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3 HEARING ON H.R. 908, A BILL TO EXTEND THE AUTHORITY OF THE
4 SECRETARY OF HOMELAND SECURITY TO MAINTAIN THE CHEMICAL
5 FACILITY ANTI-TERRORISM STANDARDS PROGRAM
6 THURSDAY, MARCH 31, 2011
7 House of Representatives,
8 Subcommittee on Environment and the Economy
9 Committee on Energy and Commerce
10 Washington, D.C.

11 The Subcommittee met, pursuant to call, at 9:07 a.m., in
12 Room 2322 of the Rayburn House Office Building, Hon. John
13 Shimkus [Chairman of the Subcommittee] presiding.

14 Members present: Representatives Shimkus, Murphy,
15 Whitfield, Bass, Latta, McMorris Rodgers, Harper, Cassidy,
16 Gardner, Green, Butterfield, Barrow, and Waxman (ex officio).

17 Staff present: David McCarthy, Chief Counsel,
18 Environment & Economy; Tina Richards, Senior Policy Advisor,

19 Chairman Emeritus; Gerald S. Couri, Senior Environment Policy
20 Advisor; Chris Sarley, Policy Coordinator, Energy & Economy;
21 Alex Yergin, Legislative Clerk; Jackie Cohen, Democratic
22 Counsel; Greg Dotson, Democratic Energy & Environment Staff
23 Director; Caitlin Haberman, Democratic Policy Analyst; and
24 Karen Lightfoot, Democratic Communications Director, and
25 Senior Policy Advisor.

|
26 Mr. {Shimkus.} I would like to call the hearing to
27 order. And I will start by recognizing myself for 5 minutes.

28 Today we will hold our first legislative hearing on H.R.
29 908, a bill that will give regulatory certainty, while
30 providing the necessary security to keep chemical facilities,
31 the employees who work there, and the American public safe.

32 Under the leadership of Chairman Emeritus Barton,
33 language authorizing the creation of the Chemicals Facility
34 Anti-Terrorism Standards Act, which we know as CFATS, became
35 law during the 109th Congress. CFATS takes a common-sense
36 approach to chemical facility security by allowing the
37 Department of Homeland Security to register facilities and
38 determine where the biggest security threats exist. This is
39 done through the development of risk-based standards that
40 greatly reduce or eliminate vulnerabilities. To date, this
41 framework has been used successfully, with thousands of
42 facilities around the country identified, and industry
43 working collaboratively with DHS to comply with regulations.
44 It is important that these efforts move forward because the
45 continuation of the CFATS program remains critical to our
46 national security.

47 Introduced by Vice-Chairman Tim Murphy and Ranking
48 Member Gene Green, H.R. 908 will allow our antiterrorism

49 security efforts at chemical facilities across the country to
50 remain strong and the law underpinning them to remain in
51 effect. At the same time it gives DHS time to fully
52 implement this law, but most importantly, it provides a
53 signal of clarity to business that they will not face
54 uncertainty, fostering job creation and getting our economy
55 back on track. I am encouraged by the bipartisan effort with
56 introduction of this bill. It has played no small part in us
57 holding this legislative hearing today and I look forward to
58 continuing these efforts together.

59 I appreciate Under Secretary Beers for working with us
60 on his schedule to make sure he could testify today and that
61 is why we are starting a little bit earlier than we normally
62 do. I look forward to an update on the Department's progress
63 as well as its thoughts on CFATS moving forward.

64 Regarding our second panel, CFATS is a law that affects
65 facilities with chemicals, not just chemical facilities. I
66 believe it is important for this committee to hear from some
67 of those interests. DHS's own information shows that some
68 universities, hospitals, warehouses, distributors, and paint
69 manufacturers are considered high-risk sites under CFATS. I
70 welcome these interests and all our members on the second
71 panel. I am equally interested in hearing how their sectors
72 have managed implementation, whether they think major new

73 additions to the law are warranted, and what type of affects
74 an extension of CFATS could have moving forward.

75 Finally, I want to raise one more matter in case there
76 have been many questions. As everyone knows, our committee
77 has sole jurisdiction over the Safe Drinking Water Act and
78 existing drinking water security program at EPA. While I am
79 not opposed to looking at this issue separately and at a
80 later date, the fact of the matter is CFATS is set to expire
81 very shortly and the drinking water provision aren't. In a
82 true risk-based spirit, we are going to attack the problem
83 that is the most pressing first and then later look into
84 seeing whether something more needs to be done in the other
85 area.

86 My time has expired. I will look for any one of my
87 colleagues who may want a minute and 30, and if not, I will
88 yield back my time and yield to the ranking member, Mr. Green
89 from Texas, for 5 minutes.

90 [The prepared statement of Mr. Shimkus follows:]

91 ***** COMMITTEE INSERT *****

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92 [H.R. 908 follows:]

93 ***** INSERT 6 *****

|
94 Mr. {Green.} Thank you, Mr. Chairman, for holding the
95 legislative hearing today on H.R. 908, the full
96 implementation of the Chemical Facility Anti-Terrorism
97 Standards Act introduced by Representative Tim Murphy and
98 myself.

99 Chemical facility security is extremely important in the
100 protection of public health and safety and particularly in
101 our congressional district in Houston. The Houston Ship
102 Channels are the heart of the petrochemical complex that
103 stretches along the Texas Gulf Coast producing many products
104 essential to modern life. It is also the largest
105 petrochemical complex in the country. These chemical
106 facilities contribute much in our economy and way of life in
107 employing thousands of workers in high-paying quality jobs.
108 These dedicated employees, as well as the communities that
109 surround these facilities deserve the best security standards
110 possible to prevent an act of terrorism on U.S. soil.

111 Section 550 of the Department of Homeland Security
112 Appropriations Act of 2007, Congress authorized the
113 Department to regulate security at high-risk chemical
114 facilities. Under Section 550, covered facilities must
115 perform security vulnerability assessments and implement Site
116 Security Plans containing security. According to DHS, since

117 CFATS became effective in June of 2008, they have analyzed
118 nearly 40,000 facilities across the United States.

119 Initially, DHS identified more than 7,000 facilities as
120 potential high-risk. Then over 2,000 facilities have been
121 downgraded or are no longer regulated. Currently, CFATS
122 covers 4,744 high-risk facilities nationwide across all 50
123 States, of which 4,126 facilities have received high-risk
124 determinations.

125 The program is funded through appropriation rider due to
126 expire on March 18 with the CR. It is very important for the
127 security of this country to revisit this statute to determine
128 what is working in this program and what can be improved
129 upon.

130 Additionally, it is important we provide industry with
131 some assurance that the program will continue to be funded.
132 Since 2001, chemical facilities have already invested
133 billions in security improvements or fully complying with
134 current regulations. Last year, H.R. 2868, the Chemical
135 Facility Antiterrorism Act introduced by Representatives
136 Thompson, Waxman, and Markey passed out of this committee and
137 the full House. But unfortunately, like many good pieces of
138 legislation, the House passes H.R. 2868 was never taken up by
139 the Senate, and we are here today to begin discussions on how
140 to proceed with chemical security.

141 I worked hard with Ranking Member Waxman and Markey to
142 improve H.R. 2868. One of these provisions was to avoid
143 unnecessary duplication between CFATS and exempted MTSA
144 facilities. I continue to support provisions to avoid
145 overlap with existing security programs and I intend to ask
146 our witnesses today about this issue as well.

147 And again, I want to thank our witnesses for appearing
148 and welcome Under Secretary Beers. And with that, thank you
149 for taking the time to discuss this important program. And
150 Mr. Chairman, if I have any time left, I would like to yield
151 to our ranking member of the full committee.

152 [The prepared statement of Mr. Green follows:]

153 ***** COMMITTEE INSERT *****

|
154 Mr. {Shimkus.} Do you want your full time?

155 Mr. {Green.} You want your full time? Okay. I will
156 yield back.

157 Mr. {Shimkus.} The gentleman yields back. The chair
158 now recognizes the subcommittee vice-chairman, Mr. Murphy,
159 for 5 minutes.

160 Mr. {Murphy.} Thank you, Mr. Chairman. I want to thank
161 you and also my colleague, Gene Green of Texas, for working
162 with me on this bill.

163 The chemical industry, we know, touches every segment of
164 our economy from agriculture to energy production to paint
165 and plastics. Certainly, there is nothing we can go through
166 for an hour in our lives without touching several layers of
167 it, and its safety and security is of high importance to all
168 of us and essential to our Nation's economic recovery in
169 maintaining a strong domestic chemical industry. So any
170 federal policy on plant security has to be mindful of that
171 public health and safety but also has to make sure we have a
172 regulatory certainty climate and stability so the chemical
173 employers can continue to safely grow jobs and create a
174 better economy.

175 Under the Chemical Facility Anti-Terrorism Standards,
176 our chemical plant and refineries have made significant

177 improvements towards keeping our communities safe. In fact,
178 since September of 2001, the domestic chemical industry has
179 spent an estimated \$8 billion on plant security and under the
180 existing framework will spend another \$8 billion. The law,
181 we know, identifies four high-risk categories that require
182 vulnerability assessments and Site Security Plans, but more
183 importantly, the oversight and enforcement of the Department
184 of Homeland Security.

185 By the way, I am pleased that we will be hearing today
186 from a Marine to talk about that because if anybody can tell
187 us about security, call in the Marines, right? Important
188 that we also have here today information on how this is
189 working and present to us any information with regard to its
190 effectiveness and implementation. Certainly, it does not
191 deal with all aspects of chemical safety. That is for other
192 issues on other legislation. This is specifically as it
193 relates to some of these antiterrorism security measures.
194 And we will look forward to hearing about this.

195 So given that we have a successful program here, instead
196 of changing it, the issue is let us provide domestic
197 employers certainty on the regulatory front so they can
198 continue to work towards the issue of security. Otherwise,
199 we would be creating, I think, more barriers, more confusion
200 with regard to security and jobs.

201 So I look forward to working with Chairman Shimkus and
202 Upton of the Energy and Commerce Committee, and of course
203 with Ranking Member Gene Green to pass this bipartisan
204 legislation and ensure that a key part of our Homeland
205 Security policy is maintained. And with that, Mr. Chairman,
206 I yield back.

207 [The prepared statement of Mr. Murphy follows:]

208 ***** COMMITTEE INSERT *****

|
209 Mr. {Shimkus.} The gentleman yields back his time. The
210 chair recognizes the ranking member of the full committee,
211 Mr. Waxman, for 5 minutes.

212 Mr. {Waxman.} Thank you very much, Mr. Chairman.

213 After the terrorist attack of 9/11/2001, federal
214 officials and outside experts warned that the Nation's
215 drinking water, utilities, and chemical facilities were
216 vulnerable to terrorist attack. The risk that common useful
217 chemicals could be wielded as weapons by those who would seek
218 to harm us became an alarming possibility and concern.

219 In 2006 the Appropriations Committee established a
220 program to protect the Nation's chemical facilities from
221 terrorist attack and other intentional acts. The Chemical
222 Facility Anti-Terrorism Standards Act was established by a
223 provision tacked onto an appropriations bill. Today's
224 hearing examines H.R. 908, legislation to extend the
225 authorization for this 2006 program for another 7 years.

226 The Department of Homeland Security has made tremendous
227 progress in developing its chemical security program. They
228 have done so without a great deal of congressional guidance.
229 Although the provision establishing the program was within
230 the jurisdiction of this committee, the committee didn't mark
231 up a report the provision. The members of this committee

232 didn't consider and revise it. Unfortunately, it was enacted
233 without our input. The rationale was that this program was
234 an emergency measure. It would be established quickly but
235 would also end quickly, giving our committee the opportunity
236 to develop a comprehensive policy. The Department of
237 Homeland Security was directed to issue regulations in just 6
238 months and the program was slated to expire in 2009, but now
239 we have seen that deadline extended with each appropriations
240 bill.

241 The Department has done well in getting the program off
242 the ground, but it is unable to correct shortcomings in the
243 underlying law authorizing its program. That task falls to
244 us as the committee of jurisdiction. And there are serious
245 shortcomings with the law that create dangerous security
246 gaps. For instance, drinking water facilities are not
247 covered at all. Unfortunately, H.R. 908 simply extends the
248 authorization of the existing program and would not address
249 significant security gaps that put Americans at risk. It
250 doesn't have to be this way.

251 In the last Congress, Democratic and Republican staff
252 spent hundreds of hours methodically working through the
253 issues surrounding the CFATS program. We worked with the
254 majority and minority of the Committee on Homeland Security,
255 Industry, Labor, and affected stakeholders were consulted

256 throughout the process. The result was H.R. 2868, the
257 Chemical and Water Security Act of 2009, which this committee
258 reported and passed the House on a vote of 230 to 193. That
259 legislation would have closed significant security gaps by
260 establishing a security program for drinking water facilities
261 and waste water treatment works.

