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U.S. DEPARTMENT OF HOMELAND SECURITY

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U.S. HOUSE OF REPRESENTATIVES

CONCERNING

**THE CHEMICAL FACILITY ANTI-TERRORISM STANDARDS
AUTHORIZATION AND ACCOUNTABILITY ACT OF 2014**

FEBRUARY 27, 2014



Good morning, Chairman Meehan, Ranking Member Clarke, and Members of the Subcommittee. Thank you for the opportunity to testify on *The Chemical Facility Anti-Terrorism Standards Authorization and Accountability Act of 2014*.

In December 2011, a limited distribution internal memorandum, prepared by Infrastructure Security Compliance Division (ISCD) management, was leaked to news media. The document disclosed allegations of employee misconduct and inadequate performance, as well as misuse of funds and ineffective hiring within the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) Program. In February 2012, former Chairman Lungren, of the House Committee on Homeland Security, Subcommittee on Cybersecurity, Infrastructure Protection and Security Technologies, requested that we review these issues. In April 2012, Ranking Member Waxman, of the House Committee on Energy and Commerce, also requested that we review the challenges facing this program.

In March 2013, we issued a report, *Effectiveness of the Infrastructure Security Compliance Division's Management Practices to Implement the Chemical Facility Anti-Terrorism Standards Program*, OIG-13-55. We reviewed whether: (1) management controls are in place and operational to ensure that the CFATS Program is not mismanaged; (2) National Protection and Programs Directorate (NPPD) and ISCD leadership misrepresented program progress; and (3)

nonconforming opinions of program personnel have been suppressed or met with retaliation.

ISCD addressed some issues contained in the December 2011 memorandum; however, challenges remain. For example, we determined ISCD needs to improve program-related tools and processes, reduce its reliance on contractors, eliminate program waste and duplication, follow proper hiring practices, and provide sufficient training to personnel at all CFATS Program levels. When Congress granted DHS the authority to regulate high-risk chemical facilities, it required that an interim final rule be issued within 6 months. While DHS met this deadline when it published the CFATS Interim Final Rule in April 2007, there appeared to be confusion throughout ISCD about the 6-month requirement.¹ Some ISCD employees interpreted the statute as a mandate to stand up and implement the CFATS Program within 6 months. Misinterpretations of congressional intent may have put unnecessary pressure on ISCD to develop and implement the CFATS Program, resulting in poor management oversight and internal controls, personnel issues, and missed milestones.

In our March 2013 report, we made 24 recommendations to correct program deficiencies and attain intended program results and outcomes. After a report is issued, OIG standard operating procedures require that we perform analyses of

¹ *Chemical Facility Anti-Terrorism Standards; Interim Final Rule*, 72 FR 17688, April 9, 2007.

all documentation submitted by the Department to determine whether proposed corrective actions meet the intent of a recommendation. Corrective action plans are due 90 days after a report is issued. Recommendation status is defined as “unresolved or resolved” and “open or closed.” An unresolved recommendation means the corrective action plan does not meet the intent of the recommendation. A recommendation that is resolved and open means the corrective action plan meets the recommendation’s intent, but additional measures and milestones are necessary before the recommendation can be closed. A recommendation that is resolved and closed means the corrective action plan meets the recommendation’s intent, corrective action has occurred, and no additional reporting is necessary. However, based on the recommendation, final implementation of the corrective action may not be required to close a recommendation. This process is repeated every 90 days until all report recommendations are closed. Currently, 12 report recommendations are resolved and open, and 12 recommendations are closed.

Since we issued the report, ISCD has provided our office with two corrective action plan updates regarding its progress toward addressing the report recommendations. The nine administrative recommendations closed include: selecting permanent ISCD leadership; reducing reliance on contract personnel; developing policy for appointing acting management; ensuring that all employees serving in an acting supervisory capacity have a supervisory position

description; ensuring that all employees receive performance reviews; disseminating ISCD organizational and reporting structure to staff; reiterating to all employees the process for reporting misconduct allegations; implementing a plan to ensure the long-term authorization of the CFATS Program; and establishing internal controls for the accountability of appropriated funds.

