



Written Testimony

of

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On the Environment

Regarding

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Introduction

Chairman Shimkus, Ranking Member Tonko, Members of the subcommittee,

I appreciate the opportunity to appear before you today to discuss the development and maturation of the Department of Homeland Security's (DHS) regulation of high-risk chemical facilities under the Chemical Facility Anti-Terrorism Standards (CFATS) Program.

Threat Landscape

Chemicals are vital to our way of life, to include a strong economy. They are used to develop medicines that maintain our health, provide refrigeration for our food supply, manufacture fuel for our vehicles and build the microchips that run our smartphones. Despite these benefits, the use of chemicals does not come without risk.

The CFATS Program was born out of the recognition that, though we had worked hard to strengthen our homeland security in the aftermath of the September 11, 2001 attacks, the Nation continued to face very real threats. In particular, it was noted by Congress that in the hands of terrorists or others seeking to do us harm, chemicals can cause death and mass casualties. Moreover, Congress noted that security gaps at chemical facilities had left our Nation vulnerable to the illicit acquisition and use of chemicals in attacks. It was this recognition that led Congress to establish the CFATS Program under Section 550 of the Homeland Security Appropriations Act for Fiscal Year 2007.

As we are all too aware, we live in a dynamic threat environment and the threat of a terrorist attack using chemicals is as real and relevant today as it was when CFATS was first created. We continue to see potential adversaries around the world seeking out and using in attacks such chemicals that are regulated under CFATS. We need look no further than to the

continuing threat streams, the intelligence community assessments, and incidents in Belgium, Syria, France, and the United Kingdom, to know that this is not a time to stop addressing the security threat posed by chemicals.

The CFATS Program is a vital part of our Nation's counterterrorism efforts as we work with industry stakeholders to keep dangerous chemicals out of the hands of those who wish to do us harm. Since the CFATS Program was created, we have engaged with industry to identify and regulate chemical facilities that are at the highest risk of terrorist attack or exploitation and to ensure that these facilities have security measures in place to reduce the risks associated with the possession of chemicals. As a result of implementation of the CFATS Program, the level of security across the chemical industry has significantly increased, not only making a successful attack on a chemical facility more difficult, but also serving as a significant deterrent to adversaries who might seek to attack facilities or acquire chemicals for use in an offsite terrorist attack.

CFATS Act of 2014 Afforded Stability and Certainty

In December 2014, Congress passed the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014* (CFATS Act of 2014). This statute, which enjoyed strong stakeholder support, brought stability for both the Department and the regulated community and provided stakeholders with confidence in the program's future. Until the passage of that legislation and its four-year authorization, the program had been authorized through appropriations legislation--from fiscal year to fiscal year (or even more challenging, from continuing resolution to continuing resolution). Subjecting this important anti-terrorism program to the vicissitudes of the appropriations process put our

nation at risk, as evidenced by the funding lapse in October 2013. During this lapse, not only did the programmatic activities of CFATS cease, its authorization also expired. This gap caused many facilities to question whether the program's provisions were still in effect and the Department to question whether it had the authority to take enforcement action had there been an exigent need or imminent threat. Enacting a multi-year CFATS authorization as Congress did in 2014 marked an important turning point for the program.

Among other things, it:

- Provided industry stakeholders with the certainty they needed to plan for and invest in CFATS-related security measures to harden their critical sites against possible terrorist attack or exploitation;
- Afforded the stability needed to enable the Department to make programmatic improvements as well as strategic, long-term planning decisions regarding staffing, program development, and process efficiency; and
- Sent a clear message to potentially-covered facilities storing and utilizing threshold quantities of dangerous chemicals that the CFATS Program is here to stay.

With long-term authorization, chemical facilities have become further incentivized to engage with the Department with regard to facility security. Returning to the instability of short-term renewal of CFATS would represent a significant step backwards for the Nation's chemical security efforts, inhibit long-term planning, and undermine stakeholder confidence in the longevity of the program.

CFATS Program Overview

The cornerstone of the CFATS Program is the development, submission, and implementation of Site Security Plans (SSPs), or Alternative Security Programs in lieu of SSPs that document the security measures that high-risk chemical facilities utilize to satisfy the applicable Risk-Based Performance Standards (RBPS) under CFATS. Due to the diversity of facilities that hold chemicals of interest, it is important to note that these plans are not “one-size-fits-all,” but are in-depth, highly customized, and account for each facility’s unique circumstances and risks.

In order to determine whether a facility is covered under CFATS, the facility submits a Top-Screen to the Department’s Infrastructure Security Compliance Division within the National Programs and Protection Directorate’s Office of Infrastructure Protection. Since we began collecting this information in 2007, more than 40,000 facilities have reported chemical holdings. Based on the information received in the Top-Screens, DHS determines which facilities are at high-risk of terrorist attack or exploitation and assigns each of these to a tier.

