

House Committee on Homeland Security,

Subcommittee on Cybersecurity and Infrastructure Protection

Hearing entitled “Industry Views of the Chemical Facility Anti-Terrorism Standards Program”

**Testimony of Chet Thompson, President and CEO, American Fuel & Petrochemical
Manufacturers**

February 15, 2018

The American Fuel & Petrochemical Manufacturers (AFPM) appreciates the opportunity to provide testimony on the Chemical Facility Anti-Terrorism Standards (CFATS) Program. AFPM is proud to represent 97 percent of the nation’s refining and petrochemical manufacturing capacity, including 118 refineries and 248 petrochemical manufacturing facilities in 33 states. Our members make the gasoline, diesel, jet fuel, and petrochemicals that make modern life possible. AFPM member companies meet the needs of our nation and local communities, strengthening economic and national security, and supporting more than 3 million U.S. jobs and adding \$568 billion each year to the U.S. economy.

America’s refining and petrochemical companies play an important role in ensuring and maintaining the security of America’s energy and petrochemical infrastructure. The safety and security of our member company employees, contractors, and surrounding communities are of the highest importance, and as a result our companies invest in some of the most advanced technologies, safety, and security practices in the world. The protection of critical infrastructure against potential threats is a shared responsibility between government and stakeholders that our members take seriously.

Despite well-documented early challenges with the CFATS program, the Department of Homeland Security (DHS) has made significant improvements to the program in the time since Congress reauthorized CFATS in 2014. In particular, the 2014 statute addressed major impediments to completing site security plans and streamlined the vetting process for facility access, updates that AFPM members supported. Most importantly, the four-year reauthorization provided industry with the certainty needed to make long-term facility security investments and enabled DHS to efficiently run the CFATS program and appropriately re-tier sites.

The strength of the CFATS program lies in its flexibility. No two facilities are alike, and so each of the approximately 4,000 facilities covered by the CFATS program will have different threat profiles and security needs. Additionally, the threat environment is always changing. As terrorists and other bad actors evolve their tactics, so must facilities adapt their security procedures. A command-and-control regulatory structure would not only add additional cost to complying with regulations, but will also likely lead to less security and increased risk.

With performance-based standards comes an increased need for cooperation. To that end, AFPM appreciates the long-standing cooperative relationship—spanning multiple administrations—with DHS and commends the professionalism of the DHS program offices. AFPM and its members have participated in multiple advisory groups within DHS, such as the Chemical Sector Security Council, the Oil and Natural Gas Sector Security Council, and were members of the Risk Tiering Methodology Working Group. These forums provide opportunities for shared learning and have proven extremely beneficial given the data driven nature of security risk assessment. For example, these forums helped DHS to develop robust, risk-based performance standards (RBPS) that avoid being too prescriptive for an industry as diverse in size and function as the chemical sector, but that also include strict enforcement penalties for noncompliance.

The current CFATS authorization will expire in January of 2019, providing both an impetus for action in 2018 and an opportunity to make modest improvements to the program. AFPM urges Congress to enact a multi-year reauthorization that retains the core elements of the 2014 legislation.

I. The 2014 CFATS Reauthorization Improved the Program

The CFATS program was originally authorized in the 2007 appropriations bill and gave DHS the imperative, but little statutory guidance, on how to establish the new security program. DHS eventually developed the top-screen program, tiering, and RBPS approach, but struggled to approve site security plans and ran into issues with both tiering and governance. The 2014 statutory changes helped DHS dramatically improve the program. Improvements included updates to risk assessments and the tiering methodology, the establishment of an Expedited Approval Program (EAP) for Tier 3 and 4 facilities, the reinforcement of coordination with state and local officials, and streamlining the vetting process through the Personnel Surety Program (PSP) for Tiers 1 and 2.

The structure of the CFATS framework is sound. AFPM supports the performance-based approach that has been applied to CFATS implementation and regulation, and believes this approach has worked well for facilities from a compliance and efficiency standpoint. As a result, major changes are not necessary.

The past four years have allowed covered facilities to develop an informed understanding of the implications of the 2014 statutory changes. This has provided AFPM members an opportunity to offer suggestions for assessing and reviewing the effectiveness of the changes made in the 2014 law.

