



STATEMENT

OF

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BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON HOMELAND SECURITY

SUBCOMMITTEE ON CYBERSECURITY, INFRASTRUCTURE

PROTECTION, AND SECURITY TECHNOLOGIES

***“Unlocking the SAFETY Act’s Potential to Promote Technology and
Combat Terrorism”***

MAY 26, 2011

INTRODUCTION

Chairman Lungren, Ranking Member Clarke and Members of the Committee, thank you for giving the Homeland Security & Defense Business Council an opportunity to appear before you today. I am Marc Pearl, President and CEO of the Council, a not-for-profit, non-partisan organization of the leading companies that deliver homeland security solutions to the marketplace. The Council works to ensure that the perspective, innovation, expertise and capabilities of the private sector are fully utilized in our nation's security, as well as recognized and integrated with the public sector. Council members employ more than 3 million Americans in all 50 states. We are honored and proud to work alongside civilian, defense and intelligence agency leaders in support of their strategic initiatives through our individual and collective expertise in technology, facility and networks design and construction, human capital, financial management, technology integration, and program management. Only when there is substantive engagement between the government and the private sector can we successfully deliver effective, efficient, and fiscally responsible high quality solutions to our citizens.

At the outset, we want to express our appreciation to the Subcommittee and the members of the entire Homeland Security Committee for your leadership on the full range of critical issues associated with improving the effectiveness of the laws and programs that would serve to make our nation safer and more secure. A major part of that effort is the recognition that only when government and

industry are in direct communication and cooperation can we truly create a “culture of readiness and of preparedness.”

Congress must continue to take the responsibility to encourage constant, open and reliable communication between industry and government to achieve its mission. Additionally, we look to Congress to provide the oversight and support necessary to ensure that we collectively as a nation maintain our continued vigilance and preparedness, and are fully utilizing all the tools at our disposal.

Needs shift, priorities are altered, and threats continue to evolve. Over the past decade we have – all too often – found ourselves in a reactive posture, responding to the crisis de jour. We also must focus on the need to be proactive and nurture an environment that puts our research and development into an anticipatory posture.

That was the intent of Congress when it enacted the Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act. Congress gave industry solutions providers a valuable legal tool to further encourage the innovation, implementation and deployment of technologies that would serve to make our nation safer and more secure.

The holding of this hearing today – the first specifically on this topic in five years – is allowing the Department of Homeland Security (DHS) and industry to join

with you in giving voice to an important program that helps to give our nation the ability to provide effective deterrent measures against those who would seek to destroy or kill innocent citizens.

The focus of the Council's testimony today is to provide the subcommittee with industry's collective perspective on the SAFETY Act and how we can work together to (1) Improve the Process; (2) Achieve its Priorities; and (3) Ensure Greater Public Support.

A MORE EFFECTIVE PROCESS

Throughout its brief history, the SAFETY Act has seen many peaks and valleys with respect to the amount of effort required to obtain the protections it provides to companies that have gone through the application process. Initially – as could be expected from any new administrative review process – the ability to obtain SAFETY Act protections was a lengthy and complicated process. Applications languished for months on end, and the level of detail expected by DHS was exceptionally difficult to supply. This led many companies to back away from the SAFETY Act process because the route to these protections was too arduous for the ultimate benefits.

DHS has since worked to revise and streamline its review process and set in place more formal and reliable review mechanisms. The Science & Technology (S&T) Directorate – tasked with implementing the SAFETY Act – has put forth new procedures indicating recognition that the application process is a

collaborative one with the Office of SAFETY Act Implementation. As a result, they are reporting that approval has been granted to a larger number of applicants, including some innovative anti-terror services like commercial shopping center security guards and professional security certification programs. DHS has indicated a desire to continue on the path of managing a reliable and thorough review process while showing greater sensitivity to the potential burden to applicants. We are desirous of seeing as streamlined a certification process as is feasible and reasonable, and the implementation of the Act in a full and complete fashion.

We are also concerned that the bases for technical evaluations of technologies for SAFETY Act purposes have not been as consistent or transparent as they could or should be. DHS should be encouraged to refrain from applying inconsistent criteria in their technical evaluations.

Having said this, however, the SAFETY Act review process must be rigorous, thorough and conclusive, in order that, should the utilization or performance of a product or service be challenged, there is a strong review record in place. A comprehensive documentation process will alleviate any review concerns and reinforces the Council's support for the underlying intent and foundation of the Federal law – to help ensure the widespread deployment of anti-terrorism products and services. It is critical to have a review process that establishes a strong presumption of reliability, inspires confidence that the approved product or

service truly has a utility against terrorism, and encourages customers to utilize and deploy approved technologies.

