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EVALUATING INTERNAL OPERATION AND IMPLEMENTATION OF THE CHEMICAL FACILITY ANTI–TERRORISM STANDARDS PROGRAM (CFATS) BY THE DEPARTMENT OF HOMELAND SECURITY

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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EVALUATING INTERNAL OPERATION AND IMPLEMENTATION OF THE CHEMICAL FACILITY ANTI–TERRORISM STANDARDS PROGRAM (CFATS) BY THE DEPARTMENT OF HOMELAND SECURITY

FRIDAY, FEBRUARY 3, 2012

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

The subcommittee met, pursuant to call, at 9:33 a.m., in room 2123 of the Rayburn House Office Building, Hon. John Shimkus (chairman of the subcommittee) presiding.

Members present: Representatives Shimkus, Murphy, Pitts, Bass, Latta, Harper, Cassidy, Gardner, Barton, Walden, Green, Butterfield, Barrow, Pallone, Capps, Dingell, Waxman, and Markey.

Staff present: Charlotte Baker, Press Secretary; Anita Bradley, Senior Policy Advisor to Chairman Emeritus; Jerry Couri, Senior Environmental Policy Advisor; Andy Duberstein, Assistant Press Secretary; Dave McCarthy, Chief Counsel, Environment and the Economy; Andrew Powaleny, Assistant Press Secretary; Chris Sarley, Policy Coordinator, Environment and the Economy; Peter Spencer, Professional Staff Member, Oversight; Alex Yergin, Legislative Clerk; Jacqueline Cohen, Democratic Counsel; Greg Dotson, Democratic Energy and Environment Staff Director; and Caitlin Haberman, Democratic Policy Analyst.

Mr. SHIMKUS. The subcommittee will now come to order. We would like to welcome our panel, and I would like to begin with an opening statement.

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

In my time serving in Congress, I have learned, as oftentimes is the case, that the initial problem isn't as big a deal to people as a poor explanation of a problem can be. Further, cover-ups are the best hope of people who know they are in the wrong and the worst move for those who get found out. People who try to hide problems or minimize their existence usually face a swifter and more ferocious corrective response from Congress and the public than if they had simply come clean.

It is with great surprise and disappointment that I read the internal memorandum about the operation of the division imple-

menting the Chemical Facility Anti-Terrorism Standards Act (CFATS) and its program at the Department of Homeland Security.

I, for one, have historically been a strong supporter of this program. I believe the statute is sound and the regulations reasonable. In fact, the Anderson Memo calls for only one legislative change: long-term extension of the program.

The CFATS program was not meant to be another EPA-style program designed to fine people or a bureaucratic back door to over-regulate chemicals. CFATS was meant to be a collaborative effort to secure "high risk" facilities with facility-appropriate measures based upon the risks presented. Congressional intent was that cooperation would get facilities into compliance; we did not intend to increase Federal revenues through enforcement actions. I hope DHS is not looking to abandon our original intent.

Last March, I acknowledged CFATS was a work in progress, but I felt security was being enhanced and significant public and private investments were being made to implement the program. I still believe security at facilities with chemicals is much better today than before Congress gave DHS this first ever regulatory authority. Unfortunately, my confidence in DHS and the substantial amount Congress has given to it is not nearly as strong.

Someone compared CFATS to an unmanned police car positioned at the side of the highway. It wards off speeders, but not much else. We need to be reassured that DHS's CFATS program has a plan and intends to focus solely on correcting its internal problems, implementing the CFATS program as drafted in law, and not suggesting the CFATS program should take on any other additional responsibilities. I mean, they better first do the responsibilities designed under law than to take on additional ones, such as drinking water or IST issues.

CFATS is an appropriate component of this subcommittee's jurisdiction, and the days of matador oversight of this program are over. I urge all members of this committee to join me in that effort.

As a fellow U.S. military officer, I have tremendous respect for Under Secretary Beers' service to this country. That said, he and I have been taught that there are only three acceptable responses when questioned by an officer: "yes, sir;" "no, sir;" and "no excuse, sir;" or "sir, I don't understand." Four. I expect no less than that today.

I want to welcome Under Secretary Beers and Deputy Director Wulf, who along with Director Penny Anderson showed great courage with the frankness of the internal memo. Mr. Wulf, both of you should know that the committee takes very seriously any evidence of undue pressure, influence, intimidation or retaliation whatsoever, because of your testimony today while we continue to investigate these important issues. In other words, we really do appreciate this internal memo. I think it has been very, very helpful and we want to ensure those who came forward are not penalized for that. Please let my committee staff know right away if you have any concerns. Retaliation and intimidation of Congressional witnesses is illegal and will not be tolerated.

Mr. Beers, I trust you will ensure that you are in agreement with me that no retaliation should be tolerated, and we will hold you and any other White House officials accountable to that.

[The prepared statement of Mr. Shimkus follows:]

Opening Statement Chairman John Shimkus
Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
February 3, 2012

In my time serving in Congress, I have learned it is often times the case that the initial problem isn't as big a deal to people as a poor explanation of a problem can be. Further, cover ups are the best hope of people who know they are in the wrong and the worst move for those who get found out. People who try to hide problems or minimize their existence usually face a swifter and more ferocious corrective response from Congress and the public than had they simply come clean.

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The CFATS program was not meant to be another EPA-style program designed to fine people or a bureaucratic back door to over regulate chemicals. CFATS was meant to be a collaborative effort to secure "high risk" facilities with facility appropriate measures based upon the risks presented.

Congressional intent was that cooperation would get facilities into compliance, we did not intend to increase Federal revenues through enforcement actions. I hope DHS is not looking to abandon our original intent.

Last March, I acknowledged CFATS was a work in progress, but I felt security was being enhanced and significant public and private investments were being made to implement the program. I still believe security at facilities with chemicals is much better today than before Congress gave DHS this first ever regulatory authority. Unfortunately, my confidence in DHS and the substantial amounts Congress has given to it is not nearly as strong.

Someone compared CFATS to the unmanned police car positioned at the side of the highway – it wards off speeders, but not much else.

We need to be reassured that DHS's CFATS program has a plan and intends to focus solely on correcting its internal problems, implementing the CFATS program as drafted in law, and not suggesting the CFATS program should take on any additional responsibilities – whether that includes IST or taking drinking water security oversight away from EPA.

CFATS is an important component of this Subcommittee's jurisdiction, and the days of matador oversight of this program are over. I urge all members of this Committee to join me in that effort.

As a fellow U.S. military officer, I have tremendous respect for Undersecretary Beers' service to this country. That said, he and I have been taught that there are only three acceptable responses when questioned by an officer: "yes, sir;" "no, sir;" and "no excuse, sir." I expect no less than that today.

I want to welcome Undersecretary Beers and Deputy Director Wulf, who along with Director Penny Anderson showed great courage with the frankness of their memo.

Mr. Wulf, both of you should know that the Committee takes very seriously any evidence of undue pressure, influence, intimidation or retaliation whatsoever, because of your testimony today while we continue to investigate these important issues.

Please let my Committee Staff know right away if you have any concerns. Retaliation and intimidation of Congressional witnesses is illegal and will not be tolerated.

Mr. Beers, I trust you will ensure that you are in agreement with me that no retaliation should be tolerated, and we will hold you and any other White House officials accountable.

Mr. SHIMKUS. With that, I now yield to the distinguished ranking member from Texas, Mr. Green, for 5 minutes for the purpose of offering his opening statement.

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

Mr. GREEN. Thank you, Mr. Chairman, for holding the hearing today.

Under Secretary Beers requested an internal memo on the status of the CFATS program and recommendations for improvement in the summer of 2011. This memo was delivered to Mr. Beers in November of 2011, and it leaked to the media and detailed in a story on December the 23rd, 2011. I must say, when I read the internal memo, I was surprised and dismayed by the level of dysfunction and the lack of progress within the CFATS program. I am also amazed that during this time, the subcommittee discussed CFATS program this year during our work on H.R. 908, the Full Invitation of the Chemical Facility Anti-Terrorism Standards Act. We were simply unaware of the severity of the situation within DHS and the CFATS program. The portion of the internal memo as related to challenges to implementing these priorities—I won't go into all the details, but it seems to me the root of the problem lies with the fact that DHS has hired people that are unqualified for their positions and was prohibited from hiring appropriate and qualified individuals, and they had no training program to help those folks who were unqualified. These inappropriate hires, along with a lack of proper training of the employees, has forced DHS to instead of reassigning inappropriate employees, rely on contractors to do work that should be done by the Agency.

The internal memo outlines several priorities of the program, including the process for the review of the site's security plans. Unfortunately, at the time of the memo, DHS had received 4,200 site security plans and not a single plan was approved.

I know that DHS is working to clear up all the Tier 1 facilities, but it has been 6 years since the program was enacted and we haven't even cleared the low level facilities. They decide how to conduct compliance inspections and preparing staff to do the inspections. To date, DHS has conducted not a single compliance inspection. Not that any of my industries that I represent along the Houston Ship channel are looking for an inspector to come knocking on the door, but they are—they have been working to comply and they have made substantial private investment. In some cases, we actually were able to see grants through DHS for Homeland Security protection and our plant protection.

But I must say that this proposal reinforces problems identified in the internal memo, which mostly revolve around the fact that DHS is constantly making things more complicated than they need to be, and not relying on existing systems, such as the TWIC card, to work. What I am speaking about is developing the personnel assurity programs. DHS transmitted a new personnel assurity program to OMB, and I have some concerns about this problem—this proposal, and will discuss that later. One, because at earlier hearings in this subcommittee, I felt like I had some assurances that the TWIC card would be used as a standard ID for someone work-

ing whether it be in waterside or land-based industry under CFATS. My concern is additional personal security programs will make the duplication of the CFATS. So that is one thing our committee needs to look at.

Last year at the subcommittee hearing, I asked Under Secretary Beers if the Department intended to integrate TWIC into the personnel assurity program and I received a positive response, and yet, the proposal does not make clear that TWIC is an acceptable background check. Quite frankly, now is not the time for DHS to go reinventing the wheel when implementing the personnel assurity program. The memo also includes the Agency's planned response, including a plan of action for 85 items.

I look forward to hearing from the witnesses today to confirm, but I believe several of the action items haven't initiated or completed. To say the least, I am disheartened by the lack of progress in the CFATS program, which seems to stem directly from lack of appropriately assigned and trained employees and serious lack of moral in the program, which seems to stem from the fact that no one constantly knows if the program will be reauthorized by Congress. Chemical facility security is surely important to the protection of our public health, and particularly in the district I represent. I represent the Houston ship channel, which is the heart of the petrochemical complex that stretches from the Texas Gulf Coast and produces more products essential to modern life. It is also the largest petrochemical complex in the country. I can't stress how important the success of CFATS is to my constituents who are the employees and live in the communities that surround these facilities. They deserve the best security standards possible to prevent the act of terrorism on U.S. soil.

Our role today is to listen to our witnesses and get a better understanding of the problem, and see how Congress can assist. The Agency recommends several legislative fixes, and I am hoping we have—we on the committee can work together and find a compromise on how to assist DHS, after hearing their suggestions and hearing from our stakeholders. The program is too important to our national security to be this much in distress.

Mr. Chairman, thank you for the time and I yield back.

Mr. SHIMKUS. The gentleman yields back his time.

The chair now looks to the—to my colleagues on the right, if anyone would like time for an opening statement. Hearing none, the chair would like to recognize 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, Mr. Chairman, for calling on me, and more importantly, for holding this hearing to examine the implementation by the Department of Homeland Security of the Chemical Facility Anti-Terrorism program, or Standards. The letters have been made into a shorthand called CFATS. This program is intended to address the threat of terrorism to the Nation's chemical facilities. We will hear testimony about its successes. But we are also going to hear about the program's many challenges.

The CFATS program was established in 2006. Now, almost 6 years later, it is clear that implementation has stumbled because of serious challenges and limitations in the program.

Under Secretary Beers will testify about a detailed report that he received in November of last year. This report takes the form of a memorandum, and DHS has also provided it to the committee. It paints a stark picture of this program. According to this memorandum, the program has been plagued by personnel issues, budget issues, and statutory limitations.

The challenges described in the memo are serious, and they must be addressed.

Department of Homeland Security has a plan to address the identified problems, and that plan deserves our careful scrutiny. This is a crucially important effort and we must get it right.

In some ways, the odds have always been stacked against this program. This program was created by a provision not authorized by this committee, but a rider on an appropriations bill. The program was not established with carefully crafted legislation that defined its mission and forged a vision for its implementation.

It did not have adequate enforcement authorities, enforceable deadlines, or clear procedures for approving or disapproving site security plans. It never even had an authorization.

And in some ways, it is fortunate that we have learned of these problems when we have, because this committee can now return to this issue and do the hard work of understanding where the problems are and determining how to fix them.

It is stunning to realize that this committee of Congress, which has jurisdiction over this issue, reported legislation that simply rubber-stamped the current program for 7 additional years. We didn't really know how the program was working. We didn't give it any guidance. We didn't do our job, and that legislation needs to be revisited in light of this new information.

I look forward to the testimony of Under Secretary Beers and learning more about the Department's efforts to get this program on track. The Department can take constructive actions, but it can only do so much. They cannot address shortcomings in the underlying statute. That task falls to us as the committee of jurisdiction and the committee that should have been involved in crafting the original provision. That is a responsibility we must take very seriously.

I hope today's hearing will be part of an ongoing effort by this committee to address these serious challenges facing our chemical facility security program. This is an important issue. It deserves our attention.

In the last Congress, when I was chairman of the committee, we were working on a bipartisan basis. We brought in all the stakeholders to craft legislation to authorize the program. It was a major undertaking. We brought in industry, we brought in labor, we brought in everybody else that had a concern about this issue. We were consulting everyone throughout the process. That is the type of undertaking we should begin anew, because what we saw this last year was not a furtherance of examination of the program, but simply saying oh, it is already in effect for 6 years. We will continue it down the road and we hope it will do a good job. We have

got more work to do than just sending our best wishes for the long period of authorization without doing a thorough examination to figure out how we can make this program work the way we intended it to and the way it must to protect the security of the American people.

Thank you, Mr. Chairman. I yield back the time.

Mr. SHIMKUS. And I thank you, Mr. Waxman, for your statement.

I would like to yield, with the permission of the committee, to Mr. Barton for 5 minutes, but before I do, I would just like to say, based upon my opening statement, I think Mr. Waxman's response was pretty much what I said. When problems are hid, you are going to face a swifter and more ferocious corrective response by Congress, and that is really part of that concern. I would also say, we did have a hearing prior to the markup of that bill where Department of Homeland Security said things were going well. Obviously—and industry——and obviously, that is not the case, either.

So with that, I would like to yield 5 minutes to the chairman emeritus, Mr. Barton.

OPENING STATEMENT OF HON. JOE BARTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BARTON. Thank you, Mr. Chairman. I am not sure I will take that time, and if I don't, I am happy to yield it to anybody else that you wish it to be yielded to. I do appreciate you for holding this hearing, you and Mr. Green, on the Chemical Facility Anti-Terrorism Standard Program, which has the acronym CFATS.

Back in March of last year, we discussed the concerns and dissatisfaction that the program had not met its goals. This program was set up to serve and protect the companies and the general public against the potential threat of terrorist activity. I was chairman of this committee back in the 109th Congress, and one of the authors of the Chemical Facility Anti-Terrorism Standard Act that was included as Section 550 of the Department of Homeland Security's appropriation act for 2007.

The intent was very clear. It was for the safety of the Nation's businesses and its citizens against the threat of terrorism in these types of facilities. I understand that the program has got many facets and that the orchestration of a thorough implementation plan at an expedited pace could have challenges. What I don't seem to understand is how the Under Secretary could be so unaware for so long of so many of the internal problems. Why have employees been hired in managerial positions who don't have the skill set to fulfill their jobs? Why has it taken 3 years to start addressing the internal managerial staff training and implementation problems? The industry has invested billions of dollars to upgrade security to meet the CFATS requirements. This is beyond disappointing. You have totally mismanaged this program, Mr. Under Secretary. We have spent about $90 million a year, and we have no well-developed direction and no plan.

It is my understanding that you have received over 4,200 site security plans to date, but not even one has been approved. Now, we have our differences on this committee and this subcommittee, and there were differences between the Democrats and Republicans

when this bill was put into law, but there is nobody, no one, regardless of political affiliation that says if you receive 4,200 site security plans, you don't even get one approved? Not one? I mean, when I read that a couple of days ago, I was just astounded. Your own national protection and programs directorate have prevented you from hiring personnel with the experience and qualifications to review these programs and to conduct the compliance inspection. You have allowed the hiring of inappropriate staff and have not taken control of your own infrastructure security compliance division to fix this problem, and it has been 3 years. The administration of the CFATS program must be fixed immediately to provide stability to the program and regulatory assurance to thousands of covered facilities, many of whom are members of the Society of Chemical Manufacturing and Affiliates Alliance, SOCMA. They have invested heavily in security measures over the past 5 years to attempt to be in compliance.

I have to say one good thing. Your office has been open and candid and transparent in providing the internal memoranda for committee staff to review. That is one positive checkmark in your column. Having said that, everything else is in the negative and everything else is black. It is time to get this thing done. If you can't do it, resign. If there are things that need to be fixed, tell us and we will try to do it. I think Mr. Waxman's opening statement was very good, as was Mr. Shimkus's, which I wasn't here to hear, but I did read.

With that, Mr. Chairman, I have got a minute left if you want me to yield it.

Mr. SHIMKUS. Let me reclaim that time and look to Chairman Emeritus Dingell to see if he would like to use the remainder of your time.

OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. Most briefly, Mr. Chairman. Thank you.

I want to welcome our two witnesses and our panels today, Secretary Beers and Mr. Wulf, and I want to commend you for having this hearing. I want to note that it is being conducted in a bipartisan fashion, something which merits high praise around this place. Having said that, I look forward to the results of the hearing today. I would note that I have a number of these facilities in my district, and when they let go, as one did not long back, it causes lots of excitement and can cause significant numbers of casualties and enormous hardships on the communities in which the facility might exist. So your labors and your leadership, Mr. Chairman, are much appreciated and I look forward to the hearing going forward in the spirit in which it has begun, and in the hopes that we will be able to see to it that we get these programs of widely differing character under different agencies in the point where they are pulling together and working together to accomplish the great purpose of seeing to it that we have safety and security for the country.

Thank you, Mr. Chairman.

Mr. SHIMKUS. Thank you, Mr. Dingell.

With that, the chair calls forward today's witnesses, the Honorable Rand Beers, the Under Secretary of National Protection and Programs Directorate at the Department of Homeland Security, and Mr. David M. Wulf, who is Deputy Director of Infrastructure Security Compliance Division, Office of Infrastructure Protection, National Protection and Programs Directorate at the U.S. Department of Homeland Security.

As you know, the testimony that you are about to give is subject to Title 18, Section 1001 of the United States Code. When holding an investigative hearing, this committee has the practice of taking testimony under oath. Do you have any objection to testifying under oath?

The chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today?

In that case, if you would please rise and raise your right hand, I will swear you in.

[Witnesses sworn.]

Mr. SHIMKUS. You may now be seated, and it is my understanding that the only opening statement will be given by you, Mr. Secretary, and Mr. Wulf is here to answer questions with regard to the internal? They are both going to give it, OK. Change in direction from last night, so Mr. Beers, if you would then—you are recognized for 5 minutes to give your opening statement.

TESTIMONY OF RAND BEERS, UNDER SECRETARY, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY; AND DAVID M. WULF, DEPUTY DIRECTOR, INFRASTRUCTURE SECURITY COMPLIANCE DIVISION, OFFICE OF INFRASTRUCTURE PROTECTION, NATIONAL PROTECTION AND PROGRAMS DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY

TESTIMONY OF RAND BEERS

Mr. BEERS. Thank you, Chairman Shimkus and Ranking Member Green, and distinguished members of this committee. I am pleased to be here before you today to discuss the Department of Homeland Security's efforts to regulate the security of high-risk chemical facilities under the Chemical Facility Anti-Terrorism Standards Act.

As you all are aware, the Department's current statutory authority to implement CFATS came about, as mentioned earlier, in Section 550 of the fiscal year 2007 appropriations act, and it has been amended recently to extend that authorization until October 4 of 2012. I believe strongly in the CFATS program, and I welcome the opportunity to continue to work with this committee, with the Congress, and levels of government and the private sector to further improve this vital national security program.

