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H.R. 908, A BILL TO EXTEND THE AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY TO MAINTAIN THE CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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H.R. 908, A BILL TO EXTEND THE AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY TO MAINTAIN THE CHEMICAL FACILITY ANTI–TERRORISM STANDARDS PROGRAM

THURSDAY, MARCH 31, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 9:07 a.m., in room 2322 of the Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, Murphy, Whitfield, Bass, Latta, McMorris Rodgers, Harper, Cassidy, Gardner, Green, Butterfield, Barrow, and Waxman (ex officio).

Staff present: David McCarthy, Chief Counsel, Environment and Economy; Tina Richards, Senior Policy Advisor, Chairman Emeritus; Gerald S. Couri, Senior Environment Policy Advisor; Chris Sarley, Policy Coordinator, Environment and Economy; Alex Yergin, Legislative Clerk; Jackie Cohen, Democratic Counsel; Greg Dotson, Democratic Energy and Environment Staff Director; Caitlin Haberman, Democratic Policy Analyst; and Karen Lightfoot, Democratic Communications Director and Senior Policy Advisor.

Mr. SHIMKUS. I would like to call the hearing to order. And I will start by recognizing myself for 5 minutes.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Today we will hold our first legislative hearing on H.R. 908, a bill that will give regulatory certainty, while providing the necessary security to keep chemical facilities, the employees who work there, and the American public safe.

Under the leadership of Chairman Emeritus Barton, language authorizing the creation of the Chemicals Facility Anti-Terrorism Standards Act, which we know as CFATS, became law during the 109th Congress. CFATS takes a common-sense approach to chemical facility security by allowing the Department of Homeland Security to register facilities and determine where the biggest security threats exist. This is done through the development of risk-based standards that greatly reduce or eliminate vulnerabilities. To date, this framework has been used successfully, with thousands of fa-

cilities around the country identified, and industry working collaboratively with DHS to comply with regulations. It is important that these efforts move forward because the continuation of the CFATS program remains critical to our national security.

Introduced by Vice-Chairman Tim Murphy and Ranking Member Gene Green, H.R. 908 will allow our antiterrorism security efforts at chemical facilities across the country to remain strong and the law underpinning them to remain in effect. At the same time it gives DHS time to fully implement this law, but most importantly, it provides a signal of clarity to business that they will not face uncertainty, fostering job creation and getting our economy back on track. I am encouraged by the bipartisan effort with introduction of this bill. It has played no small part in us holding this legislative hearing today and I look forward to continuing these efforts together.

I appreciate Under Secretary Beers for working with us on his schedule to make sure he could testify today and that is why we are starting a little bit earlier than we normally do. I look forward to an update on the Department's progress as well as its thoughts on CFATS moving forward.

Regarding our second panel, CFATS is a law that affects facilities with chemicals, not just chemical facilities. I believe it is important for this committee to hear from some of those interests. DHS's own information shows that some universities, hospitals, warehouses, distributors, and paint manufacturers are considered high-risk sites under CFATS. I welcome these interests and all our members on the second panel. I am equally interested in hearing how their sectors have managed implementation, whether they think major new additions to the law are warranted, and what type of affects an extension of CFATS could have moving forward.

Finally, I want to raise one more matter in case there have been many questions. As everyone knows, our committee has sole jurisdiction over the Safe Drinking Water Act and existing drinking water security program at EPA. While I am not opposed to looking at this issue separately and at a later date, the fact of the matter is CFATS is set to expire very shortly and the drinking water provisions aren't. In a true risk-based spirit, we are going to attack the problem that is the most pressing first and then later look into seeing whether something more needs to be done in the other area.

My time has expired. I will look for any one of my colleagues who may want a minute and 30, and if not, I will yield back my time and yield to the ranking member, Mr. Green from Texas, for 5 minutes.

[The prepared statement of Mr. Shimkus follows:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS

The Subcommittee will now come to order. Today we will hold our first legislative hearing on H.R. 908, a bill that will give regulatory certainty while providing the necessary security to keep chemical facilities, the employees who work there, and the American public safe.

Under the leadership of Chairman Emeritus Barton, language authorizing the creation of the Chemical Facilities Anti-terrorism Standards Act (CFATS) became law during the 109th Congress. CFATS takes a common sense approach to chemical facility security by allowing the Department of Homeland Security (DHS) to register facilities and determine where the biggest security threats exist. This is done

through the development of risk-based standards that greatly reduce or eliminate vulnerabilities. To date this framework has been used successfully, with thousands of facilities around the country identified, and industry working collaboratively with DHS to comply with regulations. It is important that these efforts move forward because the continuation of the CFATS program remains critical to our national security.

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My time has expired, and I yield 5 minutes to the ranking member of the subcommittee, the gentleman from Texas and cosponsor of H.R. 908, Ranking Member Green.

[H.R. 908 follows:]

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112TH CONGRESS
1ST SESSION

H. R. 908

To extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards program.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2011

Mr. MURPHY of Pennsylvania (for himself and Mr. GENE GREEN of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

---

A BILL

To extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards program.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Full Implementation of the Chemical Facility Anti-Terrorism Standards Act".

1 **SEC. 2. EXTENSION OF DEPARTMENT OF HOMELAND SECU-**
2 **RITY CHEMICAL FACILITY ANTI-TERRORISM**
3 **STANDARDS PROGRAM.**

4 Subsection (b) of section 550 of the Department of
5 Homeland Security Appropriations Act for Fiscal Year
6 2007 (Public Law 109–295; 6 U.S.C. 121 note) is amend-
7 ed by striking "2010" and inserting "2017".

○

OPENING STATEMENT OF HON. GENE GREEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. GREEN. Thank you, Mr. Chairman, for holding the legislative hearing today on H.R. 908, the full implementation of the Chemical Facility Anti-Terrorism Standards Act introduced by Representative Tim Murphy and myself.

Chemical facility security is extremely important in the protection of public health and safety and particularly in our congressional district in Houston. The Houston Ship Channels are the heart of the petrochemical complex that stretches along the Texas Gulf Coast producing many products essential to modern life. It is also the largest petrochemical complex in the country. These chemical facilities contribute much in our economy and way of life in employing thousands of workers in high-paying quality jobs. These dedicated employees, as well as the communities that surround these facilities deserve the best security standards possible to prevent an act of terrorism on U.S. soil.

Section 550 of the Department of Homeland Security Appropriations Act of 2007, Congress authorized the Department to regulate security at high-risk chemical facilities. Under Section 550, covered facilities must perform security vulnerability assessments and implement Site Security Plans containing security. According to DHS, since CFATS became effective in June of 2008, they have analyzed nearly 40,000 facilities across the United States. Initially, DHS identified more than 7,000 facilities as potential high-risk. Then over 2,000 facilities have been downgraded or are no longer regulated. Currently, CFATS covers 4,744 high-risk facilities nationwide across all 50 States, of which 4,126 facilities have received high-risk determinations.

The program is funded through appropriation rider due to expire on March 18 with the CR. It is very important for the security of this country to revisit this statute to determine what is working in this program and what can be improved upon.

Additionally, it is important we provide industry with some assurance that the program will continue to be funded. Since 2001, chemical facilities have already invested billions in security improvements or fully complying with current regulations. Last year, H.R. 2868, the Chemical Facility Antiterrorism Act introduced by Representatives Thompson, Waxman, and Markey passed out of this committee and the full House. But unfortunately, like many good pieces of legislation, the House passes H.R. 2868 was never taken up by the Senate, and we are here today to begin discussions on how to proceed with chemical security.

I worked hard with Ranking Member Waxman and Markey to improve H.R. 2868. One of these provisions was to avoid unnecessary duplication between CFATS and exempted MTSA facilities. I continue to support provisions to avoid overlap with existing security programs and I intend to ask our witnesses today about this issue as well.

And again, I want to thank our witnesses for appearing and welcome Under Secretary Beers. And with that, thank you for taking the time to discuss this important program. And Mr. Chairman, if I have any time left, I would like to yield to our ranking member of the full committee.

Mr. SHIMKUS. Do you want your full time?

Mr. GREEN. You want your full time? OK. I will yield back.

Mr. SHIMKUS. The gentleman yields back. The chair now recognizes the subcommittee vice-chairman, Mr. Murphy, for 5 minutes.

OPENING STATEMENT OF HON. TIM MURPHY, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA

Mr. MURPHY. Thank you, Mr. Chairman. I want to thank you and also my colleague, Gene Green of Texas, for working with me on this bill.

The chemical industry, we know, touches every segment of our economy from agriculture to energy production to paint and plastics. Certainly, there is nothing we can go through for an hour in our lives without touching several layers of it, and its safety and security is of high importance to all of us and essential to our Nation's economic recovery in maintaining a strong domestic chemical industry. So any federal policy on plant security has to be mindful of that public health and safety but also has to make sure we have a regulatory certainty climate and stability so the chemical employers can continue to safely grow jobs and create a better economy.

Under the Chemical Facility Anti-Terrorism Standards, our chemical plant and refineries have made significant improvements towards keeping our communities safe. In fact, since September of 2001, the domestic chemical industry has spent an estimated $8 billion on plant security and under the existing framework will spend another $8 billion. The law, we know, identifies four high-risk categories that require vulnerability assessments and Site Security Plans, but more importantly, the oversight and enforcement of the Department of Homeland Security.

By the way, I am pleased that we will be hearing today from a Marine to talk about that because if anybody can tell us about security, call in the Marines, right? Important that we also have here today information on how this is working and present to us any information with regard to its effectiveness and implementation. Certainly, it does not deal with all aspects of chemical safety. That is for other issues on other legislation. This is specifically as it relates to some of these antiterrorism security measures. And we will look forward to hearing about this.

So given that we have a successful program here, instead of changing it, the issue is let us provide domestic employers certainty on the regulatory front so they can continue to work towards the issue of security. Otherwise, we would be creating, I think, more barriers, more confusion with regard to security and jobs.

So I look forward to working with Chairman Shimkus and Upton of the Energy and Commerce Committee, and of course with Ranking Member Gene Green to pass this bipartisan legislation and ensure that a key part of our Homeland Security policy is maintained. And with that, Mr. Chairman, I yield back.

Mr. SHIMKUS. The gentleman yields back his time. The chair recognizes the ranking member of the full committee, Mr. Waxman, for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you very much, Mr. Chairman.

After the terrorist attack of 9/11/2001, federal officials and outside experts warned that the Nation's drinking water, utilities, and chemical facilities were vulnerable to terrorist attack. The risk that common, useful chemicals could be wielded as weapons by those who would seek to harm us became an alarming possibility and concern.

In 2006 the Appropriations Committee established a program to protect the Nation's chemical facilities from terrorist attack and other intentional acts. The Chemical Facility Anti-Terrorism Standards Act was established by a provision tacked onto an appropriations bill. Today's hearing examines H.R. 908, legislation to extend the authorization for this 2006 program for another 7 years.

The Department of Homeland Security has made tremendous progress in developing its chemical security program. They have done so without a great deal of congressional guidance. Although the provision establishing the program was within the jurisdiction of this committee, the committee didn't mark up a report the provision. The members of this committee didn't consider and revise it. Unfortunately, it was enacted without our input.

The rationale was that this program was an emergency measure. It would be established quickly but would also end quickly, giving our committee the opportunity to develop a comprehensive policy. The Department of Homeland Security was directed to issue regulations in just 6 months and the program was slated to expire in 2009. But now we have seen that deadline extended with each appropriations bill.

The Department has done well in getting the program off the ground, but it is unable to correct shortcomings in the underlying law authorizing its program. That task falls to us as the committee of jurisdiction.

And there are serious shortcomings with the law that create dangerous security gaps. For instance, drinking water facilities are not covered at all. Unfortunately, H.R. 908 simply extends the authorization of the existing program and would not address significant security gaps that put Americans at risk. It doesn't have to be this way. In the last Congress, Democratic and Republican staff spent hundreds of hours methodically working through the issues surrounding the CFATS program. We worked with the Majority and Minority of the Committee on Homeland Security. Industry, labor, and affected stakeholders were consulted throughout the process.

The result was H.R. 2868, the Chemical and Water Security Act of 2009, which this committee reported and passed the House on a vote of 230 to 193. That legislation would have closed significant security gaps by establishing a security program for drinking water facilities and wastewater treatment works. The legislation would have harmonized the Chemical Facility Anti-Terrorism Standards Act with the Maritime Transportation Security Act. It also would have removed exemptions from Federal facilities.

H.R. 2868 would have strengthened security at covered facilities by requiring assessment and in some cases adoption of safer chemi-

cals, processes, or technologies to reduce the consequences of a terrorist attack. That common-sense policy would help facilities reduce the likelihood that they will become attractive terrorist targets.

H.R. 2868 would also have strengthened security nationwide by creating an important mechanism for citizen enforcement. Companies, state attorneys general, and ordinary citizens could have used this provision to hold the Department to deadlines and ensure that the program was implemented.

Unfortunately, in its current state, H.R. 908 would make none of these changes and would do nothing to close the significant security gaps we face as a Nation. I hope that we can have a robust committee process, find common ground to close those security gaps once and for all, and to make our country safer.

Finally, I would like to note a number of issues with this legislation relating to the legislative protocols announced by the majority leader. For instance, legislation authorizing discretionary appropriations is required to specify the actual amount of funds being authorized. H.R. 908 does not do this. The Republican leadership has also said that they require a new or increased authorization to be offset by the termination of an existing authorization of equal or greater size. H.R. 908 does not terminate any existing authorization. As we move forward in the legislative process, it is important that we understand how H.R. 908 comports with these protocols.

Mr. Chairman, thank you for holding today's hearing. This is an important issue and one that I hope we can work on together. I yield back my time.

Mr. SHIMKUS. Thank you, Mr. Waxman. Now, I would like to recognize the Honorable Rand Beers. I will just say before—we are honored to have you. I have gone through your bio and career: public servant, Marine rifle company commander in Vietnam and then all over the place working in service to this country. So we do appreciate you coming and thank you for your service. And you are recognized for 5 minutes for your opening statement.

STATEMENT OF RAND BEERS, UNDER SECRETARY, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. BEERS. Thank you, Mr. Chairman, Ranking Member Green, distinguished——

Mr. SHIMKUS. Sir, there is probably a button on the front there.

Mr. BEERS. Oh, there is. There we go. Thank you, sir. Thank you, Mr. Chairman, Ranking Member Green, and distinguished members of the committee. It is a pleasure to be here today and thank you for working to accommodate our schedules jointly.

As you all are aware, Section 550 of the fiscal year 2007 Department of Homeland Security Act, as amended, set up the expiration of this program in October of 2010, and it has been extended through the legislative process, including to this committee and is set to expire. So we are very eager to work with the committee and all levels of government and the private sector to achieve passage of the legislation and permanently authorize the Chemical Facilities Anti-Terrorism Standards program.

While the inspection process is still ongoing, our analysis indicates that this program is delivering tangible results that make our

Nation more secure. For example, since our inception, there have been 1,246 committees having completely removed their chemicals of interest and an additional 584 facilities that no longer possess the quantity of chemicals of interest that meet the threshold to be considered as high-risk facilities.

Currently, as has been indicated, there are 4,744 high-risk facilities nationwide in all 50 States, of which 4,126 facilities have received a final high-risk determination and due dates for the submission of their Site Security or Alternate Security Plans. This is a reflection of the significant work that has been done to date, beginning with the review, as indicated, of more than 39,000 facilities that submitted initial consequence screenings.

More than 4,100 facilities have submitted their Site Security Plans, and in February of 2010, the Department began conducting inspections of the final-tiered facilities, starting with the highest risk, or Tier 1, facilities. The Department has completed approximately 175 preauthorization inspections to date.

An important point that I hope does not get lost in these statistics is the open dialogue that DHS has established with industry through this program and the successful security gains that have already been implemented as a result.

We enjoy a constructive dialogue with Congress, including members of this committee, as it contemplates new authorizing legislation for the CFATS program. The Department supports permanent authorization for the program, is committed to working with the Congress and other security partners to pass stand-alone chemical security legislation that includes the permanent authority beginning in fiscal year 2011.

As you know, the administration believes that such an authorization should close security gaps in the current structure, such as eliminating the exemption for water and wastewater facilities and prudently approaching mandatory consideration of inherently safer technology.

Again, thank you very much for holding this important hearing, and I would be happy to respond to any questions that you might have, Mr. Chairman, and other members of this distinguished committee.

[The prepared statement of Mr. Beers follows:]

Testimony Summary

Rand Beers
Under Secretary
National Protection and Programs Directorate
Department of Homeland Security

Before the
House Committee on Energy and Commerce
United States House of Representatives

The Department's current authority under Section 550 of the Fiscal Year 2007 Department of Homeland Security Appropriations Act, as amended, was set to expire in October 2010, but has been temporarily extended under the current Continuing Resolution. The Department is eager to work with Congress, all levels of government and the private sector to achieve passage of legislation that permanently authorizes and appropriately matures the Chemical Facility Anti-Terrorism Standards (CFATS) program.

Implementation Status

CFATS currently covers 4,744 high-risk facilities nationwide across all 50 states, of which 4,126 facilities have received final high-risk determinations. More than 4,100 facilities have submitted Site Security Plans (or Alternative Security Programs) to date, and the Department is in the process of reviewing these submissions. The Department continues to issue final tier notifications to facilities across all four risk tiers as additional final tier determinations are made by the Department, and in February 2010, the Department began conducting inspections of final-tiered facilities.

Outreach Efforts

Since the release of CFATS in April 2007, the Department has taken significant steps to publicize the rule and ensure that the regulated community and security partners are aware of its requirements. We have also solicited feedback from our public and private sector partners and, where appropriate, have reflected that feedback in our implementation activities. The Department participates, on average, in more than 250 CFATS-specific outreach engagements annually, not including formal coordination activities. In addition, the Department continues to focus on fostering solid working relationships with state and local officials and first responders.

Legislation to Permanently Authorize CFATS

The Department supports permanent authorization for the program, and is committed to working with Congress and other security partners to pass stand-alone chemical security legislation that includes permanent authority beginning in fiscal year 2011. The Administration believes that such an authorization should close security gaps in the current statute, such as eliminating the exemption for water and wastewater facilities, and prudently approach mandatory consideration of inherently safer technologies.

Statement for the Record

Rand Beers
Under Secretary
National Protection and Programs Directorate
Department of Homeland Security

Before the
House Committee on Energy and Commerce
United States House of Representatives

March 31, 2011

Thank you, Chairman Upton, Ranking Member Waxman, and distinguished Members of the Committee. It is a pleasure to appear before you today to discuss the Department of Homeland Security's (DHS) efforts to secure high-risk chemical facilities. As you are aware, the Department's current authority under Section 550 of the Fiscal Year 2007 Department of Homeland Security Appropriations Act, as amended, was set to expire in October 2010, but has been temporarily extended under the current Continuing Resolution. DHS is eager to work with this Committee, Congress, and all levels of government and the private sector to achieve passage of legislation that permanently authorizes and appropriately matures the Chemical Facility Anti-Terrorism Standards (CFATS) program. In the interest of facilitating that collaboration, my testimony focuses on the current program and the key principles that DHS would like to see guide the program's maturation.

Chemical Security Regulations

Section 550 of the Fiscal Year (FY) 2007 Department of Homeland Security Appropriations Act directed the Department to develop and implement a regulatory framework to address the high

level of security risk posed by certain chemical facilities. Specifically, Section 550(a) of the Act authorized the Department to adopt rules requiring high-risk chemical facilities to complete Security Vulnerability Assessments (SVAs), develop Site Security Plans (SSPs), and implement protective measures necessary to meet risk-based performance standards established by the Department. Consequently, the Department published an Interim Final Rule, known as CFATS, on April 9, 2007. Section 550, however, expressly exempts from those rules certain facilities that are regulated under other federal statutes, including those regulated by the United States Coast Guard pursuant to the Maritime Transportation Security Act (MTSA), drinking water and wastewater treatment facilities as defined by Section 1401 of the Safe Water Drinking Act and Section 212 of the Federal Water Pollution Control Act, and facilities owned or operated by the Departments of Defense and Energy, as well as certain facilities subject to regulation by the Nuclear Regulatory Commission (NRC).

The following core principles guided the development of the CFATS regulatory structure:

1) Securing high-risk chemical facilities is a comprehensive undertaking that involves a national effort, including all levels of government and the private sector. Integrated and effective participation by all stakeholders—federal, state, local, tribal and territorial government partners as well as the private sector—is essential to securing our critical infrastructure, including high-risk chemical facilities. Implementing this program means tackling a sophisticated and complex set of issues related to identifying and mitigating vulnerabilities and setting security goals. This requires a broad spectrum of input, as the regulated facilities bridge multiple industries and critical infrastructure sectors. By

working closely with experts, members of industry, academia, and federal government partners, we leveraged vital knowledge and insight to develop the regulation.

2) Risk-based tiering to guide resource allocations. Not all facilities present the same level of risk. The greatest level of scrutiny should be focused on those facilities that present the highest risk—those that, if attacked, would endanger the greatest number of lives.

3) Reasonable, clear, and calibrated performance standards will lead to enhanced security. The current CFATS rule includes enforceable risk-based performance standards. High-risk facilities have the flexibility to develop appropriate site-specific security measures that will effectively address risk. The Department will analyze each final tiered facility's SSP to see if it meets CFATS performance standards. If necessary, DHS will work with the facility to revise and resubmit an acceptable plan.

4) Recognition of the progress many companies have already made in improving facility security leverages those advancements. Many companies have made significant capital investments in security since 9/11. Building on that progress in implementing the CFATS program will raise the overall security baseline at high-risk chemical facilities.

On Nov. 20, 2007, the Department published Appendix A to CFATS, which lists 322 chemicals of interest—including common industrial chemicals such as chlorine, propane, and anhydrous ammonia—as well as specialty chemicals, such as arsine and phosphorus trichloride. The

Department included chemicals based on the consequences associated with one or more of the following three security issues:

1) Release – Toxic, flammable, or explosive chemicals that have the potential to create significant adverse consequences for human life or health if intentionally released or detonated;

2) Theft/Diversion – Chemicals that have the potential, if stolen or diverted, to be used or converted into weapons that could cause significant adverse consequences for human life or health; and

3) Sabotage/Contamination – Chemicals that, if mixed with other readily available materials, have the potential to create significant adverse consequences for human life or health.

The Department also established a Screening Threshold Quantity for each chemical of interest based on its potential to create significant adverse consequences to human life or health in one or more of these ways.

Implementation and execution of the CFATS regulation requires the Department to identify which facilities it considers high-risk. The Department developed the Chemical Security Assessment Tool (CSAT) to identify potentially high-risk facilities and to provide methodologies that facilities can use to conduct SVAs and to develop SSPs. CSAT is a suite of online

applications designed to facilitate compliance with the program; it includes user registration, the initial consequence-based screening tool (Top-Screen), an SVA tool, and an SSP template. Through the Top-Screen process, the Department initially identifies and sorts facilities based on their associated risks.

If a facility is initially identified during the Top-Screen process as potentially having a level of risk subject to regulation under CFATS, the Department assigns the facility to one of four preliminary risk-based tiers, with Tier 1 representing the highest level of potential risk. Those facilities must then complete SVAs and submit them to the Department, although facilities preliminarily designated as Tier 4 facilities also have the option of submitting an Alternative Security Program (ASP). Results from the SVA inform the Department's final determinations as to whether a facility is in fact high-risk and, if so, of the facility's final tier assignment. Each SVA is carefully reviewed for its description of how chemicals of interest are actually held at the site, how those chemicals are managed, and for physical, cyber, and chemical security risks.

After completing its review of a facility's SVA, the Department makes a final determination as to whether the facility is considered high-risk and assigns the facility a final risk-based tier. Final high-risk facilities are then required to develop an SSP or, if they so choose, an ASP that addresses its identified vulnerabilities and security issues. Only facilities that receive a final high-risk determination letter under CFATS will be required to complete and submit an SSP or, if the facility so chooses, an ASP. DHS' final determinations of which facilities are high-risk are based on each facility's individual consequentiality and vulnerability as determined by its Top-Screen, SVA, and any other available information. The higher the facility's risk-based tier, the

more robust the security measures and the more frequent and rigorous the inspections will be. The purpose of inspections is to validate the adequacy of a facility's SSP and to verify that measures identified in the plan are being implemented.

