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“Charting a Path Forward for the Chemical Facilities Anti-Terrorism Standards Program”

Thank you for the opportunity to testify before the committee today. My name is Dana Shea, and I am a Specialist in Science and Technology Policy at the Congressional Research Service. At the Committee’s request, I am here to discuss federal efforts to secure chemical facilities within the United States from terrorist attack. In addition to my remarks today, CRS has several reports on this topic,¹ and in accordance with our enabling statutes, CRS takes no position on any related legislation

My testimony today has three parts. First, I will provide a brief overview of the efforts by the Department of Homeland Security (DHS) to increase security at chemical facilities through the Chemical Facility Anti-Terrorism Standards (CFATS) regulatory program. In this context, I will discuss some of the program’s progress and challenges and how it has responded to audits and oversight reports issued by the Department’s Inspector General and the Government Accountability Office (GAO). Second, I will identify several policy issues that may be of interest to the Committee and Congress regarding authorization of the CFATS program. These issues will include efforts to improve risk assessment within the CFATS program; efforts to use third parties to inspect regulated facilities, and efforts to better leverage chemical process expertise and best practices to mitigate risk. Third, I will provide a brief analysis of H.R. 4007, the Chemical Facility Anti-Terrorism Standards Program Authorization and Accountability Act of 2014, as amended and ordered reported by the House Committee on Homeland Security.

Program Overview

State and federal governments have long recognized the potential harm that a large, sudden release of hazardous chemicals poses to nearby people. In response, they have regulated safety practices at chemical facilities. Chemical facilities historically engaged in security activities—as distinct from safety—on a voluntary basis. After the 2001 terrorist attacks and the decision by several states to begin regulating

¹ See CRS Report R42918, *Chemical Facility Security: Issues and Options for the 113th Congress*, by Dana A. Shea; CRS Report R43346, *Implementation of Chemical Facility Anti-Terrorism Standards (CFATS): Issues for Congress*, by Dana A. Shea; and CRS Report R43070, *Regulation of Fertilizers: Ammonium Nitrate and Anhydrous Ammonia*, by Dana A. Shea, David M. Bearden, and Scott D. Szymendera.

security at chemical facilities, Congress addressed whether to establish federal security requirements to mitigate these risks.

Statute and Regulation

In 2006, the 109th Congress passed legislation providing the Department of Homeland Security (DHS) with statutory authority to regulate chemical facilities for security purposes. This authority came through a provision in an appropriations bill.² The statute contains a “sunset provision” with an expiration date for the statutory authority. Subsequent Congresses have extended this authority, which currently expires on October 4, 2014.³ Advocacy groups, stakeholders, and policy makers have called for Congress to reauthorize this authority, though they disagree about the preferred approach.

The 2006 statute required DHS to issue regulations within 6 months of enactment. On April 9, 2007, DHS issued an interim final rule regarding the chemical facility anti-terrorism standards (CFATS).⁴ In promulgating the interim final rule, DHS interpreted the language of the statute to determine what DHS asserts was the intent of Congress. Consequently, much of the rule arises from the Secretary’s discretion and interpretation of legislative intent rather than from explicit statutory language.

Under the interim final rule, the Secretary of Homeland Security determines which chemical facilities must meet regulatory security requirements, based on the degree of risk posed by each facility. The DHS lists 322 “chemicals of interest” for the purpose of compliance with CFATS. The DHS considers each chemical in the context of three threats: release; theft or diversion; and sabotage and contamination. Chemical facilities with greater than specified quantities, called screening threshold quantities, of chemicals of interest must submit information to DHS to determine the facility’s risk status. As a consequence of this approach, the CFATS regulation applies to numerous facilities not traditionally considered to be part of the chemical manufacture or distribution sector. The statute exempts several types of facilities: facilities defined as a water system or wastewater treatment works; facilities owned or operated by the Department of Defense or Department of Energy; facilities regulated by the Nuclear Regulatory Commission (NRC); and facilities regulated under the Maritime Transportation Security Act of 2002 (P.L. 107-295).

Also under the interim final rule, DHS developed a tiered regulatory framework. Facilities that DHS deems high-risk are assigned to one of four tiers based on the magnitude of the facility’s risk. The DHS created graduated performance-based standards for facilities assigned to each risk-based tier. Facilities in higher risk tiers must meet more stringent standards.⁵

² Section 550, P.L. 109-295, Department of Homeland Security Appropriations Act, 2007.

³ The original statutory authority expired on October 4, 2009, three years after enactment. Congress has incrementally extended this authority through many appropriation acts and continuing resolutions. The Consolidated Appropriations Act, 2014 (P.L. 113-76) extends the statutory authority through October 4, 2014.

⁴ 72 *Federal Register* 17688-17745 (April 9, 2007). An interim final rule is a rule that meets the requirements for a final rule and that has the same force and effect as a final rule, but contains an invitation for further public comment on its provisions. After reviewing comments to the interim final rule, an agency may modify the interim final rule and issue a “final” final rule. The DHS first issued the proposed rule in December 2006 and solicited public comments. 71 *Federal Register* 78276-78332 (December 28, 2006). The DHS has not further modified the interim final rule.

⁵ According to the White House Office of Management and Budget, a performance standard is a standard that states requirements in terms of required results with criteria for verifying compliance but without stating the methods for achieving required results. A performance standard may define the functional requirements for the item, operational requirements, and/or interface and interchangeability characteristics. A performance standard may be viewed in juxtaposition to a prescriptive standard which may specify design requirements, (continued...)

Regardless of their tier assignments, all high-risk facilities must perform a security vulnerability assessment, develop an effective site security plan, submit these documents to DHS, and implement their security plan. The site security plan must address the security vulnerability assessment by describing how activities in the plan correspond to securing facility vulnerabilities. The DHS must review and approve the submitted documents, audit and inspect the facilities, and determine regulatory compliance. The DHS may disapprove submitted security vulnerability assessments or site security plans that fail to meet DHS performance-based standards, but not because of the presence or absence of a specific security measure.

If, after inspecting a chemical facility, DHS finds that the facility has not complied with the regulatory requirements, the Secretary may issue an order to the facility to comply by a specified date. If the facility continues to be out of compliance, DHS may fine the facility and, eventually, order it to cease operation. The interim final rule establishes the process by which chemical facilities can appeal certain DHS decisions and rulings, but the statute prohibits third-party suits for enforcement purposes.