262 The legislation would have harmonized the Chemical
263 Facility Anti-Terrorism Standards Act with the Maritime
264 Transportation Security Act. It also would have removed
265 exemptions from federal facilities. H.R. 2868 would have
266 strengthened security at covered facilities by requiring
267 assessment and in some cases adoption of safer chemicals,
268 processes, or technologies to reduce the consequences of a
269 terrorist attack. That common-sense policy would help
270 facilities reduce the likelihood that they will become
271 attractive terrorist targets.

272 H.R. 2868 would also have strengthened security
273 nationwide by creating an important mechanism for citizen
274 enforcement. Companies, state attorneys general, and
275 ordinary citizens could have used this provision to hold the
276 Department to deadlines and ensure that the program was
277 implemented.

278 Unfortunately, in its current state, H.R. 908 would make
279 none of these changes and would do nothing to close the

280 significant security gaps we face as a Nation. I hope that
281 we can have a robust committee process, find common ground to
282 close those security gaps once and for all, and to make our
283 country safer.

284 Finally, I would like to note a number of issues with
285 this legislation relating to the legislative protocols
286 announced by the majority leader. For instance, legislation
287 authorizing discretionary appropriations is required to
288 specify the actual amount of funds being authorized. H.R.
289 908 does not do this. The Republican leadership has also
290 said that they require a new or increased authorization to be
291 offset by the termination of an existing authorization of
292 equal or greater size. H.R. 908 does not terminate any
293 existing authorization. As we move forward in the
294 legislative process, it is important that we understand how
295 H.R. 908 comports with these protocols.

296 Mr. Chairman, thank you for holding today's hearing.
297 This is an important issue and one that I hope we can work on
298 together. I yield back my time.

299 [The prepared statement of Mr. Waxman follows:]

300 ***** COMMITTEE INSERT *****

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301 Mr. {Shimkus.} Thank you, Mr. Waxman. Now, I would
302 like to recognize the Honorable Rand Beers. I will just say
303 before, we are honored to have you. I have gone through your
304 bio and career, public servant, Marine rifle company
305 commander in Vietnam and then all over the place working in
306 service to this country. So we do appreciate you coming and
307 thank you for your service. And you are recognized for 5
308 minutes for your opening statement.

|
309 ^STATEMENT OF RAND BEERS, UNDER SECRETARY, NATIONAL
310 PROTECTION AND PROGRAMS DIRECTORATE, U.S. DEPARTMENT OF
311 HOMELAND SECURITY

312 } Mr. {Beers.} Thank you, Mr. Chairman, Ranking Member
313 Green, distinguished--

314 Mr. {Shimkus.} Sir, there is probably a button on the
315 front there.

316 Mr. {Beers.} Oh, there is. There we go. Thank you,
317 sir. Thank you, Mr. Chairman, Ranking Member Green, and
318 distinguished members of the committee. It is a pleasure to
319 be here today and thank you for working to accommodate our
320 schedules jointly.

321 As you all are aware, Section 550 of the fiscal year
322 2007 Department of Homeland Security Act, as amended, set up
323 the expiration of this program in October of 2010, and it has
324 been extended through the legislative process, including to
325 this committee and is set to expire. So we are very eager to
326 work with the committee and all levels of government and the
327 private sector to achieve passage of legislation and
328 permanently authorize the Chemical Facilities Anti-Terrorism
329 Standards program.

330 While the inspection process is still ongoing, our

331 analysis indicates that this program is delivering tangible
332 results that make our Nation more secure. For example, since
333 our inception, there have been 1,246 committees having
334 completely removed their chemicals of interest and an
335 additional 585 facilities that no longer possess the quantity
336 of chemicals of interest that meet the threshold to be
337 considered as high-risk facilities.

338 Currently, as has been indicated, there are 4,744 high-
339 risk facilities nationwide in all 50 States, of which 4,126
340 facilities have received a final high-risk determination and
341 due dates for the submission of their Site Security or
342 Alternate Security Plans. This is a reflection of the
343 significant work that has been done to date, beginning with
344 the review, as indicated, of more than 39,000 facilities that
345 submitted initial consequence screenings.

346 More than 4,100 facilities have submitted their Site
347 Security Plans, and in February of 2010, the Department began
348 conducting inspections of the final-tiered facilities,
349 starting with the highest risk, or Tier 1 facilities. The
350 Department has completed approximately 175 preauthorization
351 inspections to date.

352 An important point that I hope does not get lost in
353 these statistics is the open dialogue that DHS has
354 established with industry through this program and the

355 successful security gains that have already been implemented
356 as a result.

357 We enjoy a constructive dialogue with Congress,
358 including members of this committee, as it contemplates new
359 authorizing legislation for the CFATS program. The
360 Department supports permanent authorization for the program,
361 is committed to working with the Congress and other security
362 partners to pass stand-alone chemical security legislation
363 that includes the permanent authority beginning in fiscal
364 year 2011.

365 As you know, the administration believes that such an
366 authorization should close security gaps in the current
367 structure, such as eliminating the exemption for water and
368 wastewater facilities and prudently approaching mandatory
369 consideration of inherently safer technology.

370 Again, thank you very much for holding this important
371 hearing, and I would be happy to respond to any questions
372 that you might have, Mr. Chairman, and other members of this
373 distinguished committee.

374 [The prepared statement of Mr. Beers follows:]

375 ***** INSERT 1 *****

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376 Mr. {Shimkus.} Thank you, sir. I will recognize myself
377 for the first 5 minutes of questioning.

378 The last time you were before a committee, you testified
379 that 6,156 facilities fell into one of the top four high-risk
380 tiers. Today, on your testimony you are suggesting that
381 there are 4,744 facilities or around 1,400 less than before
382 now fall into one of the top four high-risk tiers. I think
383 you mentioned some of that in your opening statement as far
384 as the amount of chemicals being removed so they fell out of
385 the criteria. The decline, is some of it due to plant
386 closings themselves? Do you know?

387 Mr. {Beers.} Sir, I can't give you an exact figure on
388 plant closings, but almost all of them are a result of the
389 movement of the chemicals of interest offsite or the
390 reduction in the amount onsite that resulted in the removal
391 of them from the list of the high-risk tier.

392 Mr. {Shimkus.} Your staff could probably check these
393 numbers and get us that information?

394 Mr. {Beers.} We will, sir.

395 Mr. {Shimkus.} And thank you. Also, Ranking Member
396 Waxman talked about the budgetary aspects, but based upon the
397 present submission of a budget, there is probably a line item
398 for this program in that budget, is that not correct?

399 Mr. {Beers.} That is correct, sir. It is approximately
400 100 million a year. It was 105 in fiscal year 2010, it was
401 203 in the fiscal year 2011 request, and it is 99 million in
402 the fiscal year 2012 request so roughly 100 million, sir.

403 Mr. {Shimkus.} Great, thank you. Great. That is
404 helpful. Thank you. Also the last time you testified you
405 stated that you did not have any idea of how much industry
406 was spending to comply with CFATS, but you did note that
407 based on the number of top-screened DHS was receiving that
408 many material modifications were being made by covered
409 facilities. You didn't have last time--do you know of how
410 much industry has had to spend to upgrade to meet CFATS
411 compliance?

412 Mr. {Beers.} Sir, I don't have that number at the tip
413 of my fingertips. Let me have staff--

414 Mr. {Shimkus.} Is that something that in your
415 negotiations they talk to you about at all or--

416 Mr. {Beers.} One of the considerations that we bring to
417 bear is we develop Site Security Plans is yes, sir, the cost
418 of those security plans. Security is not a free good, as you
419 well know, and we are very mindful of that. That doesn't
420 mean that everyone has to recognize that some costs may be
421 required to implement a good security plan. But good
422 security plan is good neighborliness on the part of the

423 chemical industries in the areas that their facilities exist.

424 Mr. {Shimkus.} Are there still implementation issues
425 that need clarifying, such as Personnel Surety or
426 agricultural chemical issues?

427 Mr. {Beers.} Yes, sir. Both of those are still works
428 in progress. The Personnel Surety plan has been a subject of
429 discussion between ourselves and the chemical industry. We
430 are close to being in a position to come forward with that
431 proposal. The indefinite extension of this regulation
432 applying to some agricultural production facilities remains
433 in effect. We have done several studies, but I can't give
434 you an indication of when we are going to get to the end of
435 that indefinite extension, sir.

436 Mr. {Shimkus.} And in my opening statement I mentioned
437 numerous programs from hospitals. This is a wide range, a
438 portfolio, and I just wanted to put that out just for the
439 public to understand that this does more than just chemical
440 plants. It is a pretty wide range. And of course, from
441 universities to hospitals are some that we would not normally
442 think would be involved in this program. And in testimony in
443 the last Congress sometimes that got confused. So I am just
444 reiterating. You would agree with that, that there are
445 hospitals and universities and it is a wide range of areas
446 that are involved with the CFATS program?

447 Mr. {Beers.} Yes, sir. I mean just beyond the chemical
448 manufacturers themselves, this affects warehousing
449 distributors, oil and gas operations, hospitals,
450 semiconductor manufacturers, paint manufacturers, colleges
451 and universities, some pharmaceuticals, and some parts of the
452 agricultural industry. And I have not finished the list
453 there but that is certainly enough for giving people an
454 indication of how broadly this particular law affects
455 companies and facilities around the country.

456 Mr. {Shimkus.} Great, sir. Thank you very much. Now,
457 I yield back my time and recognize Mr. Green for 5 minutes.

458 Mr. {Green.} Thank you, Mr. Chairman. I have some
459 questions on coordination, but let me follow up with that.

460 In your testimony you talk about the exemption, for
461 example, of water and wastewater facilities. Are there any
462 other facilities that are not part of the law now that you
463 think should be included in it other than wastewater and
464 water facilities?

465 Mr. {Beers.} Sir, we have talked before and you
466 mentioned in your opening statement the MTSA exemption, which
467 takes marine facilities or facilities that are located in
468 areas defined as marine areas, which do in fact have chemical
469 facilities that would fall under this regulation if they were
470 not exempted from it. I can report to you that the secretary

471 has made it very clear both to me and the commandant of the
472 Coast Guard that she wants that harmonized with or without a
473 law. We have engaged, over the course of the last year, in a
474 working group study there are 18 recommendations that are now
475 moving up the chain as a result of that committee's study.
476 And I am hopeful that we will have that to the secretary for
477 final approval in the not-too-distant future.

478 Mr. {Green.} I appreciate that and that is one of my
479 concerns is that MTSA, you know, is part of the Transport
480 Worker Identification Card, and my concern was that we would
481 have a separate card for employees who actually go between
482 these facilities and is it hope that Homeland Security under
483 current authority could require or give credit to the TWIC
484 card for someone at a chemical security facility or vice
485 versa?

486 Mr. {Beers.} Yes, sir. That is exactly the point that
487 the chairman was making when he asked about the Personnel
488 Surety Program, and that is an effort that we are trying to
489 merge between the two programs. It certainly defies logic,
490 may I say, if we have one card for one kind of facility and
491 one card for another. Having said that and having spent some
492 time around a table with a number of members of my staff and
493 other staff, it is not a simple process, but it is a process
494 which we are committed to and engaged in and I hope to have,

495 as I said, an answer in the very near future.

496 Mr. {Green.} Okay. I have 260,000 TWIC cards issued in
497 our district and so I would hope that we would have some
498 coordination because we have plants that are not on the water
499 side but they are owned by the same company and yet, you
500 know, they would have the flexibility to transfer those staff
501 between the two.

502 I am glad in your testimony you also talked about
503 prudent IST. Under current authorization, does the
504 Department have the authority to look at inherently safer
505 technology?

506 Mr. {Beers.} It is not so much an authority question as
507 it is that we have asked our Science and Technology
508 Directorate within the Department to do a study of this
509 issue. I don't want to indicate that it is exhaustive but we
510 in the CFATS area have not at this point in time as part of
511 the CFATS program made any investigatory effort. Should such
512 a requirement be enacted, we are poised to begin that process
513 but no, sir, we haven't actually begun it.

514 Mr. {Green.} So is your testimony you don't think you
515 have the authority right now or you just haven't begun to
516 explore that?

517 Mr. {Beers.} We just haven't begun to explore it. That
518 is why I said we did have the Science and Technology

519 Directorate explore information on that and that is available
520 to us. At this particular point in time we didn't feel it
521 was appropriate to move any further than that initial
522 exploratory effort on their part.

523 Mr. {Green.} Okay. Well, it would seem that if there
524 is an issue, hopefully the Department would come to Congress
525 and say this is something we need and that way we could
526 respond.

527 The exemption of water and wastewater facilities, last
528 Congress we had legislation that included that, included lots
529 of, you know, multiple utility districts that were very
530 small, of course, some of the largest cities in the country.
531 Is there anything under current law in CFATS that would allow
532 for Homeland Security to also coordinate with our local
533 communities, again, from the smallest to the largest to deal
534 with some of the chemicals that are stored that makes our
535 drinking water safe.

