



For Immediate Release

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LEGAL NOTE Details New Security Rules for Chemical Facilities

Since the terrorist attacks of September 11, 2001, concerns have risen over the vulnerability of industrial facilities which produce or utilize chemicals to attack by al Qaeda or homegrown terrorists. Chemical producers and users have taken substantial steps to increase security at facilities, but Congress and some states have maintained pressure on these businesses to do more. In this context, the Department of Homeland Security proposed regulations to assess and regulate chemical facility security. As a new Washington Legal Foundation publication discusses, the final rule implements complex procedures with which hundreds of companies will have to comply.

This WLF CONTEMPORARY LEGAL NOTE, *New Federal Rule Dictating Anti-Terrorism Standards for Chemical Facilities*, was authored by **Joe Whitley**, a partner with the law firm Alston & Bird LLP, and **Ava Harter**, a Senior Attorney with The Dow Chemical Company. Prior to returning to Alston & Bird, Mr. Whitley was General Counsel to the Department of Homeland Security (DHS). He is also a member of WLF's Legal Policy Advisory Board.

Mr. Whitley and Ms. Harter begin the LEGAL NOTE by summarizing the Chemical Facility Anti-Terrorism Standards major provisions and requirements. After initially determining whether a company's or facility's chemical qualifies as "high-risk," DHS then administers a questionnaire to the regulated entity. Answers to the questionnaire will determine within which of four levels of "Covered Facilities" that particular facility falls. Under the rule, each particular category reflects the types of security measures that must be taken. The rule also details DHS's methods of enforcing the requirements, such as inspections, audits, and in extreme cases, the authority to order cessation of activities at a facility.

In the paper's next section, the authors proceed through a point-by-point explanation of the rule's details and requirements. Their discussion emphasizes the strong protections that exist for any chemical data which the government collects in the process of enforcing the rule, and the provisions which preempt any state or local rule which conflicts with or adds to the Chemical Facility Anti-Terrorism Standards.

The authors conclude with a brief overview of recent past and current congressional efforts on chemical security. Even though Congress itself provided DHS with authority to promulgate and enforce the Chemical Facility Anti-Terrorism Standards, some Senators and Representatives are advocating legislative reversal of the rule's preemption provision. The paper argues that any federal effort to encourage state and local regulation of chemical security will create a damaging patchwork of rules which will ultimately undermine security and needlessly burden chemical producers and consumers.

Copies of WLF CONTEMPORARY LEGAL NOTE Number 58 can be obtained by forwarding a request to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.

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