The statute requires certain protections for information developed by a facility in compliance with the statutory requirements. The DHS named this category of information “Chemical-terrorism Vulnerability Information” (CVI). The statute directs that judicial and administrative proceedings are to treat CVI the same as classified information.

Implementation

Administratively, the Infrastructure Security Compliance Division (ISCD), part of the Office of Infrastructure Protection in the DHS National Protection and Programs Directorate (NPPD), implements CFATS. The ISCD has both a headquarters staff and an inspector cadre associated with regional offices. Since FY2007, Congress has appropriated a total of \$595 million for ISCD.⁶ Annual appropriations for this program peaked in FY2010 at \$103 million. The President’s FY2015 request is \$87 million.

The DHS has had challenges in implementing the CFATS regulations, although its performance has improved following a 2011 internal review of CFATS program process. As of May 2014, DHS has authorized 1,474 site security plans; conducted 1,008 authorization inspections; and approved 719 site security plans.⁷ Over the last six months, DHS has been authorizing 104 and approving 53 site security plans monthly. That said, DHS is still in the process of addressing the initial round of submissions from regulated facilities.

Since 2007, DHS has received more than 46,000 submissions of information, known as Top-Screens, from over 36,000 chemical facilities. Of these facilities, DHS required more than 7,800 facilities to submit a security vulnerability assessment to determine whether they were high-risk. From the submitted

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such as materials to be used, how a requirement is to be achieved, or how an item is to be fabricated or constructed.

For example, a performance standard might require that a facility perimeter be secured. In contrast, a prescriptive standard might dictate the height and type of fence to be used to secure the perimeter. See Office of Management and Budget, The White House, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” *Circular A-119*, February 10, 1998.

⁶ The ISCD also is responsible for regulating ammonium nitrate sale and transfer. Some of its appropriated funding is for this purpose.

⁷ Department of Homeland Security, *Chemical Facility Anti-Terrorism Standards*, May 2014, http://www.dhs.gov/sites/default/files/publications/CFATS%20Update%20FS_May2014_508_0.pdf.

security vulnerability assessments, DHS currently identifies approximately 4,100 facilities as high-risk. DHS assigns a preliminary risk tier to the facility based on the submitted Top-Screen data. The DHS assigns a final risk tier only after reviewing the facility's security vulnerability assessment. Since mid-2010, between 14% and 22% of high-risk facilities at any given time lack a final tier assignment.

The DHS has issued 18 risk-based performance standards. One of these performance standards, regarding personnel surety, is not yet in force. The ISCD has not fully established the process by which CFATS-regulated facilities can meet this performance standard. The DHS issued a series of information collection requests from 2009 to 2011 that described implementation of the personnel surety performance standard,⁸ but, in July 2012, DHS withdrew this proposal from Office of Management and Budget review. The ISCD has recently restarted its efforts to establish a process for meeting the personnel surety performance standard. In March 2013 and February 2014, DHS released notices of a new information collection request for compliance with the CFATS personnel surety program.⁹ While DHS plans to eventually require implementation of the personnel surety program at facilities in each risk tier, it would limit the initial program to only Tier 1 and Tier 2 facilities.¹⁰ This proposal is under review in the Office of Management and Budget.

The DHS has also experienced challenges in the inspection of facilities. For example, DHS did not meet its own expectations regarding when it would begin inspection of regulated facilities. In July 2007, soon after the issuance of the CFATS regulation, DHS testified that formal site inspections of a selected group of facilities would begin by the end of the calendar year.¹¹ In December 2007, DHS testified that facility inspection would begin in Fall 2008.¹² In 2009, DHS testified that inspections would begin in the first quarter of FY2010.¹³ The first authorization inspection took place in July 2010.¹⁴

Similarly, DHS has not met its own expectations with regard to inspection and site security plan approval milestones. In 2010, DHS testified that it expected to inspect all Tier 1 facilities by the end of calendar year 2010.¹⁵ In 2011, DHS testified that it expected to inspect all Tier 1 facilities by the end of calendar year 2011.¹⁶ In 2013, DHS testified that it planned to have all Tier 1 facilities approved by October 2013.¹⁷ In 2013, DHS also reported that it planned to have all Tier 1 and Tier 2 facilities approved by May

⁸ See 74 *Federal Register* 27555-27557 (June 10, 2009); 75 *Federal Register* 18850-18857 (April 13, 2010); and 76 *Federal Register* 34720-24732 (June 14, 2011).

⁹ 78 *Federal Register* 17680-17701 (March 22, 2013) and 79 *Federal Register* 6418-6452 (February 3, 2014).

¹⁰ As of February 20, 2014, 512 of the 4,202 regulated facilities were in Tier 1 and Tier 2.

¹¹ Testimony of Robert B. Stephan, Assistant Secretary for Infrastructure Protection, National Protection and Programs Directorate, Department of Homeland Security, before the House Committee on Homeland Security, Subcommittee on Transportation Security and Infrastructure, July 24, 2007.

¹² Testimony of Robert B. Stephan, Assistant Secretary for Infrastructure Protection, National Protection and Programs Directorate, Department of Homeland Security, before the House Committee on Homeland Security, Subcommittee on Transportation Security and Infrastructure, December 13, 2007.

¹³ Testimony of Philip Reiting, Deputy Under Secretary, National Protection and Programs Directorate, Department of Homeland Security, before the House Committee on Homeland Security, June 16, 2009.

¹⁴ House Committee on Energy and Commerce, Subcommittee on Environment and the Economy, Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards [CFATS] Program by the Department of Homeland Security, Serial 112-111, February 3, 2012, p. 65

¹⁵ Oral testimony of Rand Beers, Under Secretary, National Protection and Programs Directorate, Department of Homeland Security, before the Senate Committee on Homeland Security and Governmental Affairs, March 3, 2010.

¹⁶ Oral testimony of Rand Beers, Under Secretary, National Protection and Programs Directorate, Department of Homeland Security, before the House Committee on Homeland Security, Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies, February 11, 2011.

¹⁷ Testimony of Rand Beers, Under Secretary, and David Wulf, Director, Infrastructure Security Compliance Division, National (continued...)

