

# CHEMICAL DISTRIBUTOR



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## End of the Line?



# CHEMICAL DISTRIBUTOR

## NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS

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# Regulatory Overview: The Obama Administration and You

By **Jennifer C. Gibson**, Vice President, Government Affairs, NACD



**It has become clear that the regulatory philosophy of the Obama Administration is that both the development of new regulations and the enforcement of existing regulations must be increased. This article will highlight some of the major regulatory initiatives underway in the new Administration. This is not a comprehensive list, but addresses the items that are expected to have a substantial impact on chemical distributors over the next few years.**

President Obama has been in charge of the Federal Government for over 14 months, and it has become clear that the regulatory philosophy of the new Administration is that both the development of new regulations and the enforcement of existing regulations must be increased. This is evident across all of the Federal agencies that regulate the chemical distribution industry including the Department of Homeland Security (DHS), the Department of Transportation (DOT), the Occupational Safety and Health Administration (OSHA), and the Environmental Protection Agency (EPA).

This article will highlight some of the major regulatory initiatives underway in the Obama Administration. This is not a comprehensive list, but addresses the items that are expected to have a substantial impact on chemical distributors over the next few years.

## **Chemical Facility Security – DHS**

The increase in security regulations was well underway before the Obama Administration took over as a result of the September 11, 2001 terrorist attacks. These attacks led to the creation of DHS and the Transportation

Security Administration (TSA) and later the enactment of additional chemical security and transportation security legislation and regulations. The Chemical Facility Anti-Terrorism Standards (CFATS) took effect in 2007 and DHS's Infrastructure Security Compliance Division (ISCD) is now deep into the process of implementation. As of March 4, 2010, DHS had assigned almost 6000 facilities to risk tiers under CFATS out of over 38,000 Top Screen consequence assessments submitted. Of these, 3814 had been assigned a final risk tier, and 2005 were awaiting final tiering notices. Facilities have 120 days to develop and submit a site security plan (SSP) to DHS once they receive their final tiering notices. Over 1600 site security plans have been submitted to date. DHS is currently conducting preliminary inspections to evaluate the system and determine if changes are needed to the SSP template. DHS has a goal of completing all inspections of tier 1 facilities by the end of 2010.

Development and implementation of SSPs is a major undertaking as these plans must address up to 18 Risk Based Performance Standards (RBPS) as described in the 200 page RBPS Guidance, published last year. Companies who are covered under CFATS

will spend substantial time and effort over the next couple of years on compliance with this new regulation. For more information on CFATS, visit [www.dhs.gov/chemicalesecurity](http://www.dhs.gov/chemicalesecurity).

While the CFATS regulation is a carry-over from the Bush Administration, the major difference with the Obama Administration is that it is calling for new legislation to mandate that each facility covered under CFATS conduct an assessment of inherently safer technologies (ISTs) and include this assessment in the SSP and that facilities in risk tiers 1 and 2 implement the ISTs. At the same time, DHS is conducting a long-term project to define IST and determine its ramifications throughout the chemical supply chain.

## **Transportation Security – TSA (DHS)**

In December, 2008, new TSA regulations on rail security took effect. The rule includes several new requirements to reduce the risks associated with the transportation of security sensitive hazardous materials such as poison by inhalation (PIH) materials. It establishes a chain of custody requirement for facilities in 46 key urban areas under

which shippers must physically inspect rail cars containing security-sensitive materials prior to shipment. Freight rail carriers must establish positive and secure handoff procedures for security-sensitive materials shipments at points of origin, delivery and interchanges. The rule also requires rail carriers and certain rail hazardous materials facilities to designate rail security coordinators (RSC) to serve as liaisons to TSA for intelligence information, security-related activities and ongoing communications. In addition, the rule requires freight rail carriers and certain rail hazardous materials shippers and receivers, at the request of TSA, to report the location of individual rail cars containing security-sensitive materials cars within minutes, and the locations of all cars containing security-sensitive materials within 30 minutes. Finally, the rule codifies TSA's authority to inspect railroad carriers, rail transit systems, and certain facilities that ship or receive specified hazardous materials by rail

and requires railroads to immediately report incidents, potential threats, and significant security concerns to TSA.

## **Transportation – DOT**

Changes at DOT have resulted from investigations from the House Transportation and Infrastructure Committee and accusations that officials at the Pipeline and Hazardous Materials Safety Administration (PHMSA) were too close to industry as highlighted in Congressional hearings last fall. The fallout included the reassignment of individuals at PHMSA who had years of experience and knowledge of hazardous materials safety regulations at the national and international levels. In addition, there are detailed new procedures for processing Special Permit and Approval applications as well as requests for party status and renewals. This has caused a backlog, which PHMSA is working to

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