

**THE CHEMICAL FACILITIES ANTI-TERRORISM
STANDARDS PROGRAM: ADDRESSING ITS CHAL-
LENGES AND FINDING A WAY FORWARD**

HEARING

BEFORE THE

SUBCOMMITTEE ON CYBERSECURITY,
INFRASTRUCTURE PROTECTION,
AND SECURITY TECHNOLOGIES

OF THE

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HOUSE OF REPRESENTATIVES

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THE CHEMICAL FACILITIES ANTI-TERRORISM STANDARDS PROGRAM: ADDRESSING ITS CHALLENGES AND FINDING A WAY FOR- WARD

Tuesday, March 6, 2012

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON CYBERSECURITY, INFRASTRUCTURE
PROTECTION, AND SECURITY TECHNOLOGIES,
Washington, DC.

The subcommittee met, pursuant to call, at 2:40 p.m., in Room 311, Cannon House Office Building, Hon. Daniel E. Lungren [Chairman of the subcommittee] presiding.

Present: Representatives Lungren, Meehan, Marino, Clarke, Richardson, and Richmond.

Mr. LUNGREN. Mr. Meehan is here and that makes two of us. So with the approval of the Minority we can start with the two on our side. We shall start.

The Committee on Homeland Security's Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies will come to order. The subcommittee is meeting today to examine the chemical facilities anti-terrorism standards program at the Department of Homeland Security.

Before I start, I just want to mention that we would remind our guests today that demonstrations from the audience, including the use of signs, placards, and T-shirts, as well as verbal outbursts, are a violation of the rules of the House. The Chairman wishes to thank our guests for their cooperation in maintaining order and proper decorum.

I would recognize myself for an opening statement. I wish to thank Under Secretary Beers, Director Anderson, and Deputy Director Wulf for your cooperation in providing our committee with a detailed briefing on the challenges facing the MPPD's Infrastructure Security Compliance Division, ISCD, on February 7. I must say that I was upset when I learned about the widespread mismanagement training and recruiting failures in the CFATS compliance division, which we now are learning about more than 5 years after the program was authorized.

Some examples cited were 4,200 site security plans submitted to ISCD with no plans being finally approved, workers hired without appropriate skill levels, no adequate training program for chemical inspectors having been established, supervisors selected based on

personal relationships rather than leadership or managerial ability and experience.

The leaked Anderson memo also stated that the Congressional mandate forced development of the CFATS program at an impractical pace, the inference seemingly being that the accelerated pace pushed by Congress resulted in poor program implementation, inappropriate hirings, and wasteful expenditure of taxpayer funds.

Now, Congress directed the Secretary in our 2007 DHS appropriations bill to develop a regulatory framework within 6 months to address the security of U.S. chemical facilities. I believe that was a shorter period than we had envisioned in the bill that we worked on in this subcommittee. However, this short time line was an expression of Congressional urgency and concern regarding the threat to our chemical facilities, and I don't believe it really was a hard deadline. But nonetheless we wished to urge upon the Executive Branch our concern at that time in the hope that this would be expedited.

Since that time, our Homeland Security Committee has conducted numerous oversight hearings and Departmental briefings where these compliance problems were never mentioned.

Last year I, along with my colleagues on both sides, championed a long-term extension of the Department's CFATS authority, H.R. 901. This was also consistent with the request by the administration of a long-term extension. At that time these compliance problems were never referenced to us. To the contrary, the CFATS program was often cited as a model public-private partnership for securing critical infrastructure. That in fact was the hope of those of us who had any part in offering the legislation in the first instance.

Fortunately, these program challenges were detailed in the Anderson memo requested by you, Mr. Beers, and then exposed by Fox News. No one likes to be surprised, especially those of us in Congress. We have enough surprises, I guess, that we create for ourselves. I will say mismanagement of this division was disturbing, particularly to someone—like those of us on this subcommittee who have been strong CFATS advocates.

So while the report was extremely disappointing, I want to emphasize that the CFATS program has many phases and what appears to be failures contained or pointed out in the memo, or in the compliance phase or the final phase of the program. CFATS has unquestionably improved the security of our chemical industry, identifying chemicals of interest and establishing threshold levels for those chemicals. It has also required high-risk facilities to conduct vulnerability assessments, development site security plans and adopt security performance standards to mitigate identified vulnerabilities. The Government has already spent hundreds of millions of dollars on this chemical security program, while our private sector has invested billions in CFATS security improvements. I believe those are assets and investments that ought not to be wasted.

My hope is that, while the memo relates to failures in the compliance phase of the CFATS program, that this is not used as, or misread by people to believe that we have wasted money in the Government and that the private sector has wasted money as they have dealt with CFATS security improvements. Rather, I believe,

we have had a model of private-public partnership. I devoutly hope that this will be continued.

I was pleased to see your quick response to these management failures by issuing your list of corrective action items. What was missing in the action item list, it appears, is priorities and time lines. So without that, it seems to me priority and supervision, you end up hiring unqualified inspectors and paying them for jobs that don't yet exist.

The Anderson memo reveals the CFATS program was being victimized by mismanagement. But as we know, mismanagement is correctable and in no way indicates the failure of the underlying program with security achievements. I believe that you share that sentiment, at least as evidenced by conversations we have had. You believe that the program is a worthy one and one that needs to be completed. That is why I assume the White House has supported the idea of extending the life of this program.

I look forward to hearing your plans to reorganize this office so it can accomplish its mission-approving site security plans, inspecting those facilities and ensuring that they implement the risk-based security measures outlined in their SSP.

It is obvious, Mr. Beers, that you are responsible for the management of the program. As Under Secretary of the National Protection and Programs Directorate, you are in charge of CFATS, and so adjustments of these management difficulties are under your watch and we will be very interested to hear how you are and intend to correct those failures.

It is my belief, and I believe it is shared by other Members of this subcommittee, that there ought to be no more surprises as we finish implementing the CFATS program. We will conduct vigorous oversight of the infrastructure security compliance division action plan.

This oversight will include—we will expect to have quarterly briefings by Director Anderson to our subcommittee staff on what action items and reforms have been implemented. I have included a more detailed quarterly report request, and I ask that it be made a part of the record. If there is no objection we shall enter it into the record.

[The information follows:]

REQUEST FOR REPORT SUBMITTED BY CHAIRMAN DANIEL E. LUNGREN

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

DEAR UNDER SECRETARY BEERS: As you know, I entered a request for quarterly reporting on the status of the Chemical Facilities Anti-Terrorism Standards ("CFATS") program in the official record during the House Committee on Homeland Security Subcommittee on Cybersecurity, Infrastructure Protection, and Security's hearing on March 6, 2012. The intent of this letter is to formalize that request and outline its details to you.

To ensure that Congress is appropriately informed of the CFATS program's progress towards implementation, I request a quarterly report to the subcommittee. This report should come in the form of briefings carried out by Ms. Penny Anderson, the Director of ISCD. At minimum, it should include:

- a. Progress reports on review, authorization, and approval of site security plans;
- b. Updates on changes to the tiering formula, facility tier changes, and efforts to ensure security of tiering inputs and algorithms;
- c. Updates on hiring and training of inspector cadre;

- d. Information about training program development and implementation;
- e. Explanations of changes in leadership and management of program.

I appreciate your cooperation on this important issue. If you have any questions, please contact my staff director Mr. Coley O'Brien or counsel, Ms. Monica Sanders.

Sincerely,

DANIEL E. LUNGREN,

Chairman, Subcommittee on Cybersecurity, Infrastructure Protection and Security Technologies, House Committee on Homeland Security.

[The statement of Mr. Lungren follows:]

STATEMENT OF CHAIRMAN DANIEL E. LUNGREN

I want to thank Under Secretary Beers, Director Anderson, and Deputy Director Wulf for your cooperation in providing our committee with a detailed briefing on the challenges facing the NPPD's Infrastructure Security Compliance Division ISCD on February 7.

I was upset when I learned about the widespread mismanagement, training, and recruiting failures in the CFATS compliance division, 5 years after this program was first authorized. Examples:

- 4,200 SSPs were submitted to ISCD, less than 50 have been approved;
- No inspection program design or procedures adopted;
- Restrictions on hiring qualified inspectors;
- No adequate training program for inspectors to conduct compliance inspections.

The leaked memo also stated that the Congressional mandate forced development of the CFATS program at an impractical pace. The inference being that the accelerated pace pushed by Congress resulted in poor program implementation, the hiring of inappropriate staff, and the wasteful expenditure of taxpayer funds.

Our Homeland Security Committee conducted numerous oversight hearings and Departmental briefings, where these problems were never mentioned. I championed a long-term extension of the Department's CFATS Authority last year (H.R. 901) and these problems were never discussed. To the contrary, the CFATS program was often cited as a model public/private security partnership.

Fortunately, these program challenges were detailed in the Anderson memo requested by you, Under Secretary Beers, and then exposed by Fox News. No one likes to be surprised, especially Congress. The wholesale mismanagement of this Division is disturbing, particularly to someone like myself, who drafted the legislation CFATS was modeled after.

While this report was extremely disappointing, I want to emphasize that the CFATS program has many phases and these failures are in the final phase—the compliance phase of the program. This program has unquestionably improved the security of our chemical industry, identifying dangerous chemicals of interest and establishing threshold levels for those chemicals. It has also required high-risk facilities to conduct vulnerability assessments, development site security plans, and adopt security performance standards to mitigate identified vulnerabilities.

The Government has already spent hundreds of millions of dollars for this chemical security program and the private sector has spent billions of dollars.

While the compliance phase is critical to the success of CFATS by insuring that identified security measures have been implemented by our high-risk chemical facilities, these management problems are all correctable.

I was pleased to see your quick response to these management failures by issuing your list of corrective action items. What was missing in your action item list were priorities and time lines. Without leadership, priorities, and supervision, you end up hiring unqualified inspectors and paying them for jobs that don't yet exist.

I look forward to hearing your plans to reorganize this office so it can accomplish its mission—approving site security plans (SSP), inspecting these facilities and ensuring that they implement the risk-based security measures outlined in their SSP.

I also want to be clear that there will be no more surprises as we finish implementing the CFATS program. I will conduct vigorous oversight of the Infrastructure Security Compliance Division action plan by requiring Director Anderson to report to our staff on a quarterly basis what action items and reforms have been implemented.

I now recognize the gentle lady from New York, Ms. Clarke, for her opening statement.

Mr. LUNGREN. It is now my pleasure to recognize the gentle lady from New York, Ms. Clarke, the Ranking Member of the subcommittee for her opening statement.

Ms. CLARKE. Thank you, Mr. Chairman. Thank you for calling this hearing on the chemical facilities anti-terrorism standards program. The Under Secretary's Office provided us with a confidential memorandum report that he ordered in summer 2011 for internal use, but was leaked to the news media and a summary article published in December.

We have been provided with a rare insight into the internal workings of a regulatory program that is experiencing drastic spasms. The CFATS issues before us today are greater than just the leaked internal memorandum that made headlines late last year.

Let me review the facts. The Department established CFATS in fiscal year 2007 and has received approximately \$442 million since then in appropriated funds to implement both the CFATS and ammonium nitrate programs. The Department has testified numerous times as to the successful issuance of regulation and establishment of a regulatory framework, and DHS has annually engaged stakeholders in a chemical security summit.

The information memorandum contains information that raises questions about the accuracy of those presentations. The information memorandum, for example, states that millions of dollars of training contracts have resulted in no compliance inspector training, the information technology systems are insufficient to meet ISCD needs, and that regional and headquarter locations invested in unneeded capabilities inconsistent with mission needs.

The information memorandum identifies a series of institutional flaws such as a lack of a system for tracking the usage of consumable supplies, pay grades not aligning with job requirements, and weak leadership providing the appearance of favoritism, cronyism, and retribution.

Here is what is really disturbing. The fact that DHS raised none of these points in its prior testimony or discussions, instead presenting the appearance of an on-going regulatory program. While the Under Secretary has testified that he was not aware of the scope of the problems within ISCD until 2011, the senior ISCD official in charge would seemingly have possessed detailed information not available to the Under Secretary.

Additionally, Congress has required, through appropriations report language, both reports and briefings on facets of the CFATS program, none of which reported the challenges ISCD was experiencing.

It is our job to attempt to identify the root causes of the challenges experienced by ISCD in order to avoid similar problems in other agencies in an attempt to identify how prior appropriated funds were spent and what value was received and how we should attempt to identify the official or officials responsible for the failures in ISCD performance.

Mr. Chairman, besides the fact-finding that we need to do, there is a bigger question of authorization. It seems only reasonable to me that in light of these leaked memorandums—excuse me, this leaked memorandum—and the host of problems it outlines for the CFATS program, it will behoove Congress to think again about giving the program an extended authorization without further committee oversight and guidance.

As you know, I offered two amendments limiting the 7-year authorization proposed in H.R. 901. I think the idea of limiting the authorization of this troubled program looks pretty good today. Last Congress we brought in all the stakeholders to craft legislation to fully authorize the program. It was a major undertaking. We brought in industry and labor and everyone else who had a concern about this issue. That is the kind of guidance and authorization this troubled program needs.

What I do know is that the front-line workers in every Government program, whether it be law enforcement, management, or regulatory programs, are the heart of the service to the American people. To protect us they make sure things are secure and they interact with business and industry and citizens every day. These are the important workers in your CFATS program.

I am very keen to hear the testimony today of David Wright who represents the inspectors, the lead workers, who make up the inspector cadre, the core and the heart of this program. We need to get their views on the problems you have found if we are to solve these challenges.

Mr. Chairman, I hope we are going to hear some of the answers we need today. I yield back the balance of my time.

[The statement of Ms. Clarke follows:]

STATEMENT OF RANKING MEMBER YVETTE D. CLARKE

MARCH 6, 2012

Mr. Chairman, thank you for calling this hearing on the Chemical Facilities Anti-Terrorism Standards program. The Under Secretary's office provided us with a confidential memorandum report that he ordered in the summer 2011, for internal use, but was leaked to the news media, and a summary article published in December. We have been provided with a rare insight into the internal workings of a regulatory program that is experiencing drastic spasms.

The CFATS issues before us today are greater than just the leaked internal memorandum that made headlines late last year. Let me review the facts:

- The Department established CFATS in fiscal year 2007 and has received approximately \$442 million since then in appropriated funds to implement both the CFATS and ammonium nitrate programs.
- The Department has testified numerous times as to the successful issuance of regulation and establishment of a regulatory framework, and DHS has annually engaged stakeholders in a chemical security summit.
- The information memorandum contains information that raises questions about the accuracy of those presentations. The information memorandum, for example, states that millions of dollars of training contracts have resulted in no compliance inspector training, that information technology systems are insufficient to meet ISCD needs, and that regional and headquarters locations invested in unneeded capabilities inconsistent with mission needs.
- The information memorandum identifies a series of institutional flaws, such as the lack of a system for tracking the usage of consumable supplies, pay grades not aligning with job requirements, and weak leadership providing the appearance of favoritism, cronyism, and retribution.
- Here's what really disturbing, the fact that DHS raised none of these points in its prior testimony or discussions, instead presenting the appearance of an ongoing regulatory program.

While the Under Secretary has testified that he was not aware of the scope of the problems within ISCD until 2011, the senior ISCD official in charge would seemingly have possessed detailed information not available to the Under Secretary. Additionally, Congress has required through appropriations report language both reports and briefings on facets of the CFATS program, none of which reported the challenges ISCD was experiencing.

It is our job to attempt to identify the root causes of the challenges experienced by ISCD in order to avoid similar problems in other agencies, and attempt to identify how prior appropriated funds were spent and what value was received, and we

should attempt to identify the official or officials responsible for the failures in ISCD performance.

Mr. Chairman, besides the fact-finding that we need to do, there is a bigger question of authorization. It seems only reasonable to me that in light of this leaked memorandum and the host of problems it outlines for the CFATS program, it would behoove Congress to think again about giving the program an extended authorization without further committee oversight and guidance. As you know, I offered two amendments limiting the 7-year authorization proposed in H.R. 901, and I think the idea of limiting the authorization of this troubled program looks pretty good today.

Last Congress we brought in all the stakeholders to craft legislation to fully authorize this program. It was a major undertaking. We brought in industry and labor and everyone else who had a concern about this issue, that's the kind of guidance and authorization this troubled program needs.

What I do know is that the front-line workers in every Government program; whether it be law enforcement, management, or regulatory programs, are the heart of the service to the American people. They protect us, they make sure things are secure, and they interact with business and industry and citizens everyday. These are the important workers in your CFATS program, and I am very keen to hear the testimony today of David Wright who represents the inspectors, the lead workers who make up the inspector cadre, the core and heart of this program. We need to get their views on the problems you have found if we are to solve these challenges.

Mr. Chairman, I hope we are going to hear some of the answers we need today and, I yield back.

Mr. LUNGREN. The gentlelady yields back.

Other Members of the committee are reminded their opening statements may be submitted for the record.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

MARCH 6, 2012

Mr. Chairman, thank you for holding today's hearing.

Congress expressed concern about the safety and security of chemical facilities long before 9/11.

The danger of a sudden release of hazardous chemical fumes caused by a terrorist attack is a nightmare scenario.

In 2006, Congress passed legislation providing the Department of Homeland Security with the ability to assure that chemical plants are safe and secure. This year, the authorization for that program will expire.

Much should have happened in 6 years. But unfortunately, there is not much progress to report.

In December 2011, we learned about the stunning lack of progress and the serious programmatic failures when an internal memo on the CFATS program was leaked.

It is my understanding that the Under Secretary stated on a prior occasion that the memo "fails to provide a complete picture of the program."

It is difficult for any document to capture the complete picture. But while a picture may be incomplete, it still may be accurate.

Mr. Under Secretary, I hope your testimony covers whether many of the troubling assertions contained in the internal memo are accurate:

- Is the ISCD ready to conduct a compliance inspection?
- Will inspectors will be able to review more than 20 facilities per year?
- Does the unit suffer from low morale and perceptions of favoritism?
- Have job descriptions been developed?
- Have in-house training courses been developed?
- How much is spent on contractors?
- Are contractors performing inherently Governmental functions?

Without the answer to these questions, we cannot answer the most important question—when will the CFATS program be fully operational?

Finally, Mr. Chairman, I need to point out that a fully functioning program cannot occur in an atmosphere of blame and recrimination.

The most troubling aspect of this internal memo is that it makes clear that the management of this program has developed a belief that finger-pointing and blame are an effective way of addressing the concerns of front-line workers.

Leadership does not point fingers. Leadership joins hands and works together.

This program will only become fully functional with leadership and hard work.

Mr. Under Secretary, if you do not have that kind of leadership in this program now, I suggest you attain it quickly.

There can be no doubt that a lack of administrative clarity and management commitment impeded this program in the past.

Congress must conduct vigilant oversight to assure that the program begins to move forward.

These challenges show the need for a detailed, biennial reauthorization process. With that, I yield back.

Mr. LUNGREN. We are pleased to have three very distinguished witnesses before us today on this important topic in our first panel. Rand Beers, the Under Secretary for the National Programs and Protection Directorate at the Department of Homeland Security, a position he has held since June 2009. In this role he is tasked to reduce risk to physical cyber and communications infrastructure and collaborate with governments, the private sector, nongovernment organizations, and international bodies to prevent, respond to, and mitigate threats to U.S. National security from acts of terrorism, natural disaster, and other catastrophic events.

