

PROTECTING AND SECURING CHEMICAL FACILITIES FROM TERRORIST ATTACKS

HEARING BEFORE THE SUBCOMMITTEE ON ENVIRONMENT AND CLIMATE CHANGE OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED SIXTEENTH CONGRESS

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WEDNESDAY, SEPTEMBER 11, 2019

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENVIRONMENT AND CLIMATE CHANGE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:00 a.m., in the John D. Dingell Room 2123, Rayburn House Office Building, Hon. Paul Tonko (chairman of the subcommittee) presiding.

Present: Representatives Tonko, Clarke, Peters, Barragán, Blunt Rochester, Soto, DeGette, Schakowsky, Matsui, McNerney, Ruiz, Dingell, Pallone (ex officio), Shimkus (subcommittee ranking member), Rodgers, McKinley, Johnson, Long, Flores, Mullin, Carter, Duncan, and Walden (ex officio).

Staff present: Jacqueline Cohen, Chief Environment Counsel; Adam Fischer, Policy Analyst; Rick Kessler, Senior Advisor and Staff Director, Energy and Environment; Brendan Larkin, Policy Coordinator; Mel Peffers, Environment Fellow; Anthony Gutierrez, Professional Staff Member; Jerry Couri, Minority Deputy Chief Counsel, Environment and Climate Change; Peter Kielty, Minority General Counsel; Mary Martin, Minority Chief Counsel, Energy and Environment and Climate Change; Brandon Mooney, Minority Deputy Chief Counsel, Energy; and Brannon Rains, Minority Legislative Clerk.

Mr. TONKO. The Subcommittee on Environment and Climate Change will now come to order.

OPENING STATEMENT OF HON. PAUL TONKO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

I recognize myself for 5 minutes for the purposes of an opening statement.

The events of September 11th transformed how we think about what it means to be safe in our communities. America responded with a national mobilization to confront the threat of future attacks, including the establishment of programs like the one we will consider here today.

We learned a hard lesson that we must always be vigilant and acknowledge that our federal government, including this Committee, plays a critical role in safeguarding the health and safety of the people working in, living near, and responding to incidents at our Nation's high-risk chemical facilities.

Thank you to our colleagues on the Homeland Security Committee for starting this process. Mr. Richmond and Chairman

Thompson's bill, H.R. 3256, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019, is the basis for today's legislative hearing.

Since 2007, chemical facilities have been regulated to address risks under the Chemical Facility Anti-Terrorism Standards, or CFATS, program that has been implemented by the Department of Homeland Security.

CFATS is an important part of our Nation's counterterrorism efforts to secure high-risk chemical facilities. Under CFATS, around 3,300 manufacturing, handling, and storage facilities must implement risk-based performance standards in some 18 areas.

The program received its first multiyear extension in 2014. And in January of this year, Congress acted to extend the program through April of 2020 and prevent a potentially dangerous lapse.

It is my hope that this committee will once again find bipartisan agreement on a multiyear CFATS extension that can be supported by the leadership of both House committees of jurisdiction from both sides of the aisle.

Everyone here understands the importance of a multiyear extension, which would give the program a final measure of certainty and stability, but as Congress considers the CFATS reauthorization, we cannot afford to overlook this opportunity to reinforce what is working well and address what could be improved.

Today, I expect to hear that this program generally enjoys support from chemical manufacturers, distributors, and workers at these sites. But there remain numerous ways in which it could be strengthened. I am open to hearing suggestions, especially those that help ensure workers in local communities are being consulted and participating appropriately in the program and receiving the information they need to stay safe.

I also want to hear from our witnesses how the program can greater incentivize risk reduction, not just risk management. Risk reduction is ultimately the best way to ensure the protection of workers in frontline communities.

With that said, I am skeptical of any change that would create new security gaps by allowing for additional exemptions to the program. We need, instead, to be looking more holistically at the threats facing these facilities. Without question, they are evolving, and not just from terrorism and malicious acts. When it comes to protecting workers, first responders in surrounding communities, safety and resilience are as important as security.

Chemical fires, explosions, and releases can have serious consequences, regardless of whether an incident was an accident, a natural disaster, or an act of terrorism. We saw in the aftermath of Hurricane Harvey in Texas that extreme weather can be just as big a threat as more traditional security concerns.

The people working at these facilities and living in nearby communities should be able to expect the same measure of protection and risk mitigation. And I hope the appropriate agencies will work to ensure the development of industry guidance to help facilities assess their risks from extreme weather.

September 11, 2001, forever changed how our Nation thinks about security. We have achieved much in the 18 years since, but we cannot rest on our heels or become stagnant in our thinking.

Threats to chemical facilities continue to evolve, from cybersecurity to extreme weather events. And the programs that guarantee the safety of workers, first responders, and frontline communities must also evolve to meet these threats.

Thank you to Mr. Wulf for appearing before the subcommittee once again, and I also welcome our witnesses on the second panel.

With that, I look forward to today's discussion, and I yield back.
[The prepared statement of Mr. Tonko follows:]

PREPARED STATEMENT OF HON. PAUL TONKO

The events of September 11th transformed how we think about what it means to be safe in our communities.

America responded with a national mobilization to confront the threat of future attacks, including the establishment of programs like the one we will consider today. We learned a hard lesson that we must always be vigilant, and acknowledge that our federal government—including this Committee—plays a critical role in safeguarding the health and safety of the people working in, living near, and responding to incidents at our nation's high-risk chemical facilities.

Thank you to our colleagues on the Homeland Security Committee for starting this process. Mr. Richmond and Chairman Thompson's bill, H.R. 3256, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019, is the basis for today's legislative hearing.

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Thank you to Mr. Wulf for appearing before the Subcommittee once again, and I also welcome our witnesses on the second panel. I look forward to today's discussion, and I yield back.

The Chair now recognizes the ranker of the subcommittee, Representative Shimkus of Illinois.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman, for the time.

Today, the subcommittee will not only check in on the progress of the Chemical Facility Anti-Terrorism Standards program, commonly known as CFATS, at the Department of Homeland Security but also review legislation introduced to both save the program's authority from expiring as well as make significant changes to the program.

The CFATS program, which Congress first authorized in the fall of 2006, was a continuation of congressional efforts since the terror attacks that occurred 18 years ago today. This law, then referred to as Section 550, surgically and directly addressed gaps in Federal law regarding terrorism and other intentional acts against high-risk facilities due to their use or possession of chemicals of concern at levels of concern.

The core of this new security-focused law was a process where DHS issued risk-based performance standards that required vulnerability assessments and site security plans by covered facilities. Most importantly, to avoid overlapping with other Federal programs, CFATS was designed to foster collaboration between government and regulated parties.

Unfortunately, the early years of CFATS program implementation were marked with several growing pains, some more hurtful than others. No one knows that more than our witness from the Department of Homeland Security, David Wulf. I said last June that his commitment and longevity with the program make him the Cal Ripken of CFATS, and I think others would agree with me.

Last June, we learned that Mr. Wulf not only set many remedial goals to address the issues he and the Government Accountability Office found in the CFATS program, under his watch tremendous progress has been made towards correcting those programs, reinvigorating morale, improving communication, and reviving the confidence in the CFATS program.

My congratulations to you.

I think today CFATS has earned an extension of this program authority. That is great, but Congress needs to ensure the CFATS program is a success, because it is a success, and not just because of the leadership of one or two people. After Cal Ripken retired, his team took ten years to recover to a competitive position. Given that stopping terrorism is CFATS' job, we should not assume stability after so much change to correct this program's problems.

That is why I don't believe that CFATS needs to expand its mission. I am concerned by provisions in H.R. 3256 that either provide DHS authority to offer CFATS to unregulated facilities or require study of those facilities exempted from CFATS facilities—exempted because Congress gave them their own anti-terrorism programs for their unique circumstances.

I am also concerned about the precedent for layering specific requirements onto site security plan approval, no matter how well-meaning, when meeting the risk-based performance standards already accomplishes those requirements.

A third thing that bothers me in this legislation is the redefinition of "risk" for the CFATS program and the directive to deploy that new definition. The existing definition of "risk" for CFATS—vulnerability, threat, consequence—is based on GAO recommendations and the National Infrastructure Protection Program.

One of the biggest problems DHS had to rectify is that the CFATS program used an incomplete definition of "risk" that discounted vulnerability and placed more facilities into the program and at higher-risk categories. DHS spent years undoing this mess, but the legislation acts as if the mistakes were correcting the risk formula to make it more consistent.

More significantly, I am concerned that this legislation rolls back essential protection and vulnerability information that would create a roadmap for terrorists. There are multiple Federal laws that require disclosure of information to the public and first responders for any number of reasons. The difference between this bill and those laws is that CFATS information is not focused on pollution or accidents, but how a high-risk chemical is being protected from theft or intentional detonation. First responders and local officials already have access to this information if they have a need to know and are trained in handling it. Making this information public will cause material, physical, and economic harm to these facilities and their communities.

My misgivings aside, I look forward to receiving language from you, Mr. Chairman, and meaningfully working with my colleagues to a good place where we can support this bill when it gets marked up.

I want to thank our witnesses for being with us today, and I look forward to the meaningful dialogue with them.

With that, Mr. Chairman, I yield back my time.

[The prepared statement of Mr. Shimkus follows:]

PREPARED STATEMENT OF HON. JOHN SHIMKUS

Thank you, Mr. Chairman for yielding me this time.

Today, the Subcommittee will not only check in on the progress of the Chemical Facilities Anti-Terrorism Standards Program at the Department of Homeland Security (DHS), but also review legislation introduced to both save the program's authority from expiring as well as make significant changes to the program.

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with other Federal programs, CFATS was designed to foster collaboration between the government and regulated parties.

Unfortunately, the early years of CFATS program implementation were marked with several growing pains, some more hurtful than others. No one knows that more than our witness from the Department of Homeland Security, David Wulf. I said last June that his commitment and longevity with the program make him the Cal Ripken of CFATS—and I think others would agree with me.

Last June, we learned that Mr. Wulf not only set many remedial goals to address issues he and the Government Accountability Office found in the CFATS program; under his watch, tremendous progress was made towards correcting those problems, reinvigorating morale, improving communication, and reviving confidence in the CFATS program. I think today's CFATS has earned an extension of its program authority.

That's great, but Congress needs to ensure that the CFATS program is a success because it is a success and not just because of the leadership of one or two people—after Mr. Ripken retired, his team took ten years to recover to a competitive position. Given that stopping terrorism is CFATS's job, we should not assume stability after so much change to correct this program's problems.

This is why I don't believe that CFATS needs to expand its mission. I am concerned by provisions in H.R. 3256 that either provide DHS authority to offer CFATS to unregulated facilities or require study of those facilities exempted from CFATS—facilities exempted because Congress gave them their own anti-terror programs for their unique circumstances.

I am also concerned about the precedent of layering specific requirements onto site security plan approval, no matter how well-meaning, when meeting the Risk Based Performance Standards already accomplishes those requirements.

A third thing that bothers me in the legislation is the redefinition of “risk” for the CFATS program and the directive to deploy that new definition. The existing definition of risk for CFATS—vulnerability, threat, consequence—is based on GAO recommendations and the National Infrastructure Protection Program. One of the biggest problems DHS had to rectify is that the CFATS program used an incomplete definition of risk that discounted vulnerability and placed more facilities into the program and at higher risk categories. DHS spent years undoing this mess, but the legislation acts as if the mistake was correcting the risk formula to make it more consistent.

Most significantly, I am quite concerned that this legislation rolls back essential protection of vulnerability information that would create a road map for terrorists. There are multiple Federal laws that require disclosure of information to the public and first responders for any number of reasons. The difference between this bill and those laws is that CFATS information is NOT focused on pollution or accidents, but how a high-risk chemical is being protected from theft or intentional detonation. First responders and local officials already have access to this information if they have a need to know and are trained in handling it. Making this information public will cause material physical and economic harm to these facilities and their communities.

My misgivings aside, I look forward to receiving language from you, Mr. Chairman, and meaningfully working with my colleagues to a good place where we can all support this bill when it gets marked up.

I want to thank our witnesses for being with us today and I look forward to a meaningful dialogue with them.

With that, I yield back the balance of my time.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Representative Pallone, chairman of the full committee, for 5 minutes for his opening statement.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Chairman Tonko.

Today, on the 18th anniversary of the September 11th terrorist attacks, we are here to discuss important security legislation that could help prevent another attack.

We will never forget 9/11 and its longstanding impacts on families, first responders, and our Nation as a whole. The lessons we

learned in the days and years after 9/11 should inform our efforts to strengthen the Chemical Facility Anti-Terrorism Standards program, otherwise known as CFATS. And this program provides critical national security protections by requiring chemical facilities that are high-risk terrorist targets to assess and address their vulnerabilities.

High-risk chemical facilities hold large stores of industrial chemicals that pose a safety and security risk to the American people if they are released or detonated. A recent report found that more than 134 million Americans live in the vulnerability zones around chemical facilities. That is more than one-third of Americans. And the communities most at risk are disproportionately low-income communities and communities of color.

And, unfortunately, the threats to these facilities are only increasing as climate change makes extreme weather more and more common, and CFATS-regulated facilities have been impacted by hurricanes, floods, and wildfires, putting us all at risk.

So I have been an advocate for increased safety and security at our Nation's chemical facilities for many years, well before the CFATS program was established in 2006. My home State of New Jersey, which has a high population density, also has a large number of chemical facilities, so the consequences of lax security could be devastating there. And that is why New Jersey led the way on chemical plant security, adopting requirements for the assessment of so-called inherently safer technology and adopting mandatory security standards before the Federal program was in place.

Earlier this year, the CFATS program came close to lapsing. Despite the importance of the program and support on both sides of the aisle, the authorization came within ten days of expiring during the Trump government shutdown. A bill in the Senate also sought to seriously weaken the program with changes, including an ill-advised exemption for explosives.

Fortunately, Ranking Member Walden and I were able to work with our colleagues on the Homeland Security Committee to extend the program through April of 2020 without these misguided changes. So now we have the opportunity to strengthen and improve the program, and I look forward to continuing to work in a bipartisan fashion to move the legislation forward again.

It is critical that we get this done. Three major chemical incidents this year—one in Crosby, Texas, another in La Porte, Texas, and a third in south Philadelphia—underscore the need to do more.

H.R. 3256, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019, would extend the authorization for this important program and make some welcome improvements.

The bill would strengthen the role of workers at covered facilities and improve reporting to Congress. It would require the Department of Homeland Security to verify information submitted by a covered facility before using it to lower that facility's risk tier. And it would eliminate the worrisome Expedited Approval Program.

So I look forward to hearing from the stakeholders today about these and other improvements that can be made to the program. And I hope we can continue to work together to ensure the security of these facilities and protect the surrounding communities.

I don't think anyone wants the time, so I will yield back, Mr. Chairman.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Today, on the 18th anniversary of the September 11th terrorist attacks, we are here to discuss important security legislation that could help prevent another attack. We will never forget 9/11, and its longstanding impacts on families, first responders, and our nation as a whole. The lessons we learned in the days and years after 9/11 should inform our efforts to strengthen the Chemical Facility Antiterrorism Standards program, otherwise known as CFATS. This program provides critical national security protections by requiring chemical facilities that are high risk terrorist targets to assess and address their vulnerabilities.

High risk chemical facilities hold large stores of industrial chemicals that pose a safety and security risk to the American people if they are released or detonated. A recent report found that more than 134 million Americans live in the vulnerability zones around chemical facilities—that's more than one-third of Americans. The communities most at risk are disproportionately low-income communities and communities of color.

And, unfortunately, the threats to these facilities are only increasing as climate change makes extreme weather more and more common. CFATS regulated facilities have been impacted by hurricanes, floods, and wildfires, putting us all at risk.

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Earlier this year, the CFATS program came close to lapsing. Despite the importance of the program and support on both sides of the aisle, the authorization came within ten days of expiring during Trump's government shutdown.

A bill in the Senate also sought to seriously weaken the program, with changes including an ill-advised exemption for explosives. Fortunately, Ranking Member Walden and I were able to work with our colleagues on the Homeland Security Committee to extend the program through April of 2020 without these misguided changes.

Now, we have the opportunity to strengthen and improve the program, and I look forward to continuing to work in a bipartisan fashion to move legislation forward again. It's critical that we get this done. And three major chemical incidents this year—one in Crosby, Texas, another in LaPorte, Texas and a third in South Philadelphia, Pennsylvania—underscore the need to do more.

H.R. 3256, the "Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019" would extend the authorization for this important program and make some welcome improvements. The bill would strengthen the role of workers at covered facilities and improve reporting to Congress. It would require the Department of Homeland Security to verify information submitted by a covered facility before using it to lower that facilities risk tier. And it would eliminate the worrisome Expedited Approval Program.

I look forward to hearing from the stakeholders today about these and other improvements that can be made in the program. I hope we can continue to work together to ensure the security of these facilities and protect the surrounding communities.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Representative Walden, the ranking member of the full committee, for 5 minutes for his opening statement.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. Good morning, Mr. Chairman, and thank you for holding this really important hearing and your dedication to this issue.

And I want to thank my colleague, the chairman of the full committee, for the work we did last Congress and the work that we are going to do in a bipartisan way this Congress. So thank you for that.

On this day of 9/11, we should also remember our freedom is never free and never can be taken for granted. And that is kind of—that event led us to this bill.

I remember being at a table much like this one—it was older and scratched up, because they have remodeled the building, but—after 9/11 when we had one of those discussions. And I remember we were talking about community right to know and how everything was posted on Web sites about where all the worst things were so your first responders would know, and then we realized that was a roadmap for the terrorists. And everything changed on that day and the way we approach these issues and how to protect and secure. And I will never forget some of those discussions about how things have changed.

So we know CFATS was then created after that terrorist attack on 9/11. And at that time, Congress examined Federal authority to address theft and diversion and terrorism at chemical facilities and found the existing accident prevention and process safety laws were insufficient and inappropriate to tackle these concerns.

Congress decided a separate and distinct body of law and requirements were needed to secure these facilities and that, leaving the Clean Air Act to address general safety and accident concerns that might affect air quality, Congress used CFATS to fill the legal gaps for addressing those intentional acts that compromise the security of this critical infrastructure sector.

So CFATS was not intended to be your garden-variety regulatory program. CFATS not only covers huge chemical and petrochemical complexes but also racetracks and, importantly in our region, with my friend from Washington, wineries and breweries, universities and colleges, and hospitals and other healthcare providers.

Due to the scope of the program and the fact that each facility faces different security challenges and to avoid overlapping with other Federal programs, CFATS was designed to foster collaboration between the government and the regulated parties. And this collaboration and compliance leads to facilities that are actually more secure. So it is a partnership.

I mentioned at the start of our hearing last fall that the CFATS program had to overcome some tough years. Our subcommittee received testimony that day from the Government Accountability Office and other stakeholders that the Department spent four years correcting the program, including updating its application of the Department risk criteria, the decisions under CFATS.

CFATS must provide value to taxpayers, the Federal Government, and the facilities that could fall victim to intentional attacks. And to do that, I believe the program improvements must be sustainable and they must be reliable. For this reason, I am skeptical

of making major changes to the program that would either dilute or divert the Department from its statutory mission or replicate authorities that other Federal agencies have been given by Congress.

Mr. Chairman, I know we are here to discuss legislation that keeps CFATS authority from expiring this coming April, and we should not have this anti-terrorism program expire, period. I understand the Homeland Security Committee marked up this bill 12 weeks ago, and it passed on a straight party-line vote with no Republicans supporting it, but I also understand they have not formally reported their bill.

Our committee has been overseeing this program since its inception, and today continues the Energy and Commerce Committee's work. So I look forward to working with you, Mr. Chairman, and the full committee chairman to see where we can strike a bipartisan agreement that works for the country.

So I want to welcome our witnesses for being here today and thank you all for sharing your views.

And with that, Mr. Chairman, I will yield back the balance of my time. And as a disclaimer, we have a second subcommittee hearing going on simultaneously, so I must depart for that one. But thank you for holding this hearing. We look forward to working with you in good faith.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Good morning, Mr. Chairman, and thank you for holding today's hearing.

On this day that reminds us that our freedom should never be taken for granted and that we should never forget the sacrifices made or those that are necessary to keep us safe, I appreciate that you have focused the subcommittee's attention on legislation to maintain the authority of the Chemical Facility Anti-Terrorism Standards program—or CFATS.

This program was created after the terrorist attacks of September 11, 2001. At that time, Congress examined federal authority to address theft, diversion, and terrorism at chemical facilities and found that the existing accident prevention and process safety laws were insufficient and inappropriate to tackle these concerns. Congress decided a separate and distinct body of law and requirements were needed to secure these facilities. Leaving the Clean Air Act to address general safety and accident concerns that might affect air quality, Congress used CFATS to fill the legal gaps for addressing those intentional acts that compromise the security of this critical infrastructure sector.

CFATS was not intended to be your garden variety regulatory program. CFATS not only covers huge chemical and petrochemical complexes, but also racetracks, wineries and breweries, universities and colleges, and hospitals, and other healthcare providers. Due to the scope of the program and the fact that each facility faces different security challenges, and to avoid overlapping with other federal programs, CFATS was designed to foster collaboration between the government and the regulated parties. And this collaboration and compliance leads to facilities that are more secure.

I mentioned at the start of our hearing last fall that the CFATS program has had to overcome some tough years. Our subcommittee received testimony that day from the Government Accountability Office and other stakeholders that the Department spent four years correcting the program, including updating its application of Department risk criteria to decisions under CFATS.

CFATS must provide value to taxpayers, the Federal Government, and the facilities that could fall victim to intentional attacks. To do that, I believe program improvements must be sustainable and reliable. For this reason, I am skeptical of making any major changes to the program that would either dilute or divert the Department from its statutory mission, or replicate authorities that other Federal agencies have been given by Congress.

Mr. Chairman, I know we are here to discuss legislation that keeps CFATS authority from expiring this coming April—and we should not have this anti-terrorism

program expire. I understand the Homeland Security Committee marked up this bill 12 weeks ago—that it passed on a straight party line vote with no Republicans supporting it; but I also understand they have not formally reported the bill.

Our committee has been overseeing this program since its inception and today continues Energy and Commerce's work. I look forward to working with you and the full committee chairman to see where we can strike a bipartisan agreement.

I want to welcome our witnesses for being with us today and thank them for sharing their views with us. With that, Mr. Chairman, I yield back the balance of my time.

Mr. TONKO. Well, thank you very much. The gentleman yields back.

The Chair would like to remind Members that, pursuant to committee rules, all Members' written opening statements shall be made part of the record.

Mr. TONKO. I now introduce our sole witness for our first panel, Mr. David Wulf, Acting Deputy Assistant Secretary for Infrastructure Protection at the Department of Homeland Security.

Thank you, Secretary Wulf, for joining us. We appreciate your time and your ideas and thoughts on the legislation.

Before we begin, I would like to explain the lighting system. In front of you are a series of lights. The light will initially be green at the start of your opening statement. The light will turn yellow when you have 1-minute remaining. Please begin to wrap up your testimony at that point. The light will turn red when your time expires.

So, at this time, the Chair will recognize Mr. Wulf for 5 minutes to provide his opening statement.

Secretary Wulf?

STATEMENT OF DAVID WULF

Mr. WULF. Thank you. Thank you so much, Mr. Chairman, Ranking Member Shimkus, and other members of the committee.

I really do appreciate the opportunity to be here today to provide an update on the progress the Chemical Facility Anti-Terrorism Standards program, or CFATS, continues to make in fostering security at America's highest-risk chemical facilities.

So, recognizing that we are here today on September 11th and recalling the devastating terrorist attacks carried out on the state 18 years ago, it is important to note that, as a Nation, we have made much progress in securing America's critical infrastructure.

Of course, we can never let our guard down, however, which is precisely why we come to work every day at the Department of Homeland Security and in our new Cybersecurity and Infrastructure Security Agency focused on securing today and defending tomorrow.

And with respect specifically to the CFATS program, a program that remains squarely focused on securing high-risk facilities and preventing acts of chemical terrorism, the same holds true.

So it is no secret that the CFATS program faced some significant challenges in its early years. In 2012 and 2013, as we were laying the foundation for key improvements, I did come before this committee and I emphasized the importance of long-term authorization for this critical national security program. And I am very grateful for the leadership the committee demonstrated in securing the 4-year CFATS authorization that was signed into law in December

of 2014. And I am grateful, as well, for your role in attaining the 15-month extension of that authorization through April of 2020 that was enacted earlier this year. So I am appreciative that the committee is again working to ensure a continuing long-term authorization of CFATS.

So the stability that was ushered in with long-term authorization has absolutely driven unprecedented progress as our team has worked with the CFATS-covered facilities to make America's high-risk chemical infrastructure a truly hard target. With literally tens of thousands of security measures having been put into place at high-risk chemical facilities across the Nation, these facilities have achieved, on average, a 55-percent increase in their security posture as a direct result of CFATS.