Implementation Status

To date, the Department has reviewed more than 39,000 Top-Screen consequence assessment questionnaires submitted by potentially high-risk chemical facilities. Since June 2008, we have notified more than 7,000 preliminarily tiered facilities that they have been initially designated as high-risk and are thus required to submit SVAs; we have nearly completed our review of approximately 6,200 SVAs that have been submitted. In May 2009, we began notifying facilities of their final high-risk determinations, risk-based tiering assignments, and the requirement to complete and submit an SSP or ASP.

In May 2009, the Department issued 141 final tier determination letters to the highest risk (Tier 1) facilities, confirming their high-risk status and initiating the 120-day time frame for submitting an SSP. After issuing this initial set of final tier determinations, the Department periodically issued notifications to additional facilities of their final high-risk status. To date, more than 4,100additional facilities have received final high-risk determinations and tier assignments, and several hundred that were preliminarily tiered by DHS were informed that they are no longer considered high-risk.

CFATS currently covers 4,744 high-risk facilities nationwide across all 50 states, of which 4,126 facilities have received final high-risk determinations and due dates for submission of an SSP or ASP. More than 4,100 facilities have submitted SSPs (or ASPs) to date, and the Department is in the process of reviewing these submissions. The Department continues to issue final tier notifications to facilities across all four risk tiers as additional final tier determinations are made by the Department.

In February 2010, the Department began conducting inspections of final-tiered facilities, starting with the Tier 1-designated facilities, and has completed approximately 175 pre-authorization inspections to date. The Department intends to use these initial inspections to help gain a comprehensive understanding of the processes, risks, vulnerabilities, response capabilities, security measures and practices, and any other factors that may be in place at a regulated facility that affect security risk in order to help facilities submit SSPs that can be approved under CFATS. After DHS issues a letter of authorization for a facility's SSP, DHS will conduct a comprehensive and detailed authorization inspection before making a final determination as to whether the facility's SSP satisfies the CFATS standards. To date, the Department has completed four authorization inspections. Facilities that have successfully implemented their approved SSPs and have passed an inspection will be considered in compliance with the required performance standards.

A critical element of the Department's efforts to secure the nation's high-risk chemical facilities, the SSP enables final high-risk facilities to document their individual security strategies for meeting the Risk-Based Performance Standards (RBPS) established under CFATS. Each high-

risk facility's security strategy will be unique, as it depends on the facility's risk level, security issues, characteristics, and other factors. Therefore, the SSP tool collects information on each of the 18 RBPS for each facility. The RBPS cover the fundamentals of security, such as restricting the area perimeter, securing site assets, screening and controlling access, cybersecurity, training and response. The SSP tool is designed to take into account the complicated nature of chemical facility security and allows facilities to describe both facility-wide and asset-specific security measures. The Department understands that the private sector generally, and CFATS-affected industries in particular, are dynamic. The SSP tool allows facilities to involve their subject-matter experts from across the facility, company and corporation, as appropriate, in completing the SSP and submitting a combination of existing and planned security measures to satisfy the RBPS. The Department expects that most approved SSPs will consist of a combination of existing and planned security measures. Through a review of the SSP, in conjunction with an on-site inspection, DHS will determine whether a facility has met the requisite level of performance given its risk profile and thus whether its SSP should be approved.

Along with the initial group of final Tier 1 notifications and the activation of the SSP tool in May 2009, DHS issued the *Risk-Based Performance Standards Guidance* document. The Department developed this guidance to assist high-risk chemical facilities subject to CFATS in determining appropriate protective measures and practices to satisfy the RBPS. It is designed to help facilities comply with CFATS by providing detailed descriptions of the 18 RBPS as well as examples of various security measures and practices that could enable facilities to achieve the appropriate level of performance for the RBPS at each tier level. The *Guidance* also reflects public and private sector dialogue on the RBPS and industrial security, including public

comments on the draft guidance document. High-risk facilities are free to make use of whichever security programs or processes they choose—whether or not in the *Guidance*—provided that they achieve the requisite level of performance under the CFATS RBPS. The *Guidance* will, however, help high-risk facilities gain a sense of what types and combination of security measures may satisfy the RBPS. The Department has also offered regular SSP training webinars to assist high-risk facilities with completing their SSPs.

For additional context, I would like to provide you with an example of how some facilities may be approaching the development and submission of their SSPs: in the case of a Tier 1 facility with a release hazard security issue, the facility is required to restrict the area perimeter appropriately, which may include preventing breach by a wheeled vehicle. To meet this standard, the facility is able to consider numerous security measures, such as cable anchored in concrete block along with movable bollards at all active gates or perimeter landscaping (e.g., large boulders, steep berms, streams, or other obstacles) that would thwart vehicle entry. The Department will approve the security measure as long as it is determined by the Department to be sufficient to address the applicable performance standard. Under Section 550, the Department cannot mandate a specific security measure to approve the SSP.

In June 2010, the Department issued its first Administrative Orders under CFATS to 18 chemical facilities for failure to submit an SSP. Throughout the remainder of the year, the Department issued an additional 48 Administrative Orders to chemical facilities that had failed to submit an SSP in a timely manner. Administrative Orders are the first step toward enforcement under CFATS. An Administrative Order does not impose a penalty or fine, but directs the facility to

take specific action to comply with CFATS—in this case, to complete the SSP within 10 days of receipt. If the facility does not comply with the Administrative Order, however, the Department may issue an Order Assessing Civil Penalty of up to $25,000 each day the violation continues, or an Order to Cease Operations. To date, the Department has issued 66 Administrative Orders to facilities that failed to submit their SSPs within the prescribed deadline, and we are happy to report that all 66 facilities complied with the Administrative Orders. As CFATS implementation progresses, the Department expects to continue to exercise its enforcement authority to ensure CFATS compliance.

Outreach Efforts

Since the release of CFATS in April 2007, the Department has taken significant steps to publicize the rule and ensure that the regulated community and our security partners are aware of its requirements. As part of this outreach program, the Department has regularly updated impacted sectors through their Sector Coordinating Councils and the Government Coordinating Councils of industries most impacted by CFATS, including the Chemical, Oil and Natural Gas, and Food and Agriculture Sectors. We have also solicited feedback from our public and private sector partners and, where appropriate, have reflected that feedback in our implementation activities. As the program continues to mature, on average, the Department participates in more than 250 CFATS-specific outreach engagements annually, not including formal coordination activities with individual facilities such as pre-authorization inspections and Compliance Assistance Visits.

To date, our inspectors have conducted an estimated 350 Compliance Assistance Visits and have held more than 500 informal introductory meetings with owners and/or operators of CFATS-regulated facilities. We have presented at hundreds of security and chemical industry conferences; participated in a variety of other meetings of relevant security partners; established a Help Desk for CFATS questions that receives between 40 and 80 calls daily; put in place a CFATS tip-line for anonymous chemical security reporting; and developed and regularly updated a highly regarded Chemical Security website (www.DHS.gov/chemicalsecurity). In February of this year, the Department updated the Chemical Security website to include a more robust, searchable Knowledge Center, which further supports the regulated community. These efforts are having a positive impact—again, more than 39,000 Top-Screens have been submitted to the Department via CSAT.

In addition, the Department continues to focus on fostering solid working relationships with state and local officials as well as first responders in jurisdictions with high-risk facilities. To meet the risk-based performance standards under CFATS, facilities need to cultivate and maintain effective working relationships—including a clear understanding of roles and responsibilities—with local officials who aid in preventing, mitigating and responding to potential attacks. To facilitate these relationships, our inspectors have been actively working with facilities and officials in their areas of operation, and they have participated in more than 500 meetings with federal, state, and local partners, to include an excess of 100 Local Emergency Planning Committee meetings. Such meetings afforded our inspectors with an opportunity to provide our federal, state, and local security partners with a better understanding of CFATS requirements and allowed our inspectors to gain insight into the activities of federal, state, and local partners

operating within their jurisdictions. Last year, the Department, in collaboration with the State, Local, Tribal, and Territorial Government Coordinating Council, issued outreach materials specifically tailored to the emergency response community, which summarized CFATS programs and processes for local emergency responders. In addition, for the past three years, the Department has collaborated with the State of New Jersey's Office of Homeland Security and Preparedness (OHSP) to participate in several CFATS-based workshops hosted by the state that have brought together facility owners/operators, site security personnel, emergency responders, and other state-based stakeholders. The New Jersey OHSP, which plans to host another CFATS workshop involving DHS later this spring, intends to hold workshops annually going forward. Based on the success of the New Jersey-CFATS workshop, the Department recommended that other states establish similar workshops. In partnership with DHS, the State of Michigan subsequently hosted two successful CFATS workshops in Detroit and Midland, Michigan. Moving forward, the Department hopes to continue and expand our collaborative efforts with our state partners on CFATS-based workshops.

In May 2010, the Department launched a web-based information-sharing portal called "CFATS-Share." This tool provides interested state Homeland Security Advisors and their designees, DHS Protective Security Advisors, the National Infrastructure Coordinating Center, the Chemical Sector-Specific Agency, as well as members of the State, Local, Tribal and Territorial Government Coordinating Council access to key details on CFATS facility information as needed. In the future, DHS plans to make this tool available to other federal security partners, such as the Federal Bureau of Investigation (FBI) and United States Coast Guard (USCG). The

Department continues to improve the CFATS-Share web portal based on feedback from users and is currently piloting the portal with several fusion centers.

Additionally, the Department continues to actively collaborate across components within DHS and with other federal agencies in the area of chemical security, including routine coordination between the Department's National Protection and Programs Directorate (NPPD) and the USCG, the Transportation Security Administration, the Department of Justice's FBI and Bureau of Alcohol, Tobacco, Firearms and Explosives, the NRC, and the Environmental Protection Agency (EPA). One primary example of this coordination includes the establishment of a joint NPPD/USCG CFATS-MTSA Working Group to evaluate and, where appropriate, implement methods to harmonize the CFATS and MTSA regulations. Similarly, the Department has been working closely with the EPA to begin evaluating how the CFATS approach could be used for water and wastewater treatment facilities, should the water and wastewater treatment facility exemption be revised by Congress in future versions of chemical facility security or water facility security regulations.

The Department also launched an Agricultural Facility Survey in July 2010. The goal of the survey is to provide the Department with additional information on the potential risks related to agricultural Chemicals of Interest throughout the distribution chain—including manufacturers, distributors, retailers, commercial applicators, and end-users. The survey results will also help the Department determine the most appropriate approach for addressing the existing extension of the CFATS Top Screen due date for agricultural production facilities. The Department received

completed surveys from nearly 1,200 CFATS facilities and is currently analyzing the results to determine the best approach to take regarding agricultural production facilities.

Internally, we are continuing to build the Infrastructure Security Compliance Division that is responsible for implementing CFATS. We have hired, or are in the process of on-boarding, more than 188 people, and we are continuing to hire throughout this fiscal year to meet our staffing goal of 268 positions. These numbers include our field inspector cadre, where we have hired 97 of 103 field inspector positions and 14 of 14 field leadership positions.

Legislation to Permanently Authorize CFATS

We have enjoyed the constructive dialogue with Congress, including Members of this Committee, as it contemplates new authorizing legislation. The Department recognizes the significant work that this Committee and others, including the Senate Committee on Homeland Security and Governmental Affairs, the Senate Committee on Environment and Public Works and the House Committee on Energy and Commerce, have completed in reauthorizing the CFATS program to date and to address chemical facility security. We appreciate this effort and look forward to continuing the constructive engagement with Congress on these important matters.

The Department supports a permanent authorization for the CFATS program. The Department is committed to working with Congress and other security partners to pass stand-alone chemical security legislation that includes permanent authority beginning in FY 2011. The latest

Continuing Resolution authorizes an extension of the statutory authority for CFATS, which otherwise would have sunset on Oct. 4, 2010.

It is important to highlight that the Administration has developed a set of guiding principles for the reauthorization of CFATS. These principles are the foundation for the Department's position on permanent CFATS reauthorization:

- The Administration supports permanent authorization to regulate security of high-risk chemical facilities through risk-based performance standards.

- The Department should be given reasonable deadlines by Congress to promulgate new rules to implement any new legislative requirements. CFATS, as currently being implemented, should remain in effect until or unless it is supplemented by new regulations.

- The Administration supports, where possible, using safer technology, to enhance the security of the nation's high-risk chemical facilities. Similarly, we recognize that risk management requires balancing threat, vulnerabilities, and consequences with the costs and benefits of mitigating risk. In this context, the Administration has established the following policy principles in regard to inherently safer technologies (IST) at high-risk chemical facilities:

- The Administration supports consistency of IST approaches for facilities regardless of sector.

- The Administration believes that all high-risk chemical facilities, Tiers 1-4, should assess IST methods and report the assessment in the facilities' SSPs.

- Further, the appropriate regulatory entity should have the authority to require facilities posing the highest degree of risk (Tiers 1 and 2) to implement IST method(s) if such methods demonstrably enhance overall security, are determined to be feasible, and, in the case of water sector facilities, consider public health and environmental requirements.

- For Tier 3 and 4 facilities, the appropriate regulatory entity should review the IST assessment contained in the SSP. The entity should be authorized to provide recommendations on implementing IST, but it would not have the authority to require facilities to implement the IST methods.

- The Administration believes that flexibility and staggered implementation would be required in implementing this new IST policy.

- The Administration supports maintaining the Department's current Chemical-terrorism Vulnerability Information regime for protecting sensitive information relating to

chemical facility security. This regime is similar to, but distinct from, other Controlled Unclassified Information protection regimes.

- The Department supports amending the current exemption for drinking water and wastewater facilities to specify that the Environmental Protection Agency (EPA) would have the lead on regulating for security, with DHS supporting EPA to ensure consistency across all sectors. This consistency could be achieved, for example, by the use of CFATS compliance tools and risk analysis with modifications as necessary to reflect the uniqueness of the water sector and statutory requirements. As DHS and EPA have stated before, we believe that there is a critical gap in the U.S. chemical facility security regulatory framework—namely, the exemption of drinking water and wastewater treatment facilities from CFATS. We need to work with Congress to close this gap to secure chemicals of interest at these facilities and to protect the communities that they serve; drinking water and wastewater treatment facilities that meet CFATS thresholds for chemicals of interest should be regulated. We do, however, recognize the unique public health and environmental requirements and responsibilities of such facilities. For example, we understand that a cease-operations order that might be appropriate for another facility under CFATS would have significant public health and environmental consequences when applied to a water facility.

- As you are aware, facilities regulated under MTSA authority are statutorily exempted from CFATS and thus are not required to submit Top-Screens to DHS. In order to help DHS develop a more comprehensive picture of security issues at the nation's chemical

facilities, and to help DHS evaluate whether any regulatory gaps exist that may pose an unacceptable security risk, the Department has begun the process, with close cooperation between NPPD and USCG, for determining whether and how to require MTSA-covered facilities that possess CFATS chemicals of interest to complete and submit CFATS Top-Screens.

- With respect to the other current statutory exemptions, the Department supports:

    - Maintaining the exemptions for both Defense and Energy Department facilities. Although the Department of Energy is exempt from the current statute, DOE policy does require chemical sabotage assessments utilizing the select agents lists and the adoption of protection measure where necessary; and

    - Amending the exemption for facilities regulated under the NRC to clarify the scope of the NRC exemption and to specify that DHS and the NRC shall work together to make a final determination on whether a facility or an area within a facility is subject to NRC regulation and is thus exempt from DHS regulation.

Given the complexity of chemical facility regulation, implementation logistics, and resource implications, any requirements considered in prospective legislation should also be taken into account to avoid having the Department extensively revisit aspects of the program that are either currently in place or which will be implemented in the near future.

Conclusion

The Department is collaborating extensively with the public, including members of the chemical sector and other interested groups, to work toward our collective goals under the CFATS regulatory framework. In many cases, industry has voluntarily made tremendous progress to ensure the security and resiliency of its facilities and systems. As we implement CFATS, we will continue to work with industry, our federal partners, states, and localities to get the job done.

The Administration recognizes that CFATS reauthorization requires further technical work. The Department is ready to engage in technical discussions with Committee staff, affected stakeholders, and others to work out the remaining details. We must focus our efforts on implementing a risk- and performance-based approach to regulation and, in parallel fashion, continue to pursue the voluntary programs that have already resulted in considerable success. We look forward to collaborating with the Committee, industry, and government partners to ensure that the chemical facility security regulatory effort achieves success in reducing risk in the chemical sector.

Thank you for holding this important hearing. I would be happy to respond to any questions you may have.

Mr. SHIMKUS. Thank you, sir. I will recognize myself for the first 5 minutes of questioning.

The last time you were before our committee, you testified that 6,156 facilities fell into one of the top four high-risk tiers. Today, on your testimony you are suggesting that there are 4,744 facilities or around 1,400 less than before now fall into one of the top four high-risk tiers. I think you mentioned some of that in your opening statement as far as the amount of chemicals being removed so they fell out of the criteria. The decline, is some of it due to plant closings themselves? Do you know?

Mr. BEERS. Sir, I can't give you an exact figure on plant closings, but almost all of them are a result of the movement of the chemicals of interest offsite or the reduction in the amount onsite that resulted in the removal of them from the list of the high-risk tier.

Mr. SHIMKUS. Your staff could probably check these numbers and get us that information?

Mr. BEERS. We will, sir.

Mr. SHIMKUS. And thank you. Also, Ranking Member Waxman talked about the budgetary aspects, but based upon the present submission of a budget, there is probably a line item for this program in that budget, is that not correct?

Mr. BEERS. That is correct, sir. It is approximately 100 million a year. It was 105 in FY '10, it was 203 in the FY '11 request, and it is 99 million in the FY '12 request, so roughly 100 million, sir.

Mr. SHIMKUS. Great, thank you. Great. That is helpful. Thank you. Also the last time you testified you stated that you did not have any idea of how much industry was spending to comply with CFATS, but you did note that based on the number of top-screened DHS was receiving that many material modifications were being made by covered facilities. You didn't have last time—do you know of how much industry has had to spend to upgrade to meet CFATS compliance?

Mr. BEERS. Sir, I don't have that number at the tip of my fingertips. Let me have staff——

Mr. SHIMKUS. Is that something that in your negotiations they talk to you about at all or——

Mr. BEERS. One of the considerations that we bring to bear is we develop Site Security Plans is yes, sir, the cost of those security plans. Security is not a free good, as you well know, and we are very mindful of that. That doesn't mean that—everyone has to recognize that some costs may be required to implement a good security plan. But a good security plan is good neighborliness on the part of the chemical industries in the areas that their facilities exist.

Mr. SHIMKUS. Are there still implementation issues that need clarifying, such as personnel surety or agricultural chemical issues?

Mr. BEERS. Yes, sir. Both of those are still works in progress. The personnel surety plan has been a subject of discussion between ourselves and the chemical industry. We are close to being in a position to come forward with that proposal. The indefinite extension of this regulation applying to some agricultural production facilities remains in effect. We have done several studies, but I can't give you an indication of when we are going to get to the end of that indefinite extension, sir.

Mr. SHIMKUS. And in my opening statement I mentioned numerous programs from hospitals. This is a wide range, a portfolio, and I just wanted to put that out just for the public to understand that this does more than just chemical plants. It is a pretty wide range. And of course, from universities to hospitals are some that we would not normally think would be involved in this program. And in testimony in the last Congress sometimes that got confused. So I am just reiterating. You would agree with that, that there are hospitals and universities and it is a wide range of areas that are involved with the CFATS program?

Mr. BEERS. Yes, sir. I mean just beyond the chemical manufacturers themselves, this affects warehousing distributors, oil and gas operations, hospitals, semiconductor manufacturers, paint manufacturers, colleges and universities, some pharmaceuticals, and some parts of the agricultural industry. And I have not finished the list there but that is certainly enough for giving people an indication of how broadly this particular law affects companies and facilities around the country.

Mr. SHIMKUS. Great, sir. Thank you very much. Now, I yield back my time and recognize Mr. Green for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I have some questions on coordination, but let me follow up with that.

In your testimony you talk about the exemption, for example, of water and wastewater facilities. Are there any other facilities that are not part of the law now that you think should be included in it other than wastewater and water facilities?

Mr. BEERS. Sir, we have talked before and you mentioned in your opening statement the MTSA exemption, which takes marine facilities or facilities that are located in areas defined as marine areas, which do in fact have chemical facilities that would fall under this regulation if they were not exempted from it. I can report to you that the Secretary has made it very clear both to me and the Commandant of the Coast Guard that she wants that harmonized with or without a law. We have engaged, over the course of the last year, in a working group study. There are 18 recommendations that are now moving up the chain as a result of that committee's study, and I am hopeful that we will have that to the Secretary for final approval in the not-too-distant future.

Mr. GREEN. I appreciate that and that is one of my concerns is that MTSA, you know, is part of the Transport Worker Identification Card, and my concern was that we would have a separate card for employees who actually go between these facilities and is it hope that Homeland Security under current authority could require or give credit to the TWIC card for someone at a chemical security facility or vice versa?

Mr. BEERS. Yes, sir. That is exactly the point that the chairman was making when he asked about the Personnel Surety Program, and that is an effort that we are trying to merge between the two programs. It certainly defies logic, may I say, if we have one card for one kind of facility and one card for another. Having said that, and having spent some time around a table with a number of members of my staff and other staff, it is not a simple process, but it is a process which we are committed to and engaged in and I hope to have, as I said, an answer in the very near future.

Mr. GREEN. OK. I have 260,000 TWIC cards issued in our district and so I would hope that we would have some coordination because we have plants that are not on the water side but they are owned by the same company and yet, you know, they would have the flexibility to transfer those staff between the two.

I am glad in your testimony you also talked about prudent IST. Under current authorization, does the Department have the authority to look at inherently safer technology?

Mr. BEERS. It is not so much an authority question as it is that we have asked our Science and Technology Directorate within the Department to do a study of this issue. I don't want to indicate that it is exhaustive but we in the CFATS area have not at this point in time as part of the CFATS program made any investigatory effort. Should such a requirement be enacted, we are poised to begin that process but no, sir, we haven't actually begun it.

Mr. GREEN. So is your testimony you don't think you have the authority right now or you just haven't begun to explore that?

Mr. BEERS. We just haven't begun to explore it. That is why I said we did have the Science and Technology Directorate explore information on that and that is available to us. At this particular point in time we didn't feel it was appropriate to move any further than that initial exploratory effort on their part.

Mr. GREEN. OK. Well, it would seem that if there is an issue, hopefully the Department would come to Congress and say this is something we need and that way we could respond.

The exemption of water and wastewater facilities, last Congress we had legislation that included that, included lots of, you know, multiple utility districts that were very small, of course, some of the largest cities in the country. Is there anything under current law in CFATS that would allow for Homeland Security to also coordinate with our local communities, again, from the smallest to the largest to deal with some of the chemicals that are stored that makes our drinking water safe.

Mr. BEERS. Sir, as part of our general outreach voluntary program under the National Infrastructure Protection Plan, we certainly can talk to those facilities in a best-practices sense. But in terms of any formal regulatory authority, obviously we have that exemption and no, we have not had that kind of a discussion in that sense. We have certainly worked with EPA to come to an understanding of the size of the population that we might be talking about. We have coordinated with them about the general notions that would come under a cooperative regime, which we have agreed to should that be enacted. But the actual communications of what a regulatory regime might look like, no, sir, it is a voluntary outreach program at this particular point.

Mr. GREEN. Thank you.

Mr. SHIMKUS. Thank you. And chair now recognizes Mr. Murphy for 5 minutes.

Mr. MURPHY. Thank you. And again, welcome here, Mr. Beers.

For all practical purpose, CFATS, which took effect in June of 2007, and it has taken DHS 3 years and 10 months to work out the Tier 1 facilities and I think about 175 preliminary authorization inspections and four formal authorization inspections. How much longer do you think it will take to conclude the preliminary

authorization inspections on the other 41 Tier 1 facilities? Do you have any idea?

