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April 4, 2013

The Honorable Rand Beers
Under Secretary
National Protection and Programs Directorate
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Under Secretary Beers:

Thank you for appearing before the Subcommittee on Energy and Power on Thursday, March 14, 2013, to testify at the hearing entitled "The Chemical Facility Anti-Terrorism Standards Program – A Progress Update."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Thursday, April 18, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at Nick.Abraham@mail.house.gov and mailed to Nick Abraham, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Paul Tonko, Ranking Member,
Subcommittee on Environment and the Economy

Attachment

The Honorable John Shimkus

ISCD's risk assessment approach

1. According to DHS's National Infrastructure Protection Plan (NIPP), risk is a function of three components—consequence, threat, and vulnerability—and a risk assessment approach must assess each. What's the effect of not considering threat or vulnerability for approximately 90% of regulated facilities?
2. Aren't you engaging an expert panel review?
 - a. What is the charge for this panel?
 - b. What is the timeline for them to report?
 - c. Do you plan to fully implement their recommendations?
 - d. Will you apply it to your tiering process or some other part of CFATS?
 - e. Will you apply it retroactively or prospectively?
3. Given that past evaluations did not disclose problems with the current model, will the ongoing expert panel be in a better position to identify potential problems? Why?
4. If the tiering approach is found to be faulty or requires adjustments as a result of the expert panel review, will this change the current list of tiered facilities? Will currently regulated facilities have to go through the process again?
5. To what extent does the current list of regulated facilities accurately reflect the chemical facility terrorist threat in the United States?
6. Are anti-risk, anti-vulnerability, or security measures that a facility takes incorporated into the risk tiering process? If not, does it discourage high risk chemical facilities from increasing security at their facilities and making them stronger?
7. The current risk assessment program clearly needs a lot of work and will likely undergo further changes.
 - a. Does that mean facilities will need to go through the risk assessment process again?
 - b. What impact will that have on the overall progress of the CFATS program and on the backlog?
8. DHS has determined that some of the 40,000 facilities are no longer high risk because they removed chemicals of interest or reduced their holdings of these chemicals below the Appendix A threshold before DHS made its final tiering decisions. In past hearings, DHS has asserted that this constitutes one of the successes of the program.
 - a. How many facilities have actually removed chemicals of interest, or reduced their holdings below the threshold?
 - b. Does DHS verify that these chemicals have been removed or reduced? If so, how?
9. Do you plan to expand the scope of the CFATS program aside from eventually including economic consequences into the risk assessment approach?
 - a. If so, is this prudent given the challenges you have had implementing the currently scoped program?

Site security plan review process

10. GAO says that ISCD has developed an operating plan to measure the performance of the CFATS program, and states that 63 measures are to track the site security plan review process, 9 are to track performance of ISCD's outreach efforts with industry.
 - a. Have you developed a new operating plan? If so, please provide it to the Committee.
 - b. What are some performance measures in the operating plan?
 - c. Does the plan include measures for aspects of the CFATS program other than the security plan review process and outreach efforts?
 - d. Considering the challenges ISCD has experienced with its information technology systems, will you be able to track data on these measures? Will the data tracked be reliable and useful?
 - e. How do you plan to use the data collected for each performance measure to improve CFATs program performance?
11. GAO notes that it could take 7 to 9 years to review security plans.
 - a. Will you use alternate security programs to streamline the inspection process to alleviate the backlog?
 - b. Will these changes allow ISCD to approve plans and inspect facilities for compliance more quickly?
12. The 2011 internal memo described a lack of training as a barrier to ISCD reviewing security plans and completing inspections.
 - a. Did this lack of training exacerbate the delay in reviewing site security plans?
 - b. How has ISCD changed its training program to ensure that staff are properly trained to review site security plans and conduct authorization inspections?
 - c. How are authorization inspections going?
 - d. What types of things are inspectors finding at facilities?
13. DHS established the CFATS program in April 2007 with the publication of the CFATS rule and has spent almost \$500 million since then on the program. Now, GAO reports that it may take 7 to 9 more years for ISCD to review the security plans for facilities regulated by CFATS.
 - a. Based on your experiences seeing the program from day-to-day, what assurances do we have that committing additional resources to the CFATS program will result in a regulatory program that is fully functional and operating as Congress intended?

Outreach to facility owners and operators

14. Regulated owners and operators and other interested stakeholders have expressed dissatisfaction with the on-line, computerized tools used to complete various CFATS documents and data collection requirements because the tools can be a burden to complete and use.

