

Testimony of

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on behalf of

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before the

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Subcommittee on Environment

on

The Chemical Facilities Anti-Terrorism Standards Program (CFATS) – A Progress Report

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Good morning Chairman Shimkus, Ranking Member Tonko, and members of the Subcommittee. My name is Jamie Conrad. For over a decade, I have been policy counsel to the Society of Chemical Manufacturers and Affiliates, or SOCMA, which is the only U.S.-based trade association dedicated solely to the specialty and fine chemical industry. For the previous 14 years, I was an in-house counsel at the American Chemistry Council. I have worked on chemical facility security issues since before 9/11, and I have been continuously involved in the CFATS program since the law was first enacted in 2006. I have also chaired the ABA's Section of Administrative Law & Regulatory Practice. I'm pleased to be here today to provide SOCMA's perspective on CFATS.

SOCMA strongly supports the CFATS program, and we urge Congress to develop and pass legislation to reauthorize it before its authorization expires next January. CFATS protects high-risk chemical facilities and their surrounding communities by ensuring that security measures are in place to reduce the risk of successful terrorist attacks. More than half of SOCMA's 115 manufacturing members are regulated under the CFATS program.

SOCMA urges you to reauthorize CFATS for some period of years, because regulatory certainty is integral to our operations. CFATS is an expensive and time-consuming program with which to comply, especially for small businesses. Responsible companies like those in our membership want the CFATS program – but they need it to be consistent and predictable to be able to plan their business futures. A multi-year reauthorization would give SOCMA members that assurance.

The CFATS program has gone through dramatic changes through the years. Without dwelling on the past, the early years of the CFATS program were a significant challenge for everyone. The program has vastly improved under the direction of the Deputy Assistant Secretary for Infrastructure Protection, David Wulf. His early accomplishments were what gave Congress the confidence to reauthorize the program in 2014 for four years. SOCMA believes the program's continued progress is directly

attributable to Mr. Wulf's leadership and justifies another reauthorization for some additional period of years.

The most significant recent improvement in the CFATS program is version 2.0 of the Chemical Security Assessment Tool, or CSAT, which was released in September 2016. CSAT is an integrated online portal that enables facilities to submit information for the initial Top-Screen, the Security Vulnerability Assessment and the Site Security Plan.

The original CSAT process was clunky and difficult to use, and took a significant amount of time and energy to complete. The number one recommendation in SOCMA's CFATS comments in 2014 was that DHS fix it. DHS has now improved the tool dramatically, and our members uniformly report that it is much easier to use and far less resource intensive – while still providing DHS the information it needs.

This improvement is extremely important for SOCMA members, 70% of which are small businesses. These businesses cannot afford to have dedicated staff for these kinds of processes, nor can they afford to hire consultants to do it for them. Oftentimes, a single individual is responsible for all regulatory compliance – environmental, security, FDA, etc. These kinds of improvements are thus highly valuable.

While I have thus far applauded DHS's efforts, SOCMA does have some concerns. The first is related to how DHS "tiers," or assigns risk levels to, facilities based on their CSAT submissions. When Congress reauthorized CFATS, it instructed DHS to "share with the owner or operator of a covered chemical facility any information that the owner or operator needs to comply with this section." 6 U.S.C. § 622(d)(3). Congress might expand this language to create a clearer obligation for DHS to share with a facility the exact reason for its tier assignment. That would better enable facilities to understand what they might do to lower their risk tier.

A second concern is the Personnel Surety Program, or PSP. PSP requires that facility personnel and visitors be vetted in specific ways. Currently this program only applies to Tier 1 and 2 facilities, but

DHS is considering expanding the program to Tier 3 and 4 facilities. SOCMA believes that it is premature to expand PSP to Tier 3 and 4 facilities. These facilities are by definition lower risk facilities, and PSP imposes real burdens in terms of personnel time and delay. SOCMA believes that DHS should complete a rigorous assessment, in conjunction with the Department of Justice and the FBI, of the risks avoided and costs imposed by the PSP process. A multi-agency review of the effectiveness of PSP is necessary to really understand these costs and benefits before expanding this program to Tiers 3 and 4.

SOCMA also believes there is a place within CFATS for a program that would recognize voluntary industry programs to enhance security and, as a result, the CFATS program. The leading chemical industry trade and technical organizations have developed and implemented demanding industry stewardship programs, such as SOCMA's ChemStewards, an environmental, health, safety and security (EHS&S) management program designed to help facilities optimize performance, save money and enhance their role as a good corporate citizen. A public/private sector partnership that leverages industry stewardship programs like ChemStewards to further enhance the safety and security of hazardous chemicals could benefit both chemical facilities and the public.

Last, I should emphasize the importance of using the rulemaking process to amend Appendix A, the list of chemicals of interest that triggers the applicability of the CFATS program. Chemicals on and off Appendix A are central to our members' businesses and to our economy. Prior public notice and opportunity to comment have been, and should remain, a prerequisite to amending Appendix A. Facilities impacted by changes to Appendix A must have ample opportunity to supply DHS all of the pertinent information it needs to decide whether to list a chemical and at what quantities and concentrations.

The bottom line is that the CFATS program is working, and working far more successfully and efficiently than many other regulatory programs. CFATS inspectors do a good job of working with facilities. The agency has an aggressive compliance assistance program, and that program has largely

enabled it to resolve potential non-compliance issues without having to resort to fines and enforcement actions. And DHS has worked with industry to improve the program, recognizing that such a regulatory system cannot be developed in a bubble, but must incorporate information that only regulated facilities possess. Facilities are more secure, and the public safer, today because of this program. Congress should reauthorize it to maintain that progress.

Thank you for the opportunity to testify, and I look forward to your questions.