Facilities determined to be high-risk must submit a Security Vulnerability Assessment (SVA) and SSP or Alternative Security Program to DHS for approval. The plan must include security measures that address the 18 RBPS established by DHS. The Department performs an authorization inspection at the facility prior to granting a security plan approval to ensure that the measures contained in the security plan are appropriate given the facility’s specific security issues and unique characteristics. CFATS has been established as a non-prescriptive regulatory framework, which means that a chemical facility has flexibility to work with DHS to negotiate security measures that are uniquely tailored to the circumstances of the individual facility. This makes CFATS particularly well-suited to addressing the diversity of the universe

of covered chemical facilities—which includes not only traditional chemical manufacturers and distributors, but oil refineries, semiconductor-fabrication plants, and university labs, among many others. Once a facility’s plan is approved, DHS conducts regular compliance inspections to verify that the facility is implementing the agreed-upon security measures.

Accomplishments Since the CFATS Act of 2014

Due in large part to the stability afforded by passage of the CFATS Act of 2014, I am happy to report today that much has been accomplished in the past four years and that our program continues to make significant forward progress. Through the collective efforts of our dedicated Federal workforce, industry and other stakeholders, and the leadership of Congress, the CFATS program has matured significantly in this time and is poised to continue this progress in the coming years.

Clearing the SSP Backlog and Moving into “Steady-State”

In July 2016, after more than 6,000 inspections and Compliance Assistance Visits, and review of nearly 3,000 SSPs; I approved an SSP which marked a milestone for the CFATS program. This approval, after three years of concerted effort to move the CFATS program forward, effectively eliminated the backlog of SSP reviews six years ahead of GAO projections.

With this achievement, we transitioned from “start up” to a more mature “steady-state” posture, and are now able to more fully focus on conducting compliance inspections and building a stronger culture of security. Whereas previously our inspections were overwhelmingly of the pre-approval Authorization Inspection variety, now the majority of the inspections we are conducting are post-security plan-approval Compliance Inspections (CI). To illustrate how far

we have come in this regard, at the end of fiscal year 2013, the Department had completed only one compliance inspection. Since that time, the Department has conducted 3,552 compliance inspections. I'm pleased to note that, nearly across the board, the results of these inspections have been positive. Facilities across the nation are effectively executing their comprehensive CFATS SSPs. Where issues have been identified during inspections, they have nearly always been quickly remedied; where needed, however, we have utilized our enforcement authorities to incentivize compliance.

Enhanced Risk Tiering Methodology and Chemical Security Assessment Tool (CSAT)

Version 2.0

In the fall of 2016, the Department launched an enhanced risk-assessment and tiering methodology that more-fully accounts for all elements of risk and addresses statutory requirements laid out in the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014*. The result of three years of work by DHS risk experts, the methodology has benefited from and has been informed by analysis and input from panels of external experts from industry, government, and academia. Sandia National Laboratories has also performed an independent validation.

The enhanced tiering methodology uses a scientifically-supported approach to calculate each facility's risk as a function of information related to terrorist threat, the facility's inherent vulnerabilities, and the potential consequences of a terrorist attack. Enhancements include the addition of physics-based models for chemicals that are susceptible to being taken offsite and used in an attack, updates to the threat model informed by intelligence, and improvements to the

population modeling for release facilities. We believe that these changes make this methodology a more accurate reflection of a facility's risk.

All facilities with holdings of chemicals of interest have been asked to resubmit information to inform a risk-assessment using the new methodology. To date, nearly all 28,000 facilities that had previously reported holdings of chemicals of interest at or above the screening threshold quantity have submitted a revised Top-Screen. All Top-Screens receive an eyes-on quality assurance review to ensure the data reported makes sense for the type of chemical and facility reporting. In cases in which there are concerns with the data reported, the Infrastructure Security Compliance Division contacts the facility for clarifications. When necessary, the facility is asked to make corrections to appropriately reflect the data.

The Department began issuing tiering determination letters using the enhanced methodology on April 4, 2017. We anticipate that we will have tiered the entire current population of chemical facilities of interest using the new methodology by October 2018. Having received almost nearly all revised Top-Screens and having completed analysis on those facilities, we have seen a shift in the populations as follows:

- All facilities that were high-risk (Tier 1-4) have been notified of their revised tier.
- Approximately 36% of the previous high-risk population has remained at the same risk tier.
- Approximately 48% of the previous high-risk population has moved from one tier to another tier.
- Approximately 15% of the previous high-risk population has been determined not to be high-risk.

- Approximately 4% of the previous not high-risk population has been determined to be high-risk.