Since the inception of CFATS, we have issued a basic rule, we have defined chemicals of interest, we have jointly conducted two surveys with industry to define the facilities that have a substantial enough quantity of chemicals that caused them to be determined could be at high risk. After receiving the initial submissions

from more than 40,000 facilities that might potentially be under the program, we have narrowed that down now to about 4,500 covered facilities. And in the process of doing that, more than 1,600 facilities which would have fallen under the program and 700 facilities—1,600 facilities have totally removed their chemicals of interest and 700 have reduced them to the point that they are no longer under the program. So I think we can say that these actions represent some of the successes have happened with respect to this program and the adoption of the regulation. So I think we can say that there has been a reduction in risk throughout the Nation, and that the Nation has correspondingly been made more secure.

The Department has done much work over the past few years to establish and implement this unprecedented program, but as the report suggests and as we acknowledge, CFATS still has a number of challenges to address. In recognition of this and upon the arrival of Penny Anderson and David Wulf, I asked both of them to provide for my consideration the views on the successes and challenges of the program. Candid, honest assessments and challenges to the program. These kinds of assessments are extraordinarily valuable tools that we need in order to evaluate progress and to determine where improvement is needed. Furthermore, in an unprecedented program like CFATS, course corrections are to be expected and ongoing decisions will need to be made.

In late November of 2011, a detailed report was hand delivered to me. It is important to note that in addition to the referenced challenges, the report also proposed for my consideration a charted path that will address those challenges. Specifically, the report included an action plan with detailed recommendations for addressing the issues identified, and we have shared those recommendations with this committee. Since my receipt of this report, each of the nearly 100 items in the action plan have been assigned to a member of the program's senior leadership team and I have already seen progress on these issues. For accountability planning tracking purposes, the members of the leadership team have been asked to provide milestones and a schedule for completion of each task assigned to them. The program's acting chief of staff will monitor that progress. In addition, program leadership now meets with my principal Deputy Under Secretary, Suzanne Spalding, at least once a week to provide status updates to this program.

Mr. Chairman, let me assure you, there will be no retaliation to the people who wrote this report who have served me and you and this Nation by frankly telling us where we had challenges and what we need to do about it, nor will I tolerate any retaliation between me and the office director and her deputy. You have my pledge on that and I expect to be held accountable to that issue.

The Department does take its responsibilities for CFATS and the Nation's security seriously, and we are going to move forward both quickly and strategically to address the challenges before us. Again, we believe that CFATS is making the Nation safer and we are dedicated to its success. We will make the necessary course directions to improve the program to protect the Nation.

Thank you for holding this important hearing, and I will be happy to answer any of your questions.

[The prepared statement of Mr. Beers follows:]

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
Subcommittee on Environment and the Economy
United States House of Representatives

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Thank you, Chairman Shimkus, Ranking Member Green, 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 regulate the security of high-risk chemical facilities under the Chemical Facility Anti-terrorism Standards (CFATS).

As you are aware, the Department's current statutory authority to implement CFATS – Section 550 of the Fiscal Year (FY) 2007 Department of Homeland Security Appropriations Act, as amended -- was recently extended through October 4, 2012. I believe strongly in the CFATS program and welcome the opportunity to continue to work with this Committee, Congress, and all levels of government and the private sector to further improve this vital national security program.

In the interest of facilitating that collaboration, my testimony today focuses on the current program, examples of the program's success to date, some of the current challenges facing the National Protection and Programs Directorate (NPPD) in implementing CFATS, and the actions we are taking to address these challenges. Additionally, I will reiterate the principles that we believe should guide the program's maturation and continued authorization.

I would also like to elaborate on recent reports of challenges faced by this program. At my direction, the program's leadership has outlined their priorities, the challenges they believe the program faces, and a proposed path to address those challenges and accomplish the program objectives. NPPD remains committed to examining the program and making improvements and I look forward to discussing them with you today. I assure this Committee that the CFATS program is making progress; NPPD, the Directorate with oversight responsibility for the CFATS program, is continuously reviewing the program to identify areas for improvement and correcting course when necessary to ensure proper implementation; and that CFATS is a valuable national security program worth supporting.

Chemical Facility Security Regulations

Section 550 of the FY 2007 Department of Homeland Security Appropriations Act directed the Department to develop and adopt, within six months, a regulatory framework to address the

security of chemical facilities that the Department determines pose high levels of risk. 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, specifically 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 or 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 members of industry and academia, and partners in the federal government, we leveraged vital knowledge and insight to develop the regulation;
2. *Risk-based tiering is used 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 CFATS rule includes enforceable risk-based performance standards (RBPS). High-risk facilities have the flexibility to develop appropriate site-specific security measures that will effectively address risk by meeting these standards. NPPD's Infrastructure Security Compliance Division (ISCD), the Division within NPPD responsible for managing CFATS, will analyze all final high-risk facility SSPs to ensure they meet the applicable RBPS and will approve those that do. If necessary, ISCD will work with a facility to revise and resubmit an acceptable plan; and
4. *Recognition of the progress many companies have already made in improving facility security leverages those advancements.* Many companies made significant capital investments in security following 9/11, and even more have done so since the passage of the legislation establishing this program. Building on that progress in implementing the CFATS program will raise the overall security baseline at high-risk chemical facilities.

On November 20, 2007, the Department published CFATS' Appendix A, 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 potential 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 as 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 of the CFATS regulation requires the Department to identify which facilities it considers high-risk. In support of this, ISCD developed the Chemical Security Assessment Tool (CSAT) to help it identify potentially high-risk facilities and to provide methodologies those 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, ISCD initially identifies high-risk facilities, which the Department then assigns to one of four preliminary risk-based tiers, with Tier 1 representing the highest level of potential risk. Tiered facilities must then complete SVAs and submit them to the Department for approval, although preliminary Tier 4 facilities may submit an Alternative Security Program (ASP) in lieu of an SVA. Each SVA is carefully reviewed for its description of how chemicals are managed and for physical, cyber, and chemical security risks.

After completing its review of a facility's SVA, ISCD makes a final determination as to whether the facility is high-risk and, if so, assigns the facility a final risk-based tier. Each final high-risk facility is then required to develop for ISCD approval an SSP or, if it so chooses, an ASP, that addresses its identified vulnerabilities and security issues and satisfies the applicable RBPS. ISCD's final determinations as to which facilities are high-risk, and as to their appropriate tier levels, 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 it will be expected to adopt in its SSP. Risk tier will also be a factor in determining the frequency of inspections.

The SSP is a critical element of the Department's efforts to secure the nation's high-risk chemical facilities; it enables final high-risk facilities to document their individual security strategies for meeting the applicable RBPS. The RBPS cover the fundamentals of security, such as restricting the area perimeter, securing site assets, screening and controlling access, cybersecurity, training,

and response. Each high-risk facility's security strategy and SSP will be unique, as they depend on the facility's risk level, security issues, characteristics, and other facility-specific factors. In fact, under Section 550, the Department cannot mandate a specific security measure to approve the SSP.

Therefore, the CSAT SSP tool collects information on how each facility will meet the applicable RBPS. 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. NPPD 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. NPPD expects that most SSPs will comprise both existing and planned security measures. Through a review of the SSP, in conjunction with an on-site inspection, ISCD determines whether a facility has met the requisite level of performance given its risk profile and thus whether its SSP should be approved.

For additional context, I would like to provide you with an example of how some facilities approach 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 propose numerous security measures, such as by cables anchored in concrete blocks along with movable bollards at all active gates or by 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 ISCD determines it to be sufficient to address the applicable performance standard.

In May 2009, DHS issued *Risk-Based Performance Standards Guidance* to assist high-risk chemical facilities 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.

Implementation Status

To date, ISCD has reviewed more than 40,000 Top-Screens submitted by chemical facilities. Since June 2008, ISCD has notified more than 7,000 facilities that they have been initially designated as high-risk and are thus required to submit SVAs; and ISCD has completed our review of approximately 6,500 submitted SVAs. (Note, not all facilities initially designated as high-risk ultimately submit SVAs or ASPs, as some choose to make material modifications to their chemical holdings, or make other changes, prior to the SVA due date that result in the facility no longer being considered high-risk.) In May 2009, ISCD 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, ISCD 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, ISCD periodically issued notifications to additional facilities of their final high-risk status. To date, more than 4,100 additional facilities have received final high-risk determinations and tier assignments, and several hundred that were preliminarily-tiered by ISCD were informed that they are no longer considered high-risk.

As of January 6, 2012, CFATS covers 4,458 high-risk facilities nationwide; of these 4,458 facilities, 3,727 have received final high-risk determinations and due dates for submission of an SSP or ASP. ISCD continues to issue final tier notifications to facilities across all four risk tiers as we make additional final tier determinations.

It should be noted that since CFATS' inception, more than 1,600 facilities completely removed their chemicals of interest, and more than 700 other facilities have reduced their holdings of chemicals of interest to levels resulting in the facilities no longer being considered high-risk. These actions, many of which NPPD believes were the result of choices made by facilities after Congressional passage of Section 550 and the adoption of the CFATS regulation, have helped reduce the number of high-risk chemical facilities located throughout the nation, and have correspondingly made the nation more secure. This is just one way in which Congress' passage of Section 550 to authorize the CFATS program is already helping to make our citizens safer and our nation more secure.

- Prior to approving an SSP, ISCD must first authorize the SSP. In February 2010, ISCD began conducting pre-authorization inspections of final-tiered facilities, starting with the Tier 1 facilities, and has completed approximately 180 such pre-authorization inspections to date. ISCD used these initial inspections to help gain a comprehensive understanding of the processes, risks, vulnerabilities, response capabilities, security measures and practices, and other factors at a covered facility that affect security risk and to help facilities more fully develop and explain the security measures in their SSPs. After ISCD issues a Letter of Authorization for a facility's SSP, ISCD conducts a comprehensive and detailed authorization inspection before making a final determination as to whether the facility's SSP satisfies all applicable RBPS. To date, ISCD has authorized 53 SSPs and conducted 10 authorization inspections. Facilities that successfully pass inspection and that DHS determines have satisfied the RBPS will then be issued Letters of Approval for their SSPs. They must fully implement their approved SSPs to be considered CFATS-compliant. ISCD plans to issue the first Letters of Approval in 2012 and is currently conducting its due diligence to ensure that the existing or planned security measures at any facility that will receive a Letter of Approval will, in fact, meet the appropriate risk-based performance standards.
- Under CFATS, Administrative Orders are the first formal step toward enforcement. An Administrative Order does not impose a penalty or fine but directs the facility to take specific action to comply with CFATS—for example, to complete an overdue SSP within

a specified timeframe. If the facility does not comply with the Administrative Order, the Department may issue an Order Assessing Civil Penalty of up to $25,000 each day the violation continues and/or an Order to Cease Operations. In June 2010, ISCD issued its first Administrative Orders to 18 chemical facilities for failure to submit an SSP. During the remainder of the year ISCD issued an additional 48 Administrative Orders to chemical facilities that had failed to submit their SSPs in a timely manner under CFATS. We are pleased to report that all 66 facilities complied with the Administrative Orders issued. As CFATS implementation progresses, we expect to continue to exercise our enforcement authority to ensure CFATS compliance.

Outreach Efforts

Since the release of CFATS in April 2007, ISCD 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, ISCD 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. ISCD has also solicited feedback from our public and private sector partners and, where appropriate, have reflected that feedback in implementation activities. As the program continues to mature, on average, ISCD staff participate 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, ISCD inspectors have conducted nearly 900 Compliance Assistance Visits and have held more than 3,000 informal introductory meetings with owners and/or operators of CFATS-regulated facilities. ISCD staff 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), which includes a searchable Knowledge Center. ISCD has also offered regular SSP training webinars to assist high-risk facilities to complete their SSPs.

In addition, ISCD 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, ISCD inspectors have been actively working with facilities and officials in their areas of operation, and they have participated in more than 2,000 meetings with federal, state, and local partners, including more than 100 Local Emergency Planning Committee meetings. Such meetings afford ISCD inspectors with an opportunity to provide our federal, state, and local security partners with a better understanding of CFATS requirements and allow our inspectors to gain insight into the activities of federal, state, and local partners operating within their jurisdictions.

Other efforts to ensure state and local awareness of and involvement in CFATS include the joint development with the State, Local, Tribal, and Territorial Government Coordinating Council and sharing of outreach materials specifically tailored to the emergency response community, which summarize CFATS programs and processes for local emergency responders; annual collaboration with the State of New Jersey's Office of Homeland Security and Preparedness and participation 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; and participation in two successful CFATS workshops hosted by the State of Michigan in Detroit and Midland, Michigan. Moving forward, ISCD hopes to continue and expand our collaborative efforts with our state partners on CFATS-based workshops. Additionally, in May 2010, ISCD launched a web-based information-sharing portal called "CFATS-Share." This tool provides selected Federal, State, and Local stakeholders, such as interested state Homeland Security Advisors and their designees, DHS Protective Security Advisors, the National Infrastructure Coordinating Center, the DHS 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.

ISCD also continues to collaborate within DHS and with other federal agencies in the area of chemical security, including routine engagement among the NPPD's subcomponents and with the USCG, the Transportation Security Administration, the Department of Justice's FBI and Bureau of Alcohol, Tobacco, Firearms and Explosives, the NRC, and the EPA. An example of this coordination includes the establishment of a joint ISCD/USCG CFATS-MTSA Working Group to evaluate and, where appropriate, implement methods to harmonize the CFATS and MTSA regulations. Similarly, NPPD 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 legislation.

Internally, we are continuing to build ISCD. We have hired, or are in the process of on-boarding, more than 206 people, and we are continuing to hire to meet our staffing goal of 253 positions this fiscal year. These numbers include our field inspector cadre, where we have filled 102 of 108 field inspector positions and 14 of 14 field leadership positions.

Identified Challenges and Next Steps

The Department, NPPD, and ISCD have done much work over the past few years to establish and implement this unprecedented regulatory program, but CFATS still has challenges to address. In recognition of this, upon the arrival of ISCD's new Director and Deputy Director, I asked them to provide for my consideration their views on the successes and challenges of the CFATS program. Candid, honest assessments and critiques are valuable tools in evaluating progress and determining where improvement is needed. Furthermore, in a nascent and unprecedented program like CFATS, course corrections are to be expected and ongoing decisions will need to be made.

In late November 2011, a detailed report was hand-delivered to me. It is important to note that, in addition to the referenced challenges, the report also proposed for my consideration a charted

path to addressing the challenges. Specifically, the report included an Action Plan with detailed recommended steps for addressing the issues identified, and we have shared those with this Committee. Since my receipt of the report, each of the nearly 100 action items contained in the Action Plan has been assigned to a member of ISCD's senior leadership team for action, and I have already seen progress on many of these items. For accountability, planning, and tracking purposes, the members of that leadership team have been asked to provide milestones and a schedule for the completion of each task assigned to them, and the Acting ISCD Chief of Staff will monitor progress. In addition, ISCD leadership meets with my Principal Deputy Under Secretary at least once a week to provide status updates on the action items.

The speed with which the program was stood up resulted in some decisions that, at the time, seemed appropriate. For example, at the program's outset, certain roles and responsibilities were envisioned for the program staff that, in the end, did not apply. This resulted in the hiring of some employees whose skills did not match their ultimate job responsibilities and the purchase of some equipment that in hindsight appear to be unnecessary for chemical inspectors. Additionally, we envisioned a greater number of field offices than we eventually decided to employ. These challenges resulted directly from an accelerated stand-up of the program—and while we regret that they occurred, we consider them valuable lessons learned.

I would like to point out to the Committee that NPPD has made progress in addressing some of the other challenges in the report. One identified challenge regards the ability of ISCD to complete SSP reviews in a consistent, reasonable, and timely fashion. To help overcome past difficulties in meeting this challenge, ISCD is utilizing an interim SSP review process that is allowing the Department to review Tier 1 facility SSPs in a more effective and timely manner. Using this interim approach, over the past few months, ISCD has been able to more than quadruple the number of authorized SSPs, and I am pleased to report that as of January 23, 2012, 53 Tier 1 SSPs have been authorized to date. ISCD expects to complete its review of all Tier 1 SSPs and to notify the facilities of ISCD's decisions on those SSPs within the coming months. ISCD also expects to begin issuing authorizations to Tier 2 facilities during FY12. While this interim review process is under way, ISCD is also working on an even more efficient long-term approach to SSP review for facilities in Tiers 2, 3, and 4. This long-term approach will incorporate lessons learned.

A second challenge identified in the report concerns organizational culture and morale. Based in part on internal staff surveys and personal observation, ISCD leadership believes that improved internal communication, stronger programmatic leadership, consistent levels of accountability, and a clearly articulated shared vision and values will significantly improve morale throughout ISCD. The Action Plan contains numerous planned or proposed actions designed to achieve this goal, many of which already are being implemented.

For instance, ISCD employees now contribute to, and receive a monthly ISCD newsletter and weekly updates on ISCD events in an effort to improve internal communications; numerous ISCD Director-led town halls and open-door sessions have been held with employees in D.C. and throughout the country; vacancy announcements that will be used to hire a permanent leadership team to support the new Director and Deputy Director are going through the Departmental human capital process; more thorough supervisory training and guidance on

performance monitoring is being identified and will be provided to all Divisional supervisors; and a cross-Divisional working group was established to update or develop a Division mission statement, vision statement, and statement of core values, which will be shared and consistently reinforced with all ISCD staff. Through these and other activities, I believe that Division-wide morale is improving, which ultimately will pay dividends not only in improved staff retention, but also in improved staff performance. In addition, ISCD leadership has worked with, and will continue to work with, the CFATS inspector cadre's union to develop and implement solutions to address these challenges.

In working on implementing action items and identifying the best solutions for the challenges facing CFATS, NPPD leadership is committed to receiving input from and, where appropriate, collaborating with the regulated community and our Federal, State, and local partners.

NPPD, ISCD, and the Department are taking our responsibilities for the CFATS program and the nation's security seriously and are moving forward quickly and strategically to address the challenges before us. We believe that CFATS is making the nation safer and are dedicated to its success. We will make the necessary course corrections to improve the program to better protect the nation.

Legislation to Permanently Authorize CFATS

We have benefited from the constructive dialogue with Congress, including Members of this Committee, as it continues to contemplate new authorizing legislation for CFATS. The Department recognizes the significant work that this Committee and others have accomplished to reauthorizing the CFATS program. 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 and is committed to working with Congress and other security partners to establish a permanent authority for the CFATS program in Federal law.

Conclusion

As the activities described above demonstrate, NPPD is making progress in the implementation of CFATS while CFATS is reducing the risks associated with our nation's chemical infrastructure. The Department is not alone in this belief. In August 2011, the American Chemistry Council (ACC) conducted a survey of CFATS-regulated facility owners covering approximately 800 facilities and received over 139 responses. Among other things, the ACC survey found that the majority of respondents believe extending CFATS will improve chemical security at CFATS-regulated facilities, and that companies have made substantial investments in security upgrades as a result of CFATS, and plan to make additional investments following ISCD approval of their SSPs.

As we implement CFATS, we will continue to work with industry, our federal partners, states, and localities to get the job done, meet the challenges identified in the ISCD report, and

effectuate the continuing utility of the program in preventing terrorists from exploiting chemicals or chemical facilities in a terrorist attack against this country.

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

Mr. SHIMKUS. Thank you.

Now I would like to recognize Mr. Wulf for 5 minutes. There might be a button. There you go.

TESTIMONY OF DAVID M. WULF

Mr. WULF. I would also like to thank the members of the committee for the opportunity to testify before you today.

In July of last year, Penny Anderson and I assumed our positions as deputy and deputy—director and deputy director, respectively, of the Infrastructure Security Compliance Division, or ISCD, the division within NPPD that manages the CFATS program. In response to the Under Secretary's request that we provide a fresh perspective on the program, Penny and I produced an internal assessment of what we see to be the essential priorities, challenges, and action items necessary to the success of the program. Both Penny and I feel strongly that while the challenges we have identified are not insignificant, they also are not insurmountable. I welcome the opportunity to answer any questions you might have on the background and context behind the challenges we cited, but I would also like to echo the Under Secretary's focus on the action items.

We have already made tangible progress in addressing some of the challenges in the report. One issue identified in the report is ISCD's ability to complete facility's site security plans—site security plan reviews in a consistent, reasonable, and timely fashion. To help overcome past difficulties in meeting this challenge, ISCD is utilizing an interim review process that allows the Department to authorize Tier 1 facility plans in a more effective and timely manner. Using this interim approach, over the past few months ISCD has been able to more than quadruple the number of conditionally authorized plans. Specifically, throughout all of 2010 and through November 28, 2011, we had conditionally authorized 10 site security plans. In the subsequent 2 months leading up to January 23 of this year, we conditionally authorized an additional 43 Tier 1 site security plans. ISCD expects to complete our review of all Tier 1 site security plans and to notify the facility's of ISCD's decisions on those plans within the coming months. ISCD also expects to begin issuing authorizations to Tier 2 facilities during fiscal year 2012. While this interim review process is underway, we are also working on an even more efficient long-term approach to site security plan reviews for facilities in Tiers 2, 3, and 4.

