INDUSTRY VIEWS OF THE CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON CYBERSECURITY AND INFRASTRUCTURE PROTECTION

OF THE

COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

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INDUSTRY VIEWS OF THE CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM

Thursday, February 15, 2018

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON CYBERSECURITY AND
INFRASTRUCTURE PROTECTION,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:04 a.m., in room HVC–210, Capitol Visitor Center, Hon. John Ratcliffe (Chairman of the subcommittee) presiding.

Present: Representatives Ratcliffe, Bacon, Fitzpatrick, Donovan, Richmond, and Demings.

Mr. RATCLIFFE. The Committee on Homeland Security, Subcommittee on Cybersecurity and Infrastructure and Protection will come to order. The Chair welcomes those joining us today in the audience. I want to remind everyone that is here as a guest of the committee that we do not allow anyone to disrupt the proceeding in any manner with signs or placards.

The subcommittee is meeting today to receive testimony regarding the Chemical Facility Antiterrorism Standards program, more commonly referred to as CFATS. I will recognize myself for an opening statement.

Before we begin, though, I would like to say I know that I speak for everyone on this subcommittee in extending our heartfelt condolences to the victims of yesterday's shooting in Florida. A school should never be a place where students or teachers fear for or lose their lives. As we learn more I certainly hope that no other family will be forced to endure this type of senseless tragedy.

The Chemical Facility Anti-Terrorism Standards program began in 2007 in order to keep dangerous chemicals out of the hands of terrorists seeking to do our Nation harm. Since then, the program has grown and strengthened through the tireless work put in by the men and woman at DHS and through the relentless effort of industry to keep their facilities secure.

The daily management and security of high-risk chemicals is not an issue that the Government can solve on its own. Working with industry stakeholders in this area is an integral part and aspect of our Nation's continuing counterterrorism efforts.

By identifying high-risk facilities and ensuring that they have appropriate security measures in place, the risks associated with these chemicals can be heavily mitigated. Especially after recent

tragedies, greater collaboration between the Government and facility owner-operators also can provide confidence and peace of mind to the American public.

It is important to point out that CFATS is a broad program that covers facilities that use, manufacture, store, or handle specific quantities of chemicals that DHS has identified as being extremely dangerous.

As shown by the various industries that our witnesses come from, facilities under this program touch all aspects of our economy, such as energy and health care, mining, agriculture, electronics, and plastics. The need for Congress and DHS to get this program right is both a National security and economic imperative.

The CFATS program has used risk-based performance standards, such as perimeter security, access control, and cybersecurity, to examine and evaluate a facility's security posture.

While it is up to individual owner-operators of a CFATS-covered facility to choose what programs best ensure the security of stored chemicals, a high-risk facility ultimately must implement stringent standards as set forth in CFATS.

As DHS previously stated before this subcommittee, "the significant reduction in the number of chemical facilities that represent the highest risk is an important success in the CFATS program and is attributable both to the design of the program and the work of CFATS personnel and industry at thousands of chemical facilities."

Through engagement and collaboration with industry stakeholders over the past few years, this committee is hopeful that the CFATS program can continue to protect chemicals from those who mean to do us harm.

I would like to thank our panel for taking time today to testify. Your thoughts and opinions are very important as we oversee the Department of Homeland Security in meeting its duties under the Chemical Facilities Anti-Terrorism Standards program.

As stakeholders, you offer a unique and integral insight into the interworkings of this program, which is set to expire, by the way, at the end of this year. I look forward to a robust conversation with our distinguished panel today that will support our efforts in overseeing the CFATS program.

[The statement of Chairman Ratcliffe follows:]

STATEMENT OF CHAIRMAN JOHN RATCLIFFE

FEBRUARY 15, 2018

The Chemical Facility Anti-Terrorism Standards program, or CFATS program, began in 2007 in order to keep dangerous chemicals out of the hands of terrorists seeking to do our Nation harm. Since then, the program has grown and strengthened through the tireless work put in by the men and woman of DHS, and through the relentless effort of industry to keep their facilities secure. The daily management and security of high-risk chemicals is not an issue that Government can solve on its own. Working with industry stakeholders in this area is an integral aspect of our Nation's continuing counterterrorism efforts. By identifying high-risk facilities and ensuring that they have appropriate security measures in place, the risks associated with these chemicals can be heavily mitigated.

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Mr. RATCLIFFE. Before I recognize the Ranking Member I ask unanimous consent to insert statements from the National Association of Chemical Distributors and the Institute of Makers of Explosives. Without objection, so ordered.

[The information follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS

FEBRUARY 15, 2018

The National Association of Chemical Distributors (NACD) is pleased to provide the following statement for inclusion in the record of the February 15, 2018, hearing, *Industry Views of the Chemical Facility Anti-Terrorism Standards Program.*

NACD commends the subcommittee for holding this important hearing as a first step in reauthorizing the Chemical Facility Anti-Terrorism Standards (CFATS) program—NACD strongly urges you to introduce CFATS reauthorization legislation as soon as possible so it can proceed through Congress and be signed into law well before the program's January 2019 expiration date.

ABOUT NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the Nation and generate 93 percent of the industry's gross revenue. NACD members, operating in all 50 States through more than 2,800 facilities, are responsible for nearly 130,000 direct and indirect jobs in the United States. NACD members are predominantly small regional businesses, many of which are multi-generational, and family-owned.

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

While security has always been an inherent element of Responsible Distribution, following the terrorist attacks of September 11, 2001, distributors were the first sector of the chemical industry to mandate security measures for its members. NACD continues to assess Responsible Distribution's security measures against current threats. In 2013, NACD added a specific Security Code to Responsible Distribution that consolidated many prior requirements and enhanced others. These require-

ments apply to all NACD members, including those who do not have facilities subject to the CFATS regulations. Over the past 16 years, NACD members—both CFATS-regulated and non-CFATS-regulated companies—have made substantial investments to make their facilities more secure.

NACD SUPPORTS LONG-TERM REAUTHORIZATION OF CFATS

The CFATS program has made the chemical industry and our Nation much more secure. Since its establishment in 2007, the industry has invested millions of dollars and instituted thousands of new security measures at our facilities.

From the beginning, the Department of Homeland Security (DHS) has taken a collaborative, common-sense approach in implementing the CFATS regulations. Despite being dependent on temporary appropriations measures during the first 7 years of the program, the agency did a commendable job in writing the regulations and setting up the internal infrastructure to be able to implement and enforce the new standards.

One reason for the success of the CFATS program is the fact that DHS has taken the time to truly learn about the diverse chemical industry and work with companies on security measures that meet the CFATS Risk-Based Performance Standards while providing flexibility to each unique chemical facility in doing so. DHS has excelled in outreach to the industry by publishing numerous fact sheets and "lessons learned" documents; interacting with facility owners and operators during the Chemical Sector Security Summits and other trade association meetings; and always making inspectors and headquarters personnel available to talk through issues and answer questions.

In addition, DHS worked with NACD and the American Chemistry Council to develop a CFATS Alternative Security Program (ASP) Guidance Document and Template to enhance the process for submitting site security plans. The ASP provides DHS with greater clarity about regulated facilities' security measures and how they meet or exceed CFATS requirements, while simplifying the compliance process and giving facility owners and operators a comprehensive security document to follow.

The "Protecting and Securing Chemical Facilities from Terrorist Attacks Act" of 2014 (Pub. L. No. 113–254), which for the first time provided CFATS a multi-year authorization, further enhanced security efforts by providing regulatory certainty to both industry and DHS. This stability allowed DHS to increase efficiencies in the program while streamlining the information submission process for regulated facilities.

For example, in 2016, DHS rolled out an enhanced risk-tiering methodology to identify more accurately high-risk facilities and assign them to appropriate risk tiers. DHS notified all facilities with threshold quantities of CFATS chemicals of interest that they must submit new Top-Screen surveys to the agency. At the same time, the agency launched version 2.0 of the Chemical Security Assessment Tool (CSAT 2.0), the on-line portal facilities use to submit Top Screens, Security Vulnerability Assessments, and Site Security Plans/ASPs. CSAT 2.0 is much more streamlined and user-friendly than the old version, which allows facilities to submit their information and DHS to analyze the material more easily. DHS has virtually completed this re-tiering process and is conducting authorization inspections and compliance inspections of facilities assigned to different tiers as well as newly-regulated facilities.

A long-term reauthorization of CFATS in the next few months would allow for the continuation of this positive momentum. NACD urges the subcommittee leadership to introduce CFATS reauthorization legislation as soon as possible so it can move through the process and be signed into law before there is a threat of a program lapse. Doing so will provide needed certainty and enhance the security of chemical facilities and our Nation.

NACD looks forward to working with the subcommittee and Congress on CFATS reauthorization legislation in the coming weeks and months.

Thank you for the opportunity to submit these comments.

STATEMENT OF THE INSTITUTE OF MAKERS OF EXPLOSIVES

FEBRUARY 15, 2018

DEAR CHAIRMAN RATCLIFFE AND RANKING MEMBER RICHMOND: The Institute of Makers of Explosives (IME) would like to provide the following information for your edification as you conduct the hearing *Industry Views of the Chemical Facility Anti-Terrorism Standards (CFATS) Program.* As an industry regulated by both the Department of Homeland Security (DHS/the Department) and the Department of Jus-

tice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), we believe we can provide a unique view for the subcommittee.

Founded in 1913, IME is a nonprofit association that provides comprehensive recommendations concerning the safety and security of commercial explosive materials. IME represents U.S. manufacturers and distributors of commercial explosive materials as well as other companies that provide related services. IME provides technically accurate and reliable information and recommendations concerning commercial explosive materials through our Safety Library Publications and other guidelines. A significant number of IME best practices have been adopted into the regulations of Federal and State agencies.

IME has supported the CFATS program, as a matter of policy, since Congress created the program in Section 550 of the 2007 Appropriation process. When it was time to reauthorize the program during the 113th Congress (H.R. 4007/Pub. L. No. 113–254), IME was there supporting it. IME has also worked closely with DHS personnel and, we believe, have developed a good working relationship based on professionalism, and a respect for each other's focus on security. IME is a member of the Chemical Sector Coordinating Council, participates in the annual Chemical Security Summits, and regularly invites DHS personnel to speak to our members at industry meetings.

In regard to the CFATS program, overall, we can, in all good conscience, say that the CFATS program is in a much better place in 2018, than it was 4 years ago. The Department has rolled out the Chemical Security Assessment Tool (CSAT) 2.0 and, according to our members' experience and feedback, has done a good job screening explosive manufacturing facilities. While there may be differences over whether or not a facility should be tiered, the process used is efficient and effective. If we were to give it a grade, it would be a firm "B" for solid accomplishment. Nevertheless, we have detailed four areas below where the agency can improve.

DUPLICATIVE REGULATION OF EXPLOSIVES SHOULD BE ELIMINATED

IME's highest concern is that DHS regulations on explosive materials duplicate security regulations under the jurisdiction of ATF. Duplicative regulatory requirements impose significant costs that are impacting jobs and industry investment without a commensurate increase in security of commercial explosives.

When the Department promulgated the CFATS Chemicals of Interest (COI), Appendix A, they included explosive materials that have been regulated by ATF for safety and security purposes for nearly a half century under the Organized Crime Control Act of 1970 (OCCA), and later by the Safe Explosives Act of 2002 (SEA). In fact, explosives are the only materials on the COI for which security regulations already existed under the jurisdiction of another agency. Given that ATF regulatory requirements, along with our industry's best practices, have resulted in a sustained and exemplary security record for the commercial explosives industry, the costs incurred under the duplicative CFATS requirements far exceed any benefits.

As mentioned above, per the OCCA, 18 U.S.C. Chapter 40, and the SEA, also known as Federal Explosives Law (FEL), ATF regulates explosives under 27 CFR Part 555 for safety and security. ATF's explosives mission involves preventing terrorists and other criminals from accessing explosives. ATF regulations (based on IME's American Table of Distances) are also designed to ensure that there would be no significant impact to the public from an unintended detonation at an explosives facility.

There is no rationale for DHS to include explosives on the COI, as evidenced by the Government's own data on explosive incidents. The U.S. Bomb Data Center (USBDC), established by Congress in 1996 as a National collection center for information on arson and explosives-related incidents throughout the United States, incorporates information from various sources such as ATF; the Federal Bureau of Investigation; and the United States Fire Administration. The USB DC publishes annually the Explosives Incident Report (EIR) (Unclassified), providing analytical data regarding explosives-related incidents, bombings, recoveries, and thefts/losses reported through the Bomb Arson Tracking System (BATS).

According to available EIRs, commercial explosives, as components of Improvised Explosive Devices in the United States, have remained at less than 2% for 20 years. Explosives thefts have been on a consistent downward trend. Over the past 20 years, thefts of explosives reported by licensees/permittees have plummeted 92%. The EIR data further underscores the excellent security record of the commercial explosives industry by reporting only 8 thefts of commercial explosives in 2015, and 61 from 2011–2015. Although the industry strives for zero thefts, the number is infinitesimal considering that 14,550,000 pounds of commercial explosives were con-

sumed in the United States during the 2011–2015 period.[1] Clearly, the record shows that ATF regulations and industry best practices effectively ensure the security of commercial explosives and prevent diversion for criminal or other illicit use. The fact that a negligible amount of commercial explosives have been used for illicit purposes illustrates the effectiveness of regulations and industry best practices in place long before explosives were redundantly included under the CFATS regulations.

While there is no empirical data showing a need for regulation, IME was able to gather data on how much CFATS-duplicative compliance costs the industry at ATF-regulated sites. Below are four case studies of estimated or expended resources that illustrate our concern:

IME Member Company—Case Study 1, CFATS Expenses $350,000–370,000 (est.)

- Area perimeter fencing
  - $65,000 for fence and labor
  - $60–80,000 to clear brush and trees for fence installation
  - $30,000 for gate with remote entry access camera system
- $50,000 camera system per each magazine location on the site
- Employee development and implementation time
- Travel expenses for assessment and DHS inspection

IME Member Company—Case Study 2, CFATS Expenses $433,820 (actual)

- Signage—$6,800
- DHS-approved locks & construction to accept new locks—$29,600
- Travel for training and inspections—$1,800
- Gate replacement—$10,000
- Fence installation—$3,500
- Solar lighting—$4,600
- Video verified Intruder Detection System (IDS)—$223,650
- Video verified monitoring—$151,470
- Video verified maintenance (to date)—$2,400
  Yearly Recurrent Cost $70,400
- Video-verified monitoring and maintenance and lighting

IME Member Company—Case Study 3, CFATS Expenses $837,400 (actual)

- Fencing—$679,200
- New locks—$3,200
- Reinforce gates—$1,200
- Install IDS—$151,500
- Signage—$2,300

IME Member Company—Case Study 4, CFATS Expenses $500,000–$1 Million (est.)

* Subject to DOD Contractual Requirements

- Underground power and communication conduit for security systems required by DOD 4145.26–M.
  - Alternate option, $300,000 per magazine site at 10 sites=$3 million.

CFATS Total estimates and actual expenses of $2.64 million (estimate).

