

Issue 1: Chemical Facility Security Anti-Terrorism Standards (CFATS) reauthorization

Background: Section 550 of the Homeland Security Appropriations Act of 2006 required the Department of Homeland Security to implement chemical facility security regulations. These regulations were finalized on November 20, 2007, and required all propane marketers and propane customers that store over 60,000 lbs (14,285 gallons) of propane to register with DHS and complete an internet-based “Top Screen” questionnaire by January 22, 2008. DHS is to review the data submitted and decide either to place facilities in one of four risk-based Tiers or to relieve them of further action. To date, DHS has not delivered any determinations to covered propane facilities yet. Congress included in Section 550 an October 1, 2009 sunset date for the regulations. This is spurring renewed congressional attention to the provisions in the law, and several troubling policies are in play.

Status: There are two bills pending currently that would reauthorize the CFATS regulations. H.R. 5577 was introduced by Homeland Security Committee Chairman Bennie Thompson (D-MS), and H.R. 5533 was introduced by Rep. Albert Wynn (D-MD). The House Homeland Security Committee reported H.R. 5577 on March 14, 2008, and the bill is now pending in the House Energy and Commerce Committee. H.R. 5577 contains much more troubling provisions than H.R. 5533. No official action has occurred in the Senate yet.

H.R. 5577 would permanently authorize the CFATS regulations. Importantly, NPGA was successful in lobbying to have DHS retain the authority not to regulate facilities it does not view as a risk. However, H.R. 5577 would require facilities placed by DHS into a risk-based tier to perform an “Inherently Safer Technology” assessment. This forces facilities to consider, among other things, the security impacts of reduced or eliminated storage. NPGA believes that there is no IST for a propane facility, and that this would enact incentives for consumers to switch to unregulated fuels. Finally, H.R. 5577 would also weaken DHS’s preemption authority, meaning its ability to prevent states/localities from implementing security requirements of their own. It is already difficult to site new storage facilities, without having states/localities being allowed to use security arguments against industry or consumer facilities.

H.R. 5533 would permanently authorize the CFATS regulations, but it would also weaken DHS’s existing preemption authority. However, the bill’s sponsor lost his primary reelection bid and has decided to retire from Congress this summer. Nevertheless, it is likely that the policies in this bill will continue to be supported by many in Congress.

The Ask: Support a simple reauthorization of the CFATS regulations that (1) allows DHS to cover only those facilities it views as risks; (2) does not include Inherently Safer Technology assessments; and (3) does not weaken federal preemption authority.