This is one example of how we have identified programmatic issues such as the lack of an efficient site security review process and found workable solutions to ensure near-term improvements and progress, as well as the long-term success of CFATS. While not every action item will have a near-term or simple solution, what I can tell you is that I am very proud to represent the hardworking men and women of the CFATS program and I am confident in our ability to address these challenges together.

I welcome your questions and look forward to working together to further the success of this important national security program.

[The prepared statement of Mr. Wulf follows:]

David Wulf Opening Statement

I would also like to thank the Members of the Committee for the opportunity to testify before you today. In July of last year, Penny Anderson and I assumed our positions as Director and Deputy Director, respectively, of the Infrastructure Security Compliance Division (ISCD) - the Division within NPPD that manages the CFATS program.

In response to the Under Secretary's request that we provide a fresh perspective on the program, Penny and I produced an internal assessment of what we see to be the essential priorities, challenges, and action items necessary to the success of the program, Both Penny and I feel strongly that while the challenges we have identified are not insignificant, they are also not insurmountable.

I welcome the opportunity to answer any questions you might have on the background and context behind the challenges we cited, but I would also like to echo the Under Secretary's focus on the action items.

While not every action item will have a near-term or simple solution, what I can tell you is that I am proud to represent the hard working men and women of the CF ATS program, and I am confident in our ability to address these challenges together. I welcome your questions, and look forward to working together to further the success of this important national security program.

Mr. SHIMKUS. Thank you, Mr. Wulf. What I would ask—I am looking also at the staff, I don't think we have a copy of that and some members may want to refer to that, so if I can get staff to grab a copy of that and get it copied so that we can distribute it, because we did have the Under Secretary's opening testimony for the record.

With that, I would like to recognize myself for 5 minutes to begin questions. I am going to bounce around a little bit, but the first one, we are in a very fiscally constrained environment, Under Secretary, as you understand, and with the challenges that are going to occur to our military, 45 billion to 90 billion a year that could be cut, we at the national level are going to be looking for everywhere we can go to try to adjust dollars so that we can meet the needs of the primary role of some of the Federal Government's operations.

So let me start with just this whole—this budget type question. The Anderson-Wulf memo states on page 15 that ISCD lacks a system for tracking the usage of consumable supplies which creates an environment for fraud, waste, and abuse. Our concern is this not an IG or GAO saying that, this is a program manager describing their own program. How can a member of Congress choose to fund a program that is so self-described?

Mr. BEERS. Let me begin the answer to that question and turn to my colleague here. The report notes these deficiencies in the program. We had asked for a management review of the program in December of last year. That program review was completed while this particular report was being prepared and was incorporated into the report, and the comments that you see are part of an effort by management at the most senior level—that means me—asking to make sure that, in fact, this program was working properly.

I want to turn to Mr. Wulf now to talk about what we are going to do about these findings.

Mr. WULF. I would just add that, you know, we did not find any actual indication of fraud, waste, or abuse with regard to the purchase and tracking of supplies. We found that a system was not in place, and it is something we have already moved forward to address. We——

Mr. SHIMKUS. Let me reclaim my time, and I—we know there are action items. We are going to move forward. But that is obviously a major concern that the—that we are going to have to deal with, not just the committee ourselves but our colleagues in this whole debate. So we will go ahead and follow this. I do appreciate the fact that you in July brought Ms. Anderson and Mr. Wulf on board.

I guess a question would be since you have been on board, Under Secretary, since June 19, 2009, what took you so long to have an overview of this program?

Mr. BEERS. The initial indications of concern surfaced in the following year. Prior to that, I had definitely had the sense that the program was an evolving program, that changes were being made, but they were being made in due course with appropriate diligence by the program managers. In July of 2010, I discovered a discrepancy in the way that people were being paid within the program, and moved at that point to correct it. In the fall of 2010, we posted an announcement to——

Mr. SHIMKUS. And let me—not to be disrespectful, just to move to another question, because the timeline is kind of important for us because you testified before us March 31 of 2011 and statements were made. Again, that is—my comments back to Mr. Waxman was, you know, we were given a pretty good signal that things were going well. There were small problems but nothing major.

One of the questions I asked you was about the high-risk tiering process and the reasons for a drop in the number of those facilities tiered. This is—at that time, I was not aware of any mis-tiering problem. Were you?

Mr. BEERS. No, I was not, sir.

Mr. SHIMKUS. And that is—if not, when did you first learn about the tiering problem?

Mr. BEERS. I first learned about the tiering problem in the beginning of June of this last year.

Mr. SHIMKUS. Was it the earliest time, to your knowledge, that DHS personnel discovered that some facilities have been mis-tiered was the month that you had given? Was there—in other words, were there other folks within the Department that knew that this tiering process was all messed up?

Mr. BEERS. There was an indication in May of 2010 that there might be a problem with respect to tiering. The individuals within the office looked at the problem and felt that they had resolved the problem and informed people up the chain of command. I did not know that there was a problem at that point in time. I was not informed of that, and the program went forward from there.

In 2011, with a new acting director of the office, he asked for a review of the program and he discovered that—or rediscovered this discrepancy issue and asked for a much deeper dive into that. That deeper dive is what resulted in the problem being identified to the assistant secretary and immediately to me. And that was in June of 2011.

Mr. SHIMKUS. And my time is expired. Just so we can move forward, we are going to continue—obviously we are going to have to continue to do oversight over this process and I hope, if there are any relevant activities that folks within—under your office that have not been doing their job, that through the legal process of removal that some people can be held accountable, because I do think there are probably—if there wasn't waste, fraud and abuse, there may have been. There may be theft and that would be helpful to understand that the government can correct bad actors.

Now I would like to recognize Mr. Green for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Secretary Beers, thank you for being here.

As I said in my opening statement, it seems like the problems with—for the last 6 years is the inability to hire quality individuals and the lack of morale. I think some of that comes from having year to year reauthorization. Mr. Wulf said in his statement, but I apologize, none of us have a copy of your statement, Mr. Wulf, what has been done since the memo was released or since mid-December or since it was released on the 23rd, there has been some action that has been done that we haven't heard about except this morning.

Mr. Beers, do you know Mr. Wulf's statement about some of the things that have been done in the last month or so?

Mr. BEERS. Yes, I do, sir. I want to start this response, but I also want Mr. Wulf to respond as well. We have looked at the training issues that were identified in the report. We have removed the impediment for hiring training officers within the program so that that can go forward, and we have begun to look at the training requirements in order to take the people who were hired who may not have adequate training for that position that they are in. But lastly, the other thing that we need to focus on here is we have to define what it is we, in fact, expect from our inspectors when they are doing the final site authorization inspections and when they are doing compliance inspections. David?

Mr. WULF. I would add that, you know, we are very excited about the progress we have made in the past couple of months on the review of the Tier 1 site security plans. I believe the progress we have made in that regard and the statistics I mentioned are included in the written testimony as well.

We have a very aggressive plan to move forward with the review of the site security plans and to conduct outreach and to get into the reviews of the lower——

Mr. GREEN. OK. I know you gave some hard numbers. I only have 5 minutes; in fact, it is down to 3 now almost.

You gave some hard numbers on what has been done in the last 30 days. Could you reiterate that?

Mr. WULF. Absolutely. We started 2 months ago with 10 Tier 1 site security plans that had been authorized. We are now at 53.

Mr. GREEN. OK, and that is the only hard number that you gave in your testimony? Like I said, we don't have your testimony and it is hard to go over something outside——

Mr. WULF. Absolutely, absolutely. So we have done—we have authorized 43 or conditionally authorized 43 additional Tier 1 site security plans.

Mr. GREEN. OK, and——

Mr. BEERS. All those were taken from my testimony. Those facts are all in my written testimony.

Mr. GREEN. OK, but was that based on actually site visits or is that from what has been provided by the companies?

Mr. WULF. That is based on what has been provided by the companies, in some instances following compliance assistance visits conducted on the sites by our chemical security.

Mr. GREEN. OK, let me get to another issue I have talked about. I mentioned about the personal security program which was submitted on June 14 of last year by OMB and listed as the third priority in the DHS memo. I am aware that we need to screen individuals against the terrorist screening database. As the proposed personnel security program would require each facility to submit background information on all existing personnel within 60 or 90 days upon implementation for existing personnel, any new unescorted individuals will not be classified as personnel will need, if they have a TWIC card, their information submitted to DHS within 24 or 48 hours.

In the real world, we went through a big roll out of the TWIC card a few years ago, and it was not as smooth as we would have

liked. In fact, I think there are 260,000 TWIC cards issued in our district in the port of Houston. And so when you are going to overlay it with a personal security requirement, what did the TWIC card not cover that you think we need now under the personnel assurity? Because I am concerned about reinventing the wheel, even though like I said, it wasn't—the wheel didn't run too well earlier, but it is running pretty well now.

Mr. BEERS. Sir, let me clear up some perhaps misunderstanding of the way we intend to use the TWIC card. We will accept the TWIC card as a proof of a background check. We would like to know the names of the individuals who come onto the site who have TWIC cards in order to determine that the TWIC card is, in fact, still valid, but anybody who possesses a TWIC card, that will be the standard—that will be an acceptable standard, and anybody who might have access to getting a TWIC card can do so to use that in lieu of any other background check.

Mr. GREEN. OK. I want to make sure that is what was submitted, because I have some concern about that. Sometimes what we hear and what even passes in law doesn't get to the final stage. Was that submitted that the TWIC card would be the ID when submitted to OMB?

Mr. BEERS. David?

Mr. WULF. The leveraging of TWIC and other existing credentials is part of the—was part of the information collected and was submitted to OMB.

Mr. GREEN. Well, I would feel comfortable seeing in writing what you said, Secretary Beers, about the TWIC card because again, we have thousands literally, I don't know how many hundreds of thousands around the country that we don't want to also have a breakdown in redoing something. And I know working with the industry and the bargaining units and everything else is something that ought to be important.

And I know I am over my time, Mr. Chairman. I have a number of other questions I would like to submit if we don't have time today.

Mr. SHIMKUS. Without objection, I thank my colleague and I would like now to recognize Mr. Murphy from Pennsylvania, the vice chairman of the committee, for 5 minutes.

Mr. MURPHY. Thank you, Mr. Chairman.

Secretary Beers, the memo states that CFATS must build on—in its ability to critically evaluate itself and conduct mid- and long-range planning. So to that end, let me ask for your candid responses. Why was this not done until now?

Mr. BEERS. I beg your pardon? By whom, sir?

Mr. MURPHY. Why was some of this not done until now in terms of really evaluating itself? Was there anything that stood in the way of delaying this kind of self-evaluation?

Mr. BEERS. No, sir, there wasn't anything that prevented it. As I indicated to the—earlier, we have had several reviews. This is the most extensive one which we have asked for, but we have had several reviews over the course of the program since I became the Under Secretary.

Mr. MURPHY. Let me—just for clarification, who sets the CFATS goals and objectives for each year? Who is responsible for that?

Mr. BEERS. I am sorry, sir?

Mr. MURPHY. Who sets the CFATS goals and objectives for each year? Who is responsible for doing that?

Mr. BEERS. Sir, the program directors provide those goals. They go up the chain of command to the assistant secretary and on to me. Ultimately, I am responsible for them.

Mr. MURPHY. Are those public information, in terms of those annual goals and objectives?

Mr. BEERS. I will have to check, sir. I don't know whether that is public information.

Mr. MURPHY. OK, and how do you measure those goals and objectives? Is that something you have in terms of internal documentation of how you review those?

Mr. BEERS. Sir, let me ask David Wulf to answer that.

Mr. WULF. There are established performance metrics that we prepare and send up the appropriate chains. The performance is measured with respect to things such as numbers of inspections conducted, percentage of inspections conducted as compared to the totality of the regulated community.

Mr. MURPHY. Well clearly from the evaluations, things that you are talking about—and I add my comments to the chairman's in terms of we appreciate getting your candor on these. But in addition is who would like know, are these factors—are these evaluations somehow factored into employee compensation, such as raises or bonuses?

Mr. BEERS. Sir, as a general matter with respect to the entirety of NPPD performances factored into the issue of bonuses or promotions, Dave, do you want to add anything specifically?

Mr. WULF. I would echo the Under Secretary's sentiments. Meeting our performance goals is and will be a significant measure for us in assessing allocation of bonuses.

Mr. MURPHY. Do you know if any of the CFATS employees or superiors received a bonus since 2009?

Mr. WULF. I am sorry, sir, could you repeat that?

Mr. MURPHY. Do you know if any of the CFATS employees or supervisors or superiors received any bonus since 2009?

Mr. WULF. I don't have that information. We could——

Mr. MURPHY. Would you let—it may be helpful to this committee if you would let us know in conjunction with some of the information given. We would appreciate that.

Let me also say, the Anderson-Wulf memo that you have states that employees felt uncomfortable delivering bad news to superiors. So to what extent does the failure to inform you caused by this chill work environment, and who chilled the environment that—was it you, someone else? Who in the chain of command had that effect? Secretary Beers?

Mr. BEERS. Sir, let me start in answering that. I have said as a management principle based on my 40 years in government that I appreciate hearing bad news and I don't want to hear bad news from anybody else. This particular issue has been used as a teaching moment by me for the entirety of my workforce, because no one, no one should feel that they can't tell me bad news, because bad news is usually something that we can do something about, and if we don't hear it, we can't do anything about it. I can't speak

to the culture within the office that—and the words in the report, but I want you to understand that to all of the people who work for me, I say that time and again. I am perfectly prepared to hear bad news, and I really don't want to hear from somebody outside the organization.

Mr. MURPHY. As a Navy officer, I admire a Marine officer saying that. I recall the former chairman of the Joint Chiefs of Staff, Admiral Mullen, saying that as he climbed the chain of command the food got better and the news got better, too. Unfortunately, it is important to have that bad news coming up.

So are you confident now that you are getting full accurate information, full disclosures on CFATS information?

Mr. BEERS. Sir, I have complete confidence in Penny and David making sure that that information comes to me, and they know that I want to hear it and they know that I want to fix problems that they surface to me to the extent that I have the power to fix it, so yes.

Mr. MURPHY. Mr. Chairman, I am over my time. Could I ask Mr. Wulf to give an answer to the same question?

Mr. SHIMKUS. Yes.

Mr. WULF. Sir, I can confirm that Director Anderson and I received the message the Under Secretary was just discussing that he wants the bad news within the first week or two of our arrival on the job, and that is very much the spirit in which this report was written for him. Yes, within the organization I can't necessarily speak to how the culture evolved, but I can tell you that Penny and I have gone to great lengths to create a culture of transparency, a culture in which our employees are not afraid to raise issues that they view as problems. We have an open door policy. We have all hands on meetings on a regular basis, and we have made it clear that we don't tolerate repression of concerns that folks may wish to bring up.

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

Mr. SHIMKUS. Let me, before I yield to the chairman emeritus, Mr. Dingell, let me ask unanimous consent for 5 days for members of the subcommittee to submit opening statements for the record. Without objection, so ordered.

Now I would like to recognize Mr. Dingell for 5 minutes.

Mr. DINGELL. Mr. Chairman, thank you for your courtesy.

Secretary Beers, why did you commission a top-to-bottom study of this program?

Mr. BEERS. Sir, when it became evident to me that, one, we had a re-tiering issue that was brought to my attention in June, and that we had had an issue about locality pay and we had had a slowness in terms of the approval of site security plans, that I needed to make sure that the new management which we had brought in to take over the program and make sure that it was running solidly brought their full attention to giving me as accurate a picture as possible in this program.

As I said earlier, we had already commissioned a management study which was completed during the time that the report was prepared, and that was part of the report as well. So the final request of Penny Anderson and David Wulf was the result of an in-

creasing concern on my part that the program was not running well.

Mr. DINGELL. Thank you, Mr. Secretary.

Now, is Department of Homeland Security working to engage the industry in helping to get this program successfully implemented? Yes or no.

Mr. BEERS. Absolutely yes.

Mr. DINGELL. Mr. Secretary, I know there has been some controversy recently regarding some misclassified facilities. Can you assure me and the members of this subcommittee that you have properly addressed this issue and that you have correctly identified high-risk facilities? Please answer yes or no.

Mr. BEERS. Yes.

Mr. DINGELL. Now these questions to Mr. Wulf.

Mr. Wulf, as your internal memo points out, there have been a number of challenges in implementing this program. Do you believe that the program is fixable? Yes or no.

Mr. WULF. Yes.

Mr. DINGELL. You do agree or believe it is?

Mr. WULF. Absolutely.

Mr. DINGELL. Thank you.

What are the top two or three things that need to be addressed to bring this about, in your opinion? The top two or three things.

Mr. WULF. I would say the SSP, the site security plan review process, which we have already begun to move forward considerably over the last 2 months, and preparing our inspectors and our—the rest of our team to move forward and conduct authorization and compliance inspections.

Mr. DINGELL. Now what progress have you and the Department made in addressing these issues?

Mr. WULF. We have quadrupled the number of Tier 1 site security plans that we have conditionally authorized just over the last 2 months. We have commissioned an inspector tools working group as well to develop the standard operating procedures, other policies, and to determine what tools our inspectors will need as we move forward to the next stages of this program to actually conduct authorization inspections and to get into the regular cycle of compliance inspections moving forward.

Mr. DINGELL. Thank you, Mr. Chairman. You will note I returned 1 minute and 27 seconds. Thank you.

Mr. SHIMKUS. Thank you, Mr. Dingell.

Now I would like to recognize the gentleman from New Hampshire, Mr. Bass, for 5 minutes.

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

I am not as familiar with the substance of this program and its history and so forth. I don't have a lot of facilities in my area. I am, however, very concerned about this memo. We have oversight responsibility, and to some extent, we are as vulnerable, if you will, to criticism for failure to be—to perform adequate oversight and be vigilant about the use or abuse or alleged abuse of taxpayers' funds. And that is why this memo is bipartisan, because we all know that we have a responsibility to make sure that the government is run well.

I am also a businessman, and have over my life hired and fired people to do things. I don't like to fire people, but it happens. Mr. Beers, if you were in my position, looking at this report, would you consider yourself to have done a good job on your role to date?

Mr. BEERS. Sir, as I have said publically before, I hold myself responsible for this—these sets of problems, and I am committed to fixing them.

Mr. BASS. If you were your own boss, would you keep you on the job?

Mr. BEERS. I can't answer that question, sir.

Mr. BASS. I mean, do you—have you considered the possibility this might not be the right role for you, and it might be time for you to step aside? Mr. Barton referred to it in his opening statement.

Mr. BEERS. Sir, I consider that every day I work for the Federal Government. I swore an oath of office on at least three occasions to protect and defend the Constitution of the United States, and I believe in that. And if I believe I can't do the job, then I will walk away from it as I have done before.

Mr. BASS. Do you think it is unusual to have an action memo that for all intents and purposes, you are not really disputing, with 70 different recommendations, a lot of which are noted in progress? You also noted in your testimony or answered a question a minute ago that you could address these issues "to the extent that I have the power to fix it." Do you have the power to fix these—all of these problems?

Mr. BEERS. As far as the issues within this particular action plan, yes.

Mr. BASS. So would you——

Mr. BEERS. But with respect to Mr. Green's comment about TWIC cards, no, I can't make the TWIC card be broader than the current authorization of the TWIC card, which means that you have to be a transportation worker.

Mr. BASS. All right. Well, Mr. Beers, this is a disturbing memo. We appreciate the fact that it has come to our attention, and I certainly hope that we—that you understand that most of us haven't seen anything like—this is a very unusual and unusually poorly run agency. If it is not going to—if at any time you believe that you are not the right person to turn this troubled agency around, that maybe there ought to be a different managing structure.

So having made that point, I think—I hope that the committee will carefully watch the progress in this action plan, because the American taxpayers are not going to stand for this kind of alleged or perceived incompetence in management for this very important agency to our Nation's security.

Mr. SHIMKUS. Would the gentleman yield to me——

Mr. BASS. Yes, sir.

Mr. SHIMKUS [continuing]. For the remainder of your time?