Mr. BEERS. Sir, I have told my staff that I expect those to be completed by the end of this calendar year. We have obviously taken more time than you or we would have liked in terms of moving this program forward, but part of the reason that that time has been taken is that one, we are absolutely committed to a dialogue with industry on this issue, and we are trying to and continuing to try to set up a program that is a cooperative program. I think that by and large if you talk to industry, they will give you a response not dissimilar to what I am telling you right now. That dialogue has taken time. We have learned a lot on the path from the law's enactment to today and I have no doubt that we will continue to learn that. But we are definitely committed to getting the Tier 1 facilities done by the end of this year. And as you know, at the beginning of this calendar year, we began a major effort to move this forward.

Mr. MURPHY. Thank you. What about the other authorization inspections? Same thing? You feel that——

Mr. BEERS. The other categories?

Mr. MURPHY. Yes.

Mr. BEERS. We will move onto them as soon as we get through the preauthorization inspections of the Tier 1 facility. So as you note, we have done 175. There are 216 facilities that are in Tier 1 and 3 that are pending final tiering. So we should be able to move through those on the pre-inspection relatively quickly. It is getting the final version of the Site Security Plan and reviewing it and issuing letters that they should begin implementation that has taken up the time. They and we discovered that the original submissions didn't always have a sufficient amount of detail and that has required a dialogue. We have learned a lot from that dialogue and I think we can move this program more quickly now based on that information.

Mr. MURPHY. Thank you. And you feel industry has been cooperative with you in trying to implement these?

Mr. BEERS. Absolutely been cooperative, sir.

Mr. MURPHY. Thank you. When you testified for this committee before, DHS stated that it has not studied the inherently safer technologies' potential effects on employment. Has that taken place since this hearing?

Mr. BEERS. No, sir, not to my knowledge.

Mr. MURPHY. OK. All right. How about can you explain to me how inherently safer technology works to prevent theft and diversion of chemicals in any way? Is that part of the things that you would have jurisdiction or would be looking at yourselves?

Mr. BEERS. The simplest explanation of inherently safer technology actually deals with a water issue, as you are well aware. The use of chlorine in water creates a chemical that represents a risk depending upon the volume of the chemical stored at the particular site. There is an alternative which does not require a toxic chemical to be put there and use in that. And the question is whether or not we are going to have movement in that direction.

But let me be clear. While there may be an estimated 6,000 water and wastewater facilities that might fall under this were it

included. We don't have enough firm data to tell you how those would stratify out and in fact whether they would all in fact be within the regime as you——

Mr. MURPHY. OK. Have you been communicating with EPA on these issues? Are you able to talk with them?

Mr. BEERS. We have been talking with EPA since the last Congress and the bill that this committee——

Mr. MURPHY. Is that a cooperative relationship as well?

Mr. BEERS. Yes, sir, I think it is.

Mr. MURPHY. Do we need a federal law to tell you to do that? Or it sounds like you are already doing that, which I appreciate.

Mr. BEERS. No, we don't need a federal law to tell us to do that.

Mr. MURPHY. Thank you. Because I know before we passed the Title IV, the Public Health Security and Bioterrorism Preparedness Response Act in 2002, which requires security for drinking water facilities and we are pleased that things are going over and that you are working cooperative on that. But I see I am out of time, so thank you so much, sir, and I yield back my time.

Mr. BEERS. Thank you, sir.

Mr. SHIMKUS. Gentleman yields back his time. Chair recognizes ranking member of the full committee, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman. I am concerned that this legislation would leave unanswered many questions about our Nation's vulnerability to attack on chemical facilities and I would like to explore some of these questions with you, Mr. Beers.

Is it true that drinking water and wastewater facilities are statutorily exempt from the CFATS program?

Mr. BEERS. Yes, sir.

Mr. WAXMAN. Are they exempt because there is no risk of a terrorist attack?

Mr. BEERS. Sir, I was not present when the law was originally put forward. I am not privy to the decision-making process that resulted in the exemption.

Mr. WAXMAN. OK. Is it true that nuclear facilities are also statutorily exempt from the CFATS program?

Mr. BEERS. Yes, it is, sir.

Mr. WAXMAN. Should I rest assured that terrorists will not target these facilities?

Mr. BEERS. No, sir, you should not rest assured that they will not, but we believe that the security regime that the regulatory agency has there is sufficient. Having said that, we have an outreach program between the Department of Homeland Security, the Nuclear Regulatory Commission, and the Department of Energy to talk in a voluntary mode about facilities that are also regulated by another department or agency.

Mr. WAXMAN. What about the federal facilities that have large stores of chemicals that the Department is concerned about, the so-called Appendix A chemicals? Are they exempt?

Mr. BEERS. Yes, sir. That is my understanding.

Mr. WAXMAN. Is there any reason to think that chemicals pose less of a risk when they are at federal facilities than when they are at private facilities?

Mr. BEERS. No, sir. But we have a lot more control over the security at federal facilities than we do without the CFATS program over private-sector facilities.

Mr. WAXMAN. Are you concerned about these gaps created by these exemptions?

Mr. BEERS. Sir, the administration is taking the position, which I support, that water and wastewater ought to be included in this regime. We have also undertaken an effort within the Department of Homeland Security, as I indicated earlier, to ensure that there is a common regime between those facilities that are regulated under the MTSA and those facilities that are regulated under CFATS. That committee effort is completed. The recommendations are now moving up the chain to the Secretary to approve that, but she has made very clear to both me and the Commandant of the Coast Guard that she expects a harmonious regime across these two areas.

Mr. WAXMAN. There are gaps and you expressed concern about them. You think they are otherwise being addressed but would H.R. 908 address those gaps?

Mr. BEERS. H.R. 908 focuses on the permanent authorization. Sir, we also need the permanent authorization. The fact that we are living from year to year or CR to CR is not a particularly good way for us to run a program and work with our partners in the industry if we are uncertain about the future of it. You——

Mr. WAXMAN. Uncertain about the future of CR?

Mr. BEERS. Excuse me?

Mr. WAXMAN. Are you uncertain about the future of a CR?

Mr. BEERS. Sir, a CR has an end date. If the next act with respect to this year's appropriations doesn't address this issue, yes, sir. I am.

Mr. WAXMAN. I can understand that. I was being a little facetious in my question to you.

We have only touched upon some of the significant security gaps. As you know, port facilities are not held to the same security standards as chemical facilities even though they may pose the same risk, and I hope that this subcommittee is able to work together to address those security deficiencies and craft legislation to secure our Nation.

It has been almost 10 years since the attacks of 9/11 but the job of securing our country's vulnerable assets is still unfinished, and I am concerned that DHS continues to miss milestones for implementation of this important program.

Mr. Beers, how many facilities have completed the CFATS process?

Mr. BEERS. Sir, in terms of the final approval of a plan, no facilities have. We have 175 that have received authorization letters and we have inspected—that means that they go forward implementing their Site Security Plan so that we can then go out and look at the implementation of the Site Security Plan. We have four of those 175 who have had an inspection after they have begun to implement those plans and we expect that those four, which are currently under review, will be finally approved in the not-too-distant future.

Mr. WAXMAN. Um-hum. Well, let me just say—and I only have a few seconds left—it has been almost 4 years since the Department's rules took effect and not one facility has completed the process. With that success rate I think we should all have concern about simply rubberstamping this program for another 7 years. And I just want to put that issue on the table. Thank you, Mr. Chairman.

Mr. SHIMKUS. Thank you, sir. And before I recognize Mr. Latta, I want to recognize Mr. Murphy for unanimous consent request.

Mr. MURPHY. Thank you, Mr. Chairman, a request for two letters, with unanimous consent, to submit. One is a letter from the CEO Randy Dearth of LANXESS and the other one is from the American Chemistry Council.

Mr. SHIMKUS. Without objection, so ordered.

[The information follows:]

LANXESS
Energizing Chemistry

March 28, 2011

Congressman Tim Murphy
322 Cannon House Office Building
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Phone: 412-809-3600
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Dear Congressman Murphy,

I am writing to express my support for HR 908 to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards (CFATS) Program.

CFATS is the most robust, all-inclusive and challenging regulatory program regarding chemical security in U.S. history. And, despite the significant investment necessary for compliance, the chemical industry has given this program its full cooperation since its start in 2007.

I commend you and Congressman Gene Green for introducing legislation that will allow the Department of Homeland Security to continue implementing a program that has proven so successful in such a relatively short period of time. Our industry looks forward to working with Congress to establish CFATS as a permanent program that protects our sites, our employees and our neighbors.

Thank you for your leadership on this issue and for your ongoing support of LANXESS, as well as the people and businesses of western Pennsylvania.

Sincerely,

Randall S. Dearth
President & CEO
LANXESS Corporation

CAL DOOLEY
PRESIDENT AND CEO

March 30, 2011

The Honorable John Shimkus
19th Congressional District-Illinois
Chairman, House Energy and Commerce Committee
Subcommittee on Environment and Economy
2452 Rayburn House Office Building
Washington, DC 20515

The Honorable Gene Green
29th Congressional District-Texas
Ranking Member, House Energy and Commerce Committee
Subcommittee on Environment and Economy
2470 Rayburn House Office Building
Washington, DC 20515

Chairman Shimkus and Ranking Member Green:

The American Chemistry Council and its members respectfully submit this letter for the record regarding the forthcoming hearing, "H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards ("CFATS") Program" to be held by the House Energy and Commerce Subcommittee on The Environment and the Economy.

The business of chemistry is a critical aspect of our nation's economy; employing nearly 800,000 Americans and producing more than 19 percent of the world's chemical products. Our industry is also a vital part of the nation's critical infrastructure, which depends on the chemical industry to produce the essential products that are critical for everyday life. In fact, more than 96% of all manufactured goods are directly touched by the business of chemistry.

Security is a topic of great importance to our members and we commend the leadership that Congressmen Tim Murphy (PA-18) and Ranking Member Gene Green (TX-29) have demonstrated in advancing security at facilities that possess chemicals from terrorist threats in the United States. The continuation of the CFATS program is critical to our national security. A long-term extension of CFATS will enable the Department of Homeland Security (DHS) to continue its anti-terrorism security efforts at facilities across the country and to further the progress that has been accomplished to date.

CFATS is by far the most robust, comprehensive and demanding chemical security regulatory program to date. It takes a well-designed risk-based approach, sets a high bar through performance-based standards, and holds covered facilities accountable for meeting those

standards. It drives facilities to consider all potential risk-reduction options, including process safety improvements, when developing a site security plan.

According to DHS, since CFATS became effective in June 2008, they have analyzed nearly 40,000 facilities across the United States. Initially, DHS identified more than 7,000 facilities as potentially high-risk. Since then, over 2,000 facilities have been downgraded and are no longer regulated. This reduction is due to the response by the regulated community in making security investments, including process safety improvements such as the reduction or elimination of onsite chemical inventories. DHS has now identified less than 4,800 high-risk facilities across the nation. ACC believes this is clear evidence of the effective security partnership that has been forged between the public and private sectors, and that CFATS is working and its implementation should be fully supported.

We look forward to working with you and the other members of the House, as well as all stakeholders, to achieve the long-term extension of CFATS. Working together we can achieve our national security goals in a fashion that protects and advances economic growth and innovation.

Sincerely,

Cal Dooley

Mr. SHIMKUS. The chair now recognizes the gentleman from Ohio, Mr. Latta, for 5 minutes.

Mr. LATTA. Well, thank you very much, Mr. Chairman, and Mr. Under Secretary, thanks very much for being with us today.

If I can just go back, on page 3 of your testimony on the very bottom of the paragraph there, talking about what is listed about 322 chemicals of interest. And I think that a question was asked mainly on agriculture, which I think the chairman had mentioned. The other thing you say there is an indefinite suspension on agriculture. What was that again, please?

Mr. BEERS. Sir, because of the use of fertilizer in the agricultural industry, quantities of that fertilizer that are stored on farms, as well as at the wholesale distributor, that represented a large problem that we recognize but were not prepared in the initial effort to try to get at the heart of the problem, which are these larger facilities. So we gave them an extension, we have conducted some studies, but we are not to the point where we are prepared to talk about rule-making with respect to those facilities.

Mr. LATTA. Thank you very much. Because the reason is I represent kind of an interesting district. I represent one of the largest manufacturing districts in Ohio and I represent the largest agricultural district because, of course, with anhydrous ammonia, that is one of the ones that our farmers are out there using all the time.

And then another chemical listed is propane because in my area we have a lot of folks that live in the country that use propane for their main source of heat. Now, would propane be another one of those that down the road there might be something that—because, again, this is something that folks back home rely on all the time.

Mr. BEERS. Sir, with respect to that yes, it is, but we are talking about levels of propane, not the fact of propane. And sir, I am not a farmer and I don't know how much propane in a rural setting a farmer might have on his site, but I do have some rural property and I don't have that many propane tanks.

Mr. LATTA. You know, it is mainly for folks that live—and even in small villages. They don't have natural gas. They use propane tanks that are there to heat their homes. I just wanted to double-check that with you.

And I guess there is also the other question that I have is when you are looking at the release and the theft and the diversion, the sabotage and contamination, so down the road would you be looking at that, then, or because, again, on release, again, of course, the farmer is out there when you are spraying with anhydrous. I guess that is my question is that would somebody in agricultural production fall under these regulations? It would be kind of an undue hardship on them.

Mr. BEERS. Sir, that is part of the issue that we are working our way through. I mean the point here is that those 4 issues that you just read out are all considerations, but we have the authority to make judgments on how to or what to interpret on that. There is a level of storage that we look at, but it is also a question of where it is and what kind of potential threat it is.

Mr. LATTA. Thank you.

Mr. BEERS. So we take all those issues into consideration.

Mr. LATTA. Thank you very much.

Mr. BEERS. This is not a mechanistically implemented regulatory regime.

Mr. LATTA. Mr. Chairman, I yield back. Thank you very much.

Mr. SHIMKUS. If the gentleman would yield just your last 50 seconds for me. I represent parts of 30 counties in Southern Illinois so this propane debate is an interesting one. These residential tanks are about the size of a pickup truck, the bed of a pickup truck. If you were doing a development in a rural area where you had 10 or 15 homes with that, based upon the footprint of this development, could they fall into this process?

Mr. BEERS. No, I don't believe they could. I can give you——

Mr. SHIMKUS. I guess the issue is how much——

Mr. BEERS. But this is the issue of how much——

Mr. SHIMKUS. How much over—right.

Mr. BEERS. And that particular——

Mr. SHIMKUS. That might be a good thing because, look, I mean we will have an agricultural perspective always through this process.

Mr. BEERS. My staff is giving me a prompt.

Mr. SHIMKUS. Good.

Mr. BEERS. Sixty thousand pounds——

Mr. SHIMKUS. OK.

Mr. BEERS. —is the threshold screening quantity.

Mr. SHIMKUS. All right. I will have to find out how many pounds are in one of those big tanks.

Mr. BEERS. So there is a propane tank out back of my rural property without a dolly of some sort.

Mr. SHIMKUS. Right.

Mr. BEERS. Even the larger tanks that you are talking about are——

Mr. SHIMKUS. And we will follow up. That is what we have hearings for. So thank you, sir. Now, the chair would like to recognize Mr. Barrow. No, he is not here. Ms. McMorris Rodgers for 5 minutes? No questions. Mr. Cassidy for 5 minutes. Would the gentleman yield for a second? And hit your button again and then pull the microphone up.

Mr. CASSIDY. Now, Mr. Waxman's question implied that the NRC is doing a poor job of regulating the security at nuclear power plants. When I visited the one in my district, oh, 6 or 8 months ago, I was impressed with the perimeter fences, the .50 caliber guns, the check-in process, et cetera. Have you had a chance to review the security requirements for such facilities and would you accept the implication of his questioning, that there is an inadequacy of those?

Mr. BEERS. Sir, as I said in answer to his question, we believe that the regulatory regime that those plants are currently under is adequate to ensure their protection.

Mr. CASSIDY. OK. I just wanted to make sure that was documented.

Secondly, now, I don't have your expertise—I am totally up front about that—but it seems like if we have incompletely implemented the rules—doing a great job working at it, but it just takes time—of something passed in 2007, it seems almost counterproductive to implement a whole other regulator regime when people have to ad-

just midstream. That is just intuitive to me. Would you accept that or would you dispute that?

Mr. BEERS. Sir, you point out a challenge that would be true if that were the case, but the administration put forward its recommendation to add water and wastewater in the belief that we, in fact, have learned a great deal——

Mr. CASSIDY. Now, not to be rude but water and wastewater were not previously included, so that would not be a regulatory regime change if you will. That would be an addendum.

Mr. BEERS. Yes, sir.

Mr. CASSIDY. That is different from saying oh, listen, guys, you have been working on this, but by the way, we now have another set of rules before you completed the first set.

Mr. BEERS. I am sorry. Are you specifically referring to the Inherently Safer Technology part?

Mr. CASSIDY. Correct.

Mr. BEERS. Sir, that is why in the administration's presentation of this possible expansion that we want to be very clear that the deadlines, if any, take into account the need in moving in that direction that would be required by moving into an area that we would have to spend some time and effort.

Mr. CASSIDY. But again, just to drill down on my question, it seems like if someone has not completely incorporated the recommendations of rules issued and regulations issued dating back to 2007, to come up with another regulatory regime before you have finished the first is almost like a whipsaw and, frankly, somewhat wasteful of resources if it turns out IST takes you in another direction.

Mr. BEERS. Sir, we put forward the recommendation on this in the belief that we could, given sufficient time, be able to deal with an expansion of the regime. The challenge that you put forward is, I think, an accurately characterized challenge.

Mr. CASSIDY. OK.

Mr. BEERS. I am not disagreeing with you on that. And that is why we have been very clear that we would not want to be held to a heroic set of deadlines in that regard, because it will require an expanded effort; it will require some new information.

Mr. CASSIDY. Now, again, you have so much more expertise in this area than I that with trepidation that I go forward. But still, when I think of IST, I think that that is a fairly static concept. Now, it has to be one vetted, you have to have public comments, you have got to look at it when frankly there may be some innovation out there which doesn't have time to be processed. I think of the Maginot Line as being the IST of its day and yet clearly tank warfare, you know, ruined the concept. Now, do you accept that or is Maginot Line a poor example of where we are going with this?

Mr. BEERS. Sir, I am a military historian. I love your example. But as the process that we have undertaken with respect to the facilities under the current regime has gone from a large number of firms that submitted top-screen down to a much smaller number, which is approximately 10 percent, and we have had 1,200 firms that have fallen off of this because they have changed the holdings and we had another several hundred that are in lower screening, we recognize that this is a dynamic process. And the point that you

make about changes in technology, we would of course incorporate changes in technology as they occurred.

Mr. CASSIDY. But is it fair to say the bureaucracies have a difficult time—I am a physician. Whenever they come up with a practice guideline, I am always struck that the practice guideline has to ignore that which is on the cusp. Because in order to get the consensus for the practice guideline, the cusp almost has to be marginalized because 90 of the cusp is marginalized. But there is 10 percent of that cusp that, wow, is the brave new future. Now, I have to think that in your area that that may also be true as kind of fertile as yours is for innovation.

Mr. BEERS. Sir, that is an excellent example and I think you are correct in saying that sometimes bureaucracy appears to be slower than reality, but I would also say that one of the things about this program that we have absolutely learned is that we have to be flexible and adaptable in terms of looking at new situations and new pieces of information.

Mr. CASSIDY. Thank you.

Mr. BEERS. So that is what we would do.

Mr. CASSIDY. He is gaveling us. I yield back.

Mr. SHIMKUS. The gentleman's time has expired. The chair would like, with unanimous consent, recognize the ranking member for a UC request and then follow up with a statement.

Mr. GREEN. Mr. Chairman, I would like to ask unanimous consent to place into the record both a letter and testimony from the National Petroleum Refiners Association.

Mr. SHIMKUS. Without objection, so ordered.

[The information follows:]

Charles T. Drevna
President

National Petrochemical & Refiners Association

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March 29, 2011

Re: Continuing the Chemical Facilities Antiterrorism Standards

Dear Member of Congress:

NPRA, the National Petrochemical & Refiners Association, writes today to express its support for H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act, and other measures that would make the current Chemical Facility Antiterrorism Standards (CFATS) program permanent. NPRA is a trade association representing high-tech American manufacturers of virtually the entire U.S. supply of gasoline, diesel, jet fuel, other fuels and home heating oil, as well as the petrochemicals used as building blocks for thousands of vital products in daily life.

CFATS is an important step to provide chemical manufacturers with the regulatory certainty required to continue keeping our country safe from terrorist attacks. By reauthorizing the current Chemical Facility Anti-Terrorism Standards (CFATS), the Department of Homeland Security (DHS) will have the time it needs to fully implement the current program. The current program will significantly strengthen our national security without undermining our economy and without causing job losses in the United States. The current CFATS risk-based performance standards will serve to strengthen our nation's critical infrastructure.

NPRA cautions against adding Inherently Safer Technology (IST) provisions to chemical facility security legislation as debate on the issue continues. NPRA believes the federal government should not be granted the authority to make engineering and business decisions for our nation's chemical facilities. IST provisions may result in simply transferring risk to other points along the supply chain instead of reducing risks as intended, while hampering security in the process.

Furthermore, IST mandates will impose significant financial hardship on refiners and petrochemical producers who, like all businesses across the country, are facing challenges due to the recession. In addition to the fact that mandated chemical switching may not reduce risk, some estimates indicate that the process changes imposed by such mandates could cost hundreds of millions of dollars per facility.

Thank you for considering our views on the CFATS program. NPRA stands ready and willing to work with the Committee and Congress towards the implementation of sound, responsible, effective chemical facility security policy. America's refiners and petrochemical manufacturers are committed to implementing and complying with CFATS. We do not oppose a reasonable review of the current program; however, the existing program is still developing and should be allowed to be fully implemented before it is significantly altered.

NPRA

The program should be made permanent to provide regulatory certainty and a stable security framework for the future. We urge the Committee to reject any attempts to significantly amend the current program – particularly with provisions that would undermine both security and economic development.

Sincerely,

Charles T. Drevna
President

WRITTEN STATEMENT OF THE

NATIONAL PETROCHEMICAL & REFINERS ASSOCIATION (NPRA)

AS SUBMITTED TO THE

SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY

House Energy and Commerce Committee

on

H.R. 908, Full Implementation of the Chemical Facility Anti-Terrorism Standards Act

March 31, 2011

NPRA, the National Petrochemical & Refiners Association, appreciates the opportunity to submit this statement on "H.R. 908, Full Implementation of the Chemical Facility Anti-Terrorism Standards Act." America's refining and petrochemical companies play a pivotal role in ensuring and maintaining the security of America's energy and petrochemical infrastructure. Nothing is more important to our member companies than the safety and security of our facilities. Our members have worked extensively with the Department of Homeland Security – and have invested millions of dollars – toward strengthening facility security. NPRA strongly supports the current Chemical Facility Anti-Terrorism Standards (CFATS) and encourages Congress to make the current program permanent, which would allow both DHS and industry the time needed to fully implement the CFATS program.

NPRA is a trade association representing high-tech American manufacturers of virtually the entire U.S. supply of gasoline, diesel, jet fuel, other fuels and home heating oil, as well as the petrochemicals used as building blocks for thousands of products vital to your daily life. NPRA members make modern life possible, meet the needs of our nation and local communities, strengthen economic and national security, and provide jobs directly and indirectly for more than 2 million Americans.

Maintaining a high level of security has always been, and remains, a top priority at America's refineries and petrochemical manufacturing plants. Operators of these facilities are fully engaged in the maintenance and enhancement of facility security. Many of our member companies have long operated globally, often in unstable regions overseas, where security is an integral part of providing for the world's energy and petrochemical needs and hence have extensive knowledge of how to successfully implement site security programs.

In the aftermath of the September 11 attacks, our member companies realized that additional and unconventional threats must be considered in order to protect our nation's critical energy manufacturing and distribution infrastructure. In full understanding of the potential and significance of these threats, we did not wait for the adoption of new government mandates before implementing additional, far-reaching facility security measures. Instead, we immediately initiated measures to strengthen and enhance security, including: 100 percent ID verification and bag screening; comprehensive vehicle inspections; limitations on visitor access and tours; and, a reduction in plant access points to minimize risk. Furthermore, we have been active participants in the Chemical Sector Security Council and the Oil and Natural Gas Sector Security Council, as well as many other DHS-sponsored efforts.