Considering all four sites were already regulated for security by the ATF, CFATS requirements provided minimal additional security benefits. The industry, with hundreds of sites Nation-wide, only has an estimated 2 dozen tiered facilities, with nearly half of those being tiered under the new CSAT 2.0 process. IME is still working to generate an accurate accounting of the costs that the duplicative regulations impose on the explosives industry. When that number is finalized we will share it with the subcommittee. Nevertheless, we are sure you would agree with us that one wasted dollar on duplicative regulations is too much, let alone $2.64 million.

IME has repeatedly requested the Department relieve the industry from this duplicative and burdensome regulation. Most recently, IME met with Mr. Robert Kolasky, Deputy Under Secretary (acting), National Protection and Programs Directorate, in his position as regulatory reform officer (RRO) for the Department. The meeting was held on October 30, 2017 to discuss regulatory reform per Executive Order (EO) 13771 on Reducing Regulation and Controlling Regulatory Costs and EO 13777 on Enforcing the Regulatory Reform Agenda. IME briefed Mr. Kolasky on the situation and explained how removal of this duplicative regulation would allow DHS to focus valuable resources on other critical risks to our Nation. The Department did respond, informally, that they will not pursue rulemaking to remove what IME has identified as unnecessary regulation that imposes costs which exceed benefits;

[1] USGS, *Mineral Yearbook—Explosives*. By Lori E. Apodaca (2015).

however they indicated they would not object to a legislative fix if IME chooses to pursue that route.

For this reason, IME requests Congress amend 6 U.S.C. Chapter 1, Subchapter XVI, Chemical Facility Anti-Terrorism Standards, Section 621(4) to include as an excluded facility "(F) a business premises where explosive materials are manufactured, imported, stored or distributed subject to the regulation of the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, under 18 U.S.C. Chapter 40 and 27 CFR Part 555."

As an association that is globally recognized and respected for advancing the security and safety of commercial explosives, we are confident that removing these materials from the redundancy of the CFATS program would not negatively impact public safety and security. Regulations and practices that long predate the CFATS program have effectively ensured explosives security and safety for decades. Additionally, the amendment of CFATS regulations in deference to the explosives regulatory scheme mandated by ATF would alleviate burden on DHS and allow resources to be appropriately focused on legitimate security threats.

CHEMICALS OF INTEREST SHOULD BE REVIEWED

During promulgation of the CFATS regulations, DHS included in the list Chemicals of Interest (COI), Appendix A, a chemical that is not commercially manufactured and which listed is causing tiering errors and needless confusion and concern.

"Ammonium nitrate (AN), [with more than 0.2 percent combustible substances, including any organic substance calculated as carbon, to the exclusion of any other substance] with a Chemical Abstract Service (CAS) number of 6484–52–2."

First, to the best of IME's determination, this product is not and never has been commercially manufactured. Per our research, the product was inadvertently created during a site clean-up operation where the AN had become contaminated. However, in order to transport the material for disposal, a CAS number was required. The duplicative listing of the CAS number 6484–52–2 to also identify the solid form of AN used in the industry causes confusion often resulting in mistakes made in top screens and additional efforts expended to correct them. Each time this happens, it causes great confusion and concern as the ramifications of being tiered are discovered, and eventually additional effort is expended to figure out how to correct the mistake.

Second, the solid form of AN is an oxidizer, whereas the mixture of contaminated AN listed on the COI is identified as an explosive material. This is a significant concern for the industry, given that AN is a commonly-used product and its generally insensitive characteristics make it safe to handle, transport, and distribute under normal circumstances. The misleading description of *contaminated AN* causes needless concern to those outside of the commercial explosives industry that AN itself poses a serious danger to communities where it is manufactured, stored, and used, when, in fact, it does not. IME did bring this problem to the attention of DHS personnel; however, they were not receptive to our request to remove the non-commercial product from the list. For this reason, IME recommends the subcommittee require DHS to open the COI list to notice and comment.

PERSONNEL SURETY PROGRAM SHOULD RETAIN ALL VETTING OPTIONS

As DHS rolls out its second phase of its Personnel Surety Program (PSP), from compliance by CFATS Tier 1 and 2 facilities to Tier 3 and 4 facilities, the transition is expected to be smooth. DHS appears to have done an adequate job of preparing to add more than 3,000 facilities into the PSP, and by phasing-in compliance over 3 years, the agency will prevent a tidal wave of compliance issues hitting the Department in a very short time frame.

Nevertheless, IME is planning to submit comments to the Information Collection Request for the PSP (1670–0029) issued on December 26, 2017. IME has submitted multiple comments over the past 5 years explaining our concerns and opposition to certain elements of the program. While many of those concerns have been addressed, we urge the subcommittee to focus on the following:

First, while the Personnel-Surety-focused language of the CFATS Act of 2014 (HR 4007) directed the Department to accept visual verification as a method to comply with Risk-Based Performance Standard (REPS) 12(iv)—Personnel Surety, as an additional option to the other three options already proposed, DHS continues to be resistant to the option. As a matter of fact, in the Information Collection Request for the PSP (1670–0029), the Department wrote:

"Option 4. High-risk chemical facilities may visually verify certain credentials or documents that are issued by a Federal screening program that periodically vets enrolled individuals against the TSDB. The Department continues to believe that visual verification has significant security limitations and, accordingly, encourages high-risk chemical facilities choosing this option to identify in their SSPs the means by which they plan to address these limitations."

IME fought for this vetting option based on the fact that the safety and security of explosives is closely regulated by ATF under the FEL. The FEL requires persons who import, manufacture, store, or distribute explosives to obtain a license, and those who receive or use explosives and do not have a license, to obtain a permit. Among the many requirements that these business entities or persons must meet in order to obtain a license or a permit is to submit to ATF for a background check the names of all employees who are authorized to possess[2] explosives or those empowered to make management decisions or set company policies. The FEL standards for the background checks conducted by ATF are the forerunner of the background check standards that were subsequently adopted by DHS for the plethora of programs it administers for transportation workers.[3] These same standards are the basis for RBPS 12. All of these programs include a check for "terrorist ties" by vetting against the terrorist screening database (TSDB) the names of individuals needing access privileges to security-sensitive areas, assets, or activities.[4] These programs are operational and have been used to successfully vet populations in need of comprehensive security assessments.

IME had to work through the legislative process to ensure that our members would not be required to vet their employees through yet another Federal program to be able to do their jobs. We urge the subcommittee to remain vigilant that DHS does not add additional conditions or requirements to companies using this option, such that it becomes an unachievable option.

Second, it is worth taking a step back to examine the appropriateness and need for the PSP. To begin with, it is important to understand how terrorist ties have

[2] "Possession" is interpreted as both actual and constructive.

[3] Hazardous Materials Endorsement (HME) threat assessment, Transportation Worker Identification Credential (TWIC), Free and Secure Trade credential, and Trusted Traveler programs.

[4] The TSDB is a consolidated database of terrorist watch list information administered by the Federal Bureau of Investigation (FBI) through the Terrorist Screening Center (TSC). The TSC was created by the September 16, 2003, Homeland Security Presidential Directive—6 (HSPD–6), which directed the TSC to integrate all existing U.S. Government terrorist watch lists.

been identified and addressed since the tragic events of 9/11. Since the TSDB was created and delegated to the FBI, the Transportation Security Administration (TSA) and the Customs and Border Protection (CBP) agency, among other DHS components, were authorized to link into this system. TSA obtains a "mirror copy" of the TSDB from the FBI to facilitate vetting under the programs administered by the agency.

TSA's Office of Intelligence and Analysis (I&A) oversees all security threat assessments required by programs the agency administers, such as TWIC, HME, Secure Flight, etc. The Infrastructure Security Compliance Division (ISCD) asked I&A to conduct the TSDB check of individuals under the PSP. Since TSA, not ISCD, will be conducting these TSDB checks, it begs the question as to why ISCD did not pursue options to leverage the vetting programs that I&A already oversees, rather than setting up another stand-alone program, the PSP, which is nothing more than a portal to funnel information to I&A.

In addition to monitoring DHS to ensure that option 4—visual inspections of credentials remains viable; the subcommittee should ensure the program is serving the public well. A well-run duplicative program is still a duplicative program. If another option that would be more cost-effective and achieve the same goal is in existence, the subcommittee should consider using it.

FIELD STAFF NEED ADDITIONAL TRAINING, OVERSIGHT

It is understandable that the CFATS program may experience staffing inconsistencies with field inspectors as it matures and transforms from mainly assessing site security plans to one conducting inspections. With a large and diverse field staff, it is to be expected there may be occasional confusion and misinterpretation of the regulations and policies, and questions regarding their proper implementation. Nevertheless, without careful vetting of employees and consistent oversight, field staff may become self-empowered to interpret and apply the rules as they see fit.

Over the past year two instances have been brought to our attention where additional training and oversight were needed to correct conclusions reached by inspectors. In both these instances, the inspectors may have been aware of the DHS regulation, but they were not aware of the other regulations explosives operations must also comply with, and after the proper consultations were made, the Department's excessive demands were rescinded.

Neither of these examples are meant to characterize the field staff in general, but simply to illustrate that the commercial explosives industry must follow duplicate sets of rules and regulations between the ATF and DHS, and because of the duplicity—problems will arise. We urge the Department and the subcommittee to maintain vigilance in oversight and training of field staff and communication of policy.

We believe that by taking the actions outlined above the subcommittee can ensure the program will be well-functioning and help keep our Nation safe through the entirety of the next authorization time line.

Thank you for your consideration of these views, if you have any questions please contact us and we will be happy to discuss it with you.

Mr. RATCLIFFE. With that, the Chair now recognizes my friend, the gentleman from Louisiana, Mr. Richmond, for his opening statement.

Mr. RICHMOND. Thank you, Mr. Chairman. Good morning and I want to thank the Chairman for having this very important meeting with this subcommittee's oversight of the Chemical Facility Anti-terrorism Standards, CFATS program.

Twelve years ago, the Bush administration issued a call to action to address credible terrorist threats to high-risk chemical facilities across the country. At the time, chemical facilities security was considered one of the most significant security gaps in the post-9/11 era.

Secretary Chertoff asked Congress to pass a balanced, risk-based security measure for the chemical industry. Within a year, Congress attached language to the CHS appropriations bill giving DHS temporary authority to implement a chemical security program.

CFATS survived on annual authorizations through the appropriations process for 8 years. The lack of certainty and stability stunted the program's growth.

Congress finally passed a 4-year authorization bill in 2014 following the tragic explosion at the West Texas Chemical facility. Since then, the CFATS program has invested in better tools, better-trained personnel and a better strategic vision for the future. In short, the CFATS program has matured.

Today the program has buy-in of industry and bipartisan support on the Hill. Although I think we can do more to advance the objectives of the program, it is clear that CFATS has made us safer.

Authorization for CFATS expires in December of this year. If Congress does not act, CFATS will be relegated once again to annual authorizations through the appropriations process or worse.

Last year, this subcommittee began its reauthorization efforts with a series of candid, closed-door roundtables. I am encouraged that today we will begin hearing these stakeholder perspectives on the record.

As the subcommittee's reauthorization efforts continue, I hope we will have an opportunity to hear from the Department. In the mean time, I look forward to hearing from the witnesses here today on how we can translate the lessons learned from the first 12 years of the CFATS program into proposals to make it more efficient, more effective, and more impactful.

Toward that end, there are three topics I would like to hear more about. First, as of today, high-risk targets with significant chemical holdings, like public water systems, are exempt from CFATS. Every head of DHS from Secretary Chertoff to Secretary Johnson have said those exemptions should be eliminated.

I would be interested to learn if the witnesses here today agree with our former DHS Secretaries.

Second, as I have mentioned, CFATS has matured into a more stable program than what it was just 4 years ago. I will be interested to know how the stakeholders here today would like to see the program evolve.

Finally, I would like to know what the Federal Government can do to help chemical facilities adapt their security operations in response to evolving threats and technologies like drones.

Like many of my colleagues on this panel, my district is home to a number of chemical facilities. They play a crucial role in the local economy but with that comes risk.

The CFATS program helps address that risk and makes communities like mine safer without being overly burdensome.

I look forward to continuing this subcommittee's reauthorization efforts, and I yield back the balance of my time.

[The prepared statement of Ranking Member Richmond follows:]

STATEMENT OF RANKING MEMBER CEDRIC L. RICHMOND

FEBRUARY 15, 2018

Good morning. I want to thank Chairman Ratcliffe for continuing this subcommittee's oversight of the Chemical Facility Anti-Terrorism Standards (CFATS) program.

Twelve years ago, the Bush administration issued a call to action to address credible terrorist threats to high-risk chemical facilities across the country.

At the time, chemical facility security was considered one of the most significant security gaps in the post-9/11 era, and Secretary Chertoff asked Congress "to pass a balanced, risk-based security measure for the chemical industry."

Within the year, Congress attached language to the DHS appropriations bill, giving DHS temporary authority to implement a chemical security program.

CFATS survived on annual authorizations through the appropriations process for 8 years—and the lack of certainty and stability stunted the program's growth.

Congress finally passed a 4-year authorization bill in 2014 following the tragic explosion at the West, Texas chemical facility.

Since then, the CFATS program has invested in better tools, better-trained personnel, and a better strategic vision for the future.

In short, the CFATS program has matured.

Today, the program has the buy-in of industry, and bipartisan support on the Hill.

And although I think we can do more to advance the objectives of the program, it is clear that CFATS has made us safer.

Authorization for CFATS expires in December of this year.

If Congress does not act, CFATS will be relegated once again to annual authorizations through the appropriations process, or worse.

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First, as of today, high-risk targets with significant chemical holdings—like public water systems—are exempt from CFATS.

Every head of DHS from Secretary Chertoff to Secretary Johnson has said those exemptions should be eliminated.

And I will be interested to learn if the witnesses here today agree with our former DHS Secretaries.

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I will be interested to know how the stakeholders here today would like to see the program evolve.

Finally, I would like to know what the Federal Government can do to help chemical facilities adapt their security operations in response to evolving threats and technologies, like drones.

Like many of my colleagues on this panel, my district is home to a number of chemical facilities.

They play a crucial role in the local economy, but with that, comes risk.

The CFATS program helps address that risk, and makes communities like mine safer, without being overly burdensome.

I look forward to continuing this subcommittee's reauthorization efforts, and I yield back the balance of my time.

Mr. RATCLIFFE. I thank the gentleman.

Other Members of the committee may have opening statements. If they do, those may be submitted for the record as I mentioned.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

FEBRUARY 15, 2018

Good afternoon. I want to thank Chairman Ratcliffe and Ranking Member Richmond for holding this hearing today to examine the Chemical Facility Anti-Terrorism Standards program, or "CFATS."

Through this program, DHS works with operators of high-risk chemical facilities to ensure that security measures are in place to prevent a bad actor from using onsite chemicals in a terrorist attack.

Make no mistake—the possibility that a terrorist could use a chemical plant as a weapon of mass destruction is not mere conjecture.

It is a credible threat that has been echoed by security experts at the National Infrastructure Protection Center, the Homeland Security Council, and high-ranking

officials throughout the U.S. Government, including former Homeland Security Secretary Michael Chertoff, President Barack Obama, and even the Chairman of this Committee.

