



Written Testimony

of

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Regarding

The Chemical Facility Anti-Terrorism Standards Program

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## **Introduction**

Chairman Johnson, Ranking Member McCaskill, Members of the Committee,

I appreciate the opportunity to appear before you today to discuss the development and maturation of the Department of Homeland Security's (DHS) regulation of high-risk chemical facilities under the Chemical Facility Anti-Terrorism Standards (CFATS) Program. On behalf of NPPD, I also want to take this opportunity to thank this committee for including legislation transforming NPPD into the Cybersecurity and Infrastructure Security Agency in the recent DHS authorization bill. The new Agency would continue NPPD's mission of leading the national effort to improve critical infrastructure security, coordinating the protection of the Federal Government's networks and physical infrastructure, and helping entities in the public and private sectors manage potential cyber risk. As the threats facing our National security grow and evolve every day, we look forward to continuing to work with this committee to pass that critical legislation.

## **CFATS Program Overview**

The CFATS Program is a vital part of our nation's counterterrorism efforts as we work with our industry stakeholders to keep dangerous chemicals out of the hands of those who wish to do us harm. Since the CFATS Program was created, we have engaged with industry to identify and regulate high-risk chemical facilities and to ensure they have security measures in place to reduce the risks associated with the possession of chemicals of interest.

The cornerstone of the CFATS Program is the development, submission, and implementation of Site Security Plans (SSPs), or Alternative Security Programs in lieu of SSPs that document the security measures that high-risk chemical facilities utilize to satisfy the applicable Risk-Based Performance Standards (RBPS) under CFATS. Due to the diversity

of facilities who hold chemicals of interest, it is important to note that these plans are not “one-size-fits-all,” but are in-depth, highly customized, and account for each facility’s unique circumstances.

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

Facilities determined to be high-risk must submit a Security Vulnerability Assessment and SSP or Alternative Security Programs to DHS for approval. The plan must include security measures that meet the RBPS established by DHS. The Department performs an authorization inspection at the facility prior to granting a security plan approval to ensure that the measures contained in the security plan are appropriate given the facility’s specific security issues and unique characteristics. Once a facility’s plan is approved, DHS conducts regular compliance inspections to verify that a facility is implementing the agreed-upon security measures.

### **CFATS: Where We Were**

I recognize that for many on the Committee, today’s roundtable represents the first significant engagement with the CFATS Program. For this reason, I think it is important to first look back at the state of the program prior to 2014.

The CFATS Program was born out of the recognition that, though we had worked hard to strengthen our homeland security in the aftermath of the September 11, 2001 attacks, the nation continued to face very real threats. In particular, it was noted by Congress that there existed

vulnerabilities at facilities holding chemicals that, in the wrong hands, had the potential to injure or kill large numbers of individuals and do significant physical and economic damage. It was this recognition that led Congress to establish the CFATS Program under Section 550 of the Homeland Security Appropriations Act for Fiscal Year (FY) 2007.

The initial CFATS statute required the issuance of interim final regulations within 6 months of enactment, and, on April 9, 2007, the Department published the CFATS regulations in the *Federal Register*. Yet, as with any complex regulatory program launched in a short amount of time, the early days of the program were not without their challenges, many of which have been documented in other forums.

When we last appeared before the Committee, the CFATS Program was making progress, however significant challenges remained. When we last met, lacking separate authorizing legislation, the program continued to be reliant upon the federal appropriations process for authority to regulate. This authorization structure not only affected employee morale, it failed to instill confidence in industry stakeholders making them hesitant to make critical investments in CFATS-related security measures and enhance their security posture.

Further, this reliance on the annual appropriations process put our nation at risk, as evidenced by the funding lapse in October 2013. During this lapse, not only did the programmatic activities of CFATS cease, its authorization also expired. This gap caused many facilities to question whether the regulations were still in effect and the Department to question whether it had the authority to take enforcement action had there been an exigent need or imminent threat.