Since the creation of the current CFATS regulations, our member companies have submitted their Top Screens, Site Vulnerability Assessments (SVAs) and Site Security Plans (SSPs) in accordance with DHS timetables and are awaiting approval of those submissions. Many NPRA members' manufacturing plants have been subject to Pre-Authorization Inspections (PAIs) and await final tiering status. Throughout this process, we have developed productive and collaborative working relationships with DHS and other key federal agencies, and have strengthened relationships with state and local law enforcement offices. These relationships ensure that all parties obtain and exchange information critical to the maintenance of infrastructure security, enabling all to respond rapidly to terrorist threats.

We firmly believe that the current CFATS program has been successful, but needs to be made permanent without the addition of any extraneous provisions. CFATS must be allowed to be fully implemented by DHS before any amendments to the program are considered. As a result of the CFATS program, there has been a surge in security awareness across all industries and among industry employees. The operators and employees of our manufacturing plants and our distribution facilities are now even more keenly aware of vulnerabilities at each site, potential off-site consequences and methods to reduce risks at these sites. NPRA members also report that the current regulations have helped with better chemical inventory management. In fact, many of our member companies regularly conduct security awareness training and complete Site Vulnerability Assessments to enhance security at unregulated sites that do not fall under the CFATS program. We have an excellent working relationship with DHS and have repeatedly volunteered to help the Department through activities ranging from site tours to joint training activities and serving as technical experts. In order to fully gauge the success of the current version of CFATS, however, Congress should allow for the complete implementation of the current program. Only then should Congress and DHS determine whether or not significant changes to this highly innovative program are required.

Specific focus on the existing CFATS program and related security activities indicates the following:

1. America's refining and petrochemical manufacturing plants will continue to maintain and improve security operations to protect the vital network that provides a reliable supply of fuels and other petroleum and petrochemical products that are required to keep our nation strong and our economy growing.

2. Essential working relationships and information networks have been established between government security agencies and our members' manufacturing facilities to exchange "real-time" intelligence data on security issues. These relationships allow for rapid response to terrorist and other security threats. We believe that unwarranted and potentially counter-productive revisions to this successful program could significantly alter these relationships, thus placing unnecessary obstacles in the way of the nation's overarching goals regarding homeland security.

3. We have partnered with the Department of Homeland Security on many important security initiatives and programs, including the Risk Assessment Methodology for Critical Asset Protection (RAMCAP), the Homeland Security Information Network (HSIN), Buffer Zone Protection Plans, SVAs, Site Security Plans (SSPs) and Industry Sector Councils.

When reviewing the current program, NPRA and our member companies strongly caution against the inclusion of any unrelated amendments, such as inherently safer technology (IST) or increased information-sharing provisions. The following issues should be considered before any potential update of the current CFATS program is proposed.

Inherently Safer Technology (IST)

IST continues to be a misinterpreted concept to those outside the field of engineering. Proponents of IST as part of security legislation believe that the only way to ensure security at chemical facilities is by reducing the amount of hazardous substances used in chemical manufacturing and processing by way of "simple" chemical substitution. Application of IST, however, is bound by the laws of physics and nature; a simple reduction or switch in the use of hazardous chemicals is rarely possible within the context of a specific reaction or process. NPRA members' facilities are custom-built according to specifications that accommodate very specific chemical processes, and every facility in the country is different. It is usually not possible to simply "substitute" one chemical for another in the context of refining and petrochemical facilities. Furthermore, in terms of the reduction of certain substances, there is a serious risk of simply transferring risk to other points along the chemical supply chain – thereby not decreasing risk, but simply transferring it to other areas that may not be as secure as CFATS-covered chemical facilities.

IST is a conceptual and often complex framework that covers procedures, equipment, protection and, when feasible, the use of less hazardous chemicals. IST is not just a safety program; it is a *process* safety program that involves understanding chemical engineering and the supply chain for petroleum-based, natural gas liquids-based and other organic chemicals derived from these basic feedstocks. Its premise is that if a particular *hazard* can be reduced, the *overall risk* associated with a chemical process will also be reduced. In its simplicity, it is an intuitive concept; however, reality is not always that simple.

A reduction in hazard will reduce overall risk if, and only if, that hazard is not displaced to another time or location, or does not amplify another hazard. If the hazard is displaced, then the risk will simply be transferred, not reduced. We strongly oppose the inclusion of any IST provisions in chemical security legislation. IST and chemical engineering decisions should be left to individual sites and not mandated by the federal government.

Another factor that makes the implementation of an IST regulatory program unrealistic is that there are no methods with which to measure whether one process is inherently safer than another. Given this reality, DHS would not be able to measure the effectiveness of its regulations.

Sharing of Information

We also caution against broadening any of the information-sharing provisions in the CFATS program. Currently, security information such as Site Security Plans (SSPs), Security Vulnerability Assessments (SVAs) and security infrastructure information is kept between DHS and those at the facility who can demonstrate a "need to know." Allowing broad access to this information weakens the security of the site, increases the likelihood that this information will be leaked and could lead to situations ranging from an increase in vulnerability to terrorist attacks at the site to internal threats such as theft and

diversion. It should be strongly noted that security and intelligence information has traditionally been shared on a strict ***need to know*** basis and has not been made accessible to those who do not have a ***need to know***. There is plenty of historical evidence to support and continue limited disclosure of sensitive security and business information. While all employees should have security awareness training, detailed site security information should be strictly limited to those specific individuals with a need to know.

Background Checks (Personnel Surety)

Under CFATS, it is required that personnel with access to sensitive information or relevant operations be vetted against the National Terrorism Screening Database (NTSDB) — no matter if the person has already been vetted by other government credentialing programs, such the Transportation Worker Identification Card (TWIC) program, the Hazardous Materials Endorsement (HME) or a host of other federal government credentialing programs. In the last two years DHS has twice proposed in the *Federal Register* that employees with CFAT sites would have to obtain and maintain multiple government credentials. This would be duplicative, burdensome, and costly for industry and DHS. NPRA recommends that DHS develop a new, universal federal security credential for personnel with access to sensitive information or relevant operations that meet the requirements of CFATS RBPS # 12 – Personnel Surety. A possible first step toward this end would be the creation of a Critical Infrastructure Worker Identification Card (CIWIC) to replace all other federal chemical security credentials. In the interim there should be reciprocity of other federal chemical security credentials and the optional use of safety councils or trusted agents to assist sites vet contractors.

Maritime Transportation Security Act

Many of our member companies comply with the security requirements under the Maritime Transportation Security Act (MTSA), a program administered by the U.S. Coast Guard (USCG). The Coast Guard and NPRA members have worked together closely to achieve the security goals of MTSA. If CFATS and MTSA are harmonized, the work that sites have carried out to comply with MTSA must be recognized. Further, MTSA sites should not be subject to dual inspections and the USCG should continue its role at traditional MTSA sites.

Pipelines

Any new CFATS legislation should exclude pipelines, as they are regulated by the Transportation Security Administration's Pipeline Security Division.

Exercises, Drills and Training

Red team drills are unnecessary for CFATS sites and may lead to unintended injuries and tension in surrounding communities. However, we do support security training drills with local law enforcement, emergency response personnel and surrounding communities that would allow all parties to be better prepared for a terrorist event. We support, at a minimum, security awareness training for employees at CFATS sites. More detailed and specific training may be warranted on a ***need to know site- specific***

basis that should be determined by the facility or corporate security director. Training that would describe details of a specific SVA or SSP should only be for those with a ***need to know***. Information contained in the SVAs or SSPs are critical to the security of the site and the information contained within these plans needs to be treated with the utmost care.

Conclusion

America's refiners and petrochemical manufacturers are committed to implementing and complying with CFATS. We do not oppose a reasonable review of the current program; however, the existing program is still developing and should be allowed to be fully implemented before it is significantly altered. There are numerous implementation issues that need to be clarified before any new requirements are added, including: personnel surety, material modifications, and alternative security plans. Most importantly, with very few actual authorization inspections having been done it would be extremely poor public policy to add additional requirements to a program that has not had the chance yet to apply lessons learned from actual inspections. The program should be made permanent to provide regulatory certainty and a stable security framework for the future. We urge the Committee to reject any attempts to significantly amend the current program – particularly with provisions that would undermine both security and economic development.

NPRA appreciates the opportunity to submit this statement for the record and stands ready and willing to work with the Committee and Congress towards the implementation of sound, responsible, effective chemical facility security policy.

Mr. GREEN. And also one last question. Part of the testimony that is going to be submitted by the Petroleum Refiners—and let me read a little bit of it—"Under CFATS, it is required that personnel with access to sensitive information and relevant operations be vetted under the National Terrorism Screening Database, no matter if the person has been vetted by other government credentialing programs, such as the Transport Worker Identification Card or the Hazardous Materials Endorsement, or a host of other federal government credentialing programs. In the last 2 years, DHS has twice proposed in the Federal Registry that employees at CFATS sites would have to obtain multiple government credentials."

Obviously, there is some confusion out there concerning what DHS is doing, and that is our concern about this legislation. One of the things, we would like to give you the authority to make sure you streamline it instead of people having—it is bad enough—I work at the Port of Miami, and I have to have a Miami Port card along with a DHS card or a TWIC card. We surely don't need multiple federal cards. And so that is our concern.

Mr. BEERS. And that is our concern as well, sir, and that is what we are trying to work to resolve.

Mr. GREEN. OK. Thank you.

Mr. SHIMKUS. I want to thank you for coming and appreciate your response to the questions. And if you have got information on Mr. Green's issue and you want to be receptive to his concerns, so if there are ways in which you can provide us information as we move forward on this process, we would appreciate it. So sir, you are excused and we will sit the next panel.

Mr. BEERS. Sir, thank you very much for the opportunity and I look forward to continuing to work with you and the committee. I appreciate it.

Mr. SHIMKUS. Thank you. We will give everyone a chance to get seated and then I will do an introduction of the entire panel and then we will recognize each member on the second panel for 5 minutes, your full statements are submitted for the record, and then we will follow up with questions.

So first of all, we would like to thank the second panel for joining us. On the second panel, we have Mr. Andrew Skipp, President and CEO of Hubbard-Hall, Incorporated, from Waterbury, Connecticut. Also Mr. David Tabar, CSP—what is CSP?

Mr. TABAR. Certified safety professional.

Mr. SHIMKUS. Oh, I should know that. Global Director of Safety, Sherwin-Williams—I do know that—from Cleveland; Mr. Bill Allmond, Vice President, Government Relations, Society of Chemical Manufacturers and Affiliates; and then Mr. James Frederick, Assistant Director of Health, Safety, and the Environment, and the United Steelworkers.

And we want to welcome you all here and we will start. Mr. Skipp, you are recognized for 5 minutes.

STATEMENTS OF ANDREW K. SKIPP, PRESIDENT/CEO, HUBBARD–HALL, INC., ON BEHALF OF THE NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS; DAVID TABAR CSP, GLOBAL DIRECTOR OF SAFETY, SHERWIN–WILLIAMS, ON BEHALF OF THE AMERICAN COATINGS ASSOCIATION; WILLIAM E. ALLMOND IV, VICE PRESIDENT, GOVERNMENT RELATIONS, SOCIETY OF CHEMICAL MANUFACTURERS AND AFFILIATES; AND JAMES S. FREDERICK, ASSISTANT DIRECTOR, HEALTH, SAFETY, AND ENVIRONMENT, UNITED STEELWORKERS

STATEMENT OF ANDREW K. SKIPP

Mr. SKIPP. Thank you, and good morning, Chairman Shimkus, Ranking Member Green, and subcommittee members. My name is Andrew Skipp and I am president of Hubbard-Hall, a chemical distributor based in Waterbury, Connecticut. I am also chairman of the National Association of Chemical Distributors (NACD), and I am pleased to provide testimony today in support of H.R. 908 to extend DHS's authority to continue the CFATS program.

NACD is an association of over 250 chemical distributors who purchase and take title to products and market them to a customer base of more than 750,000. Most NACD members are small, privately-owned businesses. The typical member has 26 million in annual sales, three facilities, and 28 employees. We demonstrate our commitment to product stewardship through compliance with Responsible Distribution, our mandatory and third-party-verified environmental, health, safety, and security program.

As owners and managers, our members have a personal stake in safety and security of our employees and companies. We demonstrate this through our commitment to Responsible Distribution, our relationships with our employees and our union members, and through our careful compliance with numerous environmental, transportation, safety, regulatory concerns, both on a federal, state, and local level.

On behalf of Hubbard-Hall and NACD, I commend Representatives Murphy and Green for introducing the legislation to extend DHS's authority to continue CFATS for 7 years. NACD was a strong supporter of the 2006 legislation that resulted in CFATS. H.R. 908 would allow time for the full implementation and evaluation of CFATS before changes to this important program are considered.

Because CFATS is a major regulation based upon performance standards for each facility rather than on one-size-fits-all mandate, it is taking time for DHS to evaluate and inspect over 4,100 Site Security Plans. However, this approach has the advantages of designing plans to address each facility's unique situation while avoiding the creation of a single road map for potential terrorists.

The bottom line is the real security measures are being implemented at facilities around the Nation because of CFATS. For example, my company has three facilities that are covered by this program. We have worked hard and spent substantial resources to design our Site Security Plans and implement additional security measures.

CFATS is a major regulatory commitment for Hubbard-Hall. We are willing to invest the time and the resources to comply with this important regulation, and I know that our company and all NACD members would welcome the certainty of a clean, long-term extension.

Prior CFATS proposals included measures that would have been counterproductive to the good progress that has been made. The most disruptive of these have required all CFATS-covered facilities, including chemical distributors to conduct inherently safer technology, IST assessments, and for those in the highest-risk tiers to implement these measures. Such a mandate would shift the focus away from the real security issues and force companies to consider full-scale engineering and product changes.

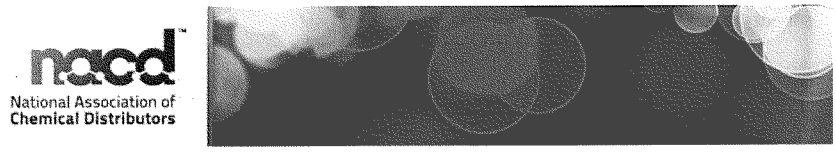
I want to emphasize that NACD opposes mandatory IST consideration. The fact of conducting IST assessments would be extremely costly for NACD members and would not reduce risk. For most NACD members, IST assessments would have to be outsourced at significant cost and produce limited options. Chemical distributors maintain specific inventories in order to respond to customer needs. If distributors are required to reduce inventories of certain products that would prevent us from meeting these needs. Particularly in these tough economic times, in addition to the myriad of regulations that already affect us, this could be the final straw to put some companies out of business, which would result in further job loss. Required inventory reductions would also assign additional risk to transportation and increase the likelihood of product handling incidents.

Finally, CFATS currently provides incentives to companies to use the safest possible methods so they can assign to a lower-risk tier. In fact, over 1,200 facilities have reduced their security risk so much that they have tiered-out of the program. Many more facilities have been assigned to lower tiers.

In conclusion, I repeat that NACD strongly supports the legislation to extend the current chemical security program with no changes. A clean extension will both provide regulatory certainty and allow for continued progress in implementing real security measures at our facilities.

On behalf of Hubbard-Hall and NACD, I appreciate this opportunity to present our views on this critical issue and I look forward to your questions. Thank you.

[The prepared statement of Mr. Skipp follows:]



Testimony of Andrew K. Skipp
President and Chief Executive Officer
Hubbard-Hall Inc.

on behalf of the

National Association of Chemical Distributors

before the

U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Environment and the Economy

on

H.R. 908, to extend the authority of the Secretary of Homeland Security
to maintain the Chemical Facility Anti-Terrorism Standards

Good Morning, Chairman Shimkus, Ranking Member Green, and members of the Subcommittee. My name is Andrew Skipp, and I am President and CEO of Hubbard-Hall, Inc., a full-line chemical distribution company based in Waterbury, CT. I am also the current Chairman of the National Association of Chemical Distributors (NACD). I am pleased to provide testimony today in support of H.R. 908, which would extend the authority of the Department of Homeland Security (DHS) to maintain the Chemical Facility Anti-Terrorism Standards (CFATS) program.

About Hubbard-Hall

Hubbard-Hall was founded in 1849 in Waterbury, CT and is a sixth generation family-owned and operated chemical distribution and manufacturing company. Our Waterbury corporate office, and Inman, SC facility have warehouse and manufacturing capabilities, and in Wilmington, MA we have a warehouse and sales office. We distribute chemicals throughout New England and sell our proprietary products throughout the United States and overseas.

About NACD

The National Association of Chemical Distributors (NACD) is an international association of chemical distributor companies. Our members purchase and take title to chemical products from manufacturers and resell them to most major industries in the United States. Member companies process, formulate, blend, re-package, warehouse, transport, and market these chemical products exclusively for an industrial customer base of more than 750,000 in the U.S. NACD members operate in every state in the continental U.S. and throughout all of North America through more than 1,300 facilities. The membership includes small businesses as well as regional and national companies.

NACD represents more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. Close to $19 billion of U.S. chemical industry sales are through NACD member companies that are also actively engaged in various phases of import/export

trade. The industrial segments served by chemical distributors use these materials to produce:

-Adhesives & Sealants	-Paints & Coatings
-Agriculture	-Pharmaceuticals
-Automotive	-Plastics
-Cosmetics/ Personal Care	-Pulp & Paper
-Electronics	-Soaps & Detergents
-Food & Beverage	-Textiles
-Municipal	-Other

Our industry plays a vital role in the United States economy and in the world marketplace. In the distribution of products, NACD distributor members directly and indirectly create more than 136,000 jobs.

Although our industry plays such a critical role in the economy, the majority of NACD's distributor members are small businesses. A typical NACD distributor member has $26 million in annual sales, three facilities, and 28 employees.

Responsible Distribution

NACD members demonstrate their commitment to product stewardship in every phase of chemical storage, handling, transportation, and disposal through compliance with Responsible Distribution, NACD's mandatory environmental, health, safety, and security program. Under Responsible Distribution, each member must follow *Codes of Management Practice* in order to protect the environment, promote health and safety of employees and community members, enhance product stewardship, and ensure the security of its facilities and products. Under each Code, member companies have an active program designed to continuously improve safety and reduce incidents. Each member must develop, implement, and undergo periodic verification of policies and procedures in each of the following areas: Risk Management; Compliance Review & Training; Carrier Selection; Handling & Storage; Job Procedures & Training; Waste Management & Resource Conservation; Emergency Response & Public Preparedness; Community Outreach; Product Stewardship; Internal Audits; Corrective & Preventive Action; and Document & Records Control.

NACD's Commitment to Security

NACD's members have always focused on the safety and security of its workplaces and products. In response to the terrorist attacks of September 11, 2011, NACD became the first chemical trade association to mandate specific security measures for its members and continues to assess Responsible Distribution's security measures against current threats. Specific measures addressing security include:

- Developing programs that address security of a member's facility and the transportation of chemicals, including conducting a security vulnerability assessment
- Scrutinizing for-hire motor carriers for the security of chemicals in transportation
- Qualifying customers purchasing chemicals as prescribed by government regulations
- Verifying implementation of security measures by an independent third-party verification firm

These requirements apply to all NACD members, including those who do not have facilities covered under the Chemical Facility Anti-Terrorism Standards (CFATS) program.

NACD Supports H.R. 908

On behalf of NACD, I commend Representatives Murphy and Green for introducing H.R. 908, which would extend the Department of Homeland Security's (DHS) authority to implement the CFATS program for an additional seven years. NACD was a strong supporter of the legislation enacted in 2006 that gave DHS authority to regulate chemical facilities and that led to the development of the CFATS program. If enacted, H.R. 908 would allow time for the full implementation and evaluation of CFATS before any changes to this important program are considered.

CFATS is a major new regulatory program, and DHS has done a commendable job with limited resources in writing the regulations and setting up the internal infrastructure to be able to implement and enforce the new standards. As of mid-March, DHS had received over 4100 site security plans (SSPs) from facilities in all four risk tiers. The agency is in the process of evaluating these SSPs and has conducted over 160 preliminary inspections to date, mostly at Tier 1 facilities. Because CFATS is a major new regulation, it will take time for DHS to evaluate

all of the SSPs and to inspect the 4100 + facilities to ensure that they are in fact implementing the security measures outlined in their plans.

One of the strengths of the CFATS program is that it requires each covered facility to meet security risk-based performance standards, according to their own particular situations and security issues. The owners and operators of each facility must decide how to meet each of the 18 risk based performance standards and submit their plan to DHS, who then must evaluate each plan individually, based on each facility's unique security risks. The result is a comprehensive plan designed for each particular facility that meets the CFATS performance standards. Because of the unique design of the CFATS program, implementation is not as clear cut as a one-size-fits-all mandate, thus more time is needed for evaluations and inspections. Although this approach has taken longer to implement, it has the advantages of creating plans to address every facility's unique situations while also avoiding the creation of a single roadmap for potential terrorists.

The bottom line is that real security measures are being implemented at facilities around the nation because of the CFATS program. For example, my company has three facilities covered under CFATS. We have worked hard and have spent substantial resources to design our SSPs and to begin to implement additional security measures at these facilities. We look forward to having continued dialogue with DHS about these plans and to continue to implement security measures that will address Hubbard-Hall's specific security issues. I would like to emphasize that CFATS has been and will continue to be a major regulatory commitment for my company. While we have been willing to invest the time and resources to comply with this important regulation, I know that Hubbard-Hall along with all of the other members of NACD who have CFATS-covered facilities would appreciate the certainty of a clean, long-term extension of the program.

Changes to the Current CFATS Program Would be Counterproductive

In the previous Congress, the House passed a bill, H.R. 2868, that would have made CFATS permanent, but would have also made several harmful and premature changes to the program. I would like to discuss some of these changes and NACD's concerns about them.

Inherently Safer Technologies

NACD opposes any measure that would require facilities to consider and/or implement "inherently safer technologies" (ISTs). H.R. 2868 would have required each CFATS-covered facility to conduct an IST assessment and for facilities in the highest risk-tiers to implement the ISTs. This mandate would have applied to all CFATS-covered facilities, regardless of facility type.

While some chemical distributors custom blend substances for customers, the primary operations for most NACD members involve warehousing, repackaging, and transportation of materials to their customers. Chemical distributors maintain specific inventories of products in order to respond to the needs of customers. For most facilities, an IST assessment, which would in most cases have to be outsourced at significant cost, would likely produce limited options that would impede our normal business operations. In cases where distributors might be required to reduce inventories of certain products, this would prevent these companies from effectively addressing their customers' needs. Particularly in these tough economic times, and in addition to the myriad regulations that already affect us, this could be the final straw to put some companies out of business, which would result in further job losses.

I would like to reemphasize that NACD opposes mandatory IST *consideration* in addition to mandatory implementation. The act of conducting IST assessments would be extremely costly for NACD members and would produce no real risk reduction benefit. These assessments would require expertise with IST methodologies, the likelihood of any possible measures to reduce risk, and the potential costs of these measures. The vast majority of NACD members are small businesses that do not have teams of chemical and process safety engineers on staff who would be able to conduct the IST assessments. These companies would be forced to hire consultants, who at rates of hundreds of dollar per hour, would easily drive the costs of the assessments into tens of thousands of dollars per facility. Again, these costly assessments would produce limited options for chemical distributors whose inventories are set up, frequently on a just-in-time basis, to address customer needs.

In addition, if facilities are required to reduce the amount of materials they have on-site as part of IST implementation, the result would be increased transportation of the materials, which would merely transfer the risk to different points along the supply chain and increase the likelihood of loading, unloading, or in-transit incidents, including potential security incidents.

Finally, CFATS already has a built-in incentive for facilities to use the safest methods and processes possible in order to be assigned to a lower risk tier or to completely tier out of the regulation. In fact, in the late 2008-2009 timeframe, approximately 7000 facilities were covered under CFATS. As of mid-March of this year, 4744 facilities were covered. Over 2000 facilities have reduced their security risk so much that they have tiered out of the program. Many more facilities have been assigned to lower tiers.

Citizen Suits

NACD also strongly opposes the inclusion of citizen suit provisions in any potential CFATS extension that would allow any individual or organization to sue a chemical facility for alleged non-compliance. The current CFATS program gives DHS authority to impose substantial penalties as well as the authority to shut down facilities for non-compliance. The threat of citizen suits is not only unnecessary, but could also divert resources from security enhancements to litigation costs.

