



441 G St. N.W.
Washington, DC 20548

July 30, 2018

The Honorable John Shimkus
Chairman
Subcommittee on Environment
Committee on Energy and Commerce
House of Representatives

Chemical Facility Anti-Terrorism Standards Program: Responses to Posthearing Questions for the Record

Dear Mr. Chairman:

On June 14, 2018, I testified before the Committee on Energy and Commerce's Subcommittee on Environment on progress and challenges in the Department of Homeland Security's (DHS) management of its Chemical Facility Anti-Terrorism Standards (CFATS) program. Subsequent to the hearing, you provided us a letter dated July 16, 2018, requesting a response to additional questions to be submitted for the record. This letter responds to the questions for the record that you posed.

If you have any questions about this letter or need additional information, please contact me at

[Redacted]

Sincerely yours,

[Redacted signature]

Chris P. Currie
Director, Homeland Security and Justice

Enclosure

Questions for the Record
June 14, 2018 Hearing on “The Chemical Facilities Anti-Terrorism Standards (CFATS) Program—A Progress Report” before The Subcommittee on Environment, House Committee on Energy and Commerce

- 1. Mr. Currie, your testimony overall seems pretty positive about the changes that DHS has made to the CFATS program. What would you say are the most notable improvements DHS has made to date regarding the implementation of the program?**

As noted in my statement, some of the most notable improvements DHS has made, to date, regarding implementation of the program are strengthening of the accuracy of the data used to identify high-risk facilities; eliminating the backlog of site security plans needing approval; implementing the Expedited Approval Program (EAP); and developing and using a questionnaire to solicit feedback on outreach with industry stakeholders.

- a. What are the most notable areas where DHS still needs to improve its implementation of the program?**

In April 2013, we reported that DHS’s risk assessment approach did not consider all of the elements of threat, vulnerability, and consequence associated with a terrorist attack involving certain chemicals.¹ At that time, DHS’s risk assessment was based primarily on consequences from human casualties, but did not consider economic consequences, as called for by the National Infrastructure Protection Plan and the CFATS regulation. We also found that (1) DHS’s approach was not consistent with the NIPP because it treated every facility as equally vulnerable to a terrorist attack regardless of location or on-site security and (2) DHS was not using threat data for 90 percent of the tiered facilities—those tiered for the risk of theft or diversion—and using 5-year-old threat data for the remaining 10 percent of those facilities that were tiered for the risks of release or sabotage. We recommended that DHS enhance its risk assessment approach to incorporate all elements of risk and conduct a peer review after doing so.

As noted in my statement, DHS has taken actions to better assess regulated facilities’ risks in order to place the facilities into the appropriate risk tier. We are currently reviewing relevant technical reports, plans, and assessments describing changes made to revise DHS’s risk assessment methodology as part of our ongoing work and will report on the results of this work later this summer.

- 2. Mr. Currie, your written testimony highlights the fact that DHS has eliminated the backlog for the Agency’s reviews of site security plans and visits to facilities to ensure that security measures meet DHS standards. Based on its analysis, is it GAO’s understanding that DHS appropriately completed all of the reviews and site visits?**

We have not reviewed whether DHS appropriately completed all of the reviews of site security plans and site visits to facilities to ensure that security measures meet DHS standards. However DHS data shows that DHS has eliminated the backlog of reviews and

¹GAO, *Critical Infrastructure Protection: DHS Efforts to Assess Chemical Security Risk and Gather Feedback on Facility Outreach Can Be Strengthened*, GAO-13-353 (Washington, D.C.: Apr. 5, 2013).

visits to facilities. Regarding the latter, DHS is currently updating its guidance for the conduct of facility site visits.

a. Does GAO have any recommendations regarding DHS's handling of site security plans?

In 2015, we found that DHS had made improvements to its processes for reviewing and approving site security plans and have no outstanding recommendations related to these plans.² For example, these improvements included (1) distributing updated internal guidance and lessons learned on plan approvals to inspectors and plan reviewers; (2) distributing updated guidance to facilities to help them improve their site security plans; and (3) implementing changes to inspection processes, such as employing smaller inspection teams, conducting preinspection phone calls with facilities to help them prepare for inspections, and enabling inspectors to help facility personnel edit their site security plans during inspections.