2014.¹⁸ The DHS did not meet these milestones. It now estimates that, by the end of FY2014, it will have approved over 90% of all Tier 1 and Tier 2 facilities that have authorized site security plans (SSPs).¹⁹

At the current level of performance, it appears likely that DHS will require several years to authorize the remaining SSPs, and several years beyond that to inspect the facilities and approve the SSPs. That said, the pace of DHS authorization, inspection, and approval of site security plans at regulated facilities has dramatically increased compared to early phases of the CFATS program. While the CFATS program has been in place since 2007, significant reforms that began in 2012 have changed how DHS implements the program. Increased efficiencies on the part of the DHS or more effective compliance by regulated facilities could further improve program performance.

Program Reviews

The CFATS program has undergone external reviews of its processes and progress. Both the DHS Office of the Inspector General (OIG) and the GAO released reports in 2013 addressing the CFATS program. Based on recommendations arising from these reviews, DHS has reviewed its internal procedures and attempted to address challenges identified.

Office of the Inspector General Review

In March 2013, the DHS OIG released a report on its review of the CFATS program through the end of FY2012.²⁰ The DHS OIG review addressed whether:

- management controls were in place and operational to ensure that CFATS is not mismanaged;
- NPPD and ISCD leadership misrepresented program progress; and
- nonconforming opinions of program personnel were suppressed or met with retaliation.

The DHS OIG report was critical of the prior performance of the CFATS program, stating:

Program progress has been slowed by inadequate tools, poorly executed processes, and insufficient feedback on facility submissions. In addition, program oversight had been limited, and confusing terminology and absence of appropriate metrics led to misunderstandings of program progress. The Infrastructure Security Compliance Division still struggles with a reliance on contractors and the inability to provide employees with appropriate training. Overall efforts to implement the program have resulted in systematic noncompliance with sound Federal Government internal controls and fiscal stewardship, and employees perceive that their opinions have been suppressed or met with retaliation. Although we were unable to substantiate any claims of retaliation or suppression of

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Protection and Programs Directorate, Department of Homeland Security, before the House Committee on Energy and Commerce, Subcommittee on Environment and the Economy, March 14, 2013.

¹⁸ Office of the Inspector General, Department of Homeland Security, *Effectiveness of the Infrastructure Security Compliance Division's Management Practices to Implement the Chemical Facility Anti-Terrorism Standards Program*, OIG-13-55, March 2013, p. 22.

¹⁹ Communication between Office of Legislative Affairs, Department of Homeland Security, and CRS, October 25, 2013.

²⁰ Office of the Inspector General, Department of Homeland Security, *Effectiveness of the Infrastructure Security Compliance Division's Management Practices to Implement the Chemical Facility Anti-Terrorism Standards Program*, OIG-13-55, March 2013.

nonconforming opinions, the Infrastructure Security Compliance Division work environment and culture cultivates this perception. Despite the Infrastructure Security Compliance Division's challenges, the regulated community views the Chemical Facility Anti-Terrorism Standards Program as necessary in establishing a level playing field across a diverse industry.²¹

The DHS OIG issued 24 recommendations to assist ISCD to correct identified program deficiencies and attain intended program results and outcomes. The ISCD concurred fully or partially with 20 recommendations and did not concur with 4 recommendations. The DHS OIG recommendations included improving internal processes to achieve a more timely response to information submissions and requests from regulated entities; defining, developing, and implementing improved processes and procedures for inspections; refining and improving the existing CFATS tiering methodology and tiering process; and reducing reliance on contractors and improving managerial oversight within ISCD.

In response to these recommendations, ISCD provided the DHS OIG with a corrective action plan. As of February 2014, ISCD has addressed 12 of the DHS OIG recommendations. Nine recommendations were administrative and include selecting permanent ISCD leadership; reducing reliance on contract personnel; developing policy for appointing acting management; ensuring that all employees serving in an acting supervisory capacity have a supervisory position description; ensuring that all employees receive performance reviews; disseminating ISCD organizational and reporting structure to staff; reiterating to all employees the process for reporting misconduct allegations; implementing a plan to ensure the long-term authorization of the CFATS Program; and establishing internal controls for the accountability of appropriated funds. Three recommendations were programmatic and pertained to: revising the long-term review process to reduce the site security plan backlog; implementing a process to improve the timeliness of facility submission determinations; and program metrics that measure CFATS program value accurately and demonstrate the extent to which risk has been reduced at regulated facilities.²²

The ISCD is still addressing 12 DHS OIG recommendations. Ten recommendations are programmatic and include improving CFATS Program tools and processes; engaging regulated industry and government partners; and finalizing program requirements. The two administrative recommendations include providing training and guidance; and eliminating inappropriate Administratively Uncontrollable Overtime pay.²³

Government Accountability Office Review

In April 2013, GAO issued a report on the CFATS program.²⁴ The GAO assessed how DHS assigned chemical facilities to tiers and the extent to which it did so, how DHS revised its process to review facility security plans, and whether DHS communicated and worked with owners and operators to improve security. The GAO found that the approach DHS used to assess risk and make decisions to place facilities

²¹ Office of the Inspector General, Department of Homeland Security, *Effectiveness of the Infrastructure Security Compliance Division's Management Practices to Implement the Chemical Facility Anti-Terrorism Standards Program*, OIG-13-55, March 2013, p. 1.

²² Testimony of Marcia Moxey Hodges, Chief Inspector, Office of Inspections, Office of the Inspector General, Department of Homeland Security, before the Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies, House Committee on Homeland Security, February 27, 2014.

²³ Testimony of Marcia Moxey Hodges, Chief Inspector, Office of Inspections, Office of the Inspector General, Department of Homeland Security, before the Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies, House Committee on Homeland Security, February 27, 2014.

²⁴ Government Accountability Office, *Critical Infrastructure Protection: DHS Efforts to Assess Chemical Security Risk and Gather Feedback on Facility Outreach Can Be Strengthened*, GAO-13-353, April 2013.

in final tiers does not consider all of the elements of consequence, threat, and vulnerability. For example, the risk assessment approach is based primarily on consequences arising from human casualties, but does not consider economic consequences. In addition, GAO found that DHS had not been tracking data on reviews of site security plans and thus could not quantify improvements to that process. The GAO estimated that it could take another seven to nine years before DHS completed reviews on submitted site security plans. Input GAO solicited from 11 trade associations also indicated that DHS does not obtain systematic feedback on outreach activities. The GAO recommended that DHS:

- develop a plan, with timeframes and milestones, that incorporates the results of the various efforts to fully address each of the components of risk and take associated actions where appropriate to enhance ISCD's risk assessment approach and
- conduct an independent peer review, after ISCD completes enhancements to its risk assessment approach that fully validates and verifies ISCD's risk assessment approach consistent with the recommendations of the National Research Council of the National Academies.