I want to follow up on this. We really got to get a handle on this card issue, and we would like for you to provide us your legal opinion of why you cannot deal with this TWIC card. We think you can. We, and that is the Energy and Commerce Committee, have been in discussions with Homeland Security for months trying to resolve this. We think it is within your jurisdiction and if it is not, we

would like to see the legal reasoning why it is not so that we can change the law. We think it is within your power now, and I think my friend, Mr. Green, would be very pleased if we can get a handle on this. So help—work with us. This is an issue, again, that was brought up in the March—in March of last year's hearing that we thought we were moving in some direction, and there have been multiple consultations with Homeland Security, and we are not any further than we were in March of 2011.

I would like to yield to my colleague.

Mr. GREEN. If the chairman would yield? I know we went through this last year, and because the TWIC card is under Department of Transportation and Coast Guard, I know there is an issue with Homeland Security. I just don't want to reinvent the wheel, because so many times those same workers that work on the dockside are also at an inland plant. And so that is why I would hope with interagency agreement, although in 908 earlier this year our committee passed, we gave that authorization there language, but it hasn't passed and hadn't passed the Senate, so we need to work on it.

Mr. SHIMKUS. And reclaiming the time, I would just say that Coast Guard is under Department of Homeland Security. This should not be difficult to do.

Now I would like to recognize Mr. Pallone, my colleague from New Jersey, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman.

We are here this morning to discuss issues facing the Chemical Facility Anti-Terrorism Standards, or CFATS, program, and we are talking about this leaked DHS internal memo from 2011 that clearly shows that DHS faces serious implementation problems with the CFATS program, most notably that the Department has received 4,200 site security plans but has yet to approve a single one. The CFATS program was enacted as a rider to the 2007 Homeland Security appropriations bill in order to give Congress time to enact comprehensive legislation, and we did just that in the 111th Congress by passing H.R. 2868 in the House. That bill provided a comprehensive security program to protect Americans living near these facilities, but unfortunately the Senate did not take it up.

I am not here to claim that H.R. 2868 would have magically fixed all the problems outlined in the DHS memo, but it certainly provided a much stronger framework to protect the more than 100 million Americans that live in the danger zone of a chemical disaster.

Last May, this committee had the opportunity once again to exercise its jurisdiction and set forth a full authorization of this program to replace the vague and inadequate CFATS program enacted in 2007. Unfortunately, the committee decided not to address shortfalls with the CFATS program, and just moved a simple extension of the current law.

Mr. Chairman, in New Jersey we have the unfortunate combination of both a large number of chemical facilities and a high population density, so the consequences of insufficient security are dire. I regret that this committee has not taken a more proactive approach to securing these facilities, and I will continue to push for

a more comprehensive security program to ensure the safety of my constituents living in the shadow of these facilities.

Now to questions. The November 2011 DHS report begins to explain why nearly 5 years after these regulations went into effect, not a single site security plan has been approved. It reveals that this committee was rash, in my opinion, in passing legislation to rubber stamp the program for 7 years without investigating or addressing the program's shortcomings. Many of us have heard from those in the business community that the CFATS program is still strong and that businesses have done everything that they are required to do under the program. According to industry representatives, we should be comforted to know that companies have acted prudently and are prepared for compliance inspections, should the Department ever begin to conduct them.

I hope this is true, but our national security is inherently a governmental function. Many members of this committee have worked for years to establish a robust regulatory structure for chemical facility security, and none should be satisfied with the suggestion that approvals and inspections are insignificant or that the role of the Department in this program is insignificant.

Now Under Secretary Beers, do you think that the Department of Homeland Security should play a role in ensuring that our chemical facilities are secure?

Mr. BEERS. Sir, I strongly believe that the Department has a role and that the office that is tasked with doing that can play that role.

Mr. PALLONE. Do you think that the Department must play a role? I mean, do you think that it is absolutely necessary that they play a role?

Mr. BEERS. I am sorry, sir?

Mr. PALLONE. Do you think that the Department must play a role, that it is absolutely crucial that they play a role?

Mr. BEERS. I think that the original intent of the Act is absolutely appropriate, and yes, the Department must play a role.

Mr. PALLONE. Would you say that site security plan approvals and compliance inspections are necessary and important to ensure chemical facility security?

Mr. BEERS. I think that they are absolutely essential to making this program work effectively.

Mr. PALLONE. Well, I mean, I agree with everything you have said, and I think the failure of the Department to complete security plan approvals and compliance inspections is a very serious issue. I am glad to see that the Department is treating it as such, and I welcome the opportunity to work together towards a strong and effective program.

But I guess the point I am really trying to make here is that this committee has a responsibility to put together an appropriate comprehensive authorization bill, and not simply rely on this paragraph or whatever it is, I mean, it is like this long, in an appropriations bill that really doesn't give you sufficient guidance or mandates or inspection or enforcement capability to do what you have to do. So I am not—I understand that there are all kinds of problems with the Department, but I think a big part of the problem is that you never had a comprehensive authorization bill to tell you

what to do and to give you the authority what to do. I mean, we could sit here all day and talk about how bad you are, and you know, there certainly are problems, but I think that it is our responsibility to do something more comprehensive to provide the guidance, Mr. Chairman. That is my only point. Thank you.

Mr. SHIMKUS. The gentleman yields back his time.

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

Mr. LATTA. Thank you, Mr. Chairman, and gentlemen, thanks very much for being here today. We have such short little time to ask all these questions, but if I could, first, is it my understanding and am I correct in hearing that we spent about—$480 million has been appropriated for the program since its inception? Is that correct?

Mr. BEERS. Yes, sir, I believe that is the right number. I can give you the exact number if you want.

Mr. LATTA. OK, but that is a ballpark. Thank you.

And as Chairman Emeritus Dingell does, he is very good at getting his rifling in on his questions, yes or no, but one thing I want to go back to is the question about working with industry. You said that you are working with industry, but you know, as we—reading the report that came through and looking at the site security plan that, you know, again as has been said a little bit earlier, that we have received—that you have received about 4,200 SSP submissions and that none have been approved.

Did you ever hear from industry during this timeframe that gee, what is going on? These things have been submitted but we are never hearing back from the Department.

Mr. BEERS. Yes, we did receive inquiries from the industry about when they were going to be approved.

Mr. LATTA. Do you know how many inquiries you have been receiving?

Mr. BEERS. I don't have that information at the tip of my fingers, sir.

Mr. LATTA. Do you know when you might have received the first inquiry?

Mr. BEERS. Excuse me?

Mr. LATTA. Do you know when you might have received the first inquiry from industry as to when they might have these approved?

Mr. BEERS. No, I can't tell you precisely when, but I can get you that information.

Mr. LATTA. OK, because again, going back to the earlier testimony that when you are looking at, you know, those 5–1/2 years since the enactment of CFATS, and that is also the stats of the statute itself, and 4–1/2 years since the final rule. It kind of—I really would like to find out when these—the industry that was being regulated was finding out if they were or not being approved, because you know, there is quite a timeframe there.

Let me go to the other thing that Mr. Wulf had brought up a little bit earlier saying that, you know, there is going to be an—and I am sorry, again, I don't have it in front of me but I just kind of wrote it down—saying that you are going to have an open door policy and not afraid to raise issues. The reason I bring this up is I was a county commissioner for 6 years, years back, and we had

about 1,100 employees in the county. We regulated all kinds of things. We had a lot of different departments. It wasn't unusual for an employee that worked in one of those departments that served underneath the Board of Commissioners to bypass their supervisors and call me at home, or being from, you know, a county of 125,000, they would run into you at the county fair, they would talk to you at the grocery store, or they would say can I talk to you someplace else? Did you all get any contact from anybody at any time saying gee, I would like to talk to you about something that we think there is something wrong going on with the program?

Mr. BEERS. Sir, on this particular program, yes, and that is part of the reason that some of the efforts in order to investigate problems took place in the past.

With respect to bypassing the chain of command, in order to prevent that particular problem, we in management and I in particular have meetings with either individuals or groups of people throughout NPPD that are well down in the chain of command in order to elicit their thoughts and suggestions so that we can improve the program overall.

Mr. LATTA. OK, let me ask you this question. Do you know when you might have started first getting an inclination that there was something wrong with people contacting you, going—bypassing the chain of command to say, you know, there is something really wrong here in personnel or the way the program is being run?

Mr. BEERS. —that I can report to you on is in the—excuse me. The first instance that I can report to you that this occurred would be in the summer timeframe of 2010 when it came to our attention because of a report by an individual that there seemed to be a problem with the locality pay. As soon as we found out that that was an issue, we took that on and went through the process to determine what had gone wrong in terms of the appropriate pay to the individuals involved.

Mr. LATTA. So this would be actions. So the first inclination would be a couple of years after the program was put in place, would that be correct?

Mr. BEERS. Yes, sir.

Mr. LATTA. OK, thank you.

And just real quick, I know my time is running out, Mr. Chairman, but if we could get some of that information back because again, you know, I really, really hope that that open door policy really does exist and that folks aren't afraid to come forward, because this has got to work. Again, when you look at the number of—with 4,200 SSPs that have been submitted and trying to get these things caught up, it is very , very important not just for the Department itself, but for all those industries out there trying to comply.

And with that, Mr. Chairman, I yield back.

Mr. SHIMKUS. Gentleman yields back his time.

The chair now recognizes the gentleman from Georgia, Mr. Barrow, for 5 minutes.

Mr. BARROW. I thank the chair. I would like to yield my time to the ranking member of the subcommittee, brother Green from Texas.

Mr. GREEN. Thank you. I am going to revisit the personnel assurity, but Mr. Wulf—and I appreciate the update that you had. I saw your testimony and I am going to encourage the chair that maybe two or three months from now, we invite you back to enjoy our hospitality again and see how far along we are, because this is such an important issue or a lot of areas. I know Mr. Pallone and mine, we have substantial chemical facilities that are not waterside based.

Let me get back to personnel assurity program, because that is something that is sensitive, because I have plenty of plants on the water, but also plenty of plants that are not. The same company owns them, and often times they transport personnel back and forth. My concern is what was submitted from the OMB that the OMB did not recognize that the TWIC card, from what you said in your testimony, would be used. And I can understand why something regulated by your agency can't apply for a TWIC card. But it seems like in the Federal Government we could use the same database. The Coast Guard, Department of transportation, the TWIC card, and use the same database for the background and the TWIC card would be interchangeable.

And my idea, and I can tell you, you know, some of my folks are going to be frustrated if they end up having to pay another few hundred dollars to get a second card because their company transfers them some where and not all companies are really nice and they say no, that is part of your requirement for the job. You have to have your driver's license to drive the company car. So that is my concern. The proposed personnel assurity program will require facilities to submit background information on all existing personnel within 60 or 90 days upon the implementation, and any new unescorted individuals who are not classified as personnel would need—even if they have a TWIC card, their information submitted to DHS 48 hours in advance. Was that part of the submittal to OMB, because that doesn't sound like you are getting TWIC cards consideration.

Mr. BEERS. Sir, I believe that is part of the submittal to OMB, and what I am trying to convey here is that we are looking at all of the opportunities to leverage the various cards and want very much to go in the direction that you want to go.

Mr. GREEN. OK. Well—and I know there may need to be an interagency memorandum to work together, and I know sometimes our Federal agencies don't like to do that, but we have—it is redundant information if we are using the same database. And I don't understand why DHS, as we proposed in two separate legislations earlier, harmonized TWIC with the leverage and the operational—the background checks. Is there a justification or an incident that I am not aware of that have existed within the TWIC system that would require DHS to go beyond TWIC?

Mr. BEERS. I am not aware of any, sir.

Mr. GREEN. OK. And it seems to be—because I try and stay pretty close to the ground there with a lot of my folks, and I have not heard on. In our area, people may not like some of the chemicals that we produce, but they are things that we don't—they produce them because somebody needs them in our country, and we want to make sure they are safely produced both for the people that live

around it, but the folks on that plane. Every time I talk about the issue with DHS, you assure me they incorporate TWIC. I just want to make sure it goes forward from that, and I think maybe we will even contact OMB and express that concern that don't reinvent the wheel, even though we have two separate Federal agencies and hopefully that would come from both agencies, including Department of Transportation. They use the same database that you have.

Mr. Chairman, I don't have any other questions. I would be glad to yield back to my colleague from Georgia, and I appreciate his courtesy.

Mr. SHIMKUS. The gentleman from Georgia yields back his time. Chair now recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman, and I certainly thank the two of you for being here today, and Mr. Wulf, I want to thank you and Ms. Anderson for the work that you have done on this. This may come as a shock, but you know, it is not always surprising to us to learn that an agency may be dysfunctional. So this is not always a surprise.

But we appreciate the candor and no one should ever be criticized or subject to anything for being very open, which you and Ms. Anderson have done, so I thank you for that. I believe that gives us some input.

But I wanted to ask you a few questions, if I may, Mr. Wulf?

You know, as I looked through the report, one of the things that you spent some time on was the issue of unions within the organization. Can you tell me when the workforce in the division was unionized?

Mr. WULF. I can't give you an exact date on that. It was before Ms. Anderson's and I arrival, but I want to say spring of last year, maybe March.

Mr. HARPER. Well let us—can you tell me, does each worker have to cast a vote in order for their votes to be recorded, as far as do you know how the process works? Non-voters are considered voters to unionize, how that is counted?

Mr. WULF. I am not completely certain about that process.

Mr. HARPER. Can you get me that information?

Mr. WULF. Absolutely.

Mr. HARPER. That would be great. Can you tell me how many employees there are in the CFATS program, and how many are eligible to be represented by government unions, and how many affirmatively voted to be represented by unions?

Mr. WULF. I don't have the totals on the voting, and I will say, there are approximately—and I don't have the exact numbers in front of me—a little more than 200 Federal employees in the CFATS program. Of those who would be eligible for union—or to vote in a union membership, that would be our field force, non-supervisory field force, so a little bit under 100 of those.

Mr. HARPER. At the time of unionization, were all programmatic and accountability measures and job descriptions in place that applied to that workforce?

Mr. WULF. As we noted in our report, we are continuing to refine the requirements for the sections and——

Mr. HARPER. Well, explain what—when you started out in your report and you said that the presence of the union at this stage in the program will have a significant negative impact, explain that.

Mr. WULF. I appreciate the opportunity to provide a little additional context to that.

Mr. HARPER. Yes.

Mr. WULF. The report was not intended to be a statement concerning whether unions and Federal workforce are good or bad, but rather a recognition of the fact that this is a program that is very much in its emerging stages, and we are very much in the midst of putting into place policies and procedures for the conduct of inspections, for the operation and review of site security plans, and so forth.

So it certainly adds a layer of complexity that wouldn't otherwise exist. That said, though, along with the union we have very much a shared interest in moving the program forward in a collaborative relationship.

Mr. HARPER. Certainly. We have an overall big picture here of an issue of national security that we have now kind of gotten bogged down and does it not make it more difficult, though, after the unionizations take place to implement some of these policies? Are you not already seeing that even on the reference that you had to the mileage reporting?

Mr. WULF. It does add a layer of complexity, but it also, I think, adds voices in the development of policy that will allow us to develop more sustainable processes moving forward.

Mr. HARPER. What was it, 16 weeks that you reported for the mileage requirements to be done?

Mr. WULF. I believe that was the estimate.

Mr. HARPER. While I understand the need, everybody has got to work together. The fact is that this has caused delay, has it not? Why don't I not make you answer that question. I think we know.

I appreciate your time, Mr. Wulf, and for you and Ms. Anderson to be so candid with your situations. Thank you.

Mr. SHIMKUS. The gentleman yields back his time.

The chair recognizes the gentlelady from California, Ms. Capps, for 5 minutes.

Mrs. CAPPS. I thank the chairman for recognizing me, and I apologize for the state of my voice, but I am feeling well. I am pleased to be here and I think you both for your testimony.

The internal Homeland Security report from November, 2011, provides new support for concerns that problems in the statutory language creating the CFATS program hindered its successful implementation. And of course, we are talking about Homeland Security here. According to the report, CFATS personnel have not yet determined how to systematically review site security plans. Although the Department has set up an interim process to try to get these plans reviewed, staff are still working to develop a process to be used over the long term. Apparently, many initial site security plan reviews have to be redone. The November reports states that they have been found to be, and this is a quote, "inconsistent with the spirit and intent of the program's mandate."

Mr. Beers, can—would you please elaborate on what the report meant when it stated that site security plan reviews had not been

conducted consistently with the spirit and intent of the statutory mandate?

Mr. BEERS. Madam, I can't specifically speak to the reason behind that. I can give you some broader context about what happened with respect to the efforts to get site security plans that, in fact, met the requirement.

As the program was rolled out and as it evolved, the guidelines for the information that needed to be provided in the site security plans failed to elicit appropriate responses from industry. Some of that undoubtedly was or could have been done better if the guidelines that we had put out had been more clear and some of it was simply on the part of industry not providing that information. I don't mean to suggest in any way that that was an intentional act, but it required us to go back to those particular facilities and ask for more information in order to be able to get to a site security plan that, in fact, appeared to meet what we needed to have in order to have a site security plan. That iterative process ended up taking time when those site security plans were initially filed, and that is part of what I regard as the due diligence that we and industry need to undertake together in order to ensure that a plan that is finally authorized and approved is a plan that is capable of providing the kind of security that you all have charged us to build.

But let me turn to Mr. Wulf about the specific comment——

Mrs. CAPPS. And I wanted—yes, briefly if you would, please, so I can go on to another question.

Mr. WULF. About the site security plan review process specifically?

Mrs. CAPPS. Well, it is just why—I am very concerned that these delays have occurred.

Mr. WULF. Yes, we have taken steps to address those through the implementation of our interim review process, and as the Under Secretary and I have mentioned, you know, we, in the last 2 months, quadrupled the number of SSP—of site security plans we have been able to authorize, and I think the future is bright moving forward on that path.

Mrs. CAPPS. I thank you for that, you are trying, and I appreciate the Department is working to address these issues and establish a consistent site security plan review process.

I am concerned, however, that flaws in the law make ambiguity and consistency in the review process unaffordable. I mean, you may have taken care of this one, but it is going to pop up again. That is because Section 550 grants discretion to the Secretary to approve site security plans that fail to meet the risk-based performance standards under this program. The law says only that the Secretary may disapprove a plan that fails to meet those standards.

As many of this committee will perhaps recall—I recall it well, because I offered an amendment during the markup of H.R. 908 that would have changed that word "may" to a "shall" to require that site security plans be disapproved if they failed to meet performance standards. That word "may" is what causes the ambiguity and the having to go back and re-question, and time is of the essence when we are talking about Homeland Security.

So Mr. Beers, back to you again. Do you agree that site security plans failing to meet the standards should be disapproved?

Mr. BEERS. Congresswoman, our objective here is to get the yes, so the notion of disapproval doesn't necessarily accomplish that. The point is, when we say we are not prepared to approve it, that is the functional equivalent thereof. But what we want to do is have a cooperative relationship——

Mrs. CAPPS. Right.

Mr. BEERS [continuing]. With industry in order to say whether or not a plan requires more information or more clarification.

Mrs. CAPPS. And industry needs to have this as well. May I just finish one sentence?

Mr. SHIMKUS. We are trying to get these in before the votes on the floor.

Mrs. CAPPS. Well, I believe that it should be a requirement so that industry is clear about what they need to do.

Mr. SHIMKUS. The gentlelady's time is expired.

The chair now recognizes the gentleman from Louisiana, Mr. Cassidy, for 5 minutes.

Mr. CASSIDY. Thank you. The memo is—one, let me just commend you for asking it be drawn up. On the other hand, obviously it paints a disaster in terms of acquisition, inventory management, attitudes, I mean, it is just a total indictment. Now, as a guy that represents an area with lots of PETRA chemicals, lots of businesses and workers dependent upon this, if I concede the argument that your job is important for safety, it frankly seems not just an indictment of your organization, but it frankly seems to place my constituents at risk.

Now that said, how many employees does this particular division of DHS have?

Mr. WULF. I want to say 206.

Mr. CASSIDY. Two hundred and six?

Mr. WULF. I believe so.

Mr. CASSIDY. Now, this problem seems so endemic. How many have been fired? I mean, it seems like an easy target because they speak consistently of people being hired because they know somebody. People who are—I mean, you list—you can almost write somebody's name in here if you only have 206 people. So clearly, it wasn't how many have been fired. How many are going to be fired?

Mr. BEERS. Sir, with respect to the issue about the re-tiering——

Mr. CASSIDY. No, I mean, just a simple question. I mean, clearly there is an endemic problem here, and it is rife. How many have been fired? It is a pretty simple question if you only have 206 employees, and how many do you have on the chopping block?

Mr. WULF. Sir, with respect to the leadership of the organization, the people who were in the leadership positions in the organization——

Mr. CASSIDY. I only have 3 minutes. Can I have a number?

