



Testimony of Andrew K. Skipp
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on behalf of the

National Association of Chemical Distributors

before the

U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Environment and the Economy

on

H.R. 908, to extend the authority of the Secretary of Homeland Security
to maintain the Chemical Facility Anti-Terrorism Standards

Good Morning, Chairman Shimkus, Ranking Member Green, and members of the Subcommittee. My name is Andrew Skipp, and I am President and CEO of Hubbard-Hall, Inc., a full-line chemical distribution company based in Waterbury, CT. I am also the current Chairman of the National Association of Chemical Distributors (NACD). I am pleased to provide testimony today in support of H.R. 908, which would extend the authority of the Department of Homeland Security (DHS) to maintain the Chemical Facility Anti-Terrorism Standards (CFATS) program.

About Hubbard-Hall

Hubbard-Hall was founded in 1849 in Waterbury, CT and is a sixth generation family-owned and operated chemical distribution and manufacturing company. Our Waterbury corporate office, and Inman, SC facility have warehouse and manufacturing capabilities, and in Wilmington, MA we have a warehouse and sales office. We distribute chemicals throughout New England and sell our proprietary products throughout the United States and overseas.

About NACD

The National Association of Chemical Distributors (NACD) is an international association of chemical distributor companies. Our members purchase and take title to chemical products from manufacturers and resell them to most major industries in the United States. Member companies process, formulate, blend, re-package, warehouse, transport, and market these chemical products exclusively for an industrial customer base of more than 750,000 in the U.S. NACD members operate in every state in the continental U.S. and throughout all of North America through more than 1,300 facilities. The membership includes small businesses as well as regional and national companies.

NACD represents more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. Close to \$19 billion of U.S. chemical industry sales are through NACD member companies that are also actively engaged in various phases of import/export

trade. The industrial segments served by chemical distributors use these materials to produce:

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|---------------------------|---------------------|
| -Adhesives & Sealants | -Paints & Coatings |
| -Agriculture | -Pharmaceuticals |
| -Automotive | -Plastics |
| -Cosmetics/ Personal Care | -Pulp & Paper |
| -Electronics | -Soaps & Detergents |
| -Food & Beverage | -Textiles |
| -Municipal | -Other |

Our industry plays a vital role in the United States economy and in the world marketplace. In the distribution of products, NACD distributor members directly and indirectly create more than 136,000 jobs.

Although our industry plays such a critical role in the economy, the majority of NACD's distributor members are small businesses. A typical NACD distributor member has \$26 million in annual sales, three facilities, and 28 employees.

Responsible Distribution

NACD members demonstrate their commitment to product stewardship in every phase of chemical storage, handling, transportation, and disposal through compliance with Responsible Distribution, NACD's mandatory environmental, health, safety, and security program. Under Responsible Distribution, each member must follow *Codes of Management Practice* in order to protect the environment, promote health and safety of employees and community members, enhance product stewardship, and ensure the security of its facilities and products. Under each Code, member companies have an active program designed to continuously improve safety and reduce incidents. Each member must develop, implement, and undergo periodic verification of policies and procedures in each of the following areas: Risk Management; Compliance Review & Training; Carrier Selection; Handling & Storage; Job Procedures & Training; Waste Management & Resource Conservation; Emergency Response & Public Preparedness; Community Outreach; Product Stewardship; Internal Audits; Corrective & Preventive Action; and Document & Records Control.

NACD's Commitment to Security

NACD's members have always focused on the safety and security of its workplaces and products. In response to the terrorist attacks of September 11, 2011, NACD became the first chemical trade association to mandate specific security measures for its members and continues to assess Responsible Distribution's security measures against current threats. Specific measures addressing security include:

- Developing programs that address security of a member's facility and the transportation of chemicals, including conducting a security vulnerability assessment
- Scrutinizing for-hire motor carriers for the security of chemicals in transportation
- Qualifying customers purchasing chemicals as prescribed by government regulations
- Verifying implementation of security measures by an independent third-party verification firm

These requirements apply to all NACD members, including those who do not have facilities covered under the Chemical Facility Anti-Terrorism Standards (CFATS) program.

