



The Committee on Energy and Commerce

Memorandum

March 12, 2013

To: Members, Subcommittee on Environment and the Economy

From: Committee Majority Staff

Subject: March 14, 2013 Hearing on the “Chemical Facility Anti-Terrorism Standards Program – A Progress Update “

On Thursday, March 14, 2013, the Subcommittee on Environment and the Economy will hold a hearing at 10:00 a.m. in room 2322 of the Rayburn House Office Building entitled “The Chemical Facility Anti-Terrorism Standards Program – A Progress Update.” This hearing continues the Subcommittee’s ongoing oversight efforts of March 31, 2011, February 3, 2012, and September 11, 2012. Witnesses are by invitation only. Additional witnesses may be announced.

The hearing will afford the Department of Homeland Security (DHS) the opportunity to update Members on the progress of the Chemical Facility Anti-Terrorism Standards (CFATS) Program in helping facilities attain each program milestone, and explain in detail how its risk assessment process compares in actual practice to the process set out in the National Infrastructure Protection Plan, with its own regulations, and with expectations of the regulated facility owners and operators. In addition, the hearing will also enable the Committee to gain the perspective of the Government Accountability Office, which has been conducting a performance audit of the CFATS program since October 2012, as well as the CFATS-regulated community on their experiences and suggestions for improvements to the CFATS program.

I. WITNESSES

Panel 1

The Honorable Rand Beers, Under Secretary, National Protection and Programs Directorate
U.S. Department of Homeland Security

David Wulf, Director, Infrastructure Security Compliance Division
U.S. Department of Homeland Security

Panel 2

Stephen L. Caldwell, Director, Homeland Security and Justice
Government Accountability Office

Panel 3

Bill Allmond, Vice President
Society of Chemical Manufacturers and Affiliates

Timothy J. Scott, Chief, Corporate Security Officer
The Dow Chemical Company
On behalf of the American Chemistry Council

Charlie Drevna, President
American Fuel & Petrochemical Manufacturers

II. BACKGROUND

CFATS Law

In 2006, Congress authorized DHS to establish and implement the CFATS program.¹ On April 9, 2007, DHS published interim final regulations in the Federal Register establishing, among other details:

- risk-based performance standards for chemical facility security;
- development of facility vulnerability assessments;
- requirements for creation by and approval of site security plans for covered facilities;
- a requirement that execution of site security plans be verified; and,
- a list of chemicals with minimum volumes that would trigger a requirement that a facility submit certain preliminary information to DHS.²

CFATS, DHS, and “Risk”

Both the National Infrastructure Protection Plan formulated by the Secretary of Homeland Security and the CFATS statute require that the performance standards against which a facility’s specific anti-terrorism measures are assessed take into account each of three risk components: vulnerability, consequence, and threat.³

For purposes of DHS risk assessment, “vulnerability” is an evaluation of the likelihood that terrorists could successfully gain the access needed to cause injury and damage either on or off site. “Consequence” would evaluate the potential loss of human life and how critical to the

¹ See Section 550 of Public Law 109-295, the DHS Appropriations Act, 2007.

² See 72 Fed. Reg. 17688,

<http://www.regulations.gov/oldLinks.jsp?url=contentStreamer?objectId=09000064802228b5&contentType=pdf&disposition=attachment>. See also See 72 Fed. Reg. 65396, http://www.dhs.gov/xlibrary/assets/chemsec_appendixa-chemicalofinterestlist.pdf.

³ http://www.dhs.gov/xlibrary/assets/NIPP_Plan.pdf and <http://www.dhs.gov/xlibrary/assets/nipp-ssp-chemical-2010.pdf>.

economy the terrorist incident would be if the facility were compromised. The remaining factor, “threat,” evaluates the intent, capability, and probability that terrorists would attempt to compromise a facility based upon available intelligence and other factors. For purposes of DHS risk assessment, all chemicals produced, used, or stored by regulated facilities fall into two groups: (1) those where the perceived threat is theft or diversion of materials, and (2) those where the perceived threat is from an on-site incident or sabotage.⁴

CFATS Compliance Process

CFATS begins by asking each facility that manufactures, uses, stores, or distributes certain chemicals to evaluate the presence and amounts of certain chemicals above a specified quantity and submit that information to DHS. DHS then conducts an assessment (a “top screen”) to determine if that facility's risk or profile merits preliminary CFATS regulation as “high-risk.” Facilities designated high-risk are sorted into four, delineated risk-based tiers based upon the effort needed to prevent a terrorist incident.

If DHS makes a preliminary determination, based upon a top screen that a facility is high-risk, DHS will require that facility to complete a Security Vulnerability Assessment (SVA) that assesses the security of a facility in light of the issues raised in DHS's preliminary tier determination letter. Following a facility's submission of the SVA and its analysis by DHS, DHS will confirm either that a facility is high-risk or inform a facility that DHS no longer considers the facility subject to further regulation under CFATS. For a facility confirmed to be high-risk, DHS will communicate the final facility tier determination, and the facility must develop, submit to DHS, and implement a Site Security Plan (SSP) that satisfies the Risk-Based Performance Standards (RBPS) enumerated in 6 CFR § 27.230.⁵

Because DHS has not finalized its policy for the personnel surety portion of the Risk-Based Performance Standards, some site security plans have been approved on the condition that, once the personnel surety policy is promulgated, the site security plan conforms to that policy.

The statute also authorizes DHS to consider and approve alternative security programs (ASP) if they meet the requirements of the CFATS regulation and provide an equivalent level of security, and it precludes DHS from disapproving site security plans on the basis of the presence or absence of a specific security measure.⁶

DHS may also pay site visits to determine whether the vulnerability assessment is adequate and to ensure that a site security plan actually meets the risk-based performance standards. Finally, DHS plans to perform post-SSP inspections to insure that a facility continues to meet the standards and may close facilities that are not.

⁴ See <http://www.dhs.gov/risk-chemical-facility-anti-terrorism-standards-cfats>.

⁵ http://www.dhs.gov/xlibrary/assets/chemsec_csattopscreenusersmanual.pdf.

⁶ See Section 550(a) of Public Law 109-295.

III. ISSUES

- Is progress being made in securing high-risk facilities against terrorism?
- What are the current steps in the CFATS process of ensuring that regulated facilities meet the risk-based performance standards? How many facilities have attained each such step?
- How does the DHS practice of assessing risk of terrorist incident for individual facilities compare to what is called for in the National Infrastructure Protection Plan?
- How does the recent experience of the regulated community with the CFATS program compare with its experience at the time of the Subcommittee's last hearing on September 11, 2012? Are there improvements and, if so, what are they?
- What is the status of the personnel surety component of the risk-based performance standards?
- What is the quality of communication between DHS and the regulated community? Is feedback systematic or based more on occasional, informal contacts?

IV. STAFF CONTACTS

If you have any questions regarding this hearing, please contact David McCarthy or Jerry Couri of the Majority Committee staff at (202) 225-2927.