Ms. Penny Anderson serves as the director of the Department of Homeland Security National Protection and Program Directorate's Office of Infrastructure Protection, Infrastructure Security Compliance Division. Ms. Anderson is responsible for leading the implementation of DHS regulatory authority for the Nation's high-risk chemical facilities, as well as supporting National-level critical infrastructure risk management, preparedness, and protection programs. Before joining NPPD, Ms. Anderson served as the Transportation Secretary Administration Federal Security Director for West Michigan from November 2007 to July 2011. In this capacity she was the primary point of coordination and oversight for transportation security management in West Michigan, including implementation of all TSA security compliance programs in that region.

Mr. Dave Wulf joined the Department of Homeland Security in July 2011 as the deputy director of the Infrastructure Security Compliance Division, ISCD, within the Office for Infrastructure Protection. In this role Mr. Wulf leads the National implementation of the chemical facility anti-terrorism standards program to assess high-risk chemical facilities, promote collaborative security planning, and ensure that covered facilities meet risk-based performance stands. Mr. Wulf also manages the Department's efforts to establish and implement a regulatory regime for ammonium nitrate products. Prior to joining DHS, Mr. Wulf held a number of positions at the Bureau of Alcohol, Tobacco, Firearms, and Explosives, serving among other roles as the Chief of Bureau's Office of Regulatory Affairs and Director of the National Center for Explosives, Training, and Research.

Thank you all for being here. We will remind you that your full written testimony will be made a part of the record. We would ask you for a summary of 5 minutes. We have got the light system to guide you on that.

We will just start from my left to right with Secretary Beers first.

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

Mr. BEERS. Thank you, Chairman Lungren and Ranking Member Clarke, as well as distinguished Members of the subcommittee. It is a pleasure to be here before you today to discuss the Department's efforts to regulate security at high-risk chemical facilities under the Chemical Facilities Anti-terrorism Standards Act.

Alongside me today, as you indicated, are Penny Anderson and David Wulf, the director and deputy director respectively of the Infrastructure Security Compliance Division. They manage CFATS program and they are also the authors of the internal assessment, which I will discuss shortly. They are here with me today to answer any questions that you might have about the original content of that assessment.

As you are aware, the Department's current statutory authority to implement CFATS, section 550 of fiscal year 2007 Department of Homeland Security Appropriations Act, as amended, was recently extended through October 4, 2012. I strongly believe that the CFATS program is a program that we need, and I am confident that it has made America safer, and I would welcome the opportunity to continue to work with this committee and the Congress and all levels of government and the private sector to further improve this vital National security program.

Since CFATS' inception we have issued the basic rule, we have defined the chemicals of interest, we have jointly conducted two surveys with industry to define the facilities that have a substantial enough quantity of these chemicals determined to be high-risk.

After receiving the initial submissions of more than 40,000 facilities potentially under the program, we have narrowed the number of covered facilities to approximately 4,500. In that process 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 that the facilities are no longer being considered high-risk. These actions, many of which NPPD believes were the result of choices made by facilities after the 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.

The Department has done much work over the past few years to establish and implement the unprecedented regulatory program, but CFATS clearly has challenges that still need to be addressed. In recognition of this, upon the arrival of the program's new director and deputy director this past summer, 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 improvements are needed. Furthermore, in an unprecedented program like CFATS, such corrections can be expected and on-going decisions will need to be made.

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

path to addressing these challenges; specifically the action plan, with detailed recommendations for addressing the issues identified, are those that we have shared with the committee. Since my receipt of the report we now have nearly 100 action items contained in this plan, and each has been assigned to a member of the program senior leadership team for action, and we have already seen progress on many of these items.

For accountability, planning, and tracking purposes, the members of the leadership team have been asked to provide milestones and a schedule for completion of each of the tasks assigned. The program's acting chief of staff will monitor progress.

In addition, program leadership meets weekly with my principal deputy under secretary, Suzanne Spalding, and provides updates as appropriate. As I said, I am happy to report that we have already made tangible progress in addressing some of the challenges of this report.

One issue identified in the report is the completion of site security plans, and we have reviewed those in I think a consistent, reasonable, and timely fashion. We have an interim review process that is allowing the Department to authorize Tier 1 facility plans in a more effective and timely manner. Using this interim report approach over the last few months ISCD has been able to more than quadruple the number of authorized plans. Specifically, as of January, we have 55 different SSPs that have been conditionally authorized. We expect to complete all the Tier 1 site security plan authorizations and to notify facilities in the coming months ahead. ISCD also expects to begin issuing authorizations to Tier 2 facilities in 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 Tiers 2, 3, and 4. The Department takes its responsibility seriously for the CFATS program and the Nation's security, and we are moving forward 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 corrections to improve the program and to better protect the Nation.

Thank you, sir and madam, and all the Members for holding this important meeting. I am happy to respond to any of the questions that you might have.

[The statement of Mr. Beers follows:]

PREPARED STATEMENT OF RAND BEERS

MARCH 6, 2012

Thank you, Chairman Lungren, Ranking Member Clarke, 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 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 the 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 status of the program, examples of the program's successes 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.

At my direction, the program's leadership has outlined their priorities, the challenges they believe the program faces, and a proposed path forward to address those challenges and accomplish program objectives. I assure the committee that the CFATS program is making progress; that 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's value as a National security program warrants your support and commitment.

CHEMICAL FACILITY SECURITY REGULATIONS

Section 550 of the fiscal year 2007 Department of Homeland Security Appropriations Act directed the Department to develop and adopt, within 6 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, academia, and partners across government at every level, 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 establishes enforceable risk-based performance standards (RBPS) for the security of our Nation's chemical facilities. 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 can disapprove security plans if an acceptable plan is not submitted; 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's 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 the Department 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 on-line 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. The CSAT tool is a secure method as it can be accessed only by Chemical-terrorism Vulnerability Information (CVI) authorized users.

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 security risk 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 measures, as described in the 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 any 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 February 14, 2012, CFATS covers 4,464 high-risk facilities Nation-wide; of these 4,464 facilities, 3,693 are currently subject to final high-risk determinations and due dates for submission of an SSP or ASP. The remainder of the facilities are awaiting final tier determinations based on their SVA submissions. 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 the inception of CFATS, 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's 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 visits of final-tiered facilities, starting with the Tier 1 facilities, and has completed approximately 180 such pre-authorization visits to date. ISCD used these pre-authorization 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.
- 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 or conditionally authorized 55 of the 117 Tier 1 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.
- Facilities must fully implement their approved SSPs to be considered CFATS-compliant.
- ISCD plans to issue the first Letters of Approval this year 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.
- It is important to note that many of the roughly 4,000 SSPs or ASPs received to date have required or likely will require substantial additional information and clarification from the facilities, adding to the time line as DHS works with the facilities to fill in the gaps and finalize their SSP or ASP submissions.
- Under CFATS, when a facility does not meet its obligations under the program, an Administrative Order is 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 time frame.
- 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, has reflected that feedback in implementation activities.

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 certain 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.

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 all 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, course corrections are to be expected and on-going decisions will need to be made.

In late November 2011, the ISCD Director and Deputy Director hand-delivered to me a memo providing their views. It is important to note that, in addition to the referenced challenges, the ISCD memorandum also proposed for my consideration a charted path to addressing the challenges. Specifically, the memorandum included an Action Plan with detailed recommended steps for addressing the issues identified, and we have shared those with the committee. Since my receipt of the ISCD memorandum, each of the nearly 100 action items contained in the proposed Action Plan has now 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 necessitated 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 appears to be unnecessary for chemical inspectors. Additionally, we initially envisioned a greater number of field offices than we determined were necessary to deploy in our current environment. These decisions and the subsequent challenges that have resulted from them are directly related to the accelerated stand-up of the program—and while we regret that they occurred, we consider them valuable lessons learned.

PROGRAM SUCCESSES

I would like to point out to the committee that NPPD has made progress in addressing some of the other challenges in the ISCD memorandum and Action Plan. 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.

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 February 21, 2012, 55 of the 117 Tier 1 SSPs have been authorized or conditionally authorized. 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 fiscal year 2012. 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 memorandum 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 the District of Columbia 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 appropriate and sustainable 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 the committee, as it continues to contemplate new authorizing legislation for CFATS. The Department recognizes the significant work that the committee and others have accomplished to reauthorize 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 continuing to make progress in the implementation of CFATS. CFATS already is reducing the risks associated with our Nation's chemical infrastructure. In August 2011, the American Chemistry Council (ACC) conducted a survey of CFATS-regulated facility owners covering approximately 800 facilities and received over 135 responses. Among other things, the ACC survey found that the majority of respondents believe extending CFATS will improve chemical security at CFATS-regulated facilities. The results also revealed that companies have made substantial investments in security up-

grades 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. LUNGREN. Thank you very much Mr. Secretary.

Now Ms. Anderson.

STATEMENT OF PENNY J. ANDERSON, DIRECTOR, INFRA-STRUCTURE SECURITY COMPLIANCE DIVISION, OFFICE OF INFRASTRUCTURE PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Ms. ANDERSON. Thank you, Mr. Chairman. Thank you for the opportunity to meet with you and the Members of the subcommittee today.

I appreciate the opportunity to talk about the CFATS program, where we are and where we need to go. I particularly appreciate the opportunity to provide some context for this internal memorandum. As we are all aware, that is what this was. It was not an investigative report, it was an internal memorandum to my leadership, expressing Mr. Wulf's and my observations about what we thought our priorities should be, what our challenges are, and, most importantly, about the way forward. Because it was written in that context and meant in that way, it didn't provide the context that would have been necessary for external readers of the program. Again, I appreciate the opportunity in that regard to provide some context.

I would last like to say that while I view the challenges identified within that memorandum as not insignificant, I also do not view them as insurmountable. I think that an awful lot of good work has been done by a lot of really good, hardworking people, and that we can make the corrections necessary to keep us on the right track and move us down the road. I again look forward to discussing with you that way forward. Thank you, sir.

Mr. LUNGREN. Thank you.

The Chair now recognizes Mr. Wulf to testify.

STATEMENT OF DAVID WULF, DEPUTY DIRECTOR, INFRA-STRUCTURE SECURITY COMPLIANCE DIVISION, OFFICE OF INFRASTRUCTURE PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. WULF. Thank you, Mr. Chairman. I don't want to reiterate the remarks of the Under Secretary and Director Anderson. But I will just say that I very much appreciate the opportunity to be here today. Both Director Anderson and I arrived at ISCD NPPD about 8 months ago. I just cannot say enough about how excited I was to join the team at the Department and NPPD, and specifically within our division. It is really filled with just a huge number of talented and committed individuals who are just completely dedicated to moving the CFATS and our ammonium nitrate program forward.

As Director Anderson mentioned, our report did identify a number of significant challenges. In no way are those challenges insurmountable. We are looking forward to continuing to work with our industry stakeholders, as well as stakeholders within the union, to move the program forward. I am looking forward to answering questions about the program today. Thank you so much.

Mr. LUNGREN. All right.

We will have a first round of questions, 5 minutes apiece. I will recognize myself for the purpose of asking questions.

Mr. Wulf, Ms. Anderson, if I were to just take the testimony you just gave just now, I would think everything was hunky-dory, that we are moving ahead, we have minor problems, we don't have to worry about it. I would hope that that would be the case. But in the memo you outlined some serious problems. If you were to make an overarching statement about the nature of the problems, what would it be? Ms. Anderson.

Ms. ANDERSON. Thank you, sir, for that question. An overarching statement about the challenges. I think that many of the challenges that we are facing are challenges that are not uncommon to a new program standing up in a Government environment, standing up very quickly. The statement you often hear is "building an airplane while flying it."

What we are doing I think is moving in the right direction. I think that a lot of the work that has been done is important, it has provided a sound basis for the program technically, and that the vast majority of the challenges are not programmatic but more administrative in nature.

Mr. LUNGREN. Let me ask you this. One of the first things you mention in the memo is at the beginning of the CFATS program the specific requirements of our Congressional mandate resulted in extraordinary pressure to proceed with the development implementation of the program at an impractical pace. What do you mean by that? I mean Congress oftentimes urges the Executive Branch to get moving on something. This is important. We always use the expression, "It is not rocket science," but I mean, this does involve science and does involve chemicals, chemistry, et cetera. But what is the cause of this extraordinary pressure? Is that really an excuse for what you found?

Ms. ANDERSON. Mr. Chairman, I wasn't here when the program stood up, and it is difficult for me to speak to what was in people's minds, people who are not here to talk about that. But what has been expressed to me, and I would certainly defer to the Under Secretary to clarify or add to this, is that there was every effort to understand, to recognize Congress' sense of urgency in terms of the importance, the criticality of this program, making sure that chemical facilities were secure and that we mitigate the risk to those facilities. In the spirit of that, we rushed forward rather quickly, and, again, in the spirit of any new regulatory program or any new program, hit some bumps in the road and have had to take some course corrections. It is a big program, it is a complex program, and I think it is not unusual to encounter some challenges on the way.

Mr. LUNGREN. Under Secretary Beers, the administration has asked for an extension, it is not a permanent—it is about as permanent as you can get in the Executive Branch—extension, a

multi-year extension. It is one of the things that I have supported because I do believe in this program. But what would you say to the critics who suggest that the revelations that are contained in this memo are evidence that we have got to go back to ground zero, that in fact the program has failed, that the fact that you have had these difficulties with respect to the compliance phase is an indication of the lack of foundation of the program itself?

Mr. BEERS. Sir, in answer to that, I would say two things. The first thing is that, as indicated by the chart up on the screen, and I realize it is a little busy, if you were to look at the 12 steps that are in that chart, reading from left to right, top to bottom, we are in the 10th step of a 12-step process at this point in time. So my first point would be we have come a long way from the very beginning of the program in terms of the things that we have accomplished.

As we have gotten to the compliance stage—excuse me, as we have gotten to the site security plan authorization stage, we have come to the realization through a number of difficult steps and the result of the report that Ms. Anderson and Mr. Wulf provided us, that we need to make sure that we have all of the people and items in place that will allow us to execute the program successfully in the final stages.

So my first point is I think we have come a long way. We clearly still have challenges. The second point is that as long as the program continues to operate on an annual authorization basis since the original authorization, it leaves a degree of uncertainty as to the long-term status of the program. I believe that we and our industry partners will be on a much stronger footing if you all indicate to us that you believe in the program as we do and want to see it go forward.

Having said that, we obviously owe you a great deal of information about the progress we make with respect to the plan of action and would hope that in the oversight function we would be able to provide that. Thank you.

Mr. LUNGREN. Thank you. My time is expired. Ms. Clarke is recognized for 5 minutes.

Ms. CLARKE. Thank you very much, Mr. Chairman. Under Secretary Beers, your office recently provided the subcommittee with an internal memorandum entitled “Challenges Facing ISCD and the Path Forward” which identify challenges facing ISCD as it continues implementing the CFATS programs, including those related to human capital management, strategic planning, procurement, and basic program administration. Many of the challenges identified in the memorandum appear to be longstanding issues that have hindered development of CFATS’ program for some time.

Nevertheless, when you testified before the House Committee on Energy and Commerce on the CFATS program in March 2011, you gave no indication there were significant problems with the program’s progress.

When did NPPD management first become aware of problems with the CFATS program and what problems were brought to its attention at that time?

Mr. BEERS. As we have briefed this committee and other committees, at the point in time that I asked for this report, there had

been three different pieces of information or problems that had come to my attention which the committees have all been briefed on. The first was related to locality pay, the second was related to the slowness of the authorization of the site security plans, and the third was related to the tiering mistake that occurred within the program. Those three items represented—and the last item came to my attention in June last year. Those three items and a report that I, together with Assistant Secretary Keil, had commissioned in December 2010, formed the basis of wanting to make sure that we had a real thorough scrub of the program. That is what resulted in the report.

Ms. CLARKE. Okay. Let me just ask. The challenges described in the ISCD memorandum raised questions about whether ISCD is positioned to make progress implementing the CFATS program, especially over the short term. What barrier does ISCD face overcoming some of the challenges discussed in the memorandum? What can NPPD do to help ISCD overcome these challenges? What actions can the subcommittee, and ultimately the Congress, take to help NPPD and ISCD overcome these challenges? Does NPPD intend to conduct a study to determine the extent to which the management challenges outlined in the ISCD internal memorandum extend to other NPPD components?

Mr. BEERS. The NPPD front office, as well as the infrastructure protection front office, stand fully behind the ISCD director and deputy director. We have provided them with human capital support in order to be able to realign the positions and the people in the organization to ensure the best possible match of requirements and qualifications. We have overcome the restrictions that existed from DHS overall about whether or not there could be training officers hired within the office. We have regular meetings with the leadership of the office in order to ascertain both where progress is on the plan of action and whether there are obstacles identified that leadership in NPPD can overcome, and, if necessary, to go to the Secretary of Homeland Security to overcome those obstacles should they exist.

Ms. CLARKE. Let me just ask this, finally. In light of the detailed failings of the program and especially in light of the managerial deficiencies outlined in the recently-leaked memorandum, is it your opinion that the program should be reauthorized carte blanche for 7 years without any recommendations from the authorizing committee, and if so why?

Mr. BEERS. It is my hope that the committee will authorize the program for the full 7 years in order to create stability with the program. I believe that we can meet the oversight that you should obviously hold us responsible for, and I think that that is a recipe for going forward.

We have two very good people running the program now. We have the clear intent on the part of leadership to give them our full support, not that we didn't before, but we didn't realize how much support was necessary. So I think that what you see here is committed leadership that is ready to go forward, and we would hope that you would be prepared to authorize the program for the full 7 years.

Mr. LUNGREN. The gentlelady's time is expired. Mr. Meehan from Pennsylvania is recognized for 5 minutes.

Mr. MEEHAN. Thank you, Mr. Chairman. Thank you for your presence here today.

One of the big concerns, of course, is not just your work in trying to internally resolve these issues, but the fact that there are businesses and others who are out waiting for the ultimate determination in a time of economic challenge that continues to be a concern.

Can you talk to me a little bit about the tiering formulas that are taking place and the process by which the tiers were identified and how that resolved itself, at least at the first level?

Mr. BEERS. Sir, initially we identified chemicals of interest and levels of holdings that sites might have to determine whether or not a second look was required. That information was provided. As I indicated in my opening statement, 40,000 facilities were identified.

Mr. MEEHAN. Self-reported?

Mr. BEERS. Self-reported, sir.

Mr. MEEHAN. Were any random checks done to make sure that there was accuracy in the self-reporting?

Mr. BEERS. The check was the second tiering process, sir, which was a much more detailed—excuse me, a second assessment, which was a much more detailed site vulnerability assessment which was provided by those companies which reduced the 40,000 facilities to 4,000-plus facilities. So we had a pretty clear indication there that we were getting to the heart of the high-risk chemical facilities, who were then put into tiers depending upon the level of their holdings and the vulnerability of those holdings. That provided an ability to look at each of them against a risk calculus that suggested how great the risk was.

Mr. MEEHAN. At some point in the program there were some flaws in that process.

Mr. BEERS. Right.

Mr. MEEHAN. Can you identify how those flaws arose and what we did to correct them?