Updated Risk Assessments and Tiering Methodology.

The 2014 Act directed DHS to develop a security risk assessment approach and corresponding tiering methodology for covered chemical facilities that take into consideration relevant threat

information, potential off-site consequences, and loss of human life. The re-tiering process began in early April 2017.

Updates made by the 2014 Act to the Chemical Security Assessment Tool (CSAT), required by the Office of Infrastructure Protection's Infrastructure Security Compliance Division (ISCD) for Top-Screen completion, made the CSAT 2.0 process more user friendly and less burdensome to facilities. The revised CSAT 2.0 process also does a more effective job of collecting relevant data while cutting out waste, making the process more efficient.

Streamlined Vetting Process through the Personnel Surety Program (PSP).

The 2014 statutory changes also streamlined the PSP vetting process for Tier 1 and 2 facilities. Under the current statute, the Program vets an individual against the terrorist screening database, eliminates duplicative applications, and provides redress if an individual believes their information submitted for screening is inaccurate.

While improvements to the vetting process for Tiers 1 and 2 were welcome, it should be noted that similar application to Tiers 3 and 4 is not necessary for lower risk facilities. DHS should pause before extending personnel surety to Tier 3 and 4 facilities until it has had time to evaluate the effectiveness of this requirement at Tier 1 and 2 facilities. Such evaluation by DHS should be based on available DHS data, and undertaken in a manner that shows an overwhelming need for an increased regulatory burden that would achieve demonstrable security results.

As such, AFPM urges lawmakers to clarify that Tier 3 and 4 facilities are exempt, or alternatively would welcome a GAO study on the value of expanding PSP to Tiers 3 and 4.

Expedited Approval Program (EAP).

The current statute also established an Expedited Approval Program (EAP) for chemical facilities that fall under Tiers 3 and 4. The EAP enables those facilities to move to an approved site security plan more quickly. AFPM supports the EAP program and recommends no further changes.

Coordination with State and Local Officials.

Updates in the 2014 statute reinforced better coordination with state and local officials to improve emergency management operations.

AFPM members also support the establishment of regional offices to improve further coordination between state and local officials. Establishing regional offices would mirror what other regulatory agencies have done and will provide DHS greater reach and understanding of regional sites. At the same time, AFPM cautions against overly-prescriptive or duplicative

programs. Policymakers must balance the need for sharing truly critical information with the risk associated with more individuals knowing potential sensitive security information. In addition, there are other statutes better suited for information coordination, including EPA’s Risk Management Plan program, that deal with community “right to know” policies. CFATS should remain focused on preventing terrorist attacks.

II. Recommendations for the 2018 CFATS Reauthorization

As policy development for a CFATS reauthorization bill gets underway, AFPM looks forward to continuing to work with lawmakers, stakeholders, and DHS. As Congress considers potential changes to the CFATS program, AFPM offers the following recommendations:

(1) Enact a multi-year, but not permanent, reauthorization.

AFPM urges Congress to pass another multi-year reauthorization bill that would provide industry with the continued certainty it needs to make long-term facility security investments. A multi-year reauthorization would enable DHS to efficiently run the CFATS program. However, given historic challenges with the program’s implementation, AFPM would recommend a sunset to allow Congress to address any needed changes at a future date.

(2) Protect the confidentiality of site security information.

Reauthorization legislation should not permit the disclosure of site security information to the general public, or anyone who does not have a need to know or the required security clearances to obtain such information. Facilities must protect sensitive information from individuals that might pose a threat to the facility’s employees or property. Sensitive information – such as security system designs, control system schematics, COI records, and tactical response information for emergency personnel – could threaten national security if it falls into the wrong hands.

(3) Promote transparency in any changes to Appendix A and Chemicals of Interest (COI).

A facility is considered a “covered facility” under CFATS if it is engaged in the manufacturing, storage, and distribution of COIs listed under Appendix A of CFATS. Currently, if DHS wants to modify Appendix A, it must undergo notice and comment rulemaking. AFPM encourages Congress to maintain this requirement.

Changes to COI, threshold quantities, and concentrations in Appendix A are critical decisions with broad applicability governing whether facilities are subject to CFATS and, in part, how they are tiered. Therefore, allowing changes to be made to Appendix A without going through notice and comment would greatly undermine transparency in the designation process and deprive DHS of potentially important information in its decision making. Any changes should be clearly based on risk, scientific data, and take into consideration current industry mitigation practices.

