Question#:	1
Topic:	Drinking Water Facility Attack
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable Janice D. Schakowsky
Committee:	ENERGY & COMMERCE (HOUSE)

Question: In 1998, pursuant to Presidential Decision Directive 63 on Critical Infrastructure Protection, the Environmental Protection Agency (EPA) has served as the designated agency for the water supply sector.

In 2000, EPA established a partnership with the Association of Metropolitan Water Agencies (AMWA) and American Water Works Association (AWWA) to jointly undertake measures to safeguard water supplies from terrorist acts. AWWA's Research Foundation contracted with the Department of Energy's Sandia National Laboratory to develop a vulnerability assessment tool for water systems (as an extension of methodology for assessing federal dams). EPA supported a project with the Sandia Lab to pilot test the physical vulnerability assessment tool and develop a cyber vulnerability assessment tool. This effort took on added importance after September 11, 2001.

On June 12, 2002, President George W. Bush signed into Public Law 107-188, the Public Health Security and Bioterrorism Prevention and Preparedness Act. Title IV of this Act established requirements on drinking water systems to conduct vulnerability assessments and create emergency response plans to prevent intentional acts to introduce biological, chemical, or radiological contamination into public water supplies. An Information Sharing and Analysis Center supported by an EPA grant became operational under AMWA's leadership in December 2002, allowing for dissemination of alerts to drinking water utilities about potential threats or vulnerabilities to the integrity of their operations that have been detected and viable resolutions to problems.

On December 17, 2003, President George W. Bush issued Homeland Security Presidential Directive 7. This directive, issued 11 months after the creation of the Department of Homeland Security (DHS) and 22 months after DHS's predecessor, the Office of Homeland Security, established EPA as the Sector Specific Agency for drinking water systems because this sector possessed "unique characteristics and operating models." Subsequent presidential directives have affirmed this designation and responsibility for the security of the sector, including the latest one, Presidential Policy Directive 21 from February 12, 2013, relating to Critical Infrastructure and Resilience.

When Congress, in 2006, established the Chemical Facility Anti-Terrorism Standards (CFATS) program in section 550 of Public Law 109-295, Congress recognized this would be the first regulatory authority DHS would be given on its own - rather than inherit from legacy agencies - and that CFATS should not cover security at facilities already subject to another regime. In the case of drinking water, Congress not only

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understood that facilities were subject to Title IV of Public Law 107-188, but that chemicals were an integral part of disinfecting pathogens and the public health dimension of drinking water made a chemical control program - focused on only the security dimension of the plant -- an ill-suited replacement for the needs of this sector. For this reason, Congress has routinely rejected calls to make drinking water systems subject to CFATS or substitute DHS for EPA as the sector specific lead.

Has there been a successful terrorist attack at a drinking water facility with EPA as the lead agency for this sector?

Is EPA incapable of carrying out congressional or executive branch requirements?

Response: The EPA has consistently demonstrated a robust capability to carry out congressional and executive branch requirements. To date, no successful physical terrorist attacks have been executed on drinking water facilities in the United States. However, EPA and DHS have established that water and wastewater systems in the United States are vulnerable to terrorist attacks, and the methods, means, and capabilities to carry out such attacks are readily available. Further, terrorist attacks on drinking water systems in foreign countries have been reported, including the use of techniques that could be applicable to drinking water systems in the United States. DHS and the EPA would be glad to provide additional information in response to this question in a classified briefing.

Question#:	2
Topic:	CFATS Expansion
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Past Subcommittee hearings have demonstrated how DHS has struggled with getting CFATS up and running since its inception in 2006. Currently, DHS regulates 3,556 facilities under CFATS. Adding just those drinking water utilities serving more than 10,000 persons would more than double CFATS's coverage universe by more than 4,100.

Please state how DHS would manage a CFATS program of nearly double its size that has public health and engineering questions that must be managed daily?

Response: The Department recommends a joint DHS-EPA gap analysis study to examine this issue and to inform any future congressional consideration of the prospect of changing the statute to remove the current exclusion of public water systems and treatment works. *See* 33 USC 1292 and 42 USC 300f. If, upon conclusion of the study, Congress amends the statute and no longer exempts water systems and treatment work facilities from CFATS requirements, then the number of facilities that must report their holdings of chemicals of interest would increase; however, the size of the population required to report their chemical holdings would depend on any parameters set in the statute.

DHS and EPA would work together to implement CFATS requirements for water and wastewater systems recognizing the critical role of these systems for public health protection.

Question: How long would DHS need to ramp up to be in technically proficient enough to competently execute security reviews and inspections at these unique facilities under CFATS?