Mr. WULF [continuing]. Have moved on.

Mr. CASSIDY. How many?

Mr. WULF. That is two people.

Mr. CASSIDY. OK, so two out of 206, one percent, and yet we have people here hired, apparently, because they know somebody, pro-

moted because they know somebody, apparently fudging on their gas reports. We only have two, only one percent? It seems like the organization—and I don't mean this to be kind of snitty, but I am just amazed that we are tolerating this level of incompetence.

Now I am struck. In your document here, you say that—I am quoting from page nine—"We have yet to approve a site security compliance inspection. Moreover, we have not yet determined what it will look like. And yet, since this report was reported in the news, we have quadrupled the number of compliance reports issued." Is that my understanding, or do I understand incorrectly?

Mr. WULF. It is—what we quadrupled is the number of site security plans we have conditionally authorized, which the step that precedes the conduct of an authorization inspection, which then leads to the final approval of a facility's site security plan, sir.

Mr. CASSIDY. OK. So the indictment of the report stands that we are 6 years into this, and we have yet to come up with a compliance inspection program. I just don't know what to say.

Now, I do know what to say. Clearly, there are ways to contract this out. I don't know how you just don't start over with this program, but I understand the Coast Guard has the authority to use an alternative security program. Can we use an alternative security program? I understand, again, you have this authorization already. Can we use that now since it looks like the current program is so dysfunctional to be beyond restitution?

Mr. BEERS. Sir, the short answer is yes, and I will let David describe what we have done with respect to that.

Mr. WULF. We do already have some alternative security programs that have been submitted by industry stakeholders, and we are working very aggressively in partnership with our industry stakeholders to develop some templates that can be used. We can't prescribe a specific template, but we are going to work through some templates that will—the hope is allow for more expeditious, speedy review and approval of——

Mr. CASSIDY. But this does not include contracting out this function, correct? Can you go to a third party to conduct these inspections? I mean, what you describe here is a staff which is poorly hired, poorly trained, and has a poor attitude and has a sense of law enforcement wanting to clear—be called commander and wear pistols as opposed to actually go through and look at something in terms of compliance.

Mr. BEERS. Sir, compliance inspection is an inherently government function. We have to have the people who do that be Federal employees.

Mr. CASSIDY. Now it is my understanding, though, that the Coast Guard actually has an alternative standard, and frankly, Bummerd now has it, the whatever they call the offshore for the oil rigs. They have a third party that is inspecting oil rigs.

Mr. BEERS. I can't speak to the Coast Guard, sir. I am not aware.

Mr. CASSIDY. OK. I have much more to ask.

Mr. SHIMKUS. The gentleman yields—they also have some contractors doing TSA function at some of the airports. It is worth looking into.

I would like to yield now 5 minutes to the ranking member of the full committee, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman.

None of us can be happy about this memo that came out last November, showing how poorly this program is serving the American public. This is a serious matter. This is a matter of national security, possible attacks by terrorists on chemical plants. I note that all of us are concerned, not just the people here in the Congress, but Mr. Beers and others in the administration. We have a stark and troubling picture, but perhaps there is a silver lining, because it appears to me that the Department is taking the situation clearly.

But I want to talk about Congress's role. It is easy at a hearing like this after we get a report of a failure to beat up on the people running the program. But Congress has a responsibility as well. This program was established in an appropriations bill, not a bill that came out of this committee. It was a rider on an appropriations bill. Mr. Beers, is there a provision in Section 550 that addresses personnel hiring?

Mr. BEERS. I am not aware of it, sir.

Mr. WAXMAN. Is there a provision that addresses use of travel cards or purchase cards?

Mr. BEERS. No, sir, I am not aware of that.

Mr. WAXMAN. How about a provision that details how inspections are to be conducted?

Mr. BEERS. No, sir.

Mr. WAXMAN. Is there a provision that explains how background checks should be conducted?

Mr. BEERS. No, sir.

Mr. WAXMAN. Are there any enforceable deadlines in this law that are written in the appropriations bill?

Mr. BEERS. No, sir.

Mr. WAXMAN. The answers to these questions are all no, and the reason is that this committee never held a hearing or conducted a markup on legislation to create this program. So the problems we see today were never contemplated by this committee, and no direction was provided. Now I understand Mr. Barton said you ought to resign, but Mr. Barton was the chair of the committee at the time this law was adopted through an appropriations bill. We tried to get the people who have a stake in this to work out legislation, and the Democrats were in power and I was chairman. We had the chemical industry and others with us. When the Republicans came to power on this committee, they said let us just extend this for 7 years. We will just kick this thing down the road for 7 years.

Now, one of the proponents of doing that was the chemical industry. They were troubled by some of the ideas that we would have further inspections and we would have further deadlines and we would make sure that things happened, but while they participated with us in trying to change the law, they said all they wanted to do this last year was extend the existing law for 7 years. Now this existing law doesn't have much of a requirement on you.

You have established a working group, Mr. Beers, in the Department to look at legislative and regulatory changes and whether they are necessary, is that correct? Speak into the mic and be sure it is on.

Mr. BEERS. I am sorry. Yes, sir, with respect to the entirety of the Department.

Mr. WAXMAN. And the November report identified several statutory limitations on the program that limits effectiveness and includes a rigid and limited enforcement authority. For example, a facility could violate requirements 20 times and they would—and you wouldn't have the authority to take any more action based on repeat violations. That means that they can repeat these violations over and over again, and you couldn't do anything about it. Is that right?

Mr. BEERS. Sir, that is an element of the report that we have looked into as a result of the report. While it is true that just on the face of it the answer to that is yes, we believe we could use our administrative order authority to have some action against——

Mr. WAXMAN. Excuse me, you are going to have to use your regulatory authority to do something that should have been said in the law by Congress. I hope this working group will examine that.

The report calls into question the adequacy of the program's performance standards. That memo said "Without testing to evaluate the effectiveness of the performance standards, adequacy of the standard often is more a matter of opinion or fact." Will your working group give us some recommendations on that issue?

Mr. BEERS. Sir, as we come to recommendations, yes, we will give those to you. We, as you know, have to go through a very formal process.

Mr. WAXMAN. Are you going to examine that issue, I presume?

Mr. BEERS. We will.

Mr. WAXMAN. Well Congress should have examined it as well.

So my point to you is, well, we are pointing fingers at you and you are saying you have excuses and everybody says we are going to do better. I think we all have a burden to bear in the failure, and Congress didn't do its job and we hoped you would have taken up the slack and done the job that Congress should have directed you to do, but I think it is awfully premature for members of this committee to try to put the whole blame on you and say you ought to quit. Maybe some members of Congress ought to quit if we aren't doing our job, or be replaced.

I yield back my time.

Mr. SHIMKUS. The gentleman's time is expired.

The chair now recognizes the gentleman from Colorado for 5 minutes, and we are going to try to get this done and then adjourn the hearing after he is through. They did just call votes.

Mr. GARDNER. I thank the chairman for the recognition, and thank you as well to the witnesses for being here today.

When I first read this memo, it was a little bit like Jerry McGuire meets the Titanic. You have got—just some of the words and phrases used in this memo: unnecessary expenses, unqualified personnel, unsuited for the work, problems with how money spent, foul language, ineffective hiring, unauthorized expenses, inappropriate work behavior, catastrophic failure, perceived cronyism, favoritism. How would you grade your performance on a scale of 1 to 100?

Mr. BEERS. I think this report is a clear indication that the program needs a whole lot of work on it, but I don't think it entirely

recognizes what we have done, and I am not being an apologist, but I do think that it indicates that we have some major challenges which we are prepared to address.

Mr. GARDNER. Unauthorized use of money, problems with how money is spent, are criminal activities taking place here?

Mr. BEERS. Sir, those are issues that we are looking into. When we discovered them——

Mr. GARDNER. You are looking into criminal—possible criminal activity?

Mr. BEERS. If that turns out to be the result of these reviews, the answer to that, of course, is yes. We have an obligation to you and to the American public to do that.

Mr. GARDNER. Do you—I mean, in terms of what you are facing, what else are we missing from this memo? I mean, is this a comprehensive memo or are there other issues that you are finding, other issues that need to be addressed?

Mr. BEERS. Sir, you are asking me to say what the unknowns are here. I am not saying that this memo is the entirety, and I don't think that David would say that. But it does represent a commitment to make sure that we understand the problems as we know them and to come up with solutions to fix that. David?

Mr. WULF. I would just add that I would echo the Under Secretary's sentiments. I would say that the report was focused, you know, as it was intended to be, an internal candid assessment. It was focused very much on the challenges side of the equation. It did not focus as much on the program's successes and opportunities. You know, I would add, too, that we have a very talented and committed workforce within ISCD. We have very committed folks at both headquarters and in the field, all eager to move the program forward. And I think, as I mentioned earlier, you know, the problems we identified in the report are certainly not insignificant, but they are by no means insurmountable, and we are looking forward. We have a nearly 100 point action plan that is in progress. We are meeting on a weekly basis with Deputy Under Secretary Spalding to review progress on those items, and you know, we anticipate continued progress.

Mr. GARDNER. The report identifies several issues with the unionization, the challenges you faced with the union. Can you name any other agencies or offices who deal in anti-terrorism security, national security, who placed a union in the picture before most accountability measures were put in place?

Mr. WULF. I am not aware of any, but——

Mr. GARDNER. OK. Let us talk a little bit about the budget. The memo talks on page 15, and I quote, "ISCD lacks a system for tracking the usage of consumable supplies, which creates an environment for fraud, waste, and abuse." This isn't an Inspector General report, it is not the GAO saying this. It is the program managers describing their own program. So how can a member of Congress choose to fund a program that is so self-described?

Mr. WULF. We recognize some administrative shortcomings in the tracking of funds, and recognizing, too, that this is a relatively new program, relatively new organization, we have put into place safeguards relating to the receipt of goods. As I mentioned earlier, we didn't identify actual fraud, waste, or abuse, just that there

were additional processes that needed to be put into place to ensure that that does not——

Mr. BEERS. And sir, a point of clarification here. That part of the report is actually taken from another review that was accomplished during, started before, and finished during the period in which they prepared that, and it was our own compliance unit that did that, that discovered that. They didn't discover any charges to be laid, but they said that the procedures were inadequate, as the report correctly says.

Mr. GARDNER. Is there—DHS has an Inspector General, correct?

Mr. BEERS. We have an Inspector General and we have also—for the whole department, and we have an office of compliance and security within our own NPPD, and that is who looked into this issue at the Assistant Secretary and my request.

Mr. GARDNER. So the Inspector General has looked into this?

Mr. BEERS. The Inspector General has access to these reports, yes, sir, but this was not done by——

Mr. GARDNER. Have you had conversations with the Inspector General?

Mr. BEERS. With respect to this report?

Mr. GARDNER. Yes.

Mr. BEERS. I can't speak to that. I have not personally had that conversation.

Mr. GARDNER. But he has this memorandum?

Mr. BEERS. As with all of these kinds of reports, yes, they are available.

Mr. GARDNER. They are available or he has them? I mean, have you sent it to him?

Mr. BEERS. I will have to confirm that to you, sir.

Mr. GARDNER. Thank you. And another question I would have, just based on the authorization, would a multi-year authorization give you the surety that you need to pursue programmatic improvements? Would it be helpful for you to be assured that legislatively the program can't change?

Mr. BEERS. As the report says and as we have said for some time, a long-term authorization of this program is vital, both to the workforce and to our security partners and stakeholders in this program. It gives us a longer term stability that a year-to-year unfortunately doesn't provide us.

Mr. GARDNER. On the issue of re-tiering, there are a number of sites that were tiered last fall——

Mr. SHIMKUS. I would remind my colleague that we are getting close to the votes being already called.

Mr. GARDNER. I have some additional questions I will get over to you. I yield back my time.

Mr. SHIMKUS. Gentleman yields back his time, and I appreciate that.

Let me just say in follow-up, I think Mr. Beers testified he would like the law to have been made permanent at the last—at the March hearing, so—but let me also just again thank you, Mr. Beers, for your long career of public service. And this is a part of your portfolio, not your entire portfolio: Marine Corps officer in Vietnam, foreign service, obviously did stuff at the Department of State, Middle East, Persian Gulf, international narcotics and law

enforcement. We get caught up in the heat of battle. We expect you to address these issues and fix them, and that will make further hearings go well.

And just in response to my friend, Mr. Waxman, I love his founding father quote, "Where good laws do well, good men do better." So you can't pass a law for total compliance. It is really the people that make things work, and I think you are going to get a handle on it. I just wish that the people who have left the Department did not get a move, but probably would have been held more accountable to their activities.

With that, I would like to adjourn this hearing. Thank you for your service.

Mr. BEERS. Thank you.

[Whereupon, at 11:17 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

STATEMENT BY CONGRESSMAN G. K. BUTTERFIELD
HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENVIRONMENT AND THE ECONOMY
EVALUATING INTERNAL OPERATION AND IMPLEMENTATION ON THE CHEMICAL FACILITY ANTI-TERRORISM STANDARDS (CFATS) PROGRAM BY THE DEPARTMENT OF HOMELAND SECURITY
FEBRUARY 2, 2012

In 2006, the Appropriations Committee assigned the Department of Homeland Security (DHS) with the unprecedented task of securing chemical facilities across the nation from terrorist attacks. In the absence of regular order, the regulatory tools provided to DHS were vague and incomplete. Clearly, this has stifled the implementation of this crucial program. As the Chemical Facility Anti-Terrorism Standards (CFATS) program is set to expire in October, the Energy and Commerce Committee must be involved in the development of important and useful reforms.

The Committee on Energy and Commerce

Internal Memorandum

February 1, 2012

MEMORANDUM

To: Members, Subcommittee on Environment and the Economy

From: Committee Staff

Subject: February 3, 2012, Hearing on Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS)

On Friday, February 3, 2012, the Subcommittee on Environment and the Economy will hold an oversight hearing at 9:30 a.m. in room 2123 of the Rayburn House Office Building on implementation and operation of the CFATS program by the U.S. Department of Homeland Security (DHS).

I. WITNESSES

The Honorable Rand Beers
Under Secretary for the National Protection and Programs Directorate (NPPD)
Department of Homeland Security

Penny J. Anderson
Director, Infrastructure Security Compliance Division, Office of Infrastructure Protection
Department of Homeland Security

II. BACKGROUND

Section 550 of Public Law 109-295 (Section 550)

Section 550 provides the DHS statutory authority to regulate chemical facilities for anti-terrorism security purposes. Section 550 requires the Secretary of Homeland Security to issue interim final regulations establishing risk-based performance standards for chemical facility security, as well as the development of vulnerability assessments and the development and implementation of site security plans by covered facilities. These regulations apply only to those facilities with chemicals that the DHS Secretary determines present high levels of security risk.

Department of Homeland Security Regulations Implementing Section 550

The Department of Homeland Security issued an "interim final rule" regarding chemical facility security in April 9, 2007, that took effect on June 8, 2007. Under it, facilities with

certain chemicals must perform a "top screen" (i.e., initial assessment of potential facility vulnerabilities) and submit this information to DHS so that DHS can determine if a facility's risk status merits further coverage under CFATS. High-risk facilities are then categorized into four risk-based tiers. DHS established different performance-based requirements for facilities assigned to each risk-based tier with high-risk facilities engendering additional responsibilities including (1) vulnerability assessment development, (2) site security plan formation and submittal, and (3) required implementation of the security plan. High-risk facilities may develop vulnerability assessments and Site Security Plans (SSPs) using alternative security programs so long as they meet the tiered, performance-based requirements of the interim final rule. The Secretary may disapprove submitted vulnerability assessments or site security plans that fail to meet DHS standards but not on the basis of the presence or absence of a specific measure. In the case of disapproval, DHS will identify areas of the assessment and plan that need improvement.

Implementation

At the outset of the program, DHS expected that roughly 30,000 facilities would be required to comply with the reporting requirements of the regulations, with only 6,000 falling into one of the four (4) high-risk categories requiring further regulation.

On March 31, 2011, DHS Undersecretary of NPPD, Rand Beers, testified before the Subcommittee on Environment and the Economy that CFATS covered 4,744 high-risk facilities nationwide and that 4,126 facilities had received final high-risk determinations. In addition, Mr. Beers stated that while more than 4,100 facilities have submitted Site Security Plans (or Alternative Security Programs) to date -- and DHS was in the process of reviewing these submissions, DHS was still issuing final tier notifications to facilities across all four risk tiers.

In addition, Mr. Beers testified that more than 39,000 facilities had registered with DHS and completed the top-screen process. Of these facilities, DHS considered more than 8,064 as high risk and required them to submit a site vulnerability assessment.

Also, Undersecretary Beers testified that DHS was in the process of filling all its positions for chemical facility security officers and inspectors and that DHS planned to continue to hire throughout the fiscal year. He stated, too, that DHS has a total of 188 people either hired or in the process of on-boarding. In addition, DHS has hired 97 of 103 field inspector positions and all of 14 field leadership positions. Mr. Beers further testified that DHS began "inspections" of Tier 1 facilities in February 2010, had completed approximately 175 "pre-authorization inspections" and 350 "compliance assistance visits, and had completed four "authorization" inspections. Facilities that have successfully implemented their approved SSPs and have passed an inspection are in compliance.

Improper Tiering and Delayed Notification under CFATS

To determine if a facility is to be regulated as high risk and, if so, which tier it falls into, DHS uses a computer system that assesses risk based upon potential worst-case scenarios for a particular facility. On July 21, 2011, DHS officials informed Committee staff that in May 2010, CFATS program officials realized they had used improper inputs and modeling in the computer assessments for the formal tiering process, resulting in improper tiering of 600 facilities between

the end of 2009 and spring 2010. In addition, DHS officials made clear that CFATS officials at that time consciously chose to not tell anyone about it. After personnel changes for the CFATS program, an internal investigation in Summer 2011 led to notifications of those facilities that had received a corrected CFATS risk tier as a result of a June 27, 2011, re-tiering process. Specifically, 148 facilities were tiered at a lower risk tier, 99 facilities were found not to need a tier and no longer became subject to CFATS regulation, 41 facilities have either data errors that still need correction or have their redetermination under review, and 175 facilities remain in the same level but will have the risk levels for their chemicals of interest decrease. Total overall numbers, per DHS, as of January 30, 2012 are:

Tier Level	# of Facilities Before Error	# of Facilities Assigned to Tier After Correction	# of Facilities to Change Tier	# of Facilities Awaiting Final Tier
1	216	115	101	7
2	538	456	82	51
3	1,129	1,081	48	175
4	2,243	2,050	193	537

DHS Internal Memorandum on CFATS

Following the "mis-tiering" episode, the new Director of Infrastructure Security Compliance Division, Penny J. Anderson, and her Deputy Director, David M. Wulf, conducted an internal review of the entire CFATS and Ammonium Nitrate programs at DHS, summarizing their findings in a November 10, 2011, memorandum to Undersecretary Rand Beers and Assistant Secretary David Keil. Fox News ran a print story about the contents of the report on December 21, 2011.[1]

The report identifies five (5) main programmatic challenges for the CFATS program: inadequate training capability, an overreliance on hired consultants for expertise, inappropriate transitions for new hires, uncertainty from extremely short program authorizations, and issues regarding job descriptions and the presence of an employee union. It also lists nine (9) staffing challenges for the CFATS program, including inexperienced managers, personnel placed in jobs for which they are not qualified, inadequate internal staff control, and lack of regulatory compliance expertise. Following the internal memorandum, the Department prepared a list of recommendations for correcting the troubles plaguing the program. It identifies the highest program priorities: speeding up the SSP review process, preparing for compliance inspections, and development and implementation of a personnel surety program for CFATS. The only legislative recommendation made in the report was a long-term extension of the existing program.

On January 30, 2012, the Department provided the Committee with the November 10, 2011, Anderson memorandum, together with additional attachments. The document is labeled "For Official Use Only." Members who wish to study the Anderson memorandum prior to the February 3, 2012, hearing may obtain a copy from room 2125 Rayburn House Office Building.

[1] http://www.foxnews.com/politics/2011/12/21/exclusive-beset-by-strife-at-dhs-office-future-anti-terrorism-program-now-in/

III. Staff Contacts

If you have any questions regarding this hearing, please contact Dave McCarthy (dave.mccarthy@mail.house.gov) of the Majority Committee staff at (202) 225-2927.