The stability afforded by long-term authorization has facilitated our planning and execution of important programmatic improvements, a few of which I will detail in a moment, while it has also afforded regulated industry stakeholders with the certainty they deserved as they planned for and made capital investments in CFATS-related security measures.

Later today, you will have the opportunity to hear directly from industry and other stakeholders about their experience with CFATS. The gains I have just noted would not have been possible without the commitment and hard work of companies across the Nation that have put CFATS-focused security measures and, in many cases—have put those measures in place and, in many cases, have provided important feedback and ideas that have helped us to improve our processes and our effectiveness.

Many of those stakeholders are here in the room today. I appreciate their presence. And I am looking forward to the perspectives that will be shared by the next panel.

And, of course, I do want to acknowledge our very hardworking CFATS team, 250 folks here in Washington and across the Nation, who have built a truly world-class program and who are laser-focused on securing America's high-risk chemical infrastructure.

So about those programmatic improvements I mentioned, what have we been doing to make CFATS even stronger as we have enjoyed the stability of long-term authorization? We have improved processes, eliminated bottlenecks, and seen unprecedented progress in the pace of inspections and in the review of facility site security plans, eliminating a backlog of security plan reviews six years ahead of earlier GAO projections.

We have developed and launched an improved risk-assessment methodology. We have implemented the CFATS Personnel Surety Program, affording CFATS-covered facilities the ability to ensure that individuals with access to critical assets have been vetted for terrorist ties. And we have dramatically reduced burden across our stakeholder community.

And while the stability afforded by long-term authorization has yielded all of this progress over the past four or five years, we are not done yet, and continued long-term authorization will be absolutely critical to ensuring that we are able to focus on driving even more effective and even more efficient approaches to fostering chemical security.

Now, as we look toward the future, I do think it is important to note that CFATS regulatory coverage is targeted to the Nation's highest-risk chemical facilities, a universe that currently is composed of approximately 3,300 facilities. And while CFATS has contributed to effectively hardening these high-risk facilities against the prospect of terrorist attack, we have actually received top-screen reports, the reports that are filed by companies to initiate the DHS risk-assessment process, from more than 30,000 additional facilities. And while we have determined that these additional facilities do not present a high risk of terrorism, they nonetheless maintain inventories of CFATS chemicals of interest, the very sorts of chemicals that are viewed as attractive by our adversaries and that are used in attacks around the globe.

So, while these facilities are not considered high-risk under CFATS, they aren't no-risk facilities. And it is for this reason that we would very much like to work with this committee and the Congress on a path toward authorizing our chemical security inspectors to work with these facilities, completely at the option of the individual facility, on a voluntary, nonregulatory basis.

And this is a point that is important to emphasize. We would like our inspectors to be able to share their expertise with these facilities, to provide assistance, and to offer consultation on security measures, not to extend CFATS regulation to these facilities. In our view, this is an important next step to build upon the culture of chemical security that CFATS has fostered.

Now, as we are all too aware, the threat of chemical terrorism remains a real and a very relevant one. Around the globe, our adversaries continue to seek, acquire, and use in attacks chemicals of the sort that trigger coverage under CFATS, and the threat stream continues to reflect that chemical facilities themselves remain an attractive target for terrorists.

I can tell you with certainty that the work we are doing as an extended chemical security community is making a real difference in protecting our Nation. And having had the opportunity to work with my counterparts in other nations, I can tell you that what we are doing here in the United States through CFATS, the culture of chemical security you have helped us to build with your support for long-term CFATS authorization is absolutely the envy of the world.

With its targeted focus on the highest-risk facilities, with its 18 comprehensive risk-based performance standards addressing physical, cyber, and insider threats, and with its nonprescriptive, flexible approach to regulation, CFATS is well-suited to enhancing security across the very diverse landscape of high-risk chemical facilities.

So I would like to again thank this committee and your topnotch staff for your leadership on CFATS authorization, for your patience with my extended statement as well. We are fond of saying that chemical security is a shared commitment. And not unlike the role of our industry and other stakeholders and the role of our very talented DHS team, the role of Congress in shaping and authorizing CFATS for the long term has been hugely important. And looking forward very much to working further with you as we drive toward a truly long-term reauthorization.

So thank you so much. I look forward to the dialogue here today.

[THE PREPARED STATEMENT OF MR. WULF FOLLOWS:]

PREPARED STATEMENT OF DAVID WULF



Testimony

David Wulf

Associate Director for Chemical Security
Cybersecurity and Infrastructure Security Agency
U.S. Department of Homeland Security

FOR A ROUNDTABLE ON

"The Chemical Facility Anti-Terrorism Standards Program"

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON THE ENVIRONMENT AND CLIMATE CHANGE

September 11, 2019

Introduction

Chairman Tonko, Ranking Member Shimkus, and members of the Committee,

I appreciate the opportunity to appear before you today to discuss the development and maturation of the U.S. Department of Homeland Security's (DHS) regulation of high-risk chemical facilities under the Chemical Facility Anti-Terrorism Standards (CFATS) Program.

Chemicals are vital to our daily lives and our economy. We use them to develop medicines that maintain our health, to fertilize our crops, to provide refrigeration for our food supply, to refine fuel for our vehicles, and to build the microchips that run our smartphones. Despite these benefits, chemicals do not come without risk. Terrorists continue to seek out, acquire, and use chemicals in devastating attacks and our adversaries around the world continue to target facilities that store or produce chemicals.

We have worked hard to strengthen our homeland security in the aftermath of Oklahoma City in 1995 and the September 11, 2001 attacks. However, the reality is that we continue to live in a dynamic, changing threat environment. While an attacker would have to physically drive a truck bomb up to a building 20 years ago, today, that attacker might target a chemical facility's operating systems making toxic chemicals vulnerable or employ an unmanned aircraft system to carry out an attack from the comfort and security of a remote location. The consequences of an airborne chemical attack on a crowded location would be devastating and ensuring that doesn't happen is one of the reasons that I sit before you today. We must remain diligent in our mission to help protect the American people from chemical attacks.

Benefits of the CFATS Program

Simply, CFATS has made our Nation more secure. Since its creation, and greatly aided by long-term authorization, we have engaged with public- and private-sector stakeholders to identify chemical facilities that present the highest risk in case of terrorist attack or exploitation and to ensure that these facilities have security measures in place to reduce the risks of these hazardous chemicals. CFATS, as a non-prescriptive, flexible, program is well-suited to reduce the risk of a chemical terrorist attack.

DHS works with facilities to identify security measures tailored to the individual site's unique circumstances. Our Chemical Security Inspector cadre works with facilities to discuss options for complying with the program's 18 risk-based performance standards and also to ensure they take credit for existing measures and business practices, thus minimizing any unnecessary expenses. As a result, the level of security across the chemical industry has significantly increased, not only making a successful attack on a chemical facility more difficult, but also serving as a significant deterrent to adversaries who might seek to exploit chemicals for nefarious purposes.

In 2006, Congress recognized the threat of attacks using chemicals to injure and cause mass casualties. Recognizing that security gaps at chemical facilities had left our Nation vulnerable and, with the aim to reduce the risk of a chemical attack against Americans, Congress took decisive action to establish the CFATS regulatory compliance program.

In December 2014, Congress passed the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014* (CFATS Act of 2014). This statute, which enjoyed strong

bipartisan and stakeholder support, brought stability for both the Department and the regulated community and provided stakeholders with confidence in the program's future.

Enacting a multiyear CFATS authorization as Congress did in 2014, has facilitated important improvements in the CFATS program, as well as incentivized facilities to engage with the Department on facility security. Facilities unsure of the return on capital investment were assured that security standards established by CFATS would not change and made critical investments to improve security. DHS/CISA would like to look to a long-term policy solution for protecting and security chemical facilities, we look forward to working with Congress and other parts of the Administration to achieve this long-term vision.

The Path Forward for Chemical Security

Since the passage of the CFATS Act of 2014, much has been accomplished and our program continues to make significant forward progress. Through the collective efforts of our dedicated workforce, industry and other stakeholders, and through the support and leadership of Congress, the CFATS program has significantly matured.

Since the passage of the CFATS Act of 2014, the program has realized true results including:

- A dramatic improvement in the pace of inspections, reviews, and approvals;
- Development and deployment of an enhanced risk-tiering methodology that affords a more accurate reflection of a facility's risk;
- Streamlining of the Site Security Plan development process and the stakeholder "user experience," reducing the burden without sacrificing security through the launch of the CSAT 2.0; and

- Enhancing efforts to address insider threat at our nation's high-risk chemical facilities through the implementation of the CFATS Personnel Surety Program (PSP).

Though much progress has been made, both within the CFATS program—and across our extended community of industry stakeholders, we are not finished. The Department recognizes that as the threat environment is constantly evolving, so too must the CFATS Program. We continue to focus on ways to enhance and evolve the CFATS program. We are undertaking a deep dive of the CFATS Program to identify opportunities to improve efficiencies and enhance the security value.

While facets of this deep-dive are still ongoing, many of the program areas were covered by the recent, extensive Government Accountability Office (GAO) audit. Having concurred with GAO's recommendations, DHS has developed and begun reporting a risk reduction metric and has enhanced outreach to local emergency planners.

In addition, CISA continues to engage our workforce and industry stakeholders on ways in which the regulation can continue evolving to meet today's complex risk landscape. Building on the success of the regulatory efforts to enhance chemical security, DHS believes we can work across the chemical security community to foster an even broader culture of chemical security through voluntary efforts.

Recognizing the targeted approach of the CFATS program covers only the highest-risk sites – a fraction of the broader universe of chemical facilities – the Department is considering other opportunities to further assist the chemical facility population at-large to enhance their security through voluntary initiatives.

Conclusion

In view of the continuing threat, chemical security must remain a continuing high-priority for the nation. We cannot allow terrorists to access dangerous chemicals. If we can imagine a scenario, a motivated terrorist can imagine a worse one. From the Middle East to Europe and beyond, we have seen overseas the devastating consequences of chemical terrorism: this cannot be allowed to happen on American soil.

As we work to defend today and secure tomorrow, it is imperative that we continue to directly address the threat of chemical terrorism, and the CFATS Program is an integral part of that effort. I look forward to working with this Committee to chart a path towards long-term reauthorization of this critical national security program, and I thank you for your continuing leadership on this issue. I am happy to take questions.

Mr. TONKO. Thank you, Mr. Wulf. And we recognize the rather quick pace that you set, so we didn't want to stop that flow. So thank you so much, and thank you again for joining us this morning.

We have concluded opening statements from our first panel. We now will move to member questions. Each Member will have 5 minutes to ask questions of our witness. I will start by recognizing myself for 5 minutes.

So, Mr. Wulf, again, thank you for joining us.

Does the administration support a multiyear extension of the CFATS program?

Mr. WULF. We absolutely do.

Mr. TONKO. And I mentioned in my opening statement the importance of going beyond risk management to promote actual risk reduction at these sites.

The American Institute of Chemical Engineers' Center for Chemical Process Safety, which includes technical experts from chemical and oil companies, has produced risk-reduction guidance to promote measures that minimize, substitute, moderate, or simplify hazardous processes.

It seems to me that there is a growing acknowledgment, including by industry, of the importance of and opportunities for risk reduction as an essential component of site security. This might include actions like consolidating chemicals into fewer sites, substituting chemicals for less hazardous alternatives, and reducing the quantity of a chemical held on-site.

Do you believe these are potentially effective measures to reduce risk?

Mr. WULF. I do. And I believe that CFATS has effectively reduced risk. And, in fact, I think one of the success stories out of CFATS is the fact that upwards of 3,000 facilities over the course of the program's history have made risk-based decisions to either reduce their quantities of CFATS chemicals of interest, eliminate those quantities, move to just-in-time delivery, change their processes such that they are no longer considered high-risk. So my belief is that CFATS kind of organically promotes those sorts of risk decisions.

Mr. TONKO. Now, do you believe that additional risk-reduction measures should be given significant consideration by facilities working to meet CFATS obligations?

Mr. WULF. I certainly think it is a good thing for facilities to be considering risk. I think CFATS does provide a very solid framework for doing exactly that across 18 risk-based performance standards that kind of form the core of the program.

Mr. TONKO. OK.

And, right now, these types of risk-reduction measures are a potential option for some facilities, and I believe sites have taken these types of actions to fulfill CFATS requirements. Currently, how does the Department actively encourage facilities to implement risk-reduction measures?

Mr. WULF. So our inspectors, throughout the CFATS process, work directly—as do many of our headquarters expert staff—work directly with facilities as they think through how to address the 18 risk-based performance standards, so standards that cover an array

of different risk-reduction measures—measures designed to deter, detect, delay a terrorist attack; measures focused on cybersecurity; measures focused on insider threat, background checks; measures focused on response and training and exercises.

So we consult. As facilities develop their site security plans, we go back and forth, recognizing, as the ranking member noted, that the CFATS community is a very diverse group, so it is not a one-size-fits-all solution from facility to facility. So we go back and forth, work with facilities as they determine which measures are most appropriate for them, to the point at which they are determined to meet the intent of each of the 18 risk-based performance standards.

Mr. TONKO. Now, you listed an array of potential risk-reduction opportunities. Do you believe any one of those holds the most promise for additional work?

Mr. WULF. Well, I think the beauty, in many ways, of the CFATS framework is that it is nonprescriptive and it is flexible. So I think it really depends on the facility, you know, which area or areas are in need of most focus. And we are able, within the CFATS framework, to work with those facilities to address, you know, which area or areas need that focus on a case-by-case basis.

Mr. TONKO. Thank you.

And while preserving flexibility in the program, can more be done to ensure a facility is implementing or, at the very least, assessing potential risk-reduction measures as part of their site security plans?

Mr. WULF. Well, I think a lot is being done already. And CFATS is very much already focused at those highest-risk facilities on working with the owners and operators and the security professionals on-site at those facilities and in those companies to reduce risk across those 18 risk-based performance standards.

Mr. TONKO. Well, we thank you for your testimony and your appearing before the subcommittee today.

The Chair will now recognize Mr. Shimkus, subcommittee ranking member, for 5 minutes to ask questions.

Mr. SHIMKUS. Thank you, Mr. Chairman.

Again, Mr. Wulf, thanks for being here.

And to my colleagues on the subcommittee, this is really an important issue. It is driven from the terrorist attack. And many of us have in our districts facilities, chemical facilities. So the balance is making sure that they are protected as much as possible.

And I think our concern—and I think we all acknowledge the fact that we want to get as long-term a reauthorization as we can. And I want to thank the chairman and the ranking member for their work in scratching, really, to get whatever it was, 18 months. We have a problem with the Senate on this issue, and I think the due diligence for us doing this right could help us overcome that.

Having said that, we want to continue to appreciate what is working and make sure that we don't, our position would be, put too much on the plate, that we start losing sight of the real goal and objective. And I really plead with my colleagues on the other side to help us find that narrow path so that we can be really united as we address and fight with the Senate for the long-term authorization.

So, as a regulatory program with enforceable requirements, would IST-like requirements—the inherently safer technology debate, which we have had in this committee numerous times—be easy to understand and enforce?

Mr. WULF. I think as a prescriptive regulatory standard, it would not be a simple thing to do.

Mr. SHIMKUS. And I think I raised this question maybe last time or in the numerous times we have been able to meet, and I don't think we have gotten an answer back. How many of the facilities that have gone through this evaluation have just decided to close?

Mr. WULF. I don't know that I have that number, but, you know—

Mr. SHIMKUS. Have been there many?

Mr. WULF. There have been facilities that have closed. I am not certain that was as a direct result of CFATS. In fact, I am pretty certain not as a direct result of CFATS.

Mr. SHIMKUS. OK. I mean—and we will mention it with the other panel. See, cost-benefit analysis, risk, additional costs, current markets—it is really tough to say what causes a sector to decide to close and to move. But that is a balance that we need to continue to address, with focus on safety, but if—I mean, we just want to be careful that we don't drive some good manufacturing in relatively safe areas in rural America out of rural America.

Let me go to ask about your intense effort to realign your risk methodology. How difficult was that to do? And proposals for changes, would that be as difficult to redo?

Mr. WULF. And I appreciate that question. And we did, I think as you know, undertake a very intensive effort to retool our risk-tiering methodology.

So kicked off in the 2013 timeframe with an extensive peer review. We brought together an expert panel composed of experts from across academia, government partner agencies, and industry to take a comprehensive look at our risk-tiering methodology, which at the time was pretty narrowly focused on the potential consequences of a terrorist attack and less so on vulnerabilities and threats.

So, after 18 months or so, that peer-review panel came back with a series of very solid recommendations. And we set about working with a second external tiering review panel, similarly composed across those communities, to bounce ideas off of for building a new and improved risk-tiering methodology that fully accounts for all relevant elements of risk. And that is exactly what we did when we set about retiering the universe of facilities. So, beginning to end, it was about a 5-year process.

Mr. SHIMKUS. Yes. So thanks. Let me make sure I put this in the record, that this relationship with DHS is because we are focused on security, and we want to put that—make sure that is on the table.

And just for my colleagues, the initial roll-out of this program was a little tumultuous and challenging and with the GAO report, and that caused us to really get involved in looking deeply at this. And, again, Mr. Wulf was able to help right the ship, and we thank him for that.

And, with that, Mr. Chairman, I yield back my time.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Representative Peters for 5 minutes.

Mr. PETERS. Thank you, Mr. Chairman.

And thank you, Mr. Wulf, for being here today.

I note there are about 3,400 chemical facilities in the United States; 350 are in California; three are in San Diego. And of the 3,400, 3,321 are high-risk. And so I think that there is a general consensus that this is a program that needs to be reupped. I think that is pretty clear, so that is a big step.

Are you familiar with the particular bill that came out of Homeland Security? Are you familiar with that draft?

Mr. WULF. I am a little bit familiar with it, yes.

Mr. PETERS. Does the administration or do you personally have issues with that bill that you would like to see changed, or are you OK with it, do you think?

Mr. WULF. So I think what we are concerned most about is that we achieve a long-term authorization for the program, as you noted. And that bill would afford us a 5-year period of authorization.

You know, I am happy to discuss individual proposals in the bill here today, but, you know, from our perspective, getting to that long-term authorization is the absolute highest priority.

Mr. PETERS. Yes. And so five years is a good number of years, you think?

Mr. WULF. I feel like maybe a zero is missing.

Mr. PETERS. OK, 0.5.

Mr. WULF. But five is a good start.

Mr. PETERS. OK. Thank you.

Mr. WULF. Five is a good start.

Mr. PETERS. I get it. OK. Well, that is helpful, actually.

Let me just ask you a specific question. On the next panel, one of the people who will be appearing is Mr. John Paul Smith from the United Steelworkers. I want to read you a quote and see if you have an issue with this.

Reauthorization “should include a requirement for CFATS facilities to generate, document, and effectively transmit actionable chemical and process information to first responders, including employees and their union representatives at self-responding facilities. DHS should also be required to generate, distribute, and make publicly available the practices facilities have used to tier out or tier down in the program. This information-sharing is critical to ensure that risks are not just being shifted and so that other facilities can use those lessons across the industry to reduce risks and hazards.”

Do you have an opinion or anything you want to say about that? Is that something you agree with, disagree with, or is not important to the administration?

Mr. WULF. Yes, I think, broadly speaking, with respect to information-sharing, this is a security-focused program, so we need to strike the—continue to strike the correct balance between ensuring that we are able to share information with those who have a need to know that information—so law enforcement, first responders, emergency planners who are charged with protecting our commu-

ilities—and ensuring that we don't provide a roadmap, that we don't—

Mr. PETERS. Right.

Mr. WULF [continuing]. Distribute information so widely that it does become available to those who would seek to do us harm.

You know, that list of folks with whom information should be shared also includes employees with a security background who can contribute to the development of a facility site security plan.

With respect to the sharing of best practices across the universe of chemical facilities, I think that is a good thing. It is, you know, certainly something we can talk some more about and work toward. But best practices that have been put in place by companies under CFATS to improve security, we absolutely want to share those to the greatest extent possible with other chemical facilities.

Mr. PETERS. Great.

And as far as today, you don't have particular objections or suggestions for this draft bill to accommodate those concerns? Or do you?

Mr. WULF. Well, I think we are in a good place, actually, already, as is, with the program with respect to being able to, you know, continue with that appropriate balance between sharing of information and protecting sensitive information from the prying eyes of our adversaries, and already, certainly, have authority to share information across the community of chemical facilities.

Mr. PETERS. Great.

Anything else you would like to tell us about this draft before we hear from the next panel?

Mr. WULF. Fifty years would be—

Mr. PETERS. Fifty years? OK. Awesome.

OK. Thank you very much. I yield back.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Representative McKinley for 5 minutes.

Mr. MCKINLEY. Sorry. I didn't realize that I was going to precede her.

What I would like to know is, firstly, have there been any incidents since this has been put in place, challenges to the system that have been caught as a result of a risk assessment?

Mr. WULF. Terrorist attacks?

Mr. MCKINLEY. Yes, terrorist attacks, yes.

Mr. WULF. No. I mean, I firmly believe that the CFATS program has effectively hardened those 3,300 high-risk facilities as targets. So, no, we have not seen a terrorist attack.

Mr. MCKINLEY. OK.

Secondly, apparently, we have 21 high-risk facilities in West Virginia. Are any of those in tier 1 or tier 2?

Mr. WULF. I would have to get that information back to you, but my initial inclination would be to say yes.

Mr. MCKINLEY. Your—would be what?

Mr. WULF. I believe so, but I will have to confirm that.

Mr. MCKINLEY. That is what I have been given the impression, that we may have some that would fall into that category.

One of the concerns that I share with this is that this area, in northern West Virginia particularly, is embarking on quite a petro-

chemical complex of buildings and industries that is going to be popping up as a result of the shale gas and the location of the cracker facility in Monaca, Pennsylvania, and possibly one in Ohio. So we are seeing there is going to be a quite an influx of businesses that are going to be in the chemical business in northern West Virginia.

I am curious to see the advantage of making a change at this point in how this works if it has been successful to date. That is what I am trying to understand, the value. What do you think is behind having this—other than extending—I would like to see it extended—but making changes to the program. Can you share with us the value in making the changes?

Mr. WULF. You know, I do think that CFATS provides a very solid framework now. It is a flexible framework, so we are able to stay ahead of the continually evolving threat curve.

I do very much appreciate the work that has been done in the Committee on Homeland Security. You know, we see that bill as a very important first step toward long-term reauthorization. But that remains, you know, our key goal, is ensuring that long-term reauthorization.

Mr. MCKINLEY. So you have—and I think I picked up enough from your testimony and some of the responses some of the others have said, that sharing this data, does that put it more at risk, by putting this information out?

Mr. WULF. Sharing sensitive—

Mr. MCKINLEY. Because we all know that—any of us have sat in on enough briefings, we know people are hacking into our systems, they are paying attention to what we are talking about. If we start identifying and sharing information back and forth, that means that information is going to be exposed to the bad actors who are around the world. So help me a little bit understanding the value of why we want to make that change.

Mr. WULF. Yes. So I think we would not like to see much, if any, change on the information-sharing front. We want to retain the flexibility to have that balance, to be able to share information with those who have a need to know, who are charged with protecting our communities, but to ensure that we keep that sensitive information—and that is the reason we have within CFATS a chemical terrorism vulnerability information protection regime—to keep that sensitive information away from the eyes of our adversaries.

Mr. MCKINLEY. But you don't have a problem, necessarily, with the whistleblower aspect of it, strengthening the whistleblower concept?

Mr. WULF. I think we have whistleblower provisions already—

Mr. MCKINLEY. Maybe tightening it up, you know, the concept—

Mr. WULF. I think we are very much, you know, open to opportunities to tighten up the whistleblower language.

Mr. MCKINLEY. So where—

Mr. WULF. And I would say, too—I am sorry—there are other things for which additional tweaks might be helpful: the ability to execute a petition process, to more effectively be able to look at products that might pose less risk and to potentially let them out of the program—

Mr. MCKINLEY. Could you share some of that information with us, as to how we might tweak this, if you think that—other than what you have already testified to?

Mr. WULF. Yes. Absolutely.

Mr. MCKINLEY. If you could get that to our office, I would like to take a look at that.

Mr. WULF. Absolutely.

And, you know, on that front, as well—and I noted in my opening statement the ability to be able to use our chemical security inspectors not only to implement the regulation with respect to those highest-risk facilities—and I think that continuing narrow focus for CFATS is important—but to be able to work on a voluntary basis with those other 30,000 facilities would be helpful to us as well.

Mr. MCKINLEY. Thank you very much. I look forward to getting the list, if you could, of the ones in West Virginia.

I yield back.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Representative Blunt Rochester for 5 minutes.

Ms. BLUNT ROCHESTER. Thank you, Mr. Chairman.

And thank you to all of the witnesses today.