We have also closed three programmatic recommendations pertaining to: revising the long-term review process to reduce the Site Security Plan backlog; implementing a process to improve the timeliness of facility submission determinations; and program metrics that measure CFATS Program value accurately and demonstrate the extent to which risk has been reduced at regulated facilities. To close these programmatic recommendations, NPPD provided our office with evidence showing a reduction in the Site Security Plan backlog for all tiers, improved ISCD response times to facility submissions, and performance metrics incorporated into ISCD's Annual Operating Plan and *Government Performance and Results Act* measure. Despite this progress, programmatic challenges remain.

Before CFATS can attain intended program results, ISCD must address the remaining 12 resolved and open recommendations. The ten resolved and open programmatic recommendations, which are 1, 2, 4, 6, 7, 8, 9, 12, 13, and 24, include: improving CFATS Program tools and processes; engaging regulated

industry and government partners; and finalizing program requirements. The two resolved and open administrative recommendations, which are 15 and 19, include: providing training and guidance; and eliminating inappropriate Administratively Uncontrollable Overtime pay.

Most industry officials believe the CFATS regulation is sound and the performance-based philosophy is appropriate. However, ISCD needs to modify its Chemical Security Assessment Tool (CSAT) to make it more efficient, effective, and easier to use. For example, the Site Security Plan is a list of yes or no questions; it is not a security plan and is of limited use to facilities. We recommended that ISCD modify the CSAT to capture facility data efficiently and ensure the tools provide meaningful end products for industry users and ISCD. In its November 2013 corrective action plan update, NPPD provided some of the key milestones and target dates for modifying the CSAT. We will close this recommendation once we receive documentation confirming NPPD has completed deploying the modified CSAT.

As ISCD addresses its Site Security Plan backlog, those facilities with approved plans will need inspection. However, when we issued our report in March 2013 ISCD had yet to define, develop, and implement processes and procedures for Compliance Inspections, or train CFATS personnel to conduct Compliance Inspections. In response to our recommendation, ISCD developed a Standard

Operating Procedure for inspections of CFATS Covered Facilities, which defines the different types of inspections, enumerates roles and responsibilities related to inspections, and details processes and procedures for pre-inspection, inspection, and post-inspection activities. ISCD has completed its Compliance Inspection guidance and training materials, but this recommendation will remain open until ISCD has trained all Chemical Security Inspectors.

Chemical facilities must resubmit a Top Screen when there are changes to the use and quantities of certain chemical of interests, referred to in the CFATS regulation as material modifications and changes in ownership.² The regulation also requires resubmission of Top Screens, Security Vulnerability Assessments, and Site Security Plans at 2 or 3 year intervals, depending on a facility's tier level. In addition, a facility may seek a redetermination of its tier level by filing a request with DHS' Assistant Secretary for Infrastructure Protection. We recommended that ISCD develop a strategy and implement a plan to address facility resubmissions and requests for redetermination as prescribed in the CFATS regulation. In its November 2013 update, NPPD officials provided some of the key milestones for finalizing the procedures and policies associated with receiving, reviewing, and responding to facility resubmissions and requests for redetermination. The recommendation will remain open pending our receipt of

² Ibid.

the approved final procedures for receiving, reviewing, and responding to facility resubmissions and requests for redetermination.

The CFATS tiering engines were created quickly, leaving limited time for quality assurance and internal control. Since December 2009, multiple errors in the data and formulas used to tier chemical facilities have been identified. Because concerns remained that the tiering methodology was still flawed, we recommended that ISCD develop a methodology and reporting process to identify and address errors and anomalies that arise in the CFATS tiering methodology and risk engine. In its November 2013 corrective action plan update, ISCD officials said they are undertaking a three-phased approach to review the tiering process and indicated that ISCD would be developing a formalized process for documenting, reporting, and resolving potential anomalies within the risk engine. This recommendation will remain open pending our receipt of the finalized process. As the three-phased approach includes an external peer review, we also recommended that ISCD provide us with the review results and ISCD's action plan to implement peer review recommendations. ISCD has received the final peer review report, and is developing an action plan with timeframes to address the recommendations. This recommendation will remain open pending our receipt of the integrated plan with timeframes and milestones for addressing the peer review recommendations.