NACD Supports H.R. 908

On behalf of NACD, I commend Representatives Murphy and Green for introducing H.R. 908, which would extend the Department of Homeland Security's (DHS) authority to implement the CFATS program for an additional seven years. NACD was a strong supporter of the legislation enacted in 2006 that gave DHS authority to regulate chemical facilities and that led to the development of the CFATS program. If enacted, H.R. 908 would allow time for the full implementation and evaluation of CFATS before any changes to this important program are considered.

CFATS is a major new regulatory program, and DHS has done a commendable job with limited resources in writing the regulations and setting up the internal infrastructure to be able to implement and enforce the new standards. As of mid-March, DHS had received over 4100 site security plans (SSPs) from facilities in all four risk tiers. The agency is in the process of evaluating these SSPs and has conducted over 160 preliminary inspections to date, mostly at Tier 1 facilities. Because CFATS is a major new regulation, it will take time for DHS to evaluate

all of the SSPs and to inspect the 4100 + facilities to ensure that they are in fact implementing the security measures outlined in their plans.

One of the strengths of the CFATS program is that it requires each covered facility to meet security risk-based performance standards, according to their own particular situations and security issues. The owners and operators of each facility must decide how to meet each of the 18 risk based performance standards and submit their plan to DHS, who then must evaluate each plan individually, based on each facility's unique security risks. The result is a comprehensive plan designed for each particular facility that meets the CFATS performance standards. Because of the unique design of the CFATS program, implementation is not as clear cut as a one-size-fits-all mandate, thus more time is needed for evaluations and inspections. Although this approach has taken longer to implement, it has the advantages of creating plans to address every facility's unique situations while also avoiding the creation of a single roadmap for potential terrorists.

The bottom line is that real security measures are being implemented at facilities around the nation because of the CFATS program. For example, my company has three facilities covered under CFATS. We have worked hard and have spent substantial resources to design our SSPs and to begin to implement additional security measures at these facilities. We look forward to having continued dialogue with DHS about these plans and to continue to implement security measures that will address Hubbard-Hall's specific security issues. I would like to emphasize that CFATS has been and will continue to be a major regulatory commitment for my company. While we have been willing to invest the time and resources to comply with this important regulation, I know that Hubbard-Hall along with all of the other members of NACD who have CFATS-covered facilities would appreciate the certainty of a clean, long-term extension of the program.

Changes to the Current CFATS Program Would be Counterproductive

In the previous Congress, the House passed a bill, H.R. 2868, that would have made CFATS permanent, but would have also made several harmful and premature changes to the program. I would like to discuss some of these changes and NACD's concerns about them.

Inherently Safer Technologies

NACD opposes any measure that would require facilities to consider and/or implement “inherently safer technologies” (ISTs). H.R. 2868 would have required each CFATS-covered facility to conduct an IST assessment and for facilities in the highest risk-tiers to implement the ISTs. This mandate would have applied to all CFATS-covered facilities, regardless of facility type.

While some chemical distributors custom blend substances for customers, the primary operations for most NACD members involve warehousing, repackaging, and transportation of materials to their customers. Chemical distributors maintain specific inventories of products in order to respond to the needs of customers. For most facilities, an IST assessment, which would in most cases have to be outsourced at significant cost, would likely produce limited options that would impede our normal business operations. In cases where distributors might be required to reduce inventories of certain products, this would prevent these companies from effectively addressing their customers’ needs. Particularly in these tough economic times, and in addition to the myriad regulations that already affect us, this could be the final straw to put some companies out of business, which would result in further job losses.

