

DHS Anti-Terrorism Standards for Chemical Facilities

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Introduction

- What is DHS and why do we care?
- What facilities are covered?
- What must covered facilities do?
- What is chemical-terrorism vulnerability information (CVI)?
- What's coming next?



What is DHS and why do we care?

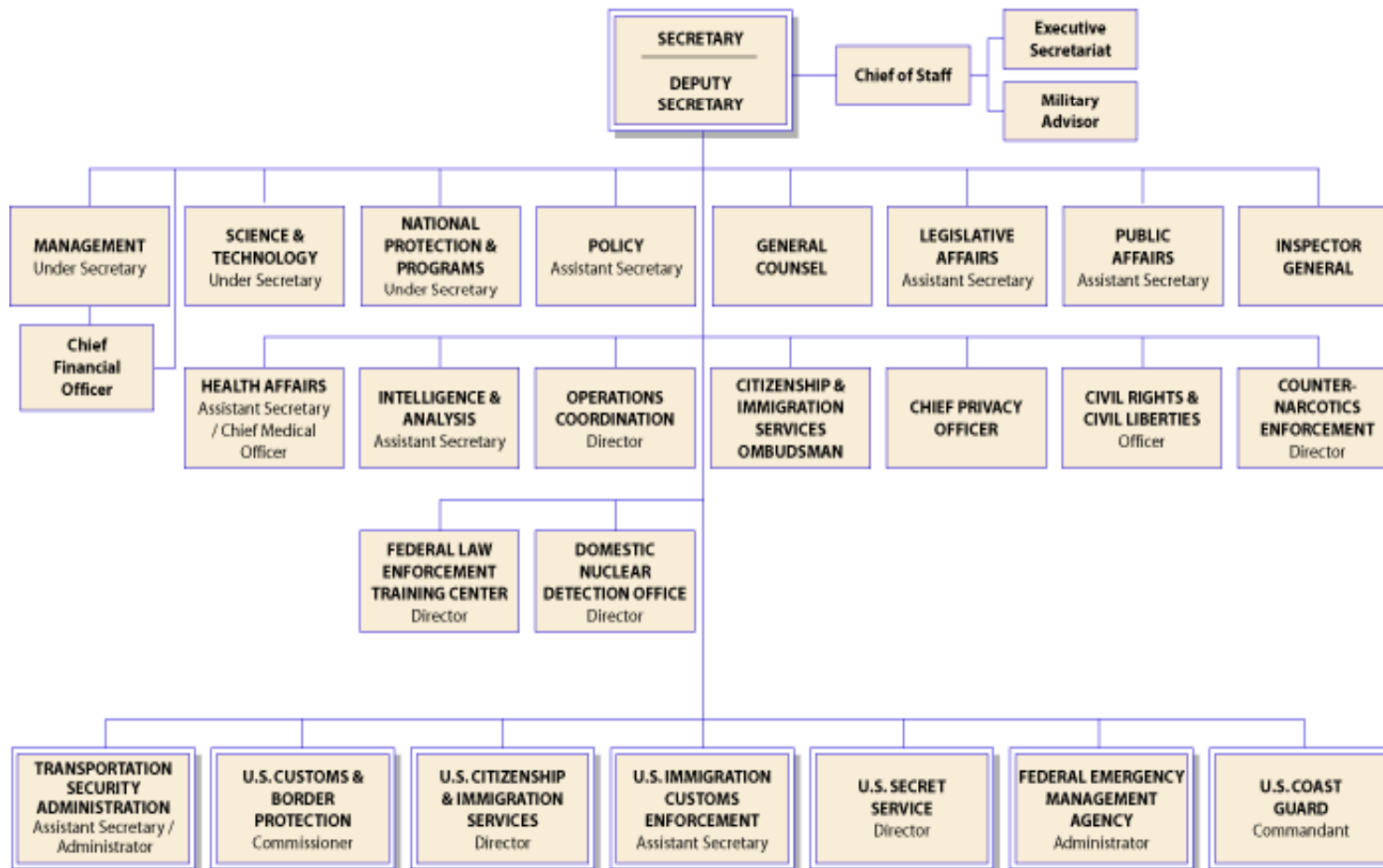
What is DHS and why do we care?

I thought this was an
environmental conference.