536 Mr. {Beers.} Sir, as part of our general outreach
537 voluntary program under the National Infrastructure
538 Protection Plan, we certainly can talk to those facilities in
539 a best-practices sense. But in terms of any formal
540 regulatory authority, obviously we have that exemption and
541 no, we have not had that kind of a discussion in that sense.
542 We have certainly worked with EPA to come to an understanding

543 of the size of the population that we might be talking about.
544 We have coordinated with them about the general notions that
545 would come under a cooperative regime, which we have agreed
546 to should that be enacted. But the actual communications of
547 what a regulatory regime might look like, no, sir, it is a
548 voluntary outreach program at this particular point.

549 Mr. {Green.} Thank you.

550 Mr. {Shimkus.} Thank you. And chair now recognizes Mr.
551 Murphy for 5 minutes.

552 Mr. {Murphy.} Thank you. And again, welcome here, Mr.
553 Beers.

554 For all practical purpose, CFATS, which took effect in
555 June of 2007, and it has taken DHS 3 years and 10 months to
556 work out the Tier 1 facilities and I think about 175
557 preliminary authorization inspections and four formal
558 authorization inspections. How much longer do you think it
559 will take to conclude the preliminary authorization
560 inspections on the other 41 Tier 1 facilities? Do you have
561 any idea?

562 Mr. {Beers.} Sir, I have told my staff that I expect
563 those to be completed by the end of this calendar year. We
564 have obviously taken more time than you or we would have
565 liked in terms of moving this program forward, but part of
566 the reason that that time has been taken is that one, we are

567 absolutely committed to a dialogue with industry on this
568 issue, and we are trying to and continuing to try to set up a
569 program that is a cooperative program. I think that by and
570 large if you talk to industry, they will give you a response
571 not dissimilar to what I am telling you right now. That
572 dialogue has taken time. We have learned a lot on the path
573 from the law's enactment to today and I have no doubt that we
574 will continue to learn that. But we are definitely committed
575 to getting the Tier 1 facilities done by the end of this
576 year. And as you know, at the beginning of this calendar
577 year, we began a major effort to move this forward.

578 Mr. {Murphy.} Thank you. What about the other
579 authorization inspections? Same thing? You feel that--

580 Mr. {Beers.} The other categories?

581 Mr. {Murphy.} Yes.

582 Mr. {Beers.} We will move onto them as soon as we get
583 through the preauthorization inspections of the Tier 1
584 facility. So as you note, we have done 175. There are 216
585 facilities that are in Tier 1 and 3 that are pending final
586 tiering. So we should be able to move through those on the
587 pre-inspection relatively quickly. It is getting the final
588 version of the Site Security Plan and reviewing it and
589 issuing letters that they should begin implementation that
590 has taken up the time. They and we discovered that the

591 original submissions didn't always have a sufficient amount
592 of detail and that has required a dialogue. We have learned
593 a lot from that dialogue and I think we can move this program
594 more quickly now based on that information.

595 Mr. {Murphy.} Thank you. And you feel industry has
596 been cooperative with you in trying to implement these?

597 Mr. {Beers.} Absolutely been cooperative, sir.

598 Mr. {Murphy.} Thank you. When you testified for this
599 committee before, DHS stated that it has not studied the
600 inherently safer technologies' potential effects on
601 employment. Has that taken place since this hearing?

602 Mr. {Beers.} No, sir, not to my knowledge.

603 Mr. {Murphy.} Okay. All right. How about can you
604 explain to me how inherently safer technology works to
605 prevent theft and diversion of chemicals in any way? Is that
606 part of the things that you would have jurisdiction or would
607 be looking at yourselves?

608 Mr. {Beers.} The simplest explanation of inherently
609 safer technology actually deals with a water issue, as you
610 are well aware. The use of chlorine in water creates a
611 chemical that represents a risk depending upon the volume of
612 the chemical stored at the particular site. There is an
613 alternative which does not require a toxic chemical to be put
614 there and use in that. And the question is whether or not we

615 are going to have movement in that direction.

616 But let me be clear. While there may be an estimated
617 6,000 water and wastewater facilities that might fall under
618 this were included. We don't have enough firm data to tell
619 you how those would stratify out and in fact whether they
620 would all in fact be within the regime as you--

621 Mr. {Murphy.} Okay. Have you been communicated with
622 EPA on these issues? Are you able to talk with them?

623 Mr. {Beers.} Been talking with EPA since the last
624 Congress and the bill that this committee--

625 Mr. {Murphy.} Is that a cooperative relationship as
626 well?

627 Mr. {Beers.} Yes, sir, I think it is.

628 Mr. {Murphy.} Do we need a federal law to tell you to
629 do that? Or it sounds like you are already doing that, which
630 I appreciate.

631 Mr. {Beers.} No, we don't need a federal law to tell us
632 to do that.

633 Mr. {Murphy.} Thank you. Because I know before we
634 passed the Title IV, the Public Health Security and
635 Bioterrorism Preparedness Response Act in 2002, which
636 requires security for drinking water facilities and we are
637 pleased that things are going over and that you are working
638 cooperative on that. But I see I am out of time, so thank

639 you so much, sir, and I yield back my time.

640 Mr. {Beers.} Thank you, sir.

641 Mr. {Shimkus.} Gentleman yields back his time. Chair
642 recognizes ranking member of the full committee, Mr. Waxman,
643 for 5 minutes.

644 Mr. {Waxman.} Thank you, Mr. Chairman. I am concerned
645 that this legislation would leave unanswered many questions
646 about our Nation's vulnerability to attack on chemical
647 facilities and I would like to explore some of these
648 questions with you, Mr. Beers.

649 Is it true that drinking water and wastewater facilities
650 are statutorily exempt from the CFATS program?

651 Mr. {Beers.} Yes, sir.

652 Mr. {Waxman.} Are they exempt because there is no risk
653 of a terrorist attack?

654 Mr. {Beers.} Sir, I was not present when the law was
655 originally put forward. I am not privy to the decision-making
656 process that resulted in the exemption.

657 Mr. {Waxman.} Okay. Is it true that nuclear facilities
658 are also statutorily exempt from the CFATS program?

659 Mr. {Beers.} Yes, it is, sir.

660 Mr. {Waxman.} Should I rest assured that terrorists
661 will not target these facilities?

662 Mr. {Beers.} No, sir, you should not rest assured that

663 they will not, but we believe that the security regime that
664 the regulatory agency has there is sufficient. Having said
665 that, we have an outreach program between the Department of
666 Homeland Security, the Nuclear Regulatory Commission, the
667 Department of Energy to talk in a voluntary mode about
668 facilities that are also regulated by another department or
669 agency.

670 Mr. {Waxman.} What about the federal facilities that
671 have large stores of chemicals that the Department is
672 concerned about, the so-called Appendix A chemicals? Are
673 they exempt?

674 Mr. {Beers.} Yes, sir. That is my understanding.

675 Mr. {Waxman.} Is there any reason to think that
676 chemicals pose less of a risk when they are at federal
677 facilities than when they are at private facilities?

678 Mr. {Beers.} No, sir. But we have a lot more control
679 over the security at federal facilities than we do without
680 the CFATS program over private-sector facilities.

681 Mr. {Waxman.} Are you concerned about these gaps
682 created by these exemptions?

683 Mr. {Beers.} Sir, the administration is taking the
684 position which I support that water and wastewater ought to
685 be included in this regime. We have also undertaken an
686 effort within the Department of Homeland Security, as I

687 indicated earlier, to ensure that there is a common regime
688 between those facilities that are regulated under the MTSA
689 and those facilities that are regulated under CFATS. That
690 committee effort is completed. The recommendations are now
691 moving up the chain to the Secretary to approve that, but she
692 has made very clear to both me and the commandant of the
693 Coast Guard that she expects a harmonious regime across these
694 two areas.

695 Mr. {Waxman.} There are gaps and you expressed concern
696 about them. You think they are otherwise being addressed but
697 would H.R. 908 address those gaps?

698 Mr. {Beers.} H.R. 908 focuses on the permanent
699 authorization. Sir, we also need the permanent
700 authorization. The fact that we are living from year to year
701 or CR to CR is not a particularly good way for us to run a
702 program and work with our partners in the industry if we are
703 uncertain about the future of it. You--

704 Mr. {Waxman.} Uncertain about the future of CR?

705 Mr. {Beers.} Excuse me?

706 Mr. {Waxman.} Are you uncertain about the future of a
707 CR?

708 Mr. {Beers.} Sir, a CR has an end date. If the next
709 act with respect to this year's appropriations doesn't
710 address this issue, yes, sir. I am.

711 Mr. {Waxman.} I can understand that. I was being a
712 little facetious in my question to you.

713 We have only touched upon some of the significant
714 security gaps. As you know, port facilities are not held to
715 the same security standards as chemical facilities even
716 though they may pose the same risk, and I hope that this
717 subcommittee is able to work together to address those
718 security deficiencies and craft legislation to secure our
719 Nation.

720 It has been almost 10 years since the attacks of 9/11
721 but the job of securing our country's vulnerable assets is
722 still unfinished, and I am concerned that DHS continues to
723 miss milestones for implementation of this important program.

724 Mr. Beers, how many facilities have completed the CFATS
725 process?

726 Mr. {Beers.} Sir, in terms of the final approval of a
727 plan, no facilities have. We have 175 that have received
728 authorization letters and we have inspected--that means that
729 they go forward implementing their Site Security Plan so that
730 we can then go out and look at the implementation of the Site
731 Security Plan. We have four of those 175 who have had an
732 inspection after they have begun to implement those plans and
733 we expect that those four, which are currently under review,
734 will be finally approved in the not-too-distant future.

735 Mr. {Waxman.} Um-hum. Well, let me just say--and I
736 only have a few seconds left--it has been almost 4 years
737 since the Department's rules took effect and not one facility
738 has completed the process. With that success rate I think we
739 should all have concern about simply rubberstamping this
740 program for another 7 years. And I just want to put that
741 issue on the table. Thank you, Mr. Chairman.

742 Mr. {Shimkus.} Thank you, sir. And before I recognize
743 Mr. Latta, I want to recognize Mr. Murphy for unanimous
744 consent request.

745 Mr. {Murphy.} Thank you, Mr. Chairman, a request for
746 two letters, with unanimous consent, to submit. One is a
747 letter from the CEO Randy Dearth of LANXESS and the other one
748 is from the American Chemistry Council.

749 Mr. {Shimkus.} Without objection, so ordered.

750 [The information follows:]

751 ***** COMMITTEE INSERT *****

|
752 Mr. {Shimkus.} The chair now recognizes the gentleman
753 from Ohio, Mr. Latta, for 5 minutes.

754 Mr. {Latta.} Well, thank you very much, Mr. Chairman,
755 and Mr. Under Secretary, thanks very much for being with us
756 today.

757 If I can just go back, on page three of your testimony
758 on the very bottom of the paragraph there, talking about what
759 is listed about 322 chemicals of interest. And I think that
760 a question was asked mainly on agriculture, which I think the
761 chairman had mentioned. The other thing you say there is an
762 indefinite suspension on agriculture. What was that again,
763 please?

764 Mr. {Beers.} Sir, because of the use of fertilizer in
765 the agricultural industry, quantities of that fertilizer that
766 are stored on farms, as well as at the wholesale distributor,
767 that represented a large problem that we recognize but were
768 not prepared in the initial effort to try to get at the heart
769 of the problem, which are these larger facilities. So we
770 gave them an extension, we have conducted some studies, but
771 we are not to the point where we are prepared to talk about
772 rule-making with respect to those facilities.

773 Mr. {Latta.} Thank you very much. Because the reason
774 is I represent kind of an interesting district. I represent

775 one of the largest manufacturing districts in Ohio and I
776 represent the largest agricultural district because, of
777 course, with anhydrous ammonia, that is one of the ones that
778 our farmers are out there using all the time.

779 And then another chemical listed is propane because in
780 my area we have a lot of folks that live in the country that
781 use propane for their main source of heat. Now, would
782 propane be another one of those that down the road there
783 might be something that--because, again, this is something
784 that folks back home rely on all the time.

785 Mr. {Beers.} Sir, with respect to that yes, it is, but
786 we are talking about levels of propane, not the fact of
787 propane. And sir, I am not a farmer and I don't know how
788 much propane in a rural setting a farmer might have on his
789 site, but I do have some rural property and I don't have that
790 many propane tanks.

791 Mr. {Latta.} You know, it is mainly for folks that
792 live--and even in small villages. They don't have natural
793 gas. They use propane tanks that are there to heat their
794 homes. I just wanted to double-check that with you.

795 And I guess there is also the other question that I have
796 is when you are looking at the release and the theft and the
797 diversion, the sabotage and contamination, so down the road
798 would you be looking at that, then, or because, again, on

799 release, again, of course, the farmer is out there when you
800 are spraying with anhydrous. I guess that is my question is
801 that would somebody in agricultural production fall under
802 these regulations? It would be kind of an undue hardship on
803 them.

