeholder comments on a range of CFATS issues, including exclusions, streamlining, applicable

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- [Got Chemicals? The State of Play on Chemical Security Regulations](#)
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chemicals, and performance standards. Given the applicability of the CFATS rule across many sectors, a rulemaking of the sort contemplated by the ANPRM could have major operational and economic effects. Moreover, it is likely that DHS will consider revising the rule to address the new chemical security legislation signed by President Obama in December. The new law requires the DHS secretary to issue guidance for expedited approval facilities, guidance that outlines security measures sufficient to meet the risk-based performance standards, and training standards for DHS or non-governmental auditors and inspectors.

If you missed our Webinar, we invite you to listen to it or view the slides now by [clicking here](#) to learn more about what is on the regulatory horizon in this area.

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