Response: As stated above, the Department and EPA recommend a joint gap analysis study to examine this issue and to inform any future congressional consideration on the prospect of changing the statute to remove the current exclusion of public water systems and treatment works. CFATS is a highly flexible, non-prescriptive regulation that is being effectively applied to a wide variety of facilities possessing chemicals of interest. The Risk-Based Performance Standards allow for security plans to be tailored to a facility's unique circumstances, and chemical security inspectors are trained to provide compliance assistance to facilities as they develop those security plans.

Question#:	2
Topic:	CFATS Expansion
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

DHS and EPA would work together to determine the best way to implement CFATS requirements for water and wastewater systems while minimizing start-up time.

Question: Recognizing that - due to practical and policy considerations -- previous presidential directives and congressional enactments have consistently placed the lead for drinking water system security with EPA and DHS providing support to EPA, please state why that was the wrong position for those administrations and congresses to take?

Response: The Department has no reason to question previous presidential directives or Congressional enactments. As stated above, the Department and EPA recommend a joint gap analysis study to examine this issue and to inform any future congressional exclusion of public water systems and treatment works. If CFATS were extended to water and wastewater systems, DHS and EPA would work together to implement CFATS requirements for those systems recognizing their critical role for public health protection.

Question#:	3
Topic:	CFATS Tiering
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Is CFATS tiering objective if DHS personnel can override it?

Response: DHS has invested significant time and expertise in developing a scientifically-supported approach to calculating facilities' risk as a function of terrorist threat, inherent vulnerabilities, and the potential consequences of a terrorist attack. The approach was the result of three years of work by DHS risk experts, developed in coordination with industry and government partners. A panel of external experts reviewed the methodology, and it was independently verified and validated by Sandia National Laboratories.

DHS is committed to ensuring that the data used in the methodology is accurate and complete in order to form the best possible assessment of risk. Experts review the data entered by a facility on its Top-Screen, which is used in the tiering determination, for quality assurance. Additionally, if there are inconsistencies or questions about the data used in the tiering methodology, DHS works with facilities to ensure that all data is accurate and complete.

Question#:	4
Topic:	New Methodology
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Mr. Wulf, your written testimony notes that all facilities with holdings of chemicals of interest have been asked to resubmit information to inform a risk-assessment using the new methodology. Has the tiering for any of these facilities changed because of the new methodology?

Response: The improved risk methodology considers a facility's consequence, vulnerability, and threat in its high-risk determination. The methodology has several new components within each of the elements of risk which resulted in some facilities seeing a change in their tiering results. Changes at previously high-risk facilities are set forth below:

- Approximately 36% of the previous high-risk population remained at the same tier. For example, a tier 2 facility that remained a tier 2.
- Approximately 48% of the previous high-risk population moved from one high-risk tier to another high-risk tier. For example, a tier 2 facility that became a tier 3.
- Approximately 15% of the previous high-risk population has been determined not to be high-risk. For example, a tier 4 facility that is no longer tiered.

Finally, approximately 4% of the previous not-high-risk population (approximately 24,000) have been determined to be high-risk (e.g. a previously-untiered facility that is now a tier 4).1

These percentages are very similar to the projections DHS briefed to industry in April 2017.

Question: What has been the reaction by the regulated stakeholders to the new methodology?

Response: The response from industry has been overwhelmingly positive. Industry representatives have expressed appreciation for the more-streamlined and user-friendly tools and for the transparency in the new tiering methodology. When questions have

[1] Note: The first three numbers – 36%, 48%, and 15% – add up to 99% due to rounding. This represents the entirety of the high-risk population prior to the enhanced methodology. The fourth number – 4% – should not be added to this calculation, as it represents 4% of a separate population--facilities that were previously not high-risk.

Question#:	4
Topic:	New Methodology
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

been raised by industry, DHS has offered technical consultations or in-person compliance assistance visits to resolve any concerns.

Question#:	5
Topic:	Appendix A Chemical Security
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Over the last 11 years, how has CFATS impacted the security of Appendix A chemicals at facilities containing them above threshold levels?