Prescriptive Requirements

NACD supports the risk-based performance standards approach of the CFATS program and would have serious concerns about the prescriptive requirements such as those in H.R. 2868 of the last Congress. In addition to the IST provisions, there were several specific mandates in that legislation, including those that would required facilities to conduct annual drills and exercises with the participation of local officials and emergency responders, set out specific criteria for employee training and procedures for background checks, and required that union representatives be involved in the development of SVAs and SSPs. These specific measures may not be appropriate for every covered facility. For example, the requirement to conduct yearly drills and exercises that include local law enforcement and emergency responders could place facilities in the position of being out-of-compliance with the regulations because the emergency responders

in many locales do not always have the time and resources to spend on these exercises and cannot be forced to participate. NACD strongly supports the concept of such drills and exercises, but we had major concerns with the lack of flexibility in parts of H.R. 2868 that such as this one that failed to recognize the resource limitations of the local law enforcement and emergency response organizations.

Duplicative Regulation

NACD is also concerned about the prospect of more duplicative regulations. Past legislation has proposed including in the CFATS program sites that are already regulated under the Maritime Transportation Security Act (MTSA). Several NACD member facilities comply with the security requirements under MTSA, which is administered by the U.S. Coast Guard (USCG). The Coast Guard and MTSA-covered facilities have worked together closely to achieve the security goals of this program. If CFATS and MTSA are harmonized, the work that sites have done to comply with MTSA must be recognized. Most importantly, MTSA sites should not be subject to dual inspections and the USCG should continue its role at traditional MTSA sites.

Lack of Pre-Emption

Finally, NACD would oppose a change to the current law such as that proposed in H.R. 2868 that would have explicitly allowed states and localities to adopt and enforce standards more stringent than the federal law. Because the protection of chemical facilities is a national security issue, NACD believes that federal preemption is an important element of an effective chemical security program. There is precedent for federal preemption in the areas of aviation, nuclear, port, and hazardous materials transportation security. Lack of a strong national standard would result in a patchwork of different chemical security rules throughout the nation, which would make compliance confusing for any company that does business across state lines, which is the industry norm. This would not be in the best interest of national security, the very objective that chemical security legislation is meant to promote.

Conclusion

NACD supports H.R. 908 to extend the current chemical security program for seven years. A clean extension will allow for continued progress in implementing real security measures at facilities throughout the nation. Any changes at this stage in the process would create uncertainty and frustrate the important progress that has been made to date.

On behalf of NACD, I appreciates this opportunity to present the association's views on this important issue. I look forward to your questions.

Mr. SHIMKUS. Thank you very much, sir. And I would like to recognize—and I guess I mispronounced it—Mr. Tabar from Sherwin-Williams. You are recognized for 5 minutes.

STATEMENT OF DAVID TABAR

Mr. TABAR. Thank you. Good morning, Chairman Shimkus and members of the subcommittee. My name is David Tabar and I am the global director of safety for the Sherwin-Williams Company in Cleveland, Ohio. I am also here representing the American Coatings Association. My purpose here today is to support H.R. 908, and I thank you for this opportunity to present our views before the subcommittee today.

The paint and coatings industry has been working to enhance the security of their manufacturing operations over the last decade. Specific steps the ACA has taken include the addition of a new security code to our Coatings Care Stewardship Program. ACA is a long-standing participant in the Chemicals Sector Coordinating Council and continues to work with the Department of Homeland Security on both voluntary and mandatory security measures under the Chemical Facility Anti-Terrorism Standards.

Over the last several years, the coatings industry has worked hard to achieve CFATS compliance, including the submission and the conduct of Top-Screens, Security Vulnerability Assessments, and Site Security Plans, along with the development of proposed action plans requiring further review with the DHS. Facilities that were identified as "high-risk" were ultimately assigned one of four tiers by DHS. The process is ongoing, and while several coatings industry sites have completed this process, including related DHS inspections, other firms await DHS response to their Site Security Plans or Alternative Security Plans.

ACA supported the original CFATS legislation and strongly supports the current program. This demanding program is now requiring thousands of chemical manufacturers and formulators nationwide to develop and deploy meaningful security enhancements. As a result, ACA supports permanent—or at least long-term—reauthorization of the existing CFATS statute in order to allow regulated facilities to continue their implementation of stringent DHS chemical facility security standards in an orderly manner. In our view, it is premature to seek to change the existing framework substantially until it has been fully implemented and we have gained a better understanding of what works and what does not.

It is important that any uncertainty created by possible short-term reauthorizations is eliminated, so as to provide regulatory clarity, thus allowing affected industries to make prudent business decisions about how best to implement the current regulations. ACA, along with other groups, has opposed previous efforts to mandate product and process substitutions with technology established by regulation. Any move away from the current risk-based standards would lead to confusion, loss of viable security products, systems methodologies, and would create prohibitive legal liability and possible business failures. A move away from risk-based standards would most certainly put U.S. manufacturers at a competitive disadvantage with foreign manufacturers not facing such requirements. By making the existing chemical security framework per-

manent, a certainty will be provided that is necessary to enable companies to protect our citizens and to facilitate economic recovery.

As a result, although ACA has consistently favored permanent CFATS reauthorization, we support the approach taken in H.R. 908, the full implementation of the Chemical Facility Anti-Terrorism Standards Act. The extension to 2017 provides industry with sufficient breathing room to implement CFATS on a permanent basis prior to a required revisiting of the law 7 years from now.

Many operations throughout the coatings industry are covered by CFATS, primary due to commercial grades of raw materials that are commonly used to formulate specialty roof, emissivity, infrastructure, or automotive coatings. As a responsible corporation, Sherwin-Williams has devoted considerable resources to CFATS compliance and works hard to meet our obligations to neighboring communities, customers, shareholders, and the public.

Examples of CFATS-related actions include: new staff positions in chemical facility anti-terrorism; raw material elimination or substitution; control of purchasing, sales, inventories; development and enhancement of chemical tracking technologies; onsite and program-related consultative reviews; organization-wide safety and security support team development; Alternative Security Plans developed for small facilities; development of internal chemical security compliance standards; development of Facility Security Officer training; development of new risk- and regulatory-based management of change systems to improve risk identification, control, and action-closure; and the development of employee security awareness training programs.

In light of our own experience, we agree with the position of ACA and our industry colleagues concerning a more permanent reauthorization of CFATS. Because of significant requirements placed on our company and other coatings manufacturers, we believe that Congress should continue to recognize this very stringent and well-constructed industrial antiterrorism program. Thank you.

[The prepared statement of Mr. Tabar follows:]

Testimony of David C. Tabar
The Sherwin-Williams Company

On behalf of the American Coatings Association

Before the

Committee on Energy and Commerce

United States House of Representatives

Subcommittee on Environment and Economy

On H.R. 908

March 31, 2011

Good morning, Chairman Shimkus, and members of the Subcommittee, my name is David C. Tabar and I am the Global Director of Safety for the Sherwin-Williams Company in Cleveland, Ohio. Sherwin-Williams is a global leader in the manufacture, development, distribution, and sale of coatings and related products to professional, industrial, commercial, and retail customers. The company manufactures products under well-known brands such as Sherwin-Williams®, Dutch Boy®, Krylon®, Minwax®, Thompson's® Water Seal®, and many others. With a global headquarters in Cleveland, Ohio, Sherwin-Williams® branded products are sold exclusively through a chain of more than 3,500 company-operated stores and facilities, while the company's other brands are sold through leading mass merchandisers, home centers, independent paint dealers, hardware stores, automotive retailers, and industrial distributors. Our Global Finishes Group distributes a wide range of products in more than 109 countries around the world. My purpose in being here today is to support H.R. 908, and I thank you for this opportunity to present our views before the Subcommittee today.

1500 RHODE ISLAND AVENUE N.W. • WASHINGTON, DC 20005 • T 202.462.6272 • F 202.462.8549 • www.paint.org

I am here representing the American Coatings Association. ACA is a voluntary, nonprofit trade association working to advance the needs of the paint and coatings industry and the professionals who work in it. The organization represents paint and coatings manufacturers, raw materials suppliers, distributors, and technical professionals. ACA serves as an advocate and ally for members on legislative, regulatory and judicial issues, and provides forums for the advancement and promotion of the industry through educational and professional development services.

In my job at The Sherwin-Williams Company, I am responsible for working with business units to facilitate standards-setting, management systems and compliance in the areas of chemical anti-terrorism safety and security, occupational safety, process safety, life and fire-safety, fire research, and workers compensation.

ACA and coatings industry activities on chemical security

The paint and coatings industry has been working to enhance the security of their manufacturing operations over the last decade. Specific steps the ACA has taken include the addition of a new Security Code to our Coatings Care® Stewardship Program. The American Institute of Chemical Engineers' Center for Chemical Process Safety (CCPS) subsequently audited the Coatings Care Security Guidance; and recommended amendments were incorporated to ensure that the Coatings Security Guidance method is consistent with the CCPS's Security Vulnerability Assessment (SVA) criteria. ACA is a long standing key participant in the Chemical Sector Coordinating Council, and continues to work with the Department of Homeland Security (DHS)

on both voluntary and mandatory security measures under the Chemical Facility Anti-terrorism Standards (CFATS).

Since the enactment of CFATS in 2006, the ACA continues its voluntary efforts, such as Coatings Care®, and continues to work with DHS to help members with CFATS compliance. Over the last several years, the coatings industry has worked hard to achieve CFATS compliance, including the submission and conduct of Top-Screens, Security Vulnerability Assessments, and Site Security Plans, along with the further development of proposed action plans requiring further review with DHS. Facilities that were identified as "high risk" were ultimately assigned one of four risk tiers by DHS. This process is ongoing, and while several coatings industry sites have completed this process, including related DHS inspections, other firms await DHS response to their Site Security Plans or Alternate Security Plans.

ACA's position on CFATS, like many of its colleagues in the chemical industry, has been consistent throughout. ACA supported the original CFATS legislation and strongly supports the current program. This demanding program is now requiring thousands of chemical manufacturers and formulators nationwide to develop and deploy meaningful security enhancements. As a result, ACA supports permanent – or, at least, long-term – reauthorization of the existing CFATS statute in order to allow regulated facilities to continue their implementation of stringent DHS chemical facility security standards in an orderly manner. In our view, it is premature to seek to change the existing framework substantially until it has been fully implemented and we have gained a better understanding of what works, and what does not.

It is important that any uncertainty created by possible short-term reauthorizations is eliminated, so as to provide regulatory clarity, thus allowing affected industries to make prudent business decisions about how best to implement the current regulations. ACA, along with other industry groups, has opposed previous efforts to mandate product and process substitutions with technology established by regulation. Any move away from the current risk-based standards would lead to confusion, loss of viable security products, systems and methodologies, while creating prohibitive legal liability and possible business failures. A move away from risk-based standards would most certainly put U.S. manufacturers at a competitive disadvantage with foreign manufacturers who do not face such requirements. By making the existing chemical security framework permanent, a certainty will be provided that is necessary to enable companies to protect our citizens, and to facilitate economic recovery.

As a result, although ACA has consistently favored permanent CFATS reauthorization, we support the approach taken in H.R. 908, the *Full Implementation of the Chemical Facility Anti-Terrorism Standards Act.* The extension to 2017 provides industry with sufficient breathing room to implement CFATS on a permanent basis prior to a required revisiting of the law seven years from now.

Sherwin-Williams' experience

The Sherwin-Williams Company has long been a leader in ensuring the safety and security of our manufacturing locations, along with extensive distribution and sales channels. Sherwin-Williams works diligently at providing for the safety, security and health of all employees,

customers, and the public. We are continuing to work closely with ACA, DHS and recognized security consultants since the passage of CFATS to comply with our obligations.

Sherwin-Williams has been affected in a very direct way by CFATS, as a considerable number of Company manufacturing and blending operations are covered by the regulation. Many operations throughout the coatings industry are covered, primarily due to commercial grades of raw materials that are commonly used to formulate specialty roof, emissivity, infrastructure, or automotive coatings. As a responsible corporation, Sherwin-Williams has devoted considerable resources to CFATS compliance, and works hard to meet our obligations to neighboring communities, customers, shareholders, and the public.

Examples of Sherwin-Williams' CFATS-related actions include:

- New staff positions in chemical facility anti-terrorism
- Raw material elimination or substitution
- Control of purchasing, sales and inventories
- Development and enhancement of chemical tracking technologies
- On-site and program-related consultative reviews
- Organization-wide safety and security support team development
- Alternate Security Plan development for small facilities
- Development of internal chemical security compliance standards
- Development of Facility Security Officer and employee training
- Development of new risk and regulatory-based management of change systems to improve risk identification, control and action-closure
- Development of employee security awareness training programs

- Extensive work with the ACA, DHS and suppliers to better evaluate the physical properties and risks associated with specified raw material pastes that do not carry the same inherent physical risks as solid versions

In light of our own experience, we agree with the position of ACA and our industry colleagues concerning a more permanent reauthorization of CFATS. Because of the significant requirements placed on our company and other coatings manufacturers during this time of economic challenge and restrained resources, we believe that Congress should continue what is a recognized as a very stringent and well-constructed industrial anti-terrorism security program.

On behalf of ACA, I appreciate this opportunity to present the association's views on these important issues. I look forward to your questions.

Mr. SHIMKUS. Thank you, sir. Now the chair recognizes Mr. Allmond for 5 minutes, sir.

STATEMENT OF WILLIAM E. ALLMOND IV

Mr. ALLMOND. Thank you. Good morning, Chairman Shimkus, Ranking Member Green, and Vice Chairman Murphy, and members of the subcommittee.

My name is Bill Allmond and I am the vice president of government relations at the Society of Chemical Manufacturers and Affiliates. For 90 years, SOCMA has been and continues to be the leading trade association representing the batch, custom, and specialty chemical industry. SOCMA's 250-member companies employ more than 100,000 workers across the country and produce some 50,000 products—valued at $60 billion annually—that help make our standard of living possible. Over 80% of our members are small businesses.

I am pleased to provide this testimony regarding H.R. 908, the full implementation of the Chemical Facility Anti-Terrorism Standards Act. SOCMA strongly supports DHS's current Chemical Facility Anti-Terrorism Standards, or CFATS. This demanding regulation is now required in nearly 5,000 chemical facilities nationwide and facilities that use chemicals nationwide to develop and deploy meaningful security enhancements. This performance-based regulation protects facilities against attack without impairing the industry's ability to remain innovative and maintain some of the Nation's highest-paying manufacturing jobs. Furthermore, the standards have teeth. DHS has the authority to levy significant fines on a facility for noncompliance, can even shut a facility down.

Congress can best assure CFATS's continued success and forward momentum by passing H.R. 908. This bill would reauthorize CFATS through 2017, thus allowing DHS and facilities to concentrate on successfully implementing that regulation through completion.

SOCMA regards this regulation thus far as a success. Due to the outstanding cooperation of the chemical sector, there has been 100 percent compliance with the requirements to submit Top-Screens, Security Vulnerability Assessments, and Site Security Plans. DHS has not yet had to institute a single administrative penalty action to enforce compliance.

Additionally, 2,000 facilities have changed processes or inventories in ways that have enabled them to screen out of the program. Thus, as predicted, CFATS is driving facilities to reduce inherent hazards, where in their expert judgment doing so is in fact safer, does not transfer risk to some other point in the supply chain, and makes economic sense.

To fully gauge the effectiveness of the CFATS program, Congress should allow all tiered facilities to come into compliance. Completing the program's implementation from start to finish would provide DHS and chemical companies the ability to assess the overall efficacy of CFATS, identify its areas of strengths and weaknesses, and subsequently make or recommend to Congress any necessary improvements.

Conversely, the need for annual reauthorization of CFATS has created uncertainty for regulated facilities. Without the assurance

of a long-term authorization of these regulations, companies do run the risk of investing in costly activities today that might not satisfy regulatory standards tomorrow.

Statutory authority for CFATS, which has been tied to a series of continuing resolutions passed by Congress since last year, is set to expire next week, as you know. Congress must act now to ensure continuation of the current standards and reauthorize the underlying statute for multiple years.

As Congress considers chemical security legislation further, there is an issue of particular concern to us, which is interest among some to mandate Inherently Safer Technology within CFATS. One of our greatest concerns with mandatory IST is the real possibility that it will negatively restrict the production of active pharmaceutical ingredients, or APIs, many of the key raw materials of which are regulated under CFATS.

APIs are used to fight many types of cancer, used in prescription and generic drugs and over-the-counter medicines. They are thoroughly regulated by the Food and Drug Administration and must meet demanding quality and purity requirements. Substituting chemicals or processes used for the production of APIs would create substantial unintended consequences. Substitution would likely violate the conditions of companies' FDA approvals. Requiring IST could also delay clinical trials while new replacement chemicals are identified, and meanwhile, to meet continuing consumer demand, API production would likely shift to foreign countries where FDA is less able to monitor conformance to quality standards.

There is a legitimate federal role in IST at the moment, however, and DHS is actually serving that role well. A few years ago, DHS initiated an increasing safety of hazardous chemicals process to develop a consensus definition of IST, and from that, to begin crafting metrics that would allow people to begin to compare inherent safety of different processes. The definition process was open and engaging and concluded last year with a document that has been universally praised. This program has now begun work on its metrics project, although SOCMA understands that there is no funding for that effort in the President's fiscal year 2012 budget. That is unfortunate because this is an example of how the Federal Government can play a useful role in the field of inherent safety. Any attempt to mandate even consideration of IST is premature otherwise.

We recommend the subcommittee move forward and place a higher priority on ensuring the current standards are extended. H.R. 908 does just that. I appreciate this opportunity to testify before you today and I look forward to your questions.

[The prepared statement of Mr. Allmond follows:]

Testimony of

William E. Allmond, IV
Vice President, Government Relations

Society of Chemical Manufacturers and Affiliates

before the

House Committee on Energy and Commerce
Subcommittee on Environment and the Economy

on

H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act

March 31, 2011

Good morning Chairman Shimkus, Ranking Member Green, and members of the Subcommittee. My name is Bill Allmond and I am the Vice President of Government Relations at the Society of Chemical Manufacturers and Affiliates (SOCMA) in Washington, DC. I am pleased to provide this testimony regarding H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act.

Four and a half years ago, Congress enacted a comprehensive chemical security regulatory program, the Chemical Facility Anti-terrorism Standards (CFATS). Thanks to this bipartisan effort, the U.S. Department of Homeland Security (DHS) and regulated facilities are deep in the middle of implementing this vital program in a focused, cooperative manner.

SOCMA strongly supports DHS's current CFATS program. This demanding program is now requiring almost 5,000 chemical manufacturing, distributing and handling facilities nationwide to develop and deploy meaningful security enhancements. Equally important, it has led over 2,000 facilities to voluntarily take steps to reduce their risk profile sufficiently enough to no longer warrant regulation under the program. This performance-based regulation protects facilities against attack without impairing the industry's ability to remain innovative and to maintain some of the nation's highest paying manufacturing jobs. Furthermore, the standards have teeth. The Secretary of the Department of Homeland Security has the authority to levy significant fines on a facility for non-compliance, and can even shut down a facility.

Congress can best assure the CFATS program's continued success and forward momentum by passing H.R. 908, recently introduced by Vice Chair Murphy and Ranking Member Green. This bill would reauthorize CFATS through 2017, thus allowing DHS and facilities to concentrate on successfully implementing that program as quickly as possible.

I. SOCMA and the Current State of Chemical Facility Security

A. SOCMA

For 90 years, SOCMA has been and continues to be the leading trade association representing the batch, custom, and specialty chemical industry. SOCMA's nearly 250 member companies employ more than 100,000 workers across the country and produce some 50,000 products – valued at $60 billion annually – that make our standard of living possible. From pharmaceuticals to cosmetics, soaps to plastics and all manner of industrial and construction products, SOCMA members make materials that save lives, make our food supply safe and abundant, and enable the manufacture of literally thousands of other products. Over 80% of SOCMA's active members are small businesses.

ChemStewards® is SOCMA's flagship environmental, health, safety and security (EHS&S) continuous performance improvement program. It was created to meet the unique needs of the batch, custom, and specialty chemical industry, and reflects the industry's commitment to reducing the environmental footprint left by members' facilities. As a mandatory requirement for SOCMA members engaged in the manufacturing or handling of synthetic and organic chemicals, ChemStewards is helping participants reach for superior EHS&S performance.

B. SOCMA's Security Achievements to Date

Maintaining the security of our facilities has always been a priority for SOCMA members, and was so before September 11. After the tragic events of 9/11, SOCMA members did not wait for new government regulations before researching, investing in and implementing additional and far-reaching facility security measures to address these new threats. Under the ChemStewards initiative, SOCMA members were required to conduct security vulnerability assessments (SVAs) and to implement security measures.

SOCMA designed an SVA methodology specifically for batch, custom and specialty chemical facilities that was approved by the Center for Chemical Process Safety (CCPS) as meeting its requirements for an effective methodology. SOCMA members have spent significant amounts of money and have devoted countless man-hours to secure their facilities and operations. These investments will naturally continue for the foreseeable future.

Many (though by no means all) SOCMA member company facilities are encompassed by the CFATS program. These facilities have completed their Site Security Plans (SSPs) and are being (or will soon be) inspected by DHS to verify the adequacy of those plans and their conformance to them. SOCMA is actively engaged with DHS to accelerate and continuously improve the implementation of the CFATS program, collaborating on new approaches to personnel surety and Alternative Security Programs.

Many of our member companies' other facilities comply with the Coast Guard's facility security requirements under the Maritime Transportation Security Act (MTSA).

Looking well beyond regulatory requirements, our members have also partnered with DHS on many important voluntary security initiatives and programs through the years, including the Risk Assessment Methodology for Critical Asset Protection (RAMCAP), the Buffer Zone Protection Plans, and the Homeland Security Information Network (HSIN). SOCMA is a founding member of the Chemical Sector Coordinating Council, which has served as a model for how critical infrastructure sectors should work together and with DHS.

SOCMA also works jointly with DHS in organizing a free annual Chemical Sector Security Summit and Expo that brings together government representatives, chemical security experts, and industry professionals to share knowledge and best practices.

Through the Sector Council and other avenues, we and our members have developed close and open working relationships with DHS and other federal agencies, and with state and local governments, to exchange information and coordinate roles in maintaining the security of our critical chemical facility infrastructure.

C. Preserving the Progress under CFATS

While we will leave a detailed progress report on the CFATS program to DHS, SOCMA wants to emphasize that we regard the program thus far as a success. Due to the outstanding cooperation of the chemical sector, there has been 100% compliance with the requirements to

submit Top-Screens, SVAs and SSPs – DHS has not yet had to institute a single administrative penalty action to enforce compliance. And as noted earlier, over 2,000 facilities – over a quarter of the preliminarily tiered facilities—have changed processes or inventories in ways that have enabled them to screen out of the program. Thus, as predicted, CFATS is driving facilities to reduce inherent hazards, where in their expert judgment doing so is in fact safer, does not transfer risk to some other point in the supply chain, and makes economic sense.

To fully gauge the effectiveness of the CFATS program, Congress should allow it to be fully implemented – for all tiered facilities to fully come into compliance. Completing the program's implementation from start to finish would provide DHS and chemical companies the ability to assess the overall efficacy of CFATS, identify its areas of strength and weakness, and subsequently make (or recommend to Congress) any necessary improvements.

Conversely, the need for annual reauthorization of the program has created uncertainty for facilities regulated by CFATS. Without the assurance of a long-term authorization of these regulations, companies run a risk of investing in costly activities today that might not satisfy regulatory standards tomorrow.

Statutory authority for CFATS, which has been tied to a series of continuing resolutions passed by Congress since last year, is set to expire next week. Congress must act now to ensure continuation of the current standards and reauthorize the underlying statute for multiple years.

D. Simplifying Personnel Surety and Federal Background Check/Credentialing Programs

While we strongly believe that the current regulatory standards themselves are working well, there is still room for DHS to improve the *efficiency* of compliance. Congress should exercise its oversight authority to assure itself both that the CFATS program continues to be effective and that DHS and other agencies minimize duplication and unnecessary regulatory burdens. A prime example is the "personnel surety program" that DHS is developing under CFATS. Risk-Based Performance Standard #12 requires facilities to implement security measures designed to: (i) verify and validate identity; (ii) check criminal history; (iii) verify and validate legal authorization to work; and (iv) identify people with terrorist ties. The facility is responsible for the first three tasks and for determining what criminal background findings would be disqualifying. Evaluating terrorist ties requires federal government involvement however, in the form of evaluating names against the national Terrorist Screening Database (TSDB) maintained by the FBI.

