

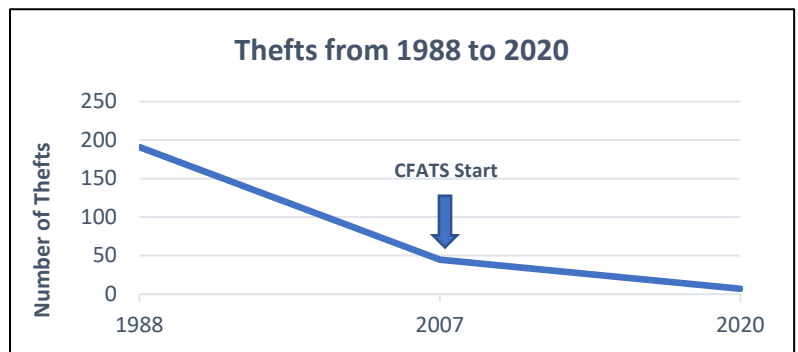
DHS/ATF: Duplicative Regulation of Commercial Explosives

Background:

The Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standard's (CFATS) program aims to secure high-risk chemical facilities against terrorism by requiring them to assess and report security risks and vulnerabilities, develop security plans, and comply with security measures. However, these requirements are duplicative of existing commercial explosives regulations enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives' (ATF), whose mission is, "preventing terrorism, reducing violent crime involving the criminal misuse of explosives, and protecting the public by enforcing laws and regulations".

Facts:

- Thefts of explosives have seen no significant reduction following CFATS implementation in 2007.
- A 2021 GAO report, entitled [Chemical Security: Overlapping Programs Could Better Collaborate to Share Information and Identify Potential Security Gaps](#) found the majority of CFATS requirements for commercial explosives directly overlap with pre-existing ATF regulations.



- In a 2021 Advanced Notice of Proposed Rulemaking (ANPRM) entitled [Removal of Certain Explosive Chemicals From the Chemical Facility Anti-Terrorism Standards](#) DHS indicated **"we believe that these regulations may be unnecessarily burdensome for facilities that are already subject to security regulations for the same chemicals by another Federal agency, ATF."** Unfortunately, this ANPRM has yet to be formalized into a rulemaking.
- While developing its Risk Management Plan regulations, the EPA issued a final rule removing Division 1.1 explosives from its list of regulated substances for accidental release prevention concluding that **". . . current [ATF and other] regulations and current and contemplated industry practices promote safety and accident prevention in storage, handling, transportation, and use of explosives, making them adequate for EPA's purposes."**

Our Position:

The commercial explosives industry has been effectively regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) since implementation of the *Safe Explosives Act of 1970*. All available government data shows that there has been no significant reduction in thefts of commercial explosives since implementation of the CFATS program.

Our Ask:

Commercial explosives should be removed from the CFATS program's Appendix A: Chemicals of Interest list by amending the legislation to include the following language "The Secretary may not designate any explosive material subject to regulation by the Department of Justice under chapter 40 of title 18, United States Code, or by the Bureau of Alcohol, Tobacco, Firearms, and Explosives under part 555 of title 27, Code of Federal Regulations, as a chemical of interest under Appendix A to part 27 of title 6, Code of Federal Regulations, or any successor thereto".