

competent jurisdiction, or as expressly authorized in writing by the Under Secretary, no person, firm, or other entity may:

(1) Disclose SAFETY Act Confidential Information (as defined above) to any person, firm, or other entity, or

(2) Use any SAFETY Act Confidential Information for his, her, or its own benefit or for the benefit of any other person, firm, or other entity, unless the applicant has consented to the release of such SAFETY Act Confidential Information.

(c) *Legends.* Any person, firm, or other entity that submits data or information to the Department under this part may place a legend on such data or information indicating that the submission constitutes SAFETY Act Confidential Information. The absence of such a legend shall not prevent any data or information submitted to the Department under this part from constituting or being considered by the Department to constitute SAFETY Act Confidential Information.

PART 27—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

Subpart A—General

Sec.

- 27.100 Purpose.
- 27.105 Definitions.
- 27.110 Applicability.
- 27.115 Implementation.
- 27.120 Designation of a coordinating official; Consultations and technical assistance.
- 27.125 Severability.

Subpart B—Chemical Facility Security Program

- 27.200 Information regarding security risk for a chemical facility.
- 27.203 Calculating the screening threshold quantity by security issue.
- 27.204 Minimum concentration by security issue.
- 27.205 Determination that a chemical facility “presents a high level of security risk.”
- 27.210 Submissions schedule.
- 27.215 Security vulnerability assessments.
- 27.220 Tiering.
- 27.225 Site security plans.
- 27.230 Risk-based performance standards.
- 27.235 Alternative security program.
- 27.240 Review and approval of security vulnerability assessments.

- 27.245 Review and approval of site security plans.
- 27.250 Inspections and audits.
- 27.255 Recordkeeping requirements.

Subpart C—Orders and Adjudications

- 27.300 Orders.
- 27.305 Neutral adjudications.
- 27.310 Commencement of adjudication proceedings.
- 27.315 Presiding officers for proceedings.
- 27.320 Prohibition on ex parte communications during proceedings.
- 27.325 Burden of proof.
- 27.330 Summary decision procedures.
- 27.335 Hearing procedures.
- 27.340 Completion of adjudication proceedings.
- 27.345 Appeals.

Subpart D—Other

- 27.400 Chemical-terrorism vulnerability information.
- 27.405 Review and preemption of State laws and regulations.
- 27.410 Third party actions.

APPENDIX A TO PART 27—DHS CHEMICALS OF INTEREST

AUTHORITY: Pub. L. 109–295, sec. 550.

SOURCE: 72 FR 17729, Apr. 9, 2007, unless otherwise noted.

Subpart A—General

§ 27.100 Purpose.

The purpose of this part is to enhance the security of our Nation by furthering the mission of the Department as provided in 6 U.S.C. §111(b)(1) and by lowering the risk posed by certain chemical facilities.

§ 27.105 Definitions.

As used in this part:

A Commercial Grade (ACG) shall refer to any quality or concentration of a chemical of interest offered for commercial sale that a facility uses, stores, manufactures, or ships.

A Placarded Amount (APA) shall refer to the STQ for a sabotage and contamination chemical of interest, as calculated in accordance with §27.203(d).

Alternative Security Program or ASP shall mean a third-party or industry organization program, a local authority, state or Federal government program or any element or aspect thereof, that the Assistant Secretary has determined meets the requirements of this

part and provides for an equivalent level of security to that established by this Part.

Assistant Secretary shall mean the Assistant Secretary for Infrastructure Protection, Department of Homeland Security or his designee.

Chemical Facility or facility shall mean any establishment that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criteria identified by the Department. As used herein, the term chemical facility or facility shall also refer to the owner or operator of the chemical facility. Where multiple owners and/or operators function within a common infrastructure or within a single fenced area, the Assistant Secretary may determine that such owners and/or operators constitute a single chemical facility or multiple chemical facilities depending on the circumstances.

Chemical of Interest shall refer to a chemical listed in appendix A to part 27.

Chemical Security Assessment Tool or CSAT shall mean a suite of four applications, including User Registration, Top-Screen, Security Vulnerability Assessment, and Site Security Plan, through which the Department will collect and analyze key data from chemical facilities.

Chemical-terrorism Vulnerability Information or CVI shall mean the information listed in § 27.400(b).

Coordinating Official shall mean the person (or his designee(s)) selected by the Assistant Secretary to ensure that the regulations are implemented in a uniform, impartial, and fair manner.

Covered Facility or Covered Chemical Facility shall mean 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 under § 27.200.

CUM 100g shall refer to the cumulative STQ of 100 grams for designated theft/diversion-CW/CWP chemicals and which is located in appendix A to part 27 as the entry for the STQ and Minimum Concentration of certain theft/diversion-CW/CWP chemicals.