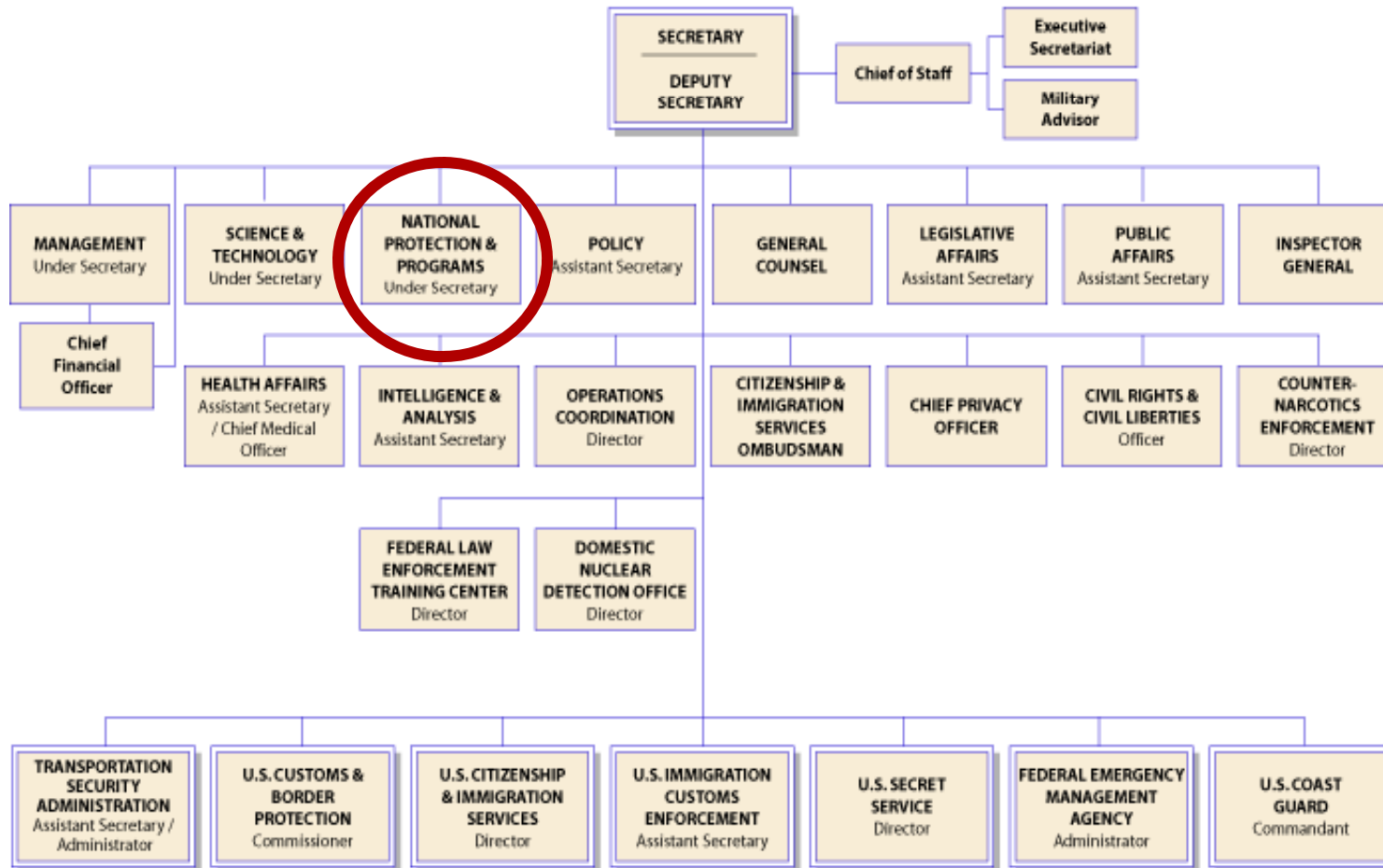
Why is Steven talking about the
Department of Homeland
Security?



What is DHS and why do we care?



What is DHS and why do we care?



What is DHS and why do we care?

- DHS has statutory authority –
 - to establish “risk-based performance standards for security of ***chemical facilities***”
 - to require “vulnerability assessments and the development of and implementation of site security plans for ***chemical facilities***”



What is DHS and why do we care?

■ Statute

- Department of Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295, § 550, 120 Stat. 1355, 1388 (**Oct. 4, 2006**)

■ Regulations

- DHS Advance Notice of Rulemaking, 71 Fed. Reg. 78,276 (**Dec. 28, 2006**)
- DHS Interim Final Rule, 72 Fed. Reg. 17,688 (**Apr. 9, 2007**)
- “Appendix A” to the regulations – pending as of late July



What facilities are covered?