We have seen terrorist plots targeting chemical facilities including one of the 9/11 hijackers who we later learned had been scouting U.S. chemical plants.

Many of these at-risk facilities are not located in remote areas.

In a 2014 study, the Environmental Justice and Health Alliance for Chemical Policy Reform found that more than 130 million Americans live, work, and go to school in the shadow of at-risk chemical facilities.

The study also found that there is a concentration of such facilities in low-income communities and communities of color—with higher poverty rates and lower housing values.

In the event of a terrorist attack on a chemical facility, these Americans would most directly be harmed.

Indeed, in 2013, a fertilizer plant explosion in sparsely-populated West, Texas leveled nearby schools, houses, commercial buildings, and even retirement homes.

A dozen first responders lost their lives, in part because they did not know the chemical composition of the fire.

Despite the fact that this facility had reported its holdings to other Federal and State regulators, DHS was not aware that this at-risk facility even existed.

We learned some hard lessons after West—and tragically, I fear we may not be done learning them.

I worry that the Department is still not sharing CFATS information with State and local emergency responders, police departments, and firefighters.

I also worry that the program may be too focused on large operations with security teams and regulatory affairs departments and may not be giving needed attention to small so-called "outlier" facilities, those facilities that fly under the Federal radar but could nonetheless are at risk.

Many of these facilities operate in areas with volunteer firefighters without specialized training and resources.

As the Congressman for a rural area and a former volunteer firefighter, I am deeply troubled by this.

The authorization for the CFATS program expires in December of this year.

Although we are late in beginning our reauthorization efforts, I believe we still have time to identify opportunities to incrementally improve the program.

As authorizers, however, the most important thing we must do is actually get reauthorization across the finish line.

We cannot afford to tie CFATS to temporary reauthorizations through the annual appropriations process again as we did in the first 7 years of the program.

I look forward to hearing from the panel about their experience with CFATS, and I hope that I can impress upon my colleagues across the aisle the need to take swift action to move forward with reauthorization.

With that, I yield back the balance of my time.

Mr. RATCLIFFE. We are fortunate to have a very distinguished panel of witnesses before us today on this important topic. Mr. Chet Thompson is the president of the American Fuel and Petrochemical Manufacturers. Mr. Thompson previously served as deputy general counsel at the Environmental Protection Agency, so I look forward to hearing how the CFATS program and EPA regulations interact with each other from you. Thanks for being here.

Ms. Kirsten Meskill is the director of corporate security for the BASF Corporation, but is here testifying on behalf of the American Chemistry Council. Ms. Meskill comes to us from BASF, the largest chemical producer in the world, as she was names one of the most influential people in security in 2016 by Security Magazine. Welcome. We are glad to have you.

Mr. Peter Mutschler is environment, health, and safety director of CHS, Inc. Mr. Mutschler also serves as the secretary of the board of directors for the ResponsibleAg program. Glad to have you here, Mr. Mutschler.

Finally, Mr. Paul Orum is the chemical safety advocate for the Coalition to Prevent Chemical Disasters. Thank you for agreeing to be with us today, sir.

I would now ask each of the witnesses to stand and raise your right hand so I can swear you in to testify.

[Witnesses sworn.]

Mr. RATCLIFFE. Let the record reflect that the witnesses have answered in the affirmative. You all may be seated. Thank you. Witnesses' full written statements will appear in the record.

The Chair now recognizes Mr. Thompson for his opening statement.

STATEMENT OF CHET THOMPSON, PRESIDENT, AMERICAN FUEL AND PETROCHEMICAL MANUFACTURERS

Mr. THOMPSON. Thank you, Chairman Ratcliffe, Ranking Member Richmond, and Members of the subcommittee. Again, it is a real honor and privilege to be here. As you mentioned, my name is Chet Thompson. I am the president of the American Fuel and Petrochemical Manufacturers.

AFPM represents 97 percent of the Nation's refining and petrochemical manufacturing capacity in this county. That includes 118 refineries, 248 petrochemical facilities. We are located in 33 States across the country. We support more than 3 million jobs and bring about $600 billion to the U.S. economy each year.

Our members make the gasoline, the jet fuel, the petrochemicals that power our economy, power the world's economy and make modern life possible. America's refining and petrochemical companies play an important role in ensuring and maintaining the security of our energy and petrochemical infrastructure.

As I sit here today I can tell you without hesitation that nothing is more important to our members than the safety and security of their work force, their employees, their contractors, and certainly their surrounding communities.

This safety and their safety requires that we protect our facilities and critical infrastructure against potential security threats.

Accomplishing this is the shared responsibility of the Government and our member companies. We have a great partnership with DHS at the moment and we believe they have done a great job implementing the CFATS program.

For all these reasons, we fully support the reauthorization of the CFATS program and urge Congress not to let this important program lapse.

Mr. Chairman, I would like to use my limited time today, I just want to highlight a few points of my written testimony. First, the overall structure of the CFATS program is sound and is not in need of a major statutory overhaul. Again, our members support the mission and the goal of CFATS and believe that the United States of America is far safer as a result of this program.

We strongly endorse the program's performance-based approach that allows facilities to develop security plans that fit their specific risk profiles as opposed to a one-size-fits-all approach that other agencies often adopt.

Second, Congress' CFATS reauthorization in 2014 dramatically improved the program. Some of the larger improvements included

the revisions to DHS's risk assessment tools, their tiering methodology, the establishment of the Expedited Approval Program for Tier 3 and Tier 4 facilities, and certainly streamlining the personnel vetting for Tier 1 and 2 facilities.

Your 4-year reauthorization was also critically important. It provided us, industry, with the certainty needed to make the long-term investments that we have made, and it certainly provided DHS the support and resources they need to improve the program. We support another multi-year reauthorization to continue this positive momentum.

So in addition to reauthorizing the program for another multi-year period, we offer the following recommendations as you move forward with your deliberations.

First, we urge Congress to continue protecting the confidentiality of CFATS site security information. DHS and covered facilities should not be required to publicly disclose or provide site security information to persons who lack the requisite security clearances.

CFATS at its core is a security program. Mandating the public disclosure of sensitive information, such as security system designs, control system schematics, worst-case scenario discharge data, COI records and other technical response information could threaten the safety of not only our facilities but the security of the Nation's critical energy infrastructure.

Second, we also urge Congress to continue to subject CFATS program, particularly Appendix A, to the formal notice and comment rule-making process under the Administrative Procedures Act. Revisions to Appendix A would have broad implications for the chemical facilities, including whether they are subject to the program and how they get tiered.

As such, proposed changes to Appendix A should be transparent and it should be open to public review and public comment.

Finally, we caution against adding new and extraneous provisions that will slow or diminish the progress DHS has made in implementing the CFATS program. More specifically, Congress should not mandate or authorize DHS to require facilities to undergo inherently safer technology review as part of the security planning process and nor should it mandate additional stakeholder involvement in the security plan development process.

So thank you again for the opportunity to be here. I look forward to working with this committee and with DHS in the months ahead.

[The prepared statement of Mr. Thompson follows:]

PREPARED STATEMENT OF CHET THOMPSON

FEBRUARY 15, 2018

The American Fuel & Petrochemical Manufacturers (AFPM) appreciates the opportunity to provide testimony on the Chemical Facility Anti-Terrorism Standards (CFATS) program. AFPM is proud to represent 97 percent of the Nation's refining and petrochemical manufacturing capacity, including 118 refineries and 248 petrochemical manufacturing facilities in 33 States. Our members make the gasoline, diesel, jet fuel, and petrochemicals that make modern life possible. AFPM member companies meet the needs of our Nation and local communities, strengthening economic and National security, and supporting more than 3 million U.S. jobs and adding $568 billion each year to the U.S. economy.

America's refining and petrochemical companies play an important role in ensuring and maintaining the security of America's energy and petrochemical infrastruc-

ture. The safety and security of our member company employees, contractors, and surrounding communities are of the highest importance, and as a result our companies invest in some of the most advanced technologies, safety, and security practices in the world. The protection of critical infrastructure against potential threats is a shared responsibility between Government and stakeholders that our members take seriously.

Despite well-documented early challenges with the CFATS program, the Department of Homeland Security (DHS) has made significant improvements to the program in the time since Congress reauthorized CFATS in 2014. In particular, the 2014 statute addressed major impediments to completing site security plans and streamlined the vetting process for facility access, updates that AFPM members supported. Most importantly, the 4-year reauthorization provided industry with the certainty needed to make long-term facility security investments and enabled DHS to efficiently run the CFATS program and appropriately re-tier sites.

The strength of the CFATS program lies in its flexibility. No two facilities are alike, and so each of the approximately 4,000 facilities covered by the CFATS program will have different threat profiles and security needs. Additionally, the threat environment is always changing. As terrorists and other bad actors evolve their tactics, so must facilities adapt their security procedures. A command-and-control regulatory structure would not only add additional cost to complying with regulations, but will also likely lead to less security and increased risk.

With performance-based standards comes an increased need for cooperation. To that end, AFPM appreciates the long-standing cooperative relationship—spanning multiple administrations—with DHS and commends the professionalism of the DHS program offices. AFPM and its members have participated in multiple advisory groups within DHS, such as the Chemical Sector Security Council, the Oil and Natural Gas Sector Security Council, and were members of the Risk-Tiering Methodology Working Group. These forums provide opportunities for shared learning and have proven extremely beneficial given the data-driven nature of security risk assessment. For example, these forums helped DHS to develop robust, risk-based performance standards (RBPS) that avoid being too prescriptive for an industry as diverse in size and function as the chemical sector, but that also include strict enforcement penalties for noncompliance.

The current CFATS authorization will expire in January 2019, providing both an impetus for action in 2018 and an opportunity to make modest improvements to the program. AFPM urges Congress to enact a multi-year reauthorization that retains the core elements of the 2014 legislation.

THE 2014 CFATS REAUTHORIZATION IMPROVED THE PROGRAM

The CFATS program was originally authorized in the 2007 appropriations bill and gave DHS the imperative, but little statutory guidance, on how to establish the new security program. DHS eventually developed the top-screen program, tiering, and RBPS approach, but struggled to approve site security plans and ran into issues with both tiering and governance. The 2014 statutory changes helped DHS dramatically improve the program. Improvements included updates to risk assessments and the tiering methodology, the establishment of an Expedited Approval Program (EAP) for Tier 3 and 4 facilities, the reinforcement of coordination with State and local officials, and streamlining the vetting process through the Personnel Surety Program (PSP) for Tiers 1 and 2.

The structure of the CFATS framework is sound. AFPM supports the performance-based approach that has been applied to CFATS implementation and regulation, and believes this approach has worked well for facilities from a compliance and efficiency standpoint. As a result, major changes are not necessary.

The past 4 years have allowed covered facilities to develop an informed understanding of the implications of the 2014 statutory changes. This has provided AFPM members an opportunity to offer suggestions for assessing and reviewing the effectiveness of the changes made in the 2014 law.

Updated Risk Assessments and Tiering Methodology.

The 2014 Act directed DHS to develop a security risk assessment approach and corresponding tiering methodology for covered chemical facilities that take into consideration relevant threat information, potential off-site consequences, and loss of human life. The re-tiering process began in early April 2017.

Updates made by the 2014 Act to the Chemical Security Assessment Tool (CSAT), required by the Office of Infrastructure Protection's Infrastructure Security Compliance Division (ISCD) for Top-Screen completion, made the CSAT 2.0 process more user-friendly and less burdensome to facilities. The revised CSAT 2.0 process also

does a more effective job of collecting relevant data while cutting out waste, making the process more efficient.

Streamlined Vetting Process Through the Personnel Surety Program (PSP).

The 2014 statutory changes also streamlined the PSP vetting process for Tier 1 and 2 facilities. Under the current statute, the program vets an individual against the terrorist screening database, eliminates duplicative applications, and provides redress if an individual believes their information submitted for screening is inaccurate.

While improvements to the vetting process for Tiers 1 and 2 were welcome, it should be noted that similar application to Tiers 3 and 4 is not necessary for lower-risk facilities. DHS should pause before extending personnel surety to Tier 3 and 4 facilities until it has had time to evaluate the effectiveness of this requirement at Tier 1 and 2 facilities. Such evaluation by DHS should be based on available DHS data, and undertaken in a manner that shows an overwhelming need for an increased regulatory burden that would achieve demonstrable security results.

As such, AFPM urges lawmakers to clarify that Tier 3 and 4 facilities are exempt, or alternatively would welcome a GAO study on the value of expanding PSP to Tiers 3 and 4.

Expedited Approval Program (EAP).

The current statute also established an Expedited Approval Program (EAP) for chemical facilities that fall under Tiers 3 and 4. The EAP enables those facilities to move to an approved site security plan more quickly. AFPM supports the EAP program and recommends no further changes.

Coordination with State and Local Officials.

Updates in the 2014 statute reinforced better coordination with State and local officials to improve emergency management operations.

AFPM members also support the establishment of regional offices to improve further coordination between State and local officials. Establishing regional offices would mirror what other regulatory agencies have done and will provide DHS greater reach and understanding of regional sites. At the same time, AFPM cautions against overly prescriptive or duplicative programs. Policy makers must balance the need for sharing truly critical information with the risk associated with more individuals knowing potential sensitive security information. In addition, there are other statutes better suited for information coordination, including EPA's Risk Management Plan program, that deal with community "right to know" policies. CFATS should remain focused on preventing terrorist attacks.

RECOMMENDATIONS FOR THE 2018 CFATS REAUTHORIZATION

As policy development for a CFATS reauthorization bill gets under way, AFPM looks forward to continuing to work with lawmakers, stakeholders, and DHS. As Congress considers potential changes to the CFATS program, AFPM offers the following recommendations:

(1) Enact a multi-year, but not permanent, reauthorization.

AFPM urges Congress to pass another multi-year reauthorization bill that would provide industry with the continued certainty it needs to make long-term facility security investments. A multi-year reauthorization would enable DHS to efficiently run the CFATS program. However, given historic challenges with the program's implementation, AFPM would recommend a sunset to allow Congress to address any needed changes at a future date.

(2) Protect the confidentiality of site security information.

Reauthorization legislation should not permit the disclosure of site security information to the general public, or anyone who does not have a need to know or the required security clearances to obtain such information. Facilities must protect sensitive information from individuals that might pose a threat to the facility's employees or property. Sensitive information—such as security system designs, control system schematics, COI records, and tactical response information for emergency personnel—could threaten National security if it falls into the wrong hands.

(3) Promote transparency in any changes to Appendix A and Chemicals of Interest (COI).

A facility is considered a "covered facility" under CFATS if it is engaged in the manufacturing, storage, and distribution of COIs listed under Appendix A of CFATS. Currently, if DHS wants to modify Appendix A, it must undergo notice and comment rule making. AFPM encourages Congress to maintain this requirement.

Changes to COI, threshold quantities, and concentrations in Appendix A are critical decisions with broad applicability governing whether facilities are subject to CFATS and, in part, how they are tiered. Therefore, allowing changes to be made to Appendix A without going through notice and comment would greatly undermine transparency in the designation process and deprive DHS of potentially important information in its decision making. Any changes should be clearly based on risk, scientific data, and take into consideration current industry mitigation practices. For these reasons Congress should ensure that proposed changes to Appendix A continue to be subject to the formal notice and comment rule-making process.