Department shall mean the Department of Homeland Security.

Deputy Secretary shall mean the Deputy Secretary of the Department of Homeland Security or his designee.

Director of the Chemical Security Division or Director shall mean the Director of the Chemical Security Division, Office of Infrastructure Protection, Department of Homeland Security or any successors to that position within the Department or his designee.

General Counsel shall mean the General Counsel of the Department of Homeland Security or his designee.

Operator shall mean a person who has responsibility for the daily operations of a facility or facilities subject to this Part.

Owner shall mean the person or entity that owns any facility subject to this Part.

Present high levels of security risk and high risk shall refer to a chemical facility that, in the discretion of the Secretary of Homeland Security, presents a high risk of significant adverse consequences for human life or health, national security and/or critical economic assets if subjected to terrorist attack, compromise, infiltration, or exploitation.

Risk profiles shall mean criteria identified by the Assistant Secretary for determining which chemical facilities will complete the Top-Screen or provide other risk assessment information.

Screening Threshold Quantity or STQ shall mean the quantity of a chemical of interest, upon which the facility's obligation to complete and submit the CSAT Top-Screen is based.

Secretary or Secretary of Homeland Security shall mean the Secretary of the Department of Homeland Security or any person, officer or entity within the Department to whom the Secretary's authority under section 550 is delegated.

Security Issue shall refer to the type of risks associated with a given chemical. For purposes of this part, there are four main security issues:

- (1) Release (including toxic, flammable, and explosive);
- (2) Theft and diversion (including chemical weapons and chemical weapons precursors, weapons of mass effect,

§ 27.110

6 CFR Ch. I (1–12 Edition)

and explosives and improvised explosive device precursors),

(3) Sabotage and contamination, and

(4) Critical to government mission and national economy.

Terrorist attack or terrorist incident shall mean any incident or attempt that constitutes terrorism or terrorist activity under 6 U.S.C. 101(15) or 18 U.S.C. 2331(5) or 8 U.S.C. 1182(a)(3)(B)(iii), including any incident or attempt that involves or would involve sabotage of chemical facilities or theft, misappropriation or misuse of a dangerous quantity of chemicals.

Tier shall mean the risk level associated with a covered chemical facility and which is assigned to a facility by the Department. For purposes of this part, there are four risk-based tiers, ranging from highest risk at Tier 1 to lowest risk at Tier 4.

Top-Screen shall mean an initial screening process designed by the Assistant Secretary through which chemical facilities provide information to the Department for use pursuant to § 27.200 of these regulations.

Under Secretary shall mean the Under Secretary for National Protection and Programs, Department of Homeland Security or any successors to that position within the Department or his designee.

[72 FR 17729, Apr. 9, 2007, as amended at 72 FR 65418, Nov. 20, 2007]

§ 27.110 Applicability.

(a) This part applies to chemical facilities and to covered facilities as set out herein.

(b) This part does not apply to facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Pub. L. 107–295, as amended; Public Water Systems, as defined by section 1401 of the Safe Drinking Water Act, Pub. L. 93–523, as amended; Treatment Works as defined in section 212 of the Federal Water Pollution Control Act, Pub. L. 92–500, as amended; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.

§ 27.115 Implementation.

The Assistant Secretary may implement the section 550 program in a phased manner, selecting certain chemical facilities for expedited initial processes under these regulations and identifying other chemical facilities or types or classes of chemical facilities for other phases of program implementation. The Assistant Secretary has flexibility to designate particular chemical facilities for specific phases of program implementation based on potential risk or any other factor consistent with this Part.

§ 27.120 Designation of a coordinating official; Consultations and technical assistance.

(a) The Assistant Secretary will designate a Coordinating Official who will be responsible for ensuring that these regulations are implemented in a uniform, impartial, and fair manner.

(b) The Coordinating Official and his staff shall provide guidance to covered facilities regarding compliance with this part and shall, as necessary and to the extent that resources permit, be available to consult and to provide technical assistance to an owner or operator who seeks such consultation or assistance.

(c) In order to initiate consultations or seek technical assistance, a covered facility shall submit a written request for consultation or technical assistance to the Coordinating Official or contact the Department in any other manner specified in any subsequent guidance. Requests for consultation or technical guidance do not serve to toll any of the applicable timelines set forth in this Part.

(d) If a covered facility modifies its facility, processes, or the types or quantities of materials that it possesses, and believes that such changes may impact the covered facility's obligations under this Part, the covered facility may request a consultation with the Coordinating Official as specified in paragraph (c).

§ 27.125 Severability.

If a court finds any portion of this part to have been promulgated without proper authority, the remainder of this part will remain in full effect.