



One Hundred Twelfth Congress  
U.S. House of Representatives  
Committee on Homeland Security  
Washington, DC 20515

July 15, 2011

The Honorable Rand Beers  
Under Secretary  
National Protection and Programs Directorate  
U.S. Department of Homeland Security  
Washington, D.C. 20528

I am writing with respect to the Chemical Facility Anti-Terrorism Standards (CFATS) program.

Last month, right around the time that the Committee was considering legislation to grant the Department of Homeland Security (DHS) authority to regulate the security of the chemical sector for seven years (H.R. 901), we were informed by DHS that there were significant errors related to the risk-tiering of about 10% of the CFATS-regulated facilities. Specifically, DHS explained that around 500 facilities were found to be improperly tiered and that data from those facilities was subsequently re-entered into the CFATS risk assessment tool. Ultimately, all the effected facilities were found to have a lower level of risk than initially determined and, in most cases, were placed in lower risk tiers. Amazingly, roughly 100 facilities were found to be of such low risk that DHS no longer intends to regulate them for security.

Thankfully, these inaccuracies were discovered. However, given the strong support for this novel regulatory program within the Congress and the private sector and the significant financial and administrative resources associated with meeting the regulation's requirements—*the preparation of a site vulnerability assessment, site security plan, and the implementation of new security procedures and enhancements*<sup>1</sup>—the discovery of these tiering inaccuracies leads to a number of critical questions about the implementation of this program that must be answered.

To that end, please provide a written response and whatever supplementary information you deem responsive to the following questions no later than July 29, 2011.

- (1) In this case, how and when were the errors detected? When and to whom were the errors reported? What, if any, requirements govern the reporting of such matters to the National Protection and Programs Directorate (NPPD) leadership or, for that matter, to the DHS leadership? If such requirements exist, were they adhered to in this case?

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<sup>1</sup> Section 550 of Public Law 111-83; 6 CFR Part 27.

- (2) What, if any, process or oversight procedure resulted in the identification of these errors? Is the Inspector General reviewing this matter?
- (3) When and how were effected facilities informed?
- (4) In this instance, of the roughly 4,000 facilities regulated under CFATS, how many were impacted by the errors and subject to the reassessment? Please provide the completed results of the reassessments – including information on how many facilities were tiered differently or removed from the program altogether.
- (5) Once the data was re-entered in the CFATS risk assessment tool and determinations about re-tiering were made, did any entity outside of the Office of Infrastructure Protection validate the resolution?
- (6) Please provide information on how many full time equivalents (FTEs) are in the CFATS program office, listed by function. How many people (FTEs and contractors) are involved in the risk assessment process in the CFATS program office?
- (7) If the CFATS program office utilizes contractors, please list the contractor firms with corresponding information on the nature and of services provided and the size of the contractor presence within the office. Were contractors involved in the risk assessment process and if so, please identify which firms and the nature of the services?
- (8) Who, within the CFATS program office, oversees the risk-tiering process? What, if any, process exists for people working within the CFATS office to report anomalies or potential problems?
- (9) What, if any, remedial action or penalty was taken with respect to the employee(s) and contractor firm(s) that were determined to be responsible for the inaccuracies?
- (10) DHS has indicated that the changes in tiering were associated with the consequence analysis for certain chemicals. Have you identified any other major errors in the CFATS tiering assessment process that could result in changes to the tiering of facilities?
- (11) Since the reporting of the inaccuracies, what new processes, if any, have been established to prevent, detect, and respond to implementation problems in the CFATS program office in a timely manner?

I believe in the CFATS program but I also recognize that it is not fully mature and that robust and continuous oversight is essential to the success of the program and the realization of a security benefit for the Nation. As you know, since 2006, I have worked extensively to give DHS the authority and resources it needs to design, establish, and implement this novel regulation. With CFATS legislation pending in the House, your timely response to this letter can help inform the legislative process.

Thank you for your attention to this matter. If you have any questions, feel free to contact Cherri Branson, Chief Counsel for Oversight at (202) 226-2616.

Sincerely,

A handwritten signature in blue ink that reads "Bennie G. Thompson". The signature is written in a cursive, flowing style.

BENNIE G. THOMPSON  
Ranking Member