Additionally, AFPM would support establishing an advisory council and subjecting chemicals in question under Appendix A to peer review. This would further enhance the transparency of the designation process and stakeholder engagement.

(4) Avoid major changes that will further hamper implementation of the CFATS program and divert resources to duplicative or otherwise wasteful policies.

DHS has made significant progress in implementing the CFATS program, but work remains. AFPM cautions against adding new and extraneous provisions that will slow or diminish the progress to date, including expansion of stakeholders involved in SSP development, resubmission of top-screen information untethered from a material change to a facility's profile, requirements for further credentials, or other related changes.

AFPM appreciates the opportunity to provide its views on CFATS, and looks forward to working with Congress and the administration to reauthorizing this important program.

THE 2014 CFATS REAUTHORIZATION IMPROVED THE PROGRAM AND MAJOR CHANGES ARE UNNECESSARY.

The statutory changes to CFATS passed by Congress in 2014 have helped DHS improve the program dramatically. These include updates to risk assessments and tiering methodology, the establishment of an Expedited Approval Program (EAP) for Tier 3 and 4 facilities, the reinforcement of coordination with State and local officials, and streamlining the vetting process through the Personnel Surety Program (PSP) for Tiers 1 and 2.

The structure of the CFATS framework itself is sound. AFPM supports the performance-based approach that has been applied to CFATS implementation and regulation, and believes this approach has worked well for facilities from a compliance and efficiency standpoint. As a result, major changes to the program are not necessary.

POLICY RECOMMENDATIONS FOR THE 2018 CFATS REAUTHORIZATION.

The 2014 CFATS reauthorization bill addressed a number of issues, including major impediments to completing site security plans and a streamlining of the vetting process for facility access. Most importantly, the 4-year reauthorization provided industry with the certainty needed to make long-term facility security investments and enabled DHS to efficiently run the CFATS program.

As policy development for a CFATS reauthorization bill gets under way, AFPM looks forward to continuing to work with lawmakers, stakeholders, and DHS. As Congress considers potential changes to the CFATS program, AFPM offers the following recommendations:

(1) Enact a multi-year, but not permanent, reauthorization.—CFATS authorization expires in January 2019. Congress should pass another multi-year reauthorization bill, as this would provide industry with the continued certainty it needs to make long-term facility security investments. A multi-year reauthorization would also enable DHS to efficiently run the CFATS program. Additionally, AFPM would recommend a sunset to allow Congress to address any needed changes at a future date.

(2) Protect the confidentiality of site security information.—Reauthorization legislation should not permit the disclosure of site security information to the general public, or anyone who does not have a need to know or the required security clearances to obtain such information. Facilities must protect sensitive information from individuals that might pose a threat to the facility's employees or property. Sensitive information—such as security system designs, control system schematics, COI records, and tactical response information for emergency personnel—could threaten National security if it falls into the wrong hands.

(3) Promote transparency in any changes to Appendix A and Chemicals of Interest (COI).—Currently, if DHS wants to modify Appendix A, it must undergo notice and comment rule making. AFPM encourages Congress to maintain this requirement.

Allowing changes to be made to Appendix A without going through notice and comment would greatly undermine transparency in the designation process and deprive DHS of potentially important information in its decision making. Congress should ensure that proposed changes to Appendix A continue to be subject to the formal notice and comment rule-making process.

Additionally, AFPM would support establishing an advisory council and subjecting chemicals in question under Appendix A to peer review. This would further enhance the transparency of the designation process and stakeholder engagement.

(4) Avoid major changes that will further hamper implementation of the CFATS program and divert resources to duplicative or otherwise wasteful policies.—DHS has made significant progress in implementing the CFATS program, but the work is still on-going. AFPM cautions against adding new and extraneous provisions that will slow or diminish the progress to date, including expansion of stakeholders involved in SSP development, resubmission of top-screen information untethered from a material change to a facility's profile, requirements for further credentials, or other related changes.

Mr. RATCLIFFE. Thank you, Mr. Thompson.

Ms. Meskill, you are recognized for 5 minutes for your opening statement.

STATEMENT OF KIRSTEN MESKILL, DIRECTOR, CORPORATE SECURITY, BASF CORPORATION, TESTIFYING ON BEHALF OF THE AMERICAN CHEMISTRY COUNCIL

Ms. MESKILL. Thank you, Mr. Chairman, and Members of the subcommittee for the opportunity to testify today. I am Kirsten Meskill. I am director of corporate security at BASF Corporation.

BASF Corporation is headquartered in Florham Park, New Jersey. We have over 100 facilities throughout North America, and in 28 States, and more than 17,000 employees in North America.

I am the immediate past chairman of the Chemical Sector Coordinating Council and the current chair of the security committee for the ACC, American Chemistry Council. I am here today on behalf of the ACC to voice general support for a long-term reauthorization of the Chemical Facility Anti-Terrorism Standards, CFATS.

ACC member companies manufacture products that are critical to the everyday health and well-being of the Nation and essential for developing a more sustainable and competitive economy. Because of our critical role in the Nation's economy and our responsibility to our employees and to the communities, security is a top priority for my company and for the ACC.

In 2001, ACC created a stringent mandatory security program called the Responsible Care Security Code. Since its creation, ACC members have invested more than $17 billion under the security code to further enhance site security, transportation security and cybersecurity at our facilities. The security code has become a gold standard for the industry and serves as a model for regulatory programs.

Today, chemical manufacturing is experiencing a renaissance thanks to the increase in domestic shale gas production. ACC has identified more than 300 new capital projects worth more than $185 billion, which will add thousands of jobs and generate billions of dollars of economic activity.

Ensuring that clear and workable Federal programs, such as CFATS, remain in place is an important part of establishing a stable regulatory environment needed to foster these new investments.

Over the past 4 years, the Department of Homeland Security has significantly improved its administration of the CFATS program, which has had a positive effect on enhancing security at chemical facilities. Several factors have led to the recent success of the CFATS program, including better site inspections and more streamlined authorization process.

Most importantly, DHS leadership has demonstrated a commitment to working with members of the regulated community to improve the implementation of the program. While DHS has made considerable strides to improve the CFATS program, there are additional areas for improvement.

First, improving transparency in DHS risk determination. This comes by being more transparent with facility operators about risk determinations and tiering levels and ways to potentially reduce the risk or even eliminate it.

Since the operator is responsible and has authority and resources for making security risk management decisions for the facility, it is important that they have access to all the information about risk tiering.

Second, reconsider the value of TSDB screening at low-risk facilities. Over the past year, DHS has been implementing risk-based performance standards at 200 high-risk facilities at Tiers 1 and 2. This requires facility operators to collect sensitive personal information from thousands of employees and contractors for DHS to vet against the Terrorist Screening Database.

DHS is now planning to extend that program to an additional 37 low-risk facilities at Tiers 3 and 4. This will expand vetting to thousands of more employees and contractors. ACC and its members are concerned that such an expansion is unnecessary and will put personal information at risk. It is unclear what benefit is associated with the additional vetting given the cost.

While we support vetting at high-risk Tier 1 and 2 facilities, we hope DHS can reconsider this requirement at lower-tier levels 3 and 4.

Finally third, establish a CFATS public-private partnership. DHS should leverage CFATS and industry stewardship programs such as ACC Responsible CARE program with the goal of further enhancing the safety and security of hazardous chemicals.

By doing so, DHS would be able to recognize responsible operators that go beyond regulatory compliance and incentivize them to continue development of chemical security programs that enhance security beyond the universe of CFATS.

I would like to close by saying that CFATS has helped make our industry and our communities more secure. It is a program that will grow stronger by adopting some additional improvements and by the continued engagement of this committee.

Thank you for the opportunity to testify today, and I am looking forward to answering any questions you might have.

[The prepared statement of Ms. Meskill follows:]

PREPARED STATEMENT OF KIRSTEN MESKILL

FEBRUARY 15, 2018

Kirsten Meskill is the director of corporate security, for BASF Corporation. BASF Corporation is headquartered in Florham Park, New Jersey with over 100 produc-

tion facilities in 28 States and more than 17,000 employees in North America. The largest sites are located in Geismar, Louisiana and Freeport, Texas. Kirsten is the immediate past chairperson of the Chemical Sector Coordinating Council and the current chairperson of the security committee of the American Chemistry Council (ACC).

ACC offers general support for long-term reauthorization of the Chemical Facility Anti-Terrorism Standards (CFATS). ACC member companies manufacture products that are critical to the everyday health and well-being of our Nation and essential to developing a more sustainable and more competitive economy. Because of our critical role in the Nation's economy and our responsibility to our employees and communities, security is a top priority for my company and for ACC member companies.

In 2001, ACC created a stringent, mandatory security program called the Responsible Care Security Code. Since the program was created, ACC members have invested more than $17 billion under the Security Code to further enhance site security, transportation security, and cybersecurity at their facilities. The Security Code has become a gold standard for the industry and serves as a model for regulatory programs.

The business of chemistry is a $768 billion enterprise that provides more 800,000 skilled, good-paying American jobs. I am happy to report that chemical manufacturing is experiencing a renaissance in the United States thanks to the increase in domestic shale gas production. In fact, ACC has identified more than 300 new capital investment projects that are worth more than $185 billion, which will add thousands of jobs and generate billions of dollars in economic activity. Ensuring that clear and workable Federal programs such as CFATS remain in place is an important part of establishing the stable regulatory environment needed to foster these new investments.

Over the past 4 years, the Department of Homeland Security (DHS) has significantly improved its administration of the CFATS program, which has had a positive impact on enhancing security at chemical facilities. Several factors have led to the recent success of CFATS program, including better site inspections and a more streamlined authorization process. Most importantly, DHS leadership has demonstrated a commitment to working with members of the regulated community to improve the implementation of the CFATS program.

While DHS has made considerable strides to improve the CFATS program, more work needs to be done.

1. *Improve transparency in DHS risk determinations*.—DHS should be more transparent with facility operators regarding what is driving risk determinations for establishing how facilities fall into a certain tier level and potentially what they may consider to reduce that risk or even eliminate it all together. More often than not, facility operators are left in the dark as to why they are tiered at a specified level, when in fact it is the operator who has the overall responsibility and authority for making security risk management decisions for that facility.

2. *Reconsider the value of TSDB Screening at low-risk facilities*.—Over the past year, DHS has been implementing Risk-Based Performance Standard 12(iv) at 200 High-Risk Facilities, Tiers 1 and 2. This process requires facility operators to collect sensitive personal information from thousands of employees and contractors and send that information to DHS for vetting against the Terrorist Screening Database (TSDB). Now DHS is planning to extend the program to an additional 3,700 low-risk Tier 3 and 4 facilities involving tens of thousands of employees' and contractors' personal information. ACC and its members are concerned that such an expansion is unnecessary and will put people's personal information at risk. It is not clear that the benefit associated with the TSDB vetting is worth the cost and risk. While we support TSDB vetting at high-risk Tier 1 and 2 facilities we want DHS to reconsider this requirement for lower-risk Tier 3 and 4 facilities.

3. *Establish a CFATS Public/Private Partnership*.—DHS should leverage the benefits of CFATS and Industry Stewardship Programs, such as the ACC Responsible Care program, with the goal of further enhancing the safety and security of hazardous chemicals. By doing so, DHS would be able to recognize responsible operators for going beyond mere regulatory compliance and incentivize the use of chemical security programs that enhance security beyond the universe of CFATS-regulated facilities.

CFATS has helped make our industry and communities more secure. It's a program that will grow stronger by adopting the improvements outlined in my testimony and by the continued engagement of this committee to make sure CFATS stays on track.

ACC and its members encourage you to support this important program and make the improvements that are needed to take CFATS to the next level while providing DHS with the appropriate Congressional oversight and guidance.

Mr. RATCLIFFE. Thank you, Ms. Meskill.

The Chair now recognizes Mr. Mutschler for 5 minutes for his opening statement. Yes, the mic, the button there.

STATEMENT OF PETE MUTSCHLER, ENVIRONMENT, HEALTH AND SAFETY DIRECTOR, CHS INC.

Mr. MUTSCHLER. Sorry. Yes, good morning, Chairman Ratcliffe and Ranking Member Richmond, Members of the subcommittee, thank you for the opportunity to be here today. My name is Pete Mutschler, and in addition to my position as the director of environment and safety for CHS and my position on the Board of Directors for ResponsibleAg, I am also here representing The Fertilizer Institute and the Agricultural Retailers Association.

CHS is a leading global agribusiness owned by farmers, ranchers, and cooperatives across the United States. CHS supplies the farmers with what they need to produce and market their products. We are committed to helping our farmer-owners succeed.

CHS is a member of The Fertilizer Institute, which is the national trade association representing the fertilizer industry. TFI represents companies engaged in all aspects of the fertilizer supply chain. Commercial fertilizers account for 50 percent of the current crop yields that we see today.

CHS is also a member of the Agricultural Retailers Association and ARA represents the interests of agriculture retailers. Products and services agricultural retailers provide are critical to the success of our Nation's farmers.

We are grateful for your efforts to ensure the passage of H.R. 4007, which provided the Department of Homeland Security and the industry with much-needed certainty for the CFATS program. With the current reauthorization expiring in December 2018, we express our support for a multi-year reauthorization that continues to provide the industry with certainty needed to make long-term investments and enables the Department to efficiently run the program.

We also believe that there is a need for reauthorization in the future to allow Congressional oversight in review of the program.

Approximately one-third of the 6,500 agriculture facilities are regulated under the CFATS program in this country. TFI estimates that the agriculture sector accounts for about half of all CFATS-registered facilities.

CHS has 390 of these facilities registered under CFATS, so we have a great deal of experience with this program.

We are pleased with the Department's efforts to improve the program and to enhance stakeholder engagement. We did need to expend additional resources to comply with the program, but we have seen a real return on that investment.

Today, DHS and the industry are focused on the common goal of ensuring that the products we handle are used appropriately and safely. Working with DHS and the CFATS program, CHS now has a better idea of the security risk at our facilities.

Our security risks are prioritized now so we can focus our efforts on the highest-risk facilities first. Moreover, CFATS has allowed us to build stronger relationships with our neighbors and communities, which is incredibly important to the cooperative system.

It is important that any reauthorization does not permit the disclosure of sensitive site security information to anyone that does not have a critical need to know.

In addition, we are strong supporters of a robust public engagement and believe that any changes to the CFATS program, including Appendix A, should be done through a formal notice and comment rulemaking process.

I am also here to represent a relatively new program to our industry, ResponsibleAg. ResponsibleAg is a voluntary industry stewardship program that launched in 2015 to help agribusinesses comply with Federal environment, safety, and security rules, including the CFATS program.

At the core of the program is a compliance assessment process and a robust suite of resources designed to assist retailers in their compliance efforts. ResponsibleAg is designed to help protect employees, first responders, and the public.

Currently, CHS has 200 facilities that participate in the program and over 100 ResponsibleAg-certified facilities. Overall in the industry, 2,600 agriculture retail facilities have signed up to be a part of ResponsibleAg. Nineteen hundred of them have been assessed and nearly 1,000 have been certified.