Mr. BEERS. Yes, sir. So what we discovered in the tiering process was that the information that was used to put companies in particular tiers—the original tiering was done with unclassified dummy information, dummy in the sense that it wasn't what we were going to use finally, but it gave us enough of a sense to get within the ball park of what the risk factor was. When we did the final tiering, that information did not get substituted for with the information which was classified, which was a narrower parameter of how high the risk was, parameter in the sense of how many individuals would be affected by a chemical release in the vicinity of the plant. So as a result of that, we discovered that we had mis-tiered a number of facilities and that those facilities—

Mr. MEEHAN. To the detriment of the facilities in the sense some were tiered as being a higher risk or less of a risk?

Mr. BEERS. All of the tiering results of that either caused a reduction in the tiering or they stayed in the same tier. No company that was mis-tiered went to a higher tier level as a result of that.

Mr. MEEHAN. Did any of these companies challenge their tiering?

Mr. BEERS. With respect to the re-tiering, no. With respect to tiering as a general proposition, companies change their holdings over time, they have new procedures that they put in place. The program allows them to come in and resubmit a screen and ask as to whether or not that would adjust.

Mr. MEEHAN. That would be done in an efficient fashion?

Mr. BEERS. That can be done by anyone at any time.

Mr. MEEHAN. I want to jump to one last question in the time that I have. Ms. Anderson, at one point in time you had talked a little bit about the management and the culture, where there were some senior officials with ethical and other kinds of performance issues that had been raised and that had not been checked upon or had gone unchecked. Can you elaborate a little bit on that and what has been done to try to alleviate that issue?

Ms. ANDERSON. Yes, sir. Thank you for the question. I am not sure that we identified any ethical issues per se from amongst those that you are referring to. But certainly, cultural challenges have been something that we have encountered and are working to overcome. I think that, again, it is a function of putting together a large group of people very quickly that all have—they all come from different places, have different life experiences, and we are squashing them together and asking them to work together as a team. Because of those different life experiences, different work experiences, they have different outlooks on where we need to go and how we need to get there. Sometimes some of the nice things fall by the wayside in the rush to do that.

So what we are doing is everything that we can to create a cohesive culture to bring everyone into the team as an engaged contributing member of the team and to address the concerns they have with regard to consistency, transparency, and fairness.

We have done a number of things in that regard. I have monthly all-hands meetings, town halls if you will, both electronic or over the telephone with the field folks and in person with our headquarters folks. We have reinvigorated or reinstated our newsletter. We are developing a share page, an on-line page where we can share information with each other. We have an open-door policy. We have a series of emails. We are sharing information about the status of things.

So we are doing everything that we can to be as transparent as makes sense as we can, to be as consistent, as fair, and to let all the members of our team know what we are doing, why we are doing it, the direction that we are going, and to solicit their active involvement engagement in the process.

Mr. MEEHAN. Well, thank you for the work that you are doing in that.

Mr. LUNGREN. The gentleman's time is expired. The Chairman now recognizes the gentlelady from California, Ms. Richardson, for 5 minutes.

Ms. RICHARDSON. Thank you, Mr. Chairman. According to the notes that I have here, DHS began inspections of Tier 1 facilities in February 2010. By September 2011, you had performed only nine authorized inspections, and as of January 23 DHS had only completed 53. Are those correct numbers?

Mr. BEERS. Fifty-five now, ma'am.

Ms. RICHARDSON. Okay, 55 out of how many that need to be done?

Mr. BEERS. The overall number of site security plans that would ultimately need to be done are—

Ms. RICHARDSON. Your mic is not on.

Mr. BEERS. Excuse me. The overall number that would need to be done is about 4,500. The Tier 1s are about 110 to 111.

Ms. RICHARDSON. So of the 55, did those all come out of Tier 1?

Mr. BEERS. Yes.

Ms. RICHARDSON. In light of that, how are you planning on being able to complete all these if we have only done 55 and 4,500 need to be done?

Mr. BEERS. The current plan is that we will finish the site security plan reviews for the Tier 1 facilities in the next several months and then move on to the Tier 2 facilities in the remainder of fiscal year 2012.

Ms. RICHARDSON. So about what time do you think you will start Tier 2?

Mr. BEERS. Sometime this summer, roughly.

Ms. RICHARDSON. Will the Tier 1 facilities be required to submit new, I think they are called SSPs, even though the inspections are just being completed now?

Mr. BEERS. The plan is that the plans that we have now will be reviewed. If they are authorized, then we would go out with an authorization inspection to make sure that the plan as submitted represents a reasonable approach to the facts on the ground. The inspectors will do that. If the inspectors then feel that that is true, then the plans would be approved.

So what we are talking about here is, as the site security plans are authorized, then we have authorization inspectors where our inspectors go out and look at each of those sites. So that is the next of the last step.

Ms. RICHARDSON. I am sorry, sir, I have only got 2 minutes and 16 seconds.

It is my understanding under CFATS that facilities resubmit their site security plan every 2 years for Tier 1 or Tier 2 facilities; is that correct?

Ms. ANDERSON. Yes ma'am, the regulation does suggest that, but it also offers some flexibility in how we implement that.

Ms. RICHARDSON. So then my question is, since we are late in conducting these, are you still going to be requiring these companies to submit them on the 2-year cycle or are you going to be making an adjustment?

Ms. ANDERSON. Yes, we are right now focusing as a matter of priority in clearing the queue of site security plans we already have. At this point we do not anticipate in the near term requesting resubmissions of SSPs that we have already authorized.

Ms. RICHARDSON. For their first 2-year submission?

Ms. ANDERSON. Yes ma'am, that is accurate.

Ms. RICHARDSON. Okay. The information memorandum also raises concerns that the content and conduct of a compliance inspection has not been defined. It is quite possible that the compliance inspection will yield different results than the authorization inspection. This potentially would allow for disparity in results.

Have you implemented some changes to address this, and if so what?

Mr. BEERS. So we have a process underway to ensure that, to the extent possible, that doesn't happen. But let me ask Director Anderson.

Ms. ANDERSON. Thank you for the question. In fact, while it is true we have not yet completed our policies and procedures in terms of the way forward for a compliance inspection, what we have done is we have held off on conducting further authorization inspections pending that information, so that we can make sure that our authorization inspections are consistent and appropriate as they relate to our compliance inspections, so we want to move together.

Ms. RICHARDSON. All right. I have got 10 seconds now left. According to the memorandum, it states that you have approximately 108 inspectors and those inspectors can only inspect approximately 10 to 15 percent of the facilities; is that correct?

Ms. ANDERSON. We are currently evaluating our workforce in terms of what it takes to do an inspection. When we have fully conceptualized what an inspection is and what it takes to do that, then we will be projecting our capabilities with our existing and any projected workforce.

Ms. RICHARDSON. Mr. Chairman, my time is expired, but I have more questions. So before we release the panel, if you could come back to me.

Mr. LUNGREN. Yes.

Ms. RICHARDSON. Thank you, sir.

Mr. LUNGREN. Mr. Marino is recognized for 5 minutes.

Mr. MARINO. Thank you, Chairman. Thank you, folks, for being here.

I am not quite sure who to direct this question to, but I am going to start with Mr. Beers and then perhaps both or one of the other two can add something to this. The flaws in the program, according to some information that you submitted to us in preparation for today, which I commend you on the way it was put together, did not appear overnight. How did it happen that the information in the leaked memo made it to the media before being shared with Congress or this committee?

Mr. BEERS. Sir, what happened, with the arrival of the report from Director Anderson and Deputy Director Wulf, was that we had not done a thorough review to ensure that there weren't more issues and questions and work proposals associated with that, and we were caught in a process before we were able to come to you and discuss this.

Mr. MARINO. How many individuals had access to this information?

Mr. BEERS. To this information?

Mr. MARINO. Yeah, to the report that was leaked.

Mr. BEERS. I can tell you that within the Office of the Under Secretary, I believe that number is three: myself, my deputy, and the chief of staff.

I would have to ask Ms. Anderson how many people had access in her office. My understanding is that only two people in the Of-

office of the Assistant Secretary had it, but I am not sure about that. Penny may be able to shed more light on that.

Mr. MARINO. Please.

Ms. ANDERSON. Thank you for the question, sir. There were in fact seven hard copies made of the final report, two belonging to Deputy Director Wulf and myself, and the remainder moving forward to our leadership. There were other individuals that were involved in the transfer of those documents, but only seven hard copies were made.

Mr. MARINO. So are you saying that only seven individuals had access to that, or did they pass that on to someone else, the seven hard copies?

Ms. ANDERSON. I can't speak—sir, I can't speak to whether or not other folks who received copies shared them.

Mr. MARINO. So we are looking anywhere from 5 to maybe 13 or 14 people had access to this. Were any of these people interviewed subsequent to the release in the newspaper?

Mr. BEERS. There is an on-going review of that, sir.

Mr. MARINO. Okay. Then I will not delve into questioning any further on this. But perhaps sometime we can get more of an in-depth explanation. Being from law enforcement, I understand that clearly.

Ms. Anderson, I probably at least inferred a response incorrectly. One of my colleagues asked where we were headed with the process, and you referred to there were cultural challenges. Can you explain to me what you meant by cultural challenges, and did it have anything to do with the leak of the memo to the media?

Ms. ANDERSON. Sir, thank you for the question. When I answered the question about where we were headed, I believe I was answering a question that was specifically directed towards our cultural, and I believe the word "ethical" was used, or "issues."

Mr. MARINO. Yes.

Ms. ANDERSON. So we are headed in a lot of directions depending on the challenge.

Mr. MARINO. Okay. Let me narrow my question more so. Were you talking about there is a challenge, cultural challenge as far as information being leaked or what information can be shared or what information to be contained? Because in my experience, at least in the 8, 9 years I have been with the Federal Government as U.S. attorney, now in Congress, we all pretty much take an oath, and there is an understanding of what information stays within an agency. Actually I am sure you agree with me that no one other than designated individuals should be speaking with the media.

Now, obviously, someone out there wants to make a name for themselves or at least read an article or hear of an article that they were associated with. But please, can you elaborate on that?

Ms. ANDERSON. Yes, sir. Well, I share your disappointment in the leak of the report. I can't speak to the motivations of the person who leaked it, because at this point we don't know who did leak it.

Mr. MARINO. Well, we pretty much know what the motivations are when something like this occurs. I am not holding you folks

personally responsible. I am concerned about, as you say, the cultural aspect of this.

What training has to take place before someone gets the point that this should not be done?

Ms. ANDERSON. Well, I don't believe that the cultural challenges that I identified in the memorandum can be attributed to the motivations of the person leaking a report.

Mr. MARINO. I see my time has run out. Thank you. I yield.

Mr. LUNGREN. We will do a quick second round here since we have only got four of us here. I yield myself the first 5 minutes. This is both to Ms. Anderson and Mr. Wulf, because, Mr. Wulf, you got the pass here today so we are going to hear from you a little bit.

In the memorandum there is a section which talks about inadequate training capability and the clause, "due to restrictions placed upon our hiring," the division has not been able to hire personnel with the necessary level of knowledge, skills, and abilities needed to appropriately achieve our mission. One example is training.

What restrictions placed upon hiring are you referring to?

Mr. WULF. That passage of the report referred to a policy, and the Under Secretary may be in a better position to speak at greater length about it, but a policy that is no longer in existence within NPPD that I believe was—that I believe was in place to try to centralize the training function within the directorate. So that was a policy that at the time precluded our division from hiring, into the division specifically, individuals with training expertise, curriculum development, and that sort of expertise. That policy is no longer in existence and we are moving forward to hire folks with the appropriate expertise.

Mr. LUNGREN. So are you talking about you weren't able to hire people who actually knew how to train people; is that what you are saying?

Mr. WULF. We did not have in our training section individuals who had experience in the training discipline, that is accurate. We had folks—

Mr. LUNGREN. And that has been corrected?

Mr. WULF. That policy is no longer a policy, and I am told it was a Departmental policy, not an NPPD policy.

Mr. LUNGREN. Mr. Beers, according to our appropriation staff, you had a \$25 million budget carry-over for this, and even with your fiscal year 2013 cut of \$14 million, that is still \$11 million that needs to be spent.

Yet in the memo there is the citation of budget constraints as an obstacle to hiring and training personnel. What are those budget constraints?

Mr. BEERS. Sir, the budget constraints to hiring and training personnel are in part what Mr. Wulf was alluding to, that we couldn't use the money because the policy which was a centralizing policy for DHS, didn't allow that to happen. Some of the other carry-overs are a result of the program wasn't moving, as evidenced by the slowness of the authorization site security plans, as rapidly as we had anticipated when we requested the money.

But let me turn to Director Anderson to elaborate further.

Ms. ANDERSON. I concur.

Mr. LUNGREN. So you had a \$25 million budget carryover, a cut of \$14 million, that is still \$11 million. So you are not saying there are constraints expending those funds for this purpose; is that right?

Mr. BEERS. At this time I don't believe we have an issue.

Mr. LUNGREN. All right. Mr. Beers, ISCD's internal memorandum implies that some of the challenges involved human capital management procurement and program administration that are outside of ISCD's control; rather, they could result from factors imposed by such things as NPPD and DHS hirings. We talked about procurement and budgetary policies and procedures and practices.

To what extent are the management problems outlined in the internal memorandum attributed to barriers associated with the policies, procedures, and practices other than what you have already said about the hiring?

Mr. BEERS. Sir, with respect to the procurement in the administrative issues, those are areas where the alignment between ISCD and the Office of Infrastructure Protection and the Office of the Under Secretary needed to be better aligned with one another. The information flow needed to get from the bottom to the top so that we were aware of those problems and could fix them. This is, I think from my perspective, the most disappointing thing about this discovery, which was epitomized by the failure of the office to report the tiering problem that we described to you before.

I have a consistent policy that I have told people that I want to hear bad news first from the people who work for me and not from people outside. I was extraordinarily disappointed by this, and have used it as a teaching moment both with respect to ISCD and IT, but with respect to the entirety of the NPPD. It wasn't that I hadn't said it before, but if this kind of a problem existed, then I needed to reiterate in the strongest possible language that this kind of behavior was unacceptable and didn't do justice to the people who worked for me and didn't allow us to fix the problems that they had.

Mr. LUNGREN. I appreciate that. Let's hope we don't have too many more teaching moments.

Ms. Clarke.

Ms. CLARKE. Thank you, Mr. Chairman. I want to go back to a little bit of what Congressman Marino was trying to get at. I want to ask a couple of questions about the status of the investigation regarding who leaked the memo to the news media. Who is conducting the investigation, and can you explain the process? Is it within DHS?

Mr. BEERS. The Office of Compliance and Security, which is an office within NPPD run by a certified law enforcement officer, is conducting the investigation. It was begun in the days after the leak. The process there is to go around and determine, first of all, who had possession of the report at one point in time.

As Director Anderson has indicated, the two of them prepared the report. I don't believe there was anybody below them who ever had access to the report, but I will let them speak to that. It went up to me and to my deputy and chief of staff, so that is where the

report appears to have been from its final drafting until I received it and it was leaked to the press.

So it was to determine who the people who had custody of it were, and interview all of them, and look for corroborating information that might suggest who was responsible for that. These are never, ever easy kinds of investigations, but because of the nature of the disclosure—well, not classified information in the sense of our classification system, it was extraordinarily sensitive information and we would like to find out who was responsible.

Ms. CLARKE. So the process began shortly after the leak, you stated?

Mr. BEERS. Yes, ma'am.

Ms. CLARKE. And it is on-going?

Mr. BEERS. It is on-going. It is not one interview necessarily, it may be reinterviews of the same person over and over again in order to try to get stories straight.

Ms. CLARKE. Got it. Thank you very much. I yield back the balance of my time, Mr. Chairman.

Mr. LUNGREN. The gentlelady yields back and the Chairman recognizes Ms. Richardson for a second round.

Ms. RICHARDSON. Thank you, Mr. Chairman.

So if I understand you correctly, you have completed 55 of Tier 1. You expect to be done with Tier 1 at some point in the next couple of months, and you will start Tier 2. When do you expect to complete Tier 2?

Mr. BEERS. The expectation is sometime in fiscal year 2013. But let me ask Director Anderson if she can be more specific than that.

Ms. ANDERSON. Thank you, sir. Thank you for the question.

I think when we talk about completion, we have to talk about what we mean by completion in the context of the process. What we have completed so far is we have authorized or conditionally authorized 55 site security plans. Of those 55, 10 have had authorization inspections conducted, the remaining 45 inspections are in the queue to be conducted. We expect very soon to have completed the reviews of the actionable Tier 1s. I say "actionable" because we have some Tier 1 facilities that are not being actively reviewed because they have had a redetermination request that we received from the facility or for reasons like that. So we haven't continued to review the SSP because they have asked us to reevaluate their tiering.

We have already begun reviewing the Tier 2 site security plans and expect to have completed the reviews in the coming year, no later than the end of 2013, but hopefully well before.

Ms. RICHARDSON. Okay. But the actual inspections have not—would not take place of Tier 2 probably in this year.

Ms. ANDERSON. No, I do not believe we will have begun the reauthorization inspections of Tier 2 in fiscal year 2012.

Ms. RICHARDSON. Okay. Because I have a Tier 2 facility that is in dire need, and I will forward the information, but we have been patiently waiting and I am very concerned as this process continues.

My next question has to do with your labor workforce. According to the notes from our prior briefing that we have had, there has been a high reliance of contractors in this particular department. The

question is whether there has been an overreliance on these external folks.

To what degree do we think that it is appropriate for them to be performing the critical core functions such as training and development, SSP reviews and technical writing? Would you agree there still is a—what is the reliance, the percentage in your workforce, of contractors versus internal employees?

Mr. BEERS. Let me start the answer to that question because this is a problem or an issue that is in the nature of the organization of the Department of Homeland Security. Well, there are seven components which came as legacy organizations to the Department. The headquarters elements of the Department did not pre-exist in most cases, the stand-up of the Department. So the initial stand-up of the Department was very contractor-heavy. As NPPD is part of that headquarters element so, too, were we contractor-heavy.

When I was briefed initially, the workforce of NPPD was over 60 percent contractors. We have now gotten down to about 40 percent contractors in the last several years. So it is an issue. But we also have a balanced workforce initiative which requires all of our contractor hires to be reviewed not just by us, but the Office of General Counsel, to make sure that they are not performing inherently Government work. So that is the framework that we are in.

Let me let Director Anderson speak to the rest of it.

Ms. ANDERSON. Thank you, sir. In fact, I think the Under Secretary captured my thoughts exactly. When we talk about the use of contractors, although we certainly are evaluating whether or not any are doing inherently Governmental work, my greatest concern as expressed in the memorandum to the Under Secretary was the need for us to stabilize the program and to create a sustainable program. With contractors coming and going, it is very difficult to do that.

Ms. RICHARDSON. So in light of the limited amount of inspections that you have been able to complete, and since currently you have approximately 108 inspectors, if you are to do new hires is it the intention to do those from contractors or to do them from Federal positions, or do you intend upon increasing them at all?

Ms. ANDERSON. Excuse me, increasing the number of inspectors?

Ms. RICHARDSON. Yes.

Ms. ANDERSON. As I mentioned during a previous question, we are currently evaluating what we will be able to accomplish in terms of our compliance activities with our existing workforce and projecting what additional resources—what we would be able to accomplish with additional resources.