In concert with this re-tiering effort, the Department also deployed CSAT 2.0, a streamlined, user-friendly update to its online portal and Top-Screen, SVA, and SSP suite of online reporting tools. The CSAT 2.0 Top-Screen collects the data necessary to process facilities through the enhanced tiering engine and improves the integration between the CSAT SVA application and the CSAT SSP application, which has resulted in a dramatically simplified experience for facilities submitting Top-Screens, SVAs, and SSPs.

As an example, under the previous format, completing a Top-Screen was estimated to take just over 11 hours. The current format has reduced that to just six hours. In addition, building upon lessons learned over the life of the program, the Department eliminated duplication and reduced the number of questions on the SVA and SSP questionnaires by more than half.

Personnel Surety Program

Vetting individuals who have access to chemicals of interest and other sensitive parts of high-risk chemical facilities is a key aspect of facility security. Under RBPS 12, Personnel Surety, facilities must implement (1) measures to verify and validate identity, (2) check criminal history, (3) validate legal authorization to work in the United States, and (4) identify individuals with terrorist ties. While all tier 1 through 4 facilities have been implementing the first three elements of RPBS 12, the Department began working with tier 1 and tier 2 facilities to implement the fourth element in December 2015 after the Office of Management and Budget

approved the Department's Information Collection Request for the CFATS Personnel Surety Program (RPBS 12(iv)).

This approval closed a critical gap by allowing facilities in these two tiers to submit names to DHS for vetting individuals' potential terrorist ties. Going forward, the Department is planning on expanding its implementation to tiers 3 and 4. The Department is in the process of requesting approval, through the Paperwork Reduction Act process, to collect information about individuals who have or who are seeking access to high-risk chemical facilities for all four tiers. In anticipation of this request, the Department published a 60-day notice in December of 2017 and will be publishing a 30-day notice soon.

Extensive Stakeholder Engagement

Recognizing that chemical security is a shared responsibility, we continue to prioritize outreach to various stakeholder communities—including relevant industries and organizations, but also with a specific emphasis on first responders and emergency managers with the aim of ensuring that information is flowing to those who have a need to know about high-risk chemical facilities in their jurisdictions. By the end of fiscal year 2017, DHS had conducted outreach with more than 1,200 state and local offices and 1,400 Local/Tribal Emergency Planning Committees (LEPCs/TEPCs) in all U.S. states and territories. Specifically, we reached nearly all State Homeland Security Advisors (or their representatives), State Fire Marshals, and State Public Safety officials and we plan to continue these engagements on a recurring basis. Further, the Department regularly participates and presents at State Emergency Response Commission meetings, Area Maritime Security Meetings, and HAZMAT conferences.

The Department prioritizes engagement with LEPCs based on the existence of CFATS covered facilities in their counties as well as their level of activity. Further, we work to build relationships with less-robust LEPCs/TEPCs to create future opportunities for providing presentations/briefings on CFATS-program requirements and resources.

Also, outreach to first responders is incorporated into the development of site security plans through Risk Based Performance Standard 9 (RBPS 9) - Response. This standard requires covered facilities to have a documented, comprehensive crisis management plan that details how the facility will respond to security incidents and requires that the facility run exercises and drills—and make contact with local first-responders--to improve its ability to implement these provisions. DHS verifies this outreach during on-site compliance inspections. In many instances, the Department has facilitated contact between the first responders and the facilities.

The Road Ahead and Reauthorization

Four years ago, in my testimony at CFATS-focused hearings, I outlined the improvements we had made and assured the Congress that we would move forward strategically and aggressively to address the challenges that remained. Today, I am proud to say that we have made good on that assurance. The CFATS universe is as diverse as the world of regulated chemicals. The program's non-prescriptive, flexible design allows each regulated facility to customize security measures, while also meeting the required risk based performance standards. Through CFATS and the hard work of our industry stakeholders who continue to harden America's highest-risk chemical facilities, we have collectively accomplished much since 2014.

This progress would not have been possible without the stability and certainty afforded by enactment of the CFATS Act of 2014.

Long term reauthorization will allow the Department and the chemical security community to continue to work together to secure the Nation's chemicals and keep them out of the hands of terrorists. The Department will be able to continue to focus on pursuing more efficient ways to implement the program, to include the enhancement of existing materials and tools, while industry will have the confidence to continue to make important investments in security.

Chemical security is very much a pressing need and must remain a continuing high priority for the nation in view of the threat environment. The CFATS program has positioned the United States as world-leaders in building the culture of security necessary to secure our nation's highest-risk chemical facilities. I look forward to working with this Committee to chart a path towards permanent reauthorization of this critical national security program, and I thank you in advance for your continuing leadership in this regard. I look forward to your questions.