



Testimony of

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before the

House Committee on Energy and Commerce
Subcommittee on Environment and the Economy

on

H.R. 908, the Full Implementation of the Chemical Facility Anti-
Terrorism Standards Act

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Good morning Chairman Shimkus, Ranking Member Green, and members of the Subcommittee. My name is Bill Allmond and I am the Vice President of Government Relations at the Society of Chemical Manufacturers and Affiliates (SOCMA) in Washington, DC. I am pleased to provide this testimony regarding H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act.

Four and a half years ago, 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 deep in the middle of implementing this vital program in a focused, cooperative manner.

SOCMA strongly supports DHS's current CFATS program. This demanding program is now requiring almost 5,000 chemical manufacturing, distributing and handling facilities nationwide to develop and deploy meaningful security enhancements. Equally important, it has led over 2,000 facilities to voluntarily take steps to reduce their risk profile sufficiently enough to 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. Furthermore, 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.

Congress can best assure the CFATS program's continued success and forward momentum by passing H.R. 908, recently introduced by Vice Chair Murphy and Ranking Member Green. This bill would reauthorize CFATS through 2017, thus allowing DHS and facilities to concentrate on successfully implementing that program as quickly as possible.

I. SOCMA and the Current State of Chemical Facility Security

A. SOCMA

For 90 years, SOCMA has been and continues to be the leading trade association representing the batch, custom, and specialty chemical industry. SOCMA's nearly 250 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 significant amounts of money 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 are being (or will soon be) inspected by DHS to verify the adequacy of those plans and their conformance to them. SOCMA is actively engaged with DHS to accelerate and continuously improve the implementation of the CFATS program, collaborating on new approaches to personnel surety and Alternative Security Programs.

Many 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 a free annual Chemical Sector Security Summit and Expo that brings together government representatives, chemical security experts, and industry professionals to share knowledge and best practices.

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.

C. Preserving the Progress under CFATS

While we will leave a detailed progress report on the CFATS program to DHS, SOCMA wants to emphasize that we regard the program thus far as a success. 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. And as noted earlier, over 2,000 facilities – over a quarter of the preliminarily tiered 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.

To fully gauge the effectiveness of the CFATS program, Congress should allow it to be fully implemented – for all tiered facilities to fully come into compliance. Completing the program’s implementation from start to finish would provide DHS and chemical companies the ability to assess the overall efficacy of CFATS, identify its areas of strength and weakness, and subsequently make (or recommend to Congress) any necessary improvements.

Conversely, the need for annual reauthorization of the program has created uncertainty for facilities regulated by CFATS. Without the assurance of a long-term authorization of these regulations, companies run a risk of investing in costly activities today that might not satisfy regulatory standards tomorrow.

Statutory authority for CFATS, which has been tied to a series of continuing resolutions passed by Congress since last year, is set to expire next week. Congress must act now to ensure continuation of the current standards and reauthorize the underlying statute for multiple years.

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

While we strongly believe that the current regulatory standards themselves are working well, there is still room for DHS to improve the *efficiency* of compliance. Congress should exercise its oversight authority to 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 #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 (iv) 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 enable facility owners and operators to submit names of current and prospective employees, as well as contractor and visitor personnel. The latest official DHS description of how this process would work would require facilities to submit personally-identifying information for contractor and visitor personnel every time they seek access to a plant.¹ Because of the heavy presence of

¹ See 75 Fed. Reg. 18850 (April 13, 2010).

contractors at chemical sites, especially during plant-wide maintenance “turnarounds,” our industry has vehemently objected to this proposal. We have also 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 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.

II. Mandatory IST Is an Inherently Risky Proposition

SOCMA vehemently believes that this Congress should enact legislation like H.R. 908 to extend the CFATS program for multiple years. Congress should not devote any further time to discussing the discredited concept of mandatory inherently safer technology (IST). The balance of this statement explains in significant detail why mandatory IST would be so unwise.

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 would also wreak economic havoc on regulated facilities, notwithstanding the findings DHS would have to make. Makers of active pharmaceutical ingredients, common fuels and other federally-regulated substances would be most at risk of such economic damage.

A. What Inherent Safety Really Is and Why Mandating It Is Not Inherently Better

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, that hazard is not displaced to another time or location, or 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 uncertain 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.

There is a legitimate federal role in IST at the moment, and DHS is actually serving that role admirably. A few years ago, DHS's Science & Technology Directorate initiated an "Increasing Safety of Hazardous Chemicals" (ISHC) process to develop an expert consensus definition of IST, and from that to begin crafting metrics that would allow people to begin to compare the inherent safety of different processes. The definition process was open and participatory, and concluded last year with document that has been universally praised.² The ISHC program has now begun work on its metrics project, although SOCMA understands that there is no funding for that effort in the President's FY2012 budget. That is unfortunate, because this is an example of how the federal government can play a useful role in the field of inherent safety. Any attempt to mandate even consideration of IST is premature otherwise.

B. IST's Impact on Pharmaceuticals

One of SOCMA's greatest concerns with mandatory IST is the real possibility that it will negatively restrict the production of active pharmaceutical ingredients (APIs), many of the key raw materials of which are included on DHS's Appendix A of covered chemicals. APIs are used to fight many types of cancer, used in prescription and generic drugs, and over-the-counter medicines. They are thoroughly regulated by the Food and Drug Administration and must meet demanding quality and purity requirements. Substituting chemicals or processes used for the production of APIs would create substantial unintended consequences. Substitution would likely violate the conditions of companies' FDA approvals. Requiring IST could also delay clinical trials while new replacement chemicals are identified or invented, and would force API manufacturers and their customer drug manufacturers to reapply for FDA approval of their products because of the significant change in the manufacturing. The lengthy one to four year approval timeline for a new or equivalent replacement chemical would be a high price to pay for American consumers, many of whom rely on ready access to pharmaceuticals. To meet continuing consumer demand, API production would likely shift to foreign countries, where the FDA is less able to monitor conformance to quality standards.

² <http://www.aiche.org/uploadedFiles/CCPS/Resources/KnowledgeBase/IST%20Final%20Definition%20Report.pdf>.

The Energy & Commerce Committee's 2009 report on H.R. 2868 attempted to assuage concerns like those just discussed, opining that, where mandated IST "could result in a product that is less effective or less available to those who need it," or "forced the company to seek new regulatory approvals (such as from the Food and Drug Administration) that could take years to obtain, that could mean that the covered facility could not continue its business" and "the Department must consider such unintended consequences."³ Respectfully, SOCMA's concerns cannot be alleviated by such non-binding language. Not only would DHS not be required to follow it, but DHS would also be free to conclude that the amount of delay required to get an FDA approval, or the degree to which the effectiveness of a product would be diminished, would *not* mean that the facility could not continue its business. After all, a sufficiently large and flexible facility might well be able to stay in business even though it has lost an important product or market. But this Committee should not be encouraging the destruction of products and markets for questionable benefits in this economy (or any other).

The debate over whether IST should be mandated within the CFATS program has been argued repeatedly in the past. Following numerous hearings in which testimony was given by academia, industry, NGOs, and government officials, the prevailing view has sided against mandating it or, at best, concluding that more information is needed. We recommend this subcommittee move forward and place a higher priority on ensuring the current standards are extended.

III. Conclusion

As this subcommittee takes up the issue of chemical security anew in the 112th Congress, SOCMA asks that you work in a bipartisan manner and support legislation that would extend authorization of existing chemical facility security standards for multiple years.

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

³ House Committee on Energy and Commerce, Report No. 111-205, pt. 2, at 48 (Oct. 23, 2009).