804 Mr. {Beers.} Sir, that is part of the issue that we are
805 working our way through. I mean the point here is that those
806 4 issues that you just read out are all considerations, but
807 we have the authority to make judgments on how to or what to
808 interpret on that. There is a level of storage that we look
809 at, but it is also a question of where it is and what kind of
810 potential threat it is.

811 Mr. {Latta.} Thank you.

812 Mr. {Beers.} So we talk all those issues into
813 consideration.

814 Mr. {Latta.} Thank you very much.

815 Mr. {Beers.} This is not a mechanistically implemented
816 regulatory regime.

817 Mr. {Latta.} Mr. Chairman, I yield back. Thank you
818 very much.

819 Mr. {Shimkus.} If the gentleman would yield just your
820 last 50 seconds for me. I represent parts of 30 counties in
821 Southern Illinois so this propane debate is an interesting
822 one. These residential tanks are about the size of a pickup

823 truck, the bed of a pickup truck. If you were doing a
824 development in a rural area where you had 10 or 15 homes with
825 that, based upon the footprint of this development, could
826 they fall into this process?

827 Mr. {Beers.} No, I don't believe they could. I can
828 give you--

829 Mr. {Shimkus.} I guess the issue is how much--

830 Mr. {Beers.} But this is the issue of how much--

831 Mr. {Shimkus.} How much over--right.

832 Mr. {Beers.} And that particular--

833 Mr. {Shimkus.} That might be a good thing because,
834 look, I mean we will have an agricultural perspective always
835 through this process.

836 Mr. {Beers.} My staff is giving me a prompt.

837 Mr. {Shimkus.} Good.

838 Mr. {Beers.} Sixty thousand pounds--

839 Mr. {Shimkus.} Okay.

840 Mr. {Beers.} --is the threshold screening quantity.

841 Mr. {Shimkus.} All right. I will have to find out how
842 many pounds are in one of those big tanks.

843 Mr. {Beers.} So there is a propane tank out back of my
844 rural property without a dolly of some sort.

845 Mr. {Shimkus.} Right.

846 Mr. {Beers.} Even the larger tanks that you are talking

847 about are--

848 Mr. {Shimkus.} And we will follow up. That is what we
849 have hearings for. So thank you, sir. Now, the chair would
850 like to recognize Mr. Barrow. No, he is not here. Ms.
851 McMorris Rodgers for 5 minutes? No questions. Mr. Cassidy
852 for 5 minutes. Would the gentleman yield for a second? And
853 hit your button again and then pull the microphone up.

854 Dr. {Cassidy.} Now, Mr. Waxman's question implied that
855 the NRC is doing a poor job of regulating the security at
856 nuclear power plants. When I visited the one in my district,
857 oh, 6 or 8 months ago, I was impressed with the perimeter
858 fences, the .50 caliber guns, the check-in process, et
859 cetera. Have you had a chance to review the security
860 requirements for such facilities and would you accept the
861 implication of his questioning, that there is an inadequacy
862 of those?

863 Mr. {Beers.} Sir, as I said in answer to his question,
864 we believe that the regulatory regime that those plants are
865 currently under is adequate to ensure their protection.

866 Dr. {Cassidy.} Okay. I just wanted to make sure that
867 was documented.

868 Secondly, now, I don't have your expertise--I am totally
869 up front about that--but it seems like if we have
870 incompletely implemented the rules--doing a great job working

871 at it, but it just takes time--of something passed in 2007,
872 it seems almost counterproductive to implement a whole other
873 regulator regime when people have to adjust midstream. That
874 is just intuitive to me. Would you accept that or would you
875 dispute that?

876 Mr. {Beers.} Sir, you point out a challenge that would
877 be true if that were the case, but the administration put
878 forward its recommendation to add water and wastewater in the
879 belief that we, in fact, have learned a great deal--

880 Dr. {Cassidy.} Now, not to be rude but water and
881 wastewater were not previously included, so that would not be
882 a regulatory regime change if you will. That would be an
883 addendum.

884 Mr. {Beers.} Yes, sir.

885 Dr. {Cassidy.} That is different from saying oh,
886 listen, guys, you have been working on this, but by the way,
887 we now have another set of rules before you completed the
888 first set.

889 Mr. {Beers.} I am sorry. Are you specifically
890 referring to the Inherently Safer Technology part?

891 Dr. {Cassidy.} Correct.

892 Mr. {Beers.} Sir, that is why in the administration's
893 presentation of this possible expansion that we want to be
894 very clear that the deadlines, if any, take into account the

895 need in moving in that direction that would be required by
896 moving into an area that we would have to spend some time and
897 effort.

898 Dr. {Cassidy.} But again, just to drill down on my
899 question, it seems like if someone has not completely
900 incorporated the recommendations of rules issued and
901 regulations issued dating back to 2007, to come up with
902 another regulatory regime before you have finished the first
903 is almost like a whipsaw and, frankly, somewhat wasteful of
904 resources if it turns out IST takes you in another direction.

905 Mr. {Beers.} Sir, we put forward the recommendation on
906 this in the belief that we could, given sufficient time, be
907 able to deal with an expansion of the regime. The challenge
908 that you put forward is, I think, an accurately characterized
909 challenge.

910 Dr. {Cassidy.} Okay.

911 Mr. {Beers.} I am not disagreeing with you on that.
912 And that is why we have been very clear that we would not
913 want to be held to a heroic set of deadlines in that regard,
914 because it will require an expanded effort; it will require
915 some new information.

916 Dr. {Cassidy.} Now, again, you have so much more
917 expertise in this area than I that with trepidation that I go
918 forward. But still, when I think of IST, I think that that

919 is a fairly static concept. Now, it has to be one vetted,
920 you have to have public comments, you have got to look at it
921 when frankly there may be some innovation out there which
922 doesn't have time to be processed. I think of the Maginot
923 Line as being the IST of its day and yet clearly tank
924 warfare, you know, ruined the concept. Now, do you accept
925 that or is Maginot Line a poor example of where we are going
926 with this?

927 Mr. {Beers.} Sir, I am a military historian. I love
928 your example. But as the process that we have undertaken
929 with respect to the facilities under the current regime has
930 gone from a large number of firms that submitted top-screen
931 down to a much smaller number, which is approximately 10
932 percent, and we have had 1,200 firms that have fallen off of
933 this because they have changed the holdings and we had
934 another several hundred that are in lower screening, we
935 recognize that this is a dynamic process. And the point that
936 you make about changes in technology, we would of course
937 incorporate changes in technology as they occurred.

938 Dr. {Cassidy.} But is it fair to say the bureaucracies
939 have a difficult time--I am a physician. Whenever they come
940 up with a practice guideline, I am always struck that the
941 practice guideline has to ignore that which is on the cusp.
942 Because in order to get the consensus for the practice

943 guideline, the cusp almost has to be marginalized because 90
944 of the cusp is marginalized. But there is 10 percent of that
945 cusp that, wow, is the brave new future. Now, I have to
946 think that in your area that that may also be true as kind of
947 fertile as yours is for innovation.

948 Mr. {Beers.} Sir, that is an excellent example and I
949 think you are correct in saying that sometimes bureaucracy
950 appears to be slower than reality, but I would also say that
951 one of the things about this program that we have absolutely
952 learned is that we have to be flexible and adaptable in terms
953 of looking at new situations and new pieces of information.

954 Dr. {Cassidy.} Thank you.

955 Mr. {Beers.} So that is what we would do.

956 Dr. {Cassidy.} He is gaveling us. I yield back.

957 Mr. {Shimkus.} The gentleman's time has expired. The
958 chair would like, with unanimous consent, recognize the
959 ranking member for a UC request and then follow up with a
960 statement.

961 Mr. {Green.} Mr. Chairman, I would like to ask
962 unanimous consent to place into the record both a letter and
963 testimony from the National Petroleum Refiners Association.

964 Mr. {Shimkus.} Without objection, so ordered.

965 [The information follows:]

966 ***** COMMITTEE INSERT *****

|
967 Mr. {Green.} And also one last question. Part of the
968 testimony that is going to be submitted by the Petroleum
969 Refiners--and let me read a little bit of it--``Under CFATS,
970 it is required that personnel with access to sensitive
971 information and relevant operations be vetted under the
972 National Terrorism Screening Database, no matter if the
973 person has been vetted by other government credentialing
974 programs, such as the Transport Worker Identification Card or
975 the Hazardous Materials Endorsement, or a host of other
976 federal government credentialing programs. In the last 2
977 years, DHS has twice proposed in the Federal Registry that
978 employees at CFATS sites would have to obtain multiple
979 government credentials.''

980 Obviously, there is some confusion out there concerning
981 what DHS is doing and that is our concern about this
982 legislation. One of the things, we would like to give you
983 the authority to make sure you streamline it instead of
984 people having--it is bad enough--I work at the Port of Miami,
985 and I have to have a Miami Port card along with a DHS card or
986 a TWIC card. We surely don't need multiple federal cards.
987 And so that is our concern.

988 Mr. {Beers.} And that is our concern as well, sir, and
989 that is what we are trying to work to resolve.

990 Mr. {Green.} Okay. Thank you.

991 Mr. {Shimkus.} I want to thank you for coming and
992 appreciate your response to the questions. And if you have
993 got information on Mr. Green's issue and you want to be
994 receptive to his concerns, so if there are ways in which you
995 can provide us information as we move forward on this
996 process, we would appreciate it. So sir, you are excused and
997 we will sit the next panel.

998 Mr. {Beers.} Sir, thank you very much for the
999 opportunity and I look forward to continuing to work with you
1000 and the committee. I appreciate it.

1001 Mr. {Shimkus.} Thank you. We will give everyone a
1002 chance to get seated and then I will do an introduction of ht
1003 entire panel and then we will recognize each member on the
1004 second panel for 5 minutes, your full statements are
1005 submitted for the record, and then we will follow up with
1006 questions.

1007 So first of all, we would like to thank the second panel
1008 for joining us on the second panel. We have Mr. Andrew
1009 Skipp, President and CEO of Hubbard-Hall, Incorporated, from
1010 Waterbury, Connecticut. Also Mr. David Tabar, CSP--what is
1011 CSP?

1012 Mr. {Tabar.} Certified safety professional.

1013 Mr. {Shimkus.} Oh, I should know that. Global Director

1014 of Safety, Sherwin-Williams--I do know that--from Cleveland;
1015 Mr. Bill Allmond, Vice President, Government Relations,
1016 Society of Chemical Manufacturers and Affiliates; and then
1017 Mr. James Frederick, Assistant Director of Health, Safety,
1018 and the Environment, and the United Steelworkers.

1019 And we want to welcome you all here and we will start.

1020 Mr. Skipp, you are recognized for 5 minutes.

|
1021 ^STATEMENTS OF ANDREW K. SKIPP, PRESIDENT/CEO, HUBBARD-HALL,
1022 INC., ON BEHALF OF THE NATIONAL ASSOCIATION OF CHEMICAL
1023 DISTRIBUTORS; DAVID TABAR CSP, GLOBAL DIRECTOR OF SAFETY,
1024 SHERWIN-WILLIAMS, ON BEHALF OF THE AMERICAN COATINGS
1025 ASSOCIATION; BILL ALLMOND, VICE PRESIDENT, GOVERNMENT
1026 RELATIONS, SOCIETY OF CHEMICAL MANUFACTURERS AND AFFILIATES;
1027 AND JAMES S. FREDERICK, ASSISTANT DIRECTOR, HEALTH, SAFETY,
1028 AND ENVIRONMENT, UNITED STEELWORKERS, ON BEHALF OF THE BLUE-
1029 GREEN ALLIANCE

|
1030 ^STATEMENT OF ANDREW K. SKIPP

1031 } Mr. {Skipp.} Thank you, and good morning, Chairman
1032 Shimkus, Ranking Member Green, and subcommittee members. My
1033 name is Andrew Skipp and I am president of Hubbard-Hall, a
1034 chemical distributor based in Waterbury, Connecticut. I am
1035 also chairman of the National Association of Chemical
1036 Distributors (NACD), and I am pleased to provide testimony
1037 today in support of H.R. 908 to extend DHS's authority to
1038 continue the CFATS program.

1039 NACD is an association of over 250 chemical distributors
1040 who purchase and take title to products and market them to a
1041 customer base of more than 750,000. Most NACD members are

1042 small, privately-owned businesses. The typical member has 26
1043 million in annual sales, three facilities, and 28 employees.
1044 We demonstrate our commitment to product stewardship through
1045 compliance with Responsible Distribution, our mandatory and
1046 third-party-verified environmental, health, safety, and
1047 security program.

