

Long-term reauthorization of CFATS remains uncertain

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By Heidi Slinkard Brasher

The Chemical Facilities Anti-Terrorism (CFATS) program was authorized by the Department of Homeland Security (DHS) to regulate chemical facilities for anti-terrorism purposes. Section 550 of the DHS Appropriations Act, 2007 (Public Law 109-295), which provided DHS with such authority, is set to expire on October 4, 2011.



Under Section 550, DHS was required to establish risk-based performance standards for security at chemical facilities, develop vulnerability assessments, and develop/implement site security plans. DHS must then review and approve each facility's assessment plan and implementation, even if the facility's plan was not a DHS-developed plan. Disapproval is only to occur if the facility's plan or assessment fails to comply with the regulations.

A chemical facility having more than specified quantities of certain chemicals is required to perform a "Top Screen" to assess the facility's potential vulnerabilities. The Top Screen is to be submitted to DHS, which then determines whether the facility's risk status is high enough to warrant further regulation. Implementation of the interim final rule provided for four risk-based tiers of these high-risk facilities, with performance-based requirements including development of vulnerability assessment, formation and submittal of site security plans, and implementation of the site security plan. As of March 2011, approximately 40,000 chemical facilities had registered and completed their Top Screen, with 8,000 being required by DHS to submit their site vulnerability assessment.

On May 16, 2011, the House Energy and Commerce Committee approved H.R. 908, Full Implementation of the CFATS Act, with an extension until 2018, and a single amendment which would eliminate duplicative background checks for employees who have already been cleared pursuant to the Maritime Transportation

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Security Act (i.e., employees who hold a Transportation Workers Identification Credential – TWIC card).

Another House Chemical Security Bill, H.R. 901, was approved on June 22, 2011, and has been sent to the House Homeland Security Committee. It also reauthorizes CFATS until 2018. Unlike H.R. 908, H.R. 901 contains several amendments, including establishing time limits for DHS approval of security vulnerability assessments or site security plans and annual reporting requirements regarding CFATS' effect on job creation or elimination.

The Senate Committee on Homeland Security and Governmental Affairs voted favorably for a three-year reauthorization of CFATS in S. 473 on June 29, 2011. It is noteworthy that S. 473 does not contain the proposed mandate that would require consideration of use of “inherently safer technology” – i.e., alternative chemicals or processes.

Despite recent committee movement, many in the industry remain concerned that the reauthorization bills will not receive full Congressional attention before the October 4, 2011, expiration and the fall recess. This would likely have the effect of extending the current CFATS program for one year and slide the issue of a lengthier reauthorization to the over-filled congressional back burner.

LINKS

- [Heidi Slinkard Brasher's Bio](#)
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