

Statement for the Record
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Thank you, Chairman Thompson, Ranking Member King, and distinguished Members of the Committee. It is a pleasure to appear before you today to address progress on the implementation of the Department's authority over security at high-risk chemical facilities through the Chemical Facility Anti-Terrorism Standards (CFATS) program, as well as provide insight regarding a transition of the existing regulatory program to a permanent authorization. In terms of CFATS, there is significant activity to report on a recent regulatory deadline—the deadline for chemical facilities to submit to the Department a completed Top-Screen questionnaire.

Chemical Security Regulations

The Fiscal Year 2007 Department of Homeland Security Appropriations Act directed the Department to develop and implement a regulatory framework to address the high level of security risk posed by certain chemical facilities. Consequently, the Department published an Interim Final Rule, known as the Chemical Facility Anti-Terrorism Standards (CFATS) on April 9, 2007. Specifically, Section 550(a) of the Act authorizes the Department to require 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 of Homeland Security.

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

- 1) Securing high-risk chemical facilities is an immense undertaking that involves a national effort, including all levels of government and the private sector. Integrated and effective partnerships among all stakeholders – Federal, State, local, and private sector – are essential to securing our national critical infrastructures, 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. By working closely with experts, such as New York and New Jersey State officials, members of industry, members of academia, and Federal government partners, we leveraged vital knowledge and insight to improve the regulation.

- 2) Risk-based tiering will ensure that resources are appropriately deployed. Not all facilities present the same level of risk, and the greatest level of scrutiny should be focused on those facilities that, if attacked, could endanger the greatest number of lives, have the greatest economic impact, or present other significant risks.
- 3) Reasonable, clear, and equitable performance standards will lead to enhanced security. The interim final rule includes enforceable risk-based performance standards. Facilities have the flexibility to select among appropriate site-specific security measures that will effectively address risk, which leads to a Site Security Plan (SSP). The Department will analyze each facility's SSP, and, if it satisfies the CFATS performance standards, approve. If an SSP does not meet the CFATS performance standards, DHS will disapprove the plan and work with the facility to revise and resubmit an acceptable plan.
- 4) Recognition of the progress many companies have already made in improving facility security leverages those advancements. Many responsible companies have made significant capital investments in security since 9/11, and building on that progress in implementing the CFATS program will raise the overall security baseline of high-risk chemical facilities.

Appendix A: Chemicals of Interest List

The Appendix A final rule to the CFATS, published in the *Federal Register* on November 20, 2007, contains a list of chemicals and their Screening Threshold Quantities. Possession of one or more of these chemicals of interest at or above the applicable threshold quantity triggers a requirement for the facility to complete and submit an online consequence assessment known as a Top-Screen. The data gathered through the Top-Screen tool informs the Department's determination of the facility's level of risk and the potential need for the facility to comply with the substantive requirements of the CFATS.

The Department published the Appendix A final rule after a notice and comment period. The final Appendix A 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 consequence 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 if intentionally released or detonated;
- 2) Theft/Diversion – chemicals that have the potential, if stolen or diverted, to be used or converted into weapons; and
- 3) Sabotage/Contamination – chemicals that, if mixed with other readily available materials, have the potential to create significant adverse consequences for human life.

The Department established a Screening Threshold Quantity for each chemical based on its potential to create significant adverse consequences for human life, given the above three listed security issues.

Chemical Security Assessment Tool

Implementation and execution of the CFATS regulation requires the Department to identify which facilities it considers high-risk. The Department developed the Chemical Security Assessment Tool (CSAT) to identify potentially high-risk facilities and to provide methodologies facilities can use to conduct security vulnerability assessments (SVAs) and to develop site security plans (SSPs). CSAT is a suite of four tools: facility registration, an SVA tool, an SSP template, and the initial consequence-based screening tool called the Top-Screen. The Top-Screen builds on the voluntary assessment tool referred to as the Risk Analysis and Management for Critical Asset Protection (RAMCAP), which the Department developed with technical input from industry. Through the Top-Screen process, the Department can identify which facilities do or do not have a significant potential to be the source of negative consequences (that is, those that are or are not high-risk) and can then “screen out” those facilities across the country that are not high-risk.

The Department requires facilities that possess a chemical of interest at or above the listed Screening Threshold Quantity to complete the Top-Screen within 60 calendar days of the publication of Appendix A (or within 60 calendar days of coming into possession of a chemical of interest at or above the applicable Screening Threshold Quantity *after* publication of Appendix A). As Appendix A was published on November 20, 2007, the due date for initial Top-Screen submissions was January 22, 2008. By that date, the Department had received 23,264 Top-Screen submissions from chemical facilities.

If a facility is not screened out during the Top-Screen process, the Department will assign the facility to a preliminary risk-based tier. Those facilities must then complete the Security Vulnerability Assessments and submit them to the Department. Results from this SVA will inform the Department’s determination of a facility’s final tier assignment. This represents the very next phase of the CFATS process.