1048 As owners and managers, our members have a personal
1049 stake in safety and security of our employees and companies.
1050 We demonstrate this through our commitment to Responsible
1051 Distribution, our relationships with our employees and our
1052 union members, and through our careful compliance with
1053 numerous environmental, transportation, safety, regulatory
1054 concerns, both on a federal, state, and local level.

1055 On behalf of Hubbard-Hall and NACD, I commend
1056 Representatives Murphy and Green for introducing the
1057 legislation to extend DHS's authority to continue CFATS for 7
1058 years. NACD was a strong supporter of the 2006 legislation
1059 that resulted in CFATS. H.R. 908 would allow time for the
1060 full implementation and evaluation of CFATS before changes to
1061 this important program are considered.

1062 Because CFATS is a major regulation based upon
1063 performance standards for each facility rather than on one-
1064 size-fits-all mandate, it is taking time for DHS to evaluate
1065 and inspect over 4,100 Site Security Plans. However, this

1066 approach has the advantages of designing plans to address
1067 each facility's unique situation while avoiding the creation
1068 of a single road map for potential terrorists.

1069 The bottom line is the real security measures are being
1070 implemented at facilities around the Nation because of CFATS.
1071 For example, my company has three facilities that are covered
1072 by this program. We have worked hard and spent substantial
1073 resources to design our Site Security Plans and implement
1074 additional security measures.

1075 CFATS is a major regulatory commitment for Hubbard-Hall.
1076 We are willing to invest the time and the resources to comply
1077 with this important regulation, and I know that our company
1078 and all NACD members would welcome the certainty of a clean,
1079 long-term extension.

1080 Prior CFATS proposals included measures that would have
1081 been counterproductive to the good progress that has been
1082 made. The most disruptive of these have required all CFATS-
1083 covered facilities, including chemical distributors to
1084 conduct inherently safer technology, IST assessments, and for
1085 those in the highest-risk tiers to implement these measures.
1086 Such a mandate would shift the focus away from the real
1087 security issues and force companies to consider full-scale
1088 engineering and product changes.

1089 I want to emphasize that NACD opposes mandatory IST

1090 consideration. The fact of conducting IST assessments would
1091 be extremely costly for NACD members and would not reduce
1092 risk. For most NACD members, IST assessments would have to
1093 be outsourced at significant cost and produce limited
1094 options. Chemical distributors maintain specific inventories
1095 in order to respond to customer needs. If distributors are
1096 required to reduce inventories of certain products that would
1097 prevent us from meeting these needs. Particularly in these
1098 tough economic times, in addition to the myriad of
1099 regulations that already affect us, this could be the final
1100 straw to put some companies out of business, which would
1101 result in further job loss. Required inventory reductions
1102 would also assign additional risk to transportation and
1103 increase the likelihood of product handling incidents.

1104 Finally, CFATS currently provides incentives to
1105 companies to use the safest possible methods so they can
1106 assign to a lower-risk tier. In fact, over 1,200 facilities
1107 have reduced their security risk so much that they have
1108 tiered-out of the program. Many more facilities have been
1109 assigned to lower tiers.

1110 In conclusion, I repeat that NACD strongly supports the
1111 legislation to extend the current chemical security program
1112 with no changes. A clean extension will both provide
1113 regulatory certainty and allow for continued progress in

1114 implementing real security measures at our facilities.

1115 On behalf of Hubbard-Hall and NACD, I appreciate this
1116 opportunity to present our views on this critical issue and I
1117 look forward to your questions. Thank you.

1118 [The prepared statement of Mr. Skipp follows:]

1119 ***** INSERT 2 *****

|
1120 Mr. {Shimkus.} Thank you very much, sir. And I would
1121 like to recognize--and I guess I mispronounced it--Mr. Tabar
1122 from Sherwin-Williams. You are recognized for 5 minutes.

|
1123 ^STATEMENT OF DAVID TABAR

1124 } Mr. {Tabar.} Thank you. Good morning, Chairman Shimkus
1125 and members of the subcommittee. My name is David Tabar and
1126 I am the global director of safety for the Sherwin-Williams
1127 Company in Cleveland, Ohio. I am also here representing the
1128 American Coatings Association. My purpose here today is to
1129 support H.R. 908, and I thank you for this opportunity to
1130 present our views before the subcommittee today.

1131 The paint and coatings industry has been working to
1132 enhance the security of their manufacturing operations over
1133 the last decade. Specific steps the ACA has taken include
1134 the addition of a new security code to our Coatings Care
1135 Stewardship Program. ACA is a long-standing participant in
1136 the Chemicals Sector Coordinating Council and continues to
1137 work with the Department of Homeland Security on both
1138 voluntary and mandatory security measures under the Chemical
1139 Facility Anti-Terrorism Standards.

1140 Over the last several years, the coatings industry has
1141 worked hard to achieve CFATS compliance, including the
1142 submission and the conduct of Top-Screens, Security
1143 Vulnerability Assessments, and Site Security Plans, along
1144 with the development of proposed action plans requiring

1145 further review with the DHS. Facilities that were identified
1146 as ``high-risk'' were ultimately assigned one of four tiers
1147 by DHS. The process is ongoing, and while several coatings
1148 industry sites have completed this process, including related
1149 DHS inspections, other firms await DHS response to their Site
1150 Security Plans or Alternative Security Plans.

1151 ACA supported the original CFATS legislation and
1152 strongly supports the current program. This demanding
1153 program is now requiring thousands of chemical manufacturers
1154 and formulators nationwide to develop and deploy meaningful
1155 security enhancements. As a result, ACA supports permanent--
1156 or at least long-term--reauthorization of the existing CFATS
1157 statute in order to allow regulated facilities to continue
1158 their implementation of stringent DHS chemical facility
1159 security standards in an orderly manner. In our view, it is
1160 premature to seek to change the existing framework
1161 substantially until it has been fully implemented and we have
1162 gained a better understanding of what works and what does
1163 not.

1164 It is important that any uncertainty created by possible
1165 short-term reauthorizations is eliminated, so as to provide
1166 regulatory clarity, thus allowing affected industries to make
1167 prudent business decisions about how best to implement the
1168 current regulations. ACA, along with other groups, has

1169 opposed previous efforts to mandate product and process
1170 substitutions with technology established by regulation. Any
1171 move away from the current risk-based standards would lead to
1172 confusion, loss of viable security products, systems
1173 methodologies, and would create prohibitive legal liability
1174 and possible business failures. A move away from risk-based
1175 standards would most certainly put U.S. manufacturers at a
1176 competitive disadvantage with foreign manufacturers not
1177 facing such requirements. By making the existing chemical
1178 security framework permanent, a certainty will be provided
1179 that is necessary to enable companies to protect our citizens
1180 and to facilitate economic recovery.

1181 As a result, although ACA has consistently favored
1182 permanent CFATS reauthorization, we support the approach
1183 taken in H.R. 908, the full implementation of the Chemical
1184 Facility Anti-Terrorism Standards Act. The extension to 2017
1185 provides industry with sufficient breathing room to implement
1186 CFATS on a permanent basis prior to a required revisiting of
1187 the law 7 years from now.

1188 Many operations throughout the coatings industry are
1189 covered by CFATS, primary due to commercial grades of raw
1190 materials that are commonly used to formulate specialty roof,
1191 emissivity, infrastructure, or automotive coatings. As a
1192 responsible corporation, Sherwin-Williams has devoted

1193 considerable resources to CFATS compliance and works hard to
1194 meet our obligations to neighboring communities, customers,
1195 shareholders, and the public.

1196 Examples of CFATS-related actions include: new staff
1197 positions in chemical facility anti-terrorism; raw material
1198 elimination or substitution; control of purchasing, sales,
1199 inventories; development and enhancement of chemical tracking
1200 technologies; onsite and program-related consultative
1201 reviews; organization-wide safety and security support team
1202 development; Alternative Security Plans developed for small
1203 facilities; development of internal chemical security
1204 compliance standards; development of Facility Security
1205 Officer training; development of new risk- and regulatory-
1206 based management of change systems to improve risk
1207 identification, control, and action-closure; and the
1208 development of employee security awareness training programs.

1209 In light of our own experience, we agree with the
1210 position of ACA and our industry colleagues concerning a more
1211 permanent reauthorization of CFATS. Because of significant
1212 requirements placed on our company and other coatings
1213 manufacturers, we believe that Congress should continue to
1214 recognize this very stringent and well-constructed industrial
1215 antiterrorism program. Thank you.

1216 [The prepared statement of Mr. Tabar follows:]

1217 ***** INSERT 3 *****

|
1218 Mr. {Shimkus.} Thank you, sir. Now the chair
1219 recognizes Mr. Allmond for 5 minutes, sir.

|
1220 ^STATEMENT OF BILL ALLMOND

1221 } Mr. {Allmond.} Thank you. Good morning, Chairman
1222 Shimkus, Ranking Member Green, and Vice-Chairman Murphy, and
1223 members of the subcommittee.

1224 My name is Bill Allmond and I am the vice president of
1225 government relations at the Society of Chemical Manufacturers
1226 and Affiliates. For 90 years, SOCMA has been and continues
1227 to be the leading trade association representing the batch,
1228 custom, and specialty chemical industry. SOCMA's 250-member
1229 companies employ more than 100,000 workers across the country
1230 and produce some 50,000 products--valued at \$60 billion
1231 annually--that help make our standard of living possible.
1232 Over 80% of our members are small businesses.

1233 I am pleased to provide this testimony regarding H.R.
1234 908, the full implementation of the Chemical Facility Anti-
1235 Terrorism Standards Act. SOCMA strongly supports DHS's
1236 current Chemical Facility Anti-Terrorism Standards, or CFATS.
1237 This demanding regulation is now required in nearly 5,000
1238 chemical facilities nationwide and facilities that use
1239 chemicals nationwide to develop and deploy meaningful
1240 security enhancements. This performance-based regulation
1241 protects facilities against attack without impairing the

1242 industry's ability to remain innovative and maintain some of
1243 the Nation's highest-paying manufacturing jobs. Furthermore,
1244 the standards have teeth. DHS has the authority to levy
1245 significant fines on a facility for noncompliance, can even
1246 shut a facility down.

1247 Congress can best assure CFATS's continued success and
1248 forward momentum by passing H.R. 908. This bill would
1249 reauthorize CFATS through 2017, thus allowing DHS and
1250 facilities to concentrate on successfully implementing that
1251 regulation through completion.

1252 SOCMA regards this regulation thus far as a success.
1253 Due to the outstanding cooperation of the chemical sector,
1254 there has been 100 percent compliance with the requirements
1255 to submit Top-Screens, Security Vulnerability Assessments,
1256 and Site Security Plans. DHS has not yet had to institute a
1257 single administrative penalty action to enforce compliance.

1258 Additionally, 2,000 facilities have changed processes or
1259 inventories in ways that have enabled them to screen out of
1260 the program. Thus, as predicted, CFATS is driving facilities
1261 to reduce inherent hazards, where in their expert judgment
1262 doing so is in fact safer, does not transfer risk to some
1263 other point in the supply chain, and makes economic sense.

1264 To fully gauge the effectiveness of the CFATS program,
1265 Congress should allow all tiered facilities to come into

1266 compliance. Completing the program's implementation from
1267 start to finish would provide DHS and chemical companies the
1268 ability to assess the overall efficacy of CFATS, identify its
1269 areas of strengths and weaknesses, and subsequently make or
1270 recommend to Congress any necessary improvements.

1271 Conversely, the need for annual reauthorization of CFATS
1272 has created uncertainty for regulated facilities. Without
1273 the assurance of a long-term authorization of these
1274 regulations, companies do run the risk of investing in costly
1275 activities today that might not satisfy regulatory standards
1276 tomorrow.

1277 Statutory authority for CFATS, which has been tied to a
1278 series of continuing resolutions passed by Congress since
1279 last year, is set to expire next week, as you know. Congress
1280 must act now to ensure continuation of the current standards
1281 and reauthorize the underlying statute for multiple years.

1282 As Congress considers chemical security legislation
1283 further, there is an issue of particular concern to us, which
1284 is interest among some to mandate Inherently Safer Technology
1285 within CFATS. One of our greatest concerns with mandatory
1286 IST is the real possibility that it will negatively restrict
1287 the production of active pharmaceutical ingredients, or APIs,
1288 many of the key raw materials of which are regulated under
1289 CFATS.

1290 APIs are used to fight many types of cancer, used in
1291 prescription and generic drugs and over-the-counter
1292 medicines. They are thoroughly regulated by the Food and
1293 Drug Administration and must meet demanding quality and
1294 purity requirements. Substituting chemicals or processes
1295 used for the production of APIs would create substantial
1296 unintended consequences. Substitution would likely violate
1297 the conditions of companies' FDA approvals. Requiring IST
1298 could also delay clinical trials while new replacement
1299 chemicals are identified, and meanwhile, to meet continuing
1300 consumer demand, API production would likely shift to foreign
1301 countries where FDA is less able to monitor conformance to
1302 quality standards.

