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Statement for the Record

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before the Senate Committee on Homeland Security and Governmental Affairs

on “Examining the Chemical Facility Anti-Terrorism Standards Program”

June 12, 2018



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AFFAIRS**

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The National Association of Manufacturers (NAM) is the nation’s largest industrial trade association, representing 14,000 small, medium and large manufacturers in every industrial sector and in all 50 states. Our members have a substantial interest and concern regarding requirements of facility site security programs, including compliance with the Department of Homeland Security’s (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program. The current CFATS program, established by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act (P.L. 113-254), will sunset on January 19, 2019. The NAM strongly supports efforts to ensure the continuity of the CFATS program. However, as Congress begins to consider reauthorization of the statute, manufacturers want to ensure legislation to reauthorize CFATS will provide regulatory certainty and not harm the intent of the program.

Manufacturers are deeply committed to the communities in which they live and serve. Across the nation, they have demonstrated a firm resolve in protecting critical infrastructure, their facilities and key assets from terrorist exploitation. Securing the homeland is a partnership that involves government at all levels, the private sector and concerned citizens across the country that are committed to action. This is why our member companies prudently make security investments

and engage in risk management planning; it is something that is required by law and something that our members consider a core component of their business operations. The NAM represents 2,152 CFATS-regulated facilities that span across major industrial sectors, such as oil and gas refining; chemical production and distribution; mining; agricultural goods and services; and electrical utilities. As CFATS-regulated facilities, these sites are engaged in the manufacturing, storage and distribution of what DHS considers chemicals of interest (COI).

Prior to the CFATS program's authorization in 2014, DHS's authority to regulate high-risk facilities was dependent on Congress approving an act of appropriations. Since its enactment in 2007, CFATS was bound to the appropriations process, and this acted as a barrier to making needed improvements to the program. DHS and industry were thrust into an environment steeped with regulatory uncertainty. Such programmatic uncertainty is detrimental because industry relies on stability to make sound, long-term investments and meet regulatory requirements. However, the authorization of CFATS in 2014 represented a turning point for the program and set an important precedent—namely, removing CFATS from the appropriations track allowed Congress, for the first time, to make significant improvements to the program. These improvements included the following:

- **Mandating congressional oversight**, requiring the Secretary of Homeland Security and Comptroller General to provide Congress with progress updates on the implementation of the CFATS program.

- **Fostering continued information sharing** between manufacturers and state and local officials to enhance security.
- **Requiring DHS to develop a security risk assessment approach and revised tiering methodology** for CFATS-regulated facilities that considers facility vulnerabilities and threat information as well as potential economic harm and loss of life.
- **Modernizing the screening process** for individuals seeking access to secure facilities. Utilization of the Personnel Surety Program eliminates duplicative regulatory requirements for facility owners and operators who need to vet individuals against the terrorist screening database.
- **Establishing an Expedited Approval Program (EAP)** for Tier 3 and 4 facilities. The EAP enables lower-tiered facilities to accelerate their site security plans through DHS's approval process.

The NAM Supports a Multiyear CFATS Reauthorization

Manufacturers believe that the multiyear congressional authorization of the CFATS program in 2014 was a pivotal moment for the longevity of the program. The NAM believes Congress should do so again. A multiyear reauthorization would continue to provide DHS with the ability to efficiently and effectively operate the CFATS program. Importantly, manufacturers would also greatly benefit from such regulatory certainty. This would enable industry to confidently make appropriate, economically justifiable, long-term investments to protect facilities' threat and vulnerability conditions.

CFATS Reauthorization Must Safeguard Facility Site Security Information

The current CFATS statute requires sharing information “with state and local government officials possessing a need to know and the necessary security clearances, including law enforcement officials and first responders.”¹ The NAM supports continued information sharing between manufacturers and federal, state and local officials to enhance security.

Manufacturers are committed to doing their part to protect their facilities, personnel, surrounding communities and the environment. According to an NAM member company, information applicable to the safe response to an incident is shared with appropriate response organizations based on risk. With regards to unplanned events, information such as chemical inventories, facility layout and available onsite emergency equipment/capabilities are shared with appropriate first responders to ensure they are adequately prepared if an emergency arises. Facilities collaborate with agencies to plan and execute drills and exercises, as well as regularly participate at local emergency planning meetings.

However, it is imperative that the submitters of confidential information to the government and first responders have a corresponding right to expect that the confidentiality of such information shall be preserved and properly protected against public disclosure. CFATS reauthorization should not expand Section 2103 of the statute (“Protection and Sharing of Information”) to permit public disclosure of facility site security information. Chemical-threat vulnerability information, such as security system designs, control system schematics, worst-

¹ Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014. Pub. L. 113-254. Sec. 2103: Protection and Sharing of Information.

case scenario discharge data, COI records and tactical response information for emergency personnel, must be safeguarded from potential threats or individuals actively seeking to do harm. The only individuals that should have access to facility site security information are those who have appropriate security credentials and clearances. The NAM is concerned about the resultant harm to the industry, facility personnel, the surrounding community and environment and the nation at large when disclosure is indiscriminate and fails to protect sensitive and confidential business information.

Manufacturers Must Be Consulted on Proposed CFATS Regulatory Changes

The NAM believes that public participation in the agency decision-making process is an essential mechanism that ensures political accountability. Starting with the Administrative Procedure Act and enhanced by a series of executive orders, rules and procedures spanning multiple presidential administrations, the federal government has recognized the importance of public participation in rulemaking and non-regulatory proceedings.

In this same vein, manufacturers must continue to be consulted on proposed regulatory changes to the CFATS program. For example, if DHS suggests alterations to Appendix A: Chemicals of Interest, these alterations must be subject to notice and comment rulemaking. Stakeholder engagement and participation is vital to the regulated community because changes to Appendix A could impact whether facilities are considered CFATS-regulated sites. In

addition, DHS's decision to modify Appendix A must be based on level of risk, sound scientific data and a comprehensive cost-benefit analysis.

Conclusion

Manufacturers have established a strong record of facility security and strive to further protect the communities in which they live and serve. Facility security will remain a top priority for manufacturers, and as such, the NAM supports the continuity of the CFATS program. CFATS reauthorization must provide manufacturers with the regulatory certainty to make the necessary investments in their facilities and meet compliance requirements.