It is such an important day. I had to step out to meet with representatives from our Delaware VFW. And I think all of us can remember where we were on September 11th. I was head of State personnel for the State of Delaware at the time, so there was a lot of concern about what would happen to employees. There was a lot of concern about communities and schools and Dover Air Force Base. And I am reminded of how important the role of Congress is and how important your role is in ensuring that Americans are protected. It means something, and especially today.

And so I have a few questions, just a few.

One, you mentioned getting rid of the backlog for inspections. Can you talk a little bit about that, what you did, how you did it?

Mr. WULF. Yes. So I appreciate that question.

We, at one point, had a very significant backlog of facility site security plan reviews and approvals. GAO projected that it would take us up to nine years to eliminate that backlog. So that was during the early days of the program. We were getting our legs under us. We had some process issues.

We rolled up our sleeves. We have a great team within the program. We retrained our workforce. We eliminated bottlenecks. And we were able to eliminate that backlog nearly six years ahead of those earlier GAO projections.

Ms. BLUNT ROCHESTER. So you had the right amount of resources in terms of dollars. You had the right workforce. You didn't have any challenges there. And do you foresee any as you move forward?

Mr. WULF. Yes, we have a very highly qualified workforce. We have enjoyed and continue to enjoy great support from within the Department.

Ms. BLUNT ROCHESTER. My second set of questions are really just related to, in your testimony, I didn't see much about engagement of local communities. And even, like, relatively minor release of chemicals from tampering could have an effect on communities,

serious ramifications, especially for vulnerable populations or hospitals or senior homes.

Can you describe or detail the work that you at DHS currently do to bring community and stakeholders into the process?

Mr. WULF. Sure. I am glad to, and I appreciate that question as well.

Certainly the reason that CFATS exists is to protect our communities, to protect the American public from the threat of terrorist attack on facilities that might cause a release of a chemical into a surrounding facility or the theft or diversion of a chemical to be deployed in an attack offsite, away from the facility.

And so we absolutely prioritize getting information to those who are charged with protecting those communities, so law enforcement, first responders, emergency planners. We have done extensive outreach with local emergency planning committees to ensure that they are aware of the CFATS program and, again, to share with cleared members of those communities, those who do have that need to know, sensitive information on CFATS facilities.

Ms. BLUNT ROCHESTER. I think that is part of the challenge, is defining need to know and who needs to know. And you talked about the shared commitment, and I know you just referenced many stakeholders. But one of my questions is, how do you balance that, not just the need to know for law enforcement but community advocates?

And could you tell us if you have any plans to increase those in affected communities in the planning process?

Mr. WULF. Yes. So we certainly include within the realm of those who have a need to know emergency planners who plan on behalf of those local jurisdictions for emergencies. And within the CFATS program, within our 18 risk-based performance standards, we have one, RBPS 9, focused on response.

And with respect to release facilities, facilities that pose a threat of release of a chemical into the surrounding community, one of the requirements we place on covered facilities is a requirement to reach out to local communities, to members of the public, to ensure that they have awareness of shelter-in-place protocols and that sort of thing. So I think that is an important way in which we engage the community within CFATS.

Ms. BLUNT ROCHESTER. I am currently working on legislation that will focus on community notification, and so we would love to follow up on this conversation.

You know, we talk about need to know, and I think it is really important to drill down deeper. Some of the testimony that may be coming later references the fact that sometimes communities are confused and things are not clear to them. And so I think, as we move forward, if we can have some dialogue about that.

And I thank you.

And I yield back my time.

Mr. TONKO. The gentlelady yields back.

The Chair now recognizes Representative Johnson for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman.

And, Mr. Wulf, thank you for being here again today to talk about this very important program. You know, it is imperative that we all understand this program and especially understand the im-

pact that the proposed changes in H.R. 3256 will have on CFATS. We can't produce a bill that creates unintended consequences. Nobody wants to do that. So your participation is very much appreciated.

A topic at our last CFATS hearing was improving training for compliance inspections and enforcement. Can you briefly tell us what steps DHS has taken to improve in this area?

Mr. WULF. Sure, and I am glad to. I appreciate the question.

So we very highly prioritize training for our workforce. We continue to operate, you know, a robust training program that includes basic training for all of our new inspectors. It includes advanced training for our inspector cadre on topics such as cybersecurity, on topics such as the Personnel Surety Program.

And, more recently, we have initiated—or we have established a corps of senior inspectors across the country. So these are folks who are in place to provide not only on-the-job training for our inspectors, to serve in sort of a mentorship role, but to focus on building and ensuring that we have a consistent approach as we work with facilities across the country.

And on that front, as well, we have recently established an audit program. So we are internally looking at our own actions, we are auditing our inspections, we are generating best practices to share among and across our inspector corps, and, you know, identifying areas where we may need some improvement.

Mr. JOHNSON. OK. All right.

Does DHS have minimum qualification requirements for inspectors to demonstrate their knowledge and understanding of the facilities they encounter and relevant guidance on enforceable requirements?

Mr. WULF. Absolutely we do. So those inspectors, you know, need to get through the basic and advanced training. There are exams at the end of the training. There are basic requirements to be selected, to become a chemical security inspector.

And, you know, we have, as a result, a very talented workforce. We have folks with vast experience across military, law enforcement, chemical industry—

Mr. JOHNSON. Yes. Let's dig into that a little bit, because we have talked about training, but what types of professional development exists for these auditors and inspectors to stay proficient on industry, you know, new developments and that kind of stuff?

Mr. WULF. So there is that on-the-job training, that sort of internal training. But we ensure that our inspectors are active members of relevant associations and have access to those resources.

So I, earlier this week, was at the annual Global Security Exchange put on by the American Society of Industrial Security. So we have membership for all our inspectors in that organization. They are all part of the local chapters, able to be part of that network and able to be plugged in and to stay on the leading edge of evolving—

Mr. JOHNSON. Are there continuing education requirements or anything like that? Do you require them to go to any kind of seminars in their specific areas of concentration?

Mr. WULF. Yes. We manage that internally. So we—

Mr. JOHNSON. OK.

Mr. WULF [continuing]. Develop training on, for instance, advanced cybersecurity and require that members who have the sort of certification to engage with the more complex cyber cases——

Mr. JOHNSON. OK. All right.

And I know this has been touched on a little bit already. You know, some people argue that greater public sharing of chemical vulnerability information is necessary for communities to be better protected.

And I know you know that CVI is used to protect information developed under CFATS regulations that relate to vulnerabilities of high-risk chemical facilities that possess chemicals of interest for terrorist attacks.

So, Mr. Wulf, is it wise to have CVI publicly available?

Mr. WULF. No, I do not believe it makes good sense from a security perspective to have CVI information, most sensitive information about high-risk chemical facilities available to members of the general public.

Mr. JOHNSON. OK. All right.

Mr. Chairman, I yield back an entire eight seconds.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes the chair of the full committee, Representative Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Chairman Tonko.

The CFATS program is different from other regulatory programs overseen by this subcommittee, and it is different because it is implemented by your department rather than the EPA and because it does not have the same public recognition as landmark environmental laws that protect the public from contaminants in our air, our drinking water, our soil. And while this program is just as important to keeping the public safe, it is far less accessible and transparent to the public than other programs.

And when we reauthorized the program in 2014, the law included a requirement that the Department prepare an outreach implementation plan for stakeholder engagement. You published an outreach plan for fiscal year 2019, so I wanted to ask a few questions about that.

First, how have you engaged workers and their representatives under the outreach plan? And what mechanisms are in place to ensure that employees play a role in the implementation of CFATS?

Mr. WULF. So I appreciate that. We certainly, as we conduct outreach—and we very much prioritize outreach to all of our stakeholder communities. We think awareness of the CFATS program is very important to its success. We include in that outreach, efforts to maintain open lines of communication with labor organizations at the national level. And on a facility-by-facility basis, you know, we require that facilities, as noted in the existing legislation, to the greatest extent practical, engage employees with relevant security-focused expertise in developing their site security plans, and that certainly includes employees of bargaining units with the relevant expertise at those facilities.

So, as our inspectors go out and conduct inspections at those facilities, compliance inspections at those facilities, they are talking to employees; they are talking to members of the relevant bar-

gaining unit about their role in the security plan, about their role in the facility's security—

Mr. PALLONE. And what about community groups and community members around the regulated facilities, does the Department engage them as well?

Mr. WULF. So we do. And we—within CFATS and with respect to facilities that pose a threat of release, as I mentioned a little earlier, we require facilities to do that community outreach to discuss things such as shelter-in-place protocols. And, you know, we are engaged. I have personally participated in community meetings with members of the community who live in areas close to CFATS-covered facilities. And, you know, we strive to be as open and transparent as we possibly can be, recognizing, of course, that this is a security-focused program and we want to strike the right balance between sharing information with those who have that need to know and keeping that information away from those who would do us harm.

Mr. PALLONE. I have got to get to the climate issue, but can I just ask about Native American Tribes, are they involved in developing and implementing CFATS?

Mr. WULF. Yes. Absolutely. And one thing I neglected to mention in my response is that we have very much prioritized outreach to local emergency planning committees, so more than 800 of those committees in the last year and, as well, Tribal emergency response commissions. So absolutely included in that mix and, you know, very important that we get the word out about CFATS to those communities.

Mr. PALLONE. I mean, obviously I want to make sure all stakeholder voices are heard, and I find it—it bothers me when the Department talks about the stakeholders but seems to be referring to the regulated facilities because we do have to hear from the public. So I appreciate what you said.

I just wanted to spend a minute on the serious concerns posed by these facilities because of climate change and increasing extreme weather. Can you tell me how many CFATS facilities approximately are vulnerable to extreme weather events?

Mr. WULF. I think you could argue that, you know, that we are all potentially vulnerable to weather events.

Mr. PALLONE. OK. And when Hurricane Harvey struck Houston, historic flooding impacted chemical facilities across that region. At one facility, the Arkema plant in Crosby, the flooding disabled all the control measures in place to contain their dangerous chemicals because they all depended on backup generators below the water line. Can you tell me how many CFATS facilities approximately have evaluated how their security systems would fare in an extreme weather event and then, I guess, also how many facilities have provisions in their site security plans to ensure that their target chemicals remain secure even in extreme weather?

Mr. WULF. Yes.

Mr. PALLONE. You only got about half a minute.

Mr. WULF. I will take my best shot at it.

Mr. PALLONE. All right.

Mr. WULF. You know, so CFATS, which is focused, I think appropriately, on the security of high-risk chemical facilities, you know,

includes provisions to ensure that security systems are appropriately redundant, that there does exist backup power for, say, closed-circuit TV cameras and other security systems. So I would say that, you know, all of our CFATS-covered facilities have had that discussion and have put in place those sorts of redundancies, that, although put in place for the CFATS antiterrorism, security-focused purpose, have ancillary benefits when there is a weather event.

Mr. PALLONE. All right, thank you.

Mr. WULF. Of course.

Mr. PALLONE. Thank you, Mr. Chairman.

Mr. TONKO. The chairman yields back.

The Chair now recognizes Representative Duncan for 5 minutes.

Mr. DUNCAN. Thank you, Mr. Chairman.

Back in 2014, when the CFATS was authorized by Congress, I sat on the Homeland Security Committee, so I remember the debates back then. Also, sitting here, listening to the conversations this morning, on the 18th anniversary of the 9/11 terrorist attacks on our country, I can't help but think about why the Department of Homeland Security was stood up in the first place, and that was because we had a lot of agencies at the Federal Government working independently, sharing—or not sharing—information, stovepiping of that information, protecting their turf, their fiefdoms, and so we decided to put the security concerns of our Nation into one department, the Department of Homeland Security, to focus on areas that need to be protected and hedged against terrorist attacks of the future. I think protecting our chemical facilities that could be vulnerable to terrorist attacks is important. We talk with a lot of chemical companies in our State about these issues and did back in the early 2011, 2012, 2013, 2014, before CFATS was passed.

Mr. Wulf, I think there is an importance of maintaining a focus on site security. EPA plays a role when there is a chemical spill. OSHA plays a role when there are work-site accidents or sets forth guidelines for the protection of the employees at facilities around the country. That is their role. That is their mission—safety and hazard protection in the workplace and environmental protection if there is a chemical spill or the possibility of a chemical spill, putting guidelines in place to keep railcars or chemical facilities, 55-gallon drums from being subject to spills and contaminating the environment.

The Department of Homeland Security has a mission, and that is to keep me and you, my fellow Americans, safe from terrorist attacks. That is their role. That is why they were stood up. But now you want to bring two more agencies into that role, and I am fearful that we have gotten away from the lessons learned after 9/11. And that is, this stovepiping of information, the failure to share information between agencies because of turf battles. Come on, folks; 18 years ago, we learned these lessons. We are going to talk about climate change with regarding to chemical safety. My gosh, we are talking about keeping us safe from terrorist attacks.

Mr. Wulf, I appreciate you being here, your perspective. From your perspective at DHS, why is it so important to avoid diluting the CFATS program's mission?

Mr. WULF. And I appreciate the question. And, you know, we feel it is important to retain a focus on security. That is our mission at the Department of Homeland Security.

Mr. DUNCAN. You are not trying to protect your turf at Homeland Security, are you?

Mr. WULF. We are not.

Mr. DUNCAN. You are trying to protect Americans?

Mr. WULF. Absolutely right. It is an antiterrorism program. The threat is as real and as relevant as it ever has been. It is as high as it has ever been from a chemical-terrorism perspective. It continues to evolve into, you know, realms such as unmanned aircraft systems, cyber attacks, and insider threat, and beyond, and I feel as though we do need to maintain, within the CFATS program, a laser focus on security. And with CFATS, we are talking about America's highest risk chemical facilities. It is a targeted program, I think appropriately so, and it has been a successful program, so we do not want to take our eye off that ball.

Mr. DUNCAN. I appreciate that. How is further expanding the program into environmental and worker space—safety space deviating from the CFATS mission?

Mr. WULF. So CFATS is a security program. So the 18 risk-based performance standards are focused on securing facilities against terrorist attacks. As I noted a few minutes ago, there are ancillary benefits in the—you know, in terms of reducing risk in weather scenarios, but, you know, our 150 chemical security inspectors are security professionals. They are trained and well equipped to work with facilities to put in place security measures, and that is what our program is here to do. It is a small program, but it is a successful one.

Mr. DUNCAN. Yes, well, I thank you for that. And I just urge us to keep our eye on the ball and understand, again, why the Homeland Security Agency was stood up—to protect us against terrorist attacks, not to protect us against chemical spills, accidents in the workplace, whatever. We have agencies to deal with that. This is about protecting the chemical facilities from terrorist attacks. We are reminded on the 18-year anniversary of 9/11, we ought to keep our eye on the ball to keep America safe. With that, I yield back.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Representative Soto for 5 minutes, please.

Mr. SOTO. Thank you, Mr. Chairman.

Acting Deputy Assistant Director Wulf, how far along are we on securing our chemical facilities since the beginning of 2007 through now?

Mr. WULF. We are well along, and I think in a very good place. As discussed earlier, we eliminated that backlog of site security plan reviews and approvals, and we are very much in sort of steady state for the programs. So the vast majority of inspections we are conducting across the country are the post site security plan approval, compliance inspection variety of inspections, and I will say those inspections are going well. You know, on occasion, issues are noted, but they are typically very quickly resolved. We have tremendous commitment. We have tremendous buy-in across our industry stakeholder community, and I can tell you absolutely, those

high-risk chemical facilities, those 3,300 or so, are hardened against terrorist attack.

Tens of thousands of security measures have been put into place at those facilities, and on average, a CFATS-covered facility has increased security to the tune of 55 percent from the point at which the facility enters into the program to the point at which I sign their site security plan approval, and they enter into that regular cycle of compliance inspection activity.

Mr. SOTO. So, just so we are clear, all major chemical facilities in the Nation now are under this purview and are being maintained and get continual inspections?

Mr. WULF. So CFATS is a targeted program, and I think that is appropriate. We are focused on the highest risk facilities. So about 30,000 facilities across the country have recognized that they have threshold quantities of CFATS chemicals of interest and have submitted what we call a Top-Screen report to initiate the risk-assessment process through which we determine which facilities are at high risk.

So about ten percent of facilities are determined by us to be at high risk of terrorist attack or exploitation. We have put those facilities into risk tiers, tiers 1 through 4, highest of the high risk, to lowest of the high risk but still high risk. And it is with those facilities that we work to develop site security plans and to put them through the regular cycle of compliance inspection activity.

I noted earlier that we have those other 30,000 facilities out there. We would like very much to work with those facilities as well on a voluntary basis, you know, at those facilities' complete option, not on a regulatory basis, not extending the regulatory requirements to those facilities, but being able to lend a helping hand, to consult on potential security measures, to consult regarding potential vulnerabilities. So I think that is an important next step for us, from a chemical security perspective. But we are in a very good place with respect to those high-risk chemical facilities.

Mr. SOTO. In the proposed legislation, subsection F, it requires the Department of Homeland Security to share more information with State and local emergency officials. And, you know, it has been 18 years since the 9/11 terrorist attacks. I have a first responder who was—Vivian Rodriguez, in my own office who was there responding to that. We have a lot of retired NYPD in central Florida. I think that shouldn't surprise anybody. I have heard firsthand that they were told that the air was safe after the attack, and we saw obviously a large loss of life because government agencies said that all first responders were safe during the cleanup. So, with this, with the current law and with the new proposals, Homeland Security and other agencies responsible, should a chemical facility, God forbid, be attacked, they would be working with our local officials to let them know whether the air was safe, let them know whether the water around and under the facilities were safe, so we won't have this happen again. Is that fair to say given the current law and the reforms in this bill?

Mr. WULF. So, you know, my sense is that those are areas within the domain of our friends at EPA.

Mr. SOTO. But Homeland is supposed to be the point on a lot of these things, so you would be working with the EPA. So would this

bill help make sure that our first responders and others would be told if the air wasn't safe to breathe or other aspects, given that you all are there to coordinate when we have a terrorist attack among the agencies?

Mr. WULF. Yes, I would have to take a closer look at the bill. My sense is that it doesn't contain provisions that would do that, with respect to our security-focused antiterrorism program, but I will say that within the CFATS program, we continue to prioritize that outreach, we continue to prioritize sharing of information about CFATS-covered facilities with those community—with those emergency planners, with law enforcement, with first responders who are charged with protecting the public.

Mr. SOTO. Well, obviously, we never want that to happen again, so a big issue, we hope to hear back from you soon on that.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Representative Rodgers for 5 minutes, please.

Mrs. RODGERS. Thank you, Mr. Chairman. I want to thank both the panels for being here today.

Securing our critical infrastructure from terror attacks is vital, and we are especially reminded of that today, on this important anniversary, 9/11. The CFATS program has been instrumental in ensuring chemical facilities at risk of terror attacks are protected. As we consider reauthorization of this crucial program, I am interested in making sure we are particularly focused on ensuring DHS can effectively implement its core mission under this program—protecting our vulnerable chemical infrastructure from acts of terrorism and intentional attacks.

Mr. Wulf, last June, you appeared before us for three hours to discuss DHS' efforts to correct the CFATS program-identified deficiencies. Have any new program deficiencies been discovered, and what are you doing about them?

Mr. WULF. Thank you for the question. So, recently, well, within the last couple of years, GAO conducted a comprehensive review of the CFATS program. It had only a couple of recommendations, noting broadly that the program has been successful, that we have made—had made significant, significant improvements and really were clicking on all cylinders. The couple of recommendations focused on defining metrics for success, how we could measure the effectiveness of the program and the reduction in vulnerability of facilities.

And we took that on and we are able now to measure the extent of improvement in a facility's security posture over the course of the program, and that is that 55 percent average improvement in security at CFATS-covered facilities.

The second finding was focused on outreach to local emergency planning committees, and we undertook to redouble our outreach efforts in those regards, reaching to more than 800 LEPCs across the country, and actually hit within the last year or so local emergency planning committees for all counties that have five or more CFATS-covered facilities, and over the course of the program's history, literally thousands and thousands of outreach engagements with local emergency planning committees.

No other deficiencies have been identified. As noted, we have addressed, confronted head-on areas where we thought improvement was necessary. We retooled that risk-tiering methodology. We eliminated that site security plan review and approval backlog. We are in steady state for the program. We are conducting inspections that are going well.

The facilities covered under our program are really and truly hard targets and owes very much to the hard work not only of our dedicated team, but companies across the country that have embraced the program and that have put in place CFATS-focused security measures.

Mrs. RODGERS. Thank you. So what type of quality control has been established to catch these problems earlier on in the future?

Mr. WULF. One of the things we have done is to put in place an internal audit program. So we are sending some of our own senior personnel along on inspections to audit them and to identify where issue—you know, in the event issues arise, in the event there are things we can be doing better, to address those, and to identify where things are going well, and to ensure that we are able to foster consistency on a national basis across our ten regions so that facilities in California experience a CFATS inspection the same way as facilities in New York. So we have done that. We have put in place a cadre of senior inspectors who are also charged with, on a day-to-day basis, ensuring that we are acting consistently across the country and providing on-the-job training to our inspectors to ensure that the latest and greatest in terms of program guidance, policy guidance, is disseminated and taken in across our workforce.

Mrs. RODGERS. OK. Earlier this year, Congress narrowly avoided having the authority for the entire CFATS program disappear. Previously, the CFATS program had been operating on a 4-year authorization. What is the difference between managing a program with a very short authorization and one with a longer lead time?

Mr. WULF. Thank you. I guess I have done both, and I will say that when we are on a short-term situation—and you could argue that this 15-month extension is sort of that—our team spends a lot more time up here with you all, focusing on getting long-term reauthorization. But, substantively, long-term authorization offers us a stability that is so important for moving the program forward. You know, it is the stability that enables us to make improvements, that has enabled us to do things like enhance the risk-tiering methodology and eliminate that backlog and put in place online systems that reduce burden, among many, many other things. It provides certainty for our industry stakeholders as they think about making capital investments in security. It sends a message to those who might seek to avoid their obligations under CFATS, that the program isn't going anywhere, that it is here to stay, and it is super helpful from a morale standpoint in terms of our ability to recruit and retain the best and the brightest.

Mrs. RODGERS. Super. Thank you. Thank you for your leadership.

Mr. WULF. Of course, and I thank you.

Mr. TONKO. The gentlelady yields back. The Chair now recognizes Representative Ruiz for 5 minutes, please.

Mr. RUIZ. Thank you very much, Mr. Chairman, for holding this hearing on such an important topic.

Mr. Wulf, in your testimony you talked about the rapidly changing threat environment that sensitive chemical facilities are facing. One unique aspect of that changing landscape I would like to touch on is cybersecurity. You see, we think of threats in terms of physical attacks, leakage, thefts, assaults, vandalism, but in the digital age that we live in, bad actors armed with a keyboard can cause extremely high levels of damage or act as an accomplice to those who may be seeking to gain access to harmful chemicals. Can you give me the worst-case scenarios in one of these facilities where a cybersecurity vulnerability manipulation attack, and what can it pose to the facility and to the surrounding communities?

Mr. WULF. Yes. I mean, I suppose that in the worst-case scenario, where a facility has cyber systems that are, you know, pretty fully integrated with its industrial control systems, with its chemical process systems, that a, you know, cyber attacker could work to manipulate those processes potentially causing a release of chemicals. You know, where cyber systems are integrated with business process systems, you know, a cyber attack could seek to divert a shipment of chemicals or something along those lines.

Mr. RUIZ. In the required reporting of vulnerability assessments in site security plans, is cybersecurity specifically a reporting requirement for those facilities?

Mr. WULF. It is. Cybersecurity comprises one of our 18 risk-based performance standards. The CFATS program, I think, was very much out front with respect to cybersecurity. Our risk-based performance standard eight is focused on cyber. Our inspectors engage in discussion during inspections and in the process of working with facilities as they develop their site security plans—

Mr. RUIZ. One of the biggest concerns that we have as a Nation is a lack of cybersecurity experts to fill those spots. There are studies that have shown that we have a cybersecurity shortage in the workforce, and so we are looking into ways that we can help beef that up.

Let me talk to you about another issue that has been mentioned by Ranking Member Pallone in terms of consulting with the surrounding communities. The majority of these locations are around communities, like you said, that are minority or underserved, and there is a quote here from the Environmental Protection Agency that says, catastrophic accidents at chemical facilities, historically about 150 each year, can result in fatalities, serious injuries, evacuations, and other harm to health and human health. We heard earlier that 134,000 people live around those areas. This is particularly concerning to me because this is an environmental-justice issue.

So you mentioned earlier that you consult with surrounding communities. I would like to go a little more specific in that. How do you do it? How do you decide with which community, when, how frequent, and with who do you consult with? Give me an example.

Mr. WULF. Yes. So an example would be any one of the thousands of outreach engagements we have held with—

Mr. RUIZ. What are those outreach engagements? Is it a newspaper article? How do you engage specifically?