Over one-third of the agriculture retail facilities in the country are ResponsibleAg participants. We continue to encourage more facilities to participate in the program, but we are very pleased with the progress we have made to date.

As a part of the reauthorization of the CFATS program, I respectfully ask the Members of this subcommittee to consider how ResponsibleAg and other stewardship programs can complement and enhance the limited resources of the CFATS program. For now I simply ask that you be willing to work with us to potentially find a way to recognize these stewardship programs in the reauthorization.

Finally, as Members of this committee work to reauthorization the CFATS program, I want to stress that any lapse in the program would be a serious concern to us. It would be highly disruptive to both the industry and the regulated community.

Thank you very much for the opportunity to share the views of CHS, TFI, and ARA.

[The prepared statement of Mr. Mutschler follows:]

PREPARED STATEMENT OF PETE MUTSCHLER

FEBRUARY 15, 2018

Good morning, Chairman McCaul, Subcommittee Chairman Ratcliffe, Ranking Member Thompson, Subcommittee Ranking Member Richmond, and Members of the subcommittee. Thank you for the opportunity to be here today.

My name is Pete Mutschler. I am a director of environment, health, and safety for CHS Inc. and the secretary of the Board of Directors for ResponsibleAg. I am also here on behalf of The Fertilizer Institute (TFI) and Agricultural Retailers Association (ARA). CHS Inc. is a member of both associations.

CHS Inc. is a leading global agribusiness owned by farmers, ranchers, and cooperatives across the United States. Diversified in energy, grains, and foods, CHS

is committed to helping its customers, farmer-owners, and other stakeholders grow their businesses through its domestic and global operations. CHS supplies energy, crop nutrients, grain marketing services, animal feed, food and food ingredients, along with business solutions including insurance, financial, and risk management services. The company operates petroleum refineries/pipelines and manufactures, markets, and distributes Cenex® brand refined fuels, lubricants, propane, and renewable energy products.

As I mentioned earlier, CHS is a member of The Fertilizer Institute (TFI), which is the national trade association representing the fertilizer industry. TFI represents companies that are engaged in all aspects of the fertilizer supply chain. Approximately 50 percent of crop yields are attributable to the use of commercial fertilizers.

CHS is also a member of the Agricultural Retailers Association (ARA). ARA represents the interests of agricultural retailers, who provide farmers with crop nutrients, crop protection, seeds, and other products and services to support our Nation's farmers.

We are grateful for your efforts to ensure passage of H.R. 4007 which provided the Department of Homeland Security (DHS) and industry with much-needed certainty for the CFATS program. With the current authorization expiring in December 2018, we express our support for a multi-year reauthorization that continues to provide industry with the certainty needed to make long-term facility investments and enables the Department to efficiently run the program. We believe periodic reauthorization is important to allow continued Congressional oversight and review of the program.

It is estimated that there are approximately 6,500 agricultural retail facilities in the United States. Approximately one-third of these facilities are regulated under the CFATS program because they store or handle fertilizer products included in Appendix A: Chemicals of Interest (COI). TFI estimates that the agricultural retail sector accounts for about half (50 percent) of all CFATS-regulated facilities. CHS has approximately 390 facilities registered with CFATS, so we have a great deal of experience with the program.

While the initial roll-out of the CFATS program was challenging, we are pleased with the Department's efforts to improve the program and enhance stakeholder engagement. We did need to expend capital resources to comply with the program, but we have seen benefits from our participation. Today, we are focused on the common goal of both DHS and industry, namely to ensure that the products we handle, and that are critical to America's farmers, are used appropriately. In considering the benefits of our participation, CHS now has a better idea of the security risks at our facilities. Our risks are prioritized which allows us to focus our efforts on the most high-risk facilities and commit the appropriate level of human and financial resources on our low-risk locations. Moreover, CFATS allows us to build stronger relationships with our neighbors and communities, a hallmark of the cooperative system.

We believe it is important that any reauthorization not permit the disclosure of sensitive site security information to the general public, or to anyone who does not have a need to know, or the required security clearance to obtain, such information. The program must ensure that this highly-sensitive information is protected from individuals that might pose a threat to the facility's employees or property.

In addition, we are strong supporters of robust public engagement and believe any changes to the CFATS program, including Appendix A, should be done through a formal notice and comment rule making.

As I mentioned previously, I also serve on the board of directors for ResponsibleAg. ResponsibleAg is a voluntary, industry stewardship program that launched in 2015 with the goal of assisting agribusinesses to comply with Federal environmental, health, safety, and security rules focused on the safe handling and storage of fertilizer products, including the CFATS program. At the core of the program is a Federal regulatory compliance assessment addressing current Federal regulations. These assessments identify any issues of concern, recommendations for corrective action if needed, and provide a robust suite of resources to assist in compliance. ResponsibleAg is designed to protect employees, first responders, and the general public through an organized program of periodic and thorough assessments.

CHS is very supportive of ResponsibleAg. Currently, we have 200 facilities that participate in the program and over 100 ResponsibleAg-certified facilities. Overall, almost 2,600 agricultural facilities have signed up with ResponsibleAg, 1,900 facilities have been assessed, and nearly 1,000 facilities have been certified. Over one-third of agricultural retail facilities are ResponsibleAg participants. While we continue to encourage more facilities to participate, we are very pleased with the progress to date.

As part of the reauthorization of the CFATS program, I respectfully ask that Members of this subcommittee consider how ResponsibleAg and other third-party audited stewardship programs can complement and enhance the limited resources of the CFATS program. For now, I simply ask that you be willing to work with us to potentially find a way to recognize these stewardship programs in a reauthorization.

Finally, as Members of this committee work to reauthorize the CFATS program, I want to stress that any lapse in the program would be a serious concern. It would be highly disruptive to both the regulated community and the Department's efforts to address any potential risks to National security.

Thank you again for the opportunity to share the views of CHS, TFI, and ARA. Protecting the public, our employees, and our communities is paramount to us all, and we look forward to working with the committee on this shared goal and a successful reauthorization of the CFATS program.

Mr. RATCLIFFE. Thank you, Mr. Mutschler.

The Chair now recognizes Mr. Orum for 5 minutes.

STATEMENT OF PAUL ORUM, CHEMICAL SAFETY ADVOCATE, COALITION TO PREVENT CHEMICAL DISASTERS

Mr. ORUM. Good morning. My name is Paul Orum and I thank you for this opportunity to address the effectiveness of the Chemical Facility Anti-Terrorism Standards program. The dangers of chemicals and terrorists are well-known. The question today is whether CFATS solutions are sufficiently protective and efficient and resourceful.

Congress should reauthorize CFATS for a limited term. But Congress should also recognize the significant risks of simple reauthorization. While CFATS has improved fence line security to some degree, strategies to protect rather than reduce chemical targets are inevitably fallible.

Better strategies are available.

The program should generate solutions, not just control problems. It should use all available options: Improve public confidence by respecting community concerns, better optimize solutions, and more effectively use available resources, such as employee expertise.

Even small changes could make the current program much more effective. Here are 5 general areas and 10 practical recommendations to build on the current program.

First, use all available options, not just management and control strategies. Current CFATS standards focus on risk-based management and control while neglecting prevention. As a result, the chemical industry spends billions protecting chemical targets. This is not only a high-risk strategy in terms of terrorism, but also wasteful in an economic sense. Modernizing facilities in ways that remove chemical targets can reduce the need for such expenditures.

CFATS can better align production and security by first seeking to avoid the need for security measures and then addressing residual vulnerabilities. Specifically, DHS should compare target reduction practices that companies are already using, help other facilities evaluate these practices and involve qualified private-sector solutions developers in the process.

Second, continue to exercise oversight, especially though of the ability of CFATS to realistically ensure protection. U.S. Government Accountability Office has produced useful reports about the program. However, GAO reports to date have evaluated CFATS

program implementation rather than the adequacy of the standards to realistically ensure protection.

Congress should ask GAO to investigate whether CFATS standards actually protect life, property, and security against known and evolving threats.

Third, use all available resources, especially make better use of employee input. Facility employees are often the most vulnerable in a chemical release, but also the most knowledgeable about problems and remedies. There are existing employee input requirements in CFATS but more systematic and substantial employee input will improve security planning.

Fourth, to improve public confidence, respect community concerns. The lack of public information under CFATS admittedly makes it difficult for DHS to address public concerns. While site security plans are understandably protected information, chemical hazards are often at the same time well-known.

Secrecy is at once not a real option and not responsive to communities. When evident problems are not addressed, public confidence wanes. The program should respect the public's fundamental interests in disaster preparedness and knowledge of solutions that can reduce well-known hazards.

Fifth, support other programs that improve chemical security. EPA's Risk Management Planning requirements are also important to chemical security because the RMP program engages civil society in prevention and preparedness in ways that CFATS does not. We are very concerned with the administration's 20-month delay of modest but important amendments to the RMP program.

We are concerned that the delay endangers police, fire, and other emergency responders, impedes local disaster planning, and delays preparations for safer technology assessments that could help reduce terrorist targets.

Congress should also be aware of the need for credible independent evaluation of new developments in Federally-funded toxic gas science and should assert its interest in assuring the integrity of Federal research.

I would be pleased to answer any questions or otherwise follow up about how these recommendations might be achieved.

[The prepared statement of Mr. Orum follows:]

PREPARED STATEMENT OF PAUL ORUM

FEBRUARY 15, 2018

Good morning, my name is Paul Orum. Thank you for this opportunity to address the effectiveness of the Chemical Facility Anti-Terrorism Standards (CFATS) program of the Department of Homeland Security (DHS).

The dangers of chemicals and terrorists are well known. The question today is whether CFATS' solutions are sufficiently protective, efficient, and resourceful.

Congress should reauthorize CFATS, for a limited term. But Congress should also recognize the significant risks of simple reauthorization. While CFATS has improved fence line security to some degree, strategies that protect rather than reduce chemical targets are inevitably fallible. (See Chemical Security Breaches in the News in Attachment A.) Better strategies are available.

The program should generate solutions, not just control problems; use all available options; improve public confidence by respecting community concerns; better optimize solutions; and more effectively use available resources such as employee expertise.

Even small changes could make the current program much more effective. Here are 5 general areas and 10 practical recommendations to build on the current program.

Use all available options—not just management and control strategies.

Current CFATS standards focus on risk-based management and control strategies, while neglecting prevention. As a result, the chemical industry spends billions protecting chemical targets.[1] This is not only a high-risk strategy in terms of terrorism, but also wasteful in an economic sense. Modernizing facilities in ways that remove chemical targets can reduce the need for such expenditures. CFATS can better align production and security by first avoiding the need for security measures and then addressing residual vulnerabilities. Specifically, DHS should compare target reduction practices that companies already use, help facilities evaluate these practices, and involve qualified private-sector solutions developers.

CFATS' 18 performance standards are important but incomplete. The standards encourage chemical facilities to overly commit resources to conventional security measures. These sunk costs can then become a barrier to target reduction strategies that could more effectively protect people, property, and security. In this way, CFATS tends to perpetuate terror targets that could be removed by a more complete strategy. No amount of fence line security will assure protection, address supply chain risk, or modernize facilities. Conventional security will also inevitably attenuate over time.

There has been some reduction in the need for chemical security measures, but the exact extent is hard to determine. Several thousand facilities have tiered out of high-risk status by removing or modifying chemical holdings.[2] But what are the lessons learned about target reduction opportunities from practices at these facilities?

Independent surveys show hundreds of facilities across some 20 industry sectors reducing chemical targets, including bleach producers, water utilities, power plants, oil refineries, aluminum smelters, and many manufacturers, among other industries.[3] (See sector list in Attachment B.)

Successful companies commonly adopt an alternate chemical or process, use a chemical in a less dangerous or less concentrated form, or generate a chemical only as needed without storage. Other options may co-locate chemical suppliers with users, improve inventory control, or consolidate and minimize bulk storage. These changes remove unnecessary dangers and avoid some costs of regulatory compliance, liability insurance, personal protective equipment, community notification, emergency planning, and site security. When fully considered, these measures often save money, and can help get companies off the treadmill of expensive partial solutions.

Congress should direct DHS to:

1. Identify, compile, and compare target reduction practices that are already in use in industry (including non-covered and previously covered facilities). In this context, the Department is not approving or disapproving particular technologies, but rather comparing similar facilities and industry sectors and identifying relevant target reduction practices. This process will generate opportunity awareness and capacity within the Department.
2. Assist chemical facilities in evaluating how target reduction options can reduce the need for security measures and reduce the potential consequences of a terrorist attack. Security vulnerability assessments and site security plans should incorporate the review of target reduction options. To the extent that the target reduction measures reduce the need for required security measures (under CFATS 2102(b)(1)), covered facilities should be permitted to use the target reduction measure to meet and avoid required risk-based performance standards (under CFATS 2102(a)(2)(C)).
3. Establish methods and procedures to facilitate technical assistance and the transfer and diffusion of target reduction technologies between qualified private-sector entities, covered chemical facilities, and the Department. Provide for deliberate information sharing with qualified private-sector entities engaged in the design, devel-

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[1] Since 2001, member companies of the American Chemistry Council industry trade association have spent more than $17 billion on chemical security, *www.americanchemistry.com/policy/security,* accessed February 12, 2018.

[2] Between 2007 and 2017 DHS redeterminations cut the number of high-risk facilities by about half from more than 7,000 to about 3,500. Figures have fluctuated as DHS re-determined the status of some facilities.

[3] Survey reports by Paul Orum include: *Preventing Toxic Terrorism, Center for American Progress*, 2006; *Toxic Trains and the Terrorist Threat*, Center for American Progress, 2007; *Chemical Security 101*, Center for American Progress, 2008; *Safer Chemicals Create a More Secure America*, Center for American Progress, 2010; *Who's in Danger? Race, Poverty, and Chemical Disasters*, Environmental Justice and Health Alliance for Chemical Policy Reform, 2014.

opment, and supply of target reduction technologies. This change will help rectify the lack of attention to prevention strategies and lack of involvement of solutions developers in existing information-sharing provisions (of CFATS Section 2103). CFATS information sharing otherwise focuses on emergency response.

4. Produce an annual aggregated lessons learned analysis of trends in successful target reduction practices and emerging target reduction opportunities.

5. Improve interagency coordination by sharing information on risk reduction achieved through demonstrated and emerging target reduction practices with the Director of National Intelligence as well as Federal, State, and local government agencies that have responsibilities for security, safety, or natural disaster preparedness at chemical facilities.

Exercise oversight—especially of the ability of CFATS standards to realistically ensure protection.

The Government Accountability Office (GAO) has produced useful reports about CFATS. However, GAO reports to date have evaluated CFATS program implementation rather than the adequacy of the standards to realistically ensure protection. Congress should ask GAO to investigate whether CFATS standards actually protect life, property, and security against known and evolving threats. GAO should also evaluate how DHS manages information about practices at facilities that tier down or out of the program.

Congress should request that GAO:

6. Review the sufficiency of security risk determinations and countermeasures under CFATS and the need for revised or additional strategies to address evolving security risks (e.g., drones and cyber threats).

7. Assess whether local emergency response resources are sufficient to credibly respond to a worst-case chemical facility terrorist incident.