For these reasons Congress should ensure that proposed changes to Appendix A continue to be subject to the formal notice and comment rulemaking process.

Additionally, AFPM would support establishing an advisory council and subjecting chemicals in question under Appendix A to peer review. This would further enhance the transparency of the designation process and stakeholder engagement.

(4) Avoid major changes that will further hamper implementation of the CFATS program and divert resources to duplicative or otherwise wasteful policies.

DHS has made significant progress in implementing the CFATS program, but work remains. AFPM cautions against adding new and extraneous provisions that will slow or diminish the progress to date, including expansion of stakeholders involved in SSP development, resubmission of top-screen information untethered from a material change to a facility's profile, requirements for further credentials, or other related changes.

AFPM appreciates the opportunity to provide its views on CFATS, and looks forward to working with Congress and the Administration to reauthorizing this important program.

Testimony Summary for Chet Thompson, AFPM President and CEO

The 2014 CFATS Reauthorization Improved the Program and Major Changes are Unnecessary.

The statutory changes to CFATS passed by Congress in 2014 have helped DHS improve the program dramatically. These include updates to risk assessments and tiering methodology, the establishment of an Expedited Approval Program (EAP) for Tier 3 and 4 facilities, the reinforcement of coordination with state and local officials, and streamlining the vetting process through the Personnel Surety Program (PSP) for Tiers 1 and 2.

The structure of the CFATS framework itself is sound. AFPM supports the performance-based approach that has been applied to CFATS implementation and regulation, and believes this approach has worked well for facilities from a compliance and efficiency standpoint. As a result, major changes to the program are not necessary.

Policy Recommendations for the 2018 CFATS Reauthorization.

The 2014 CFATS reauthorization bill addressed a number of issues, including major impediments to completing site security plans and a streamlining of the vetting process for facility access. Most importantly, the four-year reauthorization provided industry with the certainty needed to make long-term facility security investments and enabled DHS to efficiently run the CFATS program.

As policy development for a CFATS reauthorization bill gets underway, AFPM looks forward to continuing to work with lawmakers, stakeholders, and DHS. As Congress considers potential changes to the CFATS program, AFPM offers the following recommendations:

(1) Enact a multi-year, but not permanent, reauthorization.

CFATS authorization expires in January 2019. Congress should pass another multi-year reauthorization bill, as this would provide industry with the continued certainty it needs to make long-term facility security investments. A multi-year reauthorization would also enable DHS to efficiently run the CFATS program. Additionally, AFPM would recommend a sunset to allow Congress to address any needed changes at a future date.

(2) Protect the confidentiality of site security information.

Reauthorization legislation should not permit the disclosure of site security information to the general public, or anyone who does not have a need to know or the required security clearances to obtain such information. Facilities must protect sensitive information from individuals that might pose a threat to the facility's employees or property. Sensitive information – such as security system designs, control system schematics, COI records, and

tactical response information for emergency personnel – could threaten national security if it falls into the wrong hands.

(3) Promote transparency in any changes to Appendix A and Chemicals of Interest (COI).

Currently, if DHS wants to modify Appendix A, it must undergo notice and comment rulemaking. AFPM encourages Congress to maintain this requirement.

Allowing changes to be made to Appendix A without going through notice and comment would greatly undermine transparency in the designation process and deprive DHS of potentially important information in its decision making. Congress should ensure that proposed changes to Appendix A continue to be subject to the formal notice and comment rulemaking process.

Additionally, AFPM would support establishing an advisory council and subjecting chemicals in question under Appendix A to peer review. This would further enhance the transparency of the designation process and stakeholder engagement.

(4) Avoid major changes that will further hamper implementation of the CFATS program and divert resources to duplicative or otherwise wasteful policies.

DHS has made significant progress in implementing the CFATS program, but the work is still ongoing. AFPM cautions against adding new and extraneous provisions that will slow or diminish the progress to date, including expansion of stakeholders involved in SSP development, resubmission of top-screen information untethered from a material change to a facility's profile, requirements for further credentials, or other related changes.