Mr. WULF. So it will be plugging into a, you know, in person, to a local emergency planning committee meeting and talking there to——

Mr. RUIZ. Like with who? Because oftentimes in these underresourced communities, rural areas, they don't have the technical assistance. So who exactly are you reaching out to? Are you reaching out to the city mayor? Are you reaching out to the environmental justice community stakeholders? Who exactly and how are you doing it? See, the problem is that we have learned from different examples that the Federal Government oftentimes has a check-the-box kind of attitude, where if they send a letter to somebody that might not have actual connections with the community, they have checked the box and say we have engaged. But we are trying to redefine what meaningful engagement, meaningful consultation is, so that communities actually have a voice and a say and a participation to help you mitigate risks. And, also, if there is a risk, who is responsible for cleaning it up? Is there any provision where the community can go to the chemical facilities and ask for compensation for the environmental or health damage that can result from these leaks, potential leaks?

Mr. WULF. Yes, so I would say there is a lot to unpack there, but we certainly do not pursue a check-the-box approach to outreach engagement with communities and local emergency planning committees in particular. So we send inspectors who work in those communities, who work in those regions to engage personally. And those LEPCs can include not only emergency responders from the community, law enforcement, and other, but members of the public as well, the news media in some instances. So we are out there in person, and we have made that a very high priority.

Mr. RUIZ. At the next panel we have some environmental justice stakeholders, and I am curious to see what they say about that as well. Thank you.

Mr. WULF. Of course.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes Representative Flores for 5 minutes, please.

Mr. FLORES. Thank you, Mr. Chairman.

Chairman Tonko and leader Shimkus, we appreciate you holding this important hearing today.

Mr. Wulf, thank you for appearing again today and welcome back to the committee.

Reauthorizing CFATS is important to me and to my district, which includes the community of West, Texas. Since our last hearing in June of 2018, I am pleased to report that we were able to extend CFATS through April 2020, ensuring that the program does not expire as we work on a long-term solution. And as you have heard earlier, I am among the group that has strong concerns regarding the recent partisan bill that came out of the Homeland Security Committee. That said, I am hopeful that we can still work together to find consensus on a bipartisan bill that can also pass the Senate and be sent to President Trump's desk for signature. I would like to thank all of the witnesses on both panels for providing their perspectives.

Mr. Wulf, questions about the personnel surety or the identity-verification processes against the terrorist screening base have constantly been an issue with CFATS. Now that you have finished with the highest risk, high-risk facilities, or tiers 1 and 2, DHS is now implementing these requests at the tier 3 and tier 4 facilities. How is this new universe of facilities different than the highest risk facilities in terms of sizes and challenges?

Mr. WULF. So I appreciate that question, and I would say the biggest difference is in the size of the population. So tier 1 and 2 facilities with which we have worked over the last three years to implement terrorist-ties vetting, pose about ten percent of our regulated population. But the other 90 percent falls within tiers three and four. So that is about 3,000 additional facilities with which we will be working over the next three years to ensure that—and I think this is important—that they know and have the assurance that those who have access to their facilities, to those high-risk chemical facilities and the critical assets on those facilities, have been vetted for terrorist ties.

Mr. FLORES. OK. As you know, you had to get through the tier 1 and 2 facilities and a backlog build-up. You were able to resolve the backlog with respect to personnel surety verification. How does DHS intend to expand the personnel surety process to the tier 3 and tier 4 facilities without developing another critical backlog?

Mr. WULF. Our plan is to do this incrementally, to do sort of a—to take a phased approach, and to work with between 80 and 85 companies—and 85 facilities on a monthly basis to talk them through their options for complying with the terrorist-ties vetting piece of our personnel surety risk-based performance standard. We have the capability to do this. We have the capacity to do this. We anticipate working through the tier 3 and 4 facilities within the next three years.

Mr. FLORES. Let's assume that the worst case developed, and we hope—all of us hope it doesn't. And I know you will be committed to not having this happen. But let's assume that a big backlog did develop. What accommodations should be made to avoid jeopardizing the entire CFATS program if that backlog develops for the tier 3 and tier 4 facilities?

Mr. WULF. Well, I think that in going in a phased fashion, we will avoid the prospect of a backlog. But if we were to find ourselves with a backlog, we could—we would have the flexibility to ratchet back a little bit, but I am very confident we will not get a backlog in the personnel surety arena. And we are going to work with facilities, you know, those 80 to 85 a month. We are going to be sensitive to the operational needs of facilities, particularly where we have companies that have multiple CFATS-covered facilities. We don't want to hit them all at the same time with these requirements. So we have and expect to continue to work very successfully and cooperatively with the facilities as we move through the personnel surety process.

Mr. FLORES. OK. In an industrial-accident context, the EPA is required to consider worst-case scenarios from a community, health, and welfare perspective. When looking at CFATS for tourism purposes, how does DHS evaluate the communities sur-

rounding high-risk facilities like schools, hospitals, and population density?

Mr. WULF. So we look at the entirety of the surrounding population. We model that based on potential directions of prospective plumes of released chemicals. We evaluate it with respect to daytime and nighttime populations, and that certainly includes those who are found in schools, those folks who are in hospitals.

Mr. FLORES. OK. Thank you for your important feedback, and I yield back the balance of my time.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes the Representative from Michigan, Representative Dingell, for 5 minutes, please.

Mrs. DINGELL. Thank you, Chairman Tonko, and I thank you for having this hearing today.

And, Mr. Wulf, I thank you for your work, because it really is very important, and I do hope we are able to find some bipartisan common ground on this. And it is particularly fitting that we are doing this on 9/11. And I come from Michigan, which actually my district has a number of those chemical facilities or borders on them, and I suspect I am probably one of the only people that—it was 2001, but earlier that year that I had a funeral in Riverview, had the explosion, and we went through an evacuation. So I remember the fear in that community—and it was an accident. I don't even know if you are familiar with it.

So Michigan is one of the States that has got a lot of chemical facilities, and we have been hit hard by the PFAS contamination, so I am going to focus on that today. And I have got questions about the use of these chemicals in what we are doing to notify people in the area, and how quickly are we developing other replacements. I have spent a lot of time on this in the last month during the August recess talking to people, and it is clear when you have high-intensity fires, et cetera, that PFAS right now, foam, is one of the things that can deal with it the most effectively, but are there other things that are available? When the Intercontinental Terminals Company facility caught fire in Deer Park, Texas, in March of this year, PFAS firefighting foams were used to stop the blazes. When the EPA tested the nearby Galveston Bay, they found PFAS contamination at about a thousand times higher than it is currently allowed in drinking water. And while the ITC facility is not a DH facility—it is a maritime transportation security facility—it is emblematic of the larger concerns around chemical facility safety and the use of inter—foam, an emerging contaminant we have been talking about on PFAS. So, Mr. Wulf, I wanted to know what you have done to update your instructions to CFATS participants to limit the use of PFAS foams to fight fires at covered facilities, and are there alternatives, and are we moving fast enough to develop safe and effective alternatives?

Mr. WULF. Yes, so I appreciate that question, and I think certainly a significant concern. You know, I think that is something I am going to have to take back and reach back to you upon.

Mrs. DINGELL. I think that is really important. So, as you are doing this, do you know if you have got a—DHS has a plan to phase out firefighting foams as part of your site security plans?

Mr. WULF. I am going to have to get back to you on that as well.

Mrs. DINGELL. So let me keep asking questions that I—this is just real because I mean, I am living—Michigan has got more contaminated PFAS sites than any State. Quite frankly, I don't think we know whether we have got more than anybody, or we have tested more than any other State. So I suspect we are going to start to see this in a lot of other States. We just know about it.

But when a chemical security inspector enters a facility for compliance, are they looking for or documenting how much PFAS chemicals are at the facility?

Mr. WULF. So those inspectors—and I appreciate the question—are looking across an array of risk-based performance standards and assessing the extent to which a facility is complying with the security measures it has promised to put into place within its site security plan. And those include measures related to incident response. So to the extent specific chemicals are used in that response, they would be looking at that.

Mrs. DINGELL. So, when you get back to me, is there a way to use safer chemicals or chemicals in lower thresholds and limit the need for PFAS firefighting foams? And are you working with the Department of Defense, who has contributed to this, to also develop those foams? I know you got to get back to me. But at the end of your testimony—and I have only got 25 seconds—you say DHS is focused on ways to enhance and evolve the CFATS program. You also say you are taking a deep dive into efficiency and enhancements to CFATS. Does that include PFAS chemicals?

Mr. WULF. You know, it is not something that we have looked at, but—

Mrs. DINGELL. I am out of time, but if you lived in Michigan, and the one that I lived through, the spill closed, but I still have—my down rivers have lots of facilities. So we care, and so does—my whole district does but in different ways. So thank you for the work you do, but this one matters, too. Thank you.

Mr. TONKO. The gentlelady yields back.

The Chair now recognizes Representative Carter for 5 minutes, please.

Mr. CARTER. Thank you, Mr. Chairman.

And thank you, Mr. Wulf, for being here, this is extremely important. We appreciate your participation in this.

I have had the opportunity during our August break, to visit a number of the chemical manufacturers in my district, and I have been very impressed. All of them are cooperative. They get it. They understand. They want to do what is right. What they don't want is just unnecessary changes that aren't really going to increase safety but instead just increase costs. And I noticed during your testimony that one of the things that you said was that, since you started the program, that there has been a dramatic improvement in the pace of inspections and reviews and approval. How has DHS done this? How have you been able to make this work?

Mr. WULF. So, you know, I appreciate that question. We rolled up our sleeves. We looked at areas where we had bottlenecks in processes. We looked at areas where we felt as though we could do more to train our workforce, and we got to work. And I will say that a big part of being able to do that was that we enjoyed, beginning in December of 2014, the stability that came along with long-

term authorization of the program. Before that point, we were sort of going from fiscal year to fiscal year through the appropriations process or, worse, from continuing resolution to continuing resolution. We didn't know whether, in the event of a funding hiatus, a government shutdown, whether the program would cease to exist for a period of time. So that was really no way to operate, but the stability that long-term authorization has afforded has really enabled us to make those key improvements.

Mr. CARTER. It is my understanding that you had a GAO audit and that this led you to make some changes in your efforts, and I was just—and also in risk-reduction metric, as well as enhancing outreach to local emergency planners. How have you done that?

Mr. WULF. So, with respect to the metric, we have dug in and built a methodology through which we can assess the level of security at the beginning of a facility's entrance into the CFATS program, and the level of security increase that it has achieved at the point at which we get to approving the facility site security plan. And on average, facilities have shown a 55-percent increase in security between those two periods.

With respect to outreach, to local emergency planning committees, that has always been a priority of ours. We have redoubled our efforts over the last year or so and have personally engaged upwards of 800 separate, local emergency planning committees that represent the highest concentration counties—of counties with the largest number of CFATS facilities found in them.

Mr. CARTER. Would you describe your relationship working with the businesses as being good? I mean, do you feel like they are co-operating, feel like they are receptive?

Mr. WULF. Yes, I absolutely would. You will hear from a couple of our industry stakeholders on the next panel. Industry, writ large, has embraced this program, has worked with us to help improve the program over the years. We could not—we could not accomplish the chemical security mission without that level of commitment.

Mr. CARTER. OK. In my last minute and a half, I want to ask you specifically about some things related to my district. I represent the entire coast of Georgia, including two major seaports. Tell me what you would do differently, if anything, in the way of safety in the seaports, particularly when they are transferring the chemicals, if they are shipping them or if they are bringing them in, importing them?

Mr. WULF. Yes. So that is a good question, and we work closely with our friends in the U.S. Coast Guard who implement something called the Maritime Transportation Security Administration Program. So facilities that are on the water are regulated, from a security standpoint, by the Coast Guard, but sometimes there are facilities that are co-located. There may be a CFATS-covered facility that is in the midst of a MTSA facility regulated by the Coast Guard. And so we work hand-in-hand with the Coast Guard captain of the port to harmonize our activities in those areas and ensure that everything is covered from a security standpoint.

Mr. CARTER. OK. So it is the Coast Guard's responsibility when it gets to the port. What about the transportation from the port to the end user?

Mr. WULF. So, if it is at a fixed facility, if it is sitting at a chemical distribution facility, for example, that facility will fall under, generally speaking—unless it sits on the water—the CFATS program, and we will work with that facility. Among the risk-based performance standards, among the security measures that will be in place will be measures related to the shipping and receiving of CFATS chemicals of interest. So we will work with those facilities as they put in place those measures. We will inspect against those measures when we go out for compliance inspections.

Mr. CARTER. Absolutely. Thank you very much, and I yield back.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes the Representative from Colorado, Representative DeGette, for 5 minutes, please.

Ms. DEGETTE. Thank you so much, Mr. Chairman, and I am so happy you are having this hearing.

We have had a number of investigative hearings about the risk of chemicals over the years, and so looking at this legislation, it is really important. And I am glad to be here.

Mr. Wulf, I wanted to ask you about some of the facilities that are reporting. The EPA says that my home district—I am like many of the members here; I have an urban district with a lot of facilities that manage hazardous material in Denver. And the EPA says Denver has 27 facilities that are managing enough hazardous material to be required to complete risk-management plans under the Clean Air Act, and it has 21 facilities that manage enough hazardous chemicals to be reporting under the Toxic Release Inventory. But Department of Homeland Security staff told my staff yesterday that only three facilities in my district are deemed high enough risk to be subject to the chemical facility anti-terrorist standards that are the subject of this hearing. So I am wondering if you can tell me what the difference is, why we would have all these facilities that have to have this other reporting, but yet only three that DHS has determined to be at a high enough risk.

Mr. WULF. Yes, no, I appreciate that question. So CFATS is a security-focused program, and it is focused on the highest risk facilities—

Ms. DEGETTE. Right, I know that.

Mr. WULF [continuing]. And our antiterrorism security program, you know, means those facilities that, based on a number of different factors, are at the highest risk of terrorist attack or exploitation. So it may relate to the types and quantities and/or concentrations of the chemicals that may be of more or less interest to potential terrorists, adversaries. It may relate to the location of the facility in relation to populated areas. Those are a variety of the factors.

Ms. DEGETTE. I mean, I know what the standards are, but I guess my question is, do you know—I mean, you may not know specifically about the first congressional district of Colorado. But does your agency review all of these other facilities that have these kinds of chemicals that have to do the reporting to determine whether they do meet that threshold or not?

Mr. WULF. So, yes, the sort of entry point for CFATS is the requirement to file a Top-Screen to initiate that risk-assessment process. So, you know, more than 30,000 facilities have initiated

the process because they have one or more of our CFATS chemicals of interest at or above the threshold quantities or concentrations. And so, you know, we have tiered as being at high risk of terrorist attack or exploitation about ten percent of those facilities. So it is very conceivable that some of those other facilities are among those 30,000 facilities that have—

Ms. DEGETTE. Right. They probably are.

Mr. WULF [continuing]. Have filed Top-Screens.

Ms. DEGETTE. So they have been reviewed by your agency is what you are saying?

Mr. WULF. Yes. We—

Ms. DEGETTE. OK. So—

Mr. WULF. Likely, if they have threshold quantities of CFATS chemicals, it is likely that they have submitted a Top-Screen.

Ms. DEGETTE. So the other thing is the DHS people wouldn't tell us which three facilities were listed. Is there some reason for that?

Mr. WULF. So, you know, certainly we strive to balance, you know, balance things on the information-sharing front, but I think we certainly can make that information available to you, yes.

Ms. DEGETTE. Because what I am looking at is, in the First Congressional District, which, as I say, we have a lot of chemical facilities. You know, you have to balance between secrecy so that terrorists don't find out about it. You know, so I have to—they will find out so the public knows what is in their neighborhood, and that is why I asked the question.

Mr. WULF. Yes, it is a balance.

Ms. DEGETTE. OK. All right. So they will let me know.

Now, is it true that some facilities have minimized the inherent risk of their operations, for example, by reducing the storage of hazardous materials to the point where they are no longer considered high risk?

Mr. WULF. It is true that thousands of facilities over the course of the CFATS program's history have reduced their holdings of CFATS chemicals of interest.

Ms. DEGETTE. And that would be in the public interest, I would think.

Mr. WULF. We view that as a success of the program.

Ms. DEGETTE. OK, great. Thank you.

Thank you very much, Mr. Chairman. I yield back.

Mr. TONKO. The gentlelady yields back.

And we now recognize the Representative from Illinois, Representative Schakowsky, for 5 minutes, please.

Ms. SCHAKOWSKY. Thank you. Thank you so much.

I want to thank the chairman for calling this hearing, and also, Mr. Wulf, I want to thank you for returning to talk to our committee, especially on this day, on 9/11, about these critical programs. I also want to thank you for coming to Illinois last summer to present at DHS chem security talk that was held in Chicago, and at that event, you spoke about the importance of the CFATS program and the importance of taking the program on the road. And so I wanted to just ask you a bit about those sessions. First, are those sessions ongoing? Is DHS continuing to travel the country to bring important information—that is how we viewed it—about the CFATS program to people where they live?

Mr. WULF. Absolutely, we are. And I appreciate the comment on the chemical security talks we held last year, one of those events in Chicago, one in Oakland, as well as one in Philadelphia. This year, we held a larger forum chemical security summit in New Orleans, and it is great to bring the entire extended chemical security community together to share information about CFATS, to discuss sort of hot topics, policy updates, those sorts of things, and certainly best practices for securing chemical facilities. So it absolutely continues to be a priority.

And on less of a big-splash level, we continue to prioritize getting out to local emergency planning committees, getting out to State-level industry associations to spread the word about the program and ensure that companies with facilities that have threshold quantities of CFATS-covered chemicals of interest know that they need to report those to us.

Ms. SCHAKOWSKY. Well, first of all, I wish you fun in New Orleans. I was just there for a conference. Had a ball. Anyway—

Mr. WULF. It is a pretty fun spot.

Ms. SCHAKOWSKY [continuing]. Second—yes—are there any efforts—when you think about stakeholders, are there any efforts to make sure that some of the labor unions are involved in these sessions at all?

Mr. WULF. Yes. We have a good relationship with the labor unions. You know, we certainly reach out across all stakeholder communities, and, you know, we hope that they will be part of sessions such as chemical security talks.

Ms. SCHAKOWSKY. Right. I think it is absolutely essential that these stakeholders have a role in ensuring the security of individual facilities and would like to ask a few questions about the experience of workers. So what requirements are currently in place to ensure that employees have a role in the development of site security plans at covered facilities?

Mr. WULF. I appreciate that question, and I think employees now are very much involved in the development of site security plans. I think specifically—and I think this is appropriate—employees who have security-related expertise or roles in the security process. The current, you know, the current state of play is that there is a requirement that facilities, to the greatest extent practicable, involve employees in the development of site security plans, employees with that relevant security-focused expertise, and that would include employees at facilities that are covered by bargaining units, collective bargaining units.

Ms. SCHAKOWSKY. I think it is so important because it can differ from facility to facility, and the workers really know what is going on. Do you know if, are the workers allowed to pick their own representative when opportunities arise for worker input?

Mr. WULF. I believe the situation is that, you know, the facility security officer determines which employees are best positioned to provide meaningful input to the development of a site security plan.

Ms. SCHAKOWSKY. Now, this is going to sound like a silly question. Do all employees at CFATS facilities know they work at a CFATS facility?

Mr. WULF. So, you know, again, that is kind of where we get to the balanced—striking the appropriate balance between sharing information with those who have a need to know it, and keeping sensitive information from those who might not have a need to know. So, at a CFATS-covered facility, all employees will be part of mandated training and exercise programs so that they are aware of how to deal with security at—

Ms. SCHAKOWSKY. And who to go to, right?

Mr. WULF. Oh, yes.

Ms. SCHAKOWSKY. OK. Great. Thanks. My time is up. I appreciate you very much.

Mr. WULF. Oh, thank you so much.

Mr. TONKO. The gentlelady yields back. Excuse me.

The Chair now recognizes the Representative from New York, Representative Clarke, for 5 minutes, please.

Ms. CLARKE. I thank you, Mr. Chairman, and I thank our Ranking Member Shimkus for convening this important hearing on how we can protect our workers and communities from the risk associated with hazardous chemical facilities. As a Member of Congress who sits on both the Energy and Commerce and Homeland Security Committees, this legislation is particularly important to me. Adding further significance is the fact that today is also the 18th anniversary of one of the most tragic days in our Nation's past, a day that me and my fellow New Yorkers still hold fresh in our memories.

Chemical facilities throughout our Nation, which serve a range of important functions, also pose many unique risks to our communities. It is our duty in Congress to ensure that the proper protections are in place to keep our constituents safe. While a major focus of the CFATS program is to safeguard chemical facilities against acts of terrorism, it is also imperative that we consider the multiple risks that the climate crisis presents to these facilities, their workers, and surrounding communities. Many CFATS facilities are situated in areas that are highly vulnerable to natural disasters. This is especially concerning when you consider the fact that climate change is already increasing the frequency and severity of extreme weather events, including major storms and floods.

Further concerning, although not so surprising, is the fact that low-income communities and communities of color are disproportionately located near these facilities, and, consequently, we are at greater risk of harm from potential disasters. Therefore, as we seek to better safeguard CFATS facilities from all risk, climate and otherwise, it is also important that we recognize this reality and ensure the vulnerable communities who are most impacted by these risks are also present at the table so that they can have a meaningful say in protecting their own futures.

Mr. Wulf, thank you for being here today to offer testimony on this matter. According to the EPA's Toxic Release Inventory, there are currently 408 chemical facilities in and around Brooklyn, New York, that handle toxic chemicals, and you don't need to look too closely into a map—or at a map to realize that many of these facilities are located within or adjacent to high-risk flood areas. So can you please describe some of the major risks that CFATS facilities

and their surrounding communities face due to flooding and severe storms?

Mr. WULF. And I appreciate the question, appreciate the support for the CFATS program. Of course, CFATS is an antiterrorism program, focused on security, but weather events certainly pose a threat to all manner of facilities as well. And though I think it is important that we retain within the CFATS program our laser focus on antiterrorism and on enhancing security at facilities that are at high-risk of terrorist attack or exploitation, the measures that facilities put into place, redundant—you know, redundant systems, emergency power to enhance their security, can have additional benefits in the weather-related realm.

Ms. CLARKE. I think it was the Houston storm that we saw a horrible incident with a chemical facility. Have we learned anything from that event?

Mr. WULF. So, you know, what we—we do engage, in the event of a weather scenario, with our CFATS-covered facilities. We are in frequent, in constant communication with those facilities to assess their status, to talk about whether they have any unmet needs, and I will say that, you know, those facilities are very—certainly very security aware, certainly very risk aware. And actually the recent hurricane scenario, Hurricane Dorian, we were in contact with one of our facilities in Florida that determined to make a risk-informed decision to move a railcar of potentially toxic-release chemicals off of an island and to an inland location.

Ms. CLARKE. Let me ask, do you work with FEMA and EPA to coordinate your programs that deal with chemical facility management? And given the administration's proposed rollbacks to EPA's risk-management program, do you believe that the CFATS program can and should incorporate measures to enable more first responder, community, and worker engagement, that will help the facilities better prepare for and protect against natural disaster threats or chemical incidents?

Mr. WULF. Yes, so I think we continue to prioritize within the CFATS program today that outreach and engagement with the first responder communities, having been in person—not myself—but our team to over 800 local emergency planning committees over the course of the past year. So that certainly continues to be a priority. And, you know, certainly remain in contact and coordination with our counterparts at EPA and FEMA.

Ms. CLARKE. Very well. Thank you very much for your response today.

I yield back, Mr. Chairman.

Mr. TONKO. The gentlelady yields back. That concludes our first panel.

I would like to thank Mr. Wulf for joining us today. Mr. Wulf, I ask that you respond promptly to any questions for the record that you receive from our members following this hearing. At this time, I ask that staff prepare the witness table such that we may begin our second panel shortly.

Mr. TONKO. OK. We will resume with the second panel now to share their thoughts.

We will now hear from four witnesses. We will start with my left, with Mr. John Paul Smith, legislative representative for United Steel Workers.

Thank you for joining us.

Next to him we have Ms. Michelle Roberts, national co-coordinator of the Environmental Justice Health Alliance.

Thank you, Ms. Roberts.

And next to Ms. Roberts, we have Mr. Scott Whelchel, chief security officer and global director of emergency services and security for Dow Chemical Company on behalf of the American Chemistry Council.

Thank you, Mr. Whelchel.

And, finally, Mr. Matthew Fridley, corporate manager of safety, health, and security, Brenntag North America, Inc., on behalf of National Association of Chemical Distributors.

We want to thank our witnesses for joining us today. We look forward to your testimony.

At this time, the Chair will now recognize each witness to present 5 minutes' worth of opening statements.

Before we begin, I would like to explain the lighting system. In front of you is a series of lights. The light will initially be green at the start of your opening statement. The light will turn yellow when you have 1-minute remaining. Please begin to wrap up your testimony at that point. The light will turn red when your time has expired.