Response: In order to comply with CFATS and the Risk-Based Performance Standards (RBPS), high-risk facilities have implemented tens of thousands of security measures to enhance the security surrounding their chemicals of interest. DHS has determined that 75% of facilities have implemented, at a minimum, one enhancement to their security in order to satisfy the RBPS. These enhancements include measures such as:

- Detection measures – Facilities have added intrusion detection systems, cameras or personnel-based monitoring to their perimeter and/or storage locations for the chemicals of interest.
- Delay measures – Facilities have added layers of delay measures through locked cages, buildings, or rooms in order to create additional barriers of protection and reduce the number of individuals which have access to the chemicals of interest.
- Personnel Surety – Facilities are conducting background investigations on all individuals with access to the chemicals of interest and, as applicable, are implementing escort procedures for visitors.
- Training – Facilities have developed and are conducting security awareness training, drills, and/or exercises related to potential threats and attack scenarios.
- Response – Facilities have developed and are implementing security response plans and coordinate regular/recurring outreach with local law enforcement and first responders.

Question#:	6
Topic:	Personnel Surety
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: As you know, personnel surety is an issue that never seems to go away. Your testimony mentioned that DHS is preparing to address personnel surety for Tier 3 and 4 sites. Recognizing that Tier 3 and 4 sites do not pose as high a risk as Tier 1 and 2 sites - suggesting they need a littler touch - how is DHS applying this principle in thinking about PSP regulations at Tier 3 and 4 sites?

Response: Tier 3 and 4 facilities are still considered high-risk, and an attack on them or using their chemicals of interest could cause significant loss of life. DHS believes that due to these facilities' risk levels they should be required to implement all applicable Risk-Based Performance Standards, including RBPS 12(iv) – screening for terrorist ties. All high-risk facilities with approved site security plans are currently implementing2 the other portions of RBPS 12—checks on identity, legal authorization to work, and criminal history. RBPS-12(iv), however, known as the CFATS Personnel Surety Program, has been implemented only at Tier 1 and Tier 2 facilities. Since December 2015, DHS has been collecting best practices and lessons learned from deploying the Personnel Surety Program to Tier 1 and 2 facilities and is ready to implement the program at all high-risk chemical facilities.

The Department is in the process of requesting approval, through the Paperwork Reduction Act (PRA) process, to collect information about individuals with/or seeking access to high-risk chemical facilities for all four Tiers by August 2018. In anticipation of this request, the Department published a 60-day notice in December of 2017 and a 30-day notice in June 2018.

Consistent with other performance standards, the Department places a priority on affording facilities flexibility in how they tailor their security plans to comply with RBPS 12(iv). While other RBPS—such as those focused on delaying and detecting terrorist attacks—are scalable based on a facility's tier, there is no comparable way to scale the conduct of terrorist-ties checks that are designed to address insider threat. Nonetheless, DHS affords facilities four options from which a facility may choose to satisfy the personnel surety requirement.

- Option 1: Direct vetting, via the Chemical Security Assessment Tool (CSAT) Personnel Surety Program application

[2] IN this case implementing could also include having a planned measure in place.

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- Option 2: Leveraging vetting conducted under other credential programs, which allows for submission of other credential information via the CSAT Personnel Surety Program application;
- Option 3: Electronic Verification of a Transportation Worker Identification Credential (TWIC), using a TWIC reader
- Option 4: Visual verification of credentials.

Facilities also are invited to propose other options to ensure screening of terrorist ties for facility personnel and unescorted visitors. It also bears noting that facilities can decide to restrict access to critical assets completely for some facility personnel or require escorts for visitors in order to reduce the number of individuals required to be vetted. The Department plans to provide additional resources and assistance to Tier 3 and 4 facilities based on the lessons learned to date and plans also to continue allowing facilities to avail themselves of multiple options. Accordingly, and in view of the continuing threat of chemical terrorism, we believe it is appropriate to extend the Personnel Surety Program to high-risk facilities in Tiers 3 and 4.

Question#:	7
Topic:	Precursor Chemical Gaps
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: You were asked, due to existing regulations but the Bureau of Alcohol Tobacco and Firearms and the Department of Transportation, about whether a statutory exemption from CFATS was warranted for facilities manufacturing explosives. You stated that there was a great deal of overlap between ATF and CFATS, but that you would be concerned that gaps would exist for precursor chemicals if such a statutory exemption was granted by Congress.

Under Section 3(d) of Executive Order 13777, DHS was required to identify regulations that could be modified to reduce unnecessary regulatory burden, including instances of duplication. In addition, CFATS gives DHS the ability to permit compliance with approved alternate security programs to satisfy some or all CFATS requirements.

Has DHS taken action pursuant to Executive Order 13777 or under Alternate Security Program provisions in the Homeland Security Act to eliminate the duplication between CFATS and ATF while at the same time permit CFATS to cover articulated gaps in law for precursor chemicals? If not, why not?