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DHS Funding for Chemical Facility Security Regulation by Fiscal Year (in millions)

Fiscal Year	Request ($ in millions)	Appropriation ($ in millions)	Full-time Equivalents
FY2007	10	22	0
FY2008	25	50	21
FY2009	63	78	78
FY2010	103	103	246
FY2011	105	96	257
FY2012	99	93	242

Source: Department of Homeland Security, Preparedness Directorate, Infrastructure Protection and Information Security, *FY2007 Congressional Justification*; Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection and Information Security, *Fiscal Year 2008 Congressional Justification*; Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection and Information Security, *Fiscal Year 2009 Congressional Justification*; Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection and Information Security, *Fiscal Year 2010 Congressional Justification*; Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection and Information Security, *Fiscal Year 2011 Overview Congressional Justification*; Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection and Information Security, *Fiscal Year 2012 Congressional Justification*; H.Rept. 109-699; P.L. 110-28; the explanatory statement for P.L. 110-161 at *Congressional Record*, December 17, 2007, p. H16092; the explanatory statement for P.L. 110-329 at *Congressional Record*, September 24, 2008, pp. H9806-H9807; H.Rept. 111-298; P.L. 111-242, as amended; S.Rept. 112-74; and H.Rept. 112-331.

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RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives

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February 21, 2012

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

Dear Under Secretary Beers:

Thank you for appearing before the Subcommittee on Environment and the Economy on February 3, 2012, to testify at the hearing entitled "Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 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 Tuesday, March 6, 2012.

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

Attachment

Question#:	1
Topic:	issues
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: At the March 31, 2011 hearing, I asked you if there were any implementation issues that need clarifying. You mentioned only issues related to personnel surety and agricultural facilities. Clearly, the Anderson/Wulf memo suggests that these were only a tiny tip of the iceberg.

When were you made aware that more than two implementation issues were facing CFATS?

Response: The broader issues began to more clearly emerge in June 2011 when I was notified about the F1 Tiering issues. Although Assistant Secretary Keil and I, as a matter of due diligence, asked the National Protection and Program Directorate's Office of Compliance and Security to conduct a management review in December 2010, the results were not available until September 2011.

Question#:	2
Topic:	priorities
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Do you agree with Mr. Wulf's testimony that the Site Security Plan Review Process and preparing for compliance inspections are the two highest program priorities?

Are those priorities higher than fundamental government management controls?

Response: Yes, the Site Security Plan (SSP) Review Process and preparing for, and ultimately conducting, compliance inspections are the two highest programmatic priorities. Of course, proper program management and fundamental government management controls are essential to the success of any government program, including the successful achievement of the SSP review and compliance inspection priorities. As discussed with this Committee, we are addressing certain programmatic and management challenges through a comprehensive Action Plan. The National Protection and Programs Directorate's senior leadership is briefed on a regular basis on the progress made to address the nearly 100 items contained in the Action Plan. The Department looks forward to continuing to make progress on the Action Plan and working with Congress to ensure continued success in the CFATS program.

Question#:	3
Topic:	ISCD
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: ISCD does not appear to have an adequate level of confidence in its expertise to approve site security plans. If DHS/ISCD begins to rapidly approve SSPs, or for that matter rapidly disapprove them, why should Congress have confidence that these decisions are well informed and reflect sound, expert judgment?

Response: Infrastructure Security Compliance Division (ISCD) staff possess the expertise to review and recommend authorization and approval or disapprove Site Security Plans (SSP). These recommendations are well-informed and reflect sound, expert judgment. Resident scientists and engineers at the Department of Homeland Security's (DHS) Science and Technology Directorate Chemical Security Analysis Center are also available to provide subject matter expertise, as appropriate.

After a facility's SSP is authorized or conditionally authorized, an authorization inspection is scheduled. Authorization inspections are conducted at covered facilities in order to verify that the descriptions of current and planned measures listed in the facility's security plan are accurate and complete. If, in reviewing/evaluating the results of the authorization inspection and other information, it is determined that the security plan is sufficient, DHS then approves the SSP and the facility is notified that it should carry through with the planned measures and should continue to implement existing measures.

To date, ISCD staff have authorized or conditionally authorized SSPs for 60 Tier 1 facilities. DHS has not yet approved any facility's SSP. ISCD will continue to review and as appropriate, authorize, Tier 1 SSPs and will work with facilities that have not yet received authorizations to improve their ability to meet the risk-based performance standards. NPPD and ISCD leadership also expect that as additional processes, guidance, training, and tools are developed to assist staff in the SSP review process and as additional experience is gained in the conduct of SSP reviews, the pace of the SSP reviews will increase while maintaining the quality of the review process and of the decisions made.

Question#:	4
Topic:	Tier 1
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: What quality control measures do you have in place for implementation of Tier 1 Site Security Plan reviews? How will these review standards be different from the long-term review process?

Response: The Infrastructure Security Compliance Division (ISCD) has established an interim Site Security Plan (SSP) review process that includes the development, refinement, and training in definitions and review procedures; a multi-layered review approach that still allows for expeditious review and that ensures consistency in application of standards; and a quality assurance procedure for reviewing and reporting on the effectiveness, efficiency, and consistency of reviews.

ISCD is in the process of further refining a long-term review process and will incorporate lessons learned from the interim review process.

Question#:	5
Topic:	personnel
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Do the personnel matters identified in the report help explain the failure to approve the site security plans?

Response: A variety of factors, including some of the personnel issues identified in the Infrastructure Security Compliance Division (ISCD) memorandum, have contributed, to some degree, to challenges related to the review of Site Security Plans (SSP), although much progress has been made in recent months. As described in the proposed ISCD Action Plan accompanying that memorandum, the Department of Homeland Security (DHS) is addressing these challenges in a conscientious manner, and the pace of SSP review and authorization has already improved since the memorandum was completed.

Question: Are there any portions of the SSP review and compliance inspection process that DHS must bargain over with the inspectors union?

Response: On March 16, 2011, the Federal Labor Relations Authority (FLRA) certified the American Federation of Government Employees Local 918, as the exclusive representative for all eligible ISCD Inspection and Enforcement Branch (I&EB) employees.

As a result of the FLRA's certification, ISCD is obligated to comply with Chapter 71 of Title 5 of the United States Code, Executive Order 15322, and the Master Agreement between National Protection and Programs Directorate and American Federation of Government Employees Local 918, Agreement 2011 in labor relations issues impacting the working conditions of I&EB employees in the bargaining unit.

ISCD is in the process of further developing a long-term SSP review process, as well as potential updates to compliance inspection procedures. Any collective bargaining obligations will be assessed when the above-referenced potential revisions to the SSP review process and the compliance inspection procedures are further developed.

Question: In your opinion how many DHS personnel are well-qualified to review and approve or disapprove Site Security Plans?

Response: Review and approval, or disapproval, of an SSP typically requires skills in multiple disciplines, such as physical security, cybersecurity, chemistry, and engineering. Accordingly, review of an SSP cannot be performed by any single individual. Rather, an

Question#:	5
Topic:	personnel
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
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SSP review requires the collaboration of a team of qualified experts. ISCD has a number of employees in each of the skill sets required to review SSPs who are well qualified to conduct that review in a consistent, efficient manner and to make appropriate recommendations to senior leadership, enabling them to make reasoned decisions as to SSP approval or disapproval. The current interim SSP review process, although resource-intensive, has proven in a very short time that teams of ISCD personnel are well qualified to conduct these reviews with appropriate guidance and training.

Question#:	6
Topic:	CFATS 1
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: On March 31, 2010, you testified that "our analysis indicates that this [CFATS] program is delivering tangible results that make our Nation more secure." Further you said: "successful security gains have already been implemented as a result."

Besides the voluntary removal of chemicals from various facilities, what other security gains have DHS (as opposed to facility operators) accomplished?

Response: The Chemical Facility Anti-Terrorism Standards (CFATS) program has significantly reduced, directly or indirectly, the overall security risk associated with the chemical sector in several ways:

- Development of a list of chemicals of interest (COI) with screening threshold quantities (STQ), as specified in Appendix A to CFATS, which the Department of Homeland Security (DHS) uses to help identify potentially high-risk chemical facilities with minimal burden on the chemical industry. Without this COI list, it is unlikely that many of the more than 2,300 facilities that have voluntarily removed or significantly reduced the onsite quantity of COI related to their potential security risks would have done so.
- Development of an easy-to-use, online assessment tool (the "Top-Screen") through which potentially high-risk chemical facilities possessing COI at or above the applicable STQ submit information to the Department to facilitate preliminary identification of facilities presenting a high security risk.
- Review of more than 40,000 Top-Screen submissions, resulting in the initial identification of more than 7,000 preliminary high-risk facilities.
- Development of an online Security Vulnerability Assessment (SVA) tool, through which preliminary high-risk facilities have provided the Department with additional, more-detailed information about their chemicals, their specific circumstances and their potential vulnerabilities, which DHS uses to make a final determination regarding the facilities' risk status.
- Completion of the review to date of more than 6,500 SVAs, resulting in the issuance of final high-risk determinations for more than 3,700 facilities and assignment of those facilities to appropriate risk-based tiers.
- Development of an online Site Security Plan (SSP) tool for use by final high-risk chemical facilities in the development and submission of SSPs or Alternative Security Programs (ASPs) for DHS's review and approval or disapproval. This SSP tool collects information on how each facility will meet the applicable risk-based

Question#:	6
Topic:	CFATS 1
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performance standards (RBPSs) under CFATS. The 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. This tool has helped facilities make appropriate and sound decisions in developing security plans that fit the unique characteristics of each facility and best account for the facility's assets and vulnerabilities.

- Publications of a RBPS Guidance document to assist CFATS-covered facilities develop adequate SSPs. The RBPS Guidance document provides guidance on what types and combinations of security measures and processes may be appropriate for a facility, based on its unique circumstances, and addresses specific items a facility may wish to consider when selecting security measures and procedures (such as physical and environmental considerations, command and control considerations, and the use of layered security) to satisfy the RBPS. This document can also be of value to facilities not regulated under CFATS since it provides guidance on effective security measures that such unregulated facilities could implement voluntarily.
- Enhancement of the national ability to prepare for and respond to potential threats directed at or involving aspects of many types of chemical facilities (including facilities not traditionally considered part of the chemical industry), based on the information provided through Top-Screen and SVA submissions. This has contributed greatly to the development of a more comprehensive, nationwide picture of chemical security risks and concerns. CFATS and the data the Department has collected have given the Federal Government a far better understanding of what dangerous chemicals are available commercially, who has them, how they are handled and secured, as well as which facilities present the highest risks.
- Establishment of a sensitive but unclassified information-protection regime, called Chemical-terrorism Vulnerability Information (CVI), to help protect certain sensitive security information developed and/or provided to the Department in compliance with CFATS.
- Completion of more than 1,000 Compliance Assistance Visits as of February 27, 2012, and participation in more than 3,000 informal introductory meetings with owners and/or operators of CFATS-regulated facilities, which have helped to ensure that the regulated community is aware of CFATS requirements, and of chemical security risks.
- Development of working relationships with state and local officials through outreach efforts beyond the regulated community. Those relationships are enhancing the overall level of preparedness of the nation for preventing or responding to potential terrorist attacks involving high-risk chemical facilities or chemicals from those facilities and will pay positive dividends in the event of a chemical security incident. To this end, the Infrastructure Security Compliance Division (ISCD) has participated

Question#:	6
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in more than 2,500 meetings involving Federal, state, and local partners, including more than 100 Local Emergency Planning Committee meetings.

- Increase in security awareness and education through outreach activities, as well as the CFATS website and Help Desk.
- Establishment of an anonymous CFATS Tip-Line, which supports the reporting of suspicious activities and the identification of facilities or individuals who potentially are not complying with CFATS requirements.
- Collaboration within DHS and with other Federal agencies in the area of chemical security, including routine engagement among the National Protection and Programs Directorate's subcomponents and with the U.S. Coast Guard; the Transportation Security Administration; the Department of Justice's Federal Bureau of Investigation; and Bureau of Alcohol, Tobacco, Firearms and Explosives, the Nuclear Regulatory Commission, and the Environmental Protection Agency. This collaboration allows for the identification of potential security gaps and the sharing of lessons learned, all of which makes the overall homeland security effort more efficient and effective.

As the above activities demonstrate, CFATS has helped the nation better understand the complex security issues associated with the chemical industry, allowed the Federal Government to identify high-risk chemical facilities throughout the nation, provided tools to allow high-risk facilities to assess their vulnerabilities and develop plans to reduce their risks, spurred the voluntary elimination or reduction of chemicals of interest at facilities throughout the country, facilitated the selection and implementation of security measures and procedures to reduce security risks, and enhanced nationwide preparedness through increased understanding and collaboration.

Question#:	7
Topic:	inspection 1
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: On October 1, 2009, testifying with you on behalf of the Department Sue Armstrong stated that formal inspections would begin in December 2009. According to the internal memo, compliance inspections have still not occurred.

Is it correct that compliance inspections have not yet occurred?

Response: Correct, compliance inspections have not yet occurred because the Department of Homeland Security (DHS) has not yet approved any Site Security Plans (SSP) or Alternative Security Programs (ASP).

Question: Is it also correct that the "inspections" you have conducted do not measure actual compliance with the standards?

Response: The Infrastructure Security Compliance Division (ISCD) has conducted 10 authorization inspections to date. These inspections are conducted following ISCD's issuance of a Letter of Authorization for a high-risk facility's SSP in order to verify that the descriptions in the facility's authorized SSP or ASP are accurate and complete and that the equipment, processes, and procedures described are appropriate and sufficient to meet applicable CFATS performance standards. The findings from an authorization inspection, as well as other relevant available information, are evaluated by ISCD to determine whether or not DHS should issue a Letter of Approval for an SSP or ASP. An authorization inspection differs from a compliance inspection in that the latter is used to evaluate a facility's compliance with an SSP or ASP that DHS has approved.

Question: Do we know, today, that sites comply with standards?

Response: ISCD is currently evaluating whether covered facilities' SSPs meet applicable Risk-Based Performance Standards (RBPS) through (a) the SSP review process and (b) the authorization inspection process at facilities that have already received Letters of Authorization for their SSPs. Compliance inspections cannot be conducted to verify facilities' compliance with their SSPs, however, until DHS has approved the SSPs.

Question#:	7
Topic:	inspection 1
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: What specifically did you understand Ms. Armstrong to mean on October 1, 2009?

Response: We understand that she was estimating that authorization inspections would begin on or around December 2009, based on information and projections available at that time. The first authorization inspection took place in July 2010.

Question: What, in your judgment, led to the inspection gap between October 2009 and November 2011?

Response: ISCD assumes the term "inspection gap" refers to the fact that ISCD has conducted 10 authorization inspections to date. Authorization inspections occur after a facility's SSP receives a Letter of Authorization. ISCD has worked to overcome the challenges it faces in evaluating SSP submissions and issuing Letters of Authorization. The interim SSP review process that ISCD established has enabled it to more than quadruple the number of SSPs that have received Letters of Authorization (a total of 60 as of March 2012). ISCD conducted the first authorization inspection in July 2010, has already conducted 10 authorization inspections and plans to begin conducting authorization inspections at the remaining facilities that have received Letters of Authorization beginning in the fourth quarter of fiscal year 2012.

Question#:	8
Topic:	inspection 2
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The Anderson/Wulf memo of November 2011 states: "we are not ready to conduct a compliance inspection. To date, we have not determined the content or design of a compliance inspection, nor have we developed the necessary processes and procedures to conduct a compliance inspection."

So what types of inspections have been occurring?

Is it correct that compliance inspections may turn up results that differ from the less-formal "assistance" inspections that have been conducted?

Response: Compliance inspections are conducted after a covered facility's Site Security Plan (SSP) or Alternative Security Program (ASP) has been approved by the Department of Homeland Security (DHS). Since no SSPs or ASPs have yet been approved, the Infrastructure Security Compliance Division (ISCD) has not yet conducted any compliance inspections.

Authorization inspections occur after a covered facility receives a Letter of Authorization for its SSP or ASP. Authorization inspections are conducted by ISCD inspectors in order to verify that the descriptions of measures in the facility's authorized SSP or ASP are accurate and complete, and that the equipment, processes, and procedures described in the SSP or ASP appear to be appropriate to meet applicable Chemical Facility Anti-Terrorism Standards (CFATS) risk-based performance standards. The authorization inspection results, as well as other relevant available information, are evaluated by ISCD to determine whether or not DHS should issue a Letter of Approval for the facility's SSP. To date, ISCD has completed 10 authorization inspections.

CFATS inspectors have also conducted and may continue to conduct what have been previously referred to as Preliminary Authorization Inspections (PAIs), which are visits to CFATS covered facilities that have submitted SSPs but that have not yet received Letters of Authorization for their SSPs. To avoid confusion with CFATS authorization inspections and compliance inspections, ISCD now refers to these inspector activities as Compliance Assistance Visits. The main purposes of those pre-authorization visits are to help ISCD gain a better understanding of the processes, risks, vulnerabilities, response capabilities, security measures and practices, and other factors at a covered facility that are relevant to ISCD's review of the facility's SSP and to help facilities more fully develop and explain the security measures in their SSPs.

Question#:	8
Topic:	inspection 2
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Because of the different purposes of compliance inspections and what were previously called PAIs, it is possible that the results of inspection visits could differ.

Question#:	9
Topic:	inspection 3
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: You have indicated that DHS has "on board" 123 FTEs in inspection and enforcement, yet, as of the November 2011 Anderson/Wulf Memo, you "have not determined what a compliance inspection will look like or how it will be conducted, nor have we trained the inspectors how to engage in compliance activities".

What do these inspectors do and why were they hired before the development and understanding, both by DHS/ISCD and the inspectors, of their duties?

Have you made progress correcting these deficiencies since December 2011?

What is the status of their training?

Response: As of February 27, 2012, the inspectors have completed 10 authorization inspections at high-risk chemical facilities with authorized or conditionally authorized Site Security Plans (SSP), 180 Pre-Authorization Inspections (now referred to as Compliance Assistance Visits), more than 1,000 other Compliance Assistance Visits to covered facilities, almost 700 presentations to Federal, state, local and private sector partners, and more than 3,000 outreach visits to the potentially regulated community. Additionally, the inspectors have attended more than 2,500 meetings with Federal, state and local partners.

In the preliminary stages of implementing the Chemical Facility Anti-Terrorism Standards (CFATS) regulation, the inspectors have focused much of their efforts on providing outreach and on assisting chemical facilities in understanding the requirements of this developing program. This was especially important in the first few years after the Department of Homeland Security (DHS) adopted the CFATS regulations, since many, if not most, of the potentially affected facilities had no prior experience with federal security regulatory programs. In particular, inspectors provided information to and assisted many facilities in registering to use the online Chemical Security Assessment Tool (CSAT), understanding how to use and complete the CSAT Top Screen and Security Vulnerability Assessment (SVA) tools, and in understanding how to prepare and submit (or revise) SSPs or Alternative Security Programs (ASPs). These outreach and assistance efforts were and are essential to the effective implementation of the CFATS program. In fact, the assistance provided by the inspectors has contributed substantially to the submissions by chemical facilities to date of more than 40,000 Top Screens, more than 6,500 SVAs and more than 4,200 SSPs.

Question#:	9
Topic:	inspection 3
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

The Infrastructure Security Compliance Division (ISCD) stood up a working group in September 2011 to review the current processes, procedures, and equipment utilized by the inspector cadre and to update or develop additional materials and tools to further assist the inspector cadre in performing future authorization inspections as well as compliance inspections, which occur after approval of SSPs or ASPs. ISCD plans to finalize updates to the inspection procedures and to provide additional training to the inspector cadre later in fiscal year 2012.

Question#:	10
Topic:	inspection 4
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: When will we see operations of this compliance inspection program?

Response: Though the Infrastructure Security Compliance Division (ISCD) has yet to begin performing compliance inspections, the inspectors are engaged in other operational activities on a day to day basis.

ISCD will utilize compliance inspections on a periodic and as-needed basis to verify that facilities with approved Site Security Plans (SSP) or Alternative Security Programs (ASP) are complying with their approved SSPs or ASPs.

ISCD stood up a working group in September 2011 to review the current processes, procedures, and equipment utilized by ISCD's inspectors and to update/develop additional materials and tools for the inspectors to accomplish all types of Chemical Facility Anti-Terrorism Standards (CFATS) inspections, including authorization inspections, which occur before approval of an SSP, as well as compliance inspections. Based on the work of this group, ISCD plans to finalize updates to the internal inspection procedures later in fiscal year (FY) 2012. ISCD also plans to provide additional training to its inspector cadre, which will enable them to continue authorization inspections at Tier 1 facilities in FY 2012. After the authorization inspections for Tier 1 facilities are completed, ISCD's next priority will be authorization inspections of Tier 2 facilities.