Industry representatives favorably view some DHS' Infrastructure Protection voluntary programs, and recommend these programs be used to assist the CFATS Program. For example, the Protective Security Advisor Program has a field cadre that specializes in public and private outreach, and activities to reduce security risks of critical infrastructure and key resources across all sectors. In addition, many industry members use the Voluntary Chemical Assessment Tool, which allows owners/operators to identify current facility risk levels using an all-hazards approach, and it also facilitates a cost-benefit analysis. However, since CFATS Program development, management separated the Infrastructure Protection voluntary and regulatory programs, impeding ISCD's ability to identify and apply best practices across programs. We recommended ISCD document engagement with Infrastructure Protection and DHS regulatory and voluntary programs to identify and implement existing tools and processes that can be leveraged to make Top Screen, Security Vulnerability Assessments, and the Site Security Plan tools more efficient, effective, and easier to use for the CFATS Program. In its November 2013 update, NPPD provided examples of collaboration since the inception of ISCD. The examples NPPD provided demonstrate collaboration; however, these examples pertain to the initial CFATS tools and processes development, not current efforts to modify existing program areas. This recommendation will remain open pending the receipt of documentation demonstrating continued engagement between Infrastructure

Protection and DHS regulatory and voluntary programs has resulted in tangible improvements to the Top Screen, Security Vulnerability Assessments, and the Site Security Plan tools.

The regulated chemical industry has embraced the Risk-Based Performance Standards approach and the flexibility it allows. However, challenges remain with CSAT tools, and limited feedback is provided to facilities following submissions of Security Vulnerability Assessments and Site Security Plans. While the industry has applauded ISCD leadership for identifying programmatic issues, additional efforts are necessary. Industry officials support the CFATS Program, but without a clear path forward, they are concerned about industry resources and funds spent to meet program requirements. As a result, we recommended that ISCD improve the clarity of guidance provided to the CFATS-regulated industry so that industry can benefit from regular and timely comments on facility submissions. In its November 2013 corrective action plan update, NPPD officials reiterated that as part of its efforts to improve the CSAT, ISCD intends to update guidance materials for the Top-Screen, Security Vulnerability Assessment, and Site Security Plan. ISCD is also in the process of developing updated guidance related to its Chemical-terrorism Vulnerability Information program, and intends to release guidance specific to the CFATS Personnel Surety Program when the CFATS Personnel Surety Program is launched. The recommendation will remain open pending our receipt of guidance materials for the Top-Screen, Security

Vulnerability Assessment, Site Security Plan, Chemical-terrorism Vulnerability Information program, and the CFATS Personnel Surety Program.

Risk-Based Performance Standards-12, Personnel Surety, requires regulated facilities to perform background checks and ensure credentials for facility personnel, and for unescorted visitors with access to restricted areas or critical assets. This includes measures designed to (1) verify and validate identity; (2) check criminal history; (3) verify and validate legal authorization to work; and (4) identify people with terrorist ties. Since April 2010, NPPD has paid DHS' Transportation Security Administration (TSA) more than \$7.7 million to conduct vetting against the terrorist watchlist, although no names have been vetted to date. Providing names to TSA for vetting is contingent on the Office of Management and Budget's (OMB) approval of the program's Information Collection Request. As a result, we recommended that ISCD limit funding for Personnel Surety Program vetting until the Information Collection Request has been approved. Since our review, NPPD will only allocate funding to TSA when deemed appropriate given all relevant factors. NPPD has also submitted the Information Collection Request necessary to move the Personnel Surety Program forward. We acknowledge that Information Collection Request approval rests with OMB, and this recommendation will remain open until documentation is received that the Information Collection Request has been approved by OMB and names have been sent to TSA for vetting.