8. Evaluate how the Department documents, maintains, and utilizes information on instances of changes to facility tier assignments under CFATS 2102(e)(3) and how management, utility, and use of the information can be improved. Successful practices of facilities that tier down or out of the program can inform the Department only if this information is organized and usefully retrievable.

Use available resources—especially make better use of employee input.

Facility employees are often the most vulnerable in a chemical release, but also the most knowledgeable about problems and remedies. There are existing employee input requirements in CFATS (2102(b)(2) and 2102(d)(2)(C)(ii)). More systematic and substantial employee input will improve security planning.

Congress and DHS should:

9. Require facility owners to develop and maintain written employee input plans to:
- Consult with employees and their representatives in the development of security vulnerability assessments and site security plans, to include employees with technical expertise in design engineering and process operations, whenever available;
- Document and maintain records of the employees involved, the team's recommendations, and the owner or operator's resolution of those recommendations;
- Designate responsible parties and time lines for corrective actions;
- Provide for employee input during audits and inspections; and
- Certify that input is received from employees and their representatives to the greatest extent practicable.

To improve public confidence, respect community concerns.

The lack of public information under CFATS makes it difficult for DHS to address public concerns. While site security plans are understandably protected information, chemical hazards are often at the same time well-known. Secrecy is at once not a real option and not responsive to communities. When evident problems are not addressed, public confidence wanes. The program should respect the public's fundamental interests in disaster preparedness and knowledge of solutions that can reduce well-known hazards.

Some examples: Prior to the deadly fire and explosion, West Fertilizer in West, Texas was well-known in the community yet reportedly had no fence, frequent theft of chemicals, and a practice of self-service by farmers after hours. The graffiti that is common on rail cars attests to their public visibility and accessibility.[4] The chem-

[4] CFATS does not regulate chemicals in transportation, but assessments and plans should address interrelated supply chain risks.

ical release from Arkema in Crosby, Texas after Hurricane Harvey was widely publicized, as is the norm for chemical emergencies. Residents near the PBF refinery (formerly ExxonMobil) in Torrance, Calif., are conducting high-visibility organizing for alternatives to hydrofluoric acid that will not endanger the community. (Notably, Chevron's Salt Lake City refinery is converting from hydrofluoric acid to liquid ionic catalysts, a promising technology that eliminates a major potential of an offsite toxic gas release.) Lack of public confidence—in CFATS, industry, and Government in general—is one reason communities are very interested in fail-safe target reduction solutions that are effective even if control strategies fail.

Congress and DHS should:

10. Delimit protected information to the extent that the information is already publicly available, readily discoverable, or otherwise lawfully disclosed.[5]

Support other programs that improve chemical security.

Risk Management Planning (RMP).—EPA's RMP requirements are also important to chemical security. Because the RMP program engages civil society in prevention and preparedness in ways that CFATS does not, risk management planning is also important to chemical security. We are very concerned with the administration's 20-month delay of the modest but important amendments to the RMP program.[6] EPA produced the amendments after years of public comment and consultation between the agency, DHS, OSHA, ATF, and other agencies. We are concerned that the delay endangers police, fire, and other emergency responders; impedes local disaster planning; and delays preparations for safer technology assessments that could help reduce terrorist targets.[7]

Over a 10-year period some 2,291 serious chemical facility incidents killed 59 people, injured or forced a total of 17,000 people to seek medical treatment, forced approximately half a million to shelter or evacuate, and caused $2.7 billion in property damages.[8] EPA data show that serious releases occur as often as 2 or 3 times per week Nation-wide. Millions of Americans live in danger of a chemical release, including 1 in 3 school children.[9] African American, Latino, and low-income populations are disproportionately affected—especially in fence-line communities.[10] A terrorist attack on industrial chemicals would likely first impact the same populations.

Toxic gas science.—Congress should also be aware of the need for credible, independent evaluation of new developments in Federally-funded toxic gas release and dispersion science. Concerned organizations have warned that industry and Government reevaluation efforts could result in changes to the National guidance documents used for emergency response planning in a manner that intentionally reduces perception of risk and industry costs.[11] The Chlorine Institute issued, and then withdrew, guidance that dramatically-reduced dispersion scenario distances for chlorine gas.[12] Several companies relied on the document to starkly reduce estimated RMP vulnerability zone distances. Such changes could put at risk emergency responders, facility employees, and the public. The National Transportation Safety Board and the Chemical Safety and Hazard Investigation Board both have clear independent authority to investigate systemic issues affecting the chemical industry but neither organization has apparently taken up this issue to date. The relevant Congressional committees should assert their interest in assuring the integrity of Federal research.

I would be pleased to answer any questions or otherwise follow up on how these recommendations might be achieved.

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[5] Similar factors have successfully delimited chemical trade secret claims for many years under section 322(b) of the Emergency Planning and Community Right to Know Act of 1986.

[6] Chemical Disaster Rule, 82 FR 4594, January 13, 2017.

[7] The Chemical Disaster Rule requires certain oil refineries, paper mills, and chemical plants to conduct safer technology alternatives assessments. Information on chemical hazards and alternatives in these sectors is found in the report, *Who's In Danger?* (cited above), pp. 33–36.

[8] EPA Regulatory Impact Analysis exh. 6–5 at 87 (Dec. 2016), *http://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-0734.*

[9] *Kids In Danger Zones,* Center for Effective Government, 2014.

[10] *Who's in Danger? Race, Poverty, and Chemical Disasters,* Environmental Justice and Health Alliance for Chemical Policy Reform, 2014.

[11] Washington Fire Chiefs letter to Senator Maria Cantwell, August 2, 2017; Columbia Riverkeeper letter to Members of Congress, August 28, 2017.

[12] Chlorine Institute Pamphlet 74, Edition 6, *Guidance on Estimating the Area Affected by a Chlorine Release,* June 2015.

ATTACHMENT A.—CHEMICAL PLANT SECURITY BREACHES IN THE NEWS

Security agencies and others have repeatedly warned that a terrorist attack could release industrial chemicals and harm thousands of people around some chemical facilities. In response, Congress created security requirements called Chemical Facility Anti-Terrorism Standards (CFATS). But year after year, news reports show instances—more than 100 and counting—of security measures failing to impede uninvited news reporters, thieves, or hackers. The ease with which reporters and others observe lax security underscores the need for a more effective and comprehensive CFATS program that reduces unnecessary targets of opportunity whenever feasible. In fact, at least hundreds of chemical facilities have successfully switched to safer and more secure chemicals and processes that effectively remove ready targets for terrorists.

THE REAL STORY: SECURITY BREACHES IN THE NEWS

"I parked across the street and walked along the railroad tracks [and] spent a half-hour working my way around [a Los Angeles chlorine facility], trying doorknobs, squeezing into openings in the fence and snapping photos of security weaknesses. An unarmed guard, a contractor, was posted at the main entrance, but in the back, out of view of the security cameras, only a padlock and chain secured a gate that led straight to [chlorine rail] tankers . . . No one stopped or questioned me."—Washington Post, Outlook, Matthew Quirk, April 9, 2017.

"The increased number of intrusions into energy computer controls last year brings the number of such incidents in the industry to more than 400 since 2011, Homeland Security data show. Security specialists say that's likely a conservative number because energy companies aren't required to report cyber attacks to the U.S. Government."—Fuelfix.com, March 22, 2017.

"Federal law enforcement investigators are searching in at least three States for more than 500 pounds of explosives stolen from a CSX train . . . "—CBS News, April 22, 2016.

"A Chinese steel manufacturer faces renewed U.S. criminal charges over allegations that it arranged to improperly obtain confidential trade secrets from DuPont and got access to hacked information from the U.S. company's computers."—Reuters, January 7, 2016.

"A Lockport man was charged Friday with a trespassing violation after he allegedly flew a drone near the VanDeMark Chemical Co. plant, which produces highly toxic phosgene gas."—Buffalo News, December 5, 2015.

"The Roberts County Sheriff's Department needs the public's help after a reported theft involving two 150-pound Chlorine gas tanks that will be harmful, possibly fatal, if exposed. [T]he tanks were reported stolen from the rural water pump station."—KSFY.ABC, Sioux Falls, SD, September 11, 2015.

"The Calcasieu Parish Sheriff's Office and the Joint Terrorism Task Force are investigating a drone flying over an industrial facility in Calcasieu Parish. According to the sheriff's office, agencies received two separate complaints, one on March 3 at 2 p.m. and the other one on Monday morning . . . "—KATC–TV3, Southwest Louisiana, March 18, 2015.

"A San Francisco Federal court has sentenced U.S. businessman Walter Liew to 15 years in prison for stealing trade secrets from chemical giant DuPont and then selling them to a State-owned Chinese company."—Fortune, July 10, 2014.

"More than half of all facilities licensed last year by Texas to carry ammonium nitrate lacked either secure fencing or locked storage areas for the potentially explosive chemical compound . . . [One security incident] involved an employee of a fertilizer facility who stole 4 tons of ammonium nitrate fertilizer."—Dallas News, November 3, 2013.

"The Texas fertilizer plant that exploded 2 weeks ago, killing 14 people and injuring about 200, was a repeat target of theft by intruders who tampered with tanks and caused the release of toxic chemicals . . . Police responded to at least 11 reports of burglaries and five separate ammonia leaks at West Fertilizer Co. over the past 12 years . . . "—Milwaukee Journal Sentinel, May 4, 2013.

"In rural areas across the United States, the thriving meth trade has turned storage facilities like West Fertilizer Co and even unattended tanks in farm fields into frequent targets of theft, according to several government and fertilizer industry reports issued over the past 13 years . . . Chemical safety experts said the recurrent security breaches at West Fertilizer are troubling because they suggest vulnerability to theft, leaks, fires or explosions."—Reuters, May 3, 2013.

"A break-in at a small north Georgia water treatment plant is raising alarms among security experts. Authorities said sometime last weekend, someone broke in and altered the chemical settings in the filtration system . . . [T]here are no roam-

ing security guards or cameras at the plant, just a rusty barbed wire fence, a sign and a small lock."—Atlanta Journal-Constitution, April 30, 2013.

"Two south Georgia chemical companies are still figuring out exactly what thieves stole from them. Investigators aren't saying much about what the crooks may have been after, but tens of thousands of dollars worth of chemicals are gone . . . "—WMC Action News 5/WALB News 10, Southern Georgia, 2013.

"There is an interesting chemical theft story over on *www.lohud.com* about the bulk gasoline theft from three retail stores in New York. It seems that someone drove a tank truck into three separate closed-for-the-night gasoline stations and pumped gasoline out of the in-ground tanks into the tanker."—Chemical Facility Security News blog, March 16, 2012.

"At least 48 chemical and defense companies were victims of a coordinated cyber attack that has been traced to a man in China, according to a new report from security firm Symantec Corp. Computers belonging to these companies were infected with malicious software known as 'PoisonIvy,' which was used to steal information such as design documents, formulas and details on manufacturing processes . . . the victims include 29 chemicals companies . . . "—Reuters, December 31, 2011.

"A 20-year old Mound man and former Gustavus Adolphus College student faces a felony charge for allegations he stole chemicals from a classroom with the intent of making an explosive device."—St Peter Herald, Faribault, MN, April 22, 2010.

"A few yards off a south county road, with only a chain link fence to protect it, sits an ammonia tank big enough to kill thousands."—KMOV News 4, St. Louis, MO, January 31, 2008.

"A private security company's unarmed guards have been yanked out of the city's two water filtration plants amid concerns about safeguarding Chicago's drinking water. Water Management employees found gaping holes in the company's performance, City Hall sources said. 'They were sleeping. They weren't where they were supposed to be.' "—Chicago Sun Times, October 22, 2007.

"One water facility visited this past week had a large hole in its protective chain-link fencing, allowing anyone to easily access a storage shed where canisters of chlorine gas are stored. The fence had been down for more than a month, after a truck from a nearby shipping company accidentally rammed it."—Whittier Daily News, Whittier, CA, May 29, 2007.

"Frankly, I could toss a rock to these tankers [at Nashville metro wastewater plant] so there's no security here—nothing that's going to stop a terrorist attack. Last fall, just in the shadow of the State Capitol, we spotted this chlorine tanker sitting unattended for hours."—News Channel 5, Nashville, TN, April 10, 2007.

"We park [at DuPont's Edge Moor plant] across the street from what appear to be eight chlorine tank cars near two storage tanks the size of grain elevators. There's a large gap in the fence where railroad tracks exit the plant . . . [Once inside] the only barrier between me and the chance to unleash possible toxic catastrophe is a striped pole bearing a sign that reads Men at Work."—Washington Monthly, March 2007.

"Five years after terrorists murdered 2,996 people in the Sept. 11 attacks, the Trib embarked on a probe to see how well railroads and their customers secure lethal hazardous materials . . . [T]he Trib penetrated 48 plants and the freight lines that service them to reach potentially catastrophic chemicals in populated parts of Seattle, Tacoma, Atlanta, Pittsburgh, Las Vegas, San Francisco's Bay Area and the New Jersey suburbs, as well as two port facilities in Oregon and Washington."—Pittsburgh Tribune, January 14, 2007.

"[In New Jersey], surrounded by a tall chain-link fence on a dead-end street, stands a chemical plant that . . . could pose a potentially lethal threat to the 12 million people who live within a 14-mile radius. A Discover reporter managed to find the inconspicuous plant, take a few photographs, and spend some moments pondering how fragile the building was and the havoc that could be caused with a single well-aimed truck bomb."—Discover Magazine, July 2006.

"Train cars on the fringe of downtown Fresno are right out in the open—no fence, no rail police, no security guards. We hung around for more than half an hour and no one questioned our being there."—CBS Channel 47, Fresno, CA, April 28, 2006.

"Gates to the depot are unlocked and unguarded, allowing unimpeded access to tracks where cars loaded with deadly chlorine, ammonia or oleum gases are stored . . . Security is so lax that a reporter and photographer recently spent 10 minutes driving along a rail bed beside cars holding toxic chemicals without being challenged, or even approached, by railroad employees."—New York Times, March 27, 2006.

"We began to investigate just how close we could get to one of these [rail] tankers. It took us about 1 hour to find out . . . Train yards in South Florida are wide open.

We walked around this tanker holding facility under the cover of darkness for 6 hours."—CBS 4, South Florida, November 14, 2005.

"On a recent visit to Chalmette Refining [Louisiana], a Times editorial writer had no trouble standing in the nearby park for 15 minutes with a large knapsack . . . At two plants in Dallas that use large amounts of chlorine, the same writer parked a car on the periphery and milled about for more than a half-hour without being stopped. The fencing was minimal—far less than at a nearby automobile factory."—New York Times, May 22, 2005.

"At the Olga Plant in eastern Lee County during a random visit, we found the front gate wide open with no workers in sight. 'There has never been a time at the Olga water plant where I felt secure,' said [a] utility worker."—NBC2, Lee County, FL, May 16, 2005.

"[The chemical plant in northern New Jersey] remained loosely guarded and accessible. Dozens of trucks and cars drove by within 100 feet of the tanks. A reporter and photographer drove back and forth for 5 minutes, snapping photos with a camera the size of a large sidearm, then left without being approached."—New York Times, May 9, 2005.

