



Testimony of

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*before the*

House Committee on Energy and Commerce  
Subcommittee on Environment and the Economy

*on*

The Chemical Facility Anti-Terrorism Standards  
Program – A Progress Report

March 14, 2013

Good morning Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee. My name is Bill Allmond and I am Vice President of Government & Public Relations at the Society of Chemical Manufacturers and Affiliates (SOCMA). I am pleased to have the opportunity to provide you with a progress report on the Department of Homeland Security's implementation of its Chemical Facility Anti-Terrorism Standards (CFATS) from the perspective of specialty chemical manufacturers, many of which are small and medium-sized companies.

For 91 years, SOCMA has been and continues to be the leading trade association representing the specialty chemical industry. SOCMA's 200 member companies employ more than 100,000 workers across the country and produce some 50,000 products – valued at \$60 billion annually – that make our standard of living possible. From pharmaceuticals to cosmetics, soaps to plastics and all manner of industrial and construction products, SOCMA members make materials that save lives, make our food supply safe and abundant, and enable the manufacture of literally thousands of other products. Over 80% of SOCMA's active members are small businesses.

Maintaining the security of our facilities has always been a priority for SOCMA members, and was so before September 11, 2001. After the tragic events of 9/11, SOCMA members did not wait for new government regulations before researching, investing in and implementing additional and far-reaching facility security measures to address these new threats. Under SOCMA's ChemStewards® initiative, SOCMA members were required to conduct security vulnerability assessments (SVAs) and to implement security measures. However, there were no uniform federal standards for measuring and implementing these security improvements across industry. CFATS standardized that security process.

Many SOCMA member company facilities are encompassed within the CFATS program. They have submitted their Site Security Plans (SSPs) and some are beginning to be inspected by DHS to verify the adequacy of those plans and their conformance to them. SOCMA members have spent an enormous amount of money and have devoted countless man-hours to secure their facilities and operations. These investments will naturally continue for the foreseeable future.

Definitively, DHS's Chemical Facility Anti-Terrorism Standards work. DHS listened to the private sector in developing a regulatory framework that is performance-based and preserves the ability for security professionals to make investments in measures that suit their specific facilities, but that also provides robust performance standards and imposes strict penalties for non-compliance.

But that does not mean that the CFATS experience has been easy for regulated companies, especially small and medium-sized facilities. Completing site security plans – and now, preparing for, participating in, and following up on inspections – requires substantial company resources and personnel.

I am pleased to report that there has been marked improvement in CFATS implementation under the leadership of National Programs and Protection Directorate (NPPD) Deputy Undersecretary Suzanne Spaulding and Infrastructure Security Compliance Division (ISCD) Director David Wulf, both of whom joined the Department in 2011. We also were encouraged by the

appointment of Scott Breor as Mr. Wolf's deputy. We are confident that this program will continue to move forward with these individuals at the helm.

Below I will (i) explain what is good about CFATS; (ii) describe lessons we are learning about the CFATS inspections process; and (iii) describe DHS' continued collaboration with industry.

## **I. CFATS is Reducing Risk**

To be clear, SOCMA's membership regards the program thus far as a success, even if its implementation has moved much more slowly and cautiously than we all would prefer. The CFATS statute was wisely drafted to be comprehensive and flexibly structured to impose security performance standards that are relatively more demanding of higher-risk facilities and less demanding of lower-risk plants. To a great extent, DHS's rules implement the statutory mandate issued by Congress in 2006.

Both the law and the rules are fundamentally sound and do not require replacement. Since the program was launched in 2007, more than 2,000 facilities have changed processes or inventories in ways that have enabled them to screen out of the program. Thus, as predicted, CFATS is driving facilities to reduce inherent hazards, where in their expert judgment doing so is in fact safer, does not transfer risk to some other point in the supply chain, and makes economic sense. Hundreds of other regulated facilities that had not already done so have already made significant proactive investments in security measures in anticipation of compliance with the full implementation of CFATS. As a result of CFATS, our nation is more secure from terrorist chemical attacks and other threats than it was before the program's inception. And this risk reduction has taken place through a market-based approach that has certainly cost society less than if all the initially covered facilities were still subject to regulation.

Furthermore, due to the outstanding cooperation of the chemical sector, there has been 100% compliance with the requirements to submit Top-Screens, SVAs and SSPs – DHS has not yet had to institute a single administrative penalty action to enforce compliance.

SOCMA also supports the CFATS program because our members have invested significant amounts of financial and human capital in it over the past several years. SOCMA's members alone, a majority of which are small manufacturers with under \$40 million in annual sales, have invested an estimated \$515 million in security measures to date. CFATS has provided significant additional security to a critical segment of our nation's infrastructure, as well as the general public.

No one should dispute that, despite challenges to its implementation, the two main alternatives to CFATS would both be far worse. Having no chemical security regulation at all would create a risky and tilted playing field in which most companies secured their facilities voluntarily, at significant cost, while a minority created risks for us all, and gained an unfair economic advantage, by not doing so. Our nation would also not be well-served by a prescriptive program that mandated incorporation of inherently safer technology (IST). Such an approach would threaten to drive chemical operations overseas where security standards are weaker.

## **II. Inspections Reveal Positives, Challenges for Small & Medium-Sized Facilities**

### **A. Communication by Inspectors Appears to Be Positive**

From the few inspections that have so far been conducted of SOCMA members, the interaction of DHS inspectors with facilities scheduled for an inspection appears to be positive. Inspectors are providing sufficient details with facilities prior to their arrival onsite, including an itinerary for their visit, which greatly assists facility personnel in planning ahead for the inspector to ensure resources and personnel are available if needed.