Ms. RICHARDSON. Mr. Chairman, could I ask a follow-up question because she didn't answer my question?

My question was, I asked you that previous question, but my question now is: Once you do that review, if it calls for you needing to hire more, is it your intention to hire those from contractors or to hire them—do internal training and to hire in Government positions? What is your intention?

Ms. ANDERSON. Well, insofar as we have not yet developed a plan for additional inspector positions, I can't say categorically that a decision has been made to move in a certain direction, though I

suppose it has been my anticipation that new inspector positions would be Federal employees.

Ms. RICHARDSON. Where is the bulk of your contractor positions of 40 percent? That is my last question, Mr. Chairman.

Mr. BEERS. That is general to NPPD, that is general to NPPD, not—I don't know the specifics with her individual work.

Ms. RICHARDSON. If you could supply it to the committee—because I know the Chairman wants to get on with the second panel—of the workers that you have, of now the 40 percent, where are they located within the Department?

Mr. LUNGREN. Okay, I believe the gentlelady from New York wants to recapture the time that she gave back.

Ms. CLARKE. Just a minute of it, Mr. Chairman. I appreciate your indulgence. My question is directed to Ms. Anderson and Mr. Wulf. We had a lot of discussion about what went wrong. I want to focus in on the employees for a minute, because certainly with the investigations going on, with all that has been uncovered, there has to be some level of disruption, some level of not knowing where they stand.

What is the relationship now with the employees? How are the employees getting through this? What types of things have been put in place to give some level of reassurance to people that—you know, that first all of them are valued; but second of all, that things will work out in the end? Have there been conversations with their union? If you would share that with us. Thank you.

Ms. ANDERSON. Yes, ma'am. Thank you for the question. I actually am really happy you asked a question about the workforce, because there seems to be a perception that there is some question about the capabilities of the ISCD team. While it is true that I have identified instances where we don't have a good person-position fit, I can honestly say I have never worked with a more talented, hardworking group of folks. I think that they are the key to our success, and I am very concerned about the impact of recent activities on their morale and on the confidence that they have in our program and in our way forward.

So you are correct in suggesting that there is a certain amount of angst and there have been some dips in morale since this, and certainly it has been a distraction from our mission activities.

We are doing as much as we can to reassure them. We are being as transparent as we can with them at every stage of the process. When the Fox News article was leaked, came out as a result of the leak, I sat down with all of my folks and talked through it and talked about it and linked it back to previous discussions we had had about our challenges. I have been very open about that.

We have again set up routine communications with our folks. We have shared with them the action plan and we have involved them in the implementation of the action plan. We have engaged them at every level and to every extent we can. Certainly our engagement has involved the union. We have met with Mr. Wright and we have, to the extent that we can, involved the inspectors in all of these discussions and have been sharing this information with them, reassuring them that they are an important part of our team, they are the key to the success of this program, and that we

need to move forward with them, and we are taking every step we can to involve them in that process and to be transparent about it.

Mr. LUNGREN. Okay, the gentlelady yields back.

I want to thank the witnesses for their valuable testimony on this first panel. Members may have some additional questions for the witnesses and we would ask that you respond to these in a timely fashion in writing.

With that, I would be pleased to dismiss this panel and we will move on to Panel II. Thank you very much.

Mr. BEERS. Thank you, sir.

Mr. LUNGREN. We have a distinguished panel of three witnesses for our second panel.

Mr. Bill Allmond is the vice president of Government and Public Relations for the Society of Chemical Manufacturers and Affiliates, a position he has held since 2007. The Society is the United States' leading trade association representing specialty batch chemical manufacturing. Prior to joining the Society, Mr. Allmond served for 10 years as director of Regulatory and Public Affairs at the National Association of Chemical Distributors.

Mr. Timothy Scott, chief security officer and corporate director of Emergency Services and Security for the Dow Chemical Company, a company he has served with since 1979. In his current role, Mr. Scott leads Dow's global emergency services and security operational organizations at over 200 locations around the world.

Mr. David Wright is the president of the American Federation of Government Employees Local 918. In his career as a Federal protected service officer 1986. Since that time, he has been promoted to the rank of sergeant and inspector, and has served as president of local 918 since 2006.

We thank all of you for being here. We, of course, will include your written testimonies in their entirety in the record. We would ask that you confine your statements to a summary of 5 minutes.

We will proceed from my left to my right with Mr. Allmond first.

**STATEMENT OF WILLIAM E. ALLMOND IV, VICE PRESIDENT,
GOVERNMENT AND PUBLIC RELATIONS, SOCIETY OF CHEMICAL MANUFACTURERS AND AFFILIATES**

Mr. ALLMOND. Good afternoon, Chairman Lungren, Ranking Member Clarke, and Members of the subcommittee. My name is Bill Allmond and I am the Vice President of Government and Public Relations at the Society of Chemical Manufacturers and Affiliates. I am pleased to provide this testimony regarding the problems of and the progress made by the chemical facility anti-terrorism standards.

Nearly 6 years ago, Congress enacted a comprehensive chemical security program known as CFATS. Thanks to this bipartisan effort, the Department of Homeland Security and regulated facilities are well down the road in implementing this important program. To a great extent DHS' rules implement the mandate issued by Congress in 2006. Regrettably, however, DHS has stumbled in implementing those rules by failing to put in place, among other things, basic management practices or effective leadership.

The 2011 internal memorandum from the Infrastructure Security Compliance Division is sobering. It demonstrates that a Govern-

ment agency without proper management can take an effective regulatory framework and then mess it up. However, as this subcommittee assesses the Department's failures with the CFATS program, we must bear in mind that it is processes and personnel that need addressing, not the program itself.

SOCMA regards the CFATS program thus far as a success, despite the internal management challenges. We emphasize four key facts. First, this demanding program is now requiring over 4,000 chemical facilities Nation-wide to develop and deploy security enhancements. Covered facilities have invested billions of dollars in security upgrades to meet CFATS' requirements. SOCMA's members alone, a majority of which are small manufacturers with under 40 million in annual sales, have invested an estimated 515 million in security measures. Hundreds of other regulated facilities that had not already done so have made proactive investments in security measures in anticipation of their CFATS compliance obligations.

Second, and equally important, CFATS has led over 2,000 facilities to voluntarily take steps to reduce their risk profile, that they no longer warrant regulation. Thus, as predicted, CFATS is driving facilities to reduce inherent hazards where, in their expert judgment, doing so is in fact safer, does not transfer risk to some other point in the supply chain, and makes economic sense.

Third, Congress wisely drafted the CFATS statutes to impose security performance standards that are more demanding of higher-risk facilities and less demanding of lower-risk facilities. This performance-based approach protects facilities against attack without impairing the industry's ability to remain innovative and to maintain some of the Nation's highest-paying manufacturing jobs.

Finally, the standards have teeth. The Secretary has the ability to levy significant fines on a facility for noncompliance and can even shut down a facility. Both the laws and the rules are fundamentally sound and do not require replacement. The regulatory program they created is not inherently impossible for a Government agency to implement, but it does require knowledgeable people to review SSPs and inspect facilities, and also the courage to make decisions based on judgment.

Unfortunately, the memorandum indicated that ISCD staff largely does not have adequate skills in part because higher levels of DHS prevented ISCD from being able to hire sufficiently expert personnel. Staff have also been discouraged from using their judgment.

On the other hand, no one should dispute the fact that despite the challenges of CFATS implementation, the two main alternatives would be far worse. SOCMA neither wants an absence of chemical security regulations nor a prescriptive program that would drive chemical operations overseas due to burdens such as mandatory incorporation of inherently safer technology.

The internal problems holding CFATS' implementation are serious but not insurmountable. SOCMA is confident that the new leadership of Penny Anderson and David Wulf is committed to improving the Nation's and the program's implementation. Thanks to the internal assessment, they have a greater understanding of the challenges facing them in a robust action plan.

The following are SOCMA's recommendations for placing fast implementation back on track.

One, Congress should encourage ISCD to collaborate more with industry where the greatest security expertise relies. ISCD can and should be more transparent about its operations. Also, simplifying personal surety and Federal background check and credentialing programs needs to be a top priority. Also, mandating inherently safer technology into the CFATS program is the last thing ISCD should or even could try to implement. Also, ISCD needs to retrain and, as necessary, replace much of the staff.

Last, Congress needs to provide certainty for the regulator and regulated alike by approving a multi-year CFATS reauthorization. It may appear counterintuitive to advocate for a long-term authorization of a program troubled by agency mismanagement. But the key to fixing CFATS is a vigorous oversight, not budget cuts or a complete reset.

We appreciate this opportunity to testify today and look forward to your questions.

[The statement of Mr. Allmond follows:]

PREPARED STATEMENT OF WILLIAM E. ALLMOND, IV

MARCH 6, 2012

Good morning Chairman Lungren, Ranking Member Clarke, and Members of the subcommittee. My name is Bill Allmond and I am the Vice President of Government & Public Relations at the Society of Chemical Manufacturers and Affiliates (SOCMA) in Washington, DC. I am pleased to provide this testimony regarding progress made by the Chemical Facility Anti-Terrorism Standards.

Five-and-a-half years ago, and working in a bipartisan manner, Congress enacted a comprehensive chemical security regulatory program, the Chemical Facility Anti-terrorism Standards (CFATS). Thanks to this bipartisan effort, the U.S. Department of Homeland Security (DHS) and regulated facilities are well down the road in implementing this important program.

Regrettably, DHS has stumbled in its implementation of the program by failing to put in place, among other things, basic management practices or effective leadership, both at the Division level and at high levels. The 2011 internal memorandum "Challenges Facing ISCD, and the Path Forward" issued by Penny J. Anderson and David M. Wulf of the Infrastructure Security Compliance Division (ISCD) regarding the process of implementation is sobering. It demonstrates the fact that a Government agency without proper management can take a credible program legislated by Congress and then mess it up. However, as this subcommittee and others assess the Department's failures with the CFATS program, we should be reminded that it is the process or personnel that needs addressing, not the program itself.

Today we will explain why we remain supporters of the CFATS program—despite DHS's management failings—highlight achievements as a result of the program, and recommend solutions moving forward. At the outset, though, we emphasize these key facts:

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

I. SOCMA IS THE ONLY U.S. TRADE ASSOCIATION DEDICATED SOLELY TO SERVING THE NEEDS OF THE SPECIALTY, BATCH, AND CUSTOM CHEMICAL MANUFACTURING INDUSTRY

A. SOCMA

For 91 years, the Society of Chemical Manufacturers and Affiliates has been and continues to be the leading trade association representing the batch, custom, and specialty chemical industry. SOCMA's nearly 230 member companies employ more than 100,000 workers across the country and produce some 50,000 products—valued at \$60 billion annually—that make our standard of living possible. From pharmaceuticals to cosmetics, soaps to plastics, and all manner of industrial and construction products, SOCMA members make materials that save lives, make our food supply safe and abundant, and enable the manufacture of literally thousands of other products. Over 80% of SOCMA's active members are small businesses.

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

B. SOCMA's Security Achievements to Date

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

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

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

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

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

SOCMA also works jointly with DHS in organizing and financing an annual Chemical Sector Security Summit and Expo, a hugely successful, free event that brings together Government representatives, chemical security experts, and industry professionals to share knowledge and best practices to regulated and non-regulated facilities alike.

Through the Sector Council and other avenues, we and our members have developed close and open working relationships with DHS and other Federal agencies, and with State and local governments, to exchange information and coordinate roles in maintaining the security of our critical chemical facility infrastructure. In particular, we have sought to engage continuously and constructively with ISCD, even though we could never gain much understanding of its internal operations. As the Anderson/Wulf memorandum reveals, we understood it far less well than we imagined.

II. DESPITE DEPARTMENTAL MISMANAGEMENT, CFATS IS REDUCING RISK AND “MUST EVOLVE”

SOCMA wishes to emphasize that we regard the program thus far as a success, even if its implementation is moving much more slowly than we all would prefer. The CFATS statute was wisely drafted to be comprehensive, appropriately performance-based, and flexibly structured to impose security performance standards that are relatively more demanding of higher-risk facilities and less demanding of lower-risk plants. To a great extent, DHS’s rules implement the statutory mandate issued by Congress in 2006.

Both the law and the rules are fundamentally sound and do not require replacement. The regulatory program they created is not inherently impossible for a Government agency to implement, but it does require: (i) Knowledgeable people to review SSPs and inspect plants, and (ii) the courage to make decisions based on judgment. Unfortunately, the memorandum indicated that DHS’s ISCD staff largely do not have adequate expertise or training, in part because higher levels of the Department prevented them from being able to hire sufficiently expert personnel.

Since the program was launched in 2007, over 2,000 facilities have changed processes or inventories in ways that have enabled them to screen out of the program. Thus, as predicted, CFATS is driving facilities to reduce inherent hazards, where in their expert judgment doing so is in fact safer, does not transfer risk to some other point in the supply chain, and makes economic sense. Hundreds of other regulated facilities who had not already done so have already made significant proactive investments in security measures in anticipation of compliance with the full implementation of CFATS. As a result of CFATS, our Nation is more secure from terrorist chemical attacks and other threats than it was before the program’s inception.

Furthermore, due to the outstanding cooperation of the chemical sector, there has been 100% compliance with the requirements to submit Top-Screens, SVAs, and SSPs—DHS has not yet had to institute a single administrative penalty action to enforce compliance.

It is important to note that the memorandum that we all have now reviewed was not intended to highlight these achievements under CFATS; it was only meant to be an internal tool for ISCD’s leadership to assess and subsequently respond to the immediate challenges to the program’s implementation. The memo overwhelmingly and repeatedly points to process deficiency as a cause of DHS’s failure to properly implement CFATS. In fact, DHS specifically states on page 10 of its memo that, “even with sufficient planning and vision it is a given that the implementation of a new program will naturally result in some mistakes and course corrections. The program must evolve.”

SOCMA also supports the CFATS program because our members have invested significant amounts of financial and human capital in it over the past several years. The memo details the many things not being done by DHS. However, the industry has done a lot. Covered facilities have invested billions of dollars in security upgrades to meet CFATS’s requirements. SOCMA’s members alone, a majority of which are small manufacturers with under \$40 million in annual sales, have invested an estimated \$515 million in security measures since the inception of the program. CFATS has provided to significant additional security to a critical segment of our Nation’s infrastructure, as well as the general public—although, it is admittedly difficult to assign a monetary value to this increased security for purposes of justifying the program’s annual cost to taxpayers.

Facilities with high-risk chemicals are safer today both because of CFATS and the efforts taken by industry by their own initiative. After 9/11, and prior to DHS’s issuance of the risk-based standards, many companies already began proactively instituting security measures at their high-risk facilities. However, there were no uniform standards for measuring and implementing these security improvements across industry. CFATS has standardized the security process, but has allowed the voluntary assurance of chemical security to continue through DHS’s Voluntary Chemical Assessment Tool (VCAT). The Chemical Sector Specific Agency developed VCAT to assist additional facilities that fall outside CFATS to assess their own risks and to implement voluntary security measures as desired. SOCMA has endorsed VCAT through our ChemStewards® EHS&S management program, in which participation is mandatory for all active members.

No one should dispute that, despite the challenges to its implementation, the two main alternatives to CFATS—no chemical security regulations at all, or a prescriptive program that places such burdens on industry as mandatory incorporation of inherently safer technology (IST) and would subsequently threaten to drive chemical operations overseas where security standards are weaker—would both be far worse. Since the program’s inception, no terrorist attacks have taken place in the United

States that involved chemicals or that would otherwise indicate that CFATS has failed its purpose.

III. CFATS IMPLEMENTATION CHALLENGES ARE NOT INSURMOUNTABLE

The internal problems holding back CFATS implementation are serious and significant but not insurmountable. SOCMA is confident that the new leadership of Penny Anderson and David Wulf is committed to improving its programmatic implementation. Thanks to the internal assessment, they a greater understanding of the challenges facing them and a robust action plan.

SOCMA is also committed to working with the Department to improve its implementation, where appropriate. The industry has nothing to gain from this crisis. And we have been concerned about the slow pace of implementation for years. First, delays create uncertainty. Regulated businesses do not like to hang in suspense for years wondering if their major capital commitments were sufficient. Second, delay only invites negative stories in the press, like the ones we are now starting to see, questioning the security of chemical plants—when we know that these facilities have done what they have been asked or required to do at this stage. Delays can also make companies believe their Government is not really serious about the security of chemical facilities. It is hard to believe DHS is serious, when commitments made about approving SSPs and completing pre-authorizing inspections are repeatedly broken. Such failures cause security professionals to lose credibility with their superiors who authorize compliance costs, as these managers conclude that their security staff are simply “crying wolf” about their regulatory obligations. DHS mismanagement has, in some cases, stopped the forward momentum that security managers had with their own senior management in convincing them of the need for certain cost decisions, placing forward progress in a holding pattern.

The following are SOCMA’s recommendations for placing CFATS implementation back on track:

A. Congress Should Encourage ISCD to Embrace Greater Collaboration with Industry to Enhance Public-Private Partnership

The CFATS framework is sound; however, DHS’s implementation has been flawed. This is largely because DHS has drifted away from the spirit of the public-private partnership on chemical security that it has so often hailed as a keystone of the CFATS program. Congress should encourage ISCD to work collaboratively with the regulated community to solve the technical, training, and tool-related issues currently presenting challenges to the implementation of CFATS.

Industry can provide much assistance moving forward, including ways for DHS to minimize the future cost and complexity of the CFATS program. For example, the Chemical Sector Coordinating Council (CSCC), the industry advisory body that interacts with DHS on security issues, over a year ago presented DHS with a viable and immediately implementable personnel surety proposal that addresses the many shortfalls of the Department’s own proposed program. DHS’s current proposal, which is under review by the Office of Management and Budget, places unreasonable reporting and information-gathering burdens on regulated sites, does not leverage the use of existing Federal credentials that already screen candidates against the very same background check requirements as proposed in the pilot, is overly prescriptive and does not reflect the flexible framework of the CFATS standards themselves.

B. More Operational Transparency Is Warranted

ISCD can safely be much more transparent about its operations. While some classified information and chemical-terrorism vulnerability information (CVI) should not be disseminated, there is no reason why ISCD cannot communicate the progress of its operations more clearly and regularly to both Congress and the public. The tremendous change that the new ISCD leadership wants to drive will never occur unless ISCD reports regularly to Congress. More sustained oversight will enable Congress to hold DHS accountable going forward, so the mistakes of the past are not repeated or perpetuated.

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

Congress should assure itself both that the CFATS program continues to be effective and that DHS and other agencies minimize duplication and unnecessary regulatory burdens. A prime example is the personnel surety program that DHS is developing under CFATS. Risk-Based Performance Standard No. 12 requires facilities to implement security measures designed to: (i) Verify and validate identity; (ii) check criminal history; (iii) verify and validate legal authorization to work; and (vi)

identify people with terrorist ties. The facility is responsible for the first three tasks and for determining what criminal background findings would be disqualifying. Evaluating terrorist ties requires Federal Government involvement however, in the form of evaluating names against the National Terrorist Screening Database (TSDB) maintained by the FBI.