"The chemicals in these facilities have the potential to affect hundreds of thousands of valley residents, but in many cases the only security being used is a chain link fence . . . Crime reports . . . show that the company [Hill Brothers Chemical] called police 35 times between 2002 and 2004; 13 of those calls were burglary reports."—CBS 5 News, Phoenix, AZ, February 17, 2005.

"[F]our tanker cars stood in a row in an unfenced CSX Transportation rail yard . . . There were no visible barriers . . . except about 100 yards of open space and tracks. There was ample cover for someone to hide or stash a weapon. No security personnel stopped to question why the visitors were lingering there and why one of them was taking pictures. There was no visible security—not even a 'no trespassing' sign."—Baltimore Sun, January 16, 2005.

"6NEWS investigators walked the fence line at Jones Chemicals . . . At a gate there was a gap big enough for a person to crawl under . . . At the Transflo terminal . . . we found the front gate wide open."—NBC News 6, Charlotte, NC, March 3, 2004.

"A tour of Houston-area industrial facilities by a Chronicle reporter and photographer, accompanied by a security consultant, found obvious, easily corrected and therefore inexcusable security lapses . . . Ramshackle gates and unmended fences, the Chronicle's consultant said, could not stop cattle, much less a bomb-laden vehicle."—Houston Chronicle Editorial, December 31, 2003.

"We found gates unlocked or wide open, dilapidated fences and unprotected tanks filled with deadly chemicals in dozens of plants in metropolitan areas that could put more than one million people at risk in the event of a terrorist attack . . . There was one plant in Chicago that I simply sat on top of the tank and waved 'Hello, I'm on your tank.'"—CBS '60 Minutes' citing Carl Prine, Pittsburgh Tribune, November 16, 2003.

"At three [Portland area facilities], a reporter parked his car outside of perimeter fencing but within 30 yards of the most dangerous chemical tanks or rail tank cars and remained there—in his car or outside his car taking pictures of the tanks—for as long as 90 minutes without being challenged."—Portland Oregon Tribune, October 3, 2003.

"A reporter and photographer were able to walk within a stone's throw of several railroad cars used to store chemicals [at JCI Jones Chemicals]. The pair took notes and photographs in plain sight for more than 15 minutes—noting the lack of a perimeter fence and several wide-open warehouse doors . . . "—Times Herald-Record (Warwick, NY), August 3, 2003.

"Someone who apparently planned to use anhydrous ammonia to make crystal methamphetamine had tampered with a 2,000-gallon tank at Channel Chemical plant. About 600 gallons was missing. Last May, an ammonia leak caused by a thief who stole the chemical from a food processing plant at Arlington, Washington, forced the evacuation of about 1,500 people."—Associated Press, Gulfport, MS, February 23, 2003.

"We decided to put security to the test. We drove our news car right into a site that stores tons of chlorine. We had easy access to all areas for about 5 minutes before an employee stopped us."—KVBC Channel 3, Las Vegas, November 19, 2002.

"[Channel 7 found] wide open gates and doors, automatic fencing that doesn't close properly, few or no security guards . . . fences that have missing barbed wire, or sizable gaps, or have been trampled to the ground, unchallenged access to chemical storage areas."—ABC Channel 7, Chicago, IL, November 6, 2002.

"Officials at four chemical plants have confirmed that they have no night security guards . . . Within the last year, workers once saw two strangers running through the Noveon plant . . . "—The Louisville Courier-Journal, October 14, 2002.

The International Security Management Association, an industry organization, advertised in Roll Call against mandatory National chemical security standards and argued instead for voluntary measures. One ISMA officer is from Sony Electronics—a company with security so lax at its Pittsburgh facility that a news reporter stood next to a 90-ton rail car of chlorine without rousing any response from company security.—Roll Call, Sept. 19, 2002; personal communication with Pittsburgh Tribune reporter Carl Prine.

"The [Pittsburgh Tribune's] latest foray into 30 chemical factories, shippers and warehouses in [Baltimore, Houston, and Chicago] buttresses a recent investigation into western Pennsylvania's unguarded toxic facilities."—Pittsburgh Tribune-Review, May 5, 2002.

"The security was so lax at 30 sites [in western Pennsylvania] that in broad daylight a reporter—wearing a press pass and carrying a camera—could walk or drive right up to tanks, pipes and control rooms considered key targets for terrorists."—Pittsburgh Tribune-Review, April 7, 2002.

"On Jan. 31, [a shotgun wielding] robber had trespassed on property owned by Citgo Petroleum Corp., one of several refining companies that claimed to have boosted security in the wake of the Sept. 11 terrorist attacks."—San Antonio Express-News, February 16, 2002.

"A CBS investigation found mammoth holes in security. Just last week we gained access to several chemical companies including BP Chemical and Kinder Morgan."—CBS 2, New York City, November 6, 2001.

"This month infiltrators in frogmen suites [gained access to] a Sterling Chemicals, Inc., plant in Texas City. The frogmen were cops testing security at the plant. Sterling's recent security upgrades—prison-like watchtowers, security cameras, concrete barricades at all entrances and additional guards—had not kept them out."—Newsweek, November 5, 2001.

"At Cleveland Hopkins there are also security gaps around the perimeter of the airport . . . Just off the highway, a jet fuel storage tank is completely accessible to any passing motorist."—0990.3 WCPN FM, Cleveland, OH, October 23, 2001.

Compiled by Paul Orum, Revised May 15, 2017.

ATTACHMENT B.—CHEMICAL SECURITY; SAMPLE CHANGES AT CHEMICAL FACILITIES

Many leading companies are already reducing chemical targets of opportunity. Surveys identify existing alternatives used across some 20 industries:

- *Bleach manufacturers* eliminate bulk chlorine gas by generating chlorine as needed "just in time" on-site, eliminating transportation and storage vulnerabilities.
- *Petroleum refineries* avoid dangerous hydrofluoric acid alkylation by using less hazardous sulfuric acid; others are moving to liquid ionic or solid acid catalysts.
- *Water utilities* eliminate bulk chlorine gas by using liquid chlorine bleach, ozone without storage, and ultraviolet light as appropriate.
- *Paper mills* eliminate bulk chlorine gas by using hydrogen peroxide, ozone, or chlorine dioxide without bulk storage.
- *Pool service companies* eliminate chlorine gas by using chlorine tabs or liquid bleach.
- *Manufacturers of polyurethane foams* eliminate bulk ethylene oxide by substituting vegetable-based polyols.
- *Soap and detergent manufacturers* eliminate bulk oleum and sulfur trioxide by using sulfur burning equipment on-site.
- *Manufacturers of ferric chloride* eliminate bulk chlorine gas by processing scrap steel with less concentrated liquid hydrochloric acid (<37 percent) and oxygen.
- *Titanium dioxide producers* eliminate bulk chlorine gas by generating chlorine on-site as needed without storage, or by using the sulfate process.
- *Secondary aluminum smelters* eliminate bulk chlorine gas by removing impurities with nitrogen gas injected with magnesium salts.
- *Manufacturers of semiconductors, silicon wafers, and metal products* eliminate concentrated hydrofluoric acid by using less concentrated forms (<50 percent).
- *Power plants* eliminate bulk anhydrous ammonia gas by using cleaner combustion or by using aqueous ammonia or urea in pollution control equipment; they also remove chlorine gas by using liquid bleach to treat cooling water.
- *Refrigerated warehouses* reduce anhydrous ammonia gas through low charge ammonia refrigeration systems.

- *Wholesale chemical distributors* eliminate most bulk chlorine gas and sulfur dioxide gas by distributing alternatives such as liquid bleach and sodium bisulfite.
- *Pulp mills, food processors, wastewater plants, and hazardous waste recovery operations* eliminate bulk sulfur dioxide gas by, as appropriate, generating sulfur compounds on-site or purchasing sodium bisulfite, metabisulfite, hydrosulfite, or other alternatives.
- *Diverse manufacturers* eliminate bulk chlorine gas by generating chlorine onsite as needed without storage, such as for fuel additives, water treatment chemicals, and aramid polymers used to make bulletproof vests.

Mr. RATCLIFFE. Thank you, Mr. Orum.

I now recognize myself for 5 minutes for questions. I want to ask a question about the Expedited Approval Program, but before I do, very quickly if I can get each of you to answer this as briefly as possible.

We have heard a lot about facilities that are either newly-tiered or that have changed tiers. So I want, as quickly as possible again, whether you feel the CFATS program right now is correctly considering variables like consequences and threats and vulnerabilities when we are assessing the risk? I guess, more specifically, has this re-tiering initiative methodology from your perspective been successful?

I will just go across the board. Mr. Thompson.

Mr. THOMPSON. Thank you for the question. Certainly our members believe that since the reauthorization in 2014 that the re-tiering process has been improved and folks believe that that risk are better being assessed. A number of our facilities have been re-tiered, so we are pleased with the direction.

Mr. RATCLIFFE. Great.

Ms. Meskill.

Ms. MESKILL. I agree with that. Many of ACC's members are also pleased. We have seen a general over-the-industry reduction in the number of higher-risk facilities.

However, going back to the point that I made in my opening statement, there is really a lack of transparency so as industry we don't quite know how these risk tierings were applied to the general sites and so it is difficult for me to comment on whether or not it has addressed the real hazards and risks out there without really having full transparency to how these conclusions were made.

Mr. RATCLIFFE. Thank you.

Mr. Mutschler.

Mr. MUTSCHLER. Our experience on the re-tiering has been very positive actually and the engagement between our facilities and DHS has been positive. I will agree we don't always understand why, but they have been very willing to open up a dialog and answer our questions as to why we are moving around to the point that they can. So it has been very positive for us.

Mr. RATCLIFFE. OK.

Mr. Orum.

Mr. ORUM. There is not much public information as others have pointed out, for evaluating this. For that reason I have suggested that GAO should be reviewing sufficiency of the tiering and of the overall protectiveness of the program.

Mr. RATCLIFFE. OK. So you mentioned GAO. The GAO also reported in 2017 that very few facilities have participated in DHS's

Expedited Approval Program, which, as you all know, is intended to reduce the burden and expedite the processing of security plans for Tier 3 and Tier 4 facilities.

So I really want to find out why you think that that participation in the Expedited Approval Program has been so limited? If you have thoughts on the implementation by DHS about what we can do to enhance participation, I would like to hear that.

Again, I will just go across the board.

Mr. THOMPSON. Well, quickly, I will say that we certainly believe through this re-tiering process, and as more of our facilities get re-tiered and moved potentially to that 3 and 4 category, you are going to see a greater use of the Expedited Approval Process.

Mr. RATCLIFFE. OK.

Ms. MESKILL. I agree with that as well. As new sites and companies, particularly small and medium, come into the CFATS regulatory area, I think we will see more expedited approval process for those companies like mine and for other member companies of ACC that have been with CFATS from the very beginning, to go back into the expedited approval process is really backtracking and so it doesn't make a lot of sense for us.

Mr. RATCLIFFE. Thank you.

Mr. MUTSCHLER. From the agricultural retailers' position, the expedited approval process has actually worked very well for us and I can see that continuing on. We have actually had no problem once we have gone into the tier side of the program.

Mr. ORUM. I have no strong bias about the Expedited Approval Process other than that it should be as substantial as the rest of the process. Our overall concern is just the sufficiency of what facilities look at when they do their evaluations and their Site Security Plans, rather than that process.

Mr. RATCLIFFE. OK. My time is about to expire.

Mr. MUTSCHLER. I want to give you a quick opportunity. You mentioned that ResponsibleAg program as being a voluntary stewardship program that has been successful in your industry.

I am wondering, are the requirements under that program, do you think they are more stringent on security issues than the CFATS program is? Why would facilities opt to participate in that ResponsibleAg program if they are regulated by CFATS?

Mr. MUTSCHLER. I don't think it is more or less. I think the regulations are there and compliance is pretty standard across the board. Why would they choose to participate in that? It is because, you know, with under CFATS or any regulatory program our operations only get evaluated every so often. The resources just are not there to get onto every site.

We can use ResponsibleAg to cover, you know, like I said, 1,900 of them have been assessed and that just assures them that they are complying with the regulations and gives the communities a comfort level that we are doing the right thing.

Mr. RATCLIFFE. Terrific, thank you. My time is expired.

The Chair now recognizes the Ranking Member, Mr. Richmond.

Mr. RICHMOND. Let me kind-of pick up where the Chairman left off. Since CFATS was established, I guess over a decade ago, we had about 70,000 facilities covered. Now it is down to 3,500 today in terms of high-risk. That has been reduction largely in response

to facilities voluntary reducing or removing dangerous chemicals and thereby hopefully eliminating a potential terrorist target.

Are there ways that you think we can leverage that data or looking at those 3,500 facilities that have reduced their risk? Maybe trying to figure out if there are any metrics or similarities across the line without compromising security or the proprietary interests of those companies?

We will start with you, Mr. Thompson.

Mr. THOMPSON. Well, I certainly would support, you know, more information and my members will welcome the information that other facilities have used in order to exit the program. We see no downside to that whatsoever.

Mr. RICHMOND. Well, the question is: Do you think you could do it without giving up any proprietary information of those companies?

Mr. THOMPSON. Well, again, it depends. Without knowing precisely the information we are talking about I couldn't answer that of course. Certainly there would have to be a balance between not releasing proprietary information or, you know, security-related information.

But to the extent that DHS could synthesize this into something that could be released publicly I think that would help. But competing against this train is this notion of driving at this, you know, as I said in my testimony, I don't believe they should force inherently safer technology reviews.

You know, that is not appropriately a part of this program. But certainly other aspects of what facilities have done we would welcome it.

Mr. RICHMOND. Mr. Orum.

Mr. ORUM. Yes, there are ways to make better use of that information without just compromising proprietary information. First, I think DHS should be producing lessons learned analyses, which can be done simply by aggregating and anonymizing information rather than including facility-specific information about those lessons learned.

Second, remember that trade secret factors have been used for many years to successfully deal in public information. Where information is already available or readily discoverable it basically is not secret, can't be kept secret. For example, under the Emergency Planning and Community Right To Know Act, those criteria have been used very successfully.

Third, I think that the need-to-know information sharing under Section 2103 of CFATS should be specifically broadened such that private-sector developers of target reduction technologies can have an access to that information for purposes of technology transfer and diffusion and technical assistance.

Otherwise, that section is all focused on emergency response. That is part of the failure, I think, of imagination of the program as a whole, that it is not focused more on the prevention side.

Mr. RICHMOND. Speaking of prevention, what should we be doing to address the statutory exemptions for certain types of high-risk facilities like water treatment systems and nuclear power plants?

Mr. ORUM. Drinking water and wastewater facilities just should definitely be included in the program. Half of large drinking water

facilities already don't use bulk chlorine gas and there is a trend in that direction.

The others two-thirds of wastewater facilities do not use bulk chlorine gas. The bleach manufacturers that serve them are an increasing number, although still relatively small, no longer bringing in rail cars and 90 tons of chlorine gas.

That whole system and the supply chain of transportation that serves it could very effectively be brought under the program. It is just a matter of Congress doing it.