The ISCD has taken steps to address the GAO recommendations. For example, ISCD engaged the Homeland Security Studies and Analysis Institute to coordinate an examination of the CFATS risk assessment model. According to GAO, HSSAI recommended that ISCD revise the current risk-tiering model and create a standing advisory committee—with membership drawn from government, expert communities, and stakeholder groups—to advise DHS on significant changes to the methodology. In addition, ISCD plans to modify the risk assessment approach to better include all elements of risk and has developed an accompanying implementation plan. Finally, DHS is engaged with Sandia National Laboratory to assess how to include economic consequences into their risk tiering approach.²⁵

Policy Considerations

Congressional policy makers have considered chemical facility security legislation in each Congress since the 109th and have introduced legislation in the 113th Congress. Some of the policy issues raised during congressional consideration of such legislation include: how to assess facility risk; whether to employ third-party employees as inspectors to improve program performance; whether DHS should be allowed to mandate the use of certain approaches or chemical process best practices, sometimes known as inherently safer technologies or methods to reduce the consequences of terrorist attack; which facilities should be regulated as chemical facilities; and how to identify non-responsive facilities.

Risk Assessment

The risk-based tier assignment process has presented challenges to DHS. The DHS has identified anomalies in its risk assessment tools that led to approximately 500 facilities receiving erroneous tier assignments. Additionally, GAO has identified other factors DHS should include in calculating security risk for CFATS facilities. The DHS is in the process of receiving additional recommendations and analysis to determine how to best address these recommendations in the risk-based tier assignment process.

²⁵ Government Accountability Office, *Critical Infrastructure Protection: Observations on DHS Efforts to Identify, Prioritize, Assess and Inspect Chemical Facilities*, GAO-14-365T, February 27, 2014; and Personal Communication with DHS, May 8, 2014.

In May 2010, DHS identified an anomaly in one of the risk-assessment tools it was using to determine a facility's risk tier. At that time, DHS believed that it had resolved the anomaly. In June 2011, a new acting ISCD Director "rediscovered" this issue, identified its potential effect on facility tiering, brought the issue to the attention of NPPD leadership,²⁶ and notified numerous facilities of a change in their risk tier.²⁷ Subsequent review of the risk-assessment tool resulted in DHS reviewing the tier determination of approximately 500 facilities. In some cases, DHS determined that facilities no longer qualified as high-risk and thus were no longer subject to the CFATS regulations.

In April 2013, GAO issued a report on the CFATS program.²⁸ The GAO found that the approach DHS was using to assess risk and place facilities in final tiers did not consider all elements of consequence, threat, and vulnerability. The GAO review of the risk assessment approach revealed that ISCD was inconsistent in how it assessed threat. According to GAO, ISCD considered threat for the 10 percent of facilities tiered because of the risk of release or sabotage, but not for the approximately 90 percent of facilities that are tiered because of the risk of theft or diversion. Also, GAO identified that when it did use threat data, the data were not current. The DHS subsequently engaged in an additional review of these issues and is considering improvements to its process.

When developing its interim final rule, DHS estimated the number of facilities it expected to be regulated primarily because of the threat from a potential release and the number regulated due to the potential for theft or diversion of chemicals.²⁹ In 2012, DHS analyzed facilities with final tier assignments and identified their primary risk category. The actual distribution of facilities did not align with how DHS had estimated in 2007. In 2007, DHS estimated that 62% of regulated chemical facilities would be release facilities.³⁰ In 2012, only 13% of the regulated facilities were release facilities.³¹ This could be a significant issue for policy makers. It potentially reflects a shift in regulatory focus away from the threat of release to the surrounding community toward the threat of theft for later use as a weapon. Alternatively, this might reflect an unequal treatment of risk by DHS when considering release and theft from facilities.

Congressional policy makers may be interested in the extent to which changes in the way DHS determines risk affects the regulated community and the plans that DHS has to minimize its financial impact. The mechanisms by which DHS determines the risk of the regulated facilities is a key consideration for the CFATS regulatory program. Changes to these mechanisms may have significant impacts on the regulated community. Depending on what changes are made, facilities might be given a higher or lower tier assignment or be found no longer high-risk. Other facilities currently not considered high-risk might become regulated. As the CFATS program continues into its implementation, investment by the regulated community in required security measures will continue to increase as DHS approves an increasing number of site security plans.

²⁶ Oral testimony of Rand Beers, Under Secretary, National Protection and Programs Directorate, Department of Homeland Security, before the House Committee on Energy and Commerce, Subcommittee on Environment and the Economy, February 3, 2012.

²⁷ Department of Homeland Security, "DHS Notifies Chemical Facilities of Revised Tiering Assignments," July 5, 2011, <http://www.dhs.gov/files/programs/cfats-revised-tiering-assignments.shtm>.

²⁸ Government Accountability Office, *Critical Infrastructure Protection: DHS Efforts to Assess Chemical Security Risk and Gather Feedback on Facility Outreach Can Be Strengthened*, GAO-13-353, April 2013.

²⁹ Note that a facility might be primarily regulated for one category but also qualify under the other.

³⁰ Department of Homeland Security, *Chemical Facility Anti-Terrorism Standards Interim Final Rule Regulatory Assessment*, DHS-2006-0073, April 1, 2007.

³¹ 79 *Federal Register* 6418-6452 (February 3, 2014) at 6438.

Third-Party Inspection

DHS inspects regulated chemical facilities using a federal inspector cadre, known as Chemical Security Inspectors. These DHS employees manage, coordinate, and conduct inspections, compliance assistance visits, and outreach activities.³²

DHS had previously considered using DHS-certified third-party inspectors as part of its regulatory program and had implied that its existing statutory authority allows such use.³³ Several policy issues were raised at that time. They included whether such inspections should be performed solely by federal employees; what third-party entities might be appropriate to perform CFATS inspections; and how to harmonize training and inspection standards between federal and third-party inspectors. These issues are discussed below.