1303 There is a legitimate federal role in IST at the moment,
1304 however, and DHS is actually serving that role well. A few
1305 years ago, DHS initiated an increasing safety of hazardous
1306 chemicals process to develop a consensus definition of IST,
1307 and from that, to begin crafting metrics that would allow
1308 people to begin to compare inherent safety of different
1309 processes. The definition process was open and engaging and
1310 concluded last year with a document that has been universally
1311 praised. This program has now begun work on its metrics
1312 project, although SOCMA understands that there is no funding
1313 for that effort in the President's fiscal year 2012 budget.

1314 That is unfortunate because this is an example of how the
1315 Federal Government can play a useful role in the field of
1316 inherent safety. Any attempt to mandate even consideration
1317 of IST is premature otherwise.

1318 We recommend the subcommittee move forward and place a
1319 higher priority on ensuring the current standards are
1320 extended. H.R. 908 does just that. I appreciate this
1321 opportunity to testify before you today and I look forward to
1322 your questions.

1323 [The prepared statement of Mr. Allmond follows:]

1324 ***** INSERT 4 *****

|

1325 Mr. {Shimkus.} Thank you. And now I would like to turn
1326 to Mr. James Frederick, who is from the United Steelworkers.
1327 Before I give you your 5 minutes, during the district court
1328 period, I visited the U.S. steel plant in Granite City,
1329 Illinois. We still make steel in this country. It is
1330 difficult to do. It is the second time I have been there but
1331 it is phenomenal, a big operation, so thanks to you and the
1332 membership for the guide and the tour and I look forward to
1333 hearing your testimony.

|
1334 ^STATEMENT OF JAMES S. FREDERICK

1335 } Mr. {Frederick.} Thank you, Mr. Chairman and members of
1336 the subcommittee. Thank you for the opportunity to appear
1337 before you this morning to discuss the United Steelworkers'
1338 views on H.R. 908. The USW appreciates the opportunity to
1339 share our views with the Subcommittee on the important
1340 aspects of this issue and how H.R. 908, if passed, will
1341 extend the Department of Homeland Security Chemical Facility
1342 Anti-Terrorism Standards, CFATS.

1343 My name is Jim Frederick. I am a member of the United
1344 Steelworkers and the assistant director of the union's
1345 Health, Safety, and Environment Department in Pittsburgh,
1346 Pennsylvania. I have spent my 20-year career identifying and
1347 addressing workplace health and safety hazards; responding
1348 and investigating worker deaths, injuries, and illnesses;
1349 assisting local unions with health, safety, and environment
1350 improvements; and developing and delivering worker health,
1351 safety, and environment education and training programs.

1352 The full name of our union is the United Steel, Paper
1353 and Forestry, Rubber, Manufacturing, Energy, Allied-
1354 Industrial, and Service Workers International Union. As the
1355 largest industrial union in North America, we represent a

1356 total of 1.2 million active and retired members in the United
1357 States, Canada, and the Caribbean. More than 125,000 of
1358 these work in 800-plus chemical industry workplaces. Many of
1359 these are small workplaces and some are small businesses.

1360 The USW involvement in chemical plant security started
1361 long before the original promulgation of CFATS or the
1362 September 11, 2001, terrorist attacks on the United States.
1363 Our union has always been actively engaged and involved with
1364 our members, communities, regulators, and legislators to
1365 improve workplace safety for our members, as well as their
1366 families and the community.

1367 The importance of this issue and these rules were well
1368 laid out in the Senate Committee on Homeland Security and
1369 Governmental Affairs hearing yesterday, titled ``10 Years
1370 After 9/11.''

1371 As part of a broad coalition of more than 100
1372 organizations, the USW believes that legislation must be
1373 passed to improve chemical industry workplace safety and
1374 security, not just to extend the existing interim measures
1375 that generated CFATS rule. We believe that this is
1376 absolutely necessary to properly protect the communities that
1377 our members and their neighbors live and work. Recent
1378 examples from the Gulf oil spill to the earthquake and
1379 tsunami in Japan resonate of what can happen if catastrophic

1380 events take place in this country.

1381 And we believe the problems with CFATS include the
1382 following: (1), specific security measures. CFATS prohibits
1383 DHS from requiring any specific security measure. H.R. 908
1384 would extend the prohibition from the DHS Secretary from
1385 denying approval for a Site Security Plan based on the
1386 presence or absence of a particular measure. The performance
1387 based standards will continue to allow employers to determine
1388 how they comply with the rules. Performance standards often
1389 result in cost and productivity taking precedence over
1390 safety. Performance standards also typically equate to less
1391 regulator oversight.

1392 An example of this is sometimes seen in chemical storage
1393 areas or tank farms at a chemical plant or oil refinery where
1394 retaining dikes are constructed to keep unexpected releases
1395 of chemicals from escaping to the environment beyond the tank
1396 farm. However, the retaining dikes are often in disrepair or
1397 are not engineered to retain the proper volume of chemicals
1398 in the tank farm.

1399 Next, smart security--CFATS fails to develop the use of
1400 smart security--safer and more secure chemical processes that
1401 can cost-effectively prevent terrorists from triggering
1402 chemical disasters. When we train workers and others to
1403 correct health and safety hazards in our workplaces we turn

1404 and follow the hierarchy of controls. The hierarchy of
1405 controls instructs us that the most effective way to control
1406 a hazard from causing an injury is to eliminate it or
1407 substitute it with something less hazardous. Legislation and
1408 standards addressing chemical plant security should utilize
1409 the same hierarchy principles to recognize and encourage the
1410 elimination or reduction of hazardous materials when possible
1411 and use substitution with less hazardous components.

1412 Safer processes may not be feasible in some
1413 circumstances, but they should at least be considered in a
1414 security plan. Many safety measures may be possible without
1415 expensive redesign and newer equipment. Since 1999, more
1416 than 500 facilities have used smart security to eliminate
1417 risks and create communities that are less vulnerable to
1418 harm. 500 is an impressive number but many, many more need
1419 specific guidance from legislation and regulation to
1420 implement such changes.

1421 Exemptions of too many workplaces at risk, as I already
1422 discussed this morning, CFATS explicitly exempts thousands of
1423 chemical and port facilities, including water treatment
1424 facilities and including at least half of the oil refineries
1425 in this country.

1426 Worker involvement: CFATS fails to involve knowledgeable
1427 workers in the development of vulnerability assessments and

1428 Site Security Plans or protect employees from its excessive
1429 background checks. Lesson after lesson can be taken from the
1430 input from workers in various workplace health and safety
1431 exercises of how that input has helped the employer to
1432 integrate and put in place effective security and safety
1433 measures.

1434 And one last point on risk shifting, CFATS fails to
1435 address the current problem of risk shifting, such as when
1436 companies shift chemical hazards to unguarded locations such
1437 as rail sidings. Risk shifting takes place continually in
1438 many workplaces. There are several reasons that this
1439 practice occurs, but the results are always the same. The
1440 community is at increased risk of exposure to a release of
1441 hazardous materials or to a terrorist obtaining these
1442 materials.

1443 In one recent example at a USW workplace, railcars of
1444 hydrofluoric acid are being stored off site property on rail
1445 sidings. The workplace stores approximately 2 million pounds
1446 of hydrofluoric acid, some offsite. The railcars are located
1447 near residential areas in the community. A release from 1 or
1448 more of these would be devastating to the residents close by
1449 and for a large area of the surrounding communities.
1450 Chemical plant security legislation can fully eliminate risk
1451 shifting by banning the practice legislatively and in

1452 subsequent regulation.

1453 The USW believes that legislation must be passed to
1454 improve chemical industry workplace safety and security that
1455 includes these items, not just to extend the existing interim
1456 measures that generated CFATS as a final rule. We believe
1457 that this is absolutely necessary to properly protect
1458 communities. However, if CFATS is going to be extended by
1459 this bill, please consider reduction of the time for the
1460 extension to 1 year and charge all stakeholders involved to
1461 convene as necessary to develop longer-term solutions to
1462 these problems.

1463 On behalf of the USW membership and their communities,
1464 thank you for the opportunity to testify this morning.

1465 [The prepared statement of Mr. Frederick follows:]

1466 ***** INSERT 5, 5A *****

|
1467 Mr. {Shimkus.} Thank you. Now, the chair recognizes
1468 himself for 5 minutes for questions.

1469 We have used the word ``permanent'' and I guess in this
1470 system of authorization that 7 years would seem like
1471 permanent, but Mr. Allmond, you mentioned it is really a
1472 long-term authorization, which would then give us a time to
1473 look at the bill through the next process. Would you all
1474 agree with that, that this is really not a permanent
1475 authorization or reauthorization? This is a 7-year
1476 authorization. Mr. Skipp?

1477 Mr. {Skipp.} Yes, I would say that that is true. I
1478 think that there is a very steep learning curve that is going
1479 on here. Certainly, the efforts of the Department of
1480 Homeland Security have been admirable about how they bring
1481 this thing up. And I think we are now finding that we are
1482 getting our hands around this thing but we need more time.
1483 And I think this does that. Recognize the fact that rules
1484 can change down the way, but this is a great first step.

1485 Mr. {Shimkus.} Mr. Taber?

1486 Mr. {Taber.} I would agree with that wholeheartedly.
1487 Seven years is going to go by rather quickly. We have got a
1488 lot that we have done in the last several years. We need the
1489 next few years to tighten that up, and we also need the

1490 direct involvement with DHS more specifically now that we
1491 have filed, all our plants are willing to move forward.

1492 Mr. {Shimkus.} Mr. Allmond?

1493 Mr. {Allmond.} Yes, sir, Mr. Chairman. Seven years
1494 would provide a lot more time. I mean, Congress, you know,
1495 has a very important oversight responsibility down the road,
1496 but it would give, certainly, industry a lot more certainty.

1497 Mr. {Shimkus.} Mr. Frederick, you said 1 year so I want
1498 you to weigh in also.

1499 Mr. {Frederick.} Certainly. I already stated that we
1500 would recommend a shorter extension. The program has been in
1501 place for several years already. Extension only adds to
1502 making essentially this into a permanent fix as what was
1503 started and agreed to at the time to be a temporary interim
1504 quick solution.

1505 Mr. {Shimkus.} But 7 years is not permanent. I mean 7
1506 years will come and there will be another reauthorization
1507 period to look at. I guess because the next point following
1508 up on this is that the full implementation CFATS hasn't
1509 occurred to date, is that correct?

1510 Mr. {Skipp.} That is correct.

1511 Mr. {Shimkus.} And anyone disagree with that? So the
1512 point being I think we have to be very, very careful about
1513 changing the rules midstream before everyone has completed

1514 the process that was designed originally. And so that is
1515 part, you know, I like what Mr. Murphy has done with the 7
1516 years. Maybe that will be discussed as we move the process
1517 through in the committee. Maybe that time frame may be
1518 adjusted. I am not sure how the committee would do in an
1519 open process that that may come up. But I think it is
1520 important that we give the existing authorization time to get
1521 through the whole process. We heard the deputy secretary
1522 talk about they are not even through the process of tiering
1523 folks out, moving people around, and so that is just kind of
1524 an editorial comment.

1525 Do you all believe that there are other exiting
1526 requirements for health and safety such as OSHA's Process
1527 Safety Management Program, the Emergency Planning and
1528 Community Right-to-Know Act, the EPA's Risk Management
1529 Program, and are these appropriate for safety protections?

1530 Mr. {Skipp.} Well, they are part of that as far as I am
1531 concerned. And we implemented all of those things in our
1532 community. We are a company that goes back to 1849 in the
1533 city of Waterbury. I am the 6th generation to run the family
1534 business, and I can tell you that being thoughtful to our
1535 community and making sure we are communicating well with them
1536 is something that we do every day, and we integrate that with
1537 our police and fire as well. So this would just complement

1538 those efforts, I believe.

1539 Mr. {Tabar.} Now, I know both for the coatings industry
1540 and with Sherwin-Williams, global process safety is very
1541 critical to us. We have made efforts not only here in the
1542 U.S., but we are looking at exporting our programs
1543 internationally. We think that a lot is embodied in process
1544 safety that deals with IST already and it is very normal for
1545 us to deal with substitutions and changes, reformulations as
1546 part of our chemical process safety efforts.

1547 Mr. {Allmond.} Yeah, that is correct, Mr. Chairman, and
1548 as the under secretary testified, DHS is nowhere near close
1549 to understanding how to regulate IST at the moment.

1550 Mr. {Shimkus.} Mr. Frederick?

1551 Mr. {Frederick.} And it is certainly correct that these
1552 are pieces of a very complex issue that do come into play of
1553 providing some semblance of safety in those workplaces.

1554 Mr. {Shimkus.} Great. Thank you. My time is about
1555 expired, so I will yield to the ranking member, Mr. Green,
1556 for 5 minutes.