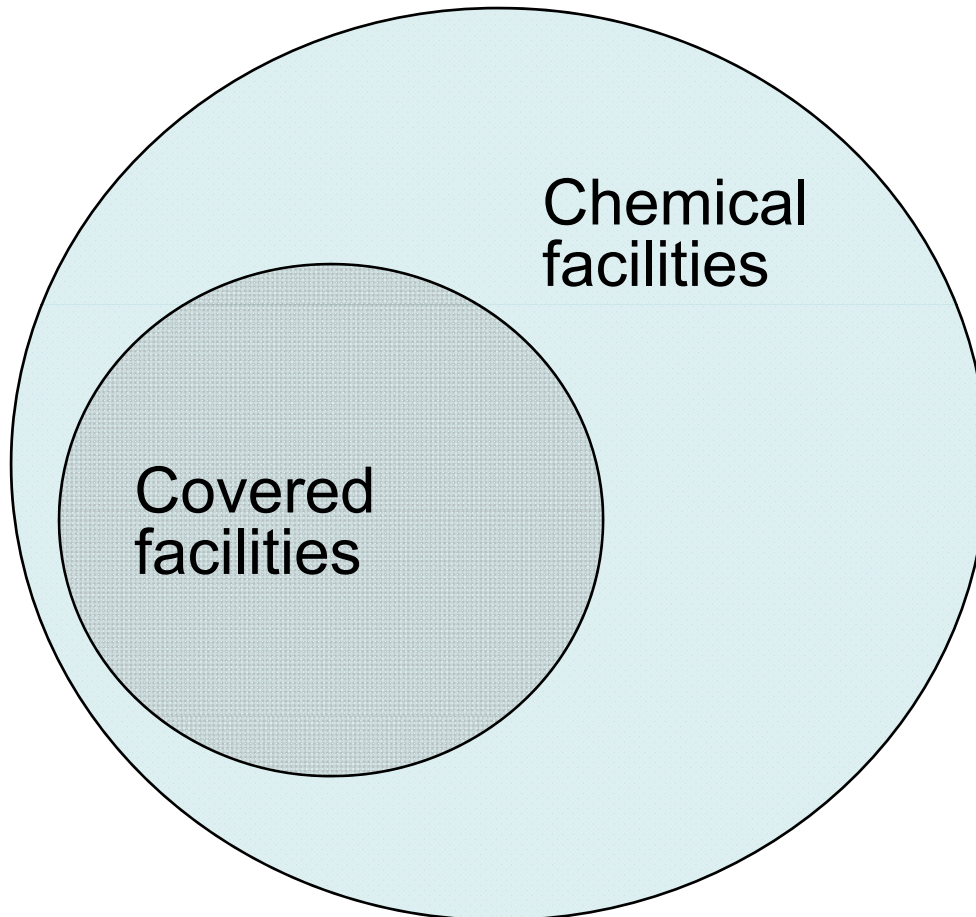


What facilities are covered?

- Exempt:
 - Facilities regulated under the Maritime Transportation Security Act
 - “Public water systems” (SDWA)
 - “Treatment works” (CWA)
 - DOD & DOE facilities
 - Facilities regulated by the Nuclear Regulatory Commission



What facilities are covered?



- **Chemical** facilities:
 - Must register
- **Covered** facilities:
 - Subject to additional requirements

What facilities are covered?

- “Chemical facility”:
 - Possesses or plans to possess . . .
a chemical of interest . . .
in a quantity above the screening
threshold quantity (STQ)
- Appendix A: List of chemicals of
interest and STQs



What facilities are covered?

- Examples from *proposed* Appendix A:
 - Acetone: 2,000 lbs.
 - Acetylene: 7,500 lbs.
 - Anhydrous ammonia: 7,500 lbs.
 - Chlorine: 1,875 lbs.
 - Hydrochloric acid (conc. 37% or greater): 11,250 lbs.
 - Propane: 7,500 lbs.
 - Sodium chlorate: 2,000 lbs.
 - Vinyl chloride: 7,500 lbs.

* *Chemical barrel = 55 gallons ≈ 458 lbs. of water*
- Quantities not necessarily same as EPA's RMP



What facilities are covered?