Inherently Governmental Functions

Policy makers have weighed the appropriate role of federal versus nonfederal employees in CFATS inspections. Some government functions are considered as inherently governmental, meaning they must be performed by government employees and cannot be contracted out.³⁴ The most recent policy guidance for federal agencies on inherently governmental and related functions was released in September 2011.³⁵ This policy guidance describes three categories of functions:

- inherently governmental functions,
- functions closely associated with the performance of inherently governmental functions, and
- critical functions.³⁶

While inherently governmental functions must be performed by government employees, functions closely associated with the performance of inherently governmental functions and critical functions may be performed by either federal employees or contractors.³⁷

The DHS itself has raised questions about “whether it is appropriate for DHS to use third-party auditors and if so, for which tiers of facilities; what the standards and requirements would be for those third-party auditors; and who would pay for third-party auditors.”³⁸ That said, the most recent policy guidance

³² As of October 2012, DHS had 101 Chemical Security Inspectors located in 10 regional areas organized in three districts across the United States. DHS had an additional 13 regional and district commanders to oversee the Chemical Security Inspectors. Office of Inspector General, Department of Homeland Security, *Effectiveness of the Infrastructure Security Compliance Division's Management Practices to Implement the Chemical Facility Anti-Terrorism Standards Program*, OIG-13-55, March 2013.

³³ 71 *Federal Register* 78276-78331 (December 28, 2006).

³⁴ For an analysis of the various definitions of “inherently government functions,” See CRS Report R42325, *Definitions of “Inherently Governmental Functions” in Federal Procurement Law and Guidance*, by Kate M. Manuel.

³⁵ 76 *Federal Register* 56227-56242 (September 12, 2011).

³⁶ For a more thorough analysis of the policy letter, see CRS Report R42039, *Performance of Inherently Governmental and Critical Functions: The Obama Administration's Final Policy Letter*, by Kate M. Manuel, L. Elaine Halchin, and Erika K. Lunder. See also CRS Report R42325, *Definitions of “Inherently Governmental Functions” in Federal Procurement Law and Guidance*, by Kate M. Manuel.

³⁷ 76 *Federal Register* 56227-56242 (September 12, 2011) at 56241.

³⁸ 72 *Federal Register* 17688-17745 (April 9, 2007) at 17712.

contains examples of both inherently governmental functions and functions closely associated with the performance of inherently governmental functions.³⁹ The approval of federal licensing actions and inspections is listed as an inherently governmental function. Provision of inspection services is listed as a function closely associated with the performance of inherently governmental functions.

Identity of Third-Party Inspectors

The DHS has a range of entities that might be employed as third-party inspectors, including private sector companies, state agencies, or other federal agencies. Some other federal agencies already employ contractors to conduct inspections to assess compliance with federal regulatory requirements. For example, the Environmental Protection Agency (EPA) uses both federal and contract staff to inspect federal facilities for compliance with some federal environmental regulations. According to EPA, properly trained and authorized contract inspectors are appropriate for federal facility compliance inspections and evaluations under the Clean Water Act (CWA), the Resource Conservation and Recovery Act (RCRA), the Toxic Substances Control Act (TSCA), the Oil Pollution Act (OPA), and the Safe Drinking Water Act (SDWA).⁴⁰ The EPA has also identified EPA contract inspectors as eligible to assess compliance under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).⁴¹

Additionally, both the EPA and the Nuclear Regulatory Commission (NRC) may delegate certain responsibilities to state officials. The EPA delegates an assortment of environmental authorities to states.⁴² The authority for these delegations is generally in statute. Under the Atomic Energy Act of 1954 (P.L. 83-703, as amended), the NRC may relinquish to states portions of its regulatory authority to license and regulate radioactive materials. Under the EPA and NRC authorities, states generally must promulgate regulations that are at least as stringent as the federal requirements.⁴³ When approved, these states then regulate in lieu of the federal requirements. These agreements are documented through approval by senior agency officials.

Certification of Third-Party Inspectors

Since the current inspector cadre is composed of federal employees, stakeholders might reasonably expect that their qualifications and performance meet DHS standards. If DHS was to use other federal agency, state, or contract employees as inspectors, the regulated community might wish greater transparency in how DHS is assessing these inspectors' skills and training in order to have equal confidence in equivalency between DHS and non-DHS inspectors. The DHS might develop such stakeholder confidence by setting contractor minimum capabilities through contract requirements; rigorously verifying contract inspector knowledge and skills; and providing inspection guidance available to the regulated community.

³⁹ 76 *Federal Register* 56227-56242 (September 12, 2011) at 56241.

⁴⁰ David J. Kling, Director, Federal Facilities Enforcement Office, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, "Clarification on the Use of Contract Inspectors for EPA's Federal Facility Compliance Inspections/Evaluations," *Memorandum to Regional Federal Facilities Senior Managers and Program Managers*, September 19, 2006.

⁴¹ <http://www.epa.gov/compliance/resources/publications/federalfacilities/compliance/accessbrochure.pdf>.

⁴² For an overview of federal environmental laws, including delegation to states, see CRS Report RL30798, *Environmental Laws: Summaries of Major Statutes Administered by the Environmental Protection Agency*, coordinated by David M. Bearden, and CRS Report RL34384, *Federal Pollution Control Laws: How Are They Enforced?*, by Robert Esworthy.

⁴³ In some cases, such as regulation of underground storage tanks, states may directly enforce EPA regulations.

Capacity and Timing

Fundamental to the issue of third-party inspection is whether the existing DHS inspector cadre has sufficient capacity to perform the necessary inspections in a time period meeting congressional expectations. If some of the challenges to CFATS program performance arise from insufficient inspection capacity, third-party inspectors might augment the capacity of the inspection cadre. This increased inspection capacity might lead to a commensurate increase in the rate of authorization inspection, site security plan approval, and compliance inspection of CFATS-regulated facilities. In contrast, if some of the challenges to CFATS program performance arise from factors outside of the inspector cadre, such as review of submitted documentation, use of third-party inspectors might have a minimal effect on performance.

A key question is whether the use of third-party inspectors is intended to accelerate the rate of inspection in the short or long term. An increase in the number of inspectors may not yield results as quickly as some policy makers might expect. The DHS likely would have to develop policy and procedure for the acquisition of non-DHS and nongovernmental inspectors. Once these inspectors were hired, either as federal employees or under contract, they would likely need to undergo CFATS-specific training and certification activities. Thus, there would likely be a delay between DHS receiving the authority and DHS deploying third-party inspectors to perform inspections.