In December 2007, Congress directed NPPD to provide a plan to regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility to prevent the misappropriation or use of the chemical in an act of terrorism. However, as of March 2013, the Ammonium Nitrate Program was only in the rulemaking process. As a result, we recommended that ISCD develop an action plan and guidance for implementing the Ammonium Nitrate Program, which incorporates lessons learned from CFATS Program challenges. In its November 2013 corrective action plan update, NPPD officials said they have been working to develop a final rule, an action plan, and guidance for implementing the final rule. The recommendation will remain open pending our receipt of quarterly status updates of the Ammonium Nitrate Security Program Action Plan until all items on the plan have been implemented. In addition, ISCD is moving forward with a dual-functioning inspector cadre and will be hiring inspectors for the Ammonium Nitrate Program and cross-training them on the CFATS Program. We recommended that ISCD develop and implement a curriculum and timeline for training inspectors to perform both Ammonium Nitrate and CFATS Program duties and responsibilities. NPPD provided a copy of the ISCD New Chemical Security Inspector Training Work Plan and copies of training materials for courses identified in the Work Plan. However, this material does not include necessary training for the proposed dual-functioning Ammonium Nitrate Security Program inspector cadre. Therefore, the recommendation will remain open

pending our receipt of training curriculum and implementation data for dual-functioning inspectors.

When establishing the CFATS Program, ISCD leadership envisioned an academy to train Chemical Security Inspectors to enforce the CFATS regulation. However, ISCD began training personnel before issuing the CFATS Interim Final Rule, developing a program vision, or defining inspector roles and responsibilities. In addition, by focusing training efforts on Chemical Security Inspectors, ISCD has provided limited guidance to headquarters staff on responsibilities and career development. Most headquarters staff do not have formalized training, and frequently have to learn critical position duties and functions on the job with little guidance. We recommended that ISCD develop and implement a learning curriculum that (1) describes position roles and responsibilities clearly; (2) provides comprehensive training plans to prepare employees to perform assigned duties; and (3) communicates measures to assess performance. In its November 2013 corrective action plan update, NPPD officials said that ISCD has completed a Strategic Human Capital and Training Plan, delivered Performance Management Training to all personnel, and is developing an ISCD Employee Handbook. The recommendation will remain open pending our receipt of documentation that the ISCD Employee Handbook has been developed and disseminated to all ISCD employees.

Since its inception in 2007, ISCD has struggled with applying sound Government practices to human capital issues, pay administration, and resource allocation. ISCD personnel received inappropriate Administratively Uncontrollable Overtime, which is a form of premium pay used to compensate employees who occupy positions that require substantial amounts of irregular and unscheduled overtime work. We were unable to determine a definitive rationale for why inspectors were receiving Administratively Uncontrollable Overtime and recommended that ISCD eliminate its authorization and payment for all ISCD personnel. In its November 2013 update, NPPD officials said that instead of eliminating Administratively Uncontrollable Overtime, ISCD leadership has determined that the more appropriate path is to continue to permit CFATS Chemical Security Inspectors to claim Administratively Uncontrollable Overtime in a manner that is consistent with rules and regulations, and that is supported by greater oversight, increased training, documented policies and procedures, and greater management controls.

We consider NPPD's actions partially responsive to our recommendation.

Administratively Uncontrollable Overtime is a form of premium pay used to compensate employees who occupy positions that require substantial amounts of irregular, unscheduled overtime work that cannot be controlled administratively and cannot be scheduled in advance of the workweek.

According to the Interim Final Rule, the Department will conduct audits and

inspections at reasonable times and in a reasonable manner, providing covered facility owners and operators with advance notice before inspections, with limited exceptions. Therefore, inspectors schedule their work in advance, eliminating the need for Administratively Uncontrollable Overtime. The recommendation will remain open pending our receipt and analysis of documentation that demonstrate Administratively Uncontrollable Overtime payments to inspectors are supported and justified by current and long-term activities across multiple fiscal years.

Chairman Meehan, this concludes my prepared remarks. I welcome any questions that you or the Members of the Committee may have.