All high-risk facilities fall into one of four risk-based tiers. These high-risk facilities will be required to develop Site Security Plans that address their identified vulnerabilities and address the performance standards and the security issues presented by the facility. The higher the risk-based tier, the more robust the security measures and the more frequent and rigorous the inspections will be. For example, Tier 1 facilities will have more rigorous requirements than Tier 4 facilities. Inspections will both validate the adequacy of a facility’s Site Security Plan and verify the implementation of the plan’s measures.

Risk-Based Performance Standards

CFATS promulgated 19 risk-based performance standards for compliance. The standards themselves are broad and designed to promote a great deal of flexibility in how a facility approaches meeting standards applicable to it. Although all high-risk facilities must comply with the risk-based performance standards, the measures necessary to meet these standards will vary for the different tiers. For example, a Tier 1 facility with a release hazard security issue would be required to satisfy the performance standards for perimeter control, personnel access, cyber

security, intrusion detection, and all other standards applicable to that security issue at a level appropriate for Tier 1 facilities.

How the facility chooses to meet the required performance standard in its Site Security Plan is at the facility's discretion. In the example of the Tier 1 facility with a release hazard security issue, the "restrict area perimeter" performance standard at the Tier 1 level may involve, for example, the facility establishing a clearly defined perimeter that cannot be breached by a wheeled vehicle. To meet the performance standard, the facility is able to consider a vast number of security measures and might ultimately choose to install cable anchored in concrete block along with movable bollards at all active gates. As long as the specific measures are sufficient to address the performance standard, the Department would approve the plan. Or, the facility might choose to "landscape" its perimeter with large boulders, steep berms, streams, or other obstacles that would thwart a wheeled vehicle. Again, as long as the proposed measures are sufficient, the Department would approve this plan.

Phased Approach to CFATS Implementation

The Department is using a phased approach for implementation of the CFATS regulation. In advance of the release of Appendix A, the Department began Phase 1 of CFATS implementation at certain facilities that the Department believed, based on available information, are likely to be high-risk. Following initial outreach at the corporate level, the Department sent letters to approximately 90 facilities, informing them of their selection for participation in Phase 1, and advising those facilities of the requirement to submit a Top-Screen. The facilities were to complete the Top-Screen in advance of the release of Appendix A and receive technical assistance from Department inspectors. The Department, after receiving the majority of Phase 1 Top-Screens, reviewed these submissions for risk determinations. Those Phase 1 facilities determined to be high-risk will receive written notification from the Department informing them of the Department's determination and instructing these facilities on their requirements to complete a Security Vulnerability Assessment (SVA) for departmental review. The Department will provide technical assistance to those Phase 1 high-risk facilities as they conduct the SVA process.

In addition to the above, publication of the final Appendix A initiated Phase 2, the full implementation of the CFATS program. Phase 2 covers all facilities that possess chemicals of interest at or above the listed Screening Threshold Quantities listed in Appendix A. For Phase 2, most facilities have completed the Top-Screen, although a number of facilities received filing extensions. Those facilities subsequently determined to be high-risk will receive preliminary tiering decisions and will be instructed to complete SVAs. Upon receipt of a facility's SVA, the Department will review it for purposes of final tiering determinations, and covered facilities will be required to develop SSPs. The Department will review those SSPs and conduct on-site facility inspections to ensure compliance with the submitted plan.

Outreach and Partnership Efforts

Since the release of CFATS in April, the Department has made a concerted effort to publicize the rule and make sure that our security partners are aware of CFATS and its requirements. As part

of a dedicated outreach program, the Department has presented at numerous security and chemical industry conferences, participated in a variety of other meetings of relevant security partners, issued several press releases regarding the regulations, published and distributed full copies of the regulations as well as various facts sheets summarizing critical aspects of the regulations, and developed and continually update a DHS.gov Chemical Security website. We believe these efforts are definitely having an impact. As of February 10, 2008:

- 24,891 facilities have submitted a completed Top-Screen;
- Approximately 7,800 facilities have requested and received a Top-Screen filing extension; and
- Agricultural operations possessing COI for agricultural use have received a Top-Screen filing extension.

Partially stemming from the implementation issues surrounding the ammonium nitrate security-related provisions within the Fiscal Year 2008 Omnibus Appropriations Act, the Department granted an extension to a category of agricultural operations possessing COI for agricultural use. This extension will allow the Department to engage agri-business distributors and end users in dialogue to narrow the CFATS program's focus on the truly high-risk operations. DHS is currently gathering more information about these issues to determine whether any modification of the Top-Screen requirements might be warranted. As a result of this research and dialogue, DHS will review its approach toward COIs used in agricultural operations.

Additionally, the Department intends to focus efforts on fostering solid working relationships with State and local officials and first responders in jurisdictions with high-risk facilities. To meet the risk-based performance elements under CFATS, facilities are likely to develop active, effective working relationships with local officials in the areas of delaying and responding to potential attacks and a clear understanding of roles and responsibilities during an elevated threat situation.