Mr. RICHMOND. I see my time is running out, and I just hope at some point we have a conversation about whether you all think we have adequately—or, the conversation about drones and these facilities.

My district is the largest petrochemical footprint in the country, and I worry about drones and security in the neighborhood security every day. So I hope that comes up in questions or later testimony.

With that, I yield back.

Mr. RATCLIFFE. Thank the gentleman.

The Chair now recognizes the gentleman from New York, Mr. Donovan, for 5 minutes.

Mr. DONOVAN. Thank you, Mr. Chairman, and just my friend from Louisiana just hit on something I was gonna speak on, too. Since the reauthorization in 2014, our enemies' methods of threatening our systems have changed, drones being one of them.

Are there any things that this committee could do to help in your efforts to protect the facilities that we are talking about here with these new rising threats, whether it be in the field of physical security or cybersecurity?

I would ask the entire panel. I would be very interested in hearing your expertise.

Mr. THOMPSON. Well, let me certainly echo what the Ranking Member and what you just said about drones. Drones is certainly a high threat and concern of our industry as well. We have been working closely with the FAA on drone issues.

We encourage DHS to work with FAA on drone issues, you know, to coordinate between the two agencies, you know, who should lead and how to protect the airspace above our facilities. It is a very important issue.

We also believe that DHS should implement a voluntary program for our facilities to report potential drone attacks so there can be more of a collection of data to help us going forward.

Ms. MESKILL. I agree. We are all very worried about drones, particularly the weaponization and arming of drones. Those drones entering airspace over our chemical facilities.

Currently in many States, some States have passed regulation putting that area restricted so that drones cannot cross it, but that is not uniform across all our States. So we are looking for that.

Drone technology is great. It is advancing quickly and it is really completing our security and safety programs. It is fantastic. The ability to use drones to do inspections of smokestacks and other structures without putting other scaffolding in place is really great.

As we watch security advancement we can even implement drone technology to do perimeter checks and things like that. So it is really great, but we are paralyzed because we are very concerned

about weaponized drones coming over our facilities. We don't have a way to defend ourselves against that right now.

Mr. DONOVAN. Thanks.

Mr. MUTSCHLER. Again, from the agricultural side of the industry, you know, we agree with everything I have heard here, but I really believe highly in the public-private partnerships to address any new risk that is coming our way. I think DHS has done a very good job working with us, and particularly looking at the risk to the agricultural sector.

We are remote facilities. We are scattered all over the countryside, and we have some unusual risk. They have been very open to work with us on assessing those risks, and I think what the committee can do is encourage these public-private relationships using some of the stewardship programs to look at best management practices in addition to just regulatory requirements.

Mr. ORUM. Here again I think you have a prime issue to put to the Government Accountability Office for an in-depth study on whether current existing CFATS standards are, in fact, sufficient to address evolving risks of concern.

Mr. DONOVAN. Quickly, could each of you just speak 15, 20 seconds on cybersecurity and what you feel could be an assistance to you in protecting your facilities from a cyber attack?

Ms. MESKILL. Sure. Access to intelligence, so it is a continuing theme that we have heard over and over again. We need information. Clearly we need declassified or Classified information. We need to share that information. We need to understand where those risks are, where they are evolving, where they are happening in the industry so that we can then design our security programs to address those risks.

Mr. THOMPSON. I certainly wasn't avoiding the question. I was trying to be a gentleman.

[Laughter.]

Mr. THOMPSON. But like I say, there is a certain way this ranks high with the drone issue, cybersecurity as well. AFP and our members have been actively involved with this. Certainly there is a risk-based performance, I believe No. 8, that deals with this issue. So our security plans address cyber.

We have also been working closely with NIST and their framework for this issue and so we are actively involved and certainly the Government in sharing information, finding ways voluntarily to share amongst ourselves would be the way the Government could help.

Mr. MUTSCHLER. Again, I get back to that public-private partnership deal and on cybersecurity we are currently at the table with DHS talking about precision agriculture and what is the vulnerabilities of those systems. I think those dialogs are incredibly healthy for us as the industry to protect the systems. It is doing a good job on opening the eyes of the regulatories to us as to what is actually out there right now, so——

Mr. DONOVAN. I thank you all and I also invite each of you to share with us anything that comes up after this hearing on how we could help you protect those facilities. Thank you for your testimony.

Mr. Chairman, I yield back the time that I don't have remaining.

Mr. RATCLIFFE. I thank the gentleman.

The Chair now recognizes the gentlelady from Florida, Chief Demings.

Mrs. DEMINGS. Thank you so much, Mr. Chairman and thank you to our witnesses for joining us here today.

The CFATS Act of 2014 includes protection for workers, including a requirement that facilities to the extent practical consult with at least one knowledgeable employee or labor union representative in security planning and vulnerability assessments.

Mr. Orum, can you elaborate on the benefit of having employees on the ground contribute to security plans and service force multipliers for monitoring compliance?

Mr. ORUM. Yes, employees tend to get hurt first and worst by chemical releases. They also observe problems every day and are knowledgeable about remedies. Basically the more involved employees are the more fixes to the problems.

There are a number of things that CFATS could do more substantially, including employees routinely in inspections, for example. Making sure that companies certify that they have consulted with employees, requiring an input plan in which employee recommendations are documented as well as the responses to those recommendations.

DHS could also do a sort-of "See Something, Say Something" educational campaign for employees. It is possible also that transferring the whistleblower protection provisions to OSHA, which administers such programs for a couple dozen agencies, could help make them more effective.

Mrs. DEMINGS. You know, as a former police chief, I frequently ask the men and the women on the ground who were doing the job for their opinions on how we could do it better and how we could keep them safer. For the other panelists, what are the circumstances that would make it impractical for a facility to ask an employee for help with a security or site security plan?

We will start with you, Mr. Thompson.

Mr. THOMPSON. Well, it is not as much whether it is impractical. I think what we are always striving to do is find the appropriate balance. We are dealing with highly-sensitive security information and so we need to balance that and the need to limit that information from getting out more publicly where it could pose greater risks with, you know, balance that with certainly the expertise that some of our work force could bring to bear.

So our facilities, you know, are always looking for that balance. If there are folks within the work force that can add to the development of vulnerability assessments or security plans, certainly we bring that expertise to bear. But again, it is a balance and there is not a one-size-fits-all answer here.

This isn't about what Mr. Orum said about identifying problems and releases. This is about security. So we need to take a different account.

Mrs. DEMINGS. Isn't identifying problems a part of a security plan?

Mr. THOMPSON. Absolutely, but some of the releases that were being referenced there are other programs like EPA's Risk Manage-

ment Planning program and EPGA. There are lots of other programs.

I think it is important for us when we talk about this to remember we are talking about CFATS and security and the highly-sensitive information that we are dealing with. Again, that is what makes us want to—this isn't an issue of just stiff-arming our employees. This, again, is the issue of finding the appropriate balance to deal with highly-sensitive information.

Ms. MESKILL. So I agree with everything Mr. Thompson said, but in addition, across the industry, plans are developed at a site level. It is that site director who is ultimately accountable and responsible for safety and security at his facility. So there is immediately on-site employee engagement and involvement in development of those plans.

Of course you need some technical skill as well. At my company, and I know at other member companies at ACC, you have individuals like me and teams like me that advise and give that technical skill.

But ultimately it is the people on the ground that are coming up with those plans because, like Mr. Orum said, they are the first ones who know the risks. They are really in the best position to develop those plans.

Mrs. DEMINGS. Yes.

Mr. MUTSCHLER. I kind-of agree with everything I have heard. One thing is, you know, I truly believe that there is not an adequate safety and security plan that doesn't include the input from all employees at certain phases of the project. We have had tremendous luck with DHS on this issue, and particularly with our outreach program for non-regulated facilities.

They will sit down with all our employees and we will go through a vulnerability assessment and the only thing that where it starts crossing the line is when you have this road map that shows you exactly how to damage the facility.

That is the area that we need to protect. But we take input on all levels of our safety programs and security from not only the employees but the communities we work with. You know, we have law enforcement involved in that same process. They need to be.

Mrs. DEMINGS. Excellent. Thank you very much and I am out of time.

I will yield back.

Mr. RATCLIFFE. Thank the gentlelady.

The Chair now recognizes the gentleman from Nebraska, Mr. Bacon.

Mr. BACON. Thank you all for being here and this is a new subject matter for me, so I am trying to learn as fast as I can. Could you give me an example, any of you, of a Tier 1 facility versus a Tier 2? What kinds of things are we looking at that are different? I don't know if I understand it?

Mr. MUTSCHLER. I will start with that. It is not completely known by the regulated party, but, you know, the amount of work that they do analyzing the vulnerabilities and what possibly could be in there as multiple factors. Not only what is stored on the site, where it is located, what is the general make-up of the geography, and the population in the area.

I have always been surprised to see which ones are tiered at which levels, so——

Mr. BACON. That is interesting that it is hard for you to ascertain in you are having to live it.

Any other thoughts on that question?

Ms. MESKILL. No, I agree with that. You know, and I made reference to this earlier, during the reauthorization process there were sites that fell out of tiering, which did surprise us. So oftentimes it is a bit of a surprise to us, industry.

Because we don't have sufficient transparency or knowledge as to what exactly is being looked at.

Mr. BACON. Mr. Thompson, you talk about flexibility and how important it is. Can you describe what does that really mean and why is that so important to you for CFATS?

Mr. THOMPSON. Well, again, it is important as I said in my testimony about, you know, this being performance standards and not one-size-fits-all. Every facility is different, every work force is different.

I don't disagree with any, you know, what the panel has said. I think we were consistent about getting input from our work force. What we, you know, are opposed to are mandates that tell us exactly how to go about it.

So, you know, that is the main point here. We need the flexibility to develop the best plan that we can to provide the maximum security. In some situations that will involve lots of work force involvement and in other situations maybe less so.

So we just need the flexibility to develop the best plan we can working with DHS.

Mr. BACON. Ms. Meskill, on the DHS CFATS officials are they helpful to you? I mean, are they good advisors? Are they a little bit ambiguous or——

Ms. MESKILL. No.

Mr. BACON [continuing]. Help you get to the solution?

Ms. MESKILL. No, they have been extremely helpful, and we do work extremely closely with them, both at the chem sector level but also at the ACC level and then at the site level. They have been very gracious in responding to questions, very responsive and overall, yes.

I think they try very hard to understand and relate to the challenges that industry has and complications that those challenges present sometimes to make us comply with the regulation.

Mr. BACON. To the remaining three, have you found them helpful as well?

Mr. MUTSCHLER. I would like to lead off with that one. I have found them extremely helpful.

Mr. BACON. Good.

Mr. MUTSCHLER. In our industry we have a lot of people that are not security experts. They are selling fertilizer. They are giving farmers advice. They are trying to, you know, market grain and that is their main job.

Every time we have interacted with the DHS personnel they have been very professional, very informative. They have really helped ease the anxiety of our locations. In my overall opinion it

has been a tremendous success because of the people that are involved.

Mr. BACON. Thank you. That is good to hear. Anybody else.

Mr. THOMPSON. Well, I certainly won't miss the opportunity to echo our thanks to DHS. They do a terrific job. This is a hard program. They have done, you know, we can't say enough.

Mr. ORUM. I would add that average community member has never met a DHS CFATS employee, I presume. My impression is though, however, and I keep harping on this, there is a kind-of a mindset failure that is too much focused on conventional security and not enough on the reduction of risk profiles as a potential security measure. More should be done to use that aspect.

Mr. BACON. OK, thank you very much. I would just wish all of our agencies had that kind of feedback for helping out their customers.

I yield back.

Mr. RATCLIFFE. Thank the gentleman.

I thank all the witnesses for your testimony today, and I thank the Members for all their questions.

I can relate to you all that the combination of the National shooting tragedy and a change in the House calendar prevented some Members of the subcommittee from attending our hearing today. Some of those Members will likely have additional questions for you as witnesses and we will ask you to respond to those in writing.

Pursuant to committee rule VII(D), the hearing record will remain open for a period of 10 days. Without objection, the subcommittee stands adjourned.

[Whereupon, at 11:01 a.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS FROM HONORABLE JAMES R. LANGEVIN FOR CHET THOMPSON

Question 1a. One of the risk-based performance standards imposed by CFATS is cybersecurity. In your experience, is DHS providing your member with the information and support that they need in order to secure their systems against evolving cyber threats?

Answer. Response was not received at the time of publication.

Question 1b. How do your members account for cybersecurity in their security plans?

Answer. Response was not received at the time of publication.

Question 1c. How has the CFATS program improved cybersecurity for chemical facilities?

Answer. Response was not received at the time of publication.

Question 2a. DHS published its standards guidance for CFATS in 2009. While updated guidance has been provided for some of those standards in the past 9 years, one more recent threat that seems to remain unaddressed by the area perimeter standard is the threat posed by unmanned aerial systems, or drones. In the wrong hands, drones can be used to surveil perimeter security systems to discover weaknesses, or—in the worst case—to carry explosives over barriers designed to stop ground vehicles. What are your respective groups doing to educate your members about drone threats to their facilities and about the countermeasures they can employ?

Answer. Response was not received at the time of publication.

Question 2b. Have facility operators found that the law allows them to effectively defend their facilities against unauthorized drone activity?

Answer. Response was not received at the time of publication.

Question 2c. What more do you feel DHS can do to help chemical facilities successfully manage the risks posed by drones?

Answer. Response was not received at the time of publication.

QUESTIONS FROM HONORABLE JAMES R. LANGEVIN FOR KIRSTEN MESKILL

Question 1a. One of the risk-based performance standards imposed by CFATS is cybersecurity. In your experience, is DHS providing your members with the information and support that they need in order to secure their systems against evolving cyber threats?

Answer. Response was not received at the time of publication.

Question 1b. How do your members account for cybersecurity in their security plans?

Answer. Response was not received at the time of publication.

Question 1c. How has the CFATS program improved cybersecurity for chemical facilities?

Answer. Response was not received at the time of publication.

Question 2a. DHS published its standards guidance for CFATS in 2009. While updated guidance has been provided for some of those standards in the past 9 years, one more recent threat that seems to remain unaddressed by the area perimeter standard is the threat posed by unmanned aerial systems, or drones. In the wrong hands, drones can be used to surveil perimeter security systems to discover weaknesses, or—in the worst case—to carry explosives over barriers designed to stop ground vehicles. What are your respective groups doing to educate your members about drone threats to their facilities and about the countermeasures they can employ?

Answer. Response was not received at the time of publication.

Question 2b. Have facility operators found that the law allows them to effectively defend their facilities against unauthorized drone activity?

Answer. Response was not received at the time of publication.

Question 2c. What more do you feel DHS can do to help chemical facilities successfully manage the risks posed by drones?

Answer. Response was not received at the time of publication.

QUESTIONS FROM HONORABLE JAMES R. LANGEVIN FOR PAUL ORUM

Question 1a. In your testimony, you suggest not enough has been done to investigate the efficacy of the performance requirements DHS has established in the CFATS program. How might the CFATS performance standards fall short in addressing evolving cybersecurity threats?

Answer. Response was not received at the time of publication.

Question 1b. How might the CFATS performance standards fall short in addressing the threats posed by drones?

Answer. Response was not received at the time of publication.