1557 Mr. {Green.} Mr. Chairman, I am just glad to hear you
1558 say you all. I thought that was something that I said--

1559 Mr. {Shimkus.} I am from Southern Illinois.

1560 Mr. {Green.} I know, Southern Illinois. Well, you all
1561 heard my questions earlier about coordination between because

1562 I have a lot of plants. In fact, along the Houston Ship
1563 Channel, all of my refineries--I have five refineries. Four
1564 of them are, by the way, organized by steelworkers and thank
1565 you. I used to have real steelworkers but now they are all
1566 refinery and chemical plant workers. The coordination of
1567 that to where we only have 1 federal identification card and
1568 that is our goal. And I know for your facilities it is the
1569 same thing.

1570 Mr. Frederick, you represent many of the workers at the
1571 chemical facilities. In fact, I was last year at a
1572 Conoco/Chevron facility. It actually has 500 steelworkers,
1573 and it was after the economy cratered and some of my chemical
1574 plants are closing, but since they make these plastic bottles
1575 we all drink out of, they were running 3 shifts and 500 union
1576 members. Do you have concerns about the MTSA issues?
1577 Because I know that plant is on the channel, Ship Channel of
1578 Houston and Exxon/Mobil refinery and Shell, but they also
1579 have facilities that are not covered by MTSA.

1580 Mr. {Frederick.} Yes. And for a number of reasons bur
1581 a couple of very good examples. One is just inconsistencies
1582 from within employers from one facility that is covered by
1583 CFATS to a facility that is not and how they have addressed
1584 the facility safety and security as a result of that
1585 inconsistency. So certainly, yes, there is a number of

1586 examples that we could go into of why we think those should
1587 be included in the same set of rules as those off the
1588 waterways.

1589 Mr. {Green.} Okay. Mr. Skipp, you testified about
1590 potential for duplicative regulations. Under 2868, we would
1591 have ensured that facilities under MTSA would see only one
1592 regulator, the U.S. Coast Guard. Do you think that is
1593 important?

1594 Mr. {Skipp.} I liked what I heard Under Secretary Beers
1595 say, which is the harmonizing between those two departments
1596 of CFATS and MTSA. And I think that would be great. It all
1597 depends on how you define harmonized. As long as there is
1598 not a redundancy or duplicative efforts, which I know is a
1599 concern of yours, then I think it would be fine.

1600 Mr. {Green.} I guess because when you rolled out the
1601 Transport Worker Card, believe me, I had a lot of constituent
1602 case work when constituents, because of whatever reason, we
1603 had to work case-by-case through Lockheed who had the
1604 contract. And like I said, we have 260,000 of those, more
1605 than that now probably, and we want to make sure that we
1606 don't have to go through that again, don't remake the wheel.
1607 Don't we already have some--

1608 Mr. {Skipp.} Agreed.

1609 Mr. {Green.} Mr. Frederick, I am interested in your

1610 testimony you gave about the concerns of workers and
1611 regarding personnel security requirements. Are changes in
1612 908 needed to ensure that workers' rights are protected?

1613 Mr. {Frederick.} Yes. And in one of the examples that
1614 is in my written statement, the need for worker involvement
1615 in the process of the Site Security Plans is very important.
1616 And in order to have thorough and good worker participation,
1617 some safety net of protection for them, a whistleblower
1618 protection for them is necessary. You know, in almost any
1619 other instance we recognize the deficiencies of that and can
1620 see that at some workplaces it is very encouraged, workers
1621 are involved, and at others for many reasons it is not. So
1622 we are concerned that, yes, there should be some provisions
1623 to protect workers as they participate in this process.

1624 Mr. {Green.} And I know in your testimony I agree with
1625 you. And I guess because there are other agencies that also
1626 regulate these same plant sites like OSHA and every once in a
1627 while I still get to go speak at one of my what I call share
1628 committee that we have a group of industries that bring the
1629 community involved, the fence line and also the employees are
1630 there, both unionized and management, and sit down and talk
1631 with the constituents. CFATS doesn't exempt that from
1632 current law like, for example, OSHA requirements.

1633 Mr. {Frederick.} Correct, and then some of that it has

1634 been, you know, referred to in the past by DHS as the
1635 employers certainly have the ability to do that, so it
1636 becomes somewhat of the voluntary piece for employers to do
1637 so. The problem is that not all employers volunteer.

1638 Mr. {Green.} Okay. And having been on both sides of
1639 the bargaining table, the best way you get there is you talk
1640 to the folks actually producing a product and you can get the
1641 best ideas from them because they are living it every day.

1642 One of your exceptions, too, in your testimony, and you
1643 use the example of a chemical storage and tank farms,
1644 particularly with berms, EPA regulates those now or the State
1645 Environmental Agencies with the deference of EPA, because we
1646 have had some problems with those berms that are not updated.
1647 We end up contacting EPA instead of using another law. So
1648 there is already some current law that we can deal with on
1649 enforcement of those. And again, I know your members are out
1650 there every day and we work with our locals every way we can.

1651 So Mr. Chairman, I appreciate it. I know I would like
1652 to talk a little bit more about IST because having managed a
1653 business, we didn't call it inherently safer technology, but
1654 believe me, if we could save money and save on potential
1655 worker injuries, we used that as a part of our business
1656 practice. But thank you for your patience.

1657 Mr. {Shimkus.} Thank you. The chair now recognizes Mr.

1658 Murphy for 5 minutes.

1659 Mr. {Murphy.} Thank you. And I appreciate all the
1660 panel's comments. It is very helpful.

1661 Mr. Taber, with regard to the American Chemistry
1662 Council, how much have members spent overall--do you have any
1663 idea--in terms of--

1664 Mr. {Taber.} I could answer that but I am not a member
1665 of the American Chemistry Council but the American Coatings
1666 Association.

1667 Mr. {Murphy.} Well, how about Sherwin-Williams? I am
1668 sorry.

1669 Mr. {Taber.} That is okay.

1670 Mr. {Murphy.} I thought you had some knowledge of that,
1671 too. Does anybody there know in terms of how much--

1672 Mr. {Taber.} As far as the ACA goes I would say that we
1673 have not yet collected that data, partly because we are
1674 awaiting the direct involvement with DHS on the
1675 interpretation of the Site Security Plans and Alternate
1676 Security Plans at the moment.

1677 Mr. {Murphy.} I appreciate that.

1678 Mr. {Skipp.} And I would echo that also. That is
1679 something we were waiting to find out more information from
1680 our people and how DHS will implement that.

1681 Mr. {Murphy.} But are you able to share how much your

1682 own companies have invested in all of this in terms of
1683 compliance or in terms of working through the security issue?

1684 Mr. {Skipp.} We have three relatively small facilities.
1685 It is just around \$200,000.

1686 Mr. {Murphy.} Okay. Mr. Taber, do you have--

1687 Mr. {Taber.} I can state it this way. It will likely
1688 be in the huge numbers in terms of the true capital cost.
1689 Right now we aggregate safety, health, environmental
1690 security--

1691 Mr. {Murphy.} Put together.

1692 Mr. {Taber.} --expenditures and we are projecting a
1693 very large possible impact on the corporation as a function
1694 of this regulation.

1695 Mr. {Murphy.} Mr. Allmond, do you have any comments in
1696 terms of money that is invested in some of these security
1697 measures?

1698 Mr. {Allmond.} Congressman Murphy, I have an
1699 approximate amount, you know, tens of millions of dollars,
1700 especially when you factor in the staff time, the employee
1701 time to actually go through the Site Security Plans. You
1702 know, there is a lot of staff time built into complying with
1703 this regulation, especially up front.

1704 Mr. {Murphy.} I see. Mr. Frederick, do you have any
1705 idea how much some of the companies you work with have

1706 invested in working on these issues of security?

1707 Mr. {Frederick.} We are not privy to that information.

1708 Mr. {Murphy.} Is it working? Okay. Very good. Sorry.

1709 Mr. {Frederick.} We typically don't receive that
1710 information from--

1711 Mr. {Murphy.} But your workers are engaged in these
1712 processes? You talked about the importance of sharing--

1713 Mr. {Frederick.} Yes. Yes.

1714 Mr. {Murphy.} Okay. And how about one of the other
1715 members here? Do you include workers in Site Security
1716 reviews and welcome their input? Can you give us an idea of
1717 how you use that?

1718 Mr. {Skipp.} Sure. They participate on our safety
1719 committee. All employees do that. It is on a right-to-know
1720 basis. It is where their expertise might be able to help in
1721 one specific area, but as far as knowing the overall plan per
1722 se, they aren't necessarily involved in every aspect of that.

1723 Mr. {Murphy.} Is that done for security purposes?

1724 Mr. {Skipp.} Yes.

1725 Mr. {Murphy.} Same with you, Mr. Taber?

1726 Mr. {Taber.} Well, certainly under the OSHA programs,
1727 we are one of the leaders, at least in our firm with
1728 voluntary protection programs and OSHA cooperation and so we
1729 take the same perspective with safety and health as we do

1730 with security. I think some of the developing areas are the
1731 Employees Security Awareness Training programs that we are
1732 just on the verge of implementing that will take our security
1733 awareness and involvement with all employees to another
1734 level.

1735 Mr. {Murphy.} Mr. Allmond, agree?

1736 Mr. {Allmond.} Well, our organization has a program
1737 called ChemStewards that encourages all of our members to
1738 include employees into the decision-making process. I think
1739 generally they would agree with Mr. Skipp and Mr. Taber as
1740 well.

1741 Mr. {Murphy.} The reason I am asking that is Mr.
1742 Frederick brings up a point here and all of you are saying
1743 the companies recognize that people who do this every day
1744 have an inherent value in being able to provide that
1745 information. And given that, my impression when I have
1746 toured chemical facilities, even ones that maybe have been
1747 written up in the newspaper where someone snuck onto the site
1748 as part of a reporter's story, they have invested a great
1749 deal in taking care and have asked employees for their ideas.
1750 Is this something we need to codify into law or is something
1751 that is being done?

1752 Mr. {Allmond.} It doesn't need to be codified from my
1753 perspective and I am sure from our association's perspective

1754 because it is part of good business practice and what we do
1755 every day.

1756 Mr. {Skipp.} I would concur. I mean, as Mr. Green
1757 said, it is very important to tap into the knowledge of our
1758 expertise of our people and we do that every day through LEAN
1759 and other initiatives that it is just good business sense.

1760 Mr. {Murphy.} Okay. I appreciate that. We want to
1761 make this bill work and we want to have the flexibility for
1762 Homeland Security to enact it. We heard before that they are
1763 working carefully with EPA. And I personally recognize I
1764 like it, as when I owned a business, I would ask my employees
1765 as well for suggestions along the way. The whole is greater
1766 than some of the parts and getting information from workers
1767 and goodness knows I believe with regard to management and
1768 employees, everybody wants to have a safe and secure
1769 workplace, and I would certainly encourage the association's
1770 continuing to hold those high standards.

1771 I recognize I am out of time, Mr. Chairman.

1772 Mr. {Skipp.} Can I make 1 other comment just about
1773 that? And I think that you didn't get a lot of clear numbers
1774 as far as where things are. We are really looking for
1775 certainty, and I think that is what this CFATS bill will do
1776 in order for people to invest more. There is some holding
1777 back because people are not sure which way to go because they

1778 haven't gotten enough feedback yet from the Agency.

1779 Mr. {Murphy.} That is important. Thank you, Mr.
1780 Chairman.

1781 Mr. {Shimkus.} Thank you. The chair recognizes Mr.
1782 Butterfield for 5 minutes.

1783 Mr. {Butterfield.} Thank you very much, Mr. Chairman
1784 and Ranking Member. Ladies and gentleman, it is good to see
1785 all of the witnesses today and thank you very much for your
1786 willingness to come forward and to give us your testimonies.

1787 Mr. Frederick, let me start with you. In your testimony
1788 I am told that you said that ``performance standards often
1789 result in cost and productivity taking precedence over
1790 safety.'' Did I quote you correctly?

1791 Mr. {Frederick.} Yes.

1792 Mr. {Butterfield.} We have seen several examples in the
1793 past year alone of major industrial actors placing profits
1794 over the safety of their workers and the safety of the
1795 environment, notably, with the BP oil spill. It is a serious
1796 issue and CFATS should be structured to limit the ability of
1797 covered facilities to place too much emphasis on cost at the
1798 expense of worker safety or the safety of the surrounding
1799 area.

1800 Question: Can you give an example of these performance
1801 standards resulting in cost concerns outweighing the concerns

1802 of security?

1803 Mr. {Frederick.} Yes. Without the specific workplace
1804 but within the oil-refining industry, some of the
1805 performance-based standards--this is the day-to-day case of
1806 the performance is achieved on paper but on the shop floor
1807 where the folks are working around the hazardous materials,
1808 the shortcuts have been taken, the hole in the fence has been
1809 filled with a camera instead of a new fence, whatever the
1810 case may be. We could provide some specifics from specific
1811 facilities for the record after the hearing if you would
1812 like.