I would like to reemphasize that NACD opposes mandatory IST *consideration* in addition to mandatory implementation. The act of conducting IST assessments would be extremely costly for NACD members and would produce no real risk reduction benefit. These assessments would require expertise with IST methodologies, the likelihood of any possible measures to reduce risk, and the potential costs of these measures. The vast majority of NACD members are small businesses that do not have teams of chemical and process safety engineers on staff who would be able to conduct the IST assessments. These companies would be forced to hire consultants, who at rates of hundreds of dollar per hour, would easily drive the costs of the assessments into tens of thousands of dollars per facility. Again, these costly assessments would produce limited options for chemical distributors whose inventories are set up, frequently on a just-in-time basis, to address customer needs.

In addition, if facilities are required to reduce the amount of materials they have on-site as part of IST implementation, the result would be increased transportation of the materials, which would merely transfer the risk to different points along the supply chain and increase the likelihood of loading, unloading, or in-transit incidents, including potential security incidents.

Finally, CFATS already has a built-in incentive for facilities to use the safest methods and processes possible in order to be assigned to a lower risk tier or to completely tier out of the regulation. In fact, in the late 2008-2009 timeframe, approximately 7000 facilities were covered under CFATS. As of mid-March of this year, 4744 facilities were covered. Over 2000 facilities have reduced their security risk so much that they have tiered out of the program. Many more facilities have been assigned to lower tiers.

Citizen Suits

NACD also strongly opposes the inclusion of citizen suit provisions in any potential CFATS extension that would allow any individual or organization to sue a chemical facility for alleged non-compliance. The current CFATS program gives DHS authority to impose substantial penalties as well as the authority to shut down facilities for non-compliance. The threat of citizen suits is not only unnecessary, but could also divert resources from security enhancements to litigation costs.

Prescriptive Requirements

NACD supports the risk-based performance standards approach of the CFATS program and would have serious concerns about the prescriptive requirements such as those in H.R. 2868 of the last Congress. In addition to the IST provisions, there were several specific mandates in that legislation, including those that would required facilities to conduct annual drills and exercises with the participation of local officials and emergency responders, set out specific criteria for employee training and procedures for background checks, and required that union representatives be involved in the development of SVAs and SSPs. These specific measures may not be appropriate for every covered facility. For example, the requirement to conduct yearly drills and exercises that include local law enforcement and emergency responders could place facilities in the position of being out-of-compliance with the regulations because the emergency responders

in many locales do not always have the time and resources to spend on these exercises and cannot be forced to participate. NACD strongly supports the concept of such drills and exercises, but we had major concerns with the lack of flexibility in parts of H.R. 2868 that such as this one that failed to recognize the resource limitations of the local law enforcement and emergency response organizations.

Duplicative Regulation

NACD is also concerned about the prospect of more duplicative regulations. Past legislation has proposed including in the CFATS program sites that are already regulated under the Maritime Transportation Security Act (MTSA). Several NACD member facilities comply with the security requirements under MTSA, which is administered by the U.S. Coast Guard (USCG). The Coast Guard and MTSA-covered facilities have worked together closely to achieve the security goals of this program. If CFATS and MTSA are harmonized, the work that sites have done to comply with MTSA must be recognized. Most importantly, MTSA sites should not be subject to dual inspections and the USCG should continue its role at traditional MTSA sites.

Lack of Pre-Emption

Finally, NACD would oppose a change to the current law such as that proposed in H.R. 2868 that would have explicitly allowed states and localities to adopt and enforce standards more stringent than the federal law. Because the protection of chemical facilities is a national security issue, NACD believes that federal preemption is an important element of an effective chemical security program. There is precedent for federal preemption in the areas of aviation, nuclear, port, and hazardous materials transportation security. Lack of a strong national standard would result in a patchwork of different chemical security rules throughout the nation, which would make compliance confusing for any company that does business across state lines, which is the industry norm. This would not be in the best interest of national security, the very objective that chemical security legislation is meant to promote.

Conclusion

NACD supports H.R. 908 to extend the current chemical security program for seven years. A clean extension will allow for continued progress in implementing real security measures at facilities throughout the nation. Any changes at this stage in the process would create uncertainty and frustrate the important progress that has been made to date.

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