3. Mr. Currie, one of the issues raised in your testimony where DHS may have room for improvements is regarding compliance inspections. Your written testimony notes that as of July 2015 DHS had conducted compliance inspections at only 83 of the 1,727 facilities with approved security plans. Do you know what the current number of facilities for which DHS has conducted compliance inspections?

We are currently examining compliance inspections as part of our ongoing work with a focus on, among other things, the extent to which the CFATS program has taken action to conduct chemical facility inspections since we first examined this area in 2015. In addition to examining changes made to the program's compliance inspection process and related procedures and guidance, we also obtained data on the numbers of completed compliance inspections per year and will report on the results of our work in our report later this summer.

a. Your written testimony also noted that of the small number of facilities for which DHS had conducted compliance inspections, nearly half of the facilities were not compliant with their approved security plans and that DHS did not have documented procedures for managing compliance. Based on GAO's analysis of the current situation, has DHS improved in this area?

As noted in my statement, DHS updated its CFATS Enforcement Standard Operating Procedure (SOP) and has made progress on the new CFATS Inspections SOP. Once completed these two documents collectively are expected to formally document the processes and procedures currently being used to track noncompliant facilities and ensure they implement planned measures as outlined in their approved site security plans, according to ISCD officials. DHS officials stated they expect to finalize these procedures by the end of fiscal year 2018.

4. Mr. Currie, your written testimony discusses the need for DHS to better coordinate and share data with states and other federal agencies, such as EPA, to better identify facilities that had failed to report information to comply with CFATS. Based on GAO's

²GAO, *Critical Infrastructure Protection: DHS Action Needed to Verify Some Chemical Facility Information and Manage Compliance Process*, GAO-15-614 (Washington, D.C., July 22, 2015).

recent analysis of the CFATS program, is DHS doing a better job of working with state and other federal agencies?

As noted in my statement, DHS has taken action to better identify facilities that had failed to report information to comply with CFATS. Specifically, DHS compared DHS data with data from other federal agencies, such as EPA, as well as member states from the Chemical Facility Safety and Security Working Group to identify potentially noncompliant facilities. As a result of this effort, in July 2015, DHS officials reported that they had identified about 1,000 additional facilities that should have reported information to comply with CFATS and subsequently contacted these facilities to ensure compliance. DHS officials told us that they continue to engage with states to identify potentially non-compliant facilities.

- 5. Mr. Currie, you noted that DHS has made progress better assessing the risks at regulated facilities in order to place facilities in the appropriate risk tier. Would you please elaborate?**
- a. GAO previously recommended that DHS incorporate all elements of risk in its risk assessment approach. Based on GAO's most recent analysis, does GAO believe that DHS is incorporating all elements of risk?**
 - b. Does GAO have any initial feedback it can share regarding the model DHS developed with Sandia National Laboratories regarding the elimination of the economic consequences of a chemical attack?**
 - c. What about the model that DHS developed with Oak Ridge National Laboratory to devise a new tiering methodology?**

As noted in my statement, DHS has made progress towards addressing our recommendations that it enhance its risk assessment approach to incorporate all elements of risk and conduct a peer review after doing so, and we are currently assessing these actions as part of our ongoing work. For example, DHS worked with Sandia National Laboratories to develop a model to estimate the economic consequences of a chemical attack. In addition, DHS worked with Oak Ridge National Laboratory to devise a new tiering methodology, called the Second Generation Risk Engine. In so doing, DHS revised the CFATS threat, vulnerability, and consequence scoring methods to better cover the range of CFATS security issues. Additionally, DHS conducted peer reviews and technical reviews with government organizations and facility owners and operators, and worked with Sandia National Laboratories to verify and validate the new tiering approach. We are currently reviewing relevant technical reports, plans, and assessments describing changes made to revise DHS's risk assessment methodology as part of our ongoing work and will report on the results of this work later this summer.

