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R SHEET ON

CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

March 2020

BACKGROUND

America's chemical facilities produce materials that are essential to the nation's economy and the lives of everyday citizens. Farming requires fertilizer, medical patients need pharmaceuticals and chemical coatings make sure our public infrastructure lasts for decades. But handling chemicals, like all heavy industry, is not without risk, both to chemical firms and their workers. But unlike other heavy industry, chemical facilities carry the risk of their sometimes-volatile and -dangerous materials falling into the hands of terrorists and others who mean to do harm.

To that end, Congress created the Chemical Facility Anti-Terrorism Standards (CFATS) program in 2007 to manage risk associated with chemical plants through regulation and a modest grant program. The program is overseen by the Cybersecurity and Infrastructure Security Agency at the Department of Homeland Security. Initially designed as a program with limited duration, it was reauthorized by Congress in 2014 and again in 2019. The program is set to expire in 2020, leaving lawmakers to decide whether to allow CFATS to sunset, reauthorize the program for a limited time, or make it a permanent part of CISA/DHS efforts to mitigate terrorism risk.

CURRENT DEBATE

Workplace deaths and injuries are tragic, whatever industry they happen in. The nation's body of regulation of occupational hazards provides important guidance on how these risks are to be mitigated and reported. Federal and state occupational rules work in concert with local building codes and land use regulations to mitigate potential hazards chemical facilities pose to those nearby. Most chemical facility risks are local. And facility owners have reason to mitigate local risks, at least inasmuch as they bear the costs should these safety externalities not be completely internalized.

But other risks particular to the chemical industry and its infrastructure are of national scope. These include the risks related to terrorism—both attacks on chemical facilities and intrusions that allow dangerous chemicals to fall into the hands of those who mean to do harm. The vast potential costs to the nation of such events are far out of proportion with the everyday risk chemical facilities pose to their workers and nearby residents. Such situations are a textbook cause for federal regulation.

This impetus gave rise to the CFATS program, designed to account for and manage risks specific to facilities that handle chemicals useful in acts of terrorism. The core of the program is the CFATS tiering system, which categorizes chemical-handling facilities based on the amounts of various chemicals of interest contained in a given facility.[1] The tiering system allows CISA administrators to understand the risks associated with different facilities that handle different combinations of substances that pose national security threats should they be diverted.[2] Tiering allows CFATS grant funding to be targeted to offset risks where national security benefits are greatest. But bundling management of heterogeneous risk is not without issue. The CFATS program has struggled to ensure its tiering structure is meaningfully associated with facility risk, and questions of bureaucratic efficiency remain.

SUMMARY

- The Chemical Facility Anti-Terrorism Standards program offsets the costs of national security preparations at critical infrastructure sites.
- Chemicals firms face incomplete incentives to account for national security externalities related to their business.
- Terrorism risks at chemical facilities are of national significance, and federal regulation is appropriate to manage them.

1. For a list of these chemicals, see: https://www.cisa.gov/publication/cfats-coi-list

2. For more on the tiering process, see: https://www.cisa.gov/cfats-process

ACTION ITEMS

Moving forward, policymakers have three alternative paths for managing risk associated with the nation's major chemical manufacturing and handling facilities. The first option would be to shift all risks associated with chemical facilities to industry. While this avoids government outlays, creating blanket rules that set one-size-fits-all standards in an industry where facilities' risks differ from site to site could leave some chemical complexes underprepared—and others expensively overprepared—in the event of a security incident.

Barring this decision, Congress has two choices to better regulate chemical facility risk. First, it could rebuild the CFATS program under new laws and associated Department of Homeland Security rulemaking actions, recognizing the need for a national regulatory solution for the bespoke terrorism risks posed by chemical infrastructure. This could lead to a better-designed program than CFATS, but at the cost of years of regulatory delay.

Alternately, Congress could reauthorize or, going further, make permanent the CFATS program in its current form without changing its scope or size. This has the advantage of using the work the government has already undertaken as the basis for further chemical plant infrastructure safety improvements. This is the general path the U.S. House of Representatives took when it reauthorized the program in 2019. Should Congress find the current specifications of the program acceptable, a more permanent authorization could be appropriate.

CONTACT US

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