

Statement

of

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on behalf of the

National Association of Chemical Distributors

before the

U.S. Senate
Committee on Homeland Security and Governmental Affairs

on

The Chemical Facility Anti-Terrorism Standards

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Good morning, Chairman Johnson, Ranking Member McCaskill, and other distinguished committee members. My name is Jennifer Gibson, and I am vice president of regulatory affairs for the National Association of Chemical Distributors (NACD). On behalf of NACD, I am pleased to participate in this important roundtable and to provide this statement on the Chemical Facility Anti-Terrorism Standards (CFATS) program.

About NACD

NACD is an international association of nearly 440 chemical distributors and their supply-chain partners. NACD members represent more than 85 percent of the chemical distribution capacity in the nation and generate 93 percent of the industry's gross revenue. NACD members, operating in all 50 states through more than 2,800 facilities, are responsible for nearly 130,000 direct and indirect jobs in the United States. NACD members formulate, blend, re-package, warehouse, transport, and market the chemicals produced by manufacturers to 750,000 end users in nearly every industry sector, including:

Aerospace	Metal Finishing
Agriculture	Paints and Coatings
Automotive	Pharmaceuticals
Cosmetics	Plastics
Detergents	Pulp and Paper
Electronics	Steel
Energy	Transportation
Food Ingredients	Water Treatment
Fragrances	And More

While chemical distribution is big business, NACD members are predominantly small regional companies, many of which are multi-generational and family owned. The typical NACD distributor member has \$26 million in annual sales, three facilities, and 26 employees.

NACD Responsible Distribution®

NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. Through Responsible Distribution, NACD

members demonstrate their commitment to continuous performance improvement in every phase of chemical storage, handling, transportation, and disposal operations.

While security has always been an inherent element of Responsible Distribution, following the terrorist attacks of September 11, 2001, distributors were the first sector of the chemical industry to mandate security measures for its members. NACD continues to assess Responsible Distribution's security measures against current threats. In 2013, NACD added a specific Security Code to Responsible Distribution that consolidated many prior requirements and enhanced others. These security requirements apply to all NACD members, including those who do not have facilities subject to the CFATS regulations. Over the past 16 years, NACD members – both CFATS-regulated and non-CFATS-regulated companies – have made substantial investments to make their facilities more secure.

NACD Supports Long-Term Reauthorization of CFATS

NACD strongly supports a long-term reauthorization of CFATS. The CFATS program has made the chemical industry and our nation much more secure. Since its establishment in 2007, the industry has invested millions of dollars and instituted thousands of new security measures. While these resources have not gone directly towards growing chemical distributors' businesses, NACD members recognize and appreciate the importance of making their companies, employees, and communities more secure.

A Collaborative Approach Has Led to Success

From the beginning, the Department of Homeland Security (DHS) has taken a collaborative, commonsense approach in implementing the CFATS regulations. Despite being dependent on temporary appropriations measures during the first seven years of the program, the agency did a commendable job in writing the regulations and setting up the internal infrastructure to be able to implement and enforce the new standards. While there were some growing pains in the first few years, by listening to and learning about industry DHS was able to use this information to make improvements to run the CFATS program more efficiently.

One reason for the success of the CFATS program is the fact that DHS has taken the time to truly learn about the diverse chemical industry and work with companies on security measures that meet the CFATS Risk Based Performance Standards while providing flexibility to

each unique chemical facility in doing so. DHS has excelled in outreach to the industry by publishing numerous fact sheets and “lessons learned” documents; interacting with facility owners and operators during the Chemical Sector Security Summits and other industry meetings; and always making inspectors and headquarters personnel available to talk through issues and answer questions. DHS has spoken at numerous NACD meetings over the years to make sure our members were aware of the latest CFATS developments and lessons learned.

In addition, DHS worked with NACD and the American Chemistry Council (ACC) to develop a CFATS Alternative Security Program (ASP) Guidance Document and Template to enhance the process for submitting site security plans. The ASP provides DHS with greater clarity about regulated facilities’ security measures and how they meet or exceed CFATS requirements, while simplifying the compliance process and giving facility owners and operators a comprehensive security document to follow.

The Diverse World of Chemical Facilities - Ensuring Different Industries Are Aware of CFATS Obligations

Following the tragic 2013 West Fertilizer fire and explosion, DHS doubled down on efforts to reach “outliers,” those facilities that may not be aware of their obligations to inform the agency about their possession of chemicals of interest (COI) by filing Top Screens. Because NACD members sell COI to so many diverse industries, the association agreed to assist DHS with this effort by sharing CFATS information with these customers. NACD worked with the agency to create a special flyer to inform members’ customers about CFATS, their obligation to file Top Screens if receiving threshold quantities of COI, and information on how to start the process.

Regulatory Certainty Needed for Efficiency

The “Protecting and Securing Chemical Facilities from Terrorist Attacks Act” of 2014 (P.L. 113-254), which for the first time provided CFATS a multi-year authorization, further enhanced security efforts by providing regulatory certainty to both industry and DHS. This stability allowed DHS to increase efficiencies in the program while streamlining the information submission process for regulated facilities.

For example, in 2016, DHS rolled out an enhanced risk tiering methodology to identify more accurately high-risk facilities and assign them to appropriate risk tiers. DHS notified all

facilities with threshold quantities of CFATS chemicals of interest that they must submit new Top Screen surveys to the agency. At the same time, the agency launched version 2.0 of the Chemical Security Assessment Tool (CSAT 2.0), the online portal facilities use to submit Top Screens, Security Vulnerability Assessments, and Site Security Plans/ASPs. CSAT 2.0 is much more streamlined and user friendly than the old version. The updated version allows facilities to submit their information and DHS to analyze the material more efficiently. DHS completed the re-tiering process in a timely and efficient manner and is now conducting authorization inspections and compliance inspections for facilities assigned to different tiers as well as newly regulated facilities.

CFATS Going Forward

NACD believes the CFATS program is strong and needs minimal change other than a multi-year reauthorization. One NACD priority is to make sure any changes to the Appendix A list of chemicals remain subject to notice and comment rulemaking. Changes to this COI list have major impacts on many companies' businesses and security investments. While changes may periodically be needed, it is important to give the regulated community the opportunity to provide information and explain the impacts of any proposed changes.

NACD also supports the creation of a program under which DHS would recognize companies that meet certain criteria such as participation in an environmental, health, safety, and security program such as Responsible Distribution. Several state governments, including Indiana, Illinois, Michigan, and Ohio, have officially recognized Responsible Distribution. NACD members have made a strong commitment to operate their facilities safely and securely through Responsible Distribution. Recognizing these companies through measures such as less frequent inspections would allow DHS to prioritize resources to concentrate on the "outliers" or bad actors that may pose a greater security risk.

Conclusion

NACD supports the CFATS program and looks forward to working with the committee on legislation to reauthorize this important security regulation in the coming weeks and months. A multi-year reauthorization of CFATS would provide needed certainty and further enhance the security of chemical facilities and our nation.

On behalf of NACD, I appreciate this opportunity to present the association's views on this important issue. I look forward to your questions.