So, Mr. Smith, you may start. You have 5 minutes, please.

STATEMENTS OF JOHN PAUL SMITH, LEGISLATIVE REPRESENTATIVE, UNITED STEELWORKERS (USW); MICHELE L. ROBERTS, NATIONAL CO-COORDINATOR, ENVIRONMENTAL JUSTICE HEALTH ALLIANCE (EJHA); SCOTT WHELCHER, CHIEF SECURITY OFFICER AND GLOBAL DIRECTOR OF EMERGENCY SERVICES AND SECURITY, DOW, ON BEHALF OF AMERICAN CHEMISTRY COUNCIL; AND MATTHEW FRIDLEY, CORPORATE MANAGER OF SAFETY, HEALTH, AND SECURITY, BRENNTAG NORTH AMERICA, INC., ON BEHALF OF NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS.

STATEMENT OF JOHN PAUL SMITH

Mr. SMITH. Chairman Tonko, Ranking Member Shimkus, and members of the committee, thank you for the opportunity to testify today. I am here on behalf of the United Steel Workers International Union. Our union is the largest industrial union in North America and represents the majority of unionized workers in the chemistry industry.

Before coming to Washington, I worked in this sector for a little more than ten years and then as a police officer for four, where I received from basic homeland security training.

In the very southern tip of Illinois, near the confluence of the Ohio and Mississippi Rivers, sits a uranium conversion facility where I was fortunate to earn for my family and serve the local union in several capacities, including chairing the Health and Safety Committee.

This facility, currently idled, processes uranium later used in nuclear fuel. The facility housed large quantities of very dangerous chemicals, including hydrofluoric acid, sulfuric acid, liquid hydrogen, and potassium hydroxide. A release at the facility would have obvious catastrophic consequences. Worst-case-scenario models accounted for an affected radius that included several small towns and cities.

The facility is not covered by CFATS because it is regulated in part by the Nuclear Regulatory Commission. But the NRC does not regulate the areas of the plant where the vast majority of these chemicals are stored. Post-9/11, the NRC did issue a site security order and included the chemical storage in the restricted area of the plant, meaning everything inside the fenceline. The security order, however, did not require employee involvement, so the people most familiar working with the chemicals did not participate in the site security plan.

Most of the people I worked with have never heard of CFATS. Our union makes an effort to educate our members, provides training in addition to what they receive from employers, and has an annual health, safety, and environment conference that convenes as we speak.

Even with additional training and education, we have concerns that the CFATS program is widely unknown to our members and even more so to workers at nonorganized facilities that do not have the benefit of the additional resources the union provides.

We have tried to address this issue with the Department, but meaningful progress has not been made. This is one issue that can be addressed by Congress by requiring, as an initial step, a work-site poster at CFATS facilities and additional worker participation.

I know from my experience that every day our members manufacture and handle the most toxic and dangerous chemicals in the world. The knowledge and experience they have of these chemicals are invaluable. We know as much or more than anyone the hazards associated with these substances and the potential for damage to critical infrastructure, along with injury and loss of lives.

It is crucial that the CFATS include language requiring worker involvement in the site security plan and that workers are able to choose the person to best represent them. That representative should participate throughout all phases of security planning, implementation, and inspections.

Our members are tasked with dealing with minor accidental chemical releases, fires, and explosions on a more regular basis than most realize and with large-scale events, like the explosion and fire that happened on June 21st of this year, near HF Unit at the Philadelphia Energy Solutions refinery in south Philadelphia, where their quick, skilled actions saved the community from disaster.

Whether from unintentional incidents or intentional terroristic threats, our members know the security of the facilities they work in is of grave importance. Many of the refineries like PES, where our members work and live, that fall under the jurisdiction of the Marine Transportation Security Act, are exempted from the CFATS program.

We ask for the removal of that exemption and oppose any new exemptions. We are concerned about legislative proposals that exempt large categories of facilities and chemicals, such as explosives and mixtures.

Our union supports stronger language for whistleblower protections with a provision for remedy in the bill reauthorization. Notifying workers that are at a CFATS facility and have whistleblower protection should be a priority. Having a remedy process makes workers more comfortable reporting violations.

The legislation should also encourage facilities to employ industry practices that reduce risk and eliminate hazards. There are facilities that have instituted controls that have inherently reduced risks, and those lessons should be shared for implementation across the industry.

Reducing or eliminating hazards has a far greater effect on protecting workers and communities and target reduction than adding fences, cameras, and guards. It is critical that relevant information be shared with local first responders, local officials, and unions. Workers in the public are important stakeholders in preventing and responding to incidents.

Our union opposes any legislation that takes the industry down a path of self-regulation. Congress has the opportunity to strengthen the security of our country's chemical facilities and make workers in our community safer by closing some of the gaps of the CFATS program and making sure the working people at these facilities have a voice that is heard.

Once again, thank you for the opportunity to testify.
[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF JOHN PAUL SMITH



Testimony

Of

**John Paul Smith
United Steelworkers**

before the

**House Subcommittee on Environment and Climate
Change**

On

Chemical Facility Anti-Terrorism Standards Program

September 11, 2019

Chairman Tonko, Ranking Member Shimkus and members of the committee, thank you for the opportunity to testify today. I am here on behalf of the United Steelworkers International Union (USW). Our union is the largest industrial union in North America, representing approximately 850,000 members across many sectors, including the majority of unionized workers in the chemical industry. Before coming to Washington, I worked in this sector for a little more than ten years and then as a police officer for four years, where I received basic homeland security training.

In the very southern tip of Illinois, near the confluence of the Ohio and Mississippi rivers, sits a uranium conversion facility where I was fortunate to earn for my family and serve the local union in several capacities, including chairing the Health and Safety Committee. This facility, currently idled, processes uranium later used in nuclear fuel. The facility housed large quantities of very dangerous chemicals including hydrofluoric acid, sulfuric acid, liquid hydrogen, and potassium hydroxide. A release or explosion at the facility would have obvious catastrophic consequences. Worst case scenario models accounted for an affected radius from the plant that included several small towns and cities. The facility is not covered by CFATS because it is regulated, in part, by the Nuclear Regulatory Commission, but the NRC does not regulate the areas of the plant where the vast majority of these chemicals are stored. Post 9/11, the NRC did issue a site security order and included the chemical storage in the "restricted area" of the plant, meaning everything inside the fence line. The security order, however, did not require employee involvement so the people most familiar working with the chemicals on site were not involved with the site security plan.

Recently, the U.S. Chemical Safety Board (CSB) issued a new safety digest on the importance of worker participation to prevent chemical incidents. The digest notes that lack of worker participation was a factor in several major chemical incidents investigated by the CSB. In each of the four incidents cited in the study, worker concerns were not addressed properly by management. It cites these lessons learned and makes recommendations related to worker involvement and preventing catastrophic incidents.¹

On top of the lack of employee involvement at my former occupation, the facility would store tank cars of one of the most toxic deadly acids on the planet just outside the fence line on a rail spur, less than 50 yards from a US Highway and less than a mile from people's homes. On any given day on my way to work I would drive past over a half million pounds of liquid anhydrous hydrofluoric acid sitting next to the highway unattended and under secured. CFATS does not cover storage outside a facility's fence line, so companies are able to shift the risks and avoid compliance by storing their chemicals in railcars on small rail yards or tanker trucks on empty lots just outside the facility boundary. We urge Congress to work with the Department of Homeland Security (DHS) to continually review and prevent loopholes or gaps in security.

As Congress considers reauthorization of this program, there are a number of important provisions that should be included in the bill to ensure that workers and communities are protected and treated fairly:

1. **Worker awareness of CFATS:** Most of the people I worked with had never heard of CFATS. Our union makes an effort to educate our members, provides training in

¹ https://www.csb.gov/assets/1/6/worker_safety_digest.pdf

addition to what they receive from employers, and has an annual Health, Safety and Environment conference. Even with additional education and training, we have concerns that the CFATS program is widely unknown to our members and, even more so, to workers at non-organized facilities that do not have the benefit of the additional resources the union provides. Our union and others have tried, since the passage of the 2014 authorization bill, to address this issue with the Department, but meaningful progress has not been made. This is one issue that can be addressed by Congress requiring, as an initial step, a worksite poster at CFATS facilities and additional worker participation.

2. **Worker involvement in CFATS:** I know from my experience that every day our members manufacture, mix, transfer, and store the most toxic and dangerous chemicals in the world. The knowledge and experience they have with these chemicals are invaluable. We know, as much or more than anyone, the hazards associated with the substances we handle and the potential for damage to critical infrastructure along with injury and loss of lives. It is crucial that CFATS include clear language requiring worker involvement in the site security plan, and that workers are able to choose the person to best represent them. That representative should be provided with the facility information necessary to contribute and participate throughout all phases of security planning and implementation and accompany DHS compliance officers during CFATS inspections. Particularly at union facilities, it is important that DHS has a mechanism to ensure that the company is informing and involving the bargaining agent for the employees. While Congress included some

worker participation language in the 2014 authorization bill, our union is not aware of any actual worker participation at facilities in CFATS related processes as a result of the language. We applauded the bipartisan recognition of the importance of workers in 2014, but the implementation of that law has shown that Congress must include stronger worker participation provisions in this reauthorization legislation.

3. **Gaps in jurisdiction:** Our members are tasked with dealing with minor accidental chemical releases, fires, and explosions on a regular basis and with large scale events, like the recent explosion and fire on June 21st of this year near a hydrofluoric acid unit at the Philadelphia Energy Solutions (PES) refinery in South Philadelphia, where their quick, skilled actions saved the community from disaster.² Whether from unintentional incidents or intentional terroristic threats, our members know the security of the facilities they work in is of grave importance. Many of the refineries where our members work, like PES, are located at ports and fall under the jurisdiction of the Marine Transportation Security Act (MTSA) rather than under CFATS. We support and ask for the removal of that exemption. In addition to the MTSA exemption, there are other gaps in jurisdiction including facilities regulated by the US Coast Guard, Department of Defense, and Department of Energy that are excluded from the program. Also excluded are water supply and waste water treatment facilities. Congress must ensure the security of these chemicals and the safety of our workers and communities by closing jurisdictional gaps that leave some areas

² https://www.inquirer.com/news/philadelphia-refinery-fire-explosion-timeline-hero-rescuers-20190629.html?fbclid=IwAR34CaBjyd4voaDudSxZii_378yfqkU1gR9KQSmivr2MQHn0eJTyDphNffs

vulnerable. We are concerned about legislative proposals that would exacerbate these problems by exempting large categories of facilities and chemicals, such as explosives and mixtures.

4. **Strengthened whistleblower protections:** Our union supports stronger language for whistleblower protections. While this was included in the 2014 bill, we have learned over the last five years that the provisions Congress passed must be improved. For example, notifying workers that they are at a CFATS facility and have whistleblower protection should be a priority. Also, the current program does not include remedies for workers, contractors, subcontractors, or others who are retaliated against by the owner/operator. These two provisions are fundamental to ensure that those who need to make a report that will protect national security can do so without fear. While we are open to various policy options, we would support strengthening the program as it exists at DHS or turning over the administration of the whistleblower program to the experts in the whistleblower office at the Occupational Safety and Health Administration (OSHA), which administers over twenty whistleblower statutes across the federal government.
5. **Promotion of effective means to prevent chemical incidents:** The CFATS program can be improved by transitioning emphasis from a framework of chemical management to risk reduction. Reducing or eliminating hazards has a far greater effect on protecting workers and communities than adding fences, cameras, and guards. Some of the industry has recognized the value of risk reduction as DHS reports that thousands of high-risk facilities have chosen to meet their CFATS obligations by

implementing risk-reduction measures that include consolidating hazardous chemicals from multiple sites down to one or two sites, using less concentrated or less hazardous forms or chemicals, and reducing the total quantity of hazardous chemicals stored on site.³ But many facilities have not taken these steps to proactively evaluate and implement safer chemical practices that would reduce risk in the event of an intentional or an accidental release. While I was working at the chemical facility, my employer changed one of the processes from using anhydrous ammonia to the much less hazardous aqueous ammonia. This change ultimately made our community, our lives as workers, and our economic security safer by reducing the risk that a release would cause injury and devastate the infrastructure of the facility. We urge Congress to ensure that the CFATS program encourages risk reduction, not just risk management.

6. **Information sharing and transparency:** For both incident reduction and post incident mitigation, the program needs a better requirement for sharing information. There are cases, like at the facility I worked, where companies rely on local first responders and emergency management to respond to incidents at their facilities. From both my experience working at the plant and as a local first responder, I know first-hand how important it is to have current and necessary information about the chemicals on site, the worst-case scenario, and the emergency response plans for the facility. Any reauthorization should include a requirement for CFATS facilities to generate, document, and effectively transmit actionable chemical and process information to

³ <https://www.dhs.gov/cisa/cfats-monthly-statistics>; <https://www.gao.gov/assets/700/692483.pdf>

first responders, including employees and their union representatives at self-responding facilities. DHS should also be required to generate, distribute, and make publicly available the practices facilities have used to tier out or tier down in the program. This information sharing is critical to ensure that risks are not just being shifted, and so that other facilities can use those lessons across the industry to reduce risks and hazards.

Additionally, we urge Congress to ensure that DHS improves upon its transparency with Congress and stakeholders in the day-to-day implementation of its mandate under CFATS. Congressional oversight and public comments are important checks on the actions of the executive branch. We oppose legislative proposals that would move toward industry self-regulation or limit these checks in other ways.

Congress has the opportunity to strengthen the security of our country's chemical facilities. Closing some of the gaps of the CFATS program will make our communities safer and ensure working people at these facilities have a voice that is heard.

Once again, thank you for the opportunity to testify.

Mr. TONKO. Thank you so much, Mr. Smith.

And next we will hear from Ms. Roberts. You have 5 minutes, please.

STATEMENT OF MICHELE L. ROBERTS

Ms. ROBERTS. Thank you. Dear members—

Thank you very much for having the opportunity to present before you today. It is very important because today I stand for the many communities that many people don't see, those who live in the shadows of these facilities.

My name is Michele Roberts. I am the national co-coordinator of the Environmental Justice Health Alliance for Chemical Policy Reform. EJHA is what we refer ourselves to be. I am equally an environmental scientist.

EJHA is a national collective of grassroots groups throughout the country working to achieve environmental and economic justice.

As recent industrial disasters in Wisconsin, as you heard, Texas, and others, Pennsylvania, illustrate, a major industrial chemical release, fire, or explosion can injure workers, endanger communities, and cause the abrupt closure of important industrial facilities.

While those specific incidents were not terrorism related, they show the serious vulnerability of facilities located in communities around the country. CFATS is a critical program to defend against these incidents. Reauthorizing CFATS represents an important opportunity to strengthen its effectiveness.

The existing statute must be improved in several areas. To name a few examples, it should include water treatment and maritime facilities, include clear protections against cybersecurity threats, and require that the Department of Homeland Security verify statements submitted by facilities that claim to no longer fall within the jurisdiction of CFATS.

In addition to those points, I refer you to a letter that we submitted to the committee from a coalition of health worker, environmental justice, and allied organizations by BlueGreen Alliance on August 23rd, 2019.

More broadly, environmental justice communities like those affiliated with EJHA have issues with the following areas of the current insufficient CFATS program. Frankly, the entire CFATS program is secretive and confusing. Even experienced advocates are sometimes unsure about aspects of CFATS. Because it is impossible to know for sure what facilities are even required to participate in CFATS, it is impossible for community members or advocates to fully understand the level of danger, planning, preparedness, or the lack thereof, et cetera, in their neighborhoods.

The best way to guess that a facility might be a CFATS facility is if it is an RMP, Risk Management Program facility, but that is not a sure thing.

The emergence of new technologies and cybersecurity threats, coupled with this administration's attacks on the other foundational policies and programs that protect workers and communities from catastrophic events at hazardous facilities, means that a really strong and important CFATS bill and program are more important now than ever.

The CFATS program is absolutely critical to protect the financial interests of these facilities, as well as the health and safety of their workers and the surrounding communities, particularly in the light of the total failure of the EPA's Risk Management Program to do so.

Further, we need CFATS program to reduce and eliminate potential terrorists. We need best practices information, and lessons learned should be shared and used to guide the standard setting for other similar facilities. We need CFATS program should account for overburdened communities and vulnerable populations. The CFATS program and site planning decisions absolutely must be more inclusive of and transparent to workers at CFATS facilities.

EJHA strongly supported and advocated for the 2017 modest, most deeply important improvements to the RMP rule. While the improvements didn't go far enough to be fully protective, they added critical elements that EPA is now trying to roll back.

Though not the subject of this particular hearing, we need each of the members of this committee to join us in strongly calling for EPA to fully implement the 2017 improvements of the Risk Management Program and additionally strengthen the CFATS program for those folks who I said languish in the shadows, the ones you don't see, until an explosion occurs. And then, unfortunately, we are seeing traumatized folks, who, by the way, are living in trauma daily not knowing who is actually thinking about them should there be explosion.

Thank you very much. We need a more protective bill for our people and for workers.

Thank you.

[The prepared statement of Ms. Roberts follows:]

PREPARED STATEMENT OF MICHELE L. ROBERTS

Comments of Michele L. Roberts on "Protecting and Securing Chemical Facilities From Terrorist Attacks"

September 11, 2019

Dear Members the of the House Energy & Commerce Committee, Energy and Climate Change Subcommittee,

Subcommittee Chairman Tonko, Chairman Pallone, Ranking Members Shimkus and Walden, members of the Environment & Climate Change Subcommittee, first I want to thank you for holding this hearing today and for the opportunity to testify on this important issue.

My name is Michele Roberts. I am the National Co-Coordinator of the Environmental Justice Health Alliance for Chemical Policy Reform. EJHA for short. EJHA is a national collective of grassroots groups throughout the country working to achieve Environmental and Economic Justice.

As recent industrial disasters in Wisconsin (Husky), Texas (ITC, Exxon, among others) and Pennsylvania (Philadelphia Energy Solutions) illustrate, a major industrial chemical release, fire, or explosion can injure workers, endanger communities and cause the abrupt closure of important industrial facilities.

While those specific incidents were not terrorism-related, they show the serious vulnerability at facilities located in communities around the country. CFATS is a critical program to defend against these incidents. Reauthorizing CFATS represents an important opportunity to strengthen its effectiveness.

The existing statute must be improved in several areas. To name a few specific examples, it should include water treatment and maritime facilities, include clear protections against cybersecurity threats, and require that the Department of Homeland Security verify statements submitted by facilities that claim to no longer fall within the jurisdiction of CFATS.

In addition to those points, I refer you to the letter submitted to the Committee from a Coalition of health, worker, environmental justice and ally organizations by the Blue Green Alliance on August 23, 2019.

More broadly, Environmental Justice communities like those affiliated with EJHA have issues with the following areas of the current insufficient CFATS program:

Frankly, the entire CFATS program is secretive and confusing. Even experienced advocates are sometimes unsure about aspects of CFATS. Because it's impossible to know for sure what facilities are even required to participate in CFATS, it's impossible for community members or advocates to fully understand the level of danger, planning, preparedness (or lack there of) etc.

in their neighborhoods. The best way to guess that a facility might be a CFATS facility is if it is an RMP facility, but that's not a sure thing.

The emergence of new technologies and cybersecurity threats, coupled with this administration's attacks on the other foundational policies and programs that protect workers and communities from catastrophic events at hazardous facilities, means that a really strong and important CFATS bill and program are more important now than ever. **The CFATS program is absolutely critical to protect the financial interests of these facilities, as well as the health and safety of their workers and the surrounding communities, particularly in light of the total failure of the EPA's Risk Management Program to do so.**

EJHA strongly supported and advocated for the 2017 modest but deeply important improvements to the RMP rule. While the improvements didn't go far enough to be fully protective, they added critical elements that EPA is now trying to roll back. Though not the subject of this particularly hearing, we need each of the members of this committee to join us in strongly calling on EPA to fully implement the 2017 improvements to the Risk Management Program.

Further:

- **The CFATS program should focus reducing and eliminating potential terrorist targets** by requiring facilities to take steps to prevent disasters by doing things like minimizing the quantity of dangerous chemicals stored on sight and switching to safer chemicals and processes where feasible. "Risk management" steps like fencing, security guards, et cetera. can also be helpful, but "**risk reduction**" should be the primary objective.
- Where facilities have been able to "tier out" of the program (and their claims are verified by DHS), **best practices, information and lessons learned** about how they were able to do so **should be shared and used to guide the standard-setting for other similar facilities.**
- **The CFATS program should account for overburdened communities** (such as communities with multiple concentrated facilities and/or other environmental and health stressors) **and vulnerable populations** (such as hospitals, daycares, senior citizen homes et cetera). The bill should require that the unique risks facing these communities be incorporated into the CFATS program and used in making tiering and site planning decisions.
- **The CFATS program and site planning decisions absolutely must be more inclusive of and transparent to workers at CFATS facilities.** We support the comments of the United Steelworkers comments on this topic and thank them for their work and commitment to protecting the health and safety of plant workers, who are often also members of Environmental Justice communities.

Thank you again for the opportunity to comment. I am happy to answer any questions you might have and EJHA looks forward to continuing to work with you all to make this program as strong, preventative and protective as it can be.

Sincerely,

Michele L. Roberts
National Co-Coordinator
Environmental Justice Health Alliance for Chemical Policy Reform

Mr. TONKO. You are welcome. Thank you, Ms. Roberts.
And now we will hear from Mr. Whelchel for 5 minutes, please, and welcome.

STATEMENT OF SCOTT WHELCHER

Mr. WHELCHER. Good afternoon, Chairman Tonko, Ranking Member Shimkus, and distinguished members of the committee.

My name is Scott Whelchel. I am chief security officer and global director of emergency services and security for Dow, a material science company headquartered in Midland, Michigan.

In addition to my role at Dow, I am currently vice chair of the Chemical Sector Coordinating Council. Prior to joining Dow, I had the privilege of serving as homeland security and emergency preparedness director for St. Charles Parish, Louisiana, a community with a nuclear power facility and over 20 other industrial sites.

In St. Charles, industry and government work together in an all-hazards and whole community approach to emergency management. While in this role, I was honored to be elected by my peers to serve as president of the Louisiana Emergency Preparedness Association.

I am also a member of the Security Committee of the American Chemistry Council, on whose behalf I am testifying today. And I hope to bring both the private and public sector perspectives to the discussion.

I want to thank you for allowing me to participate in this important hearing, especially on this solemn occasion of 9/11, and I am pleased to provide important input on the CFATS program.

Since its inception, CFATS has made many programmatic improvements. These include improved site security inspectors and inspections, risk-assessment processes, the security plan authorization process, and its collaboration with the regulated community and others.

CFATS inspectors' levels of expertise has vastly improved, and the program demonstrates broad consistency across regions in the application of that expertise.

CFATS has an effective model of centralized management and decentralized execution, which allows for headquarters and the compliance branch to resolve any confusion stemming from the variability and the interpretation of the CFATS performance standards. This consistency has brought trust.

CFATS and the regulated community have not benefited from the uncertainty stemming from short-term reauthorization. Longer authorization periods provide important stability for covered facilities to effectively plan for security investments as well as enabling DHS to more efficiently and effectively manage their program.

Given this, the ACC and its member companies see the value and the need for periodic congressional oversight and would not support permanent reauthorization.

It has been said that failures in security happen at the seams, the seams of people, processes, and policy. Given that, security risk is a function of threat, vulnerability, and consequence, it takes both industry and government and others to work together on each of the factors in this equation.

Therefore, it is imperative that DHS remains as transparent as possible regarding the specific factors driving the risk and resulting risk tier levels at facilities. CFATS should embrace the post-9/11 philosophy of need to know but responsibility to share.

Having spent over 20 years in the intelligence community, I fully understand both sides of this equation and recognize the challenges inherent in sharing information that is sensitive or classified.

In that same spirit, industry must share all relevant information needed for comprehensive emergency planning with local emergency managers and response agencies. Not only is this already addressed in the CFATS risk-based performance standards, it is best covered by safety regulations overseen by the EPA and OSHA.

But even with those drivers, information sharing is only one step in the cycle. It is incumbent not only on industry to share but for emergency management officials to drive integrated planning, coupled with implementation of comprehensive and inclusive exercise and training strategies, to compliment the hazard awareness that comes with that information sharing.

In St. Charles Parish, both government and industry adhered to a set of mutually supporting obligations. As we sit here today, local and State emergency planners and other agencies receive chemical inventory data. This data in many States is available in digital form and can be immediately uploaded by those State and local agencies into CAMEO, or Computer Aided Management of Emergency Operations, to facilitate enhanced emergency planning efforts.

The CFATS program has made our industry, our communities, and our country more secure. CFATS will grow stronger by adopting the improvements outlined in the written testimony provided and through continued engagement of this committee to ensure the CFATS program stays on track.