During my previous testimony, I had informed the Committee that the Department had undertaken a thorough review of our risk assessment process. The CFATS risk-assessment

methodology is one of the foundational elements of the program, as DHS uses it to determine which of the tens of thousands of facilities in possession of threshold quantities of chemicals of interest are at high-risk of terrorist attack or exploitation and are, therefore, required to develop CFATS security plans.

The review included documenting all processes and procedures relating to the risk assessment methodology, conducting an internal review of the risk assessment process, and initiating an external peer review of the risk assessment methodology. All three of these had been completed, and after a review of the Peer Review Final Report, the Department began to consider changes to the tiering methodology.

Finally, we were continuing to work our way through a backlog of SSP reviews. At the time of my 2014 testimony, CFATS covered over 4,200 facilities of which less than half had an authorized SSP and only one-fifth had an approved plan. Though the program had begun to improve the pace of authorizations, inspections, and approvals, the Government Accountability Office (GAO) had projected that it would take the Department seven to nine years to work through the backlog.

### **CFATS: Where We Are**

As I noted at the outset of my testimony, it has been four years since our last CFATS-related appearance before the Committee, and I am happy to report today, we have made significant accomplishments and the trajectory of our progress is clearly upward. Through the collective efforts of our dedicated federal workforce, stakeholders, and the leadership of lawmakers, the CFATS Program has matured significantly in that time.

## **Clearing the SSP Backlog**

In July 2016, after more than 6,000 inspections and Compliance Assistance Visits, and review of nearly 3,000 SSPs, I signed off on the approval of a milestone SSP of a chemical manufacturing facility. This approval, after three years of concerted effort to move the CFATS program forward, effectively eliminated the backlog of SSP reviews 6 years ahead of GAO's projections. I am sure Chairman Johnson will appreciate knowing that this milestone facility was located in Wisconsin.

With this achievement, we have transitioned from "start up" to a more mature "sustainment" posture, and are now able to more fully focus on conducting compliance inspections and creating a stronger culture of security. Whereas previously our inspections were overwhelmingly of the pre-approval Authorization Inspection variety, now the majority of the inspections we are conducting are post-security plan-approval Compliance Inspections (CI). To illustrate how far we have come in this regard, in FY2013, the Department had completed only a singular compliance inspection. In FY2017, the Department conducted 1,569 such inspections.

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

### **Version 2.0**

In the fall of 2016, the Department launched an enhanced risk-assessment and tiering methodology that appropriately accounts for all elements of risk and addresses statutory requirements laid out in the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014*. The result of 3 years of work by DHS risk experts, the methodology has benefited from and has been informed by analysis and input from a panel of external experts from industry, government, and academia. Sandia National Laboratories has also performed an independent verification and validation.

The enhanced tiering methodology uses a scientifically supported approach to calculate each facility's risk as a function of information related to terrorist threat, the facility's inherent vulnerabilities, and the potential consequences of a terrorist attack. Enhancements include the addition of physics-based models for chemicals that could be taken offsite and used in an attack, updates to the threat model informed by intelligence, and improvements to the population modeling for release facilities. We believe that these changes make this methodology a more accurate reflection of a facility's risk.

All facilities with holdings of chemicals of interest are required to resubmit information and are being assessed using the new methodology. To date, nearly all 28,000 facilities that had previously reported holdings of chemicals of interest at the screening threshold quantity have submitted a revised Top-Screen. All Top-Screens receive an eyes-on quality assurance review to ensure the data reported makes sense for the type of chemical and facility reporting. In cases where there are concerns with the data reported, ISCD contacts the facility for clarifications. When necessary, the facility is asked to make corrections to appropriately reflect the data. DHS began issuing tiering determination letters using the enhanced methodology on April 4, 2017. We anticipate that we will have tiered the entire current population of chemical facilities of interest using the new methodology by October 2018. The Department expected shifts in tiers and originally analyzed over 8,000 Top-Screens to identify the projected movements. Now that DHS has received almost all revised Top-Screens it completed analysis on those facilities and saw a shift in the populations as follows:

- All facilities that were high-risk (Tier 1-4) prior to CSAT 2.0 have been notified of their revised tier.

