

Statement for the Record
Robert B. Stephan
Assistant Secretary, Infrastructure Protection
National Protection and Programs Directorate
Department of Homeland Security

Before the

Subcommittee on Transportation Security and Infrastructure Protection
Committee on Homeland Security
United States House of Representatives

Wednesday, December 12, 2007
Room 311, Cannon House Office Building

Thank you, Chairwoman Jackson-Lee, Congressman Lungren, and distinguished Members of the Subcommittee. 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 CFATS, the Chemical Facility Anti-Terrorism Standards. The recent release of the final Appendix A to CFATS makes the discussion of this important topic all the more timely.

Chemical Security Regulations

The Fiscal Year 2007 Department of Homeland Security Appropriations Act directed the Department to develop and implement a regulatory framework for high-risk chemical facilities. The Department published the Chemical Facility Anti-Terrorism Standards 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 defined by the Department of Homeland Security.

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

- 1) Securing high-risk chemical facilities represents an immense undertaking that involves a national effort, including all levels of government, industry, and the public. 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, which is focused on securing high-risk facilities, 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. Consultation with industry experts, academic specialists, engineering associations, and non-government organizations was necessary to assist in creating and effectively implementing a rule that accomplishes necessary security goals while ensuring economic viability of the sector. By working closely with public experts, such as New York and New Jersey State officials, we leveraged vital knowledge and insight to improve the regulation.

- 2) Risk-based tiering ensures 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.
- 3) Reasonable, clear, and equitable performance standards lead to enhanced security. The rule includes enforceable risk-based performance standards based on the type and severity of potential risks posed by terrorists. Facilities have the flexibility to select among appropriate site-specific security measures that will effectively address risk. The Department will approve a facility's Site Security Plan if it satisfies the CFATS performance standards. If a Site Security Plan 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 raises the overall security baseline of high-risk chemical facilities.

Public and private stakeholder input was critical to success in developing the regulatory framework. In December 2006, the Department released an Advance Notice of Rulemaking, seeking comment on significant policy issues and draft regulatory text. We received more than 1,300 pages of comments from more than 106 separate submitters. We carefully reviewed and considered these extensive comments. Within the Interim Final Rule, we included a second public comment period specific to the rule's Appendix A, the Chemicals of Interest List.

Appendix A: Chemicals of Interest List

Appendix A to the CFATS contains a list of chemicals and their Screening Threshold Quantities. Possession of one or more of these chemicals of interest at or above the specified quantity triggers a requirement for the facility to complete and submit an online consequence assessment tool known as a Top-Screen. The data gathered through the Top-Screen informs the Department's preliminary 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 public comment period for Appendix A closed on May 9, 2007. We received more than 4,000 comments on a wide range of subjects, such as which chemicals and thresholds the Department should use, the treatment of chemical mixtures, and the potential impact of Appendix A on certain types of facilities not traditionally considered chemical facilities, such as farms and universities. We studied these comments carefully and conducted extensive outreach with representatives of several stakeholder groups to better understand their specific concerns.

After careful consideration of the comments and consultation with a variety of technical subject matter experts, including the Federal Bureau of Investigation's Explosives Unit and the DHS Science and Technology Directorate's Chemical Security Analysis Center, the Department

published the final Appendix A in the Federal Register on November 20, 2007. The final Appendix A listed approximately 300 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 or health if intentionally released or detonated;
- 2) Theft/Diversion – chemicals that have the potential, if stolen or diverted, to be used or converted into weapons; 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 established a Screening Threshold Quantity for each chemical based on its potential to create significant adverse consequences for human life or health.

Chemical Security Assessment Tools

Implementation and execution of the CFATS regulation requires the Department to identify which facilities it considers high-risk. To facilitate this, the Department developed a consequence-based screening tool called the Chemical Security Assessment Tool (CSAT) Top-Screen. The Top-Screen builds on the assessment tool referred to as the Risk Analysis and Management for Critical Asset Protection (RAMCAP), which the Department developed with industry input.

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). Through the Top-Screen process, the Department can identify which facilities do not have a significant potential to be high risk and can then “screen out” those facilities.