DHS has announced its intent to establish a web-based application that would require facility owners and operators to submit personally-identifying information about current and prospective employees, as well as contractor and visitor personnel seeking access to a plant.¹ Our industry has expressed serious reservations about this proposal, in part because of the heavy presence of contractors at chemical sites, especially during plant-wide maintenance “turnarounds.” In particular, we have strongly urged DHS to rely on the half-dozen or so other Federally-issued credentials that involve a TSDB check. Unions have also expressed concern about DHS’s proposal.

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

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

D. Mandating Inherently Safer Technology into CFATS Program Is the Last Thing ISCD Should—Or Even Could—Implement

As the memorandum clearly points out, ISCD staff are substantially lacking in knowledge and expertise even about security, much less chemical process safety. They have shown great reluctance to make decisions on relatively simple issues like physical security. It is obvious to SOCMA that they are even more unqualified to make much more sophisticated and decisions about process safety. Congress should thus not devote any further time to discussing the discredited concept of mandatory IST.

An IST mandate such as that contained in last year’s House bill would have created a new CFATS statute to require Tier 1 and 2 facilities to implement “methods to reduce the consequences of a terrorist attack”—i.e., IST—whenever DHS made specified findings about risk reduction and technical and economic feasibility. However commonsense such a mandate might appear on the surface, it is fundamentally a bad idea in the security context. Inherent safety is a superficially simple but truthfully very complex concept, and one that is inherently unsuited to regulation. It could also wreak economic havoc on regulated facilities, notwithstanding the findings DHS would have to make.

First and foremost, it is important to clarify a common misunderstanding about inherent safety. Quite simply, IST is a process-related engineering concept, not a security one. It is premised on the belief that, if a particular chemical process hazard can be reduced, the overall risk associated with that process will also be reduced. In its simplicity, it is an elegant concept, but the reality is almost never that simple. A reduction in hazard will reduce overall risk if, and only if, (i) that hazard is not displaced to another time or location and (ii) it does not result in the creation of some new hazard.

Inherent safety is only successful if the sum total of all risks associated with a process life cycle is reduced. This is rarely a simple calculation, and to some extent it is an irreducibly subjective one (for example, a substitute chemical that may reduce explosion risks may also pose chronic health risks). The calculation becomes even more difficult when it is being done not solely for reasons of process safety (where accident probabilities can be estimated with some degree of confidence) but also for reasons of security (where the probability of terrorist attack is highly uncer-

¹See 76 Fed. Reg. 34729 (June 14, 2011).

tain but certainly low). Finally, there is no agreed-upon methodology to measure whether one process is inherently safer than another process. For all these reasons, the world's foremost experts in IST and chemical engineering have consistently recommended against regulating inherent safety for security purposes.

E. ISCD Needs to Retrain and Potentially Replace Much of Its Staff

Furthermore, it is evident from the memorandum that ISCD needs to retrain and may need to replace much of its staff. ISCD's Penny Anderson and David Wulf are exceptions, however. They are not responsible for the situation they inherited. Writing the kind of memorandum they authored shows that they are experienced, capable Government managers who know what needs to be done. They are going to need a lot of help, however, including continued Congressional oversight to make sure they are getting the cooperation they need from DHS management and from the union.

For others within ISCD, though, the memorandum makes clear that too few experienced staff bear the bulk of the responsibility for the administration of CFATS, and far more do not know how to conduct their work or even have properly defined position responsibilities; others simply have an unrealistic view of their jobs.

Congress should examine DHS's hiring guidelines and practices to eliminate the identified obstacles to the recruitment and retention of qualified staff for the CFATS program. Replacing and retraining staff may result in immediate costs to the Department in the short term, but would lead to long-term savings through the reduction of ISCD's reliance on contractors, which the memorandum found cost a great deal more than Federal employees. Additionally, relying on contractors who typically have high job turnover precipitates the need for constant retraining. Institutional knowledge is lost when key activities are conducted primarily with contract support.

F. Congress Needs to Provide Certainty for Regulator and Regulated Alike By Approving a Multi-year CFATS Reauthorization

The memorandum identifies the failure to achieve long-term or permanent authorization of CFATS as one of the greatest challenges to the program's future success. It may appear counterintuitive to advocate for long-term authorization of a troubled program, but the key to fixing CFATS is vigorous oversight, not budgetary uncertainty or budget cuts. SOCMA continues to support a long-term extension of the standards to allow DHS and the regulated community to come fully into compliance.

IV. CONCLUSION

Moving forward, if DHS is to suitably engage industry and be accountable for its progress, Congress conducts regular oversight, and the program is provided regulatory certainty, SOCMA believes that CFATS can successfully be implemented without the need for additional legislation.

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

Mr. LUNGREN. Thank you for testifying.

Mr. Scott.

STATEMENT OF TIMOTHY J. SCOTT, CHIEF SECURITY OFFICER AND CORPORATE DIRECTOR, EMERGENCY SERVICES AND SECURITY, DOW CHEMICAL

Mr. SCOTT. Chairman Lungren, Ranking Member Clarke, and Members of the subcommittee, my name is Tim Scott and I am the chief security officer for the Dow Chemical Company. I am speaking today on behalf of Dow and the American Chemistry Council, the Nation's largest chemical industry trade representative.

I will focus on four points today. First, there are clearly concerns on all sides about the lack of significant progress on the implementation of the chemical facility and anti-terrorism standards. We see these as management issues and not as issues with the CFATS concept.

Second, ACC member companies implemented the Responsible Care Code for Security in 2002 and have voluntarily and signifi-

cantly improved the industry security over the past decade, spending nearly \$10 billion on security enhancements.

Third, CFATS has achieved some progress toward improving the security of our Nation's chemical sector. The CFATS concept and the design are good.

Fourth, we now have an excellent opportunity to correct the course and complete the critical task before us.

Active significant progress on CFATS, along with the apparent internal issues at DHS are disheartening, but not a cause for altering our course and nullifying the efforts and progress that have been made. The open and collaborative partnership that made CFATS successful in the beginning clearly has declined, and the lack of mission clarity and leadership is apparent. This is not a condemnation of everyone and everything in DHS; this is a breakdown in management, communication, and collaboration, making a relatively straightforward program overly complex and burdensome.

This is a wake-up call, not a death knell. We now have the catalyst for change and an excellent opportunity to correct the course and achieve success. The concept and basic design of CFATS are solid. CFATS has potential and has sparked some improvements in security. It can be developed in an efficient and productive process to improve the security of our Nation's critical chemical industry.

Industry has dedicated billions of dollars and thousands of hours working with DHS at every level. Dow alone has spent about \$250 million on security. We have completed vulnerability assessments, audits, and, as needed, security upgrades at facilities worldwide, not just those regulated under CFATS in the United States.

From the beginning and to this day, Dow has taken a leadership position on the security issue, and Dow is the only chemical company to achieve Safety Act designation from DHS for both our site security and our distribution system security processes.

The CFATS concept is good, risk-based, and focused on the right priorities. The CFATS design is good, allowing regulated companies to apply customized security systems and processes to each unique site and situation to comply with DHS' established performance standard and subject to DHS approval.

The issues with CFATS are in the details, and those can be fixed if we work as a collaborative team with a common goal. We need to fix what is wrong, not start over from square one, and we don't need to make the process more complex.

There are many effective and efficient operations to achieve the successful implementation of CFATS and the ultimate goal of reducing the vulnerability of the chemical industry, our communities, and our country. We can get site security plans approved. We can get the highest-risk sites audited, we can get agreements and plans in place to reduce vulnerabilities and comply with the risk-based performance standards. We can make this happen within a very reasonable period of time.

Included with my written statement are potential solutions to some issues of most concern—the personnel surety process, site security plan approval, transparency on the risk assessment process, and reasonable alternatives that would expedite the process.

This will be a difficult task, but not an impossible mission. CFATS can work as conceived. Implementation will take leadership, communication, and collaboration well beyond what we have seen recently. DHS, industry, and this subcommittee can make this work.

ACC is consistently taking a proactive approach to security, and we have worked in good faith with DHS from the beginning. Our members have aggressively stepped out to make significant investments in security. Industry does not want to waste this effort by starting over. ACC is ready and willing to take on the challenge as an equal stakeholder to finish the task and fully implement CFATS. We need DHS on the team to meet this challenge with the common mission and goal. ACC asks that you separately address the internal issues in DHS and that you reauthorize the CFATS legislation so that we can continue the efforts that are already underway. Thank you.

[The statement of Mr. Scott follows:]

PREPARED STATEMENT OF TIMOTHY J. SCOTT

MARCH 6, 2012

Chairman Lundgren, Ranking Member Clarke and Members of the subcommittee, my name is Tim Scott and I'm the chief security officer of The Dow Chemical Company. I'm speaking today on behalf of Dow and the American Chemistry Council, the Nation's largest chemical industry trade representative.

I'll focus on 4 points today:

First—there clearly are concerns on all sides about the lack of progress on the implementation of the CFATS program. This poses a growing concern to both industry and this subcommittee, but we see these as management issues—not issues with the CFATS concept.

Second—the members of the American Chemistry Council implemented the Responsible Care Security Code in 2002 and have voluntarily and significantly improved the security of its member facilities over the past decade. Since the Security Code's inception ACC members have spent nearly \$10 billion on security enhancements. We have worked with DHS from the beginning to make CFATS successful.

Third—in spite of the apparent issues the Chemical Facilities Anti-Terrorism Standards have made some progress toward improving the security of our Nation's chemical sector since the implementation of the program—the concept and design of CFATS are good.

And fourth—we now have an excellent opportunity to correct the course and complete the critical task before us.

The concerns associated with the implementation of the Chemical Facilities Anti-Terrorism Standards (CFATS)—along with the apparent internal issues at DHS—are disheartening, but not a cause for altering our course and nullifying the effort and progress that have been made. What started as a strong and successful public-private partnership with robust communication and collaboration that made the initial CFATS initiative successful clearly has declined. With that decline came the stagnation of the program and progress. This is not a condemnation of everyone and everything in DHS—there are many good people in DHS doing their best and doing a good job—this is a breakdown in management, communication, and collaboration making a relatively straightforward program overly complex and burdensome.

This is a wake-up call—not a death knell. We now have the catalyst for change and an excellent opportunity to correct the course and complete the task at hand.

The concept and basic design of CFATS are solid. CFATS has potential, has already sparked some improvements in chemical security and can be developed further into an efficient, productive process to improve the security of our Nation's critical chemical industry. Industry has dedicated billions of dollars on security since the implementation of CFATS. We've spent thousands of hours working with DHS at every level.

I would like to point out what Dow Chemical alone has done in terms of capital investments and security upgrades in an effort to lead the industry in compliance with the CFATS program. Dow has spent approximately \$250 million on security systems to ensure our facilities are as safe and secure as they can reasonably be

and we have completed vulnerability assessments, audits, and as-needed security upgrades at our facilities worldwide—not just those regulated under CFATS in the United States. We did this in part because we have a duty to our shareholders, employees, and communities but also because we find the CFATS program a good model—in harmony with the Responsible Care Security Code—to secure our facilities. It's my understanding that Dow is the only chemical company to achieve SAFETY Act designation from DHS for both our site security and our distribution system security processes.

The concept is good—risk-based and focused on the right priorities. The design of the CFATS program is good—allowing the regulated companies to apply customized security systems and processes to each unique site and situation in compliance with the DHS-established risk-based performance standards and DHS approvals. What's wrong or misguided with CFATS are in the details and those can be fixed if we work as a collaborative team with a common goal. We need to fix what's wrong, but not start over from square one.

There are many effective and efficient options that can achieve the successful implementation of CFATS as well as the ultimate goal of reducing the vulnerability and mitigating the risk of the chemical industry, our communities and our country. Working together we CAN get site security plans approved. We CAN get the highest-risk sites audited. We CAN get agreements and plans in place designed to reduce vulnerabilities and comply with the risk-based performance standards. And this CAN happen within a very reasonable period of time. I've included with my written statement examples of potential solutions to many of the issues that in our opinion are the areas of most significant concern—the proposed personnel surety process, site security plan approval, transparency on the risk assessment process, and reasonable alternatives for site security plans and inspections that would expedite the process.

Attached to this written statement are examples of potential solutions to some issues of most concern—the personnel surety process, site security plan approval, transparency of on the risk assessment process, and reasonable alternatives that would expedite the process overall.

This will be a difficult task, but not an impossible mission. CFATS can work as conceived—implementation will take leadership, communication, and collaboration well beyond what we've seen recently. We—DHS, the industry and this subcommittee—can make this work.

ACC has historically and consistently taken a proactive approach to security—establishing the Responsible Care Security Code in 2002 and supporting legislation to address and improve security across the chemical sector as a whole—and have worked in good faith with DHS. Our members have aggressively stepped out to make significant investments in site security. Industry does not want to waste this effort by starting over.

ACC is ready and willing to take on the challenge as an equal stakeholder to finish the task and fully implement CFATS. We need DHS on the team to meet this challenge with a common mission and goal as they were when we started this journey and our early successes were achieved.

ACC asks that you separately address any internal issues in DHS and that you reauthorize the CFATS legislation so we can continue the efforts that are already well under way to secure our Nation's chemical sector.

ATTACHMENT

DEAR MEMBERS.—The following are specific recommendations for your consideration that are intended to help improve the implementation of CFATS. With the guidance and oversight of Congress, many of these improvements could be achieved through administrative changes by DHS.

Personnel Surety

DHS has been unable to implement a workable personnel surety program for CFATS facilities to properly vet thousands of employees and contractors against the Terrorist Screening Database. DHS can address this issue in two ways.

- (1) Begin accepting information of non-vetted employees at CFATS facilities for TSDB screening.
- (2) Leverage the existing Transportation Worker Identification Credential (TWIC) program by fully recognizing TWIC card holders as satisfying the TSDB screening requirement.

CFATS facilities can validate TWICs using existing tools such as the TSA's Cancelled Card List without the need to collect, protect, and transmit sensitive workers' personal information to DHS. While we recognize some shortcomings in the TWIC

program, TSA continues to make improvements that will further strengthen the program. There are currently more than 1 million TWIC card holders. Most of them also work at CFATS sites. By simply leveraging the TWIC program fully, DHS could vastly improve personnel surety at CFATS facilities and greatly reduce the burden to the regulated community.

As a long-term goal, DHS should consider creating an enhanced vetting and credentialing program that incorporates the lessons from the TWIC program and has broader application across the critical infrastructure sectors.

Site Security Plan (SSP) Process

DHS should engage members of the CFATS regulated community and their trade group representatives at the earliest stages and throughout the process to improve/revamp the SSP portion of CSAT. As identified in the "Memo", this has been one of the biggest road blocks in DHS's ability to efficiently analyze and approve site security plans. However, this will be a long-term effort to ensure it is done properly and will likely take several months to complete.

As an interim measure, ACC recommends that DHS work with the regulated community to accelerate the development of Alternate Security Programs (ASPs). ASPs can be developed in a relative short time frame, providing a standardized and consistent approach for plan submissions and approvals. ACC began such an initiative with DHS in November 2011 and plan to have the first ASP Guidance Document ready for use by this spring.

CFATS Program Transparency

DHS should improve the transparency of the CFATS program by offering confidential sharing (in a classified setting if necessary) of pertinent facility-specific DHS risk information with the owner/operator. Facility owners/operators want to make fully-informed decisions about managing their risks and implementing security measures. Currently the facility is unaware of how CFATS risk-tiering decisions are made by DHS and how changes by the facility could reduce their risk and lower their CFATS profile. By making this process more transparent, it would vastly improve the security awareness of the facility and could identify potential tiering errors or anomalies before they arise.

Alternative Inspection Program for Tier 3-4

DHS should consider an alternative self-inspection program for lower tier facilities (Tiers 3 & 4) using accredited third-party auditors. This alternative inspection program could be monitored with statistical sampling (audit schedule) by DHS CFATS inspectors to verify compliance. This would help streamline the program by lessening the burden on the DHS inspection cadre and allow DHS to focus resources and attention on higher-risk facilities (Tiers 1 & 2). Existing private-sector programs could be leveraged under this concept including the Responsible Care Security Code Program, which is mandatory for membership in ACC and requires third-party certification by an accredited third-party auditor.

Mr. LUNGREN. Thank you very much, Mr. Scott.
Now Mr. Wright is recognized for your statement.

**STATEMENT OF DAVID L. WRIGHT, PRESIDENT, AMERICAN
FEDERATION OF GOVERNMENT EMPLOYEES LOCAL 918**

Mr. WRIGHT. Chairman Lungren, Ranking Member Clarke, and Members of subcommittee. My name is David Wright. I am president of AFG Local 918, the NPPD Union. I am also an inspector with the Federal Protective Service, a component of NPPD. I am here today to express our commitment to this critical Homeland Security mission and to work with NPPD, as I have repeatedly expressed to senior agency leaders.

I have not been given the opportunity to review the internal report written by Director Anderson that generated this hearing. My knowledge of the contents of the internal report is mostly limited to what I have read in the Fox News articles of December 2011. My perception is that these are the types of issues that can be addressed in a good labor-management relationship. Policies and procedures can only be addressed effectively by taking into account the

perspective of the field-level workforce that accomplishes the work on a daily basis.

AFGE Local 918 labor-management relationship with NPPD is mostly cooperative and effective, in direct conflict with what has been reported in the media as a result of the leaked internal report. The conflict ranges from outright exaggeration of the vehicle mileage log issues, to the implied agency inability to implement policy and procedure due to a Union workforce.

I have consistently pledged the Union's cooperation of many NPPD National-level meetings, to include one meeting with Director Anderson in September 2011. At all meetings I have indicated the Union's readiness to remove any perceived Union roadblocks in support of the CFATS program.

On January 9, 2012, after the negative news article, I met with Director Anderson in the presence of Assistant Secretary Todd Keil and senior Union leadership. Once again I reiterated that successful accomplishment of the CFATS mission is the Union's first priority, and that while we would expect an opportunity to get meaningful input, there would be no Union roadblock to implementation of critical Homeland Security policies and procedures. I strongly reject the assertion that the workforce is unqualified. Most have extensive background in law enforcement, military, regulatory authority, and academics.

The chemical security workforce is dedicated, and all came on board with the promise of building a new agency dedicated to closing a potential gap in the Nation's Homeland Security network, the storage of mass amounts of hazardous chemicals at chemical facilities.

In closing I have been asked by the workforce to advise you and the American public that the NPPD chemical security inspector workforce is qualified, willing, ready, and able to accomplish the critical task of assessing security at the Nation's chemical facilities. AFGE Local 918 has repeatedly declared its cooperation to the agency in moving forward before and after the internal report. We are now making that commitment to you. It is incumbent on Congress and DHS leadership to mark that path forward.

I thank this subcommittee for the attention to this critical Homeland Security issue and I am available for questions.

[The statement of Mr. Wright follows:]

PREPARED STATEMENT OF DAVID L. WRIGHT

MARCH 6, 2012

Chairman Lungren, Ranking Member Clarke and Members of the subcommittee: My name is David Wright. I am the president of Local 918, the National Protection and Programs Directorate Union affiliated with the American Federation of Government Employees (AFGE). I am also an inspector with the Federal Protective Service (FPS) within National Protection and Programs Directorate (NPPD). In March 2011, AFGE was named as the exclusive bargaining unit representative of the Chemical Security Inspectors (CSIs) as result of Federal Labor Relations Authority certification. AFGE then delegated the responsibility to represent the CSIs to Local 918. Up until that point, AFGE Local 918 had represented FPS employees since April 2006.