DHS has announced its intent to establish a web-based application that would enable facility owners and operators to submit names of current and prospective employees, as well as contractor and visitor personnel. The latest official DHS description of how this process would work would require facilities to submit personally-identifying information for contractor and visitor personnel every time they seek access to a plant.[1] Because of the heavy presence of

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[1] *See* 75 Fed. Reg. 18850 (April 13, 2010).

contractors at chemical sites, especially during plant-wide maintenance "turnarounds," our industry has vehemently objected to this proposal. We have also strongly urged DHS to rely on the half-dozen or so other federally-issued credentials that involve a TSDB check. Unions have also expressed concern about DHS's proposal.

DHS has been open to discussing alternative approaches, and the industry has proposed both interim and long-term alternatives that could involve reliance on existing federal vetting programs (e.g., the Transportation Worker Identification Credential or TWIC), mechanisms by which contractor and visitor employers could submit information regarding their own employees, and ultimately a universal federal security credential that would supersede all others.

While we have had productive discussions with the Office of Infrastructure Protection on our proposals, any alternative has to struggle against (i) the desires of some within DHS to make CFATS a system for tracking who has ever had access to which chemical facility, and (ii) resistance within TSA to allowing TWICs to be made available to persons working in non-maritime settings. We realize that these issues fall into the jurisdictions of multiple Congressional committees. Especially for that reason, we urge this subcommittee and others with jurisdiction to work together, and with DHS and other agencies, to minimize the burdens of assuring personnel surety under the CFATS program and, more generally, to rationalize the current crazy quilt of security credentialing programs.

II. Mandatory IST Is an Inherently Risky Proposition

SOCMA vehemently believes that this Congress should enact legislation like H.R. 908 to extend the CFATS program for multiple years. Congress should not devote any further time to discussing the discredited concept of mandatory inherently safer technology (IST). The balance of this statement explains in significant detail why mandatory IST would be so unwise.

An IST mandate such as that contained in last year's House bill would have created a new CFATS statute to require Tier 1 and 2 facilities to implement "methods to reduce the consequences of a terrorist attack" – i.e., IST – whenever DHS made specified findings about risk reduction and technical and economic feasibility. However commonsense such a mandate might appear on the surface, it is fundamentally a bad idea in the security context. Inherent safety is a superficially simple but truthfully very complex concept, and one that is inherently unsuited to regulation. It would also wreak economic havoc on regulated facilities, notwithstanding the findings DHS would have to make. Makers of active pharmaceutical ingredients, common fuels and other federally-regulated substances would be most at risk of such economic damage.

A. What Inherent Safety Really Is and Why Mandating It Is Not Inherently Better

First and foremost, it is important to clarify a common misunderstanding about inherent safety. Quite simply, IST is a process-related engineering concept, not a security one. It is premised on the belief that, if a particular chemical process hazard can be reduced, the overall risk associated with that process will also be reduced. In its simplicity, it is an elegant concept, but the reality is

almost never that simple. A reduction in hazard will reduce overall risk if, and only if, that hazard is not displaced to another time or location, or result in the creation of some new hazard.

Inherent safety is only successful if the sum total of all risks associated with a process life cycle is reduced. This is rarely a simple calculation, and to some extent it is an irreducibly subjective one (for example, a substitute chemical that may reduce explosion risks may also pose chronic health risks). The calculation becomes even more difficult when it is being done not solely for reasons of process safety (where accident probabilities can be estimated with some degree of confidence) but also for reasons of security (where the probability of terrorist attack is highly uncertain but certainly low). Finally, there is no agreed-upon methodology to measure whether one process is inherently safer than another process. For all these reasons, the world's foremost experts in IST and chemical engineering have consistently recommended against regulating inherent safety for security purposes.

There is a legitimate federal role in IST at the moment, and DHS is actually serving that role admirably. A few years ago, DHS's Science & Technology Directorate initiated an "Increasing Safety of Hazardous Chemicals" (ISHC) process to develop an expert consensus definition of IST, and from that to begin crafting metrics that would allow people to begin to compare the inherent safety of different processes. The definition process was open and participatory, and concluded last year with document that has been universally praised.[2] The ISHC program has now begun work on its metrics project, although SOCMA understands that there is no funding for that effort in the President's FY2012 budget. That is unfortunate, because this is an example of how the federal government can play a useful role in the field of inherent safety. Any attempt to mandate even consideration of IST is premature otherwise.

B. IST's Impact on Pharmaceuticals

One of SOCMA's greatest concerns with mandatory IST is the real possibility that it will negatively restrict the production of active pharmaceutical ingredients (APIs), many of the key raw materials of which are included on DHS's Appendix A of covered chemicals. APIs are used to fight many types of cancer, used in prescription and generic drugs, and over-the-counter medicines. They are thoroughly regulated by the Food and Drug Administration and must meet demanding quality and purity requirements. Substituting chemicals or processes used for the production of APIs would create substantial unintended consequences. Substitution would likely violate the conditions of companies' FDA approvals. Requiring IST could also delay clinical trials while new replacement chemicals are identified or invented, and would force API manufacturers and their customer drug manufacturers to reapply for FDA approval of their products because of the significant change in the manufacturing. The lengthy one to four year approval timeline for a new or equivalent replacement chemical would be a high price to pay for American consumers, many of whom rely on ready access to pharmaceuticals. To meet continuing consumer demand, API production would likely shift to foreign countries, where the FDA is less able to monitor conformance to quality standards.

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[2] http://www.aiche.org/uploadedFiles/CCPS/Resources/KnowledgeBase/IST%20Final%20Definition%20Report.pdf.

The Energy & Commerce Committee's 2009 report on H.R. 2868 attempted to assuage concerns like those just discussed, opining that, where mandated IST "could result in a product that is less effective or less available to those who need it," or "forced the company to seek new regulatory approvals (such as from the Food and Drug Administration) that could take years to obtain, that could mean that the covered facility could not continue its business" and "the Department must consider such unintended consequences."[3] Respectfully, SOCMA's concerns cannot be alleviated by such non-binding language. Not only would DHS not be required to follow it, but DHS would also be free to conclude that the amount of delay required to get an FDA approval, or the degree to which the effectiveness of a product would be diminished, would *not* mean that the facility could not continue its business. After all, a sufficiently large and flexible facility might well be able to stay in business even though it has lost an important product or market. But this Committee should not be encouraging the destruction of products and markets for questionable benefits in this economy (or any other).

The debate over whether IST should be mandated within the CFATS program has been argued repeatedly in the past. Following numerous hearings in which testimony was given by academia, industry, NGOs, and government officials, the prevailing view has sided against mandating it or, at best, concluding that more information is needed. We recommend this subcommittee move forward and place a higher priority on ensuring the current standards are extended.

III. Conclusion

As this subcommittee takes up the issue of chemical security anew in the 112th Congress, SOCMA asks that you work in a bipartisan manner and support legislation that would extend authorization of existing chemical facility security standards for multiple years.

We appreciate this opportunity to testify before you today. I look forward to your questions.

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[3] House Committee on Energy and Commerce, Report No. 111-205, pt. 2, at 48 (Oct. 23, 2009).

Mr. SHIMKUS. Thank you. And now I would like to turn to Mr. James Frederick, who is from the United Steelworkers. Before I give you your 5 minutes, during the district work period, I visited the U.S. steel plant in Granite City, Illinois. We still make steel in this country. It is difficult to do. It is the second time I have been there but it is phenomenal, a big operation, so thanks to you and the membership for the guide and the tour and I look forward to hearing your testimony.

STATEMENT OF JAMES S. FREDERICK

Mr. FREDERICK. Thank you, Mr. Chairman and members of the subcommittee. Thank you for the opportunity to appear before you this morning to discuss the United Steelworkers' views on H.R. 908. The USW appreciates the opportunity to share our views with the Subcommittee on the important aspects of this issue and how H.R. 908, if passed, will extend the Department of Homeland Security Chemical Facility Anti-Terrorism Standards, CFATS.

My name is Jim Frederick. I am a member of the United Steelworkers and the assistant director of the union's Health, Safety, and Environment Department in Pittsburgh, Pennsylvania. I have spent my 20-year career identifying and addressing workplace health and safety hazards; responding and investigating worker deaths, injuries, and illnesses; assisting local unions with health, safety, and environment improvements; and developing and delivering worker health, safety, and environment education and training programs.

The full name of our union is the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial, and Service Workers International Union. As the largest industrial union in North America, we represent a total of 1.2 million active and retired members in the United States, Canada, and the Caribbean. More than 125,000 of these work in 800-plus chemical industry workplaces. Many of these are small workplaces and some are small businesses.

The USW involvement in chemical plant security started long before the original promulgation of CFATS or the September 11, 2001, terrorist attacks on the United States. Our union has always been actively engaged and involved with our members, communities, regulators, and legislators to improve workplace safety for our members, as well as their families and the community.

The importance of this issue and these rules were well laid out in the Senate Committee on Homeland Security and Governmental Affairs hearing yesterday, titled "10 Years After 9/11."

As part of a broad coalition of more than 100 organizations, the USW believes that legislation must be passed to improve chemical industry workplace safety and security, not just to extend the existing interim measures that generated CFATS rule. We believe that this is absolutely necessary to properly protect the communities that our members and their neighbors live and work. Recent examples from the Gulf oil spill to the earthquake and tsunami in Japan resonate of what can happen if catastrophic events take place in this country.

And we believe the problems with CFATS include the following: (1), specific security measures. CFATS prohibits DHS from requir-

ing any specific security measure. H.R. 908 would extend the prohibition from the DHS Secretary from denying approval for a Site Security Plan based on the presence or absence of a particular measure. The performance based standards will continue to allow employers to determine how they comply with the rules. Performance standards often result in cost and productivity taking precedence over safety. Performance standards also typically equate to less regulator oversight.

An example of this is sometimes seen in chemical storage areas or tank farms at a chemical plant or oil refinery where retaining dikes are constructed to keep unexpected releases of chemicals from escaping to the environment beyond the tank farm. However, the retaining dikes are often in disrepair or are not engineered to retain the proper volume of chemicals in the tank farm.

Next, smart security—CFATS fails to develop the use of smart security—safer and more secure chemical processes that can cost-effectively prevent terrorists from triggering chemical disasters. When we train workers and others to correct health and safety hazards in our workplaces we turn and follow the hierarchy of controls. The hierarchy of controls instructs us that the most effective way to control a hazard from causing an injury is to eliminate it or substitute it with something less hazardous. Legislation and standards addressing chemical plant security should utilize the same hierarchy principles to recognize and encourage the elimination or reduction of hazardous materials when possible and use substitution with less hazardous components.

Safer processes may not be feasible in some circumstances, but they should at least be considered in a security plan. Many safety measures may be possible without expensive redesign and newer equipment. Since 1999, more than 500 facilities have used smart security to eliminate risks and create communities that are less vulnerable to harm. 500 is an impressive number but many, many more need specific guidance from legislation and regulation to implement such changes.

Exemptions of too many workplaces at risk, as I already discussed this morning, CFATS explicitly exempts thousands of chemical and port facilities, including water treatment facilities and including at least half of the oil refineries in this country.

Worker involvement: CFATS fails to involve knowledgeable workers in the development of vulnerability assessments and Site Security Plans or protect employees from its excessive background checks. Lesson after lesson can be taken from the input from workers in various workplace health and safety exercises of how that input has helped the employer to integrate and put in place effective security and safety measures.

And one last point on risk shifting, CFATS fails to address the current problem of risk shifting, such as when companies shift chemical hazards to unguarded locations such as rail sidings. Risk shifting takes place continually in many workplaces. There are several reasons that this practice occurs, but the results are always the same. The community is at increased risk of exposure to a release of hazardous materials or to a terrorist obtaining these materials.

In one recent example at a USW workplace, railcars of hydrofluoric acid are being stored off site property on rail sidings. The workplace stores approximately 2 million pounds of hydrofluoric acid, some offsite. The railcars are located near residential areas in the community. A release from 1 or more of these would be devastating to the residents close by and for a large area of the surrounding communities. Chemical plant security legislation can fully eliminate risk shifting by banning the practice legislatively and in subsequent regulation.

The USW believes that legislation must be passed to improve chemical industry workplace safety and security that includes these items, not just to extend the existing interim measures that generated CFATS as a final rule. We believe that this is absolutely necessary to properly protect communities. However, if CFATS is going to be extended by this bill, please consider reduction of the time for the extension to 1 year and charge all stakeholders involved to convene as necessary to develop longer-term solutions to these problems.

On behalf of the USW membership and their communities, thank you for the opportunity to testify this morning.

[The prepared statement of Mr. Frederick follows:]

Testimony

James S. Frederick, Assistant Director

Health, Safety and Environment

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW)

Before the Subcommittee on Environment and the Economy;

Committee on Energy and Commerce;

Congress of the United States

House of Representatives

Hearing – "H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program"

March 31, 2011

Mr. Chairman and members of the Subcommittee:

Thank you for the opportunity to appear before you this morning to discuss the United Steelworkers (USW) union views on H.R. 908, **Full Implementation of the Chemical Facility Anti-Terrorism Standards Act.** The USW appreciates the opportunities to share our views with the Subcommittee on the important aspects of this issue and how H.R. 908, if passed, will extend the Department of Homeland Security (DHS) Chemical Facility Anti-Terrorism Standards (CFATS).

My name is Jim Frederick. I am a member of the United Steelworkers, and the assistant director of the Union's Health, Safety and Environment Department in Pittsburgh, Pennsylvania. I have spent my 20 year career identifying and addressing workplace health and safety hazards; responding to and investigating worker deaths, injuries and illnesses; assisting local unions with health and safety improvements; and developing and delivering worker health, safety and environmental education programs.

The full name of our union is the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC. As the largest industrial union in North America, we represent a total of 1.2 million active and retired members in the United States, Canada and the Caribbean. More than 125,000 of these members work in more than 800 chemical industry workplaces. Many of these are small workplaces and some are small businesses.

The USW involvement with chemical plant security started long before the original promulgation of the Chemical Facility Anti-Terrorism Standards in 2007 or the September 11, 2001 terrorist attacks on the United States. Our union has always been actively engaged and involved with our employers, communities, regulators, and legislators to improve workplace safety for our members as well as their families and the community.

As part of a broad coalition, the USW believes that legislation must be passed to improve chemical industry workplace safety and security, not just to extend the existing interim measures that generated CFATS final rule. We believe that this is absolutely necessary to properly protect the communities that our members and their neighbors live and work. We believe the problems with CFATS include the following.

1. CFATS prohibits the DHS from requiring any specific *security measure*.

2. CFATS fails to develop the use of *smart security* -- safer and more secure chemical processes that can cost-effectively prevent terrorists from triggering chemical disasters.

3. CFATS explicitly exempts thousands of chemical and port facilities, including approximately 2,400 water treatment facilities and more than 400 facilities on navigable waters, including the majority of oil refineries.

4. CFATS fails to involve knowledgeable employees in the development of vulnerability assessments and security plans, or protect employees from excessive background checks.

5. CFATS denies the public the information needed to ensure an effective, accountable program.

6. CFATS fails to address the current pervasive problem of risk shifting, such as when companies shift chemical hazards to unguarded locations such as rail sidings.

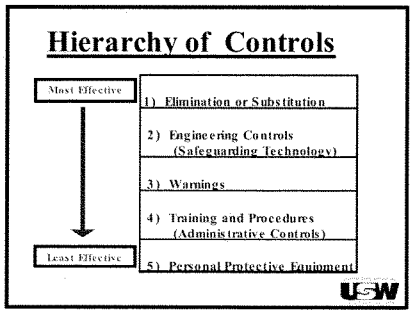
Specific Security Measures - CFATS prohibits the DHS from requiring any specific *security measure.*

H.R. 908 would extend the prohibition for the DHS Secretary from denying approval for a site security plan based on the presence or absence of a particular security measure. The performance based standards will continue to allow employers to determine how they comply with the rules. Performance standards often result in cost and productivity taking precedence over safety. Performance standards also typically equate to less regulator oversight. Less regulator oversight may provide an opening for employers to underestimate the potential worst case scenario when calculating the safety and security protections.

An example of this is sometimes seen in chemical storage areas or tank farms at a chemical plant or oil refinery where retaining dikes are constructed to keep unexpected releases of chemicals from escaping to the environment beyond the tank farm. However, the retaining dikes are often in disrepair or are not engineered to retain the proper volume of chemicals in the tank farm.

Smart Security - CFATS fails to develop the use of *smart security* -- safer and more secure chemical processes that can cost-effectively prevent terrorists from triggering chemical disasters.

When unions train workers and others to correct hazards in our workplaces we focus on the use of the hierarchy of controls. The hierarchy of controls instructs us that the most effective way to control a hazard from causing an injury is to eliminate it or substitute it with something less hazardous.



Legislation and standards addressing chemical plant security should utilize the same hierarchy principles to recognize and encourage the elimination or reduction of hazardous materials when possible and the use of substitution with less hazardous components.

Safer processes may not be feasible in some circumstances, but they should at least be considered in a security plan. Many safety measures may be possible without expensive redesign or new equipment. Safer fuels or process solvents can be substituted for more dangerous ones. The storage of highly hazardous chemicals can be reduced. Since 1999, more than 500 facilities have used *smart security* to eliminate risks and create communities that are less vulnerable to harm. 500 is an impressive number of facilities, but many, many more need specific guidance from legislation and regulation to implement such changes.

Exemptions of too many at-risk workplaces - CFATS explicitly exempts thousands of chemical and port facilities, including approximately 2,400 water treatment facilities and more than 400 facilities on navigable waters, including the majority of oil refineries.

These exemptions include facilities regulated by the Safe Drinking Water Act and the Federal Water Pollution Control Act, the Maritime Transportation Security Act of 2002, facilities owned or operated by the Department of Defense, Department of Energy or facilities regulated by the Nuclear Regulatory Commission. Many of these facilities are located in close proximity to cities. It is expected that the safety of these facilities is covered by other requirements; however, this leaves a gap for employers, workers and

communities that should be closed by including these facilities in the scope of chemical plant security regulations.

Worker Involvement - CFATS fails to involve knowledgeable employees in the development of vulnerability assessments and security plans, or protect employees from excessive background checks.

The CFATS final rule lacks requirements to ensure that chemical plant workers and their Unions' are involved in developing Security Vulnerability Assessments and Site Security Plans. The DHS has suggested that facilities may involve employees in their security efforts. Some would contend that this provides employers with the flexibility to voluntarily invite worker and union participation. The problem is that too many employers choose not to volunteer.

Our experience has been that in cases of other relevant regulations, such as many of the Occupational Safety and Health Administration's (OSHA) standards, the government encourages employees and employee representatives to be engaged and involved in the process to assess and address unsafe conditions and hazards. Time and time again, this inclusion has been beneficial to the employer and regulator alike.

Workers are the best source to identify vulnerable hazards and often have much more hands-on worksite experience to recommend solutions. The USW has performed

training with workers (and managers) from many of our chemical industry local unions. Through exercises such as hazard mapping we have demonstrated the value of worker experience in identification of unsafe conditions in the workplaces.

Workers will always be the first line of defense and the eyes, ears and noses of chemical facilities. Workers are in a unique position to identify and prevent potential facility vulnerabilities. They understand just where an intruder might enter a plant; the effectiveness of workplace security measures; the location of hazardous materials; whether the facility is sufficiently staffed with trained personnel; if backup control systems properly operate; as well as other potential risks. Because of their concerns about workplace safety and health, they routinely point out hazards to their employer. Workers also are often required to respond during emergencies, and in doing so, function as the first line of defense against a disaster. Workers and their unions are vital participants in plant safety and security. The failure to formally involve employees in developing vulnerability assessments and security plans ignores one of the most vital, available and cost-effective resources to employers.

To be fully effective, worker participation must be supported by strong and effective whistleblower protection. This will ensure that workers are encouraged to participate and confident in their ability to inform employers of issues of concern.

Prior bills that emerged from the committees of jurisdiction in the House and Senate (H.R.5695 and S.2145) both contained worker participation and whistleblower protections. Other jurisdictions have also dealt with this issue. The State of New Jersey's Toxic Catastrophe Prevention Act, (N.J.S.A. 13:1K-19 et seq.) and New Jersey Department of Environmental Protection Administrative Order 2005-05 establishes procedures for participation by employees and their representatives. Any DHS legislation should include a requirement for worker and union involvement in all facets of the operations.

Conducting background checks on current, long-term employees of a high risk facility is unlikely to identify a potential terrorist. Workers' right to privacy could be violated by such an order in an attempt to identify that which is extremely unlikely. Resources by all involved, employers, workers, unions and DHS will be needlessly expended in compliance with background check requirements. DHS should also provide a means for workers to appeal mistakes in background checks before losing their employment.

Public Access to Information - CFATS denies the public the information needed to ensure an effective, accountable program.

Workers and the public must have the right to know what risks they face. The right to information of workers including site plans that have already been guaranteed by previous legislation must be maintained. There is no question that some information

should be protected from public disclosure. The public must be allowed to know what chemicals are on a site, but specific process and storage information may need to be confidential. Community residents are vital in the process to assist in reducing risk, but they need to know basic information in order to do so. Such information is also necessary for effective emergency planning, and to protect vulnerable populations in communities.

Excessive secrecy does not increase security. Instead, it may provide cover for officials who may not be complying with the requirements.

Risk Shifting - CFATS fails to address the current problem of risk shifting, such as when companies shift chemical hazards to unguarded locations such as rail sidings.

Risk shifting takes place continually in many workplaces. There are several reasons that this practice occurs, but the results are always the same. The community is at increased risk of exposure to a release of hazardous materials or of a terrorist obtaining these materials. In one recent example at a USW represented workplace, railcars of hydrofluoric acid are being stored off site property on rail sidings. The railcars are located near residential areas in the community. A release from one or more of these would be devastating to the residents close by and for a large area of the surrounding communities. Chemical plant security legislation can fully eliminate risk shifting by banning the practice legislatively and in subsequent regulation.

Summary

The USW believes that legislation must be passed to improve chemical industry workplace safety and security that includes the items listed below, not just to extend the existing interim measures that generated CFATS final rule. We believe that this is absolutely necessary to properly protect communities. Legislation should achieve the following:

- Require facilities that pose the greatest risk to assess safer chemical processes and conditionally require the use of safer chemical processes where feasible and commercially available, and includes a technical appeals process to challenge DHS decisions;
- Provide resources to assist facilities to use safer and more secure processes;
- Require worker involvement in the development of security plans and provide protections for whistleblowers and limit background check abuses; and,
- Preserve state authority to establish stronger security standards;

On behalf of the USW membership and their communities, thank you for the opportunity to testify this morning.

Mr. SHIMKUS. Thank you. Now, the chair recognizes himself for 5 minutes for questions.

We have used the word "permanent" and I guess in this system of authorization that 7 years would seem like permanent, but Mr. Allmond, you mentioned it is really a long-term authorization, which would then give us a time to look at the bill through the next process. Would you all agree with that, that this is really not a permanent authorization or reauthorization? This is a 7-year authorization. Mr. Skipp?

Mr. SKIPP. Yes, I would say that that is true. I think that there is a very steep learning curve that is going on here. Certainly, the efforts of the Department of Homeland Security have been admirable about how they bring this thing up. And I think we are now finding that we are getting our hands around this thing but we need more time. And I think this does that. Recognize the fact that rules can change down the way, but this is a great first step.

Mr. SHIMKUS. Mr. Taber?

Mr. TABER. I would agree with that wholeheartedly. Seven years is going to go by rather quickly. We have got a lot that we have done in the last several years. We need the next few years to tighten that up, and we also need the direct involvement with DHS more specifically now that we have filed, all our plants are willing to move forward.

Mr. SHIMKUS. Mr. Allmond?

Mr. ALLMOND. Yes, sir, Mr. Chairman. Seven years would provide a lot more time. I mean, Congress, you know, has a very important oversight responsibility down the road, but it would give, certainly, industry a lot more certainty.

Mr. SHIMKUS. Mr. Frederick, you said 1 year so I want you to weigh in also.