If a facility is not screened out during the Top-Screen process, the Department will make a preliminary determination that a facility is high-risk and assign the facility to a preliminary risk-based tier. All high-risk facilities must then complete the CSAT Security Vulnerability Assessment (SVA). Results from this online tool inform the Department’s final tier determination of a facility’s risk level.

All high-risk facilities fall into one of four risk-based tiers. High-risk facilities will be required to develop Site Security Plans addressing their identified vulnerabilities. A high-risk facility’s security measures must meet the performance standards. The higher a facility’s risk tier, the more robust the measures it will need to incorporate and the more frequent and rigorous its inspections will be. 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 promulgates nineteen 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, each tier requires appropriate levels of security for each security issue. For example, a Tier 1 facility with a release hazard security issue would carry different expectations for perimeter control, personnel access, intrusion detection, and all other standards applicable to that security issue than lower tier 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 meet the performance standard, the Department would approve the plan. Alternatively, the facility might choose to "landscape" their 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 June of 2007, the Department began CFATS implementation at certain facilities deemed likely to present highest-risk. The release of Appendix A on November 20, 2007, triggered implementation at the Nation's remaining high-risk facilities in a fashion sequential to Phases 1(a) and (b) discussed below. The phased approach will also permit a time of learning, particularly for our inspectors, as well as for industry. What we learn in the earlier phases can then shape further implementation of the program and ensure consistency across the country. The following summarizes our current activities:

- On June 8, 2007 the Top-Screen became available online, and the CVI program went into effect. On June 11, we contacted the State Homeland Security Advisors and the Chemical and Oil and Natural Gas Government Coordinating Councils and Sector Coordinating Councils to brief them on program implementation.
- The week of June 11, 2007 marked the beginning of Phase 1(a), in which the Department asked select facilities it believed to be high-risk, given available information, to complete the Top-Screen. Following initial outreach at the corporate level, the Department sent letters to approximately 50 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 final Appendix A with technical assistance from Department inspectors. The Department, after receiving the final Phase 1(a) Top-Screens in

prompt fashion, is currently reviewing these submissions for preliminary high-risk determinations. If those facilities are determined to be high-risk, the Department will provide written notification, and then engage these facilities directly on the CSAT Security Vulnerability Assessment (SVA).

- In October 2007, Phase 1(b) began, in which approximately 50 additional facilities believed to be high-risk were contacted with the request they begin their CFATS requirements in advance of the release of the final Appendix A. A number of the Phase 1(b) facilities have already submitted Top-Screens to the Department.
- November 20, 2007, the date of the publication of the final Appendix A, initiated Phase 2, the full implementation of CFATS. Publication of the final Appendix A officially started the program for all facilities that possess chemicals of interest at or above the listed Screening Threshold Quantities. During Phase 2, such facilities will complete the Top-Screen, and those facilities subsequently determined to be high-risk will receive preliminary tiering decisions and will then be instructed to complete SVAs. Upon receipt, the Department will review the submitted SVAs for purposes of final tiering determinations, and subject facilities will be asked to develop SSPs. DHS will subsequently review those SSPs, and conduct on-site facility inspections to ensure a facility's compliance with their submitted plan.

Outreach and Partnership Efforts

Since the release of the Interim Final Rule in April, the Department has made a concerted effort to publicize the rule and make sure that our security partners are aware of the 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 numerous 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 updated a DHS.gov Chemical Security website. We believe these efforts are definitely having an impact. As of November 25, 2007:

- 12,267 facilities have registered in the CSAT process;
- 2,079 facilities are in some phase of Top-Screen completion; and
- 1,197 facilities have submitted a completed Top-Screen.

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 a potential attacks and a clear understanding of roles and responsibilities during an elevated threat situation. As stated in our guiding principles, our vision is that all stakeholders participate in the planning and implementation of protective security measures around high-risk chemical facilities.

Conclusion

The Department is collaborating extensively with the public 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 begin to fully implement the chemical facility security regulations, we will continue to work as partners with industry, States and localities, and the Congress to get the job done.

Given the nature of the terrorist adversary we face, we simply cannot afford an “us-versus-them” stance toward the Chemical Sector but, instead, must work together to implement 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 Congress to ensure that the chemical security regulatory effort achieves success by 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 towards a more secure future.

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