This is not altogether surprising, however. Regional commanders and inspectors have regularly made themselves available to SOCMA over the past several years. As we testified to this Subcommittee last September, DHS inspectors have repeatedly provided compliance assistance onsite upon request or participated in SOCMA events, engaging with our membership. Many of them also attend the Chemical Sector Security Summit each year, which SOCMA co-funds with DHS.

This level of communication may not be true of all DHS CFATS inspectors, but it is what we have learned from facilities with which we have spoken and what we at the organization have witnessed.

### **B. On-Site Inspection Process So Far Appears to Be Reasonably Executed**

Facilities are finding DHS inspectors generally to be reasonable during the onsite inspection. Among the personnel conducting the inspections are individuals with chemical industry experience, which is critical when interpreting how risk-based performance standards apply to and could be implemented at chemical manufacturing facilities.

The amount of time spent by inspectors on-site conducting the facility is also, thus far, reasonable. Some facilities are reporting that their facility inspection took two to three days, less than the amount of time once generally assumed based on the first reports.

Importantly, inspections of which we are aware have appropriately verified a facility's approach to addressing applicable Risk Based Performance Standards (RBPS). Inspectors appear not to be adhering rigidly to the RBPS Guidance and, instead, to be permitting company personnel to explain, from the facility perspective, how they are appropriately implementing their site security plan.

### **C. Inspections Are Requiring an Enormous Amount of Facility Time and Personnel**

The principal challenge that SOCMA's small and medium-sized chemical facilities are finding with the inspection process is the enormous amount of time and resources to prepare for an inspection and, in particular, to respond to one after it has been completed.

SOCMA members are familiar with onsite inspections. Due to their required adherence to other regulations, many of our members are regularly inspected by various government agencies,

including the Environmental Protection Agency, the Food and Drug Administration, and the Occupational Safety and Health Administration – to name just several. Additionally, every manufacturing facility that our members operate must undergo periodic third party verification mandated by SOCMA’s ChemStewards® program. With CFATS, however, our members have encountered so far an unwillingness to reasonably extend deadlines or provide additional time for facility response.

DHS should be more willing to extend the amount of time a small and medium-sized facility has to respond to a post-inspection report. Facilities are learning that, even if they had an inspection that overall seemed to go well, they are having to rewrite much of their site security plan to address issues discovered during the inspection. It is difficult for these smaller facilities to mobilize sufficient personnel to address such requirements following a CFATS inspection within a deadline of 30 days, which has been the usual case. Under a 30-day deadline, facilities are having to pull two to three workers for two to three days each—a total of over 70 man hours—from their productive jobs to ensure they meet the deadline. To us, this is unreasonable. Larger companies have more qualified personnel available to be redirected in such ways. In small companies, however, there simply may not be more than a few people qualified to work on security measures. And all of those people have other obligations, which frequently include compliance with other regulatory programs.

Highlighting our desire for more flexibility with deadlines, the Manufacturers Alliance for Productivity and Innovation released a study<sup>1</sup> last fall that found that chemical manufacturing output could fall 9%-10% per year on average over the next decade because of the cost of federal regulations. Given this prospect, we welcome as much flexibility as can reasonably be allowed by federal agencies during regulatory implementation.

Because their ability to continue selling products in the marketplace generally requires successful performance on inspections, SOCMA members place a high priority on preparing for and performing well on these inspections. We don’t question DHS’s need for additional information following an inspection; like other inspections, it is most often an expected part of the process. Nevertheless, given our members’ small size and the enormously challenging deadlines they are under, it seems reasonable to us for DHS to give them more time to respond to inspections. It is still early in the inspections process and these burdens are now coming to light among SOCMA’s members. DHS still has time to make adjustments and we are confident that, following today’s hearing, they will consider our perspective.

### **III. Collaboration with the Regulated Community on Implementation Has Improved**

As SOCMA has previously testified, the CFATS framework is sound. We have cautioned that, while the standards are sound, ISCD should work collaboratively with the regulated community to solve the technical, training and tool-related issues currently presenting challenges to CFATS implementation. We are pleased that DHS has worked closely with industry to establish an Alternative Security Program template. This development is certainly a public commitment by

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<sup>1</sup> Manufacturers Alliance for Productivity and Innovation, *Macroeconomic Impacts of Federal Regulation of the Manufacturing Sector* (August 21, 2012) at 9, available at <http://www.mapi.net/research/publications/macroeconomic-impacts-federal-regulation-manufacturing-sector>.

DHS to better collaborate on implementation.

Additionally, DHS appears prepared to co-host another Chemical Sector Security Summit this year. The summit is a collaborative effort by the Department and the Chemical Sector Coordinating Council to provide a public educational forum for CFATS stakeholders. An overwhelming majority of attendees each year are industry representatives. SOCMA members, in particular, find high value in this collaborative event. We fully expect that DHS will again work with us to provide this opportunity this year.

#### **IV. Conclusion**

SOCMA believes that DHS has steadily improved its implementation of CFATS in recent months. However, the inspections process is showing mixed results; while it is generally working well, DHS needs to show more flexibility in setting deadlines for small and medium-sized facilities.

I appreciate this opportunity to testify before you today and look forward to your questions.