In terms of staffing the chemical security program, the National Protection and Programs Directorate has launched an aggressive hiring effort in order to meet a wide variety of program requirements by the end of fiscal year 2008. In addition, the chemical security regulatory program has embarked on a course to fulfill in fiscal year 2008 the following deliverables:

- Review submitted SVAs for final tiering determinations, yielding the population of facilities subject to the substantive security requirements of the CFATS regulatory program;
- Develop the CSAT SSP template for use by regulated facilities, as well as review of Phase 1 facility SSPs and conduct inspections for those facilities;
- Review SSPs, along with a select number of inspections for Tier 1 facilities;
- Enhance the CSAT suite of applications, by developing requirements for CSAT version 2.0, which will 1) provide chemical facilities with the ability to conduct "what if" analyses within the SVA based on risk assessments, 2) host a portal for a personnel surety capability, 3) maintain Top-Screen and SVA analytical capabilities, and 4) host a case management system for tracking CSAT usage; and

- Engage State and local officials and chemical facilities to plan, train, and exercise activities related to delay and response performance standards.

In addition, as the Committee is aware, the Department has recently submitted a fiscal year 2009 budget request that further details the chemical security regulatory program's requirements for future years, including additional inspector personnel to upgrade outreach, plan approval, inspection, and audit capabilities; further outfit the program's adjudications and appeals component; and further enhance CSAT by developing an economic modeling tool for the chemical sector, as well as accomplish other important program objectives.

Ammonium Nitrate Regulations

In addition to the previously legislated chemical security regulatory authority discussed above, in the Fiscal Year 2008 Omnibus Appropriations Act, Congress amended the Homeland Security Act of 2002 (6 U.S.C. 361 et seq.) by adding a Subtitle J, Secure Handling of Ammonium Nitrate (AN). Subtitle J authorizes the Department to regulate the sale and transfer of AN and requires that DHS develop a regulatory program that oversees or requires (1) the registration of AN Facilities and AN Purchasers with DHS; (2) Point of Sale verification of AN purchasers; (3) record keeping requirements for AN sales transactions, with penalties for failing to maintain records appropriately; (4) theft or loss reporting requirements; (5) compliance inspections conducted by DHS; (6) guidance materials and informational posters for the benefit of both AN facilities and AN purchasers; (7) an appeals process. Subtitle J also provides DHS with the authority to levy civil penalties of up to \$50,000 per violations of the subsequent regulation.

One of the key principles of any subsequent DHS regulatory program resulting from Subtitle J will be to ensure that the AN-specific regulations are complementary to the CFATS regulations, especially as CFATS applies to AN facilities (that is, facilities that meet CFATS criteria for submitting Top Screens and high-risk facilities that must submit SVAs and SSPs). The goal is to ensure the secure handling of AN without unduly burdening buyers and sellers of AN.

Prior to initiating the rulemaking process, Congress directed the National Protection Programs Directorate (NPPD) to develop a report that would discuss how the Department would implement and fund a program incorporating the above requirements within the current budget. DHS is currently in the process of developing that implementation report, which will estimate the magnitude of the costs that AN facility owners and operators, AN purchasers, and DHS may incur in the implementation of and compliance with the Act. The report is presently undergoing intra-Departmental review and will be presented to Congress in the near future.

In addition to this new authority, the Department is currently engaged in a variety of efforts, both regulatory (e.g., CFATS and the U.S. Coast Guard's Maritime Transportation Security Act program) and voluntary (e.g., National Infrastructure Protection Plan's Chemical Sector efforts, Transportation Security Administration's security action items), aimed at securing the chemical supply chain, including ammonium nitrate.

As discussed above, the Department is currently analyzing the various regulatory approaches that could be used to accomplish the activities required by Subtitle J. Our intent is to harmonize the new

security authorities for ammonium nitrate with existing chemical security supply chain authorities, including CFATS, MTTSA, and the rail transportation security regulations. To that end, DHS is working to ensure that there are no duplicative or overlapping regulatory requirements, and is seeking to avoid unnecessarily burdening both the private sector and the Federal Government.

New Legislation

Any new legislation on chemical security should be carefully crafted to continue the forward momentum and success of the CFATS program. Prior and existing efforts by the Department, and most important, the compliance activities already implemented or underway by the regulated population, should be carried forward with the enactment of any new legislative authority. The Department and industry have invested a significant amount of resources and time into information collection and consequence assessment activities, and those efforts should be validated by incorporation or continuation to maximum extent in any new legislation.

Conclusion

The Department is collaborating extensively with the public, including members of the chemical sector and environmental groups, to actively work toward achieving our collective goals under the CFATS regulatory framework. In almost every case, industry has voluntarily done a tremendous amount to ensure the security and resiliency of its facilities and systems. As we implement the chemical facility security regulations, we will continue to work as partners with industry, States and localities to get the job done.

We must focus our efforts on implementing a risk- and performance-based approach to regulation and, in parallel fashion, continue to pursue the voluntary programs that have already borne considerable fruit. In doing so, we look forward to collaborating with the Committee to ensure that the chemical security regulatory effort is sufficiently defined in order to achieve success in reducing risk throughout the chemical sector. In addition to our Federal Government partners, success is dependent upon continued cooperation with our industry and State and local government partners as we move toward a more secure future.

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