Compliance inspections will occur on a prioritized basis, beginning with Tier 1 facilities, after facilities have been issued Letters of Approval. Since this is dependent on the findings of the authorization inspections and ISCD's further review of the SSPs prior to approval, ISCD is not able at this time to provide a timeframe for when compliance inspections will begin.

Question: When was the Infrastructure Security Compliance Division at DHS operational?

Response: The following timeline highlights ISCD's steps towards becoming operational:

- October 2006 - Section 550 of the Department of Homeland Security (DHS) Appropriations Act of 2007, Public Law 109-295, was enacted. The Office of Infrastructure Protection established the Chemical Security Working Group

Question#:	10
Topic:	inspection 4
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
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(CSWG) to work with DHS Office of the General Counsel to develop regulations implementing Section 550.

- December 2006 – DHS released the Advance Notice of Rulemaking.
- Spring 2007 – The Chemical Security Compliance Division (CSCD) was formed.
- April 2007 – DHS published the CFATS Interim Final Rule.
- Fall of 2007 – CSCD's name was changed to ISCD.
- November 2007 – DHS published Appendix A to the CFATS Interim Final Rule.
- January 2008 – Facilities began submitting Top-Screens for ISCD review prior to preliminary identification of high-risk facilities.

Question: When did you begin hiring potential inspectors and related staff for implementing the CFATS?

Response: The CSWG was established in October 2006 with limited personnel. CSWG obtained detailees from the Federal Protective Service in November 2006 to perform duties relating to Sec. 550. Many of these detailees later became CSCD, and then ISCD inspectors. ISCD did not begin to directly hire inspectors until July 2008.

Question#:	11
Topic:	CFATS 2
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The Anderson/Wulf Memo mentions that the CFATS office has not developed a process for the integration of new hires. Yet, the memo also clearly states that the CFATS workforce is top-heavy and has folks employed whose skills should not qualify them for these jobs.
Should the CFATS workforce be culled to make sure you have the best fit between workforce and mission?

How long do you expect to have a hiring freeze while ISCD develops a plan to hire specific skill sets and properly integrate new employees?

Response: The Infrastructure Security Compliance Division's (ISCD) Director and Deputy Director are leading an internal analysis to determine the proper staffing needs of the Division and ensure that the Chemical Facility Anti-Terrorism Standards (CFATS) workforce is qualified to meet those needs. While hiring actions will not be taken until confirmed needs are identified, the skills required to fill those needs are defined, and a plan is in place to properly integrate the selected employees. ISCD is not implementing a "hiring freeze" and will take appropriate actions to fill vacancies and other staffing needs as the criteria above are met.

Question#:	12
Topic:	policy 1
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The Anderson/Wulf Memo is critical of administrative restrictions on hiring. It says NPPD advised the CFATS program that its policy prevented hiring trainers and people with appropriate skill sets.

What NPPD policy is that? Is it statutory in nature or administrative? Is something being done to correct it?

Response: There is no statute, regulation, or National Protection and Programs Directorate (NPPD) policy preventing the hiring of training personnel or people with the appropriate skill sets for their approved positions. However, it was originally envisioned that certain positions, such as those related to training, would be staffed at the Department of Homeland Security (DHS)-level rather than at the Office of Infrastructure Protection (IP)-level.

Question: Was the mass hiring of 0343 personnel, or general analysts, related to the NPPD policy? If not, what was the reason?

Response: No, the hiring of the General Series-0343 Management and Program Analysts was not related to NPPD policy. This was an initiative to recruit for and fill numerous vacant positions across IP, not just the Infrastructure Security Compliance Division (ISCD).

Question: Is the prohibition on hiring 1700 series training personnel related to the NPPD policy?

Response: Currently there is no prohibition against hiring training personnel within the 1700 series. NPPD subcomponents are responsible for addressing their own technical and specialized training requirements; however, they are expected to work in conjunction with the training experts within the NPPD Office of Professional Development and Training. Once the major duties for a position are identified, classification standards are used to determine the appropriate title, series, and grade level.

It is NPPD's understanding that Subcomponents were not previously permitted to hire 1700 series personnel due to plans to staff this function at the DHS level and that these plans are no longer actively being pursued.

Question#:	12
Topic:	policy 1
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: What does the Department plan to do with the "several" inspector training courses that have little to do with inspections or enforcement?

Response: ISCD is conducting a comprehensive review of the curriculum from the training courses ISCD previously provided to its Inspectors. This redesign will result in a more focused and streamlined Inspector training curriculum and includes the elimination of any courses and material that ISCD determines are no longer necessary and the development of additional, relevant curricula.

Question#:	13
Topic:	policy 2
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The Anderson/Wulf Memo is highly critical of the lack of qualified, permanent supervisors. It states that many CFATS employees have been allowed to violate policy and underperform without consequences.

What is the process for becoming a supervisor?

Response: Employees may apply to vacancy announcements for supervisory positions through the Office of Personnel Management's (OPM) USAJobs website. The candidates are evaluated by answering assessment questions; the applications are reviewed by OPM; and qualified candidates are referred to the selecting official.

Question: Does DHS have specific criteria that are prerequisites to becoming a supervisor?

Response: Yes. If an employee applies for a supervisory position he or she will be required to answer assessment questions. Management also has the right to reassign current employees into supervisory positions if they determine the employee is qualified and possesses the necessary skill sets for the position. Additionally, new supervisors are required to complete a one-year supervisory probationary period. The Department of Homeland Security (DHS) has training requirements for new supervisors to the Department and is in the process of further strengthening the supervisor training through the Cornerstone Supervisory Leadership Program.

Question: What does DHS consider to be the appropriate Supervisor/inspector ratio?

Response: DHS does not have an established Supervisor/Inspector ratio.

Question: How many CFATS program supervisors, including Branch Chiefs, are not "acting"?

Response: The Infrastructure Security Compliance Division (ISCD) currently has 23 supervisors on its staff. Of these, 15 are in the supervisory positions for which they were hired, five are holding acting positions at a higher-level within ISCD, two are on external details, and one is on active military duty.

Question#:	14
Topic:	ISCD inspectors
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: According to the Anderson/Wulf memo, "generally, introduction of a union in the government workplace tends to occur after the program has been fully established and the work unit is mature. That is not the case with the unionization of ISCD inspectors." Why did the Administration certify the union before the CFATS program was fully stood up?

Response: The decision to organize a union in the Government workplace is one for the union and the employees to make, not for the Government employer. Unions organize at any time the members deem it appropriate for employees to be represented by a labor organization. Such organization efforts can occur at any time either at the developmental stages or once a program is established and mature. The Federal Labor Relations Authority (FLRA) is responsible for certifying unions. Once a labor organization decides it wants to organize certain employees, it approaches the employees, and acquires signatures from a certain percentage of employees, and has the right to file a petition with the FLRA.

Question#:	15
Topic:	employee surveys
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: On March 31, 2011, you stated: "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." The Anderson Memo though suggests that industry is feeling less cooperated with – in fact, employee surveys suggest the top item challenging ISCD is "achieving credibility with the chemical industry."

How do you square what you testified to 11 months ago with that comment from the ISCD employee survey?

Response: Soon after joining the Department of Homeland Security (DHS), the new Infrastructure Security Compliance Division (ISCD) Director solicited the views of ISCD staff regarding the Chemical Facility Anti-Terrorism Standards (CFATS) program and its implementation, to include the perceived strengths of the program and the perceived challenges that ISCD faces. The statement regarding "achieving credibility with the chemical industry" was one issue among many that at least one ISCD staff member raised. While each staff member is entitled to his/her opinion, and the National Protection and Programs Directorate (NPPD) fully supports Divisional leadership seeking input from staff on challenges ISCD is facing, that does not mean that all the apparent challenges identified during this effort were significant or necessarily even accurate. In this case, NPPD continues to believe that the Department's relationship with the regulated community is both strong and appropriate, and Under Secretary Beers stands by his March 31, 2011, testimony asserting as much.

Question: How many times have you met with a broad coalition of CFATS regulated entities to discuss improvements to SSPs or the Personnel Surety Program?

Response: I have directly met with the chemical industry several times over the course of this Administration and discussed both the SSP process and the Personnel Surety Program. I have met with the American Chemistry Council three times since the fall of 2009, with the Chemical Sector Coordinating Council and its leadership on several occasions, and the Oil and Natural Gas Sector Coordinating Council once in the past year. Additionally, NPPD's Deputy Under Secretary, Suzanne Spaulding, has had separate meetings with the chemical industry, including meetings with the Chemical Sector Coordinating Council and the Association Fuel and Petrochemical Manufacturers (formerly the National Petrochemical and Refiners Association).

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Moreover, DHS maintains a strong relationship with CFATS regulated entities because of the continual engagement with these facilities. ISCD inspectors have conducted more than 1,000 Compliance Assistance Visits to regulated facilities as of February 27, 2012, and have participated in more than 3,000 informal introductory meetings with owners and/or operators of CFATS-regulated facilities.

ISCD staff 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 dozens of 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), which includes a searchable Knowledge Center. ISCD has also offered regular Site Security Plan (SSP) training webinars to assist high-risk facilities to complete their SSPs. Improving SSPs has been a central part of the conversation in many of these engagements.

ISCD has pursued many avenues in order to provide feedback to the regulated population on their SSP submissions and to gather recommendations and lessons learned for improvements to the SSP tool. This includes the previously mentioned conferences and outreach visits, many of which were to discuss the development of SSPs with broad coalitions of the regulated community through meetings with or organized by industry associations, such as the American Chemistry Council and the Society of Chemical Manufacturers & Affiliates. ISCD also has participated in the annual Chemical Security Summit and quarterly Chemical Sector Coordinating Council meetings, during which the topic of SSP submissions has been discussed. ISCD also performed 180 Preliminary Authorization Inspections (now referred to as Compliance Assistance Visits) to assist facilities in the completion of their specific SSPs, developed an SSP Helpful Hints document in coordination with the regulated community to share on ISCD's website, and conducted weekly webinars with the regulated community in order to provide guidance on the completion of SSPs.

With respect to ISCD's engagement with industry about the CFATS Personnel Surety Program, DHS has attempted to leverage and build upon the existing positive relationship in several ways:

- DHS staff and leadership have participated in many CFATS Personnel Surety Program discussions, meetings, and listening sessions with industry leaders and other industry stakeholders. DHS has met with industry representatives, both

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individually and collectively, multiple times to discuss their concerns, objections, and ideas for alternative solutions.

- DHS has also discussed screening and CFATS Personnel Surety Program issues with owners and operators on-site at chemical facilities.
- DHS has provided annual briefings on the topic at the Chemical Sector Security Summit held each year in Baltimore, Maryland.
- In August 2010, DHS conducted two workshops for private sector representatives in Houston, Texas to demonstrate the CFATS Personnel Surety Program data collection and submission process and procedures, through a question-and-answer session.

The Department intends to maintain positive relations with the high-risk chemical facilities that it regulates, and remains attentive to any legitimate concerns that industry may have regarding the SSP review process and the development of the CFATS Personnel Surety Program.

Question: Are policies that restrict Executive Branch work with the business community being employed by DHS? If so, has that inhibited communication or slowed ISCD understanding of the facilities it is supposed to regulate?

Response: DHS has followed all applicable statutory and regulatory requirements and Executive Branch policies concerning appropriate engagement between government regulators and the regulated community. DHS does not believe that adherence to these statutes, regulations, and Executive Branch policies has inhibited or slowed DHS's ability to communicate effectively with the facilities regulated under CFATS.

Question#:	16
Topic:	contractors
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The Anderson/Wulf Memo indicates that DHS uses too many contractors and needs to build more expertise "in house." On October 1, 2009, Mr. Green, asked Mr. Beers how many of the 130 people DHS was in the process of hiring or had hired were "experts in the field of chemical engineering, chemical process, safety, design and engineering." Sue Armstrong responded that "five or six" were either civil, physical, or chemical engineers and one chemist was one staff.

Has DHS put a greater emphasis on hiring in these areas to help ISCD digest and interpret the Site Security Plans?

Response: Yes, ensuring that the Infrastructure Security Compliance Division (ISCD) continues to have the expertise necessary to conduct Site Security Plan (SSP) reviews is a high priority. Currently, ISCD employs people with expertise in the following areas for SSP review: chemical security, cybersecurity, physical security, chemical engineering, chemistry, and information technology management.

ISCD is in the process of conducting a top-to-bottom review of the Division's staffing to develop a Human Resources Plan that will further define and document the roles, responsibilities, required skills, and reporting relationships of its staff. This plan will further assist ISCD in identifying any remaining human resource needs and in its future hiring decisions.

Question#:	17
Topic:	IT infrastructure
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: It is clear CFATS is having many problems related to its IT infrastructure.

How much money has CFATS has spent on in this area?

Response: The Infrastructure Security Compliance Division (ISCD) is in the process of further developing its information technology (IT) capabilities. As part of this process, ISCD is continually evaluating and enhancing its IT systems. These enhancements have been identified and planned for as the program has developed in order to increase ISCD's ability to carry out its mission, including its inspections and enforcement activities.

ISCD has spent approximately $66.9 million from the fourth quarter of fiscal year (FY) 2006 through January 2012 (Project Life Cycle) on its IT investments.

Question: Of that amount, how much is being used on equipment whose direct impact on the CFATS program is beneficial and cost-effective?

Response: ISCD believes that all funds expended on its IT Investments have been beneficial and cost-effective to the program. With regard to IT equipment specifically, including operational hardware and software licensing fees, ISCD has spent approximately $9.6 million from the fourth quarter of FY 2006 through January 2012 (Project Life Cycle). The remaining $57.3 million of IT investment supported application development, hosting operations and maintenance costs, and other operations support for the development, maintenance, and enhancement of the IT systems,

Question: How much will it cost to modify the CHEMS database? How long will it take?

Response: Through fiscal year 2013, ISCD estimates that it will cost approximately $6 million to make enhancements to its IT systems, including the CHEMS database. It is not possible to specify when enhancements and modifications to the CHEMS database will be completed since, in order to fulfill its mission, ISCD will continually evaluate its IT capabilities and identify areas of improvement, making enhancements and modifications as necessary.

Question#:	18
Topic:	training
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: How much has the CFATS program spent on training-related contracts?

Response: The Infrastructure Security Compliance Division (ISCD) has spent approximately $7.8 million on training-related contracts for the Chemical Facility Anti-Terrorism Standards (CFATS) program from fiscal year (FY) 2008 to the present.

Question: How much more will CFATS need to spend to get a training program you think will be useful?

Response: ISCD believes that its training program has always been a useful tool. As the program has developed and assumptions about the implementation of CFATS have evolved, so have the needs of ISCD's training program. At this time, the ISCD is in the process of evaluating and updating its training program in order to supplement previous curricula and further prepare its Chemical Security Inspector cadre to conduct inspections. ISCD estimates that it will need to spend approximately $2.5 million ($1.3 million for travel and per diem and $1.2 million for development and trainer costs) through FY 2013.

Question: How much do you think the CFATS program could save from contracting reforms?

Response: At this time, ISCD cannot predict potential cost savings from contracting reforms. ISCD does believe that there are potential savings through changes in acquisition and procurement processes and planning.

Question#:	19
Topic:	impractical
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The Internal Memo mentioned that the law authorizing CFATS required development and implementation of the CFATS program at an "impractical" pace.

Isn't it true that DHS had a white paper outlining the direction of CFATS, which became the precursor for the CFATS interim final regulation? If so, why did the workload come as a surprise to DHS?

Response: The Department of Homeland Security (DHS) was aware that developing the Chemical Facility Anti-Terrorism Standards (CFATS) regulatory program would be a significant undertaking and the scope of the effort and workload involved was not a surprise to the Department. Prior to receiving statutory authority to adopt regulations for security at high-risk chemical facilities, the Department had developed some initial thoughts as to what a regulatory program governing security at high-risk chemical facilities might involve.

The statutory requirement set an extremely ambitious and demanding goal for the Department to develop such regulations within a six-month rulemaking period, while simultaneously hiring staff, building the program office, and establishing the processes and tools necessary to evaluate and potentially regulate thousands of facilities from across the country. The Department was successful in meeting this goal.

Question#:	20
Topic:	inappropriate
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: How many people, whose skills were "inappropriate" for the position, were hired by DHS for CFATS before the CFATS program had established specific needs?

Response: The establishment of specific program needs and the development of the long-term process for fulfilling identified program requirements is an ongoing and dynamic one. As the Chemical Facility Anti-Terrorism Standards program continues to mature, the Infrastructure Security Compliance Division will ensure that all of the positions it needs are staffed with individuals who possess the appropriate knowledge, skills, and abilities necessary to perform at the appropriate level.

Question#:	21
Topic:	compliance inspections
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Compliance inspections are the final type of inspection DHS does to assure final compliance with the law. When do you intend to have a defined program in place to impart the processes and procedures necessary to conduct these inspections? Will you have a timeline for beginning these inspections?

Response: Compliance inspections will be used by the Infrastructure Security Compliance Division (ISCD) to verify that facilities with approved Site Security Plans (SSP) or Alternative Security Programs (ASP) are complying with their approved SSPs or ASPs on a periodic and as-needed basis.

ISCD stood up a working group in September 2011 to review the current processes, procedures, and equipment used by ISCD's inspectors and to update/develop additional materials and tools for the inspectors to accomplish all types of Chemical Facility Anti-Terrorism Standards inspections, including authorization inspections which occur before approval of an SSP.

Based on the work of this group, ISCD plans to finalize updates to the internal inspection procedures later in fiscal year (FY) 2012. ISCD also plans to provide additional training to its inspectors, enabling them to continue authorization inspections at Tier 1 facilities in FY 2012. After completion of the authorization inspections for Tier 1 facilities are completed, ISCD will adjudicate the inspection results before final approvals may be issued for the Tier 1 SSPs.

Compliance inspections will occur on a prioritized basis after facilities have been issued Letters of Approval. Since this depends on the findings of the authorization inspections and ISCD's further review of the SSPs prior to approval, ISCD is not currently able to provide a definite timeframe for the start of compliance inspections.

Question#:	22
Topic:	EPA
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

Question: Recently, Lawrence Stanton, Director of EPA's Office of Emergency Management announced that EPA would publish non-Offsite Consequence Data on the EPA website. This non-OCA information includes specific facility-by-facility lists of covered chemicals used, the inventory of those chemicals used, preventative measures in place, and the location in a plant where those chemicals are used. This information constitutes a virtual roadmap for terrorists. Meanwhile, Greenpeace recently announced that it is launching a new Google mapping tool that allows anyone to see "vulnerability zones"

Were you consulted on this policy change by EPA?

Response: On October 14, 2011, the Director of the Environmental Protection Agency's (EPA) Office of Emergency Management sent an e-mail notifying, and soliciting feedback from, the Department of Homeland Security (DHS) about EPA's proposal to reestablish internet access to the non-Off-site Consequence Analysis (OCA) sections of the Risk Management Plan (RMP) database beginning in July 2012. EPA also briefed DHS and other Federal partners on the proposal during the Chemical Government Coordinating Council (GCC) meeting on December 8, 2011.

Question: Was it subject to interagency review?

Response: During the Chemical GCC meeting on December 8, 2011, EPA led an interagency discussion with representatives from DHS, the Department of Commerce, and the U.S. Chemical Safety Board on EPA's proposal to re-post non-OCA information on EPA's RMP website.

EPA notified DHS on March 28, 2012, of EPA's intent to extend its discussion with interested parties and postpone the target date for implanting the proposal indefinitely. DHS is in the process of developing its position on EPA's planned action and intends to provide feedback and recommendations to EPA in the near future. DHS anticipates accepting EPA's offer to engage in additional dialogue on this topic.

Question: Did you or Secretary Napolitano contact the White House about it?

Response: The National Protection and Programs Directorate's (NPPD) Office of Infrastructure Protection (IP) did not contact the White House regarding EPA's proposal

Question#:	22
Topic:	EPA
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable John M. Shimkus
Committee:	ENERGY & COMMERCE (HOUSE)

to publish non-OCA data on the EPA website. NPPD/IP is not aware of Secretary Napolitano having any contact with the White House on this issue.

Question#:	23
Topic:	criteria
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable Edward Whitfield
Committee:	ENERGY & COMMERCE (HOUSE)

Question: What criteria are being used to prioritize the processing of site security plans?

Are Tier I and Tier 2 facilities being prioritized? If not, why not?

Response: Site Security Plans (SSP) are prioritized for processing and review according to the covered facilities' risk tier levels. SSPs for the highest of the high-risk facilities, the Tier 1 facilities, are reviewed first, followed by review of the Tier 2, 3, and 4 facilities, in that order. The Infrastructure Security Compliance Division (ISCD) has reviewed or is actively reviewing all of the SSPs for the Tier 1 facilities and has begun reviewing the SSPs for the Tier 2 facilities.