The long-term security of our Nation is a goal and a commitment that we all share.

On behalf of both the American Chemistry Council and Dow, I appreciate this opportunity to present our views on this important issue. I look forward to your questions.

[The prepared statement of Mr. Whelchel follows:]

PREPARED STATEMENT OF SCOTT WHELCHER

**U.S. House of Representatives, Committee on Energy and Commerce,
Subcommittee on Environment and Climate Change****Hearing Entitled: "Protecting and Securing Chemical Facilities from Terrorist Attacks"****Written Testimony by Scott Whelchel on behalf of the American Chemistry Council****Wednesday, September 11, 2019****10:00 am in the John D. Dingell Room, 2123 Rayburn House Office Building****Introduction**

Scott Whelchel is the Chief Security Officer and Global Director of Emergency Services and Security for Dow, the leading multi-national manufacturer of chemical products. Dow operates 113 manufacturing sites in 31 countries and employs approximately 37,000 people. The Company's portfolio of performance materials, industrial intermediates, and plastics businesses that delivers a broad range of differentiated science-based products and solutions for our customers in high-growth segments, such as packaging, infrastructure, and consumer care.

Scott is also the Vice Chair of the Chemical Sector Coordinating Council and is a distinguished member of the Security Committee of the American Chemistry Council (ACC).

Prior to joining Dow, Scott was the Director for St. Charles Parish Department of Homeland Security and Emergency Preparedness and is Past-President of the Louisiana Emergency Preparedness Association. Scott worked in the U.S. Intelligence Community for over 24 years in both a military and civilian service capacity. During his intelligence career, he served as a Senior Intelligence Officer for the Office of the Director of National Intelligence and Counterintelligence Officer for the Department of Defense in the Federal Civilian Service in Washington, DC.

The business of chemistry is a \$553 billion enterprise; providing more than 540,000 skilled, good-paying American jobs. The average annual salary of a U.S. chemical industry employee is \$86,000, which is 25 percent higher than the average U.S. manufacturing pay. The chemical manufacturing industry is experiencing a renaissance in the United States thanks to the increase in domestic shale gas production. In fact, the ACC has identified more than 330 new capital investment projects worth more than \$200 billion adding tens of thousands of jobs and generating almost \$300 billion dollars in economic activity.

ACC represents a majority of the chemical producers across the United States, including a diverse set of small and medium-sized companies engaged in the business of chemistry. ACC member companies manufacture products that are critical to the everyday health and well-being of our nation and are essential to developing a more sustainable and more competitive economy. For this reason - but primarily due to our responsibility to protect our employees and the communities in which we operate - chemical security is a top priority for Dow and for all ACC member companies.

Responsible Care® Security Code

In 2001, the ACC created the Responsible Care® Security Code, a stringent, mandatory security program for ACC member companies. Since it was established, ACC member companies have invested more than \$23 billion to further enhance their site security, transportation security, and cybersecurity. The Security Code is the gold standard for the industry and serves as a model for regulatory programs around the world.

The Need to Reauthorize CFATS with Program Improvements

ACC supports a long-term reauthorization of the Chemical Facility Anti-Terrorism Standards (CFATS) program. Ensuring that the CFATS program remains in place is a crucial part of establishing a stable regulatory environment, and providing the needed certainty to foster long-term security investments.

Program Improvements

Since 2014, the Department of Homeland Security (DHS) has significantly improved its administration of the CFATS program, which has had a significant impact on enhancing chemical security across the United States. Several factors have led to its recent success, including:

- Improved site security inspectors and inspections;
- Improved risk assessment process;
- Improved Site Security Plan (SSP) authorization process; and
- A commitment to work with the regulated community to improve the program.

While DHS has made considerable strides to enhance the CFATS program, ACC offers the following recommendations to further improve the program.

- Ensure Long-Term Multi-Year Authorization.

Recently, Congress approved a short-term (15 months) extension to the CFATS program, following a previous 4-year authorization period. Longer authorization periods provide important stability for covered facilities to effectively plan for security investments, as well as enabling DHS to efficiently manage the program.

Periodic Congressional oversight of the program is important for assessing the efficacy of the CFATS program in meeting a changing security environment. Therefore, a long-term reauthorization of the CFATS program is necessary to meet these key objectives: oversight, stability and efficiency.

- Assess the value of Terrorist Screening Database (TSDB) vetting at lower risk facilities.

DHS recently began implementing phase one of Risk Based Performance Standard 12(iv), screening individuals for terrorist ties. Phase one was limited to approximately 240 of the highest risk CFATS facilities in Tiers 1 and 2. This process requires CFATS facilities to collect

sensitive personal identifying information (PII) from thousands of employees and contractors and transmit that information over the internet to DHS for vetting against the TSDB.

DHS has begun to significantly expand this requirement to more than 3,000 lower risk facilities, Tiers 3 and 4. This would include the personal information of an additional tens of thousands of employees and contractors. ACC believes that such an expansion is unnecessary and will needlessly create a security risk by exposing thousands of individual records to loss or cyber theft and operational interruptions (false positives, etc.). Further, we believe the benefit with TSDB vetting at lower risk facilities is minimal at best. While we support TSDB vetting at the highest risk Tier 1 and Tier 2 facilities, we strongly recommend that Congress reconsider this requirement for the lower risk, Tier 3 and Tier 4 facilities.

- Improve transparency in DHS CFATS risk determinations.

DHS needs to be more transparent with CFATS facilities regarding the specific factors driving risk at their location. Furthermore, DHS should proactively engage CFATS facilities to reduce risk. Often, covered facilities are not fully aware of the specific threat driving CFATS risk at a specified tier level. It is the site security manager who has the overall responsibility and authority for making critical security risk management decisions at CFATS facilities and the facility security director should be fully informed by DHS of all details related to threat and risk. If needed this can be done in a classified setting.

- Establish a CFATS Recognition Program

DHS should leverage Industry Stewardship Programs, such as ACC's Responsible Care, by establishing a Regulatory Recognition Program under CFATS. By doing so, DHS would recognize responsible operators for going above and beyond mere regulatory compliance and incentivize the creation of new stewardship programs.

Performance data show facilities that participate in well-established stewardship programs outperform their peers and the industry overall. By providing regulatory incentives, DHS can influence improved performance beyond the universe of the CFATS-regulated community and prioritize their efforts where they are most needed.

- Maintain a Security Program Focus

It is also important for the CFATS program to maintain its security focus. The program's continued success will depend upon its ability to help manage security risks. The CFATS program should not stray beyond its primary function of addressing security risks and into areas already addressed by well-established environmental, health and safety regulatory programs administered by other federal and state agencies. Adding additional safety and labor requirements could impair the CFATS program focus on security risk, and will impede its progress towards the goal of protecting critical infrastructure.

- Information Sharing and Coordination

Protecting our people, communities and operations from security risk is never taken lightly. We engage and include all necessary experts and stakeholders to ensure security plans are solid, comprehensive and sustainable. Coordination activities with local emergency planners, first responders and law enforcement are essential to effectively responding during an incident at any facility, especially at those which are designated as high risk.

Reauthorization legislation should not permit the disclosure of site security information to the public, or anyone who does not have a need to know to obtain such information. Facilities must protect sensitive information from individuals that might pose a threat to employees, property or surrounding communities. Sensitive information—such as security system designs, control system schematics, worst case scenario discharge data, Chemical of Interest (COI) records, Chemical-terrorism Vulnerability Information, and tactical response information for emergency personnel—could threaten security if it falls into the wrong hands.

The current regulatory framework strikes the right balance to ensure that those with a need-to-know have the information they need to respond effectively. Risk Based Performance Standard (RBPS) 9 requires CFATS facilities to develop a response plan and coordinate with local response groups. CFATS compliance inspectors will not approve a facility's Site Security Plan (SSP) if this coordination has not happened.

- Cybersecurity

Cybersecurity is an important element of a comprehensive security risk management system. Cyber requirements and needs vary greatly across the chemical sector. The CFATS program includes Risk Based Performance Standard (RBPS) 8, which is a performance standard that addresses the deterrence of cyber sabotage including the prevention of unauthorized on-site or remote access to critical process controls and critical business systems, and other sensitive computerized systems. The level and degree of cyber protections expected at facilities increases in correlation to their level of cyber integration.

For example, at Dow, they are implementing a manufacturing cybersecurity strategy to complement their enterprise strategy. This includes the placement of cybersecurity specialists inside their facilities to provide tailored security to the manufacturing assets needing additional layers of protection.

ACC believes that DHS could do a better job in sharing cyber threat information with CFATS facilities. This type of data would be very helpful for facilities to prioritize their risk evaluation and security planning. DHS inspectors should also be trained in the latest cybersecurity threats, techniques and incidents against chemical operators and handlers so it can be shared with regulated facilities and plans adapted accordingly.

- Voluntary Programs and Outreach

Since its inception, the DHS infrastructure protection program has developed a wealth of valuable tools and voluntary programs which have made a considerable difference in reducing the risk of hazardous chemicals. These tools and outreach activities should be expanded and

made available to the broader chemical community including non CFATS regulated facilities. DHS should embrace a comprehensive strategy to effectuate meaningful chemical risk reduction including regulation, voluntary programs and recognition of industry programs.

Conclusion

The CFATS Program has made our industry, our communities and our country more secure. CFATS will grow stronger by adopting the improvements outlined in this testimony and through the continued engagement of this Committee to ensure the CFATS program stays on track.

The long-term security of our nation is a goal and a commitment that we all share. ACC and its member companies encourage you to provide the much-needed stability to this important security program through a long-term reauthorization, and make the necessary improvements to the program while providing DHS with the appropriate Congressional oversight and guidance.

Mr. TONKO. Thank you, Mr. Whelchel.

And, finally, we will hear from Mr. Fridley. Welcome. And you are recognized for 5 minutes, please.

STATEMENT OF MATTHEW FRIDLEY

Mr. FRIDLEY. Thank you, sir.

Good afternoon, Chairman Tonko, Ranking Member Shimkus, and distinguished members of the committee.

My name is Matthew Fridley, and I am the safety, health, and security manager for Brenntag North America, a chemical distribution company headquartered in Reading, Pennsylvania.

In addition to my role at Brenntag North America, I am currently the chair of the Chemical Sector Coordinating Council. The Coordinating Council has a strong working partnership in both the private and public sectors to develop industry practice and to build culture in safety and security.

I am also the vice chair of the Regulatory Affairs and Security Committee for the National Association of Chemical Distributors, on whose behalf I am testifying today.

I thank you for allowing me to participate in this important hearing today, and I am pleased to provide input on the Chemical Facility Anti-Terrorism Standard.

Brenntag is currently the largest chemical distributor globally and the second largest chemical distributor in the United States. Brenntag North America operates over 180 facilities, employs over 5,100 people.

Brenntag has been an active member of the NACD for over 35 years. We have been participating in NACD's Responsible Distribution Program since its inception in 1991. This comprehensive program addresses environmental, health, safety, and security risks. Member companies are third-party verified to ensure quality and performance.

While security has always been an inherent element of the Responsible Distribution after the 9/11 terrorist attacks, NACD added specific security elements to the program, and the association continues to enhance these requirements.

In 2013, NACD added a specific security code to Responsible Distribution that consolidated many prior requirements and enhanced others. These requirements apply to all NACD members, including those that do not have facilities subject to the CFATS regulation.

NACD and Brenntag support a long-term reauthorization to the CFATS. I believe the CFATS program has made the chemical industry in our Nation much more secure. From the time of the program's establishment in 2007, the industry has invested significant capital in training resources towards enhanced security measures at our facilities.

In fact, Brenntag is one of most regulated companies under CFATS, knows the importance of this program better than most. While these resources did not necessarily assist us in growing business, they were nonetheless important to ensure the security of our company, our employees, and community.

DHS has generally taken a non-adversarial, reasonable approach in implementing the CFATS regulation. DHS has made significant

improvements in the program following the program's 2014 reauthorization.

Changes in leadership of the CFATS program help establish a commitment to work with the regulated chemical industries, including the Chemical Sector Coordinating Council.

Another reason for the success of the CFATS program is the fact that DHS has taken the time to truly understand the diversity of the chemical industry and work with the regulated community on security measures.

The clear objective of the CFATS program is to help facilities be more secure. While not taking a punitive approach, DHS has excelled in outreach in three key ways. They have published numerous fact sheets and lessons learned documents, interacting with facility owners and operators during the Chemical Sector Security Summits and other industry meetings and always making inspectors and headquarter personnel available to walk and talk through issues or questions.

The program's 2014 reauthorization, which for the first time provided CFATS a multiyear reauthorization, further enhanced security efforts by providing regulatory certainty to both industry and DHS.

This stability allowed DHS to increase efficiencies in the program while streamlining the information submission process for regulated facilities.

It is my hope that Congress can pass a long-term reauthorization of the CFATS program. I believe the CFATS is strong and requires minimal change. One priority I can recommend is to require that any changes to the Appendix A Chemicals of Interest List remains subject to rulemaking.

Changes to the COI List could have a major impact on my business operation and security investments. Changes may be needed upon discovery of a new threat information, but it is important for regulated communities like mine to be able to provide information to DHS and explain the impacts on any proposed changes.

I also support the creation of a program where DHS would recognize companies that meet certain criteria, such as participation in a program like Responsible Distribution. By acknowledging responsible distributors, DHS would then be able to prioritize resources for the noncompliant outliers that may pose a greater security risk.

CFATS is recognized globally as a model chemical security framework worldwide, and DHS frequently responds to requests to work with other governments as they seek to build cultures on chemical security similar to the United States.

As the only Federal program focused solely on facility site security with COIs, this must remain as CFATS program's only purpose.

On June 19th, the House Homeland Security Committee approved H.R. 3256, which will now be considered by this committee. While NACD applauds Congress' commitment to reauthorizing the CFATS program, we are concerned that provisions in H. R. 3256 would jeopardize the integrity of the program. Congress must ensure the CFATS reauthorization legislation only strengthens, not weakens, facility site security.

On behalf of the NACD and Brenntag, I appreciate this opportunity to present our views on this important issue, and I look forward to answering your questions.

[The prepared statement of Mr. Fridley follows:]

PREPARED STATEMENT OF MATTHEW FRIDLEY

Statement

of

Matthew Fridley, CHS
Corporate Manager of Safety, Health, and Security
Brenntag North America, Inc.

on behalf of

National Association of Chemical Distributors

before the

U.S. House
Committee on Energy and Commerce
Subcommittee on Environment and Climate Change

on

Protecting and Securing Chemical Facilities from Terrorist
Attacks

Wednesday, September 11, 2019

Good afternoon, Environment and Climate Change Chairman Tonko, Ranking Member Shimkus, and distinguished members of the committee. My name is Matthew Fridley. I am the Safety, Health, and Security Manager for Brenntag North America, Inc., a chemical distribution company headquartered in Reading, Pennsylvania.

In addition to my role at Brenntag North America, Inc., I am currently the chair of the Chemical Sector Coordinating Council (CSCC). The CSCC has a strong history of working in partnership with both private and public sectors to develop industry practices that build a culture of safety and security. I am also the vice chair of the Regulatory Affairs and Security Committee for the National Association of Chemical Distributors (NACD), on whose behalf I am testifying today.

I want to thank you for allowing me to participate in this important roundtable and am pleased to provide input on the Chemical Facility Anti-Terrorism Standards (CFATS) program and H.R. 3256, the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019*.

About Brenntag North America, Inc. and NACD

Brenntag North America, Inc. is part of the Brenntag Group, which entered the chemical distribution business in 1912. Brenntag is currently the largest chemical distributor in the world and the second largest chemical distributor in the United States. Brenntag North America, Inc. operates over 180 facilities in the U.S. with customers in all 50 states. Brenntag North America, Inc. employs more than 5,100 people who manage over 20,000 different products sold to over 30,000 customers.

NACD's nearly 430 member and Affiliate companies represent more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. NACD member companies are vital to the chemical supply chain providing products to over 750,000 diverse companies such as aerospace, agriculture, cosmetics, detergents, electronics, automotive, plastics, paints and coatings, pharmaceuticals, food ingredients, water treatment, and more.

Brenntag has been an active member of NACD for over 35 years. NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution®, the association's third-party-verified environmental, health, safety, and security program. NACD added a specific Security Code, which encompasses many CFATS regulations, to NACD Responsible Distribution that consolidated many prior requirements and enhanced others. These requirements apply to all NACD members, including those that do not have facilities subject to CFATS.

Since NACD adopted security requirements as part of NACD Responsible Distribution, our members have spent nearly \$50,000,000 to enhance site security programs further

Support for Long-Term Reauthorization of CFATS

The chemical industry is responsible for more than a quarter of the U.S. GDP (\$768 billion), supports the production of almost all commercial and household goods, and is essential to economic growth. The chemical industry provides more than 800,000 skilled, good-paying American jobs. The business of chemistry is America's largest exporting sector, supplying an eighth of the world's chemical needs. The total value of U.S. chemical exports exceeds \$174 billion.

Brenntag North America, Inc. and NACD support a long-term reauthorization of CFATS. I believe the CFATS program has made the chemical industry and our nation much more secure. From the time of the program's establishment in 2007, the industry has invested significant capital and training resources towards enhanced or augmented security measures at our facilities.

In fact, Brenntag North America, Inc. — as one of the most regulated Department of Homeland Security (DHS) CFATS companies in the United States — would know the importance of the CFATS program better than most. While these resources did not necessarily assist in growing business, they were nonetheless important to ensure the security of the company, our employees, and the community.

The Need for CFATS in Light of Threat Environment

Evaluating and enhancing our security procedures based on the input of experienced DHS personnel has undoubtedly been beneficial to my company and the chemical distribution industry. However, I believe it is possible the program could be administered with less of an administrative and financial burden on industry.

While it is true that in the program's first few years there were some growing pains, the DHS Infrastructure Security Compliance Division team was able to make substantial improvements to run the CFATS program more efficiently, enhance security, and reduce burden by listening to those in chemical distribution. Many of the objectives of the Risk-Based Performance Standards (RBPS) are already integral to the operations of the chemical industry, including complying with the regulations of other agencies (such as the Drug Enforcement Agency), industry association standards (such as NACD Responsible Distribution), insurance recommendations, and good chemical practices. However, there are still areas in which DHS could improve, such as clarifying the process for what security measures facilities should take based on potential threat increases. The ongoing supply of chemicals and associated services is critical in times of emergency; therefore, simply ceasing operations is not a viable option for businesses during times of higher risk.

Overall Experience with CFATS Process Through DHS

DHS has generally taken a non-adversarial, consultative, and reasonable approach in implementing the CFATS regulations. DHS has made significant improvements to the program following the program's 2014 reauthorization. Changes in the leadership of the CFATS program helped establish a commitment to work with the regulated chemical industry, along with the Chemical Sector Coordinating Council to have a positive impact on chemical security across the United States.

Examples of DHS's improvements include achieving the intent of the RBPS and the preparation of Site Security Plans (SSPs) and Alternate Security Plans (ASPs). That same approach has remained throughout the entirety of the program. While the initial process was burdened with cumbersome, confusing, and inefficient paperwork, this aspect of the program has improved over time. DHS has also greatly improved the Chemical Security Assessment tool, the online portal for submitting Top Screens, Security Vulnerability Assessments, and SSPs and ASPs. However, it should be noted that the process for SSP and ASP revisions and updates remains challenging for distributors. This is something we are willing to continue to work with DHS to resolve.

It has been our experience that DHS staff, in both the field and at headquarters, have generally been knowledgeable, professional, courteous, and willing to provide consultation for facilities that request it. Additionally, DHS staff typically arrange their site visits in advance, unlike many other government agencies.

First Responder Coordination/Information Sharing

As good stewards of the DHS CFATS program, along with the NACD Responsible Distribution program, Brenntag goes above and beyond the regulatory requirements for certain information sharing and outreach with first responders and other local entities.

An example of this coordination is a recent occurrence at one of our highly regulated DHS facilities in the Southeast. After months of preparation with DHS CFATS inspectors, Transportation Security Administration officers, FBI Weapons of Mass Destruction agents, Joint Terrorism Task Force members, and local police and fire department bomb/arson units, we completed a live exercise drill of an unknown package at our facility. The live exercise drill was developed to allow our company to practice emergency response procedures to ensure we knew what we were supposed to do in that situation. Once we simulated the call to the first responders, our employees became spectators, and we allowed the emergency response community to exercise as they needed.

These types of drills are important for both our industry and emergency responders. Without our partnerships that are developed through the CFATS program, drills such as these would not be an easy task to achieve.

Protecting Confidential Information

As important as it is to coordinate and share information with emergency responders, it is equally important to only provide the facilities' sensitive security information on a need-to-know basis.

The current Chemical-terrorism Vulnerability Information process has the correct balance to ensure facilities communicate and share need-to-know information with those agencies to enable them to respond effectively (RBPS 9). During the inspections process, all DHS inspectors verify that the facility has performed its yearly requirement for outreach with local responders and will not approve the facility's SSP if this outreach has not occurred.

NACD members, such as Brenntag, take engagement with local communities seriously and recognize the value in forming strong relationships with those communities. To that end, the chemical distribution industry complies with an array of federal and state laws and regulations requiring communication of certain information about regulated facilities with first responders and other local entities. In addition to information sharing requirements in DHS's CFATS, the chemical distribution industry complies with the following:

1. EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 304: Emergency Notification
2. EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 311: Safety Data Sheets (SDSs)
3. EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 312: Tier I, II
4. EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 313: Toxic Release Inventory (TRI)
5. EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 103: Release Reporting
6. EPA Clean Air Act: Risk Management Program
7. EPA Toxic Substances Control Act (TSCA): Chemical Data Reporting
8. DOT Hazardous Materials Regulations: Emergency Response and Release Reporting
9. OSHA Hazard Communication Standard
10. OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard
11. OSHA Process Safety Management (PSM) Standard

The CFATS-regulated community shares information with a variety of entities under the regulatory and legal regimes listed above. NACD, along with Brenntag, believes these requirements appropriately address public safety and facilitate the proper level of dialogue between regulated-entities and the public. Therefore, we oppose additional information-sharing requirements in CFATS reauthorization legislation.

Recognition for Participation in Industry Program

I support the consideration of incorporating, in whole or in part, verified industry-standard programs, such as NACD Responsible Distribution, into the evaluation of whether a facility has met the intent of the applicable RBPS. NACD members and others who participate in robust industry stewardship programs have made a strong commitment to operate their facilities safely and securely. Recognizing these responsible companies through simple measures like less frequent inspections would allow DHS to prioritize resources to concentrate on the "outliers" or bad actors that don't participate in these programs, and that may pose a greater security risk to themselves or the population at large.

Appendix A Changes

Currently, if DHS proposes changes to Appendix A: Chemicals of Interest, then those changes must be subject to notice and comment. NACD, along with Brenntag, supports the status quo, as well as codifying that DHS be subject to notice-and-comment rulemaking for any proposed changes to Appendix A: Chemicals of Interest in the next reauthorization. A transparent process that encourages stakeholder engagement is key, as changes made to Appendix A that may be perceived as minor could impact a facility's CFATS risk tiering. Should DHS attempt to alter Appendix A, any rulemaking must be based on the level of risk, scientific data, and a cost-benefit analysis.

Simplification of the Change Process

While calls and emails placed to DHS's CFATS helpline regarding changes to SSPs and ASPs are generally acknowledged quickly, responses to these questions can sometimes take considerably longer and may be too ambiguous to be useful. A quicker response rate and clear guidance by DHS personnel in answering inquiries would ensure timely and accurate solutions for regulated companies. Rapid and frequent changes in product offerings, procurement, and inventory are core to the business of many chemical distribution companies. Prompt accommodation regarding DHS documents is needed for new Chemicals of Interest (COI) or newly increased Screening Threshold Quantities for existing COI. In most cases, the existing facility infrastructure and procedures will suffice for meeting the intent of the RBPS.

Maintain Security Focus to Avoid Further Duplicative Regulations with Other Regulatory Agencies

The CFATS program is the only federal program focused on security at facilities with certain chemicals, and this must remain the program's sole purpose. The chemical distribution industry is required to comply with various regulatory programs administered by other agencies (e.g., EPA, OSHA, DOT, etc.) to ensure the safety of the communities in which the chemical distribution facilities serve and are located. Potential expansion of the CFATS program into areas regulated by other agencies, including EPA, OSHA, and DOT, would result in duplicative, confusing, and contradictory regulatory requirements — thereby eroding the purpose of this program: to secure our nation's high-risk chemical facilities from terrorist exploitation. The DHS CFATS program allows for facilities to leverage other agencies requirements to meet CFATS compliance.

Conclusion

That said, as the threat environment is long-term, so too should be the authorization of the CFATS program. NACD and Brenntag North America support CFATS and look forward to working with the committee on legislation to reauthorize this important security regulation in the coming weeks and months. A multi-year reauthorization of CFATS would provide needed certainty and enhance the security of chemical facilities and our nation. Both industry and DHS need reasonable predictability.

