

Written Statement On CFATS

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Good Morning Chairman Johnson, Ranking Member McCaskill, members of the Committee and fellow roundtable attendees. My name is Jesse LeGros Jr. and I am the Acting Vice President of Infrastructure Protection Personnel of American Federation of Governmental Employees (AFGE) Local 918. I am also a Chemical Security Inspector(CSI) with the Infrastructure Security Compliance Division(ISCDC) within the Department of Homeland Security. I also worked in a law enforcement capacity with the Federal Protective Service. We help protect our nations chemical facilities under the Chemical Facility Anti-Terrorism Standards (CFATS) program. On behalf of my fellow union members and Chemical Inspectors, I would like to thank you for this opportunity to speak to you today.

CFATS Inspector Training:

I was in the first formal inspector academy class. This class was one-month long. Some of the later classes were two months and my understanding there was at least one that was three months. I am not sure as to when the last academy class was. Mostly all training today is acquired on the job. Our profession and mission is unique. I'm not sure that an academy class for Chemical Security Inspectors (CSI's) is necessarily warranted but they had been formally provided in the past. Since our controlling regulation is primarily focused on the physical security of the Chemicals of Interest (COI), formal and specialized training on physical security measures should be required. The Federal Protective Service has an excellent physical security class at the Federal Law Enforcement Training Center (FLETC) and that would be a perfect place to start. We have hired a number of individuals with little to no physical security training or experience. These particular skills cannot be learned strictly by doing it under on-the-job (OTJ) training. It can be a challenge to try to perform complex assignments concerning physical security measures and practices without having received consistent, structured and formal academy-based training. Trying to learn or teach these skills during an inspection is imprudent and can distract from the quality of the inspection. There is a lot of pressure on CSIs to perform these scheduled inspections and to timely file reports within the program deadlines. As is often the case in governmental inspectional operations, those reports filing deadlines tend to become the dominant influence and control over the process itself. In some cases that pressure can result in reduced quality or comprehensiveness resulting in the reports being of less than maximum or optimal value. If all CSIs were fully and consistently academy trained, then there would be less distraction from mission and product that currently results from inspectors trying to learn on the job.

Cybersecurity Training:

The agency does not provide any cyber security training as they claim. I have attended two "Cyber Training" classes. One was at Idaho National Laboratory, in Idaho. This class was about Hackers and how they can access cyber systems. The other was in Washington D.C. This is considered the Cyber Training class for all inspectors to enable them to do the cyber section on our reports. The class content was primarily related to providing instructions as to how to fill out

the cyber section of an Authorization Inspection(AI) Report. This class did not get into the various technical aspects of the Cyber world or Cyber Security. At the time I took the class, we weren't even doing AI's, we had moved on to Compliance Inspections (CI's). We have had numerous webinars involving cyber, but these were all geared on filling out an inspection report and not on analysis, understanding, or protecting cyber systems. The agency claims that it has qualified inspectors in our ranks that have cyber training and experience. However, there is no list of these qualified and trained specialist accessible to a lead inspector when it comes to scheduling an Inspection. The lack of such a roster make it difficult for an inspector to schedule the participation of another inspector – trained in cyber security related to – to participate in the field assessment process. The absence of such a resource makes it difficult to accomplish this element of the program. Some inspectors pursue knowledge or training in this subject area on their own. If CSIs are to continue performing this increasingly critical function, then formal academy and in-service training should be put in place. I talked to one inspector who has a lot more cyber training than most. He advised that all of the classes that he has taken besides the two stated were taken on his own initiative and were not assigned by the agency. The agency has three cyber integration levels that can be assigned to a facility, Minimal, Partial and Significant. A Minimal can be done by any inspector. A Partial is done by an inspector with cyber training. A Significant would be done by a cyber SME from HQ. In January 2013 we were directed that for a minimal we only had to answer four questions:

1. Does the facility have cyber security policies?
2. Does the facility provide cyber training to users?
3. Is there a vulnerability to the facilities ability to thwart a diversion in a holistic review of all security measures?
4. Has the facility taken credit for all security measures to mitigate cyber vulnerabilities?