Inherently Safer Technologies

Congressional policy makers may choose to address the issue of inherently safer technologies, sometimes called methods to reduce the consequences of terrorist attack. The current statute bars DHS from mandating the presence or absence of a particular security measure. Therefore, DHS cannot require a regulated facility to adopt or consider inherently safer technologies. Congress could choose to continue the current policy or provide DHS with statutory authority regarding inherently safer technologies at regulated chemical facilities or require efforts regarding inherently safer technologies.

The Obama Administration has stated its support of inherently safer technologies to enhance security at high-risk chemical facilities in some circumstances. The DHS has testified that the Administration believes that all facilities regulated under CFATS should be required to assess inherently safer technology methods at their facilities. In addition, regulators should be able to require implementation of inherently safer technology methods at Tier 1 and Tier 2 facilities, if such methods demonstrably enhance overall security and are determined to be feasible.⁴⁴

A fundamental challenge for inherently safer technologies is how to compare one technology with its potential replacement. It is difficult to unequivocally state that one technology is inherently safer than another without adequate metrics. Risk factors may exist outside of the comparison framework, and analyses may become narrowly focused and their outcomes inappropriately weighted.⁴⁵ Some experts

⁴⁴ Testimony of Rand Beers, Under Secretary, National Protection and Programs Directorate, Department of Homeland Security, before the Senate Committee on Homeland Security and Governmental Affairs, March 3, 2010; and Personal Communication between CRS and Office of Legislative Affairs, Department of Homeland Security, January 16, 2014.

⁴⁵ For example, the replacement of hydrogen fluoride with sulfuric acid for refinery processing would replace a more toxic chemical with a less toxic one. In this case, experts estimate that equivalent processing capacity would require 25 times more sulfuric acid. Thus, more chemical storage facilities and transportation would be required, potentially posing different dangers than atmospheric release to the surrounding community. Determining which chemical process had less overall risk might require considering factors both internal and external to the chemical facility and the surrounding community. See testimony of M. Sam Mannan, Director, Mary Kay O'Connor Process Safety Center, Texas A&M University, before the House Committee on (continued...)

have asserted that the metrics for comparing industrial processes are not yet fully established and need additional research and study.⁴⁶

Supporters of adopting inherently safer technology as a way to improve chemical facility security argue that reducing or removing chemicals of interest from a facility will reduce the incentive to attack the facility. They suggest that reducing the consequences of a release also lowers the threat from terrorist attack and mitigates the risk to the surrounding populace. Some facilities have voluntarily changed amounts of chemicals on hand or chemical processes in use. Supporters of adopting inherently safer technology cite these as examples that facilities can implement such an approach in a cost-effective, practical fashion.⁴⁷

Opponents of mandating inherently safer technologies question this approach. Industrial entities assert that these are safety, not security, methods; that process safety engineers within the regulated industry already employ such approaches in a safety context; and that process safety experts and business executives should determine the applicability and financial practicality of changing existing processes at specific chemical facilities.⁴⁸ Additionally, some stakeholders question whether the federal government contains the required technical expertise to adjudicate the practicality and benefit of alternative technological approaches.⁴⁹ Opponents of an inherently safer technology mandate also state concern that few existing alternative approaches are well understood with regard to their unanticipated side effects.⁵⁰

One policy approach might be to mandate the implementation of inherently safer technologies for a set of processes. Another policy approach might be to mandate the consideration of implementation of inherently safer technologies with certain criteria controlling whether implementation is required. A third policy approach might be to mandate the development of a federal repository of inherently safer technology approaches and consideration of chemical processes against those options listed in the repository. Alternatively, policy makers might establish an incentive-based structure to encourage the adoption of inherently safer technologies by regulated entities. To some extent the CFATS regulation provides such an incentive, since DHS may assign facilities that reduce or eliminate the amount of

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Homeland Security, December 12, 2007; and Committee on Inherently Safer Chemical Processes, National Research Council, *The Use of Methyl Isocyanate (MIC) at Bayer CropScience*, 2012.

⁴⁶ Committee on Assessing Vulnerabilities Related to the Nation's Chemical Infrastructure, National Research Council, *Terrorism and the Chemical Infrastructure: Protecting People and Reducing Vulnerabilities*, 2006; and Testimony of M. Sam Mannan, Director, Mary Kay O'Connor Process Safety Center, Texas A&M University, before the House Committee on Homeland Security, December 12, 2007.

⁴⁷ See, for example, Paul Orum and Reece Rushing, Center for American Progress, *Preventing Toxic Terrorism: How Some Chemical Facilities Are Removing Danger to American Communities*, April 2006; and Paul Orum and Reece Rushing, Center for American Progress, *Chemical Security 101: What You Don't Have Can't Leak, or Be Blown Up by Terrorists*, November 2008.

⁴⁸ See, for example, testimony of Timothy J. Scott, Dow Chemical Company, before the House Committee on Homeland Security, Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies, February 11, 2011; and testimony of Marty Durbin, Managing Director, Federal Affairs, American Chemistry Council, before the House Committee on Energy and Commerce, Subcommittee on Environment and Hazardous Materials, June 12, 2008.

⁴⁹ See, for example, testimony of M. Sam Mannan, Director, Mary Kay O'Connor Process Safety Center, Texas A&M University, before the House Committee on Homeland Security, Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies, February 11, 2011; testimony of Dennis C. Hendershot, Staff Consultant, Center for Chemical Process Safety, American Institute of Chemical Engineers, before the Senate Committee on Environment and Public Works, June 21, 2006, S.Hrg. 109-1044; and testimony of Matthew Barmasse, Synthetic Organic Chemical Manufacturers Association, before the Senate Committee on Homeland Security and Governmental Affairs, July 13, 2005.

⁵⁰ For example, EPA experts have pointed to the change by drinking water treatment facilities between two approved disinfectants—chlorine and chloramine—as correlated with an unexpected increase in levels of lead in drinking water due to increased corrosion. Government Accountability Office, *Lead in D.C. Drinking Water*, GAO-05-344, March 2005.

chemicals of interest they store to lower risk tiers. More than 3,000 facilities have removed or reduced the amount of chemicals of interest stored onsite and no longer qualify as a high-risk facility.

Definition of Chemical Facility

The DHS regulates an assortment of facilities that possess and manufacture chemicals of interest. The term chemical facility encompasses many types of facilities. These include chemical manufacturers and distributors, agricultural facilities, universities, and others. Because DHS defines chemical facilities according to possession of a chemical of interest, it regulates facilities that are not part of the chemical manufacturing and distributing chain.

