



US Senate, Committee on Homeland Security and Government Affairs

Roundtable: Sensibly Reforming the Chemical Facility Anti-Terrorism Standards Program

Prepared Statement by the American Chemistry Council

2:30 pm, June 4, 2019, SD-106 Dirksen Senate Office Building

The American Chemistry Council (ACC) represents the major chemical producers across the United States, including a diverse set of large, medium and small companies engaged in the business of chemistry. ACC members make products that are critical to the everyday health and welfare of our nation. Our products support the military mission, provide lifesaving medications, maintain a plentiful and safe drinking water supply and support fuel economy goals with light weight composites used in the auto industry. From the smart phone in your pocket to the clothes on your back, the business of chemistry touches everyone in their daily lives. Ensuring that clear and workable programs such as CFATS remain in place is critical to maintaining a stable regulatory environment that's needed to help foster the growth in innovation and support the additional investments needed in expanding U.S. operations.

Today, the chemical industry is experiencing a renaissance in the United States thanks in large part to the growth in domestic shale gas production. The business of chemistry is a \$526 billion enterprise and growing. Today, the industry employs more than ½ million highly skilled, well paid American workers and demand for STEM expertise is growing. It is because of our critical role in the U.S. economy, and our responsibility to employees and our communities, that chemical security remains a top priority for ACC and our members.

This year marks the 31st anniversary of ACC's Responsible Care® Program. Responsible Care is the leading chemical industry Environmental, Safety and Security Stewardship Program and has become the gold standard for the industry. Responsible Care is international in scope and serves as a model for numerous regulatory programs. Months after the tragic events of September 11, 2001, the ACC Board of Directors approved the addition of the Security Code, a comprehensive security management system that is mandatory for all members of the ACC. Since then, ACC members have invested more than \$17 billion under Responsible Care to enhance their chemical security.

The CFATS Program plays a critical role as an industry baseline for securing certain chemicals of interest. CFATS levels the playing field to ensure that all establishments play by the rules and provide a minimum level of security for certain chemical holdings. As such, ACC supports long-term authorization of the CFATS Program.

DHS has made important strides in improving the CFATS Program and has demonstrated a sincere commitment to listen and work with the regulated community to help move the program forward. Nevertheless, ACC would like to offer the following important recommendations that will further enhance the CFATS program:

1. DHS should maintain its Focus on Chemical Security.

CFATS should retain its focus on its core mission of chemical security and NOT wander into other areas such as safety and environmental requirements that would serve to divert DHS attention and resources away from their core mission. Non-security related requirements should be retained under their appropriate Agency, where a core competency currently resides. Duplication of authorities across the various Federal programs creates confusion and should be minimized.

2. Eliminate the mandate for TSDB screening at lower risk facilities.

Over the past several years, DHS has been implementing the terrorist screening portion of the CFATS Personnel Surety Program (PSP) outlined under Risk-Based Performance Standard 12(iv) at all tier 1 and tier 2 (HIGH RISK) facilities (about 200 sites). This process requires the facility to collect, manage and protect sensitive personal information on its employees and contractors and securely transmit that data to DHS for FBI vetting against the Terrorist Screening Database (TSDB).

DHS is now planning to extend this program to an additional 3,000 lower risk sites assigned tiers 3 and 4. This is an enormous expansion, involving tens of thousands of employees and contractors and their personal information. ACC is concerned that such a drastic expansion of PSP is unnecessary and will needlessly put personal information at risk. Further, employees and contractors are already required to go through multiple background checks and identity verification by the facility and other entities. ACC believes the benefit associated with TSDB vetting is simply not worth the cost or the associated risk. While we support mandated TSDB vetting at tier 1 and 2 facilities, ACC recommends elimination of this mandate for lower risk tiers 3 and 4 facilities and alternatively be provided an option for those who choose to participate.

3. Establish a CFATS Recognition Program - A Public-Private Partnership:

DHS should leverage chemical industry stewardship programs, such as ACC's Responsible Care Program, with the goal of further enhancing the security of chemicals across the Nation. Under CFATS, DHS can provide regulatory recognition for responsible operators who demonstrate superior performance. Such a recognition program would enhance existing stewardship programs and incentivize the creation of new ones. It would also provide DHS a mechanism to prioritize and streamline the CFATS program. It is a fact that companies who participate in stewardship programs out perform their peers and the industry as a whole. A CFATS Recognition Program would enhance chemical security across the sector and beyond the universe of CFATS regulated facilities.

4. Improve transparency in DHS risk determinations.

DHS should be more transparent with regulated facilities regarding risk tiering determinations and what actions the facility may take to further mitigate risk. Often security managers are not aware of the determining factor(s) behind their assigned risk tier level. These are the very individuals with the overall responsibility and authority for making critical security risk management decisions for a specific site. DHS should provide a detailed explanation to the site security as to the threat driving a certain risk tier and under classified conditions if necessary.

CFATS has helped make our industry and our communities more secure. We hope that in considering long-term reauthorization of the program, this Committee will consider ACC's recommendations and supply the needed regulatory certainty and stability for companies to continue to make prudent risk management decisions and investments. ACC and its members encourage you to support this important program and take CFATS to the next level, while continuing to provide effective Congressional oversight and guidance.