

# Executive Memorandum

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## Congressional Checklist for Chemical Security

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For the first time since 9/11, Congress is seriously considering legislation to address the threat of terrorist attacks that exploit chemical infrastructure (e.g., manufacturing and storage facilities and the pipelines, trucks, and railcars that transport chemicals). Any effective legislation must define a reasonable and enforceable role for the private sector in safeguarding its assets and facilities without undermining the competitiveness of industries that manufacture, transport, and utilize hazardous chemical materials. Congress needs a checklist to ensure that proposed legislation contains the right measures and avoids potential pitfalls.

**What Is Reasonable?** Chemical infrastructure is a ubiquitous part of American life and includes everything from pumping gas to delivering home heating oil to refining gasoline and manufacturing fertilizer. Establishing federal regulatory security standards for every activity (a one-size-fits-all approach) would be a massive and expensive undertaking. It is also unnecessary. Granted, terrorists might try to turn the instruments of everyday life into weapons, but that is true for lots of things. Excessive regulation and unnecessary security would hamstring the economy without making the nation much safer.

Instead, homeland security efforts need to be prioritized based on risk. With regard to chemical security, that means focusing on dangers that local

emergency responders and hazardous material teams would not be able to handle and threats against chemical infrastructure (like large-scale plants and storage facilities) where attacks would cause catastrophic damage, threatening tens of

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- The DHS should be required to establish and enforce mandatory standards to address top-tier threats to the chemical infrastructure.
  - Chemical security legislation should protect the private sector from undue burdens that add little real security but undermine competition, cost jobs, and increase expenses.
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thousands of lives and billions of dollars in property. For this top tier of threats, it is reasonable to require the Department of Homeland Security (DHS) to establish and enforce mandatory standards for preventing unauthorized access to facilities, securing critical areas, and responding to emergency situations. Other elements

of the chemical sector should adopt the voluntary standards and best practices recommended by federal, state, and local governments and relevant nongovernmental organizations such as professional business associations and the Red Cross.

**A Reasonable Checklist.** In creating a framework for top-tier chemical infrastructure security, Congress should use as its model the Maritime Transportation Security Act (MTSA), which established performance-based requirements that allow

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This paper, in its entirety, can be found at:  
[www.heritage.org/research/nationalsecurity/em1000.cfm](http://www.heritage.org/research/nationalsecurity/em1000.cfm)

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the private sector to determine the best way to achieve security goals but also includes means to audit compliance and penalties for noncompliance. Congress should also apply the lessons learned from implementing the MTSA and establish the right balance of incentives and enforcement tools to ensure broad acceptance, rapid implementation, minimum disruption of business, and real improvements in security. An effective chemical security bill would:

- **Not mandate inherently “safer” technologies.** Some chemical products and processes are highly toxic, but mandating that these should be replaced with “safer” chemicals and methods is not appropriate for anti-terrorism legislation. With regard to security, the private sector’s job is to take reasonable measures to prevent malicious use of its facilities. On the other hand, decisions on which chemicals are the most appropriate for industrial uses are based on a number of factors including safety, environmental and health risks, and industry and consumer needs. These are not matters that should be regulated under the guise of homeland security.
- **Not impose criminal penalties for noncompliance.** Criminal penalties are unnecessary and would overcriminalize federal regulatory codes. The Nuclear Regulatory Commission manages to oversee the stringent security at civilian nuclear reactors without having the authority to impose criminal penalties. Civil penalties, appropriately enforced, have proven reasonable for ensuring private-sector compliance with critical infrastructure security needs.
- **Harmonize requirements with the MTSA.** Security at some chemical facilities is already regulated under the MTSA. Any additional legislation should ensure that these entities are not subjected to dual, competing federal security

requirements. Facilities that have already gone through the expense and effort of complying with the MTSA should not be burdened with further requirements.

- **Provide a “safe harbor” for information sharing.** To audit compliance and assess security, the DHS will need access to commercial information that is sensitive and proprietary. Congress should establish adequate protections that allow companies to share these data while safeguarding their legal rights and business practices and ensuring that terrorists are not given access to security-related information under the Freedom of Information Act.

**Grading Congress.** Congress has an opportunity to address a significant gap in homeland security by providing a framework for addressing the threat from terrorists who would use the chemical industry to attack Americans. A reasonable set of security standards that focuses on the greatest threats, similar to the measures already enforced in the maritime industry, makes sense; but these requirements need to be implemented with safeguards that protect the private sector from undue burdens that would add little real security but would undermine competition, cost jobs, and make goods and services more expensive.

If Members of Congress follow the chemical security checklist, they will provide legislation that makes America safer while maintaining its economic competitiveness and free society. If they do not, they will produce a bill that is not worth passing.

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