As mentioned above, the statutory authority underlying CFATS exempts several types of facilities, including water and wastewater treatment facilities. Thus, the federal government does not regulate water and wastewater treatment facilities for chemical security purposes. Instead, current chemical security efforts at water and wastewater treatment facilities are voluntary.⁵¹ Some advocacy groups have called for inclusion of currently exempt facilities, such as water and wastewater treatment facilities.⁵² Some water and wastewater treatment facilities possess amounts of chemicals of interest that would lead to regulation if located at a non-exempt facility.⁵³ Advocates for their inclusion in security regulations cite the presence of hazardous chemicals and their relative proximity to population centers as reasons to mandate security measures for such facilities. In contrast, representatives of the water sector point to the critical role that water and wastewater treatment facilities have in daily life. They caution against including these facilities in the existing regulatory framework because of the potential for undue public impacts. They cite, for example, loss of basic fire protection and sanitation services if the federal government were to order a water or wastewater utility to cease operations for security reasons or failure to comply with regulation.⁵⁴

If Congress was to remove the water and wastewater treatment facility exemption, the number of regulated facilities might substantially increase, placing additional burdens on the CFATS program. The United States contains approximately 52,000 community water systems and 16,500 wastewater treatment facilities.⁵⁵ These facilities vary substantially in size and service area. The number of regulated facilities would depend on the criteria used to determine inclusion, such as chemical possession or number of individuals served. It is likely that only a subset of these facilities would meet a regulatory threshold.⁵⁶ In

⁵¹ Congress required certain water facilities to perform vulnerability assessments and develop emergency response plans through Section 401 of P.L. 107-188, the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. For more information on water security activities, see CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*, by Mary Tiemann.

⁵² See, for example, Paul Orum and Reece Rushing, Center for American Progress, *Chemical Security 101: What You Don't Have Can't Leak, or Be Blown Up by Terrorists*, November 2008; and testimony of Philip J. Crowley, Senior Fellow and Director of Homeland Security, Center for American Progress, before the House Committee on Energy and Commerce, Subcommittee on Environment and Hazardous Materials, June 12, 2008.

⁵³ See U.S. Environmental Protection Agency, *Factoids: Drinking Water and Ground Water Statistics for 2008*, EPA 816-K-08-004, November 2008; and U.S. Environmental Protection Agency, *Clean Watersheds Needs Survey 2004: Report to Congress*, January 2008.

⁵⁴ American Water Works Association, "Chemical Facility Security," *Fact Sheet*, 2009. For more information on security issues in the water infrastructure sector, see CRS Report RL32189, *Terrorism and Security Issues Facing the Water Infrastructure Sector*, by Claudia Copeland.

⁵⁵ See U.S. Environmental Protection Agency, *Factoids: Drinking Water and Ground Water Statistics for 2008*, EPA 816-K-08-004, November 2008; and U.S. Environmental Protection Agency, *Clean Watersheds Needs Survey 2004: Report to Congress*, January 2008. For comparison, more than 36,000 chemical facilities filed a Top-Screen under CFATS.

⁵⁶ For example, the number of individuals served by the water facility might be used as a regulatory criterion. Section 401 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (P.L. 107-188) mandated drinking water (continued...)

2011, a DHS official testified that approximately 6,000 such facilities would likely meet the CFATS reporting threshold.⁵⁷

Another option might be to grant statutory authority to regulate water and wastewater treatment facilities for security purposes to EPA. Some water-sector stakeholders suggest that this approach would be more efficient. Providing EPA the authority to oversee security as well as public health and safety might reduce the potential for redundancy and other inefficiencies.⁵⁸

If policy makers were to assign responsibility for chemical facility security at different facilities to different agencies, each agency would promulgate separate rules. These rules might be similar or different depending on the agencies' statutory authority and interpretation of that authority, the ability of the regulated entities to comply, and any interagency coordination that might occur. Some industry representatives have expressed concern regarding the effects of multiple agencies regulating security at water and wastewater treatment facilities.⁵⁹ They assert that municipalities that operate both types of facilities might face conflicting regulations and guidance if different agencies regulate water and wastewater treatment facilities. Congress may wish to assess the areas where such facilities are similar and different in order to provide authorities that meet any unique characteristics.

Any new regulation of water and wastewater treatment facilities is likely to cause the regulated entities, and potentially the federal government, to incur some costs. Representatives of the water and wastewater sectors argue that local ratepayers will eventually bear the capital and ongoing costs incurred due to increased security measures.⁶⁰ Congressional policy makers may wish to consider whether the regulated entities and the customers they serve should bear these costs, as is done for other regulated chemical facilities, or whether they should be borne by the taxpayers in general through federal financial assistance to the regulated entities. Additionally, if inclusion of other facility types significantly increases the number of regulated entities, the regulating agency may require additional funds to process regulatory submissions and perform required inspections.

Identification of Non-Responsive Facilities

Although facilities with greater than screening threshold quantities of chemicals of interest must submit information to DHS under the Top-Screen process, an unknown number of facilities do not provide such information. A well-known example is the West Fertilizer Company, which reported more than a threshold amount of a chemical of interest to the EPA under the Risk Management Plan (RMP) program

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facilities serving more than 3,300 individuals develop an emergency response plan and perform a vulnerability assessment. Approximately 8,400 community water systems met this requirement in 2002. For more information on drinking water security activities, see CRS Report RL31294, *Safeguarding the Nation's Drinking Water: EPA and Congressional Actions*, by Mary Tiemann.

⁵⁷ Oral testimony of Rand Beers, Under Secretary, National Protection and Programs Directorate, Department of Homeland Security, before the House Committee on Homeland Security, Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies, February 11, 2011.

⁵⁸ Some agencies oversee both safety and security issues. For example, the U.S. Coast Guard has both safety and security responsibilities for ports.

⁵⁹ See, for example, American Water Works Association, "AWWA Members Urged to Contact Congress on Chemical Security Bill," and Association of Metropolitan Water Agencies, "Drinking Water Security and Treatment Mandates," *Policy Resolution*, October 2008.