Mr. FREDERICK. Certainly. I already stated that we would recommend a shorter extension. The program has been in place for several years already. Extension only adds to making essentially this into a permanent fix as what was started and agreed to at the time to be a temporary interim quick solution.

Mr. SHIMKUS. But 7 years is not permanent. I mean 7 years will come and there will be another reauthorization period to look at. I guess because the next point following up on this is that the full implementation CFATS hasn't occurred to date, is that correct?

Mr. SKIPP. That is correct.

Mr. SHIMKUS. And anyone disagree with that? So the point being I think we have to be very, very careful about changing the rules midstream before everyone has completed the process that was designed originally. And so that is part, you know, I like what Mr. Murphy has done with the 7 years. Maybe that will be discussed as we move the process through in the committee. Maybe that time frame may be adjusted. I am not sure how the committee would do in an open process that that may come up. But I think it is important that we give the existing authorization time to get through the whole process. We heard the deputy secretary talk about they are not even through the process of tiering folks out, moving people around, and so that is just kind of an editorial comment.

Do you all believe that there are other existing requirements for health and safety such as OSHA's Process Safety Management Pro-

gram, the Emergency Planning and Community Right-to-Know Act, the EPA's Risk Management Program, and are these appropriate for safety protections?

Mr. SKIPP. Well, they are part of that as far as I am concerned. And we implemented all of those things in our community. We are a company that goes back to 1849 in the city of Waterbury. I am the 6th generation to run the family business, and I can tell you that being thoughtful to our community and making sure we are communicating well with them is something that we do every day, and we integrate that with our police and fire as well. So this would just complement those efforts, I believe.

Mr. TABAR. Now, I know both for the coatings industry and with Sherwin-Williams, global process safety is very critical to us. We have made efforts not only here in the U.S., but we are looking at exporting our programs internationally. We think that a lot is embodied in process safety that deals with IST already and it is very normal for us to deal with substitutions and changes, reformulations as part of our chemical process safety efforts.

Mr. ALLMOND. Yes, that is correct, Mr. Chairman, and as the under secretary testified, DHS is nowhere near close to understanding how to regulate IST at the moment.

Mr. SHIMKUS. Mr. Frederick?

Mr. FREDERICK. And it is certainly correct that these are pieces of a very complex issue that do come into play of providing some semblance of safety in those workplaces.

Mr. SHIMKUS. Great. Thank you. My time is about expired, so I will yield to the ranking member, Mr. Green, for 5 minutes.

Mr. GREEN. Mr. Chairman, I am just glad to hear you say you all. I thought that was something that I said——

Mr. SHIMKUS. I am from Southern Illinois.

Mr. GREEN. I know, Southern Illinois. Well, you all heard my questions earlier about coordination between because I have a lot of plants. In fact, along the Houston Ship Channel, all of my refineries—I have five refineries. Four of them are, by the way, organized by steelworkers and thank you. I used to have real steelworkers but now they are all refinery and chemical plant workers. The coordination of that to where we only have 1 federal identification card and that is our goal. And I know for your facilities it is the same thing.

Mr. Frederick, you represent many of the workers at the chemical facilities. In fact, I was last year at a Conoco/Chevron facility. It actually has 500 steelworkers, and it was after the economy cratered and some of my chemical plants are closing, but since they make these plastic bottles we all drink out of, they were running 3 shifts and 500 union members. Do you have concerns about the MTSA issues? Because I know that plant is on the channel, Ship Channel of Houston and Exxon/Mobil refinery and Shell, but they also have facilities that are not covered by MTSA.

Mr. FREDERICK. Yes. And for a number of reasons bur a couple of very good examples. One is just inconsistencies from within employers from one facility that is covered by CFATS to a facility that is not and how they have addressed the facility safety and security as a result of that inconsistency. So certainly, yes, there is a num-

ber of examples that we could go into of why we think those should be included in the same set of rules as those off the waterways.

Mr. GREEN. OK. Mr. Skipp, you testified about potential for duplicative regulations. Under 2868, we would have ensured that facilities under MTSA would see only one regulator, the U.S. Coast Guard. Do you think that is important?

Mr. SKIPP. I liked what I heard Under Secretary Beers say, which is the harmonizing between those two departments of CFATS and MTSA. And I think that would be great. It all depends on how you define harmonized. As long as there is not a redundancy or duplicative efforts, which I know is a concern of yours, then I think it would be fine.

Mr. GREEN. I guess because when you rolled out the Transport Worker Card, believe me, I had a lot of constituent case work when constituents, because of whatever reason, we had to work case-by-case through Lockheed who had the contract. And like I said, we have 260,000 of those, more than that now probably, and we want to make sure that we don't have to go through that again, don't remake the wheel. Don't we already have some——

Mr. SKIPP. Agreed.

Mr. GREEN. Mr. Frederick, I am interested in your testimony you gave about the concerns of workers and regarding personnel security requirements. Are changes in 908 needed to ensure that workers' rights are protected?

Mr. FREDERICK. Yes. And in one of the examples that is in my written statement, the need for worker involvement in the process of the Site Security Plans is very important. And in order to have thorough and good worker participation, some safety net of protection for them, a whistleblower protection for them is necessary. You know, in almost any other instance we recognize the deficiencies of that and can see that at some workplaces it is very encouraged, workers are involved, and at others for many reasons it is not. So we are concerned that, yes, there should be some provisions to protect workers as they participate in this process.

Mr. GREEN. And I know in your testimony I agree with you. And I guess because there are other agencies that also regulate these same plant sites like OSHA and every once in a while I still get to go speak at one of my what I call share committee that we have a group of industries that bring the community involved, the fence line and also the employees are there, both unionized and management, and sit down and talk with the constituents. CFATS doesn't exempt that from current law like, for example, OSHA requirements.

Mr. FREDERICK. Correct, and then some of that it has been, you know, referred to in the past by DHS as the employers certainly have the ability to do that, so it becomes somewhat of the voluntary piece for employers to do so. The problem is that not all employers volunteer.

Mr. GREEN. OK. And having been on both sides of the bargaining table, the best way you get there is you talk to the folks actually producing a product and you can get the best ideas from them because they are living it every day.

One of your exceptions, too, in your testimony, and you use the example of a chemical storage and tank farms, particularly with

berms, EPA regulates those now or the State Environmental Agencies with the deference of EPA, because we have had some problems with those berms that are not updated. We end up contacting EPA instead of using another law. So there is already some current law that we can deal with on enforcement of those. And again, I know your members are out there every day and we work with our locals every way we can.

So Mr. Chairman, I appreciate it. I know I would like to talk a little bit more about IST because having managed a business, we didn't call it inherently safer technology, but believe me, if we could save money and save on potential worker injuries, we used that as a part of our business practice. But thank you for your patience.

Mr. SHIMKUS. Thank you. The chair now recognizes Mr. Murphy for 5 minutes.

Mr. MURPHY. Thank you. And I appreciate all the panel's comments. It is very helpful.

Mr. Taber, with regard to the American Chemistry Council, how much have members spent overall—do you have any idea—in terms of——

Mr. TABER. I could answer that but I am not a member of the American Chemistry Council but the American Coatings Association.

Mr. MURPHY. Well, how about Sherwin-Williams? I am sorry.

Mr. TABER. That is OK.

Mr. MURPHY. I thought you had some knowledge of that, too. Does anybody there know in terms of how much——

Mr. TABER. As far as the ACA goes I would say that we have not yet collected that data, party because we are awaiting the direct involvement with DHS on the interpretation of the Site Security Plans and Alternate Security Plans at the moment.

Mr. MURPHY. I appreciate that.

Mr. SKIPP. And I would echo that also. That is something we were waiting to find out more information from our people and how DHS will implement that.

Mr. MURPHY. But are you able to share how much your own companies have invested in all of this in terms of compliance or in terms of working through the security issue?

Mr. SKIPP. We have three relatively small facilities. It is just around $200,000.

Mr. MURPHY. OK. Mr. Taber, do you have——

Mr. TABER. I can state it this way. It will likely be in the huge numbers in terms of the true capital cost. Right now we aggregate safety, health, environmental security——

Mr. MURPHY. Put together.

Mr. TABER [continuing]. Expenditures and we are projecting a very large possible impact on the corporation as a function of this regulation.

Mr. MURPHY. Mr. Allmond, do you have any comments in terms of money that is invested in some of these security measures?

Mr. ALLMOND. Congressman Murphy, I have an approximate amount, you know, tens of millions of dollars, especially when you factor in the staff time, the employee time to actually go through the Site Security Plans. You know, there is a lot of staff time built into complying with this regulation, especially up front.

Mr. MURPHY. I see. Mr. Frederick, do you have any idea how much some of the companies you work with have invested in working on these issues of security?

Mr. FREDERICK. We are not privy to that information.

Mr. MURPHY. Is it working? OK. Very good. Sorry.

Mr. FREDERICK. We typically don't receive that information from——

Mr. MURPHY. But your workers are engaged in these processes? You talked about the importance of sharing——

Mr. FREDERICK. Yes. Yes.

Mr. MURPHY. OK. And how about one of the other members here? Do you include workers in Site Security reviews and welcome their input? Can you give us an idea of how you use that?

Mr. SKIPP. Sure. They participate on our safety committee. All employees do that. It is on a right-to-know basis. It is where their expertise might be able to help in one specific area, but as far as knowing the overall plan per se, they aren't necessarily involved in every aspect of that.

Mr. MURPHY. Is that done for security purposes?

Mr. SKIPP. Yes.

Mr. MURPHY. Same with you, Mr. Taber?

Mr. TABER. Well, certainly under the OSHA programs, we are one of the leaders, at least in our firm with voluntary protection programs and OSHA cooperation and so we take the same perspective with safety and health as we do with security. I think some of the developing areas are the Employees Security Awareness Training programs that we are just on the verge of implementing that will take our security awareness and involvement with all employees to another level.

Mr. MURPHY. Mr. Allmond, agree?

Mr. ALLMOND. Well, our organization has a program called ChemStewards that encourages all of our members to include employees into the decision-making process. I think generally they would agree with Mr. Skipp and Mr. Taber as well.

Mr. MURPHY. The reason I am asking that is Mr. Frederick brings up a point here and all of you are saying the companies recognize that people who do this every day have an inherent value in being able to provide that information. And given that, my impression when I have toured chemical facilities, even ones that maybe have been written up in the newspaper where someone snuck onto the site as part of a reporter's story, they have invested a great deal in taking care and have asked employees for their ideas. Is this something we need to codify into law or is something that is being done?

Mr. ALLMOND. It doesn't need to be codified from my perspective and I am sure from our association's perspective because it is part of good business practice and what we do every day.

Mr. SKIPP. I would concur. I mean, as Mr. Green said, it is very important to tap into the knowledge of our expertise of our people and we do that every day through LEAN and other initiatives that it is just good business sense.

Mr. MURPHY. OK. I appreciate that. We want to make this bill work and we want to have the flexibility for Homeland Security to enact it. We heard before that they are working carefully with

EPA. And I personally recognize I like it, as when I owned a business, I would ask my employees as well for suggestions along the way. The whole is greater than some of the parts and getting information from workers and goodness knows I believe with regard to management and employees, everybody wants to have a safe and secure workplace, and I would certainly encourage the association's continuing to hold those high standards.

I recognize I am out of time, Mr. Chairman.

Mr. SKIPP. Can I make 1 other comment just about that? And I think that you didn't get a lot of clear numbers as far as where things are. We are really looking for certainty, and I think that is what this CFATS bill will do in order for people to invest more. There is some holding back because people are not sure which way to go because they haven't gotten enough feedback yet from the Agency.

Mr. MURPHY. That is important. Thank you, Mr. Chairman.

Mr. SHIMKUS. Thank you. The chair recognizes Mr. Butterfield for 5 minutes.

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman and Ranking Member. Ladies and gentleman, it is good to see all of the witnesses today and thank you very much for your willingness to come forward and to give us your testimonies.

Mr. Frederick, let me start with you. In your testimony I am told that you said that "performance standards often result in cost and productivity taking precedence over safety." Did I quote you correctly?

Mr. FREDERICK. Yes.

Mr. BUTTERFIELD. We have seen several examples in the past year alone of major industrial actors placing profits over the safety of their workers and the safety of the environment, notably, with the BP oil spill. It is a serious issue and CFATS should be structured to limit the ability of covered facilities to place too much emphasis on cost at the expense of worker safety or the safety of the surrounding area.

Question: Can you give an example of these performance standards resulting in cost concerns outweighing the concerns of security?

Mr. FREDERICK. Yes. Without the specific workplace but within the oil-refining industry, some of the performance-based standards—this is the day-to-day case of the performance is achieved on paper but on the shop floor where the folks are working around the hazardous materials, the shortcuts have been taken, the hole in the fence has been filled with a camera instead of a new fence, whatever the case may be. We could provide some specifics from specific facilities for the record after the hearing if you would like.

Mr. BUTTERFIELD. Well, what about a specific requirement from DHS to address the problem?

Mr. FREDERICK. And on that, in some of just the perimeter security issues, the issue has been around fencing and when a gap in the fence, a hole in the fence has been in place, other measures have been taken instead of putting the more secure fencing in place.

The example from the testimony of the berms or dikes to keep the unexpected release of chemicals from a tank is for compliance

with other reasons but also comes into play the security because if there is a terrorist attack on that facility and the materials are released from more than 1 tank, oftentimes those are not designed to hold back that amount of the quantity of the materials within the tanks.

Mr. BUTTERFIELD. Well, one thing leads to another. Then we get into a question of whether it is preferable to have a DHS-sponsored security measure requirement that guarantees a level of safety but may not be flexible enough for the variety of facilities that are tiered from traditional chemical plants or refineries to labs that are at our universities. We understand that security isn't cheap and that one size does not fit all. It is a difficult job for DHS.

I completely agree with you, with your assessment of the value of workers' input to the process. Workers must be involved and they must also to feel free to blow the whistle without fear of reprisal. This is something we have talked about extensively in previous legislation on this issue.

My final question is do you feel that the current CFATS program adequately protects whistleblowers?

Mr. FREDERICK. No. We would not believe it does. However, at this juncture we also have not had cases to cite, only in feedback from our members that work in those facilities that they have some concerns that they have reservations about raising because there is not an adequate safety net for them to speak out on those issues.

Mr. BUTTERFIELD. All right. Thank you.

Mr. SKIPP. Congressman?

Mr. BUTTERFIELD. Yes. I am going to yield. Yes, you may respond.

Mr. SKIPP. May I respond to that also?

Mr. BUTTERFIELD. I have a minute left, yes. Sure.

Mr. SKIPP. I am Andrew Skipp and I run a chemical company in Connecticut and I can tell you that 90 percent of our members are owner/managers of their businesses. They live their business day in those facilities. There is nothing more important than the safety and security of those plants.

And I can assure you that our members take that very seriously and that they don't compromise for the benefit of just expediency. It is critical. It is our lifeblood. It is our livelihood. And so we take that initiative very seriously.

The matter about whistleblowers, I can't refer to that relative to CFATS, but certainly there are laws in place to protect them and it is something that we take very seriously in our business.

Mr. BUTTERFIELD. Thank you. All right. Anyone else want to respond to that? I have a few seconds left.

Mr. FREDERICK. Just I think the laws that are in place would not—for example, the protections within the OSHA Act would not protect a worker for calling into question something under the CFATS regulations.

Mr. BUTTERFIELD. All right. Mr. Chairman, I will yield back my time.

Mr. SHIMKUS. If the gentleman would yield me his last 4 seconds.

Mr. BUTTERFIELD. Sure.

Mr. SHIMKUS. I just want to make sure, Mr. Frederick, that none of your comments are under CVI. In other words, the information that you were alluding to is under CVI?

Mr. FREDERICK. In the example of the——

Mr. SHIMKUS. Well, you were giving some anecdotal stories and we want to make sure that——

Mr. FREDERICK. I don't believe so.

Mr. SHIMKUS. OK.

Mr. FREDERICK. To my knowledge, no.

Mr. SHIMKUS. OK. That is what we need to know. Thank you. The chair now recognizes Mr. Cassidy for 5 minutes.

Mr. CASSIDY. I never knew steelworkers' name was so long. I once sat on a plane next to a guy who worked for you all and who was I think doing mining, which I thought—so anyway, now kind of the light bulb goes on.

Mr. Frederick, there was one sentence in your testimony in which you suggested you would oppose more extensive background checks for workers. Did I hear that correctly?

Mr. FREDERICK. Yes. And our concern around background checks is twofold. One is to make certain that there is a process in place that if an error results of the background check, that that individual has an opportunity to clarify that error and correct it prior to losing his or her employment.

Mr. CASSIDY. Now, I accept that, but inherent in having more involvement in a process is greater risk that a background check may show something which would eliminate somebody's job frankly. I mean if it turns out a kid smoked marijuana in college and got busted for it and now he is 45, well, then that may come back and reflect upon him in a negative way. Would you object to, you know, drug screens, et cetera, all this that takes place?

Mr. FREDERICK. Well, there are drug testing programs in a variety of——

Mr. CASSIDY. And I just use that as an example, not as a concrete particular. So it is not background checks in particular you object to or more even exhaustive ones. Rather it is the lack of safeguards if someone loses employment because of that.

Mr. FREDERICK. Yes. And recognizing that there are necessary pieces of information that are needed. Our experience thus far has been that this is and will be a very expensive process, expensive and extensive, for a very limited amount of return of finding things more than somebody who perhaps had a minor item such as you——

Mr. CASSIDY. So if you will, kind of the principle that for last marginal benefit, you got to pay a heck of a lot of money?

Mr. FREDERICK. And in some of the other examples we are talking about yes, there are costs associated with doing dangerous work.

Mr. CASSIDY. And if you increase the cost, ultimately it is going to affect employment?

Mr. FREDERICK. It may, yes.

Mr. CASSIDY. So my concern is, for example, that that same principle is involved here. I mentioned earlier to the earlier witness I went to visit the nuclear power plant and I was struck how much security they have, three different perimeter fences. Even if they

cut a hole, there is a camera surveillance. And so they told me about how an armadillo wandered across and their motion detectors got it.

Now, if we are going to have NRC do this level of requirement and overlay CFATS, do you see that as appropriate?

Mr. FREDERICK. Well, specifically to the NRC provision, I don't have firsthand knowledge or experience. Our union does not represent workers at nuclear generators——

Mr. CASSIDY. But you mentioned that in your testimony as kind of a concern that they are excluded.

Mr. FREDERICK. The NRC. And so what I want to explain is that within the NRC they also have regulatory authority over non-energy producing facilities beyond the nuclear plants. And in some of those facilities, one example being the NRC has oversight of a very narrow piece of the production process, so a very large facility, narrow piece is NRC, but because the NRC has authority over that narrow piece, CFATS does not apply. For example, that is the facility that has 2 million pounds of hydrofluoric acid onsite and some of it in railcars offsite. That is a real concern that the NRC, small piece of the operation that they have oversight for, a large facility excluded from CFATS.

Mr. CASSIDY. Now, my concern is that if we have overlay of federal agency over federal agency, that is not just a multiplier. That is an exponent in terms of the complexity and the expense of compliance.

Now, it also seems this IST—I used the example of the Maginot Line where you have got this kind of, OK, this is the current technology but really there is something on the cusp but it has not been vetted, reviewed, public comments, so therefore it can't be because the de facto standard becomes the IST. That actually seems like a counterproductive mechanism. I don't see the problem—in fact, I see IST as almost the same problem you defined earlier going after marginal benefit with greater expense, ultimately costing jobs.

Mr. FREDERICK. In some cases the using other technologies is certainly not costing jobs. There are many examples of better technologies being brought in place across worker health and safety, as well as site security. There are other examples that jobs have benefitted.

Mr. CASSIDY. If you have IST, that becomes a de facto standard, and if it becomes a de facto standard, even if there is a better technology, it most likely won't be implemented because there is a de facto standard issued by a reg 8 months ago even if 1 month ago there is a better technology that comes out.

Mr. FREDERICK. However, if it is looked at and with a system in place as suggested in the testimony and in other folks that are looking at this issue currently in other bills, there are the ability to have a DHS appeals process that would ensure that the facility, the employer has the ability to refer this back with some questions and move on to——

Mr. CASSIDY. Now, I have been under this Federal Government now for 2½ years but it is my impression that it dances like an elephant upon the head of a pin. It is very slow-moving. It is very awkward. It is very laborious and expensive to work through that

process. So I kind of return to my point that the reg issued 9 months ago becomes a de facto standard and 2 years later you finally work through the appeals process and in the meantime you are 3 generations ahead what you originally offered on appeal is now outdated. Do you follow what I am saying?

Mr. FREDERICK. Yes.

Mr. CASSIDY. And so do you really see the bureaucracy in the appeals process working so well that we will always have the most current technology being used to secure our plants?

Mr. FREDERICK. I see that we certainly would have better technology than is in place at the start of the process and the ability for the employer, the manufacturer to continue to move forward as long as it is within the scope of their security——

Mr. CASSIDY. But if there is a new technology that comes out and it is not part of the IST, what is the likelihood that it will be immediately implemented?

Mr. FREDERICK. Well, and so perhaps I guess we are a little bit off of what we perceive the prescriptive standard on IST to look like. We believe that in the instance in some of the other applications of this issue that are in place, there is the flexibility for——

Mr. CASSIDY. Well, the assistant secretary actually, though, conceded the possibility that there would be a standard which would leave out something that would be technologically more advanced because it had not had a chance to be reviewed. And he actually, you know, frankly said yes, that is going to happen. He accepted that as a probability. And frankly that concerns me because I think that there is so much explosion of technology, we would be remiss in terms of safety and all of the other things if we didn't have a standard which allowed its usage.

I yield back. Thank you.

Mr. SHIMKUS. The gentleman yields back his time. Unanimous consent for the ranking member for a minute.

Mr. GREEN. Yes. I want to ask, your response, Mr. Frederick, to our colleague from Louisiana that because NRC has jurisdiction over, for example, nuclear facility but they don't have jurisdiction over something else on that plant site that that would exempt any other regulation because NRC has it?

Mr. FREDERICK. Just in this instance that I was referring to, just the CFATS regulation.

Mr. GREEN. We are going to explore that because I know we have OSHA requirements at nuclear facilities and we really don't want overlay and duplication but we do want somebody looking at it.

Mr. FREDERICK. Correct.

Mr. GREEN. And so that is the concern.

Mr. SHIMKUS. And I thank my colleague. I have a couple of pieces of business to finish up. Unanimous consent request that a letter from Mr. Dent on this be submitted for the record. Without objection, so ordered.

[The information follows:]

CHARLES W. DENT
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March 31, 2011

Chairman Shimkus and Ranking Member Green:

Thank you for the opportunity to submit written testimony to the Subcommittee on Environment and the Economy as your Members examine H.R. 908, a bill authored by Mr. Murphy – a fellow Pennsylvanian – to extend the Chemical Facility Anti-Terrorism Standards (CFATS) Program through 2017.

During the 111th Congress, I served as the Ranking Member of the Transportation Security and Infrastructure Protection Subcommittee for the Committee on Homeland Security and had the opportunity to analyze the impact of CFATS, as well as potential revisions, with Department of Homeland Security officials and industry experts.

As you know, CFATS regulates chemical facilities possessing certain threshold amounts of particular chemicals by requiring security vulnerability assessments, site security plans and inspections by DHS.

Last Congress, I introduced a bill to extend CFATS through 2015. Roughly 6,000 facilities – both large and small – fall within the framework of this program, and I do not want to see their investment of significant financial resources and time wasted if major provisions of the program are altered by Congress. I strongly believe Congress must be cognizant of legislation considered that will rewrite CFATS to include new and costly provisions that may have a detrimental impact on the private sector's ability to meet important Federal security requirements. Additionally, we cannot expect the United States to recover from the recession if Congress allows new mandates to cripple a small business's ability to create jobs or stifle a company's ability to further develop technologies to revolutionize challenges facing our society.

For the 112th Congress, I have the privilege of sitting on the Committee on Appropriations, Homeland Security Subcommittee. During a hearing on the Fiscal Year 2012 budget request for the Department of Homeland Security earlier this month, I engaged Secretary Napolitano on the issue of extending CFATS as currently written. When I questioned whether the Secretary supported a long term extension, she quickly responded that, yes, she supports a long term extension of the *current* CFATS program. I reintroduced my CFATS bill the following day (H.R. 916).