I am here today to express AFGE Local 918's commitment to the mission and to work with NPPD—as I have repeatedly committed to Under Secretary Beers and agency leaders. I appreciate the opportunity to speak to the subcommittee on this critical homeland security issue.

As of today, I have not been given the opportunity to review the internal report written by Director Penny Anderson that—at least in part—generated this hearing. My definite knowledge of the contents of the internal report is limited to what I have read in the FoxNews articles in December, 2011. From what I have been able to glean from the articles, the issues are precisely the types of issues than can be addressed effectively in a good labor/management relationship. The agency's policies and procedures can only be addressed thoroughly by taking into account the perspective of the field level workforce that accomplishes the work on a daily basis. In my Federal experience as a subordinate employee, as a mid-level manager and as a union official—it is my firm opinion that to ensure that the workforce is forthcoming and thorough in their input, they must be consulted by the agency and unafraid of retaliation.

A working example of Union participation in agency process is AFGE Local 918's report to appropriate authorities of the failed FPS Risk Assessment Management Program (RAMP). The failure of the RAMP Program has since been well-documented by the Government Accountability Office (GAO). One clear indication from GAO reports is that FPS failed to meaningfully consult with the field level FPS Inspectors who would accomplish the bulk of the work—a consultation that could have saved millions of dollars on an ill-conceived, poorly designed, and ultimately non-functional computer program. Without the workforce disclosures and protection of members by the Union, the expenditures on the RAMP Program would likely have been on-going.

Other accomplishments resultant of the good labor/management relationship at NPPD and FPS are recent policy/procedure changes that were vital to accomplishment of the FPS Mission—a National firearms policy and a National law enforcement jurisdiction/authority policy. The FPS draft firearms policy was presented to the Union at the “predecisional stage” at the FPS Policy Review Committee level—at the same time as agency senior official's opportunity to comment. The Union's questions were answered and the policymaking process went forward without delay on the Union's part. Answers to complex questions surrounding FPS authority and jurisdiction and policy are vital to the street-level workforce that operates daily with a variety of jurisdictional gray areas. The Union gathered the input and provided to agency. The agency attorneys considered the workforce input and drafted a policy easily interpreted by managers and individual law enforcement officers. That policy was implemented without Union delay.

While there is some contention at the ISCD/IP level, the AFGE Local 918 labor/management relationship with NPPD officials is overall cooperative and effective—in direct conflict with what has been reported in the media as result of Director Anderson's leaked “internal report”. The conflict ranges from outright exaggeration of bargaining issues (vehicle mileage log issues) to the implied agency inability to implement critical policy and procedure due to a Union workforce.

The effective NPPD labor/management relationship is evidenced by the union contract, my weekly contacts with NPPD Employee and Labor Relations and my attendance at quarterly Labor/Management Forums. I have pledged cooperation at National-level meetings with (then) Acting IP Director Rick Driggers (May 3, 2011), ISCD/IP Director Penny Anderson (September 30, 2011) and Under Secretary Beers (November 29, 2011). Each time, I have indicated the Union's readiness to remedy any perceived Union roadblocks in support of the CFATS Program. After the leaked report, I met with Director Anderson, Deputy Director Wulf, and (then)-Assistant Secretary Todd Keil on January 19, 2012 in the presence of senior Union leadership and NPPD Human Capital officials. It was reiterated that successful accomplishment of the CFATS Mission is our first priority—and that while we would expect an opportunity to give meaningful input—there would be no Union roadblock to expediting implementation of critical homeland security policies and procedures. I have indicated numerous times that the labor contract contains the following provision that allows for expedited implementation of mission-critical policies and procedures:

“ARTICLE 9—IMPACT BARGAINING AND MID-TERM BARGAINING

“D. POST-IMPLEMENTATION BARGAINING. The Parties agree that effective management of the Agency and its resources is a mutual concern. The Parties also agree that on certain limited occasions, there may be a need for expedited implementation of new policies or practices affecting conditions of employment. The provisions of this Article apply to such situations. It is understood, however, that nothing in this Article precludes the Agency and the Union from engaging in post implementation bargaining if mutually agreeable.”

Given the union contract in place, the union has limiting time frames that ensure negotiations and implementation in a relatively short time. The issue of delays in workplace bargaining must also be considered in the context of the agency bureaucracy and lack of timeliness. A very recent example was an issue presented to the Union last week. What would normally have been deemed as a “negotiable change in working conditions”—the cessation of the ISCD Hazardous Materials certification and medical monitoring of employees—was presented to the Union. In my limited research, I determined that the actual ISCD Hazardous Materials certification program has been technically and functionally dormant—if not dead—since at least mid-2011. This matter is an indication of the slow bureaucratic pace that is frustratingly normal in agency business.

The present CSI workforce had accomplished much groundwork to assess the security of the Nation’s chemical facilities prior to Director Penny Anderson’s arrival in July 2011. That groundwork and industry outreach by the inspector workforce has resulted in acceptance by private industry and hundreds of chemical facilities reducing storage of dangerous chemicals that could be used in a criminal or terrorist attack. Elimination of this agency at this point would result in about 100 “boots on the ground”, front-line inspectors being placed out of work around the Nation. Many of the inspectors and managers are former FPS inspectors who were lured away from their Federal law enforcement careers. Many CSIs have experience in private industry and are highly educated. All applied to NPPD/ISCD with the promise of building a new homeland security agency dedicated to closing a potentially devastating gap in the Nation’s security network—the storage of mass amounts of hazardous chemicals at the Nation’s chemical facilities.

Despite the insults and negative insinuations by the media reliant on the Director Anderson’s seemingly anti-employee internal report, despite the on-going laborious attempts to redefine the work process—and despite overwhelming Human Capital issues—each bargaining unit employee is dedicated to assessing and ultimately regulating security of hazardous chemical storage at these facilities.

In closing, I have been asked by the workforce to advise you and the American public that the NPPD/ISCD/IP Chemical Security Inspector workforce is qualified, willing, ready, and able to accomplish the critical task of assessing security at the Nation’s chemical facilities. AFGE Local 918 has repeatedly declared its cooperation to the agency in moving forward. We are now making that commitment to you—it is incumbent on Congress and DHS leadership to mark that path forward.

I thank the subcommittee for the attention to this critical Homeland Security issue.

Mr. LUNGREN. Thank all the panel members for their discussion. We will go into a first round of questioning.

To start off, Mr. Wright, I know you haven’t seen the entire report or the memorandum, but you have been responding with respect to the reports you have seen and the discussions that you have had.

What impact, if any, has this memo or the leaked part of the memo or the way it is being described in the press had on the morale of your members? Do they still have a desire to work for this program? Do they still think this program worthy? Do they still think this program is workable?

Mr. WRIGHT. Above all, they think it is worthy and they are ready to move forward. With that being said, there was an aspect of insult to that report. There was an aspect of calling into question capabilities, education, training, and so forth. So there was and still is an aspect of being disrespected.

Mr. LUNGREN. Mr. Scott and Mr. Allmond, since the leaked memo came out, how has DHS engaged you on the issues that were outlined in the leaked memo? Has there been any suggestion of how you work together to solve any of the issues detailed in the memo, or is that viewed more as the Department’s internal problems that has not affected the relationship of the industry with the Department?

Mr. ALLMOND. Mr. Chairman, DHS discusses these types of issues with the industry through the Chemical Sector Coordinating Council that Mr. Scott has been involved in, and so have I. We haven't had too many discussions as of yet, but we have had some preliminary discussions about some of the things that have been holding up the program that we have identified for well over a year now.

Mr. LUNGREN. Mr. Scott, you said that this report or that which came out of this report is a wake-up call, not a death knell for the program. It is my hope that that is the case. Could you outline why the program, as articulated or as legislatively drawn, and the response by the private sector to that, is both worthy of being maintained, and what are the essential advantages of it, as you see it in the context of, as you say, the industry having spent billions of dollars in terms of security?

Mr. SCOTT. Well, the primary reason we agree that CFATS is a good approach is the risk-based approach that it takes. It is really focused on the risk of each individual site, different scenarios at each sites. So it takes the risk into question, and then you apply the appropriate risk rating and tier level to the site. So that is a strong positive. We want to make sure that we are focusing on risk and that we are really focusing on reducing the risk.

The second piece of the puzzle is that it gives you—CFATS gives you a broad array of opportunities to reduce that risk. It doesn't dictate any one method or means of reducing risk. So each site, and every site is very different, in each situation, whether it is a theft scenario or an attack scenario, the site has the opportunity to pick the right answer, the right solution to reduce the risk at that site, what makes sense at that site. So the risk-based approach and the opportunity to apply a customized security package at the site is really the value, and that is why you can see real improvement already in many of the sites when they start to focus on the risk and focus on the opportunities to reduce that risk. That is why you have seen some success already. Even though the CFATS is not fully implemented we have seen some remarkable success.

The issues that we are facing right now are the management issues of how to measure success and get approval of the site security plans and get the final inspections in place; it is not the process that has the problem.

Mr. LUNGREN. Mr. Allmond, you indicated that you support Mr. Scott, a permanent or 7-year, whatever we want to call that extension of the authorization, or as we would say up here, permanent authorization. You indicated that without that there is uncertainty. Some observers on the outside might say that is overstated.

Why would your members not continue to go forward with the capital investment necessary for securing their own assets? I know how I would respond to that question, but I would like to know how you would respond to that question.

Mr. ALLMOND. Well, Mr. Chairman, regulations in general disproportionately impact small businesses, and when there is the delay in the implementation of regulations, that compounds the impact. The delays most likely have seized up compliance costs that were budgeted. When companies sit down and do their own annual budgets, there may be some compliance costs that were built in

that were not spent. It could have been spent on things like manufacturing, innovation, R&D, more jobs. So in some respects, that money was not spent and it should have been.

Mr. LUNGREN. I think you indicated in your written testimony that 80 percent of your members are small businesses?

Mr. ALLMOND. That is correct.

Mr. LUNGREN. All right. Ms. Clarke.

Ms. CLARKE. Thank you, Mr. Chairman, and I thank the witnesses for providing their insights as well.

My first question goes to Mr. Wright. Many of the problems identified in the ISCD memorandum appear to be related to hiring and developing staff to implement the program, including the lack of policies and procedures to guide staff efforts to do their jobs.

Please discuss whether you believe problems related to hiring and developing staff and a lack of related policies and procedures are a challenge to implementing the CFATS program, and if so why? Then give us your experience with how the employees were hired for the CFATS program; what is the history from your point of view?

Mr. WRIGHT. I think I will start with the second part of your question first. I probably have been around longer than any of the NPPD leadership at the inception of the CFATS program in hiring the inspectors. We were originally detailed from the FPS workforce. So I did attend that initial class, 1 day of a week-long course for the initial group of inspectors. I think that was the initial, what can now be looked at as a setback, because the focus was ultimately compliance and ultimately law enforcement. FPS inspectors were lured away from their Federal law enforcement careers with the promise, with the lure of building a new agency regulating chemical facilities. Unfortunately for those inspectors, the program was apparently misguided or labeled as misguided and changes occurred along the way.

Many FPS inspectors came back, and the ones that could tolerate the loss of their Federal law enforcement career stayed. Then there is the aspect of the management culture. It just seems to have changed several times over the years. The focus seems to have changed is what I am told.

Ms. CLARKE. So in your opinion, to what extent do the staffing challenges and lack of program guidance impede progress in implementing CFATS, if at all?

Mr. WRIGHT. I can only go back to what I have seen in the Fox News article. Apparently Director Anderson thinks that the mission is impeded by law enforcement officers that, "want to carry a badge and gun." It goes back to a cultural issue. It goes back to the authorization, and let's do form a culture, an NPPD culture, as opposed to the different cultures that have occurred throughout the time period by bringing—by losing the focus on the law enforcement and the compliance originally, and seeking to refocus seemingly every year.

Ms. CLARKE. So I see in the memo that there are insinuations that the Union is causing friction in the workplace. Would you give us the viewpoint of the employees in the Union on this matter of workplace conditions or relationships with management? Also, in the effort to give feedback to DHS management, would you charac-

terize those efforts of employees as possibly putting themselves in the position of being subjected to retaliation or intimidation?

Mr. WRIGHT. The Union culture within ISCD is new. We have been in place since March 2011. So I was absolutely blindsided by the allegations in the news article. I have worked with Secretary Beers' senior management for years now. That myth of working with the unions, of the Union creating roadblocks to implementing policies and procedures is exactly that, it is a myth.

Ms. CLARKE. Thank you.

Mr. LUNGREN. It is my pleasure to recognize Mr. Richmond for 5 minutes.

Mr. RICHMOND. Thank you, Mr. Chairman, and I will not use my entire 5 minutes. I guess my question is for Mr. Scott. I will just say that we have a Dow facility in my new Second Congressional District which will actually be the largest home to petrochemical facilities in places that will fall under CFATS in the country. So my concern and my goal is to make sure that it is as efficient and as least burdensome to the businesses that are there.

I know that at least in your recommendations, you mentioned one way to become more efficient very quickly is to leverage the existing relationship between CFATS by recognizing the TWIC card. Is that one of the recommendations?

Mr. SCOTT. My personal opinion is that that would make the personnel surety program a lot easier to manage, if the people at the sites that you are talking about in your area are both MTSA-covered sites. You will see at both of those sites security upgrades to meet the DHS compliance requirement, so that is what we like to do. But at those two sites you have a TWIC card required for entry. When somebody comes to the gate to come to work to get a Dow badge, it is very easy to look at the TWIC card to know they have already been vetted by the Federal Government and meet all the requirements that are currently involved with the CFATS personnel surety requirement.

Mr. RICHMOND. With just Dow, how many of your facilities are covered by CFATS and also by MTSA?

Mr. SCOTT. I am not sure I can answer that. I think it is about 3 dozen. In the United States we have about 3 dozen sites covered by one or the other. All of the sites are covered by the ACC response security code.

Mr. RICHMOND. I thank you, and I yield back, Mr. Chairman.

Mr. LUNGREN. Ms. Richardson is recognized for 5 minutes.

Ms. RICHARDSON. Thank you, Mr. Chairman.

My first question is for Mr. Scott. Mr. Scott, have you presented these recommendations that are in your testimony to DHS?

Mr. SCOTT. Some of the recommendations have been discussed with DHS through the Sector Council, through individual companies, through the ACC, the various associations. I can't say that we have talked about each and every one of the recommendations, but most of those have been in some discussions, yes.

Ms. RICHARDSON. Are you aware of any responses that might have been received from DHS?

Mr. SCOTT. DHS has always been willing to sit down and talk with us. I think we are having on-going discussions with—

Ms. RICHARDSON. My question is: Have there been any specific responses to the recommendations that you provided, to your knowledge?

Mr. SCOTT. Not at this time, no.

Ms. RICHARDSON. Is Dow or ACC a part of an official advisory group within DHS, especially in light of this memorandum that was leaked, where you provide feedback to them or are working with them on this process?

Mr. SCOTT. I am not working directly with DHS on that response. No.

Ms. RICHARDSON. Does ACC to your knowledge have any advisory role or working with this Department?

Mr. SCOTT. The ACC has offered input on several of the recommendations. I don't know that they are having any direct response to those recommendations as yet.

Ms. RICHARDSON. So if I am hearing what you are saying, there is no formal body, advisory body to your knowledge, that you guys are participating in on a regular basis?

Mr. SCOTT. Not on a regular basis, no.

Ms. RICHARDSON. Mr. Wright, I would have the same question for you. Is there a regular advisory group that is working with the Department to provide feedback on an on-going basis?

Mr. WRIGHT. Not to my knowledge.

Ms. RICHARDSON. Okay. And for you, sir, how about you?

Mr. ALLMOND. Well, there is the Chemical Sector Coordinating Council, but it is not a Government advisory board. It is an industry advisory, and that is where we do have periodic discussions about various chemical security issues with the Department.

Ms. RICHARDSON. So is it a formal process of a regular meeting that happens like once a year?

Mr. ALLMOND. It is probably more like four or five times a year. It is an industry-led group that discusses chemical security. Sometimes we do involve DHS as guests to our meeting, but we do exchange information.

Ms. RICHARDSON. So it is your meeting, not theirs?

Mr. ALLMOND. Right.

Ms. RICHARDSON. Also in your testimony, you have referenced that you have supplied DHS with a proposal and some things they could consider. Have you gotten any responses to your proposals?

Mr. ALLMOND. There have been discussion about the personnel surety issue that Mr. Scott talked about, the TWIC card and what-not. We have had some back-and-forth on that with the Department for many months now. We hope to have some resolution on that. That is one of the areas in the performance standards that is holding up the implementation, quite frankly.

Ms. RICHARDSON. Okay. And Mr. Wright, I just wanted to encourage you as a part of the Union that you support, I hope that you will share with them the comments from Mr. Allmond in his testimony where he said, in particular, we have strongly urged DHS to rely upon half a dozen or so Federally-issued credentials that involve the TSDB check. Unions have also expressed a concern with DHS about the proposal, so they have supported you in that. They have also noted, additionally, relying upon contractors who typically have high job turnover persist—whatever. I am struggling

on that word today. A little late last night. The need for constant retraining, institutional knowledge is the key to activities and conducted primarily with contract support. So they are really providing I think a lot of support, unlike what unfortunately you have to testify about. Your folks here have strongly commended the work that your folks have done, so it is important to share that with them.

Mr. WRIGHT. Yes, thank you.

Ms. RICHARDSON. Mr. Wright, finally my question is for you. Have you found there to be a transparent and open process of knowledge amongst the workforce of positions that are open and available, since some of them are contracted positions currently?

Mr. WRIGHT. I don't have much experience with contractors. I am concerned with the statements made here by Director Anderson about the openness and transparency of the action plan, because it has not been brought to me. I have not been notified. I do know that there are town hall meetings. I will also say that my workforce is at this point, I think, intimidated and unwilling to share that information with the Union. Also, Director Anderson is unwilling to share that plan directly with me, despite my efforts.

Ms. RICHARDSON. Well hopefully through this committee looking at this closer, we can improve upon that.

Thank you all for your testimony. "Precipitates," there we go; got it, third try. Thank you, Mr. Chairman.

Mr. LUNGREN. I thank the gentlelady for yielding back. I thank the witnesses for their testimony and the Members for their questions.

The Members of the committee may have some additional questions for the witnesses and we would ask you to respond to these in writing in a timely fashion. The hearing record will be held open for 10 days.

With that, this subcommittee stands adjourned.

[Whereupon, at 4:32 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS SUBMITTED BY CHAIRMAN DANIEL E. LUNGREN TO RAND BEERS

Question 1a. NPPD recently provided the subcommittee with an internal memorandum entitled “Challenges Facing ISCD, and the Path Forward” which identified challenges facing ISCD as it continues implementing the CFATS program, including those related to human capital management, strategic planning, procurement, and basic program administration.

What factors prompted the Under Secretary to request that ISCD develop this memorandum, and when was it written?

Question 1b. Describe any efforts to confirm the existence of management problems discussed in the memorandum and to determine if the underlying cause (or causes) for these problems was accurately identified.

