



THE COMMITTEE ON ENERGY AND COMMERCE

MEMORANDUM

September 7, 2012

To: Members, Subcommittee on Environment and the Economy

From: Committee Staff

Subject: September 11, 2012, Hearing on Operation and Implementation of the Chemical Facility Anti-Terrorism Standards Program (CFATS)

On Tuesday, September 11, 2012, the Subcommittee on Environment and the Economy will hold an oversight hearing at 10:00 a.m. in room 2322 of the Rayburn House Office Building, entitled “The Chemical Facilities Anti-Terrorism Standards Program – A Progress Report”.

I. WITNESSES

The Honorable Rand Beers
Under Secretary
National Protection and Programs Directorate (NPPD)
U.S. Department of Homeland Security (DHS)

Cathleen Berrick
Managing Director
Homeland Security and Justice Team
Government Accountability Office

Additional witnesses will be announced at a later time.

II. BACKGROUND

A. *Section 550 of Public Law 109-295 (Section 550)*

Section 550 of Public Law 109-295, authorizes the Department of Homeland Security (DHS) to establish and implement a Chemical Facilities Anti-Terrorism Standards program. On April 9, 2007, DHS published in the Federal Register the interim final regulations establishing risk-based performance standards for chemical facility security, development of facility vulnerability assessments, requirements for creation and approval of site security plans for covered facilities, and verification of compliance with the site security plants.

DHS applies these regulations to facilities with chemicals that the DHS Secretary determines present a high-level security risk. Based on an initial self-assessment of potential

facility vulnerabilities called a “top screen”, DHS determines if a facility's risk status merits CFATS regulation. Those facilities that qualify for CFATS are sorted into four risk-based tiers.

DHS sets different performance-based requirements for facilities assigned to each risk-based tier, with higher 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. Facilities may use alternative security programs (ASP) if they meet the requirements of the interim final rule and provide an equivalent level of security. By statute, DHS may not disapprove site security plans on the basis of the presence or absence of a specific security measure.

Once assigned to a tier, and unless it opts for an ASP, a facility completes and submits to DHS a facility vulnerability assessment followed by a site security plan. Each is subject to DHS approval. DHS also is to conduct site visits for the purpose of determining whether the vulnerability assessment is adequate and to ensure compliance with an approved site security plan. This hearing will afford DHS the opportunity to detail the progress of the CFATS program in helping facilities attain each of these milestones.

B. DHS Testimony on CFATS before the Subcommittee on Environment and the Economy in the 112th Congress

On March 31, 2011, and again on February 3, 2012, the Honorable Rand Beers, DHS Undersecretary for the National Protection and Programs Directorate, testified before the Subcommittee on Environment and the Economy on CFATS. The March 31, 2011, hearing was on H.R. 908, a bill to extend authority of the Secretary of Homeland Security to maintain the CFATS program. The February 3, 2012, oversight hearing was necessitated by news of an internal memorandum, co-authored by then CFATS program Director Penny Anderson and Deputy Director David Wulf (Anderson/Wulf memorandum), which detailed an array of management flaws and achievement gaps within the CFATS program.

C. GAO Investigation

When news of the CFATS management problems surfaced, several Members of Congress asked the Government Accountability Office (GAO) to determine what actions DHS is taking to address challenges identified in the Anderson/Wulf memorandum. GAO recently submitted to the Committee an August 2012 report entitled “CRITICAL INFRASTRUCTURE PROTECTION - DHS Is Taking Action to Better Manage Its Chemical Security Program, but It Is Too Early to Assess Results.” As GAO designated the report “For Official Use Only,” it is not appended to this hearing memorandum, but Subcommittee Members may obtain a copy in the Committee’s offices. However, witness Cathy Berrick, Managing Director of GAO’s Homeland Security and Justice Team, will provide an overview of GAO’s perspectives.

III. HEARING OBJECTIVES

The September 11, 2012, hearing will:

- Allow DHS to provide a progress report on the CFATS program with respect to both implementation of the action items and overall achievement of benchmark objectives identified in the Anderson/Wulf memorandum;
- Give DHS an opportunity to discuss the viability of using ASPs and whether expanding ASP usage is warranted. In 2007, DHS announced it would only accept an ASP for Tier 4 facilities; and,
- Update Members on the status of GAO’s recommendations for the CFATS program.

IV. STAFF CONTACTS

If you have any questions regarding this hearing, please contact David McCarthy or Jerry Couri of the Majority Committee staff at (202) 225-2927.

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Enacted Funds by Year (\$M)	Program Management and Inspector Staff	Training, Systems, and Program Support***	Total Funding	Full-Time Equivalent
2007*	N/A	22.000	22.000	0
2008	5.632	44.368	50.000	21
2009	11.219	66.781**	78.000	78
2010	33.495	69.868	103.363	246
2011	33.428	62.502	95.930	257
2012	32.965	60.383	93.348	242
Total	\$116.739	\$325.902	\$442.641	

* Includes one-time supplemental appropriation in FY 2007.

**Includes \$5M for Ammonium Nitrate program.

***Includes non-personnel costs such as training, travel, IT systems, technical and subject matter expert support (SME) (e.g., engineering, chemical engineers, security (physical/chemical/cyber), and regulatory (policy) support.