- 6. Mr. Currie, your written testimony discusses the Expedited Approval Program that Congress in the CFATS Act of 2014 directed DHS to create as another option that tier 3 and tier 4 chemical facilities can use to develop and submit security plans. Your written testimony notes that only 8 of the 3,152 facilities eligible to use the Expedited Approval Program opted to use it. Could you walk through why GAO thinks that is?**

As noted in my statement, DHS officials we interviewed attributed the low participation to several possible factors including:

- DHS had implemented the expedited program after most eligible facilities already submitted standard (non-expedited) security plans to DHS;
- facilities may consider the expedited program's security measures to be too strict and prescriptive, not providing facilities the flexibility of the standard process; and
- the lack of an authorization inspection may discourage some facilities from using the expedited program because this inspection provides useful information about a facility's security.³

We also found in 2017 that recent changes made to the CFATS program could affect the future use of the expedited program.⁴ As discussed previously, DHS has revised its methodology for determining the level of each facility's security risk, which could affect a facility's eligibility to participate in the EAP. DHS continues to apply the revised methodology to facilities regulated under the CFATS program and but it is too early to assess the impact on participation in the EAP.

7. Mr. Currie, based on GAO's analysis of DHS's handling of compliance inspections and enforcement—Does GAO have any recommendations for DHS?

As noted in my statement, in our July 2015 report, we found that DHS began conducting compliance inspections in September 2013, and by April 2015, had conducted inspections of 83 of the 1,727 facilities that had approved security plans.⁵ We found, among other things, that DHS did not have documented processes and procedures for managing the compliance of facilities that had not implemented planned measures by the deadlines outlined in their plans. We recommended that DHS document processes and procedures for managing compliance to provide more reasonable assurance that facilities implement planned measures and address security gaps. DHS agreed and has taken steps toward implementing this recommendation. Specifically, DHS has updated its CFATS Enforcement Standard Operating Procedure (SOP). Also, DHS has made progress on the new CFATS Inspections SOP. DHS officials stated they expect to finalize these procedures by the end of fiscal year 2018. Once completed these two documents collectively are expected to formally document the processes and procedures currently being used to track noncompliant facilities and ensure they implement planned measures as outlined in their approved site security plans, according to ISCD officials. We are examining compliance inspections, including progress on the new inspection process, as part of our ongoing work and will report on the results of our work in our report later this summer.

a. What about the issuance of penalties as a method of ensuring compliance, has GAO recommended to DHS that they issue penalties?

With regard to penalties, our July 2015 report showed that nearly half of the 83 facilities that had undergone a compliance inspection at that time were not fully compliant with their approved site security plans and that DHS had not used its authority to issue penalties because DHS officials found it more productive to work with facilities to bring

³An authorization inspection consists of an initial, physical review of the facility to determine if the Top-Screen, security vulnerability assessment, and site security plan accurately represent and address the risks for the facility.

⁴GAO, *Critical Infrastructure Protection: DHS Has Implemented Its Chemical Security Expedited Approval Program, and Participation To Date Has Been Limited*, GAO-17-502 (Washington, D.C.: June 29, 2017).

⁵GAO-15-614.

them in compliance.⁶ We are examining compliance inspections and the use of penalties as part of our ongoing work and will report on the results of our work in our report later this summer.

- 8. Mr. Currie, in past oversight hearings regarding CFATS, we discussed that a systematic approach to soliciting feedback on DHS's outreach efforts would improve the CFATS program. Are you familiar with whether DHS has improved its approach to obtaining systematic feedback on its outreach activities to facility owners and operators?**

In our 2013 report, we recommended that DHS take action to solicit and document feedback on facility outreach consistent with DHS efforts to develop a strategic communication plan. DHS agreed and implemented this recommendation by developing a questionnaire to solicit feedback on outreach with industry stakeholders and began using the questionnaire in October 2016.⁷

- a. Your written testimony notes that DHS agreed to take action to solicit and document feedback from the regulated community—to your knowledge has DHS done this?**

As discussed above, DHS implemented this recommendation by developing a questionnaire to solicit feedback from the regulated community. According to ISCD officials, they intended to implement the questionnaire during various outreach engagements with stakeholders, including meetings and conferences, contact with ISCD's Knowledge Center, and during compliance assistance visits by ISCD inspectors.