- Approximately 36% of the previous high-risk population remained at the same Tier
- Approximately 48% of the previous high-risk population moved from one tier to another tier
- Approximately 15% of the previous high-risk population has been determined not to be high-risk
- Approximately 4% of the previous not high-risk population has been determined to be high-risk

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

As an example, under the previous format, completing a Top-Screen was estimated to take just over 11 hours, the current format has reduced that to just 6 hours. In addition, building upon lessons learned over the life of the program, the Department reduced the number of questions on the Security Vulnerability Analysis from approximately 600 to 10 while the new Site Security Plan has less than one-third of the questions than the previous iteration.

### **Personnel Surety Program**

Vetting those who have access to chemicals of interest and other sensitive parts of high-risk chemical facilities is a key aspect of facility security. Under RBPS 12, Personnel Surety,



facilities must implement (1) measures to verify and validate identity, (2) check criminal history, (3) validate legal authorization to work in the United States, and (4) identify people with terrorist ties. While all tier 1 through 4 facilities have been implementing the first three elements of RPBS 12, the Department began working with Tier 1 and Tier 2 facilities to implement the fourth element in December 2015 after the Office of Management and Budget approved the Department's Information Collection Request for the CFATS Personnel Surety Program (RPBS 12(iv)).

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

### **The Road Ahead and Reauthorization**

Four years ago, I came before the Committee, outlined the improvements we had made so far, and assured the Members that we were moving forward strategically to address the challenges that remained. Today, I am proud to say that we have made good on that assurance.

In 4 years we have:

- Dramatically improved the pace of inspections, reviews, and approvals resulting in the elimination of a backlog once projected to take 7 to 9 years to clear, nearly 6 years ahead of schedule.

- Developed and deployed an enhanced risk-tiering methodology that is scientifically based; vetted by external experts from across industry, government, and academia; and a more accurate reflection of a facility's risk.
- Streamlined the SSP development process reducing the burden on facility operators without sacrificing security through the launch of CSAT 2.0.
- Closed a critical gap in the security plans of our nation's highest risk facilities through the implementation of the Personnel Surety Program (screening for terrorist ties).

In addition, the Department continues to make outreach to its various stakeholder communities a top priority particularly to first responders and emergency managers. By end of fiscal year 2017, DHS conducted nationwide outreach with more than 1200 State and local offices and 1400 Local/Tribal Emergency Planning Committees in 50 U.S. states, District of Columbia, and 9 U.S. territories. Specifically, the Department reported contacts with nearly all State Offices of the Homeland Security Advisor, First Responder/Manager, Fire Marshal, Public Safety, and plans to continue these meetings annually. Further, the Department regularly participates and presents at SERC/TERC meetings, Area Maritime Security Meetings, and HAZMAT conferences.

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

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

## **Conclusion**

Indeed, we have accomplished much since 2014. A lot of it is due, as I noted earlier, to the collective efforts of many individuals and institutions, and especially the leadership of Congress. It would be accurate to say that much of what we have been able to do in 4 years is attributable to Congress taking action and passing the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014*.

Until the passage of that legislation, the program had been authorized on a yearly basis through the appropriations process. Enacting a multi-year CFATS authorization:

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

With long-term authorization, chemical facilities of interest have become further incentivized to engage with the Department with regard to facility security and are deterred from ignoring CFATS obligations in hopes that the program will be allowed to expire.

As we are all too aware, we live in a dynamic threat environment and the threat of a terrorist attack using chemicals is as relevant today as it was when CFATS was first created. We continue to see terrorists seeking out and using chemicals of the sort regulated under CFATS. We need look no further than events which have taken place in Belgium, Syria, France, and the United Kingdom and the continuing threat stream to know that this is not a time to stop addressing the security threat posed by chemicals.

Chemical security is very much a pressing need and reauthorization for the CFATS Program is a major step toward meeting it. I look forward to working with each of you to chart a path forward for this critical national security program that includes reauthorization. I thank the Members of this Subcommittee and look forward to your questions.