⁶⁰ Testimony of Brad Coffey, Association of Metropolitan Water Agencies, before the House Committee on Energy and Commerce, Subcommittee on Environment and Hazardous Materials, June 12, 2008.

but did not file with DHS under CFATS. One limited survey of community hospitals reported that 50% of respondents were unaware of CFATS reporting requirements.⁶¹ The DHS refers to non-compliant facilities as “outliers.” Congressional policy makers have raised the concern that many facilities may still not have properly reported to DHS.⁶²

The total number of facilities not complying with CFATS reporting requirements is not known. If DHS lacks information about a facility’s chemical holdings, it is unlikely to be able to identify it as an outlier. Comparing federally held information on regulated facilities with data held by other sources may be effective in identifying outliers. In order to identify such facilities, DHS has engaged with EPA regarding RMP data. In 2013, DHS identified 3,362 facilities as potential outliers through this effort; approximately 900 have subsequently filed a Top-Screen while 522 facilities have not responded to DHS. According to DHS, ISCD plans to continue to compare EPA RMP data, as well as the Superfund Amendments and Reauthorization Act Title III data from all 50 individual state data sets, on an annual basis to identify facilities that are potentially non-compliant with the CFATS regulation.⁶³ Each discrepancy between the data sets will then be investigated and resolved to ensure reporting facilities adhere to all regulatory obligations.

In August 2013, President Obama issued Executive Order 13650, *Improving Chemical Facility Safety and Security*.⁶⁴ The White House is coordinating a review under this executive order of chemical safety and security regulations across departments and agencies to identify gaps in coverage and explore ways to mitigate those gaps through existing authorities. This effort is still in progress.

Analysis of H.R. 4007

H.R. 4007, the Chemical Facility Anti-Terrorism Standards Program Authorization and Accountability Act of 2014, was referred to the House Committee on Energy and Commerce and the House Committee on Homeland Security. On April 3, 2014, the Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies, of the House Committee on Homeland Security, amended the bill as introduced and ordered it forwarded to the full Committee with a favorable recommendation, as amended. On April 30, 2014, the House Committee on Homeland Security amended the bill as reported by the Subcommittee and ordered it to be reported to the House of Representatives with a favorable recommendation, as amended.

⁶¹ Hospitals may store chemicals of interest above screening threshold quantities and thus become regulated under CFATS. Morgan M. Bliss, Kiril D. Hristovski, and Jon W. Ulrich. “Compliance of Community Hospitals with the Chemical Facility Anti-Terrorism Standards (CFATS) in the Western United States” *Journal of Homeland Security and Emergency Management*, 10(2), 2013, pp. 433-445.

⁶² Representative Michael T. McCaul, Chairman, Committee on Homeland Security; Representative Fred Upton, Chairman, Committee on Energy and Commerce; and Representative John Carter, Chairman, Homeland Security Appropriations Subcommittee, *Letter to Janet Napolitano, Secretary, U.S. Department of Homeland Security*, July 22, 2013; Senator Tom Carper, Chairman, Committee on Homeland Security and Governmental Affairs, *Letter to Janet Napolitano, Secretary, and Suzanne Spaulding, Acting Under Secretary, National Protection and Programs, U.S. Department of Homeland Security*, June 28, 2013; and Representative Henry A. Waxman, Ranking Member, Committee on Energy and Commerce, and Representative Bennie G. Thompson, Ranking Member, Committee on Homeland Security, *Letter to President Barack Obama*, May 2, 2013.

⁶³ Department of Homeland Security, National Protection and Programs Directorate, *Infrastructure Protection and Information Security Fiscal Year 2015 Congressional Justification*, p. 90.

⁶⁴ Executive Order 13650, *Improving Chemical Facility Safety and Security*, August 1, 2013. See 78 *Federal Register* 48029-48032 (August 7, 2013).

H.R. 4007 has similarities with the existing statute. The bill incorporates much of the language in the existing statutory authority. It would require the Secretary of Homeland Security to establish risk-based performance standards and mandate that covered facilities submit security vulnerability assessments and develop and implement site security plans. The act as amended would require the Secretary to review and approve or disapprove such security vulnerability assessments and site security plans. H.R. 4007 prohibits the Secretary from making such approval or disapproval on the basis of the presence or absence of a particular security measure, which maintains the inability of DHS to require implementation of inherently safer technologies. H.R. 4007 would maintain existing statutory exemptions, information protection requirements, and preempt state law or regulation only in the case of an “actual conflict.”

H.R. 4007, as amended, and the existing statute have key differences. These are briefly described below.

- H.R. 4007, as amended, lacks a termination date for the statutory authority. The current statutory authority will terminate on October 4, 2014. The authority granted under H.R. 4007 would be permanent.
 - H.R. 4007, as amended, would specify that the CFATS risk assessment approach and tiering methodology would be based on all relevant elements of risk, including threat, vulnerability, and consequence. It further specifies the criteria to include relevant threat information, the potential economic consequences of a terrorism incident at the facility and the potential loss of human life, as well as the vulnerability of the facility to certain terrorist events. This differs from the existing statute, which does not specify how to consider security risk.
 - H.R. 4007, as amended, would expressly allow the Secretary to use third-party inspectors rather than federal employees in the inspection process. While DHS had implied that it had such authority, H.R. 4007, as amended, would codify this authority.
 - H.R. 4007, as amended, would provide certain limitations on the Secretary with respect to issuing a personnel surety standard. As mentioned above, DHS has issued a personnel surety proposal, but provisions in H.R. 4007, as amended, would conflict with this proposal. Specifically, H.R. 4007, as amended, would require DHS to accept certain credentials beyond those identified in its personnel surety proposal, prohibit DHS from requiring information on as many types of individuals as DHS planned, and require greater information sharing than DHS had proposed.
 - H.R. 4007, as amended, would codify certain activities undertaken through the Secretary’s discretion. One is mandating the acceptance of reviewed and approved alternative security programs in lieu of a site security plan. The other is creating an exemption for rail facilities handling hazardous materials. In both cases, DHS has implemented these actions through its rulemaking.
 - H.R. 4007, as amended, would amend the Homeland Security Act of 2002 by creating a new title, Title XXI, called Chemical Facility Anti-Terrorism Standards. The existing statute is free standing, not part of the Homeland Security Act.
 - H.R. 4007, as amended, would require DHS to plan and perform certain outreach activities, support small chemical facilities, and issue reports to Congress on various aspects of the CFATS program, certifying its progress and development of a risk assessment approach. It would also require a semiannual GAO report to Congress assessing the act’s implementation.
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Thank you for the opportunity to appear before the committee. I would be happy to address any questions you may have.