1813 Mr. {Butterfield.} Well, what about a specific
1814 requirement from DHS to address the problem?

1815 Mr. {Frederick.} And on that, in some of just the
1816 perimeter security issues, the issue has been around fencing
1817 and when a gap in the fence, a hole in the fence has been in
1818 place, other measures have been taken instead of putting the
1819 more secure fencing in place.

1820 The example from the testimony of the berms or dikes to
1821 keep the unexpected release of chemicals from a tank is for
1822 compliance with other reasons but also comes into play the
1823 security because if there is a terrorist attack on that
1824 facility and the materials are released from more than 1
1825 tank, oftentimes those are not designed to hold back that

1826 amount of the quantity of the materials within the tanks.

1827 Mr. {Butterfield.} Well, one thing leads to another.

1828 Then we get into a question of whether it is preferable to

1829 have a DHS-sponsored security measure requirement that

1830 guarantees a level of safety but may not be flexible enough

1831 for the variety of facilities that are tiered from

1832 traditional chemical plants or refineries to labs that are at

1833 our universities. We understand that security isn't cheap

1834 and that one size does not fit all. It is a difficult job

1835 for DHS.

1836 I completely agree with you, with your assessment of the

1837 value of workers' input to the process. Workers must be

1838 involved and they must also to feel free to blow the whistle

1839 without fear of reprisal. This is something we have talked

1840 about extensively in previous legislation on this issue.

1841 My final question is do you feel that the current CFATS

1842 program adequately protects whistleblowers?

1843 Mr. {Frederick.} No. We would not believe it does.

1844 However, at this juncture we also have not had cases to cite,

1845 only in feedback from our members that work in those

1846 facilities that they have some concerns that they have

1847 reservations about raising because there is not an adequate

1848 safety net for them to speak out on those issues.

1849 Mr. {Butterfield.} All right. Thank you.

1850 Mr. {Skipp.} Congressman?

1851 Mr. {Butterfield.} Yes. I am going to yield. Yes, you
1852 may respond.

1853 Mr. {Skipp.} May I respond to that also?

1854 Mr. {Butterfield.} I have a minute left, yes. Sure.

1855 Mr. {Skipp.} I am Andrew Skipp and I run a chemical
1856 company in Connecticut and I can tell you that 90 percent of
1857 our members are owner/managers of their businesses. They
1858 live their business day in those facilities. There is
1859 nothing more important than the safety and security of those
1860 plants.

1861 And I can assure you that our members take that very
1862 seriously and that they don't compromise for the benefit of
1863 just expediency. It is critical. It is our lifeblood. It
1864 is our livelihood. And so we take that initiative very
1865 seriously.

1866 The matter about whistleblowers, I can't refer to that
1867 relative to CFATS, but certainly there are laws in place to
1868 protect them and it is something that we take very seriously
1869 in our business.

1870 Mr. {Butterfield.} Thank you. All right. Anyone else
1871 want to respond to that? I have a few seconds left.

1872 Mr. {Frederick.} Just I think the laws that are in
1873 place would not--for example, the protections within the OSHA

1874 Act would not protect a worker for calling into question
1875 something under the CFATS regulations.

1876 Mr. {Butterfield.} All right. Mr. Chairman, I will
1877 yield back my time.

1878 Mr. {Shimkus.} If the gentleman would yield me his last
1879 4 seconds.

1880 Mr. {Butterfield.} Sure.

1881 Mr. {Shimkus.} I just want to make sure, Mr. Frederick,
1882 that none of your comments are under CVI. In other words,
1883 the information that you were alluding to is under CVI?

1884 Mr. {Frederick.} In the example of the--

1885 Mr. {Shimkus.} Well, you were giving some anecdotal
1886 stories and we want to make sure that--

1887 Mr. {Frederick.} I don't believe so.

1888 Mr. {Shimkus.} Okay.

1889 Mr. {Frederick.} To my knowledge, no.

1890 Mr. {Shimkus.} Okay. That is what we need to know.

1891 Thank you. The chair now recognizes Mr. Cassidy for 5
1892 minutes.

1893 Dr. {Cassidy.} I never knew steelworkers' name was so
1894 long. I once sat on a plane next to a guy who worked for you
1895 all and who was I think doing mining, which I thought--so
1896 anyway, now kind of the light bulb goes on.

1897 Mr. Frederick, there was one sentence in your testimony

1898 in which you suggested you would oppose more extensive
1899 background checks for workers. Did I hear that correctly?

1900 Mr. {Frederick.} Yes. And our concern around
1901 background checks is twofold. One is to make certain that
1902 there is a process in place that if an error results of the
1903 background check, that that individual has an opportunity to
1904 clarify that error and correct it prior to losing his or her
1905 employment.

1906 Dr. {Cassidy.} Now, I accept that, but inherent in
1907 having more involvement in a process is greater risk that a
1908 background check may show something which would eliminate
1909 somebody's job frankly. I mean if it turns out a kid smoked
1910 marijuana in college and got busted for it and now he is 45,
1911 well, then that may come back and reflect upon him in a
1912 negative way. Would you object to, you know, drug screens,
1913 et cetera, all this that takes place?

1914 Mr. {Frederick.} Well, there are drug testing programs
1915 in a variety of--

1916 Dr. {Cassidy.} And I just use that as an example, not
1917 as a concrete particular. So it is not background checks in
1918 particular you object to or more even exhaustive ones.
1919 Rather it is the lack of safeguards if someone loses
1920 employment because of that.

1921 Mr. {Frederick.} Yes. And recognizing that there are

1922 necessary pieces of information that are needed. Our
1923 experience thus far has been that this is and will be a very
1924 expensive process, expensive and extensive, for a very
1925 limited amount of return of finding things more than somebody
1926 who perhaps had a minor item such as you--

1927 Dr. {Cassidy.} So if you will, kind of the principle
1928 that for last marginal benefit, you got to pay a heck of a
1929 lot of money?

1930 Mr. {Frederick.} And in some of the other examples we
1931 are talking about yes, there are costs associated with doing
1932 dangerous work.

1933 Dr. {Cassidy.} And if you increase the cost, ultimately
1934 it is going to affect employment?

1935 Mr. {Frederick.} It may, yes.

1936 Dr. {Cassidy.} So my concern is, for example, that that
1937 same principle is involved here. I mentioned earlier to the
1938 earlier witness I went to visit the nuclear power plant and I
1939 was struck how much security they have, three different
1940 perimeter fences. Even if they cut a hole, there is a camera
1941 surveillance. And so they told me about how an armadillo
1942 wandered across and their motion detectors got it.

1943 Now, if we are going to have NRC do this level of
1944 requirement and overlay CFATS, do you see that as
1945 appropriate?

1946 Mr. {Frederick.} Well, specifically to the NRC
1947 provision, I don't have firsthand knowledge or experience.
1948 Our union does not represent workers at nuclear generators--

1949 Dr. {Cassidy.} But you mentioned that in your testimony
1950 as kind of a concern that they are excluded.

1951 Mr. {Frederick.} The NRC. And so what I want to
1952 explain is that within the NRC they also have regulatory
1953 authority over non-energy producing facilities beyond the
1954 nuclear plants. And in some of those facilities, one example
1955 being the NRC has oversight of a very narrow piece of the
1956 production process, so a very large facility, narrow piece is
1957 NRC, but because the NRC has authority over that narrow
1958 piece, CFATS does not apply. For example, that is the
1959 facility that has 2 million pounds of hydrofluoric acid
1960 onsite and some of it in railcars offsite. That is a real
1961 concern that the NRC, small piece of the operation that they
1962 have oversight for, a large facility excluded from CFATS.

1963 Dr. {Cassidy.} Now, my concern is that if we have
1964 overlay of federal agency over federal agency, that is not
1965 just a multiplier. That is an exponent in terms of the
1966 complexity and the expense of compliance.

1967 Now, it also seems this IST--I used the example of the
1968 Maginot Line where you have got this kind of, okay, this is
1969 the current technology but really there is something on the

1970 cusp but it has not been vetted, reviewed, public comments,
1971 so therefore it can't be because the de facto standard
1972 becomes the IST. That actually seems like a
1973 counterproductive mechanism. I don't see the problem--in
1974 fact, I see IST as almost the same problem you defined
1975 earlier going after marginal benefit with greater expense,
1976 ultimately costing jobs.

1977 Mr. {Frederick.} In some cases the using other
1978 technologies is certainly not costing jobs. There are many
1979 examples of better technologies being brought in place across
1980 worker health and safety, as well as site security. There
1981 are other examples that jobs have benefitted.

1982 Dr. {Cassidy.} If you have IST, that becomes a de facto
1983 standard, and if it becomes a de facto standard, even if
1984 there is a better technology, it most likely won't be
1985 implemented because there is a de facto standard issued by a
1986 reg 8 months ago even if 1 month ago there is a better
1987 technology that comes out.

1988 Mr. {Frederick.} However, if it is looked at and with a
1989 system in place as suggested in the testimony and in other
1990 folks that are looking at this issue currently in other
1991 bills, there are the ability to have a DHS appeals process
1992 that would ensure that the facility, the employer has the
1993 ability to refer this back with some questions and move on

1994 to--

1995 Dr. {Cassidy.} Now, I have been under this Federal
1996 Government now for 2-1/2 years but it is my impression that
1997 it dances like an elephant upon the head of a pin. It is
1998 very slow-moving. It is very awkward. It is very laborious
1999 and expensive to work through that process. So I kind of
2000 return to my point that the reg issued 9 months ago becomes a
2001 de facto standard and 2 years later you finally work through
2002 the appeals process and in the meantime you are 3 generations
2003 ahead what you originally offered on appeal is now outdated.
2004 Do you follow what I am saying?

2005 Mr. {Frederick.} Yes.

2006 Dr. {Cassidy.} And so do you really see the bureaucracy
2007 in the appeals process working so well that we will always
2008 have the most current technology being used to secure our
2009 plants?

2010 Mr. {Frederick.} I see that we certainly would have
2011 better technology than is in place at the start of the
2012 process and the ability for the employer, the manufacturer to
2013 continue to move forward as long as it is within the scope of
2014 their security--

2015 Dr. {Cassidy.} But if there is a new technology that
2016 comes out and it is not part of the IST, what is the
2017 likelihood that it will be immediately implemented?

2018 Mr. {Frederick.} Well, and so perhaps I guess we are a
2019 little bit off of what we perceive the prescriptive standard
2020 on IST to look like. We believe that in the instance in some
2021 of the other applications of this issue that are in place,
2022 there is the flexibility for--

2023 Dr. {Cassidy.} Well, the assistant secretary actually,
2024 though, conceded the possibility that there would be a
2025 standard which would leave out something that would be
2026 technologically more advanced because it had not had a chance
2027 to be reviewed. And he actually, you know, frankly said
2028 yeah, that is going to happen. He accepted that as a
2029 probability. And frankly that concerns me because I think
2030 that there is so much explosion of technology, we would be
2031 remiss in terms of safety and all of the other things if we
2032 didn't have a standard which allowed its usage.

2033 I yield back. Thank you.

2034 Mr. {Shimkus.} The gentleman yields back his time.
2035 Unanimous consent for the ranking member for a minute.

2036 Mr. {Green.} Yeah. I want to ask, your response, Mr.
2037 Frederick, to our colleague from Louisiana that because NRC
2038 has jurisdiction over, for example, nuclear facility but they
2039 don't have jurisdiction over something else on that plant
2040 site that that would exempt any other regulation because NRC
2041 has it?

2042 Mr. {Frederick.} Just in this instance that I was
2043 referring to, just the CFATS regulation.

2044 Mr. {Green.} We are going to explore that because I
2045 know we have OSHA requirements at nuclear facilities and we
2046 really don't want overlay and duplication but we do want
2047 somebody looking at it.

2048 Mr. {Frederick.} Correct.

2049 Mr. {Green.} And so that is the concern.

2050 Mr. {Shimkus.} And I thank my colleague. I have a
2051 couple of pieces of business to finish up. Unanimous consent
2052 request that a letter from Mr. Dent on this be submitted for
2053 the record. Without objection, so ordered.

2054 [The information follows:]

2055 ***** COMMITTEE INSERT *****

|
2056 Mr. {Shimkus.} I also want to advise all members that
2057 we have 10 legislative days to submit questions for the
2058 record and if you would be so good to return those questions
2059 to us to fulfill the hearing. All right. I think I was
2060 right.

2061 With that, we do appreciate your time. Please feel free
2062 to visit with us on this issue as we move forward. We do
2063 want to bring some certainty to this. We do want to have a
2064 longer-term reauthorization of some size so that you all can
2065 move forward in helping in this process. So with that, the
2066 hearing is adjourned.

2067 [Whereupon, at 10:58 a.m., the Subcommittee was
2068 adjourned.]