Response: While I did state that there is some overlap between ATF's requirements and CFATS, it would be an overstatement to say that there is a great deal of overlap. Both ATF and DHS have the authority to regulate facilities that possess explosive materials, but there are notable differences between the programs. The CFATS reporting requirements apply to facilities with holdings of screening threshold quantities of Chemicals of Interest as set forth in the CFATS regulation; however, only those facilities that are subsequently assessed as high-risk are required to implement security plans addressing the 18 CFATS risk-based performance standards. ATF regulations require both safety and security measures, to include requirements related to the conduct of inventories, the reporting of thefts/losses, and magazine-locking standards. CFATS facilities are encouraged to include the applicable security and safety measures they have in place, such as those implemented due to ATF regulation, in their CFATS site security plan or alternative security program. Because coverage under the CFATS regulation applies only to the highest-risk chemical facilities, DHS feels it is appropriate that the monitoring and detection standards required of high-risk facilities are more robust than those required under the ATF regulations that apply to all persons who store these materials.

Question#:	7
Topic:	Precursor Chemical Gaps
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable John M. Shimkus
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DHS is concerned that a wholesale exclusion from CFATS for facilities that are regulated by ATF would leave a security gap with regard to precursor chemicals that exist at those sites. ATF regulations apply to materials whose primary or common purpose is to function by explosion. ATF does not regulate Improvised Explosive Device (IED) precursor chemicals, such as ammonium nitrate. CFATS does apply to these IED precursor chemicals. They are often stored on the same site, but have no security or safe-storage requirements under ATF regulations.

There are very few high-risk CFATS facilities that are covered only for explosive materials regulated by ATF; the majority that have been determined to be high risk for explosives are considered high-risk in part because of their holdings of other chemicals of interest that are not regulated by ATF.

Appendix A to the CFATS regulation is the list of chemicals, concentrations, and quantities that must be reported to DHS. In order to add, remove, or modify a chemical of interest on Appendix A, DHS would be required to go through rulemaking

Question#:	8
Topic:	Appendix A List Modifications
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable Paul Tonko
Committee:	ENERGY & COMMERCE (HOUSE)

Question: What is the current process to add, remove, or modify a chemical of interest on the Appendix A list?

Response: In order to add, remove, or modify a chemical of interest (COI) on Appendix A, DHS is required to go through notice-and-comment rulemaking. This process would provide industry and the public with the ability to comment on any proposed changes to Appendix A prior to additions, removals or modifications becoming final.

Question: How many chemicals of interest have been added, removed, and modified on the Appendix A list in each year since the program's creation?

Response: To date, DHS has not revised Appendix A since its publication on November 20, 2007. See 72 FR 65396.

Question#:	9
Topic:	Drinking and Waste Water Facility Security
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable Paul Tonko
Committee:	ENERGY & COMMERCE (HOUSE)

Question: There are very different security and regulatory regimes at nuclear facilities, federal facilities, and other sites that received exemptions. But in the past, DHS has expressed concerns over the gaps created by these exemptions. A number of years ago, DHS testified that the administration's position to support closing security gap at drinking water facilities, is that still the administration's position?

Response: As noted above, the Department and EPA recommend a joint gap analysis study to examine this issue and to inform any future congressional decision-making with regard to the prospect of changing or removing the current exclusion of public water systems and treatment works.

Question: Does the administration still support maintaining EPA as the lead agency for drinking water and waste water facility security with the DHS supporting EPA's efforts?

Response: As stated above, the Department and EPA recommend a joint gap analysis study to examine this issue and to inform any future congressional decision-making with regard to the prospect of changing or removing the current exclusion of public water systems and treatment works.

Should Congress revoke the exclusion, DHS and EPA would work together to determine the best way to implement the CFATS program for water and wastewater systems recognizing the critical role of these systems for public health protection.

Question#:	10
Topic:	Secure Power Supply
Hearing:	The Chemical Facilities Anti-Terrorism Standards Program (CFATS) - A Progress Report
Primary:	The Honorable Diana DeGette
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Does DHS have specific recommendations for providing a secure power supply under CFATS?

Response: Because CFATS is a non-prescriptive program and based on risk-based performance standards (RBPS), DHS does not provide specific recommendations. However, under RBPS 10 (Monitoring) facilities are required to implement security measures to:

i. Ensure that security systems and equipment are in good working order and inspected, tested, calibrated and otherwise maintained;

ii. Regularly test security systems, note deficiencies, correct detected deficiencies and record results; and

iii. Promptly identify and respond to security system and equipment failures or malfunctions.

Therefore under this RBPS, DHS ensures facilities have appropriate temporary or compensatory measures for system outages and failures—for instance measures that may include a secure power supply or backup power supply.