Interestingly enough, the Secretary's response seems to contrast with actions taken by the Majority in the 111th Congress.

In 2009, the Democrat Majority passed the Chemical and Water Security Act (H.R. 2868) with controversial provisions, like the inclusion of an Inherently Safer Technology mandate and the allowance of civil suits.

More specifically, H.R. 2868 attempted to define Inherently Safer Technology (IST) by weaving it into the Department's chemical security program. However, IST is not a technology; it is a concept – an engineering process that may or may not lend to a technology. The requirement for certain facilities to complete an IST assessment to remain in compliance with CFATS could cost those employers thousands to hundreds of thousands of dollars. Furthermore, *inherently safer* does not necessarily mean *inherently more secure*. For example, IST could force a plant to replace a large storage tank with a smaller one, but the result would be an increase in the transport of the toxic substance.

In addition, the 2009 bill permitted any person to commence a civil action against any person or facility alleged to be in violation of H.R. 2868, or even against the Secretary of Homeland Security. The current statute prohibits third-party rights of action. Certainly at a time when budgets are increasingly tight, the Department of Homeland Security should not need to divert dollars away from security initiatives to address a potential flood of litigation. Moreover, civil lawsuits could lead to the public disclosure of sensitive security information. This lapse in protecting sensitive information certainly was not the original intent of CFATS.

Rather than attempting to reinvent CFATS as the House attempted to do in 2009, we should carefully consider the Department of Homeland Security support for a long term extension of the current program – allowing the private sector to continue implementation and the Federal government the chance to fully implement its existing authority.

Charles W. Dent

Mr. SHIMKUS. I also want to advise all members that we have 10 legislative days to submit questions for the record and if you would be so good to return those questions to us to fulfill the hearing.

With that, we do appreciate your time. Please feel free to visit with us on this issue as we move forward. We do want to bring some certainty to this. We do want to have a longer-term reauthorization of some size so that you all can move forward in helping in this process. So with that, the hearing is adjourned.

[Whereupon, at 10:58 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Subcommittee on Environment and the Economy

Hearing on H.R. 908, Chemical Security

March 31, 2011

Opening statement

Chairman Fred Upton

(As prepared for delivery)

Mr. Chairman, thank you for holding today's hearing. It's a pleasure to welcome our witnesses today, including Department of Homeland Security Undersecretary Rand Beers, to discuss H.R. 908, a bill by our good friends on the Subcommittee, Mr. Murphy and Mr. Green, to extend the Chemical Facilities Anti-Terrorism Standards program by seven years.

There's been much interest in this program, what is has done, and what it still needs to do. Today we'll hear from the Department about how the program works and what it has accomplished in its first five years. Then we'll hear from the people directly impacted by the CFATS program.

So far, CFATS seems to be a success story. Chemical facilities most in need of site security are getting their security plans in place, but there is more to be done and more to be learned.

One segment of the chemical production sector has said it will spend $16 billion on post-9/11 security upgrades – half of this amount attributed just to CFATS. Going into fiscal year 2011, DHS had spent $253 million on this program. Extending CFATS for seven years will help ensure that investments already made will be good for years to come. This is crucial to helping safeguard jobs. in December 2009, the Bureau of Labor Statistics was projecting wage and salary employment in the chemical manufacturing industry, excluding pharmaceuticals, to *decline* by 13 percent over the 2008-18 period, compared to 11 percent growth projected for all industries combined. Why? Because of competition from offshore and regulatory uncertainty at home. A seven year authorization will remove much of that uncertainty, at least in the chemical security area.

Mr. Chairman, the CFATS mission is to ensure that regulated facilities are secure against potential terrorist action. It's not to change the fundamental manufacturing processes, technologies, or feedstocks in the name of site security.

And the CFATS program strikes a careful balance between ensuring that the Department has the sensitive information that it needs to evaluate site security plans, and making sure that that same information is not made available to terrorists or others who don't need it.

These statutory safeguards are important to protect as we move forward with CFATS.

I look forward to today's testimony and to moving H.R. 908 through the legislative process. I yield back.

Opening Statement of the Honorable Joe Barton
Chairman Emeritus, Committee on Energy and Commerce
Subcommittee on Environment & Economy Hearing
"H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act"
March 31, 2011

Thank you for conducting this hearing regarding H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act. Ensuring the nation's chemical production facilities are secure is integral to the safety of our nations' population. This issue is one that I have worked on since the 109th Congress when I authored the Chemical Facility Anti-Terrorism Standards Act. The language of that bill was included as Section 550 of the Department of Homeland Security Appropriations Act for Fiscal Year 2007 which became law.

Despite the Department of Homeland Security finalizing their risk-based tier structure for chemical facilities, there is still much work to be completed. This program was set up to serve and protect the companies and the general public against potential terrorist activities, yet due to bureaucratic backlog, many facility's security still hang in the balance. A clean, clear extension will allow for continued progress in implementing

real security measures at facilities throughout the nation. Any changes at this stage in the process would create uncertainty and frustrate the important progress that has been made. I thank the witnesses for appearing before the committee today and I yield back.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

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April 18, 2011

The Honorable Rand Beers
Under Secretary
National Protection and Programs Directorate
U.S. Department of Homeland Security
Washington, DC 20528

Dear Under Secretary Beers,

Thank you for appearing before the Subcommittee on Environment and the Economy on March 31, 2011, to testify at the hearing entitled "H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Alex.Yergin@mail.house.gov by the close of business on Monday, May 2, 2011.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

John Shimkus
Chairman
Subcommittee on Environment and the Economy

cc: The Honorable Gene Green, Ranking Member,
Subcommittee on Environment and the Economy

Attachments

The Honorable John Shimkus

1. Per your offer, please provide a figure on plant closings that were among the 1,400 facilities that once were among the high risk tiers, but later tiered out as high risk facilities?

2. For Tier 3, how long will it take DHS to finish tiering these other 135 facilities? How long do you anticipate that both Preliminary Authorization Inspections and authorization inspections take to complete?

3. For Tier 4, how long will it take DHS to finish tiering these other 443 high risk facilities? How long do you anticipate that both Preliminary Authorization Inspections and authorization inspections take to complete?

4. How many times have you been over to EPA to assess the work that drinking water utilities have done with their vulnerability assessments and emergency response plans?

The Honorable Frank J. Pallone, Jr.

1. Why have tiers 1 and 2 changed so little compared to the reductions (2,074) in tiers 3 & 4 since August 2008? Tier 1 has actually increased by two facilities and tier 2 has decreased by only 181.

Question#:	1
Topic:	closings
Hearing:	H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Per your offer, please provide a figure on plant closings that were among the 1,400 facilities that once were among the high risk tiers, but later tiered out as high risk facilities?

Response: Of the entire population of chemical facilities that have received preliminary or final tier assignments, 29 facilities that had received final tier assignments notified the Department of Homeland Security (DHS) that they had ceased operations due to plant closings. DHS has since notified those facilities that they are no longer considered high-risk facilities under the Chemical Facility Anti-Terrorism Standards (CFATS) regulations at the present time.

Question#:	2
Topic:	Tier 3
Hearing:	H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: For Tier 3, how long will it take DHS to finish tiering these other 135 facilities? How long do you anticipate that both Preliminary Authorization Inspections and authorization inspections take to complete?

Response: As of May 6, 2011, 1,123 facilities have received Final Tier 3 determinations, with 134 facilities preliminarily assigned to Tier 3 still awaiting final high-risk determinations. Of those 134 facilities, approximately 90 are aboveground gasoline storage facilities (gasoline terminals). As previously announced in a Federal Register Notice published on January 15, 2010 (75 FR 2445), the Department of Homeland Security (DHS) will make final high-risk determinations for those facilities after DHS has fully considered and responded to comments on the issues related to gasoline terminals described in that notice. Of the remaining preliminarily-tiered facilities, many only recently received their preliminary tier assignments and, consequently, are in the process of completing their Security Vulnerability Assessments (SVAs) or only recently submitted their completed SVAs to the Department. Since the Department is currently awaiting, or is still analyzing, these SVA submissions, DHS cannot provide estimated dates by which the facilities will be notified of the Department's final high-risk determinations.

DHS anticipates completing the post-Authorization inspections of tiered facilities within 180 days of the Letter of Authorization for a facility's Site Security Plan (SSP). Completion of all inspections, however, is contingent upon the receipt of SSP's that DHS determines meet the criteria for authorization under the Chemical Facility Anti-Terrorism Standards (CFATS) risk-based performance standards. Consequently, the Department cannot provide a specific timeframe for completion.

CFATS inspections are comprehensive and detailed. The Department intends to use these inspections to help understand the processes, risks, vulnerabilities, response capabilities, security measures and practices, and any other factors that may be in place at a covered facility in order to determine if the facility meets the CFATS requirements.

The time that it takes to complete an Authorization inspection varies, because it is dependent upon the size and complexity of the facility as well as the facility submissions (Top Screen, Security Vulnerability Assessment, and SSP). At this time, the Department estimates that inspections will take approximately five days on-site and, at a minimum, another five days of preparation and reporting by the inspectors.

Question#:	3
Topic:	Tier 4
Hearing:	H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: For Tier 4, how long will it take DHS to finish tiering these other 443 high risk facilities? How long do you anticipate that both Preliminary Authorization Inspections and authorization inspections take to complete?

Response: As of May 6, 2011, 2,231 facilities have received Final Tier 4 determinations, with 443 facilities preliminarily assigned to Tier 4 still awaiting final high-risk determinations. Of those 443 facilities, approximately 300 are aboveground gasoline storage facilities (gasoline terminals). As previously announced in a Federal Register Notice published on January 15, 2010 (75 FR 2445), the Department of Homeland Security (DHS) will make final high-risk determinations for those facilities after DHS has fully considered and responded to public comments on the issues related to gasoline terminals described in that notice.

Of the remaining preliminarily-tiered facilities, many only recently received their preliminary tier assignments and, consequently, are in the process of completing their Security Vulnerability Assessments (SVAs) or only recently submitted their completed SVAs to the Department. Since the Department is currently awaiting, or is still analyzing, these SVA submissions, DHS cannot provide estimated dates by which the facilities will be notified of the Department's final high-risk determinations.
DHS anticipates completing the Authorization Inspections of tiered facilities within 180 days of the Letter of Authorization for a facility's Site Security Plan (SSP). Completion of all inspections is contingent, however, upon the receipt of SSP's that DHS determines meet the criteria for authorization or approval consistent with the Chemical Facility Anti-Terrorism Standards (CFATS) risk-based performance standards. Consequently, the Department cannot provide a specific timeframe for completion.

CFATS Authorization Inspections are comprehensive and detailed. The goal of the authorization inspection is to verify that the descriptions of security measures listed in the facility's authorized SSP (or Alternative Security Plan) are accurate and complete, and that the equipment, processes, and procedures described are appropriate and function as intended.

The time that it takes to complete an Authorization Inspection varies, because it is dependent upon the size and complexity of the facility as well as the facility's submissions (Top Screen, Security Vulnerability Assessment, and SSP). At this time, the

Question#:	3
Topic:	Tier 4
Hearing:	H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Department estimates that inspections will take approximately five days on-site and, at a minimum, another five days of preparation and reporting by the inspectors.

Question#:	4
Topic:	EPA
Hearing:	H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: How many times have you been over to EPA to assess the work that drinking water utilities have done with their vulnerability assessments and emergency response plans?

Response: The Department of Homeland Security (DHS) has been working cooperatively with the Environmental Protection Agency's (EPA) water security program and has met with EPA officials on dozens of occasions. DHS has reviewed a subset of the vulnerability assessments in order to understand general vulnerabilities and countermeasures. The stringent statutory constraints on sharing the information from these assessments, the dated nature of these one-time assessments (now 7 years old), and the availability of more updated and shareable information from the Enhanced Critical Infrastructure Protection program rendered additional reviews unnecessary.

The Department has and will continue to productively engage the EPA and has participated in several collaborative initiatives, such as a joint site visit of Blue Plains Water Treatment Facility in Washington, D.C. This site visit allowed DHS officials (including Headquarters personnel and Inspectors in the field) the opportunity to gain valuable insight into the security posture of one of the largest wastewater treatment facilities regulated by the EPA.

As the Department has stated before, there is a critical gap in the U.S. chemical facility security regulatory framework—namely, the exemption of drinking water and wastewater treatment facilities from the Chemical Facilities Anti-Terrorism Standards (CFATS). The Department has been working closely with the EPA to begin evaluating how the CFATS approach could be used for water and wastewater treatment facilities, should the water and wastewater treatment facility exemption be reconsidered in the future.

Question#:	5
Topic:	reductions
Hearing:	H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program
Primary:	The Honorable Frank Pallone Jr.
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Why have tiers 1 and 2 changed so little compared to the reductions (2,074) in tiers 3 & 4 since August 2008? Tier 1 has actually increased by two facilities and tier 2 has decreased by only 181.

Response: The Department of Homeland Security (DHS) developed a risk-based tier structure that allows us to focus resources on high-risk chemical facilities. Through the Top-Screen process, the Department initially identifies and sorts facilities based on their associated risks and the potential consequences of a successful attack. Subsequently, each Security Vulnerability Assessment (SVA) is carefully reviewed for its description of how chemicals of interest (COI) are actually held at the site, how those chemicals are managed, and for physical, cyber, and other chemical security-related risks. Results from the SVA inform the Department's final determinations as to whether a facility is in fact high-risk and, if so, the facility's final tier assignment.

Essentially, the 2008 results reflect the preliminary results of the Department's analysis following facilities' Top-Screen submissions, while the current results are based on final tier assignments made by the Department after its evaluation of facilities' SVAs.

Generally speaking, the number and types of COIs present at a Tier 1 or Tier 2 site are substantial enough such that any change with respect to a single COI would not likely alter the facility's overall tier. However, a Tier 3 or 4 site is often preliminarily tiered for a single COI, where substantial reduction or elimination of that COI would have a more dramatic impact – either reducing the facility tier, or making the site unregulated.

We also know that many facilities have made significant changes to their chemical inventories, resulting in a reduction of the overall risk presented by the facility. Since the issuance of Appendix A to the Chemical Facility Anti-Terrorism Standards (CFATS), 8,064 facilities have been initially determined to be high-risk, out of the 39,000 sites that submitted Top-Screens to DHS. At this time, 4,776 of the 8,064 facilities received final high-risk determinations and final tier assignments. The Department considered many factors in determining a facility's final tier assignment. For example, of the 3,288 facilities that are no longer considered high-risk, 1,246 facilities reported to the Department that they no longer possessed COIs, and 1,132 facilities are no longer considered high-risk following DHS analysis of the facilities' SVAs.

The Honorable John Shimkus

Can you estimate for me how much NACD members have spent on both voluntary security efforts under Responsible Distribution as well as CFATS upgrades and compliance? What would be the effect on your members if this investment is stranded with major new requirements before CFATS has become fully implemented? Would these increased compliance costs encourage some of this business to move overseas or force them to close?

The costs associated with voluntarily security efforts and CFATS upgrades and compliance vary widely among NACD members, depending on size, location, and number and types of chemicals of interest at each site. A rough estimate is that NACD members have spent well over $200 million on both voluntary measures and CFATS compliance to date. NACD members are still waiting for feedback from the Department of Homeland Security (DHS) on whether the measures they have implemented and proposed in their CFATS site security plans (SSPs) will be enough to meet the Risk Based Performance Standards (RBPSs). Many of the proposed SSP measures involve major capital investment and will not actually be implemented until facilities receive authorization from DHS, therefore total costs will go up substantially as DHS works through this process. It is taking time for DHS to evaluate the 4100+ SSPs that have been submitted and to inspect all of these facilities. Therefore, it does not make sense for changes to be made to the program before DHS can complete enough of these evaluations and inspections. NACD members have spent many hours developing and implementing their SSPs and need regulatory certainty as the process continues. To be forced to go back add items such as inherently safer technology (IST) assessments would be counterproductive, particularly for chemical distributors, whose inventories are set up to meet their customer's needs.

Chemical distributors are subject to a plethora of regulations implemented and enforced by DHS, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Drug Enforcement Administration, the Food and Drug Administration, and many others. Compliance with all of these regulations takes diligence, time, and resources. CFATS has been a substantial new addition to the already full regulatory compliance portfolios of many NACD members.

Most NACD members are small businesses and do not have a dedicated Director of Security. In most cases, the individuals responsible for all other regulatory and Responsible Distribution compliance have had CFATS added to their portfolios. Completing CFATS security vulnerability assessments and SSPs has been time, labor, and financially intensive. Most SSPs have been between 700 and 1500 pages long and have taken well over the DHS-estimated 250 man hours per site to complete. Many members have spent between $25,000 and $75,000 for outside help with CFATS submittals alone.

Given all of the investment that has already been made to date, it does not make sense to add burdensome new requirements such as IST mandates. Being forced to start the process over, including hiring consultants to assist with IST assessments, would be a major setback for companies who have already invested so many resources in CFATS. This would be particularly wasteful for chemical distributors as IST assessments would produce limited options that would impede normal business operations, primarily the ability to meet the needs of customers. This could easily be the final straw that causes some chemical distributors to move their operations overseas or close their doors.

The Honorable Frank J. Pallone, Jr.

You state in your testimony that, "conducting an IST assessment would be extremely costly…companies would be forced to hire consultants, who at rates of hundreds of dollars per hour, would easily drive the costs of the assessments into tens of thousands of dollars per facility."

HR 2868 in the last Congress directed that the Secretary provide guidance to small covered chemical facilities in assessing methods to reduce the consequences of a terrorist attack, including "tools, methodologies, or computer software" to assist small facilities with compliance. The purpose of this provision was to reduce compliance costs to small covered facilities by providing convenient and user-friendly software. Do you support the provision of user-friendly computer software as a tool intended to cut compliance costs?

I would like to reemphasize that NACD is opposed to a requirement that facilities conduct IST assessments. The primary operations for most NACD members are warehousing, repackaging, and transportation of materials. Chemical distributors maintain specific inventories of products in order to respond to the needs of customers. IST assessments would produce limited options for chemical distributors whose inventories are set up, frequently on a just-in-time basis, to address customer needs.

While the concept of user-friendly computer software to assist with compliance has merit, these systems take time to develop and can prove to be challenging to use for some. For example, if a question is not applicable to a facility, which is likely for chemical distribution, would the user be forced to enter information anyway?

The CFATS regulations are already complex because they are risk based performance standards rather than a command and control system. Many NACD members have spent between $25,000 and $75,000 per company just on the submission of CFATS Top Screens, Security Vulnerability Assessments, and Site Security Plans through the on-line DHS Chemical Security Assessment Tool. Even though these submissions were through on-line, electronic templates, they were still extremely complex and took substantial time and resources to complete. The complexity would increase with an IST element, even with dedicated software, because this concept is not clearly defined and would have different applications among facilities.

Subcommittee on Environment and the Economy
"H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program"
Additional Questions for the Record
ACA – David C. Tabar, CSP

The Honorable John Shimkus

1. Can you estimate for me how much ACA members have spent on both voluntary security efforts under Coatings Care as well as CFATS upgrades and compliance? What would be the effect on ACA members if this investment is stranded with major new requirements before CFATS has become fully implemented? Wouldn't it be fair to say that some businesses struggling with these increased compliance costs may be forced overseas or even forced out of business?

Response by Mr. Tabar:

Due to the short timeframe in which to respond, it is not feasible for the American Coatings Association (ACA) to assess or survey its members to determine the coatings industry's actual expenditures to-date on either voluntary security efforts under Coatings Care® or on CFATS upgrades and compliance. What is generally known is that impacted manufacturers have invested monies and resources in many areas of their operations. These expenditures have been and are being undertaken in order to meet current and planned future security requirements. Since DHS has not fully implemented CFATS, many associated compliance costs will remain unknown (and not incurred) until DHS approves submitted Site Security Plans. However, we expect actual compliance costs to be significant. We also anticipate that these compliance costs will have significant impact on sales, manufacturing and distribution at the local, grass-roots level. We are also cognizant that organizations that represent our suppliers, such as SOCMA and the American Chemistry Council, have testified about the significant cost of CFATS compliance to date, and it's foreseeable that those increased costs are likely to impact the cost of key raw materials used to formulate coatings.

Of immediate concern is that new regulations that could result from significant amendments to the existing CFATS program might be duplicative and overly-stringent, and could strand the investments that the coatings industry has been required to make in order to comply with CFATS since its passage in 2006. This could force companies to suspend production of commercial and/or consumer products that use regulated materials or that require the latest (and conceivably untested) technologies, thus diverting monies and resources from job creation, growth and global competitiveness.

It is certainly fair to say, as you suggest, that affected industries may find it less costly and easier to import products or move their manufacture overseas as a result of the increased compliance costs resulting from CFATS, particularly if those costs were to be stranded by new legislation.

April 29, 2011

The Honorable John Shimkus
Chairman
Subcommittee on Environment and the Economy
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Shimkus,

Thank you for the opportunity to testify before you and the Subcommittee on Environment and the Economy on March 31, 2011, regarding "H.R. 908, a bill to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards Program."

Our responses to your Questions for the Record are below. Please contact me with any further questions at (202) 721-4122 or allmondb@socma.com.

Thank you again for the opportunity to provide testimony before the Subcommittee.

Sincerely,

William E. Allmond, IV
Vice President, Government Relations
Society of Chemical Manufacturers and Affiliates

Attachments

The Honorable John Shimkus

1. **Your testimony says good things about the ISHC. Is there a difference between the IST study by DHS called ISHC and mandating it as part of a regulation? Does SOCMA support the compulsion of IST assessment or IST conversion by the government?**

Yes, there are major differences. First and foremost, the DHS study is simply that: a study, whose purpose is to develop an expert definition of inherently safer technology and metrics for trying measure it. Importantly, the study has helped to underscore the complexity of IST and how difficult if not impossible it is to measure objectively. In essence, the findings of the study confirm many of the same arguments that industry and academia alike have made to Congress as to why this concept should not be mandated through regulation. Nevertheless, we also wish to stress that while we are supportive of this work undertaken by DHS, we would immediately change our view of it if it ever diverted its purpose toward or was being used by Congress or the Department to mandate IST within a security context.

SOCMA emphatically opposes compulsion by the federal government of IST assessment or implementation. We have been at the forefront in the industry's opposition to such a mandate for years and have repeatedly testified our position to Congress.

2. **Can you estimate for me how much SOCMA members have spent on both voluntary security efforts under ChemStewards as well as CFATS upgrades and compliance? What would be the effect on your members if this investment is stranded with major new requirements before CFATS has become fully implemented? Wouldn't it be fair to say that some businesses struggling with these increased compliance costs may be forced overseas or even forced out of business?**

Complying with a substantial new regulation such as CFATS requires much capital investment and more will be required in the years to come. It is difficult to quantify how much our member companies have thus far invested, but we have publicly stated that the amount is conservatively in the tens of millions of dollars. One reason for the difficulty is the fact that facilities have been securing their facilities for years as part of normal operating procedures and design and in addition to voluntary and regulatory requirements. Another reason, and a significant concern for our members, is that exactly what CFATS requires will not become known until DHS has conducted compliance inspections at all four tiers of facilities. Our facilities have implemented what they regard as compliant measures, but DHS is only beginning compliance inspections.

As we have testified, new, game-changing requirements under CFATS will jeopardize these major capital investments. Mandated IST would cause even more dramatic harm as it could compel process and product changes that would be much more costly and could shut a facility down or force production to be moved offshore. SOCMA members build their facilities and operations to successfully manufacture certain specialty and batch chemical products. What may seem like a simple change to a process or product to a government bureaucrat could in reality be the difference between a facility remaining open, closing, or moving to a foreign country.

Additionally, regulations governing security at chemical facilities in foreign countries simply do not measure up to our standards here in America. Forcing more manufacturing operations abroad would make America less safe in some cases, such as in pharmaceutical ingredient production, which many SOCMA members manufacture. DHS's current standards have teeth. The Department has the authority to levy significant fines on a facility for non-compliance, and can even shut a facility down. This is not the case abroad. Furthermore, to date, there has been 100 percent compliance by industry with the requirements; DHS has not had to impose a single administrative penalty action to enforce compliance.

○