The DHS CFATS program has been looked upon at the international level as a model program for developing security programs within the G7 Global Partnership Against the Spread of Weapons and Materials of Mass Destruction and Global Congress. The Global Congress assembles a community of over 30 countries committed to countering chemical and explosives terrorism by bad actors and their access to chemical agents. CFATS is recognized globally as a model chemical-security framework worldwide, and DHS frequently responds to requests to work with other governments as they seek to build cultures of chemical security on a par with the security-culture CFATS has cultivated in the United States.

On behalf of both the National Association of Chemical Distributors and Brenntag North America, Inc., I appreciate this opportunity to present our views on this important issue. I look forward to your questions.

Mr. TONKO. Mr. Fridley, thank you. Thank you to our entire panel.

We have now concluded opening statements with our second panel, and we now move to member questions. And I will start by recognizing myself for 5 minutes.

So, Mr. Fridley and Mr. Whelchel, it seems that good work is being done by industry in terms of seeking to reduce risks. And I fully understand that these types of risk reduction measures might not be possible at every site. But, generally, do you think these types of actions to minimize, substitute, moderate, or simplify hazardous processes are worthy of exploring when a facility is considering how to address security at those individual sites?

Mr. FRIDLEY. Well, we are a chemical distribution company, so our inventory and what we have on site is directly affected by our customers. So we are working with some of our customers on explaining this process. We actually have a Know Your Customer program through the Responsible Distribution program that we go out and we work with those customers so they understand that the chemicals that they may be ordering may be subject to CFATS regulation.

In turn, we will work with them to maybe, is there an alternative to their process? If there is, then that would directly affect my inventory so I wouldn't have to carry as much inventory that I would have at my site.

Mr. TONKO. Mr. Whelchel.

Mr. WHELCHER. Yes, sir. I appreciate the question.

And I remember fondly being a part of a chemical—a CFATS reauthorization—excuse me—a CFATS Top-Screen meeting where we were assessing the facility for whether it should be screened in or out of the program.

And it was during the discussion with the CFATS inspector that they put forth the opportunity to visit risk reduction in the way of changing either the inventory or the concentration or other variables within the COI, and it was very welcomed by the business. And the chemistry was changed, and we were able to make those changes to our chemical processes.

We immediately started to replicate that potential to other sites. And I am pleased to say we did so at multiple sites.

Mr. TONKO. Thank you. And do you believe there could be greater guidance or encouragement from the Department to assess these types of risk-reduction measures as part of the broader security plan?

Mr. WHELCHER. I actually believe that the right balance has been struck. So the conversation was initiated initially by CFATS inspectors, but it took our knowledge of chemistry and our ability to look at our processes to carry it the rest of the way.

So I believe the CFATS program is doing the right thing in terms of initiating the action, and then industry then steps in to meet the rest of the way for developing how we do chemical production in a safer way.

Mr. TONKO. OK. Thank you.

Mr. Fridley, you would concur or——

Mr. FRIDLEY. Yes, I would absolutely concur with Scott's answer to that.

And the biggest thing, to his point, it is a shared responsibility. You know, we have responsibility as well to educate our customers. And again, it goes back to your Know Your Customer program, which is a staple in our industry.

Mr. TONKO. Thank you.

Ms. Roberts and Mr. Smith, I want to get your thoughts on this because, to my mind, working to reduce risks from the outset is likely one of the most important ways to provide meaningful protection for workers in frontline communities.

Can you give us some perspective on what it means to reduce risk for the people you are here to represent?

Mr. SMITH. Thank you, Mr. Chairman.

I can give one example, at least the facility I worked at.

They changed one of the processes from using anhydrous ammonia to aqueous ammonia, inherently reducing the risk of release of anhydrous ammonia—I am sorry—completely eliminate it from the facility. So removed that target to a much safer technology and also protected the workers at the site.

Mr. TONKO. Thank you.

And Ms. Roberts?

Ms. ROBERTS. Yes. And just—also, it is important to understand that many of the communities who live fenceline to these facilities are in housing structures that are not conducive to even sheltering in place, if that be the case.

So it is extremely important for—to minimize that, of the reduction of risk to communities by, as you heard, minimizing the amount of chemicals stored, the hazard of the chemical that is stored, if indeed there can be a safer substitution that can be utilized.

In addition to that, I know that, as we say, we are not speaking about the climate crisis, but even that in and of itself impacts all of that. So it is extremely important to look at all of the negative externalities that impact these communities and workers.

Mr. TONKO. Thank you. And what barriers might prevent these types of measures from being implemented? Is there a basis towards risk management over reduction?

Mr. SMITH. From my experience, the biggest barrier for a lot of companies is cost. It can be costly to change a process to make it safer. So I think encouragement from the Department to employ practices at these facilities is helpful.

Mr. TONKO. OK. Ms. Roberts?

Ms. ROBERTS. I do agree with that. And we are equally experiencing that with cost factor and now movement of industries.

We recently learned that there are industries leaving the Gulf Coast because of the high rates of—that are attributed to that of the hurricanes, whether it is insurance or replacement. And so some of these industries are now seeking to move into what we are calling chemical valley in West Virginia and thereby placing additional burden on the communities in West Virginia. And so it is creating quite the conundrum for us at this moment.

Mr. TONKO. I thank you.

The Chair now recognizes Mr. Shimkus, the subcommittee ranking member, for 5 minutes to ask questions, please.

Mr. SHIMKUS. Thank you, Mr. Chairman.

I think we have got some agreement that long-term reauthorization of CFATS is important. Would everybody agree with that?

And we heard the first panel, and then this panel, we still struggle with the difficulty between information available versus security of that information, getting it to the proper—the right people because, in World War II, it was loose lips sink ships, and I think there is that concern. So it is how you balance that for information versus basic security.

And then I think you hear from our side a concern about ensuring that we don't duplicate other agencies who are supposed to be doing their work, whether they are—you know, if the EPA—if there is a concern that the EPA is not doing risk management aspects, then we ought to kick EPA in the rear-end and do risk management, not give to a security agency that responsibility.

But I think we are close. I mean, I actually—these have been good hearings.

Let me go to Mr. Whelchel first. You know, because—in addressing this brief opening statement that I did here on this round of questioning.

We have always had this debate on the personnel surety programs, risk-tiering processes, and that there is a concern that our information is not being shared. I think Mr. Smith kind of recognized that.

Do you believe DHS needs to make changes to improve a regulated facility's awareness of the risk factors?

Mr. WHELCHER. I believe in a couple of areas, there is work to do. So I do believe the CFATS program has struck the right balance in looking at need-to-know and persons that are covered under that need-to-know provision.

Chemical terrorism, vulnerability of information, their CVI is an important component of the program. But to your point on tiering, as an example, what moves a facility from one tier to another once we put the information into CFATS' black box, for lack of a better term? That is still a little bit unknown, right.

Another thing that I think they can do more on information sharing is how do we—whenever we submit our personal identifying information for 12.4, our personnel surety, where does it go, how long does it sit there prior to actually getting bounced off the TSDB, or terrorism screening database? What does that process look like?

That is important for us to know because, if we are going to limit certain actions at the facility as a result of not having those people submitted or not having feedback from the TSDB, then our operations might languish while we are waiting for those processes to have an effect.

And if there is a hit on the TSDB, will we be made aware of that? Will we be the partner at the table to help work through that risk potential?

Mr. SHIMKUS. Great. Thank you.

Mr. Fridley, I am going to lump my two questions together for the sake of time.

You are the head of the Chemical Sector Coordinating Council. Can you kind of briefly explain, what does that mean? And then the followup would be, how do you differentiate between what is

safety and what is security? Because that has been part of our debate today.

Mr. FRIDLEY. Well, first, Congressman Shimkus, I want to take a second and thank you for your 24 years of service to the great people of Illinois. As a constituent that lives in your district, you will be greatly missed.

Mr. SHIMKUS. Thank you.

Mr. FRIDLEY. And wish you well.

Mr. SHIMKUS. Thank you.

Mr. FRIDLEY. So, to briefly kind of—I pulled out the actual mission statement for the Sector Council, and if you will allow me, I will read it to you.

The mission of the council is to advance the physical, cybersecurity, emergency preparedness in the national security sector infrastructure. The mission will be accomplished through voluntary actions through the infrastructure owners and operators represented in the council set forth in the Presidential Policy Directive, PPD-21, and related authorities.

So the Chemical Sector Coordinating Council represents about 15 associations that are voluntarily there to work with and through, in collaboration with DHS, Coast Guard, and the others. And we are doing this right now, as the chemical sector that represents about 25 percent of the GDP. So we are a massive undertaking.

But we are working across cross-sectors. We are starting to do this even more, especially to the national critical workgroup, to talk about some of these issues and interdependencies during natural disasters—

Mr. SHIMKUS. OK. Safety versus security. So get that in.

Mr. FRIDLEY. All right. Fantastic. Sorry about that, sir.

So safety versus security. Safety is OSHA; security is DHS. It is very two clear lines. They are very much segmented between the two, and I don't want to confuse the two and lump them together.

Mr. SHIMKUS. My time has expired. Thank you, Mr. Chairman.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes the Representative from Delaware, Ms. Blunt Rochester.

Ms. BLUNT ROCHESTER. Thank you, Mr. Chairman.

And, again, thank you to the panel.

I just wanted to follow up on Mr. Shimkus' line of questioning.

First of all, I can hear from the panel and also from Mr. Wulf that there is agreement that the CFATS program needs to continue, needs to continue long term. And, again, this is the perfect day to be having this hearing.

I still am struggling with this conversation about the balance between need to know, security risk, and meaningful engagement.

So I want to flip the table a little bit. Because as Mr. Smith was talking, it was interesting, Ms. Schakowsky asked in the last panel—asked Mr. Wulf about employees and do employees know that they are working for, you know, a company. And I understood you to say that it is—for some employees, it is widely unknown and that more training and things need to be done. And then as I heard Ms. Roberts talk about the fact that it is sometimes confusing; even people who are experts don't feel like they have the information

they need. But then I also heard Mr. Whelchel talk about the fact that there has been that right balance struck.

So it appears to me there is sort of like government and industry is good; it is golden. I haven't heard disagreement. But in terms of employees and the community, I don't hear that same thing.

So can Mr. Whelchel and Mr. Fridley talk about what you think the community and employees do need to know, and they are not knowing now currently. And if you two could talk about what you think we don't need to know, we need to stay away from that for whatever reason?

Do you get where I am going? I know you know what you need to know. So can we start with Mr.—and we have got to make it quick because I only have two minutes and 59 seconds.

Mr. FRIDLEY. Yes, absolutely. Great question.

And what we do in our industry, and at least in our facilities, is everybody is trained. Everybody is aware. There is not a person there that is employed at our facilities that are not made aware. And we select certain ones to be able to participate in the development of if they have the knowledge and, you know, the expertise to be able to assist us in those programs.

As far as the community, we are all members of LAPCs. We work with various agencies. We bring in those agencies. We do drills together. We review—

Ms. BLUNT ROCHESTER. But are there things that they should know and don't know right now?

Mr. FRIDLEY. In my opinion, not in my experience.

Ms. BLUNT ROCHESTER. In your opinion, not in your experience. OK.

Mr. Whelchel.

Mr. WHELCHER. OK. What I will add to that is, I believe there is a responsibility on the part of local emergency management officials to bridge that gap, right? So they are getting a lot of information relative to the safety risk and then target information about any terrorism risk that might be related to chemical facilities in their district or their domain.

Ms. BLUNT ROCHESTER. Let me stop you right there, because I get where you are going because I come from a government background.

So it is people are elected, people are appointed, but sometimes the community, or even in a company, they don't get access to the information; it just doesn't get to them.

So I am just curious if you think there are things that people need to know on a basic level that they are not getting information.

Mr. WHELCHER. At the risk of underscoring Mr. Fridley's point, general security awareness is a cornerstone of a good security program. So you want to broadly put that security awareness out into the community and to employees. So the See Something, Say Something doesn't just go out to the citizens of the U.S. We then target that message to our employees, and to the extent necessary, to the citizens out in the community as well through the emergency management program.

Ms. BLUNT ROCHESTER. And I only have a minute left. But can I ask Ms. Roberts?

Ms. ROBERTS. Yes, it is a challenge for us. Because on the local emergency planning commissions, those are great commissions, but oftentimes there is one community representative on that commission, and there are many communities that could be surrounding or—or within certain facilities.

One of the things that we do with the Environmental Justice Health Alliance, in partnership with other entities, we produced a report, "Who is in Danger? Race, Poverty, and Chemical Disasters," and equally we produced another report, "Life at the Fenceline," and we did so with some of our scientific and other partners because of the fact that the communities needed to have information that they didn't have access to.

Ms. BLUNT ROCHESTER. Thank you.

Ms. ROBERTS. So that is part of the challenge.

Ms. BLUNT ROCHESTER. In seven seconds, Mr. Smith.

Mr. SMITH. I can only speak on behalf of workers to this effect. And workers who have went through the security process to be cleared to work in these facilities, it is my belief there is very little they should not know. But I can tell you there is a huge gap in what they should know and what they don't know.

Ms. BLUNT ROCHESTER. Got you. Thank you. I yield.

Mr. TONKO. The gentlelady yields back.

The Chair now recognizes the Representative from Illinois, Representative Schakowsky, for 5 minutes, please.

Ms. SCHAKOWSKY. Thank you so much, Mr. Chairman.

I have looked at the testimony, I want you to know, although I wasn't here in the room, and have a number of questions that I wanted to ask.

So let me just start with this one. Hold on.

I wanted to ask Ms. Roberts, in your testimony, you mentioned that water treatment—and you asked—here, I will read it. The existing statute must improve in several areas. To name a few specific examples, it should include water treatment and marine facilities and on.

So what I wanted to ask you is if you could expand on what you think about the way that water ought to be considered when the investigators go out and look at the plants.

Ms. ROBERTS. Well, with respect to water treatment facilities, they actually carry—they include chlorine and other chemicals on site. And so that is the reason why we are asking that those facilities be equally included in the CFATS program.

Oftentimes, yet again, in environmental justice communities, especially, where there again it is—the disparity is race, then income, many of those communities are home to high-risk facilities as well as water treatment facilities. And so, therefore, there is cumulative impacts of high-risk chemicals that are in these areas.

In addition to that, the maritime facilities, as you heard Representative Dingell earlier speaking to the PFOA issue. These are also challenges that our communities are confronted with.

Ms. SCHAKOWSKY. Thank you. Do you feel as if, in general, the communities which you call—I think people in their shadows, are getting the kind of stakeholder attention that should be given when it comes to these plants and the information that you need?

Ms. ROBERTS. Unfortunately, no. If the community is involved in—what do they call it—the CAP program, the Citizen Advisory Program, they are at the behest of the industry and the industry sharing the information that the industry wishes to share.

If they are on a local emergency planning commission, as I said, equally as much, the community—there is one representative typically on the committee. When communities are seeking to try to find and get more information at times, sometimes they are confronted by Homeland Security and utilize Homeland Security laws against them as they are seeking to try to get more information on what is being stored in and around the facilities that are fenceline to their communities.

They are not seeking to terrorize these industries. They are seeking information so that they can also equally better protect themselves because many of these communities do indeed have high rates of health challenges.

And, again, the infrastructure around their communities, such as the roads, the housing structures, and what-have-you, are not conducive oftentimes to the amount of pollution that they are being—

Ms. SCHAKOWSKY. I am going to interrupt you just for a second because I also wanted to deal with the issue of workers.

The last question that I asked of Homeland Security was the question about, do workers even know that they are working at a CFATS facility? And the answer was, well, they get training.

But do you feel, just as communities don't necessarily have all the information, do workers—are you considered as stakeholders sufficiently?

Mr. FRIDLEY. Yes, ma'am. In my opinion, we train every person; we educate every person that works at our facility that what we have are security measures, you know, what we want, what we expect if they see something suspicious, they get a phone call, suspicious order, anything of that nature. So we are educating those workforces to be able to, you know, to report that properly to get that to the right agencies.

Ms. SCHAKOWSKY. OK. Thank you.

I have ten seconds. Does Steelworkers want to respond at all to that?

Mr. SMITH. Thank you, Ms. Schakowsky.

I can tell you, in our experience, most of our members do not know that they work at CFATS facility until after an issue with the program arises.

Just as a very quick example—and I can followup with specifics—recently there was a Hill staffer visit to a CFATS covered facility. And on their visit, the local union president was unaware of the program or that the facility was covered by the program.

Ms. SCHAKOWSKY. And that is a problem, right?

Mr. SMITH. Yes, ma'am.

Ms. SCHAKOWSKY. I yield back.

Mr. TONKO. The gentlelady yields back.

The Chair now recognizes the Representative from Florida, who just got back, Representative Soto, for 5 minutes.

Mr. SOTO. Thank you, Chairman.

Thank you all for coming today.

We had Acting Deputy Assistant Secretary Wulf in before, and we were talking about some of the lessons from 9/11 and the terrorist attacks—obviously, this is the 18th remembrance of that—and that we formed the Department of Homeland Security to be sort of the coordinator of all of these other agencies.

So the big question that we ended up talking about was how so many other first responders and other workers worked at Ground Zero and weren't told that the air was poisonous. Obviously, we had to create the 9/11 Fund afterwards and just amended it to help out—I represent an area with a lot of NYPD retirees who worked and were there at the time, including some of my current staff.

So a big issue for me and for everyone on the panel—and it would be great to hear from each of you—what role should the Department of Homeland Security play in making sure, as in subsection F of this legislation, that we are sharing more info with State and local emergency officials?

And let's start with—well, we will go down the list from—starting with you, Mr. Fridley, and continue on.

Mr. FRIDLEY. Thank you for the question.

And we actually work very well with a lot of the emergency responders, specifically in your State. We did a large full-scale exercise at a joint terrorism task group, DHS, TSA, FBI, bomb and arson. It was a live drill that we actually invited a Congressional Member to that event to witness the interagency working together.

So we do a lot of those things. But to your question on the air quality, that would be more from an EPA standpoint. We would deal with DHS and those other agencies from a security standpoint and let the other agencies handle those points that you pointed out early on your thing.

But we do a lot of outreach. We bring them on our site; we let them play on our site because we have the live—you know, the processes that they can't simulate somewhere else. So we do a lot of that outreach.

Mr. SOTO. Thank you.

Mr. Whelchel.

Mr. WHELCHER. Yes, just to add to that a bit. And thank you for the question.

One thing I will point out is, when you look at the cadre of folks that we have inside our company that we rely on for emergency response, whether they are in the emergency services and security function or they are operators that come to the incident to help respond, many of those folks are themselves volunteer fire service individuals in the community, reserve deputies in law enforcement, emergency medical technicians, or paramedics. And that is one of the powers that we harness by being able to look at our employee base as members of the community as well.

So there is a very strong focus on the emergency responder and what they bring, whenever they increase the risk to themselves, to help respond to an incident. So we wrap around that any and all measures that need to be taken to protect them, to equip them, to train them, recognizing the fact that they are taking additional risk beyond what the average employee does.

So that is one component, I think, is important to keep in mind.

Mr. SOTO. Thank you.

Ms. Roberts, how critical is it to get out to the community and to our first responders the health issues?

Ms. ROBERTS. It is exceptionally important. And not only first responders, but as you said, that of healthcare workers and others to be together in the community, to have a complete understanding of the landscape of communities.

One that I can think about right now is the Manchester community of Houston, Texas, where you can't get—as well as the Mossville community in Louisiana. You cannot get in and out of those community without going over a railroad track. So, if indeed there is an incident, you can actually die on the other side waiting for a railroad track—for a railcar to be removed. So these are the types of things.

In addition to that, the volunteer firefighters, as much as we love them, are not fully and adequately trained to really respond to these situations. And a case in point where—unfortunately the Congresswoman from Delaware had to leave—where the Croda plant actually shut down. It was ethylene oxide facility, and the community folks had no idea what was going on. And this was the weekend of Thanksgiving, one of the highest traveled times going back and forth across the Delaware Memorial Bridge. Each side of the bridge had to be shut down for six and one half hours.

And so the communities had no idea what was going on, and indeed, as well as some of the local volunteer firefighters. So these are the things that must be shored up, these gaps. We must have that kind of communication.

Mr. SOTO. Because my time is limited, Mr. Smith, how important is it for United Steel Workers to be informed right away about health issues, particularly with Homeland being one of the first on the scene?

Mr. SMITH. I can tell you after spending years working in a chemical facility on an emergency response team and as a first responder in a municipal police department, that information sharing is both critical and deficient. There is a big gap between those who are formulating that emergency response plan and those who are executing the emergency response plan. And I would like to see the Department work to bridge that gap with the critical information sharing.

Mr. SOTO. Just to end—and thank you, Mr. Chairman, for your flexibility.

I recognize that Homeland Security would work along with EPA, and this would be one of their fundamental issues. But they are there to coordinate the overall response to a terrorism event, and so they would be the first ones on the ground well before the EPA would ever get there.

When we are talking about day two or three after an event, if there are carcinogens in the air, in the water, it is absolutely still the Department of Homeland Security's responsibility, as the coordinator of all of these other agencies, to make sure that our workers in our local communities and our first responders and other local governments are made aware of these things and correct those.

Thank you, Chairman. I yield back.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes the gentleman from California, Representative Ruiz, for 5 minutes, please.

Mr. RUIZ. Thank you very much, Mr. Chairman.

I am going to continue my line of questioning from the previous panel.

And for this panel, I would like to talk to—or ask Ms. Fridley a question.

We know that threats to the security of chemical plants come in different forms, physical in nature, terrorist threats, theft, leaks, whatnot. And I want to bring up the threat of cybersecurity hacks.

So we heard earlier that the potential worst-case scenario, as described by Mr. Wulf, is a cybersecurity attack that, due to the production line, could actually create a scenario where chemicals could be released, just through by somebody in a computer halfway across the globe.

So I want to talk to you about what your assessment of the cybersecurity threats could be in plants, in your plant, for example. And can you give me an example of what you do to address cybersecurity issues.

Mr. FRIDLEY. Thank you for the question.

To your point and exactly what was described is something that we actually took as a threat and we eliminated.

We have no industrial control—

Mr. RUIZ. When you took as a threat, is that because it was mandatory for you to assess that, or you did it on your own?

Mr. FRIDLEY. It was a joint effort between DHS and our company to be able to look at the specific threats.

Mr. RUIZ. It was a joint effort. But is it through policy that you were forced to do it, or did you guys kind of say, “Hey, this is a good idea”?

Mr. FRIDLEY. Through the assessment, when we were doing our site security plans—

Mr. RUIZ. OK. That is part of your 18th point, yes.

Mr. FRIDLEY. Yes, we identified that as a risk.

So a couple of those things, we eliminated that. We also eliminated anything that—

Mr. RUIZ. When you say “eliminated,” what did you do?

Mr. FRIDLEY. We had broken that gap between—we have nothing on a computer system that controls any process any longer.

Mr. RUIZ. OK.

Mr. FRIDLEY. So that was one of the big gaps that we identified. We eliminated it. So that way now our biggest threat right now is probably a suspicious order coming in. So we spend a lot of time training our—

Mr. RUIZ. Yes. And who do you employ to help you with your—your cybersecurity systems? Do you contract out?

Mr. FRIDLEY. No, sir.

Mr. RUIZ. Is it in-house?

Mr. FRIDLEY. It is all in-house, and they work—

Mr. RUIZ. Is it difficult to find cybersecurity experts in your area?

Mr. FRIDLEY. We are lucky enough to have—

Mr. RUIZ. A good area?

Mr. FRIDLEY [continuing]. Some very, very good people. And they work with the US-CERT on anything, malware, alerts, and different things that come up.

Mr. RUIZ. OK. Thank you.

Now, I want to talk with Ms. Roberts. Mr. Wulf said that the agency consults with neighboring communities regarding safety and other areas of consideration of that. And we know that the vast majority of these plants are near minority, underserved, and poor communities and that leaks can be catastrophic, depending on the amount of leak and what chemicals. And I know that you are with the national coordinator of the Environmental Justice Health Alliance.

Do you think the Department of Homeland Security should consult with the environmental justice communities or stakeholders before planning, during planning, after an event, to protect chemical facilities against terrorist attacks? And do they do it?

Ms. ROBERTS. We believe that they should before, during, and after, yes.

Mr. RUIZ. And do they do it?

Ms. ROBERTS. Do they do it? It depends. Unfortunately, we have just not seen them in our communities, on the communities we serve. Unfortunately, we see them after the fact.

Mr. RUIZ. So you were saying how in every community, they address the first responders or specific people with titles. And I think that is important, obviously.

But, oftentimes, those individuals are headquartered not in those communities, especially in rural counties. And so they are headquartered out in the big cities and not there. And so the actual local residents who will be primarily affected by it don't get consulted. Is that what I am hearing from you, like those environmental or organizations within the communities?

