



Chemical Producers & Distributors Association

Issue Brief

Chemical Facility Security Legislation

Background

In April 2007, the Department of Homeland Security (DHS) issued a regulation establishing chemical facility anti-terrorism standards (CFATS), enacted by Congress the previous year. It was the intention of Congress for the CFATS to serve as a tiered, risk-based approach to categorizing chemical facilities on the basis of risk. Recognizing the need to protect the nation's chemical plants, storage facilities, and infrastructure against security threats and potential terrorist attacks, CPDA supported the government's efforts to develop and implement reasonable risk-based and performance-oriented security standards. To that end, CPDA has worked constructively with DHS in providing valuable input for the CFATS program and are actively working to implement these new standards. However, due to a sunset provision (originally set to expire in September 2009 but extended for another year in the DHS's appropriations bill) a congressional reauthorization of the program is needed.

On November 6th, 2009, the House of Representatives passed H.R. 2868, The Chemical and Water Security Act. Unfortunately H.R. 2868, would so radically overhaul the law, DHS would have to virtually start regulating chemical facility security from scratch. This is due to provisions in the bill that would allow the department to require all facilities to assess the feasibility of adopting inherently safer technology (IST) and require implementation from those high-risk facilities. In effect, it would allow DHS to mandate that businesses employ specific product substitutions and processes. Other contentious provisions include language allowing citizen lawsuits against DHS and states to enact stricter regulations.

Position

CPDA opposes legislation that reaches beyond security protections by creating a mandate to substitute products and processes with a government-selected technology. Such a standard is not measurable and would likely lead to confusion, loss of viable products, prohibitive legal liability, and business failures. Further, IST is an engineering concept used to improve designs of worker safety protections at manufacturing facilities. CPDA is concerned this concept is being inappropriately applied to security issues.

CPDA supports legislation to reauthorize the DHS chemical facility security standards enacted by Congress in 2006; as well as the CFATS regulatory framework that the DHS carefully established and is now enforcing. By simply removing the sunset date and making the chemical security regulations permanent we believe that the certainty needed to protect both citizens and the agriculture chemical industry will be achieved.

Agriculture chemical companies are complying with the landmark new DHS chemical security standards while continuing to provide essential products and services for our daily lives. We believe that counter-productive adjustments to the current law would undermine security and endanger businesses in communities all around the country.