- b. Your written testimony mentions a questionnaire to solicit feedback on outreach with industry stakeholders and notes that DHS began using the questionnaire in October 2016. Does GAO have any information regarding the effectiveness of the questionnaire?**

In early 2017, ISCD officials reported that they had begun to compile and analyze the data provided by stakeholders when using the questionnaire. However, we have not examined DHS's efforts to implement the questionnaire or the results associated with the data provided by stakeholders.

- 9. One of the questions I have is how does Congress objectively know whether the CFATS program has over time been increasing security at regulated facilities.**

- a. Can you tell me, from an objective standpoint, whether the CFATS program has increased security at regulated facilities?**

In our July 2015 report, we found that DHS's performance measure for the Chemical Facility Anti-Terrorism Standards (CFATS) program, which was intended to reflect the overall impact of the CFATS regulation on facility security, did not solely capture security

⁶GAO-15-614.

⁷GAO-13-353.

measures that were implemented by facilities and verified by ISCD.⁸ Instead, the performance measure reflected both existing security measures and planned security measures that facilities intended to implement within the fiscal year. We recommended that the Director of ISCD improve the measurement and reporting of the CFATS program performance by developing a performance measure that includes only planned measures that have been implemented and verified. In December 2015, ISCD finalized its fiscal year 2016 annual operating plan that included verification requirements for the performance measure. Specifically, the new requirement requires that ISCD officials verify that planned measures have been implemented in accordance with the approved site security plan (or alternative security program) by compliance inspection other means before inclusion in the performance measure calculation. ISCD's actions to improve the performance measure verification are consistent with our recommendation. We are examining DHS effort to measure program performance as part of our ongoing work and will report on the results of our work in our report later this summer.

b. Can you give me some practical examples, including incidents prevented or security risks avoided?

We have not specifically examined examples of incidents prevented or security risks avoided, if any. However, we are examining DHS effort to measure program performance as part of our ongoing work and will report on the results of our work in our report later this summer.

c. What types of security metrics are critical to this objective evaluation?

In our July 2015 report, we stated that the National Infrastructure Protection Plan calls for evaluating the effectiveness of risk management efforts by collecting performance data to assess progress in achieving identified outputs and outcomes. In addition, the purpose of CFATS, as stated in its regulation, is to enhance national security by furthering DHS's mission and lowering the risk posed by certain chemical facilities. Measuring the effectiveness of the CFATS program requires that facilities implement planned security measures identified as necessary to address vulnerabilities and that DHS evaluate implementation of these measures against CFATS performance standards.

However, we further reported that, because ISCD's performance measure at that time reflected both existing security measures that had not necessarily been implemented in response to CFATS and planned security measures that had not yet been verified as implemented, ISCD's performance measure did not reflect the value of the CFATS program and its impact on reducing risk at facilities, as stated in performance reports.⁹ We stated that, as the CFATS program matures and ISCD conducts compliance inspections in greater numbers, revising current performance measures or adding new ones to accurately reflect only security measures that have been implemented and verified would help provide a more accurate picture of ISCD's progress and help ISCD ensure that the program is meeting its goals.

⁸GAO-15-614.

⁹GAO-15-614.

We are examining DHS effort to measure program performance as part of our ongoing work and will report on the results of our work in our report later this summer.

10. Not every member of a Local Emergency Planning Committee (LEPC) is a first responder or local elected official. In fact, Section 301(c) of the Emergency Planning and Community Right to Know Act (EPCRA) mandates other parties, including the media constitute minimum composition of the LEPC. Section 2103 of the Homeland Security Act provides first responders and local elected officials' access to relevant chemical vulnerability information to respond to incidents.

a. Do you think non-first responders and non-elected officials should be entitled access to CVI? If so, who and why?

We have not examined who should and who should not be provided access to CVI.

b. Do you think CVI training should be a pre-requisite to anyone seeking CVI? If so, why?

We have not examined the training requirements associated with gaining CVI access.