- Examples of chemicals with STQ of “any amount”:
 - Anhydrous hydrogen chloride
 - Anhydrous sulfur dioxide
 - Carbon monoxide
 - Ethylene oxide
 - Hydrogen sulfide
 - Methyl bromide
 - Nitric oxide
 - Phosphorous
- DHS will reduce or eliminate use of “any amount” STQ in final Appendix A



What facilities are covered?

- All “chemical facilities” complete a Top Screen registration process (80 pages)
 - Identification information
 - Location
 - Chemicals of interest & quantities
 - “Distance of concern” (using EPA’s RMP*Comp – worst case scenario)
- Due 60 days after Appendix A is final



What facilities are covered?

- DHS reviews Top Screens and –
 - Determines which facilities are covered
 - Those which “present a high level of security risk”
 - Assigns a risk level
 - Tiers 1, 2, 3, 4 (high to low risk)
 - Notifies covered facilities





What must covered facilities do?



What must covered facilities do?

- Complete two more tools:
 - Security vulnerability assessment (SVA)
 - 90 days after notice of covered status
 - Site security plan (SSP)
 - 120 days after notice of covered status



What must covered facilities do?

■ SVA

1. Asset characterization
2. Threat assessment
3. Security vulnerability
4. Risk assessment
5. Countermeasures analysis



What must covered facilities do?

■ SSP

- Address vulnerabilities in SVA
- Explain how measures will address applicable ***risk-based performance standards*** and terrorist attack modes
- Explain how measures meet or exceed standard for risk-based tier



What must covered facilities do?

- ***Risk-based*** performance standards
 - Secure perimeter and assets
 - Screen access
 - Shipping procedures
 - Cyber sabotage
 - Response plan
 - Monitoring
 - Training
 - Personnel (***background checks***)

etc., etc., etc. . . .



What must covered facilities do?

- Risk-based performance standards and flexibility:
 - **Congress:** DHS “may not disapprove a site security plan . . . based on the presence or absence of a particular security measure. . . .”
 - **DHS:** A facility may not have to implement one or more standards; DHS “will work with these facilities on a **case-by-case basis** in these specific situations.”



What must covered facilities do?

- Alternative Security Program
 - Tiers 1, 2, & 3:
 - Alternative SSP only
 - Tier 4:
 - Alternative SVA & SSP



What must covered facilities do?

■ Other provisions

- Inspections
- Audits
- Recordkeeping (training logs, security incidents, threats, audits, DHS letters of approval, etc.)
- Enforcement procedures
- ***Preemption of state and local standards***
 - Statute is silent
 - Regulations: Federal program preempts states
 - Meaning, state programs cannot be more stringent



What is chemical- terrorism vulnerability information (CVI)?



What is CVI?

- CVI includes –
 - Top Screen submissions
 - SVAs
 - SSPs
 - DHS documents responding to Top Screens, SVAs, and SSPs
 - Inspections, audits
 - Etc.
- So . . . DHS produces some CVI; chemical facilities produce other CVI



What is CVI?

- Restrictions on dissemination
 - Exempt from FOIA
 - Distributed on “need to know” basis
 - Must be marked as CVI, including distribution limitation statement



What is CVI?

- “Covered persons”
 - “Need to know”
 - Anyone else who receives CVI
- Must complete training course and sign nondisclosure agreement (NDA)



What is CVI?

- Obligations of chemical facilities
 - Identify covered persons (who needs to know?)
 - In house
 - Third parties (consultants, lawyers)
 - Ensure covered persons receive training and sign NDA
 - Manage CVI
 - Tracking logs
 - Storage and handling procedures (envelopes, shipping, interoffice mail)
 - etc.



What's coming next?



What's coming next?

- **DHS:**
 - Appendix A
 - Align STQs with RMP quantities?
 - “Any amount”?
 - Concentrations and mixtures?
 - Determine who is covered, at what tier
 - How big is this program going to be?
 - Universities and labs, propane distributors, farms, industrial facilities?



What's coming next?

- **Congress:** FY08 appropriations
 - Preemption
 - Preemption provisions reversed – stronger state and local standards allowed
 - Administration opposes
 - Senate propane amendment
 - Exemption for farms, rural households and small businesses
 - Funding
 - Administration's request: \$25,000,000
 - **Senate committee report: \$40,000,000**
 - Passed House and Senate; conference pending



What's coming next?

- Anti-terrorism regulation will only increase
 - Chemicals
 - Energy
 - Transportation
 - Food and water (including agriculture)
 - Public health
 - Cyber-security
 - Banking and finance

etc., etc., etc. . . .



Questions?

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