Answer. The Department of Homeland Security, the National Protection and Programs Directorate (NPPD), and the Infrastructure Security Compliance Division (ISCD) have accomplished much over the past few years to establish and implement the Chemical Facility Anti-Terrorism Standards (CFATS) program, but this unprecedented regulatory program still has challenges to address. Upon the arrival of ISCD’s new Director and Deputy Director, Under Secretary Beers asked them to provide their views on the CFATS program for his consideration. Candid, honest assessments and critiques are valuable tools in evaluating progress and determining where improvement is needed. Furthermore, course corrections are to be expected in a nascent and unprecedented program like CFATS, and on-going decisions will be necessary. The internal memorandum in question was delivered in November 2011.

We are addressing certain programmatic and management challenges through a comprehensive Action Plan. NPPD’s senior leadership is briefed on a regular basis on the progress made to address the items in the Action Plan. The Department looks forward to working with Congress to ensure continued success in the CFATS program.

Question 2a. In response to the ISCD internal memorandum, ISCD created an action plan with numerous action items intended to address management challenges identified in the memo.

Has ISCD evaluated the level of effort needed to complete each action item, including establishing milestones and time lines for the items? How has management prioritized the completion of the action items?

Answer. Yes, the Infrastructure Security Compliance Division (ISCD) has evaluated the level of effort required for each action item. Each action item has been assigned to a member within ISCD’s leadership team for coordination. As part of this coordination, each item has been assigned milestones and a tentative time frame for completion.

While the action plan does not formally prioritize the action items, each item has milestones and a target completion date based on ISCD’s Director’s guidance and the top three priorities and top three challenges identified in the internal memorandum.

Question 2b. How is progress on the action plan being documented, measured, and communicated to leadership within NPPD and its Office of Infrastructure Protection?

Answer. Progress on the ISCD action plan is being documented and managed by a designated action plan administrator in a master project plan. The action plan administrator receives weekly updates on each item from the coordinators. The action plan progress and highlights are briefed weekly to ISCD, the Office of Infrastructure Protection, and National Protection and Programs Directorate (NPPD) leadership.

Question 2c. Is NPPD confident that the action items identified will address the root cause of the various problems? If so why? If not, why not?

Answer. Yes, NPPD is confident that the action plan will address the root causes of the challenges identified. The action plan has been reviewed by NPPD and its implementation status is briefed weekly to NPPD leadership in order to ensure that progress is being made. In addition, at the recommendation of the Government Accountability Office (GAO), we will develop metrics to assess the impact of Action Plan progress, including impact on the overall implementation of the CFATS program.

Question 3. CFATS was initially authorized in October 2006 under the Homeland Security Act of 2007. Since that time, what has the program achieved, and do you believe this level of progress is sufficient given the amount of time that has elapsed?

According to DHS and CFATS Leadership, inspectors have been conducting assistance visits to tiered facilities. What did these assistance visits entail, and how, if at all, did they help improve security at facilities?

Were results of these visits consistently documented?

Finally, how did these visits differ from the actual inspections that will eventually be conducted under the CFATS program?

Answer. The Chemical Facility Anti-Terrorism Standards (CFATS) program, as authorized in the Homeland Security Appropriation Act of 2007 (Pub. L. No. 109–295), 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 2,700 facilities that have voluntarily removed or significantly reduced the on-site quantity of COI related to their potential security risks would have done so.
- Development of an on-line 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.
- Establishment and maintenance of an up-to-date comprehensive database, based on Top-Screen submissions, with information on the chemical holdings and basic risk profile of more than 40,000 chemical facilities across the country.
- Analysis of these Top-Screen submissions, resulting in the initial identification of more than 7,000 preliminary high-risk facilities.
- Development of an on-line Security Vulnerability Assessment (SVA) tool, through which preliminary high-risk facilities have developed, and provided to the Department, 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 7,000 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 on-line 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 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.
- Publication 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, Nation-wide 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 (CAVs), 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 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, which has received over 79,000 requests.
- Establishment of an anonymous CFATS Tip-Line, which has received over 100 calls and 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, in a relatively short period of time 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 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 Nation-wide preparedness through increased understanding and collaboration.

In the preliminary stages of implementing the CFATS regulation, the inspector cadre focused much of its effort on providing outreach and on assisting chemical facilities in understanding the requirements of this nascent and unprecedented program. One method for providing such assistance involves CAVs to facilities. During these CAVs, inspectors provided information and assisted many facilities in registering to use the on-line Chemical Security Assessment Tool (CSAT), in understanding how to use and complete the CSAT Top Screen and Security Vulnerability Assessment tools, and in understanding how to prepare and submit (or revise) SSPs or 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, which to date includes over 40,000 Top Screens, over 7,000 SVAs, and over 3,600 SSPs.

ISCD conducts CAVs at covered facilities that claim (e.g., through requests for redetermination) to have eliminated or reduced their chemical holdings or to have implemented other material changes to their site or operations. These visits enable ISCD to verify the claims made by the facilities and assist ISCD in determining whether they are entitled to a change in their risk-based tiering determination.

In addition, 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 CAVs. The main purposes of these 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.

Chemical Security Inspectors document CAVs using established templates and standards for reporting. These files are reviewed by the inspector chain of command, analyzed by ISCD headquarters, and posted in the facility's case files. Additional documentation is required for all CAVs related to requests for redetermination.

CAVs differ from actual inspections because the main purposes of the former are to assist facilities in the completion of their required documentation (Top Screen, SVA, and/or SSP); verify claimed changes at a facility in connection with requests for redetermination; 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.

In contrast to CAVs, inspections are conducted only after a facility's SSP or ASP has been authorized or approved. Authorization inspections are conducted by ISCD inspectors after the facility receives a Letter of Authorization 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 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 or ASP. Following DHS's issuance of a Letter of Approval, ISCD will conduct compliance inspections on a periodic and as-needed basis to verify that facilities are complying with their approved SSPs or ASPs.

Question 4. DHS reports that, since the CFATS program's inception, more than 1,670 facilities have completely removed their Chemicals of Interest (COI). What assurance does DHS have that these facilities have removed their COI?

Answer. Under the Chemical Facility Anti-Terrorism Standards (CFATS), chemical facilities that possess any of the chemicals of interest (COI) listed in Appendix A at or above the corresponding screening threshold quantity (STQ) must complete and submit a Top-Screen. If DHS determines that the facility is high-risk and the facility subsequently makes a material modification to its operations or site, the facility must complete a revised Top-Screen within 60 days of the material modification. A material modification may involve, for example, the complete removal of all COI from the facility or a substantial reduction of COI holdings. In addition to submitting a material modification Top-Screen, the facility has the option of formally requesting that ISCD reevaluate the facility's tiering designation by submitting a Request for Redetermination.

Following the submission of a material modification Top-Screen and/or a Request for Redetermination, the Infrastructure Security Compliance Division (ISCD) will request that the facility provide specific documentation showing the removal or reduction of COI or other material change in operations, such as shipping information, receiving locations, documentation related to changes in processes, invoices, bills of lading, sale documentation, etc. ISCD may also request that the facility engage in a compliance assistance visit with ISCD inspectors so they can observe and gather pertinent information to verify the removal or reduction of COI.

As of February 3, 2012, more than 1,800 facilities have reported that they have completely removed all of the COI that they held, and more than 900 facilities have reported that they no longer possess the quantity of COI that requires submission of a Top-Screen.

Question 5a. According to the ISCD Memo, as it relates to the Site Security Plan (SSP) review process, the process is "overly complicated and inefficient, leading to substantial delays in completing reviews."

To what extent has DHS engaged members of the CFATS-regulated community, to improve/revamp the SSP portion of CFATS?

Question 5b. Has DHS considered working with the regulated community to accelerate the development of Alternate Security Programs (ASPs)? ASPs can be devel-

oped in a relatively short time frame, providing a standardized and consistent approach for plan submissions and approvals.

Answer. The Infrastructure Security Compliance Division (ISCD) has established an interim Site Security Plan (SSP) review process that includes the development and refinement of, and training in, review procedures; a multi-layered 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. As part of the long-term review, ISCD is working to leverage lessons observed in the interim review process and to include a strategic outreach to the regulated community.

The strategic outreach will build upon existing efforts to engage the Chemical Facility Anti-Terrorism Standards (CFATS)-regulated community to assist with their understanding of the regulation and the CFATS process. This has included ISCD's completion of more than 1,000 Compliance Assistance Visits and participation in more than 3,000 informal introductory meetings with owners and/or operators of CFATS-regulated facilities. ISCD's outreach efforts have gone beyond solely involving the representatives of CFATS-regulated facilities, and additionally, have fostered solid working relationships with industry trade associations, such as the American Chemistry Council (ACC) and the Agricultural Retailers Association, for example, to discuss specific concerns related to their organizations' constituents. ISCD is currently participating in a working group with the ACC to consider potential improvements to the SSP tool and to assist ACC in its efforts to develop an Alternative Security Program (ASP) template that could provide sufficiently detailed information to better enable the Department of Homeland Security to review facility ASP submissions. The option of submitting ASPs in lieu of SSPs has been emphasized to the associations and has been incorporated into standard outreach materials for the larger regulated community at conferences, meetings, and presentations.

Question 6a. DHS provided briefings and other information to this subcommittee noting that one of the factors prompting the review by ISCD officials was that DHS discovered flaws in its methodology for identifying the risk level of chemical facilities, whereby facilities are assigned to specific tiers based on the potential consequences. As a result of this flaw, some facilities were misclassified.

What was the impact of misclassifying facilities?

Question 6b. What actions were taken to correct this problem?

Answer. As briefed to the committee, 501 facility tiering decisions were potentially affected by a data error in a computer program that helps identify high-risk chemical facilities. 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, using the corrected data, the Department of Homeland Security (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' final tiering results were still subject to pending review of their SVAs or Requests for Re-determination. DHS notified all of the potentially affected facilities of the results of this review in June 2011.

Question 6c. What assurance does NPPD have that, moving forward, the methodology used to develop tiered lists is sound and that facilities are properly classified? Was the methodology peer-reviewed?

Answer. The National Protection and Programs Directorate (NPPD) and the Infrastructure Security Compliance Division (ISCD) have committed to doing a thorough review of the CFATS risk-based tiering process and to promptly developing appropriate responses to any significant new tiering issues. In order to carry out this commitment, ISCD has developed a three-phase approach including:

- Thoroughly documenting all ISCD processes and procedures relating to the tiering methodology;
- Conducting an internal DHS review of the complete tiering process;
 - As part of that effort, a working group composed of NPPD experts was formed and is nearing completion of an internal assessment of the CFATS risk-tiering methodology.
- Conducting an external peer review of the risk-based tiering methodology.
 - As part of the internal review, an analysis has been developed that identifies options and various approaches for ISCD to consider in initiating an external review.
 - This peer review would provide a forum for external experts to assess the methodologies supporting CFATS.

Yes, a formal peer review of the modified Risk Analysis and Management for Critical Asset Protection (RAMCAP) methodology used within the CFATS risk engines was conducted in 2007. DHS is in the process of developing a new peer review of the CFATS risk-tiering methodology, which is part of the ISCD Action Plan.

NPPD is committed to doing a thorough review of the CFATS risk-based tiering process—past and present. In order to do this, NPPD has developed a three-phased approach to review its tiering methodology, including: Thoroughly documenting all processes and procedures relating to the tiering methodology; conducting an internal DHS review of the complete tiering process (which is nearing completion); and conducting a new external peer review of the risk-based tiering methodology. The peer review will provide a forum for external experts to assess the tiering methodologies supporting CFATS. ISCD has completed an analysis of various approaches for conducting the external review and is currently in the process of finalizing the acquisition documentation for this effort. DHS expects to launch the external peer review later this summer. The Department will keep this committee informed of the progress on this important effort.

Question 6d. What assurance does NPPD have that, moving forward, the methodology used to develop tiered lists is sound and that facilities are properly classified?

Answer. Response was not received at the time of publication.

Question 7. Has DHS conducted an examination of all the algorithms in the process? If so, were they peer-reviewed and by whom?

Answer. As part of the Department of Homeland Security's (DHS) internal review of the complete tiering process, a working group composed of National Protection and Programs Directorate experts was formed and is nearing completion of an internal assessment of the Chemical Facility Anti-Terrorism Standards risk-tiering methodology, including review of the algorithms.

DHS is also finalizing a proposal for an external peer review of the tiering methodology.

Question 8. In the Chemicals of Interest Appendix, will there be a feedback process and engagement with stakeholders to help determine threshold amounts?

Answer. If the Chemicals of Interest Appendix is revised in the future, DHS intends to engage, as appropriate, with interested stakeholders through the rule-making process.

Question 9. How many regulated companies have come forward to question their tier rankings in light of the issues with the formula? Has any company filed a lawsuit related to this issue?

Answer. The Infrastructure Security Compliance Division (ISCD) is not aware of any formal requests by any facility to review its tier level as a result of the issue with the corrections made in 2010 to one computer program that helps DHS identify high-risk chemical facilities. ISCD is not aware of any lawsuits related to this issue.

Question 10a. ISCD's memo cites numerous examples of potential waste, fraud, and abuse associated with the use of consumable supplies, travel cards, and the procurement of goods needed to carry out inspection responsibilities under the CFATS program.

What is NPPD doing to investigate these issues?

Question 10b. Has NPPD engaged the DHS Office of the Inspector General or any other investigative body to examine these issues or any issues associated with the ISCD memorandum? If not, why not?

Answer. In September 2010, Todd Keil, then-Assistant Secretary for Infrastructure Protection (IP), established the Infrastructure Security Compliance Division (ISCD) Task Force and Charter. The Task Force was directed to review practices and policies related to the salaries and benefits of ISCD's chemical inspectors, procurement protocols, fleet management, and acquisition of equipment.

This Task Force review identified potential issues with ISCD's resource management and internal management controls and processes. The National Protection and Programs Directorate's (NPPD) leadership asked NPPD's Office of Compliance and Security (OCS) to coordinate an inspection of ISCD. OCS performed its inspection activities between April and October 2011. OCS completed its report in October 2011.

Currently, both the Government Accountability Office and the Department of Homeland Security's Office of the Inspector General are conducting their own examinations of ISCD.

With regard to consumable supplies and travel cards specifically, the internal ISCD memorandum states that the absence of sufficient procedures and oversight led to an environment where fraud, waste, and abuse could occur. However, no such incidents have been identified.

Question 11a. There have been narratives from State and local fusion center representatives that they are unable to obtain information from site security plans to

use in vulnerability assessment. The reason they were given is that it is classified regulatory information not meant to be shared.

What is the source of this policy? The CFATS statutory language as drafted in Section 550(c) of Public Law 109–293 does not preclude this type of information sharing, in fact it encourages it.

Question 11b. Can you look into this issue and provide me with a written explanation? If there is confusion about policy on the ground, we like to get constituents the right information and support.

Answer. Chemical-terrorism Vulnerability Information (CVI) is a category of sensitive, unclassified information established under Section 550(c) of the Department of Homeland Security (DHS) Appropriations Act of 2007 (Pub. L. 109–295) and the Chemical Facility Anti-Terrorism Standards (CFATS) regulation to protect certain information developed or submitted as part of the CFATS process. Thus, CVI is not “classified” information as defined by Executive Order 13526. Except in exigent or emergency circumstances, only CVI Authorized Users who have a “need-to-know” may have access to CVI. Site Security Plans (SSPs) and other specified categories of CFATS-related information are CVI and must be marked, handled, and stored in accordance with the CVI provisions of the CFATS regulation. Please note that although an SSP is a CVI document under CFATS, not all of the information contained in an SSP is CVI. Specific information that a facility develops for other, non-CFATS purposes often is not CVI even though it may later be incorporated in an SSP.

The Infrastructure Security Compliance Division (ISCD) has, upon request, shared CVI regarding specific high-risk facilities with CVI-authorized users who have a need to know that information, including non-Federal public officials at fusion centers and other State stakeholders, such as State Homeland Security Advisors. In addition, individuals within State and local fusion centers and other public officials may directly contact CFATS-covered facilities within their jurisdiction to obtain relevant information, including CVI, provided that the individual seeking that information is a CVI Authorized User with a need-to-know. It is through direct communication between State and local fusion centers and CFATS-covered facilities that most meaningful information exchanges typically occur.

To aid State and local stakeholders with preparing to access CVI, DHS provides on-line CVI training for individuals to become CVI Authorized Users. The training can be found at: http://www.dhs.gov/files/programs/gc_1181835547413.shtm. In addition, DHS has prepared a CVI Procedural Manual, with additional information about sharing of CVI, which is available at www.dhs.gov/chemicalsecurity.

Question 12a. As part of the subcommittee’s oversight role of this program, there is an interest in the progress of the hiring and evaluation of those charged with implementing the CFATS program. Of the current policy- and inspector-level employees currently working on the CFATS program, how many are qualified, properly trained and ready to carry out their job duties today?

How many will need to be re-trained?

Question 12b. How many will need to be terminated or moved to other divisions?

Answer. Infrastructure Security Compliance Division (ISCD) staff, including inspectors, have been hired and trained to ensure they have the requisite expertise in physical security, investigations, incident management, chemistry, and other relevant fields necessary to properly perform the duties that they have been charged with to date. ISCD leadership has the utmost confidence in these professionals’ abilities to conduct these operations. ISCD expects additional training will be provided to the inspector cadre as advancements in these procedures occur or as new procedures are developed.

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 assist the inspector cadre in performing future authorization inspections as well as compliance inspections, which occur after approval of Site Security Plans or Alternative Security Programs. ISCD has updated the inspection procedures and is completing the process of providing additional training to the entire inspector cadre.

At this time, it is not possible to say whether any employees should be terminated or moved to other divisions. The establishment of specific program needs and the development of the long-term process for fulfilling identified program requirements is an on-going and dynamic one. As the Chemical Facility Anti-Terrorism Standards program continues to mature, ISCD 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 13. How many CFATS employees have a chemistry or physical sciences background? How many current inspectors have a chemical facility inspection background?

Are job descriptions being designed with these qualifications in mind?

Answer. Currently, the Infrastructure Security Compliance Division (ISCD) employs the following number of staff with a chemistry or physical sciences background: Five chemical engineers, one chemist, three general engineers, and seven information technology management specialists. In addition, ISCD currently has vacant positions for four chemical engineers, one general engineer, and two information technology management specialists.

The Chemical Facility Anti-Terrorism Standards (CFATS) program is one of the first Federal regulatory programs to focus specifically on the security risks associated with chemical facilities. Since the program's inception, the inspector cadre has undergone training and participated in activities to build their expertise in chemical facility inspections.

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. Once the Human Resources Plan is developed, ISCD will fully assess the Human Resources needs to include the creation of job descriptions and determining the proper grade levels.

Question 14a. What is the status of the inspector training program?

How close is an inspector training program to being put in place?

Question 14b. Are you working to leverage the knowledge base of other components and agencies that have functioning inspection programs, such as the Coast Guard or the Department of Energy?

Question 14c. Would you be willing to leverage industry expertise in developing a training program?

Answer. The Infrastructure Security Compliance Division (ISCD) stood up a working group in September 2011 to review the current procedures and to consider revising or providing additional training to assist the inspector cadre in performing future authorization inspections and to help them to conduct compliance inspections, which will begin after the Department of Homeland Security issues Letters of Approval for covered facilities' Site Security Plans or Alternative Security Programs. Throughout the development of the Chemical Facility Anti-Terrorism Standards (CFATS) program, ISCD has worked with industry and with Federal, State, and local partners to obtain and apply lessons learned and best practices. The ISCD working group is leveraging these relationships as it works to further develop and refine its inspection procedures and training. ISCD has updated the inspection procedures and is completing the process of providing additional training to the entire inspector cadre.