Industry recognizes that the SAFETY Act – in some ways – takes S&T out of its “comfort zone” of engineering and scientific research. But DHS must understand and recognize that the SAFETY Act it is charged with administering is fundamentally a legal, not a scientific, engineering or technical merit program. The certification process does not require a detailed review of systems, but a determination with reasonable certainty that a product, technology or service is useful and effective against terrorism. Congress never intended to have a SAFETY Act-certified solution be the most useful or most effective tool against terrorism. We cannot let the perfect be the enemy of the good.

MORE EFFECTIVE PRIORITIES

The SAFETY Act was meant to provide an incentive to the private sector to continue to research, develop, deploy and utilize anti-terror technologies to best protect our nation, its citizens and critical assets. If utilized fully, the SAFETY Act encourages industry to continue to innovate. Has it been marketed as successfully as it could within government and to the business community at large?

Unfortunately, there has been a negative trend of reductions in the total number of SAFETY Act applications and approvals in recent months.

SAFETY Act-certified technologies are suggested as part of the Federal acquisition process, but DHS could further improve efforts to educate Federal contracting officials regarding the Act and its related changes to the Federal Acquisition Regulation (FAR). Implementation of the Act could also be better aligned with the Federal acquisition process, including eliminating redundancies in and expediting technical evaluation of SAFETY Act applications relating to products and services procured by DHS and other Federal government entities.

The Department should also vigorously publicize the value of the SAFETY Act to the business community at large, and continue to work with solutions providers in streamlining the application process. It should also work more closely with 3rd parties – such as the risk management industry – to better explain the value of the provisions. As a result, this could have a subsequent positive effect on the underwriting process.

By making the SAFETY Act a higher priority of the administration, and better promoting it within government and to the business community, a greater number of beneficiaries will recognize the benefits of the Act and industry can better understand what to expect from a successful application.

GREATER PUBLIC SUPPORT

The Council and its members are committed to increasing the understanding and further deployment of SAFETY Act-approved technologies, and encouraging a strong and responsible application process that gives confidence in the products and services granted SAFETY Act protections.

The focus of attention regarding successful implementation of the SAFETY Act should not be on its limiting liability, but rather on how it encourages greater and more widespread deployment of technologies that could deter terrorism and protect our citizens. Everyone loses if certified technologies are not more fully deployed and the benefits of the Act are not better publicized. Our nation would be left with fewer safeguards, and companies that do develop or deploy such technologies would be open to limitless litigation.

Congress' role – as you are doing through this hearing today – is to encourage constant, open and reliable communication between industry and government. Additionally, Congress must continue to provide the oversight and support necessary to ensure we collectively as a nation concerned about continued vigilance and preparedness are fully utilizing all the tools at our disposal.

Lastly and briefly, transportation security; border security; and the protection of people, facilities, goods, and networks, all have an international component that requires cooperation and communication among all our country's friends and

allies. Promoting the benefits of the SAFETY Act – its incentives to develop, implement and deploy the best of breed tools and solutions to fight terrorism – no matter where they are developed, manufactured or deployed would be enormously helpful in our fight to protect our own homeland. The Act provides protections for the manufacturers and providers of certified technologies and services for cases under the jurisdiction of the U.S. court system, but no such protections exist outside U.S. borders. Is it foolish to ask our strategic partners for enhanced international cooperation on 3rd party liability protections for terrorist attacks? Shouldn't this issue be put on the agenda when government officials meet with their legislative and executive branch counterparts – particularly now that we all recognize that terrorism is a global threat and homeland security a global mission?

CONCLUSION

"Success" against those who would seek to destroy our way of life, wreak havoc on our economy, and kill innocent citizens will ultimately depend on our ability to fully implement and deploy technologies and tools that fully deter and prevent a devastating catastrophe.

To achieve greater and active participation by everyone is not just the responsibility of Congress to enact the necessary laws, the administration to develop real, tangible and 'embraceable' regulations and programs to carry them out, industry to develop and help deploy the solutions, or the greater citizenry to

take on its share of the responsibility to be vigilant. It is a combination of all of the above. The SAFETY Act is but one vital tool that helps us become a safer and more secure nation.

On behalf of the Homeland Security & Defense Business Council, I once again express our appreciation for the opportunity to provide our comments on the important issues before the Subcommittee. The Council and its members pledge to provide this Committee and the Department with the appropriate support, expertise and input needed to achieve mission success.

We are prepared to work with the subcommittee and DHS to mutually achieve an environment where an improved and robust SAFETY Act is fully embraced and marketed the Department in an atmosphere ensuring a sound, fair and responsible certification process.