Question#:	24
Topic:	F1 issue 1
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable Henry Waxman
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The November 2011 internal report identified several issues in the CFATS program related to contracting, including the use of contractors to perform core functions of the program. It also references a mis-tiering incident, referred to by the Department as the F1 issue.

My understanding is that the creation, testing, and running of the "risk engine" used to tier facilities was carried out by contractors, not Department personnel. Is that correct?

Will the terms of the contracts for creation, testing and running of the risk engine be included in the Department's contracting review?

Does the Department view the running of this risk engine and the tiering of facilities to be core governmental functions?

Have other core government functions been delegated to contractors? If so, please identify those functions.

Please explain what steps will be taken to ensure that core governmental functions are not outsourced to contractors in the future.

Response: To avoid confusion, it should be noted that the references to "core functions" in the internal memorandum were not intended to refer to inherently governmental functions. Rather, the memorandum was intended to refer to functions (e.g., training, technical writing) that the Infrastructure Security Compliance Division (ISCD) Director and Deputy Director believe should be transitioned to primarily Federal employees to ensure long-term stability and continuity within the Chemical Facility Anti-Terrorism Standards (CFATS) program. ISCD necessarily relied a great deal on support by contractors with Federal employee oversight when it was stood up. As ISCD and the CFATS program have matured, it is appropriate to transition certain functions to the Federal workforce to ensure that necessary skills and knowledge are not lost over time, especially as contracts expire, are modified or are re-competed. All contracts are and will continue to be evaluated using the Department of Homeland Security (DHS) Balanced Workforce Strategy to ensure the appropriate mix of Federal and contractor skills, expertise, experience, and other assets necessary to effectively achieve the mission.

Question#:	24
Topic:	F1 issue 1
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable Henry Waxman
Committee:	ENERGY & COMMERCE (HOUSE)

The computer program (the so-called "risk engine") used by DHS to help evaluate chemical facilities' Security Vulnerability Assessments (SVA) was developed under the supervision of DHS employees by the Argonne National Laboratory. Testing was performed by Argonne National Laboratory, Oak Ridge National Laboratory (ORNL), and ABS Consulting, all under contract to DHS and subject to oversight by DHS employees. Physical operation of the engine occurs in a classified environment at ORNL and by ORNL employees under contract to DHS and with oversight by DHS federal employees. Risk engine results are subject to review by DHS federal employees and DHS issues all final high-risk determinations for individual facilities.

Question#:	25
Topic:	F1 issue 2
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable Henry Waxman
Committee:	ENERGY & COMMERCE (HOUSE)

Question: In May 2010, the contractors in question notified staff within the Infrastructure Security Compliance Division ("ISCD") of the F1 issue and worked to resolve problems with the tiering analysis. At that time, ISCD leadership took several steps in response, including temporarily halting tiering activities. When tiering was begun again at the end of that month, ISCD leadership decided that tier levels should not be revised for facilities assigned to inappropriate tiers because of the F1 issue.

In February 2011, when new ISCD leadership became aware of the F1 issue, additional response actions were initiated. On June 1, 2011, the matter was elevated out of ISCD. By June 27, 2011, all facilities that had been placed in inappropriate tiers had been informed of the issue, as had Congressional staff.

The Department's personnel surety program has attracted considerable attention, but has not been the subject of a focused hearing. While questions and testimony have focused on the potential to use TWIC cards to satisfy background check requirements under CFATS, there are additional components to personnel surety that have not been explored.

What does the personnel surety CFATS performance standard require, and what is the status of any regulations and/or guidance the Department plans to provide to facilities working to meet that standard?

In the Department's view, is there security value in recurrent vetting against the Terrorist Screening Database or in requirements to submit identifying information about individuals granted access to restricted areas?

Response: As required by the Chemical Facility Anti-Terrorism Standards (CFATS) regulation, each final high-risk facility must develop and submit for Department of Homeland Security (DHS) approval a Site Security Plan (SSP) or Alternative Security Program (ASP) that satisfies all of the applicable risk-based performance standards (RBPS) specified in CFATS. RBPS-12 requires that each SSP or ASP include performance of appropriate background checks on facility personnel and, as appropriate, unescorted visitors who have, or are seeking, access to restricted areas or critical assets at the facility. DHS refers to individuals requiring background checks under RBPS-12 as "affected individuals." These background checks must include:

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(i) Measures designed to verify and validate identity;
(ii) Measures designed to check criminal history;
(iii) Measures designed to verify and validate legal authorization to work; and
(iv) Measures designed to identify people with terrorist ties.

The Department issued guidance for all of the RBPS in May 2009 (http://www.dhs.gov/xlibrary/assets/chemsec_cfats_riskbased_performance_standards.pdf). The RBPS Guidance document discusses each RBPS, and provides examples of security measures that covered facilities may wish to consider when developing their SSPs or ASPs. For RBPS-12, the RBPS Guidance states that, in relation to the four types of background checks that must be conducted, facilities may want to explain in their SSPs how these background checks will be conducted, what the contents of the checks will include, and how frequently the facility will audit its background check program.

With respect to the requirement that covered facilities perform background checks designed to identify people with terrorist ties, the Department recognized at the time that the CFATS regulation was adopted that DHS would need to play a large role in that process, since private facilities do not have access to government databases that can be used to screen for terrorist ties. Accordingly, DHS has been developing a Personnel Surety Program, under which covered facilities (or third party submitters authorized to act on behalf of the covered facilities) would submit to the Department biographic information about affected individuals. The Department would then leverage an existing capability within the Department to vet this information against records in the Terrorist Screening Database (TSDB). The Department is exploring ways to minimize redundant background checks on individuals who have already undergone a DHS security threat assessment that checks individuals for terrorist ties as part of the Transportation Worker Identification Credential (TWIC) program, the Hazardous Material Endorsement (HME) program, or Trusted Traveler Programs.

DHS believes that though the implementation of the Personnel Surety Program, and recurrently vetting information pertaining to affected individuals against the TSDB, will add security value to CFATS and to individual high-risk chemical facilities' SSPs. As a result of implementing the Personnel Surety Program, DHS expects to be in a better position to identify any known or suspected terrorists with access to sensitive areas of high-risk chemical facilities.

The Department is in the process of complying with additional legal requirements before implementing the Personnel Surety Program, including the requirements of the Paperwork Reduction Act (PRA). As part of DHS's obligations under the PRA, the

Question#:	25
Topic:	F1 issue 2
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
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Department twice solicited comments through the Federal Register regarding DHS's proposed Information Collection Request (ICR), including the burden associated with the proposed collection and submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval.[1] The precise ways in which high-risk chemical facilities will be able to participate in the Personnel Surety Program to satisfy the terrorist-ties screening requirement of RBPS-12 is still being determined.

Before implementing the Personnel Surety Program, the Department must also ensure that appropriate controls are in place and comply with the Privacy Act, the E-Government Act, and DHS policy. Accordingly, the Department has published a Privacy Impact Assessment (DHS/NPPD/PIA-018 Chemical Facilities and Anti-Terrorism Standards Personnel Surety, May 4, 2011) and a System of Records Notice (DHS/NPPD-002 – Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records, June 14, 2011, 76 FR 34732) for the program. The Department also published a notice of proposed rulemaking to exempt portions of the CFATS Personnel Surety Program System of Records from specific provisions of the Privacy Act in order to protect information relating to national security, law enforcement, and intelligence activities from disclosure to the public. *See* 76 FR 34616 (June 14, 2011). Prior to implementation of the CFATS Personnel Surety Program, the Department may publish a final rule for Privacy Act exemptions.

In addition to the Department's efforts to ensure that there is a mechanism available for people with terrorist ties to be identified at high-risk chemical facilities, facilities are responsible for including measures in their SSPs or ASPs to perform the other types of background checks required under RBPS-12. The Department will evaluate each SSP and ASP to determine whether these measures meet the applicable performance standard. The CFATS Personnel Surety Program is not intended to halt, hinder, or replace these three other types of background checks.

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[1] The Department published three notices in the Federal Register regarding this ICR. The first notice announced the initial 60-day period for the public to review and provide comment at 74 FR 27555 (June 10, 2009). 60-second notice published the comments submitted by the public during the initial 60-day period and announced an additional 30-day period 60-public comment at 75 FR 18850 (April 13, 2010). The third notice published the Department's responses to comments received during the 30-day comment period at 76 FR 34720 (June 14, 2011).

Question#:	26
Topic:	report 1
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable Henry Waxman
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The action plan accompanying the November 2011 internal report calls for a working group to develop recommendations for needed statutory and regulatory changes.

When is the Department's timeline for developing and communicating those recommendations?

Response: An internal Infrastructure Security Compliance Division (ISCD) Working Group has completed the initial identification of a variety of potential policy and process modifications that it believes should be considered to improve the Chemical Facility Anti-Terrorism Standards program's ability to efficiently achieve its mission. Many of these potential improvements could be accomplished through policy changes or process modifications, while others likely would require additional rulemaking. The Working Group looking into these issues is in the process of finalizing its recommendations for addressing these issues and is scheduled to brief the ISCD Director on those recommendations in the coming weeks. At that point, National Protection and Programs Directorate leadership will be briefed on the recommendations. The Department of Homeland Security intends to engage with the appropriate Congressional oversight committees upon review and final approval of the recommendations.

Question#:	27
Topic:	whistleblower
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable G. K. Butterfield
Committee:	ENERGY & COMMERCE (HOUSE)

Question: How can strengthening whistleblower protections improve the ability of DHS to implement an effective CFATS program?

How can we ensure whistleblowers have access to enough information to identify security concerns which may have been overlooked?

How can we ensure that information shared by whistleblowers about overlooked safety concerns is passed up the chain to the correct people?

How can we reform CFATS to best encourage whistleblowers to come forward with their security concerns?

Response: The Department of Homeland Security (DHS) does not perceive a need at this time to include additional whistleblower protections to encourage Departmental employees to come forward with any security concerns they may have over implementation of the Chemical Facility Anti-Terrorism Standards (CFATS). While there are no specific whistleblower protections under Section 550 of the Homeland Security Appropriations Act for Fiscal Year 2007 or the CFATS regulation, Section 883 of the Homeland Security Act of 2002 (Pub. L. No. 107–296) specifically states that the whistleblower protections for employees of the Department under sections 2302(b)(8) and (9) of title 5, United States Code and the Notification and Federal Employee Anti-discrimination and Retaliation Act of 2002 (Pub. L. No. 107-174) (NOFEAR Act) apply to Departmental employees, including those responsible for developing and administering the CFATS program.

In addition to these statutory protections against retaliation, each Infrastructure Security Compliance Division (ISCD) employee has been advised of his or her responsibility to share with leadership any pertinent programmatic information or concerns. A number of methods have been identified to facilitate the sharing of this information, including ISCD director-led town halls and the use of an open-door policy. The open-door policy makes clear that if any ISCD employee is not satisfied with how an apparent security issue is being addressed, he/she can raise their concern with leadership of the National Protection and Programs Directorate (NPPD), the Office of Infrastructure Protection, or ISCD. ISCD believes this policy is an effective means to encourage employees to share their concerns and to ensure that leadership will be aware of pertinent programmatic information and will be in a position to address any significant concern in an appropriate

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fashion. Additionally, the Under Secretary of NPPD has noted in different meetings and forums that it is everybody's responsibility to share information with their leadership, especially information that can be used to identify areas where we need to improve our programs' level of performance.

ISCD also operates the CFATS Tipline, which allows for the reporting of potential security concerns involving the CFATS regulation. Callers can anonymously report concerns via voicemail or leave their name and number if a return call is desired at 1-800-FYI-4DHS (800-394-4347). The Tipline is available not only to DHS employees but also to facility employees and the general public. Once DHS receives a Tipline call, it is entered into a software management system for record-keeping purposes and then forwarded to ISCD's Compliance Section. It then assigns a Regional Compliance Case Manager to the matter to serve as the point person for coordinating ISCD's efforts to ascertain whether the caller has credibly identified a credible security issue that needs to be addressed. If it is determined that a credible security issue has been identified, ISCD will take appropriate steps to ensure that the security issue is being properly addressed. Any calls deemed threatening or suspicious are immediately forwarded to the attention of ISCD leadership and/or appropriate Federal, state, or local law enforcement agencies.

Question#:	28
Topic:	outreach
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable G. K. Butterfield
Committee:	ENERGY & COMMERCE (HOUSE)

Question: How can Congress best support the efforts of DHS to continue outreach at the state and local level?

Response: Congress can best support the Department of Homeland Security's (DHS) outreach efforts by establishing a permanent authority for the Chemical Facility Anti-Terrorism Standards (CFATS) program in Federal law and by continuing to fund CFATS at appropriate levels consistent with the President's annual budget requests. Permanent authorization would communicate to state and local partners that this important security program is here to stay, thereby justifying their time spent in facilitating outreach activities and ongoing long-term collaboration with the Department.

Question: How can CFATS regulatory framework be reformed to improve the ability of DHS to hire qualified personnel?

Response: We do not believe the current CFATS regulatory framework in any way inhibits the ability of DHS to hire qualified personnel.

Question: Are there currently any regulatory barriers that prevent optimal coordination with state and local authorities?

Response: We do not believe the current CFATS regulatory framework prevents DHS from coordinating effectively with state and local authorities.

Question: How has feedback from the public and private sector partners changed the program's implementation activities?

Response: Since the enactment of Section 550 of the DHS Appropriations Act for Fiscal Year 2007, public and private sector feedback has helped shape and improve implementation of the CFATS program. The Department's willingness to solicit and consider input from public and private security stakeholders began at the program's inception when, during the accelerated six-month period mandated by Section 550 for adoption of interim final rules, the Department issued an Advanced Notice of Public Rulemaking (ANPRM) soliciting public input on many issues that ultimately were addressed in the CFATS interim final rule that was issued in April 2007. Similarly, DHS solicited public comments on a proposed Appendix A to CFATS in the interim final rulemaking notice, and those comments helped DHS develop the final Appendix A,

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Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
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issued in November 2007, which listed more than 300 chemicals of interest and associated screening threshold quantities that facilities use to determine if they must file Top-Screens under CFATS.

With regard to implementation of the final regulations, DHS has sought and reacted to feedback from the regulated community and our public sector partners in a variety of ways, consistent with the regulatory nature of the CFATS program. For example, the Department has had members of industry test prototypes of various applications in the Chemical Security Assessment Tool currently used by the regulated community to comply with CFATS. In addition, DHS invited and responded to public comments in the development of the Risk-Based Performance Standards Guidance document and has sought feedback from the regulated community on informational materials, such as the Site Security Plan Helpful Hints fact sheet. We believe that private sector input has been, and continues to be, extremely valuable, and we look forward to continuing to receive feedback from them and to using it to continually improve CFATS implementation.

Question: The CFATS program was established without regulatory input from the majority of Congress. Do you believe the incorrect tiering of 600 facilities in 2011 serves as an example that we need to reform this statute?

Response: No, we do not believe that this incident warrants statutory reform of the CFATS program. In 2010, the use of certain incorrect data in one computer program that helps identify high-risk chemical facilities resulted in certain facilities potentially receiving risk-based tier assignments higher than they otherwise might. DHS immediately corrected the data error when the problem was discovered in mid-2010. In mid-2011, DHS decided to review all 501 tiering decisions potentially affected by that computer data error. Of the 501 facilities, 35 facilities had already been determined to no longer be high risk prior to the re-evaluation process, for reasons unrelated to the tiering issue. Upon further review of the remaining 466 facilities, DHS determined that 99 facilities were no longer considered high-risk; 148 facilities' overall tier levels should be lowered; 178 facilities should retain their facility tier levels, although other aspects of their final tier determinations should be revised; and that 41 facilities were pending SVA review or redetermination. DHS notified all of the potentially affected facilities of the results of this review in June 2011.

However, the Department does believe that certain reforms could be made to the statutory authority to make the program more effective and to better secure the Nation. An example is the granting of permanent (or at least long-term) authorization.

Question#:	29
Topic:	report 2
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable Lois Capps
Committee:	ENERGY & COMMERCE (HOUSE)

Question: The November 2011 internal report highlighted difficulties the Department faces in the review of Site Security Plans. The process of evaluating these plans to ensure that security standards will be met is an essential step in the successful execution of the CFATS program, and is essential to our national security.

Please explain the challenges the Department faces with evaluating these plans. Specifically, please explain why it is necessary to adopt an interim process while a long-term process is developed.

If the Department's process will change between the interim approval process and the long-term process, please explain how the Department will assure the dual goals of providing facilities with some certainty about their compliance and providing the public with the certainty of adequately safeguarded facilities.

Response: The primary challenges the Department of Homeland Security (DHS) faces in evaluating Site Security Plans (SSP) are related to the following:

a) the nature of the Chemical Facility Anti-Terrorism Standards (CFATS) regulation, which allows covered facilities a substantial amount of flexibility to include tailored, site-specific security measures commensurate with each facility's individual risk and circumstances; and
b) the inadequate level of detail initially provided by some facilities in their SSPs, which complicates the Department's ability to determine whether the security measures contained in the SSPs satisfy the risk-based performance standards approach mandated by the CFATS regulation and its underlying statutory authority.

In February 2010, the Infrastructure Security Compliance Division (ISCD) began conducting what was then referred to as preliminary authorization inspections (now referred to as compliance assistance visits) of final-tiered facilities, starting with the Tier 1 facilities, and has completed approximately 180 such visits to date. ISCD used these visits to help gain a comprehensive understanding of the processes, risks, vulnerabilities, response capabilities, security measures and practices, and other factors at a covered facility that affect security risk and to help facilities more fully develop and explain the security measures in their SSPs. This action assisted the Department in ensuring that

Question#:	29
Topic:	report 2
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable Lois Capps
Committee:	ENERGY & COMMERCE (HOUSE)

facilities included the appropriate level of detail in their SSPs to enable ISCD to conduct a complete review.

Additionally, ISCD has established an interim SSP review process that includes the development and refinement of, and training on, definitions and review procedures; a multi-layered review approach that still allows for expeditious review and that ensures consistency in application of standards; and a quality assurance role to review and report on the effectiveness, efficiency, and consistency of reviews.

ISCD is in the process of further refining the long-term review process and will incorporate lessons learned from the interim review process.

Question#:	30
Topic:	section 550
Hearing:	Evaluating Internal Operation and Implementation of the Chemical Facility Anti-Terrorism Standards program (CFATS) by the Department of Homeland Security
Primary:	The Honorable Lois Capps
Committee:	ENERGY & COMMERCE (HOUSE)

Question: At last year's markup of CFATS legislation, I sought to clarify an ambiguity in the SSP review process. The current language in section 550 governing this issue states "the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section." This language appears to grant discretion to the Secretary to approve site security plans that fail to meet the risk-based performance standards under this program. Changes to section 550 could create greater clarity in the Site Security Plan review process, and provide greater certainty for regulated entities and the citizens living near them. At the hearing, we learned that the Department would prefer to never disapprove a plan. Instead, the Department would prefer to work with facilities to improve any deficiencies in submitted plans, to ultimately develop approvable plans.

Should the Department have the discretion to approve a site security plan that fails to meet the risk-based performance standards of the CFATS program?

Would the Department support replacing the words "may disapprove" in section 550 with "shall not approve"? This would preserve the Department's ability to work with regulated facilities towards site security plans that meet the risk-based performance standards while clarifying that inadequate plans may not be approved.

Response: No such statutory revision is necessary. The statute (Section 550 of the Department of Homeland Security [DHS] Appropriations Act for Fiscal Year 2007) and the Chemical Facility Anti-Terrorism Standards (CFATS) regulation already provide the Department with the flexibility to work with covered facilities to ensure the adequacy of the security measures described in their Site Security Plans (SSP) (or Alternative Security Programs) prior to approving any SSP, while also authorizing the Department to disapprove any SSP that does not meet applicable Risk-Based Performance Standards (RBPS). Section 27.245(a) of the CFATS regulation contains specific procedures for approval of SSPs that satisfy the RBPS and other CFATS requirements (as specified in Section 27.225 of the regulations). Section 27.245also provides procedures for disapproving any SSP that the Department ultimately determines is deficient because it does not satisfy the requirements of Section 27.225 (including failure to meet the applicable RBPS). The Department does not interpret either Section 550 or Section 27.245 as requiring DHS to approve an SSP that fails to meet the applicable RBPS. Accordingly, DHS does not believe that it is necessary to replace "may disapprove" with "shall not approve" in Section 550.

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