Question 15a. Additionally, there is information related to the memo and administration of the program that is germane to the subcommittee's work. I have highlighted some outstanding subcommittee requests made to your staff for which we have not received a response:

In January, committee (bipartisan) staff requested and the subcommittee has yet to receive a time line of political and career individuals in charge of CFATS since its inception. This request was repeated by members in a February briefing.

Why has this information not been sent?

There has been a high amount of turnover at all levels in this program. What impact has it had on implementation and continuity of operations?

Answer. The following tables provide the names and tenures of leaders within the Office of Infrastructure Protection, including the Assistant Secretary, Deputy Assistant Secretary, Infrastructure Security Compliance Division (ISCD) Director, and ISCD Deputy Director, who have had responsibility for carrying out the requirements of Section 550 of the Department of Homeland Security Appropriations Act of 2007 (Pub. L. No. 109–295).

Assistant Secretary	Dates
Caitlin Durkovich	May 2012—Present.
William Flynn (Acting)	February 2012—May 2012.
Todd M. Keil	December 2009—February 2012.
William Flynn (Acting)	September 2009—December 2009.
James L. Snyder	January 2009—September 2009.
Robert Stephan	April 2005—January 2009.

Deputy Assistant Secretary	Dates
William Flynn	November 2010–Present (Concurrently served as Acting Assistant Secretary in February 2012–May 2012).
Sue Armstrong	November 2010–October 2011 (Detailed to the Federal Protective Service (FPS) in October 2011 and reassigned to FPS in May 2012).
Sue Armstrong (Acting)	September 2009–November 2010.
Vacant	January 2009–September 2009.
James L. Snyder (Acting)	November 2008–January 2009.
Kevin Reardon	December 2007–November 2008.
Vacant	March 2007–December 2007.
Tom DiNanno	July 2004–March 2007.

ISCD Director	Dates
David Wulf	July 2012–Present.
Penny Anderson	July 2011–July 2012.
Rick Driggers (Acting)	December 2010–July 2011.
Dennis Deziel (Acting)	September 2009–December 2010.
Sue Armstrong	July 2009–September 2009.
Sue Armstrong (Acting)	November 2008–July 2009.
James Snyder	November 2008–November 2008.
Sue Armstrong (Acting)	July 2008–November 2008.
Larry Stanton (Acting)	March 2007–July 7, 2008.
Deputy Assistant Secretary Tom DiNanno (serving as chair of Chemical Security Working Group).	October 2006–March 2007.

ISCD Deputy Director	Dates
Rick Driggers (Acting)	July 2012–Present.
David Wulf	July 2011–July 2012.
VACANT	April 2011–July 2011.
James “Chris” Anderson (Acting)	December 2010–April 2011.
Todd Klessman (Acting)	August 2010–December 2010.
Wade Townsend (Acting)	June 2010–August 2010.
Todd Klessman (Acting)	September 2009–June 2010.
Dennis Deziel (Acting)	November 2008–September 2009.
Sue Armstrong	November 2008–November 2008.

Personnel turnover at the management levels of the program has inevitably had some impact on implementation of CFATS, although continuity of the program has been substantially maintained. In order to minimize such impacts from past and potential future turnover, ISCD has, among other actions, ensured that decisions, processes, and procedures are thoroughly documented. These actions include, but are not limited to, establishing an interim Site Security Plan review process, forming an Inspection Tools Working Group, and implementing the ISCD Action Plan.

Question 15b. In January, committee (bipartisan) staff also requested a time line of how and when issues with CFATS were reported up the chain of command. That has not been received.

When did Secretary Napolitano learn of the issues and has she passed any direction down to Under Secretary Beers?

How much communication within DHS Headquarters and the Secretary’s Office has there been about the memo?

Answer. Secretary Napolitano became aware of the existence of the November 2011 internal memorandum shortly after it was submitted by ISCD leadership to the National Protection and Programs Directorate. She instructed Under Secretary Beers, Deputy Under Secretary Spaulding, and the ISCD leadership to move expeditiously to implement the action plan, continue to encourage employees to come forward with any concerns, and to keep her updated on progress and any problems.

Under Secretary Beers updates the Secretary and her immediate staff on the Action Plan regularly. The Under Secretary meets almost daily with the Secretary and

uses those opportunities to communicate progress on implementation of the Action Plan, major milestones, and issues that warrant senior leadership attention. The Deputy Under Secretary and the Assistant Secretary for Infrastructure Protection also provide periodic updates to the Department of Homeland Security's senior-most counselors.

QUESTIONS SUBMITTED BY RANKING MEMBER YVETTE D. CLARKE TO RAND BEERS

Question 1. H.R. 5695, as passed by the Homeland Security Committee in 2006 required the Secretary and Inspector General of DHS to submit reports to Congress. These reports were to address progress in achieving compliance, assess the effectiveness of facility security plans, draw lessons learned, and make recommendations to improve programs, plans, and procedures. Had these kinds of normal, authorized, requirements been included in a comprehensive authorization of CFATS, the first report to Congress would likely have been due some 5 years ago, with subsequent reports due annually thereafter. Unfortunately, the majority at the time set aside H.R. 5695 and enacted the CFATS program as a rider on the DHS appropriations act without appropriate oversight provisions. Would you agree that if Congress had included basic accountability provisions in the CFATS program from the outset, many of challenges of program implementation would have come to light years ago rather than as the result of an internal memorandum leaked to the news media?

Answer. The Department of Homeland Security believes that appropriate Congressional oversight can improve accountability and enhance the effectiveness of Executive Branch activities. As might be expected in managing a groundbreaking program, the Infrastructure Security Compliance Division (ISCD) has indeed encountered difficulties in its implementation of the Chemical Facility Anti-Terrorism Standards program. We believe the program 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 Nation-wide preparedness through increased understanding and collaboration.

Question 2. What are your plans for well-structured and regular reports to Congress on the progress of the CFATS program, and what are your recommendations for the inclusion of these kinds of reports in any future authorization by Congress?

Answer. The Department of Homeland Security (DHS) understands the need for Congress to receive regular updates on the progress of the Chemical Facility Anti-Terrorism Standards (CFATS) program. However, DHS believes that briefings and other communications—in lieu of formal reports to Congress—are the most efficient and timely methods of updating Congress on the progress of the CFATS program. DHS has provided and will continue to provide many such briefings whether or not required by legislation.

QUESTIONS SUBMITTED BY RANKING MEMBER YVETTE D. CLARKE TO PENNY J. ANDERSON

Question 1a. Please provide details on the plans for the CSI workforce, including: Creation of new job descriptions.

Question 1b. Pay-grade levels of new hires based on any revamped job description.

Question 1c. Whether the new plan will include career ladders. With the need to review so many facilities, how will the performance measurements/evaluations for inspectors be determined?

Question 1d. How will the need for overtime be addressed?

Question 1e. Will NPPD/ISCD be reducing CSI pay-grades from GS13 to GS11 and GS12?

Question 1f. Will AUO (Administratively Uncontrollable Overtime) of the CSI's be restricted?

Answer. The Infrastructure Security Compliance Division (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. Once the Human Resources Plan is developed it will fully assess the Human Resources needs to include the creation of job descriptions and determining the proper grade levels. Individual performance management plans and the application of overtime policies, including those regarding Administratively Uncontrollable Overtime, will continue to comply

with National Protection and Programs Directorate, Department of Homeland Security, and Office of Personnel Management regulations and guidelines.

Question 2. With all the CFATS implementation issues in front of you, how are you doing on the ammonium nitrate regulations and what is your time line?

Answer. The Notice of Proposed Rulemaking for the Ammonium Nitrate Security Program was published in the *Federal Register* on August 3, 2011, and the public was given 120 days to provide comment(s) concerning the proposed rule. Additionally, the Department of Homeland Security (DHS) held 12 public meetings during the 120-day comment period to brief the public on the proposed rule, listen to their concerns, and gather comments provided during those forums. The Department is currently evaluating the public comments and is determining what responses will be appropriate to include in the final rule for the Ammonium Nitrate Security Program. The Department expects to develop a final rule in a time frame that ensures that it can consider and respond appropriately to the concerns raised during the public comment period while complying with all applicable Federal rulemaking requirements and procedures.

Question 3. We know the ammonium nitrate industry has expressed concern over the proposal to regulate mixtures at the 30 percent level and that a meeting has been requested to better understand the thinking of DHS in this regard. Can you tell me when you are going to meet with industry representatives on this issue?

Answer. Members of the public, including many members of industry, submitted many written comments discussing mixture percentages during the 120-day comment period for the Ammonium Nitrate Security Program from August 2011 to December 2011. During the public comment period, the Department of Homeland Security (DHS) also hosted a series of 12 public meetings in areas of high ammonium nitrate usage around the country in order to provide the public in-person overviews of the proposed regulations and to solicit additional public feedback. At many of these meetings, attendees, including industry representatives, provided opinions and statements concerning mixture percentages. DHS is currently reviewing all of the comments and will consider that input when drafting responses to the comments and developing a final rule.

QUESTIONS SUBMITTED BY RANKING MEMBER YVETTE D. CLARKE TO TIMOTHY J. SCOTT

Question 1. Please clarify the number of Dow Chemical facilities that are required to submit a vulnerability assessment and site security plan to DHS under the Chemical Facility Anti-Terrorism Standards (excluding those facilities subject only to the top screen process but not actually assigned a risk tier).

Answer. Dow has 19 facilities (including sites acquired by acquisition from Union Carbide Company and Rohm & Haas Corporation) currently regulated, tiered, and required to submit a vulnerability assessment and site security plan under CFATS.

Question 2. Likewise please separately provide the number of Dow Chemical facilities that are subject to security requirements of the Maritime Transportation Security Act, and the number of Dow Chemical facilities, if any, that are subject to the security jurisdiction of the Nuclear Regulatory Commission.

Answer. Dow has 8 facilities (including sites acquired by acquisition from Union Carbide Company and Rohm & Haas Corporation) subject to security requirements under the Maritime Transportation Security Act, and one small research lab regulated under the Nuclear Regulatory Commission.

Question 3. In your July 24, 2007 testimony before this committee you included an illustration, "An Integrated Approach to Chemical Industry Security," which included security options for extremely hazardous chemicals that included: Reduce inventory; reduce pressures; lower temperature; make and use in process without storage; and use alternates where process allows. Does Dow Chemical incorporate any or all of these approaches into its vulnerability assessments and security plans?

Answer. Dow conducts its vulnerability assessments with teams consisting of both security and process safety specialists. All risk and vulnerability reduction options are considered during these risk-based assessments, and the option best-suited to the specific scenario and the specific site is implemented. Dow has examples of the implementation of each available option—inventory, pressure or temperature reduction; in-process consumption; and product substitution; as well as process safety implementation in new plant design.

QUESTIONS SUBMITTED BY CHAIRMAN DANIEL E. LUNGREN TO DAVID L. WRIGHT

Question 1a. Initially, the ISCD memo was not released to stakeholders in industry, the union, nor some Department employees. Since, it has been released via dif-

ferent sources. Mr. Wright, did the Department give you a reason for not providing you with the ISCD memo to prepare for the hearing?

Answer. I do recall specifically asking the Department for a copy of the ISCD memo in the context of preparing for the hearing. My prior requests had been refused due to the confidential/harsh nature of the report and the on-going investigation into the media leak. I had no reason to believe that I would be able to obtain the report from the Department.

Question 1b. Since much of it impacts the inspector cadre you represent, were you given any access to it prior to the hearing? If not, were you told why not?

Answer. I was not given access to the ISCD memo prior to the hearing. Reason given was the confidential nature of the report and the fact that the media leak was under investigation by DHS.

Question 1c. Have there been any meetings with the employees you represent to discuss the contents of the memo?

Answer. I have had two Union teleconferences with the inspector cadre prior to the hearing—one within a few days after the FoxNews report and one within days of being notified about my requested Congressional testimony. During the first teleconference the discussion centered on what we could glean from the news story and the resulting feelings of insult and degradation.

The second Union teleconference centered on my expected testimony—I was encouraged to portray to Congress the willingness and ability of the CFATS inspector workforce to accomplish the mission. This teleconference also centered on the CFATS inspector's disappointment in the performance of NPPD managers at the previous hearing at House Energy and Commerce Committee.

I also participated (listened in) on an agency "all-hands" employee teleconference with NPPD Deputy Secretary Suzanne Spaulding and ISCD Director Penny Anderson that occurred within days of the FoxNews story during which the workforce was encouraged to proceed with the mission regardless of media coverage.

A second all-hands teleconference with Director Anderson (which I was unable to attend) apparently focused on some clarification by her regarding personal insult perceived by the CFATS inspectors—of which she apparently clarified that no insult or degradation was intended.

Question 2a. There are areas of the ISCD memo, which you have not been allowed to view in its totality, that allude to inspectors wanting to carry firearms and be addressed as "commander".

Question 2b. Do you have any knowledge of either of those assertions being true?

Answer. As I testified to at the hearing, the NPPD CFATS inspector force was originally staffed by law enforcement officer detailees from the Federal Protective Service Hazmat Technician force. I distinctly recall because I was interested in the position and because of the competitive aspects of the detailee selection process. FPS law enforcement officers applied for the detail after being advised that the positions could become permanent and that ultimately—NPPD ISCD officials would attempt to gain law enforcement authority for the Chemical Security Inspector workforce. As I recall, the "plan" at the outset was to institute a law enforcement workforce that could respond to failed chemical facility security plans that resulted in shutdown of facilities—or actual breaches of security.

The title "commander" is presently in use and appears to be an official job title based on correspondence issued to me in the past. The use of the term likely originated in the context of a law enforcement "chain of command".

Since the Chemical Security Inspectors have joined the Union on March 2011—none have approached the Union regarding with what many consider to be a breach of commitment by the agency—the effort to institute a law enforcement workforce and opportunity to continue the Federal law enforcement career from which they departed. That promise faded long ago and no one is pursuing the issue to my knowledge.

Since the hearing, I have learned that the agency initiative to gain law enforcement authority was being pursued by ISCD management as late as November 2010.

Question 3. In your written testimony to the subcommittee you noted that there are time constraints in the union contract that would prevent any long-term or burdensome negotiations. However, in the leaked memo ISCD Director Penny Anderson said that there is a mileage dispute described as starting July 2011 and is allegedly on-going. Can you explain this situation?

Answer. Citing "effective management of the agency and its resources", Article 9F of the Union Contract allows for "expedited implementation of policies and procedures affecting conditions of employment".

The "mileage dispute" consisted of the agency notifying the Union about the way that Government Owned Vehicle (GOV) mileage and other GOV issues were to be documented in a vehicle mileage log. Originally, it was the Union's contention that

reporting of GOV miles driven and fuel usage documented at time of purchase (Government fuel card required mileage input at fuel pump) were sufficient for documentation of miles driven—and that the additional documentation would be duplicative and administratively burdensome, i.e. if an inspector spent 30 minutes or more per day detailing mileage and fueling on a website with insufficient internet connection in a vehicle, there is at least a duplication of effort and potential for wasting time and effort. We were also concerned that the potential waste of time could reflect on the supervisor's perception of inspector performance.

To further complicate matters, when asked about the new requirements, agency cited an NPPD Policy. When Union asked to review the policy—because we had never seen it—we were provided a copy and it turned out to be a “draft policy” not ready for implementation. Subsequently, agency provided a DHS Policy that did not require the specificity of the new NPPD form. At each of these points, I became increasingly aware that the agency was misleading me in performance of my lawful responsibility to represent the members of this newly organized portion of the FLRA-certified bargaining unit.

The Union issue was never the authority of the agency to implement such mileage log requirements. The issue was the apparent agency attempts to circumvent simple bargaining of “impact and implementation” on the workforce. The misleading nature (whether deliberate or not) of the agency's interaction with me developed into mistrust. I suggested to the agency—as a vehicle mileage log for GOV's was not a HUGE issue—that they implement the mileage log requirements and we could discuss at a later time—post-decisional bargaining as allowed by Union contract and they agreed. At that point, we'd had about four teleconferences lasting about 15–20 minutes each between four or five personnel.

The agency then neglected to implement and discuss the policy. We filed an Unfair Labor Practice (ULP) for failure to bargain in late August/early September. To my recollection there was no further discussion of the issue for the remainder of the year. In January, the FLRA informally cited that Union had offered and should pursue post-decisional bargaining and that the ULP would ultimately be dismissed by the FLRA Regional Director. The ULP was dropped in January 2012. Post-decisional bargaining was pursued and ultimately dropped due to lack of input by Union rank and file.

Question 4. Do you believe that your interactions with CFATS leadership have been obstructive in any way?

Answer. No. To the contrary, I have advised all levels within NPPD of our willingness to work together. When I met with ISCD Director Anderson and Deputy David Wulf in September 2011, they cited the temporary nature of the agency's Authorization, the concern that significant progress of the agency had to be made and uncertainty as to how to deal with the Union. I obligated to them on that day—that if they did find the Union contract as burdensome in any way, a simple communication with me would lead to elimination of any time line issues. For example, Article 9A 1 of the contract requires notification of changes in working conditions to be accomplished 30 days in advance and gives 14 days for Union to respond. This requirement could—and would—be waived in the interest of mission accomplishment at this critical stage in the agency's development. We also discussed the vehicle mileage log ULP and I advised hem that the ULP was a simple issue that could be remedied by forthrightness on the part of the agency as to the seemingly overreaching requirements.

At that time, Director Anderson expressed confidence in the efforts to develop a good labor/management relationship. I am disappointed to know—months later—that the internal report was likely being developed and drafted as we were speaking that day—and that my comments and efforts (at least to my knowledge) were not included as part of that narrative—in what I now see as an effort to paint the picture of a bad labor/management relationship.

Question 5. Mr. Wright, your union represents personnel in other areas of DHS, Federal Protective Service, for example. How have your dealings with CFATS Leadership been different from your work with other DHS components?

Answer. I have represented the Federal Protective Service personnel since 2006. My relationship with FPS has always been a mutually respectful and mostly beneficial relationship.

In the FPS years at ICE, the labor/management relationship with ICE was somewhat contentious and stifled by the nature of the differing missions, i.e. priority of Immigration and Customs Enforcement duties versus the lower priority of FPS' mission—protection of Federal facilities.

Upon the FPS transition to NPPD, Under Secretary Beers' recognition of the importance of labor relations with an FPS unionized workforce was realized—not only for the benefit of the workforce—but for the benefit of the agency through increased

employee input. At this point—at least in the context of a working relationship with FPS and senior NPPD officials, issues are discussed and remedied in an efficient, usually informal manner.

Despite my outreach and my purposeful negating/relaxation of Union contract provisions, the labor/management relationship with ISCD remains “cool” after the first year of our representation in this FLRA-certified bargaining unit.

Despite that cooled ISCD labor/management relationship, AFGE Local 918 remains committed to the successful accomplishment of the ISCD mission at this critical stage in its history.

As with our history at FPS, ICE, and NPPD, AFGE Local 918 intends to fully disclose any and all information regarding hindrance of ISCD mission accomplishment to Congress.