In March of this year, I was advised by my Chief of Regulatory Compliance (CRC) that we would be filling out all cyber questions within the reports no matter what the designation was. The union then reached out to the Field Operations Branch Chief (FOBC) to verify if this was correct. We were told that was not true but sent us a new Authorization Inspection Report Amplification Guidance document. Under the cyber section it states that if a team lead feels that a Significant facility is outside their ability they can request the support of a cyber SME, but based on need, the Compliance Branch Chief will make the recommendation as to whether a CSI, CSI with additional training, or a cyber SME will be used to perform the RBPS 8 section of the inspection. This results in too much subjectivity and reduced consistency in the application of these discretions. The union has been having numerous discussions with the FOBC about our concerns that this does not say that we do not have to answer all the questions and that they are changing significant from being done by an HQ cyber SME to an inspector. They insist that it does not, but the wording clearly says it. In one conversation the FOBC stated that he felt our complaint was more about the process than the guidance document. That the guidance document only reflects the process and that we should approve the document and then argue about the process. I advised him that if we approve the guidance document then we would be approving the process and that was not acceptable.

CSIs understand the importance of Cyber and Cyber Security. In order for us to do our job with due diligence, ISCD needs to provide the proper training on cyber and cyber security.

The employees that are trained to deal with cyber and cyber security at facilities all have certifications and degrees in those fields. We must make certifications in cyber and cyber security a minimum requirement for proper training to efficiently enforce the regulation.

Regarding the CFATS regulation, it is a valuable and important regulation and needs to be reauthorized. We have made great strides in helping protect and securing Chemicals of Interest and facilities under this regulation. Especially the ones that have no security background or understanding. This regulation has brought a more security minded thinking approach to numerous facilities. We have made some valuable contacts because of the regulation. A good example is that a non CFATS site was being flooded and was on the verge of a catastrophic situation. The facility was unable to make contact with the local first responders. The facility's corporate security officer was able to contact a CI, who was able to relay the information to the applicable emergency management and first responders. The first responders were able to contact the affected facility and provide the needed assistance and evacuations. This lowered the risk and could have possibly saved lives. There should be greater deployment and use of CSIs as members of emergency and contingency planning groups for response to undesirable events affecting sites of interest. But there are some issues with the regulation:

1. It regularly needs congressional reauthorization. It needs to a free-standing regulation with no further reauthorizations needed.
2. Background checks. The regulation says a facility must perform appropriate background checks, but it doesn't say what they consist of. This is one of the areas that must be clarified. The keeping and maintaining of these background checks needs to be part of the record keeping requirements. Within the current regulation the facility has no legal requirement to keep them for us to verify. Some facilities even dispose of the background check results leaving no proof that one was done.

CFATS Program:

CFATS program duties are routinely expanded and pushed down for the inspectors to do. CSIs started out doing inspections. Then they were assigned to do Post Inspection Reports (these were previously done by an analyst at HQ). Now we are doing CIs. Several months ago, they were tasked to do more outreach, a lot of which was being done before doing inspections. This outreach does not include Compliance Assistance Visits (CAV's) and Potential Non-Compliant Facility (PNCF) tasking/visits. CSIs are only given 12 days to complete AI and CI reports and 5 days to do a CAV or PNCF. This would be manageable if only one inspection were in progress at a time and if there were no other administrative distraction. These goals become problematic to accomplish when multiple inspections are conducted simultaneously. Outreach such as attendance at a Local Emergency Planning Committee (LEPC) or some other similar activity is hard to accomplish with the limited available time. Reports must be timely filed. Field time is further limited by the need to conduct exhaustive pre-inspection paperwork review of varying type and sensitivity (Top Screen, SVA/SSP, AIR, CIR (depending on the inspection)) for an upcoming inspection. If an inspection is scheduled for a Tuesday and Thursday, the CSI would not be able to start the report for the Tuesday inspection until Friday (Wednesday would be used to prepare for the inspection on Thursday). Two days to work on the report. If they're lucky, they will finish the report on that Monday. Thursdays report won't be started until Tuesday, assuming they don't have an inspection on that Tuesday. You

also must include travel days if the facility is not local and holidays. Due to the F1 issue (whatever that was) and the infamous “Letter to Fox News” that claimed the inspectors weren’t doing inspections, HQ is so focused on the number of inspections that they do not care that the time frame given to them to complete everything is unreasonable. It appears as if they are more concerned with reporting to Congress the number of inspections completed than provide them with sufficient staffing and training resources needed to provide the quality reports required for national security.

This concludes my statement. I will be happy to answer any questions that you may have on the CFATS regulation or program.