- a. GAO says that ISCD's Annual Operating Plan highlights plans to re-engineer the online tool to make it more efficient and effective. What steps has ISCD taken most recently to improve the online tools and what are the projected timeframes for upgrading the online tools?
 - b. GAO asked key trade associations to comment on the effectiveness of ISCD's outreach efforts and the usefulness and burden associated with the online tools, among other things. Has ISCD surveyed the regulated community and other interested stakeholders to solicit their opinions and comments regarding making improvements to the online tools?
 - c. Will the IT system enable you to capture and continuously update answers?
15. You told GAO officials that you will consider eliminating unnecessary data requirements when revising the online tools, but may continue to request the data—even if they are not used for risk tiering—because it may help facilities as they prepare their security plans.
- a. Has ISCD examined the appropriateness and usefulness of information collected via the on-line tools?
 - b. What plans if any, have you made to reduce the amount of information collected during the data collection process?
16. GAO says you do not systematically solicit feedback to assess the effectiveness of outreach efforts, and do not have a mechanism to measure the effectiveness of your outreach activities.
- a. What are your plans to obtain feedback regarding outreach efforts, particularly with regard to increasing understanding of the risk-tiering approach; the risk-based performance standards and the online tools used to comply with CFATS requirements?
 - b. Will all CFATS facilities be included in the feedback?

The Honorable Greg Harper

1. What is the CFATS program doing to conduct ongoing data collection, monitoring, and analysis of the facilities under their purview?
2. How does the CFATS program define threat risk? Are there levels to this determination?
3. Can you discuss why it will require an additional 18 months to complete the economic impact assessments that will be studied by Sandia National Laboratories? Are there other options available to the CFATS program in order to conduct initial economic impact assessments more quickly? What are the parameters of these assessments, and how can CFATS work to deliver useful data and risk analysis to this committee and to the leadership at the Department of Homeland Security?

The Honorable Henry A. Waxman

At the hearing, you expressed support for the existing risk analysis model employed within the CFATS program, which does not include vulnerability as an element of risk and does not account for economic consequences. When asked whether the CFATS risk assessment should be consistent with the National Infrastructure Plan, you answered that, generally speaking, it should. But the findings of the Government Accountability Office show that the risk model is not currently consistent with the National Infrastructure

Protection Plan or the Interim Final Rule that established the Chemical Facilities Anti-Terrorism Standards program.

1. Does DHS intend to modify the risk model to comport with the National Infrastructure Protection Plan and the CFATS rule, by incorporating vulnerability and other aspects of risk?
2. If not, does DHS intend to revise the CFATS rule to comport with the risk model used in the program?
3. What is the timeframe for completing the expert panel review of the risk assessment model, responding to the recommendations in the National Academies report on DHS risk assessment, and carrying out the verification and validation recommended by GAO?

The number of facilities that have reduced their chemical holdings and are no longer tiered is often cited as a measure of the success of the CFATS program. In your written testimony, you cited “close to 3,000” facilities that have eliminated, reduced, or modified their chemical holdings to reduce their risk and avoid falling within the CFATS program.

4. What is the exact number of facilities?
5. Please provide the Committee with the list of those facilities, as well as a characterization of the types of facilities that have made this change.
6. Please provide the Committee with documentation received from those facilities to demonstrate the reduction in their holdings, as well as examples of safer chemicals, processes, or methods employed by those facilities to reduce their chemical holdings.

I understand that the Department has denied FOIA requests for a list of the facilities that have reduced their holdings and are no longer tiered, as well as documentation on the changes in chemicals, processes, or methods that made this possible. The shift away from significant chemical holdings has been one of the main measures of success cited for this program, so it is important for this Committee and the public to understand what it really means.

7. Can you explain why the Department been unwilling to release the list of facilities that have taken action to substantially reduce their risk?

The GAO and officials at the Department have reported on the development of a new strategic communication plan for the CFATS program.

8. Will this plan include systematic outreach for workers at facilities determined to be high risk?
9. Will the plan include informal outreach for workers? Does any such informal outreach currently occur?
10. Will the strategic communication plan include outreach for communities around high risk facilities?
11. Will ordinary people have any way of knowing that a facility down the street from their home puts them at risk?

A suggestion was made during the hearing that facilities placed in tiers 3 and 4 may not merit regulation under the CFATS program.

12. Generally speaking, what might the impacts be of a successful attack on a tier 3 or tier 4 facility?

When the Committee drafted H.R. 2868 in the 111th Congress, several provisions were included to guide the tiering process for CFATS facilities. Section 2102 of the bill directed the Department of Homeland Security to first make a list of high risk facilities, based on a consideration of threat and consequences, including adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy, as well as the geographic proximity to large population centers. Facilities on the list would then be sorted into tiers by the Department based on risk. Under this two step process, vulnerability would be considered in assessing risk and placing a facility into a tier, but not in determining whether a facility fell within the universe of CFATS regulated facilities.

13. By removing vulnerability from the threshold determination of what facilities are covered by CFATS, would this two step approach have addressed the concern raised by David Wulf at the hearing that a facility could cycle in and out of the regulated universe by adding or removing security measures?