

## **NACD KEY ISSUE: CHEMICAL FACILITY SECURITY**

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Allowing the Chemical Facility Anti-Terrorism Standards to be fully implemented and assessed before rewriting the rules.

### **BACKGROUND**

In October 2006, legislation was signed into law to give the Department of Homeland Security (DHS) authority to regulate security at chemical facilities. The law authorizes DHS to require chemical facilities to conduct security vulnerability assessments (SVAs) and to implement site security plans (SSPs), based on risk. It includes substantial penalties, including authority for DHS to shut down facilities that fail to comply with the requirements.

**The Chemical Facility Anti-Terrorism Standards (CFATS), to implement the 2006 legislation, took effect in June of 2007.** Under the CFATS rule, all facilities possessing specified quantities of an extensive list of chemicals are required to submit a “Top Screen” consequence assessment to DHS. To date, over 39,000 facilities have submitted Top Screens. DHS has notified these facilities about their Top Screen results, specifically, whether or not they pose enough risk to be required to go on to the next step. The more than 7000 facilities deemed higher risk were then required to complete SVAs. DHS then evaluated the SVAs and notified facilities whether or not they pose enough risk to proceed to the SSP stage and, if so, their final risk tier assignments and deadlines for submitting their SSPs. To date, DHS has received over 4100 SSPs and is in the process of evaluating them. DHS will then inspect covered facilities to ensure that they have implemented their SSPs. Because CFATS is a major new regulatory program and SSPs are extensive, complicated, and unique to each individual site, it will take DHS some time to complete this process.

The 2006 law was originally scheduled to sunset in October 2009 and has been temporarily extended several times through appropriations bills. Legislation has been introduced in both the Senate and House to provide a longer-term extension of the CFATS program. In the 111<sup>th</sup> Congress, the House passed a bill that would have made CFATS permanent but that would have also made several premature changes to the program.

### **LEGISLATIVE UPDATE**

On June 29, 2011, the Senate Homeland Security and Governmental Affairs Committee (HSGAC) approved S. 473, the Continuing Chemical Facilities Antiterrorism Security Act, by a vote of 8-2. This legislation, sponsored by HSGAC members Susan Collins (R-ME), Mary Landrieu (D-LA), Rob Portman (R-OH), and Mark Pryor (D-AR), would reauthorize CFATS for three years. S. 473 would also develop voluntary exercise and training programs to improve collaboration with the private sector and state and local communities; establish a voluntary technical assistance program, create a chemical facility security best practices clearinghouse at DHS; and establish a chemical facility security advisory board to advise DHS on CFATS implementation and the technical assistance program.

On June 22, 2011, the House Homeland Security Committee approved H.R. 901, the Chemical Facility Anti-Terrorism Security Authorization Act, by a vote of 26-5. H.R. 901, sponsored by Cybersecurity, Infrastructure Protection, and Security Technologies Subcommittee Chairman

Dan Lungren (R-CA), would extend DHS's authority to regulate chemical facilities through September 30, 2018.

On May 26, 2011, the House Energy and Commerce Committee approved H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act, by a vote of 33-16. This bill, sponsored by Environment and the Economy Subcommittee Vice Chairman Tim Murphy (R-PA) and Ranking Democratic Subcommittee Member Gene Green (TX), would also extend the CFATS program for seven years. **NACD testified in favor of H.R. 908 and a long-term CFATS extension during a hearing before the subcommittee on March 31.**

On March 31, Senator Frank Lautenberg (D-NJ) introduced S. 709, the Secure Chemical Facilities Act, to extend and make changes to the current chemical security program, including a requirement for all facilities covered under CFATS to conduct inherently safer technology (IST) assessments and for facilities in the highest risk tiers to implement these measures.

### **NACD POSITION**

NACD was the first chemical trade association to approve new security measures, as part of its management program, Responsible Distribution, and has developed a security vulnerability assessment that specifically addresses security issues relevant to chemical distribution facilities. NACD members have invested millions of dollars and substantial resources to safeguard their facilities and the transportation of their products.

**NACD was a strong supporter of the 2006 legislation that resulted in CFATS and strongly supports bipartisan legislation such as H.R. 901, H.R. 908, and S. 473 to extend the CFATS program with no major changes.** These bills would allow more time for the implementation and evaluation of CFATS before changes to this important program are considered.

Because CFATS is a major regulation, based upon performance standards for each facility rather than a one-size-fits-all mandate, it is taking time for DHS to evaluate the more than 4100 SSPs submitted and to inspect the facilities. However, this approach has the advantages of designing plans to address each facility's unique situations while avoiding the creation of a single roadmap for potential terrorists. Real security measures are being implemented at facilities around the nation because of CFATS. This program is a major regulatory commitment for covered facilities. NACD members are willing to invest the time and resources to comply with this important regulation, and would welcome the certainty of a clean, long-term extension.

Some CFATS extension proposals such as S. 709 have included measures that would be counterproductive to the good progress that has been made. The most disruptive of these would require all CFATS-covered facilities, including chemical distributors, to conduct IST assessments, and for those in the highest risk tiers to implement these measures. Such a mandate would shift the focus away from real security and force companies to consider full scale engineering and product changes.

**NACD opposes mandatory IST consideration as well as implementation.** The act of conducting IST assessments would be extremely costly for NACD members and would not reduce risk. For most NACD members, IST assessments would have to be outsourced at significant cost and would produce limited options. Chemical distributors maintain specific inventories in order to respond to customers' needs. If distributors are required to reduce inventories of certain products, this would prevent them from meeting these customer needs. Particularly in these tough economic times, and in addition to the myriad of regulations that already affect chemical distributors, this could be the final straw to put some companies out of business, which would result in further job losses. Required inventory reductions would also transfer risk to transportation and increase the likelihood of product handling incidents.

CFATS currently provides incentives for facilities to use the safest possible methods so they can be assigned to a lower risk tier. In fact, over 1200 facilities have reduced their security risk so much that they have tiered out of the program. Many more facilities have been assigned to lower tiers.

**In closing, NACD again urges Congress to enact straightforward, long-term legislation to extend the current chemical security program with no changes. A clean extension will both provide regulatory certainty and allow for continued progress in implementing real security measures at facilities.**