Ms. ROBERTS. Yes. It is oftentimes after the fact. One thing that did happen under the previous administration, communities were indeed engaged. We were starting to try to engage in a process.

Unfortunately, under this administration, it has not been the case.

Mr. RUIZ. I have about a few seconds left.

I just want to mention that I introduced a bill, H. R. 3923, the Environmental Justice Act of 2019, which requires agencies to consider the environmental justice implications of their programs, policies, and activities, such as the Chemical Facility Anti-Terrorism Standards Program, helping ensure that we protect our communities in vulnerable populations and that there is meaningful consultations before decisions are made and even mitigation measures and cleanup measures as well. Because no community should—there should be no decision about an issue that will affect the health and well-being of a community without the community's input.

Ms. ROBERTS. That is correct. And thankfully our communities were engaged in the drafting of that bill and so to try to make sure that they were protected by putting that language into that bill. So there was consultation at that point.

Mr. RUIZ. Absolutely. We made sure of that. Thank you.

Mr. TONKO. The gentleman yields back.

The Chair now recognizes the very patient Representative from Colorado, Representative DeGette, for 5 minutes, please.

Ms. DEGETTE. Thank you so much, Mr. Chairman.

And I want to thank the panel for coming. I watched your testimony in my office, so I have been looking at everything everybody said.

And as I said to Mr. Wulf before, Denver, which is my hometown, is not usually considered a hotspot of chemical industry activity, but we have over two dozen facilities that manufacture, process, or use enough hazardous chemicals that they are required to develop risk management plans under the Clean Air Act.

A lot of those facilities are concentrated near the neighborhoods of Elyria-Swansea and Globeville in north Denver, right next to a big industrial area of Commerce City. These are lower income communities with predominantly Hispanic households.

And the same communities that bear a disproportionate share of the risk of terrorist attacks on chemical facilities also bear a disproportionate share of the pollution that they produce. I think Ms. Roberts can totally agree with that.

And so like Mr. Ruiz and others, I really think that, as well as the safety issue, we are addressing an environmental justice issue here today.

So I wanted to ask you, Ms. Roberts, given the vulnerability of what you call these fenceline communities, how important would you say it is for the neighbors to know about what is going on at these close-by chemical plants?

Ms. ROBERTS. It is exceptionally important because, with the slightest incident, if there was a release or what-have-you, that magic fence that the communities are told, you know, that will protect them, the magic fence—

Ms. DEGETTE. Right.

Ms. ROBERTS [continuing]. It will not hold that incident.

So, once there is a release, it begins to move. And depending upon the wind velocity and what-have-you, that is how fast or how slow it can move.

Ms. DEGETTE. Right. And, you know, in these communities I just mentioned, you are right. They are right along the border with this industrial area. And they are residential communities. So, you know, they don't—the chemicals don't just stop at the city and county of Denver.

Is there something that community engagement can do to encourage a neighboring plant to reduce its vulnerability to attack? And what role does public scrutiny play in that?

Ms. ROBERTS. There is a lot that community engagement can do, because communities do hold solutions. And there are practical solutions that can be incorporated to make sure that the safety of the community, as well as the worker, and, in addition, the bottom line that many of these industries are really concerned about will all be factored in.

So it is extremely, extremely important for the health and well-being of that neighboring community.

Ms. DEGETTE. So, you know, this was one of the things that I was talking about with Acting Deputy Assistant Secretary Wulf, is, one of the things that chemical plants can try to do is to reduce

the amounts of explosive or toxic chemicals on-site where it is feasible.

Would you agree with that, Ms. Roberts?

Ms. ROBERTS. Absolutely.

Ms. DEGETTE. And, Mr. Fridley, what is your view on that? If it is feasible, wouldn't the best result be to reduce those on-site chemicals?

Mr. FRIDLEY. Yes, from a security standpoint, we are always looking to reduce our threat and whatnot.

But from the EPA standpoint, what you were going with in your first line, we do a lot of different reports. We do the EPA 304, 311, 312, 313, TRI, RNP that you did, CERCLA. So we do a lot of the reporting out so that we are communicating out to those folks or to anybody, for that matter, what the hazards and what the risks are.

Ms. DEGETTE. But what they need to know is what is there and what they can do.

Now, Mr. Whelchel, I wanted to ask you the same thing. Would you agree that, if feasible, one of the best ways to reduce the risk is to remove unnecessary chemicals and hazardous substances?

Mr. WHELCHER. Thank you for the question. And yes.

And we have actually seen this in practice. So I relayed earlier, during a CFATS inspection, it was communicated from the inspector that there was a potential for us to reduce either the concentration or the quantity of the chemicals that we had on-site. And the business took a look at that and immediately had a high interest in reformulating our processes to be able to do so and then replicated that same process in nonregulated facilities.

Ms. DEGETTE. Thank you.

Mr. WHELCHER. So we absolutely value the ability to reduce our risk.

Ms. DEGETTE. Great.

Mr. Smith, what is your view of that?

Mr. SMITH. I would agree with the rest of the panel. If you can reduce a risk for the facility and the worker, I think it makes things safer and more secure.

Ms. DEGETTE. Thank you.

Thank you very much, Mr. Chairman. Thanks again for having this hearing. I yield back.

Mr. TONKO. You are welcome.

And the gentlelady yields back.

That, I believe, concludes all who were looking to ask questions of our second panel. And I thank all of our witnesses again for joining us at today's hearing.

I remind Members that, pursuant to committee rules, they have ten business days by which to submit additional questions for the record to be answered by our witnesses. And then I ask that each witness respond promptly to any such questions that you may receive.

[The information follows:]

Mr. SHIMKUS. Mr. Chairman, before you do that, may I ask for a moment for personal privilege?

Mr. TONKO. Yes, sir.

Mr. SHIMKUS. I want to recognize my pastor, who just came into the back of the room. He is here to give the invocation, or the prayer, for tomorrow's session. And other than my wife, if you want to know who keeps me on the straight and narrow, it is Pastor Wright.

So thank you for letting me introduce him.

Mr. TONKO. Well, thank you.

And thank you, Pastor, for joining us. And thank you for leading the ranking member in the right way.

Mr. SHIMKUS. Amen.

Mr. TONKO. We much appreciate it.

So I do request unanimous consent to enter a list of documents into the record. They include a letter from a coalition of organizations providing recommendations for the CFATS reauthorization, a letter from the National Association of SARA Title III Program Officials, a letter from the National Association of Manufacturers, and a letter from the Fertilizer Institute and the Agricultural Retailers Association.

Without objection, so ordered. So they are entered.

[The information appears at the conclusion of the hearing.]

Mr. TONKO. With that, the subcommittee is adjourned.

[Whereupon, at 1:11 p.m., the subcommittee was adjourned.]

116TH CONGRESS
1ST SESSION

H. R. 3256

To amend the Homeland Security Act of 2002 to reauthorize and improve the Chemical Facility Anti-Terrorism Standards Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2019

Mr. RICHMOND (for himself and Mr. THOMPSON of Mississippi) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Homeland Security Act of 2002 to reauthorize and improve the Chemical Facility Anti-Terrorism Standards Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Protecting and Securing Chemical Facilities from Ter-
6 rorist Attacks Act of 2019”.

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Chemical Facility Anti-Terrorism Standards Program.
- Sec. 4. Protection and sharing of information.
- Sec. 5. Civil enforcement.
- Sec. 6. Whistleblower protection.
- Sec. 7. Chemical Security Advisory Committee.
- Sec. 8. Implementation plan and report to Congress.
- Sec. 9. Study on risks posed by excluded facilities.
- Sec. 10. Study on feasibility of waiver program.
- Sec. 11. Comptroller General reports.
- Sec. 12. Voluntary mechanism for reporting drones and other emerging threats.
- Sec. 13. Regulations regarding specific products and mixtures containing chemicals of interest.
- Sec. 14. Termination.

(B) in subparagraph (B), by striking “that
is in effect on the day before the date of enact-
ment of the Protecting and Securing Chemical
Facilities from Terrorist Attacks Act of 2014;”
and inserting “or this title”;

1 (3) by striking paragraphs (6), (7), and (8);
2 and
3 (4) by redesignating paragraphs (9) through
4 (14) as paragraphs (6) through (11), respectively.

5 **SEC. 3. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS**
6 **PROGRAM.**

7 (a) **ADDITIONAL CFATS PROGRAM REQUIRE-**
8 **MENT.**—Section 2102(a)(2) of such Act (6 U.S.C. 622)
9 is amended—

10 (1) in subparagraph (C), by striking “and” at
11 the end;

12 (2) in subparagraph (D), by striking the period
13 and inserting a semicolon; and

14 (3) by adding at the end the following new sub-
15 paragraphs:

16 “(E) verify information submitted by a
17 covered chemical facility prior to assigning such
18 facility a lower risk tier or determining that
19 such facility no longer presents a high level of
20 security risk; and

21 “(F) develop a voluntary program for
22 chemical facilities to address potential security
23 risks at such facilities.”.

1 (b) EMPLOYEE INPUT REGARDING SECURITY MEAS-
2 URES.—Paragraph (2) of subsection (b) of section 2102
3 of such Act (6 U.S.C. 622) is amended to read as follows:

4 “(2) EMPLOYEE CONSULTATION AND AWARE-
5 NESS.—

6 “(A) EMPLOYEE CONSULTATION REQUIRE-
7 MENT.—A facility’s security vulnerability as-
8 sessment and site security plan shall be devel-
9 oped in consultation with—

10 “(i) at least one facility employee, in
11 addition to the facility security officer or
12 other individual who serves as a point of
13 contact under section 27.230(a)(17) of
14 title 6, Code of Federal Regulations, and
15 the corresponding guidance issued under
16 section 27.220(d) of such title, or any suc-
17 cessor thereto, who possesses relevant
18 knowledge, experience, training, or edu-
19 cation pertaining to matters of site secu-
20 rity; and

21 “(ii) in the case of a facility where fa-
22 cility employees are represented by a bar-
23 gaining agent, at least one employee rep-
24 resentative who—

1 “(I) is selected by the bargaining
2 agent at that facility; and

3 “(II) has relevant knowledge, ex-
4 perience, training, or education per-
5 taining to matters of site security.

6 “(B) RECORD OF EMPLOYEE CONSULTA-
7 TION.—A covered chemical facility shall main-
8 tain a written record of the employee consulta-
9 tion required by subparagraph (A), including a
10 record of—

11 “(i) the name of the employee with
12 whom the facility security officer or other
13 similar official consulted;

14 “(ii) how often and when such con-
15 sultation took place;

16 “(iii) what mechanisms the facility
17 used to capture feedback; and

18 “(iv) any recommendations that were
19 offered, accepted, or rejected as part of the
20 security vulnerability assessment or site se-
21 curity plan.

22 “(C) ACCESS TO EMPLOYEES.—Each
23 owner or operator of a covered chemical facility
24 shall, upon request, provide to an employee of
25 the Department engaged in carrying out audits

1 and inspections of such facility access to any
2 employee who participated in the development
3 of the facility's security vulnerability assess-
4 ment and site security plan.

5 “(D) EMPLOYEE AWARENESS.—The Sec-
6 retary shall produce a poster for display in
7 areas of covered chemical facilities and chemical
8 facilities of interest shall be required to display
9 that are accessible to facility employees to in-
10 form employees of the facility about program
11 requirements under this title and the whistle-
12 blower protections provided under section
13 2105.”.

14 (e) SITE SECURITY PLANS.—

15 (1) DISAPPROVAL.—Subsection (c)(1)(B) of
16 section 2102 of such Act (6 U.S.C. 622) is amend-
17 ed—

18 (A) in clause (i), by striking “and” at the
19 end; and

20 (B) by amending clause (ii) to read as fol-
21 lows:

22 “(ii) shall disapprove a site security
23 plan if—

24 “(I) the plan fails to satisfy the
25 risk-based performance standards es-

1 tablished pursuant to subsection
2 (a)(2)(C); or

3 “(II) the plan fails to include the
4 name, organizational affiliation, and
5 phone number of a local emergency
6 manager or local emergency response
7 provider and a documented policy to
8 contact the local emergency manager
9 or local emergency response provider
10 at least annually regarding emergency
11 response procedures at the facility.”.

12 (2) ASSESSMENTS.—Paragraph (3) of sub-
13 section (c) of such section is amended to read as fol-
14 lows:

15 “(3) SITE SECURITY PLAN ASSESSMENTS.—In
16 approving or disapproving a site security plan under
17 this subsection, the Secretary shall—

18 “(A) employ the risk assessment policies
19 and procedures developed under this title; and

20 “(B) confirm that the covered chemical fa-
21 cility has complied with the employee consulta-
22 tion requirements in paragraph (2) of sub-
23 section (b), including by reviewing and record-
24 ing compliance with the record-keeping require-

1 ments under subparagraph (B) of that para-
2 graph.”.

3 (d) ELIMINATION OF EXPEDITED APPROVAL PRO-
4 GRAM.—Section 2102(c) of such Act (6 U.S.C. 622) is
5 amended by striking paragraph (4).

6 (e) AUDITS AND INSPECTIONS.—

7 (1) AUTHORITY TO CONDUCT.—Subparagraph
8 (B) of paragraph (1) of subsection (d) of section
9 2102 of such Act (6 U.S.C. 622) is amended by
10 striking “under this title using” and inserting “at
11 chemical facilities of interest and covered chemical
12 facilities and shall obtain information and records to
13 ensure compliance with this title. Such audits and
14 inspections shall be conducted using”.

15 (2) REPORTING STRUCTURE.—Subparagraph
16 (D) of such paragraph is amended—

17 (A) in clause (i), by inserting “, or any
18 successor organization that implements the re-
19 quirements of subsection (a)(2),” after “De-
20 partment”; and

21 (B) in clause (ii), by inserting “, or any
22 successor organization that implements the re-
23 quirements of subsection (a)(2),” after “De-
24 partment”.

1 (3) STANDARDS FOR AUDITORS AND INSPEC-
2 TORS.—Subparagraph (E) of such paragraph is
3 amended—

4 (A) in the matter preceding clause (i)—

5 (i) by striking “The Secretary” and
6 inserting “For each individual responsible
7 for carrying out audits or inspections on
8 behalf of the Secretary, the Secretary”;

9 (ii) by inserting “to ensure such indi-
10 viduals receive” before “the training”; and

11 (iii) by striking “and retraining of
12 each individual used by the Department as
13 an auditor or inspector, including each in-
14 dividual employed by the Department and
15 all nondepartmental or nongovernmental
16 personnel” and inserting “, continuing
17 education, and other professional develop-
18 ment tools necessary to carry out duties
19 and responsibilities”; and

20 (B) in clause (i), by striking “require-
21 ments” and inserting “necessary to audit and
22 inspect compliance with all aspects of the risk-
23 based performance standards, including stand-
24 ards related to cybersecurity,”.

1 (4) EMERGENCY RESPONSE PLANS.—Such sub-
2 section is further amended by adding at the end the
3 following new paragraph:

4 “(4) AUDIT OF EMERGENCY RESPONSE PLAN.—
5 As part of the audit and inspection process under
6 this subsection, the Secretary shall provide for an
7 annual review of the compliance of a chemical facil-
8 ity with the requirements under subsection
9 (c)(1)(B)(ii)(B) and the adherence of the facility to
10 the emergency response requirements under such
11 subsection.”.

12 (f) RISK ASSESSMENT.—Section 2102(e) of such Act
13 (6 U.S.C. 622(e)) is amended—

14 (1) in paragraph (2)(B)—

15 (A) in the matter preceding clause (i), by
16 inserting “and other malicious acts” after “ter-
17 rorism”; and

18 (B) in clause (ii), by striking “severe eco-
19 nomic consequences and the potential loss of
20 human life in the event of the facility being
21 subject to attack, compromise, infiltration, or
22 exploitation by terrorists” and inserting “con-
23 sequences in event of the facility being subject
24 to attack, compromise, infiltration, or the ex-

1 exploitation of chemicals of interest by a terrorist
2 or other malicious actor”;

3 (2) in paragraph (3)—

4 (A) in subparagraph (A)—

5 (i) by redesignating clauses (i) and
6 (ii) as clauses (ii) and (iii), respectively;

7 (ii) by inserting before clause (ii), as
8 so redesignated, the following new clause
9 (i):

10 “(i) the Secretary determines that a
11 chemical facility of interest does not
12 present a high level of security risk;”;

13 (iii) in clause (iii), as so redesignated,
14 by inserting “or chemical facility of inter-
15 est” after “covered chemical facility”;

16 (B) in subparagraph (B)—

17 (i) by striking “information on” and
18 all that follows and inserting “information
19 on—”; and

20 (ii) by adding at the end the following
21 clauses:

22 “(i) how the Secretary confirmed the
23 information that was the basis for the
24 change or determination described in sub-
25 paragraph (A); and

1 “(ii) actions taken or practices em-
2 ployed by the facility to reduce or remove
3 terrorism-related chemical security risks,
4 where applicable.”; and

5 (C) by adding at the end the following new
6 subparagraph:

7 “(C) TREATMENT OF CERTAIN INFORMA-
8 TION.—For the purposes of subsection (a) of
9 section 2103—

10 “(i) information described in subpara-
11 graph (B)(i) shall be given protections
12 from public disclosure under such sub-
13 section; and

14 “(ii) information described in sub-
15 paragraph (B)(ii) shall not be given protec-
16 tions from public disclosure under such
17 subsection.”;

18 (3) by redesignating paragraph (4) as para-
19 graph (6);

20 (4) by inserting after paragraph (3) the fol-
21 lowing new paragraphs:

22 “(4) SHARING INFORMATION WITH EMERGENCY
23 RESPONSE PROVIDERS.—

24 “(A) IN GENERAL.—The Secretary shall
25 make available to State, local, and regional fu-

1 sion centers (as that term is defined in section
2 210A(j)(1) of this Act) and State and local gov-
3 ernment officials such information as the Sec-
4 retary determines necessary to ensure that
5 emergency response providers are prepared and
6 provided with the situational awareness needed
7 to respond to security incidents at covered
8 chemical facilities.

9 “(B) DISSEMINATION.—The Secretary
10 shall disseminate information under subpara-
11 graph (A) to individuals identified and entities
12 described in such subparagraph in a secure and
13 expeditious manner.

14 “(5) PRACTICES THAT MAY REDUCE CHEMICAL
15 SECURITY RISKS.—

16 “(A) IN GENERAL.—Based on the informa-
17 tion maintained under paragraph (3)(B)(ii) re-
18 garding actions taken or practices employed by
19 chemical facilities of interest to successfully re-
20 duce or remove terrorism-related chemical secu-
21 rity risks, the Secretary shall develop voluntary,
22 publicly available practices that could be used
23 to guide other facility owners and operators in
24 preventing, reducing, and mitigating chemical
25 security risks.

1 “(B) TREATMENT OF SENSITIVE INFORMA-
2 TION.—In developing and disseminating prac-
3 tices under subparagraph (A), the Secretary
4 shall protect from public disclosure all informa-
5 tion described in section 2103(a).”; and
6 (5) in paragraph (6), as redesignated by para-
7 graph (3) of this subsection—
8 (A) in subparagraph (B)(i)—
9 (i) in subclause (aa), by striking “or”
10 at the end;
11 (ii) in subclause (bb), by striking
12 “and” and inserting “or”; and
13 (iii) by adding at the end the fol-
14 lowing new subclause:
15 “(cc) determined that a chemical
16 facility of interest did not present a
17 high level of risk; and”;
18 (B) by amending subparagraph (C) to read
19 as follows:
20 “(C) for the period beginning on the date
21 that is one year before the date of the enact-
22 ment of the Protecting and Securing Chemical
23 Facilities from Terrorist Attacks Act of 2019
24 and ending on the date of the enactment of

1 such Act, the average length of time required
2 to—

3 “(i) review and approve site security
4 plans or alternative security programs for
5 covered chemical facilities;

6 “(ii) ensure a facility has achieved full
7 implementation of planned security meas-
8 ures; and

9 “(iii) conduct a compliance inspection,
10 including the average length of time in-
11 spectors spend on an individual compliance
12 inspection;”;

13 (C) in subparagraph (E), by striking
14 “and” at the end;

15 (D) by redesignating subparagraph (F) as
16 subparagraph (I); and

17 (E) by inserting after subparagraph (E)
18 the following new subparagraphs:

19 “(F) a detailed summary of reports and
20 other information generated under paragraph
21 (3) regarding facilities that receive a change in
22 tier or that are determined not to present a
23 high level of security risk;

24 “(G) a detailed summary of practices iden-
25 tified and disseminated under such paragraph;

1 “(H) actions taken and results produced in
2 implementing the practices, to the extent fea-
3 sible; and”.

4 (g) SPECIFIC PRODUCTS AND MIXTURES.—Such sec-
5 tion (6 U.S.C. 622) is further amended by adding at the
6 end the following new subsection:

7 “(f) SPECIFIC PRODUCTS AND MIXTURES CON-
8 TAINING CHEMICALS OF INTEREST.—The Secretary may
9 exclude a specific product or mixture that contains a
10 chemical of interest at or above the minimum concentra-
11 tion listed on Appendix A to part 27 of title 6, Code of
12 Federal Regulations, or any successor thereto, from any
13 reporting requirements under this section if the Secretary
14 determines that the product or mixture does not present
15 a risk for which the chemical of interest contained within
16 the product or mixture was included on Appendix A.”.

17 **SEC. 4. PROTECTION AND SHARING OF INFORMATION.**

18 (a) IN GENERAL.—Section 2103(a) of the Homeland
19 Security Act of 2002 (6 U.S.C. 623(a)) is amended—

20 (1) by inserting “with respect to information in
21 the possession of the Department, the Secretary
22 shall protect” after “any other provision of law,”;

23 (2) by striking “information,”;

24 (3) by striking the comma after “records”; and

25 (4) by striking “shall be given protections”.

1 (b) AUTHORIZED RECIPIENTS.—Such section is fur-
2 ther amended—

3 (1) by striking subsections (b), (c), and (f);

4 (2) by redesignating subsections (d) and (e) as
5 subsections (c) and (d), respectively; and

6 (3) by inserting after subsection (a) the fol-
7 lowing new subsection (b):

8 “(b) AUTHORIZED RECIPIENTS OF INFORMATION.—

9 “(1) IN GENERAL.—Upon request, the Sec-
10 retary shall make available information protected
11 pursuant to subsection (a), to the following recipi-
12 ents:

13 “(A) State, local, and regional fusion cen-
14 ters (as that term is defined in section
15 210A(j)(i) of this Act) and State and local gov-
16 ernment officials, including law enforcement
17 and emergency response providers.

18 “(B) Members of Congress.

19 “(C) Members of the Chemical Security
20 Advisory Committee under section 2010 of this
21 Act.

22 “(D) The Comptroller General of the
23 United States.

1 “(2) NONDEPARTMENTAL INFORMATION.—In-
2 formation is not protected pursuant to subsection
3 (a) if it is—

4 “(A) not in the possession of the Depart-
5 ment;

6 “(B) developed under this title but has
7 been previously produced or developed for other
8 purposes; and

9 “(C) is already publicly available, readily
10 discoverable, or otherwise lawfully disclosed.”.

11 **SEC. 5. CIVIL ENFORCEMENT.**

12 Section 2104 of the Homeland Security Act of 2002
13 (6 U.S.C. 624) is amended—

14 (1) in subsection (a)(1)—

15 (A) in subparagraph (A)(i), by striking
16 “14 days after date on which” and inserting
17 “three days after the date on which”; and

18 (B) in subparagraph (B), by striking “180
19 days” and inserting “30 days”;

20 (2) in subsection (b)(2), by inserting “section
21 2102(a)(2)(B) or any requirement issued by the Sec-
22 retary thereunder” after “comply with”;

23 (3) in subsection (c), by inserting “or other ma-
24 licious act” after “terrorist incident”; and

1 (4) in subsection (d), by inserting “, except as
2 provided in section 2105(a)(5) regarding whistle-
3 blower retaliation” before the period at the end.

4 **SEC. 6. WHISTLEBLOWER PROTECTION.**

5 Section 2105 of the Homeland Security Act of 2002
6 (6 U.S.C. 625) is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (1), by striking “Not
9 later than 180 days after the date of enactment
10 of the Protecting and Securing Chemical Facili-
11 ties from Terrorist Attacks Act of 2014, the
12 Secretary” and inserting “The Secretary”;

13 (B) by amending paragraph (2) to read as
14 follows:

15 “(2) CONFIDENTIALITY.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), in the absence of the written
18 consent of an individual who submits a report
19 under paragraph (1)—

20 “(i) the Secretary shall keep confiden-
21 tial the identity of and any identifying in-
22 formation relating to that individual; and

23 “(ii) any such report shall be subject
24 to the protections on information under
25 section 2103 of this Act to the extent that

1 the report does not consist of publicly
2 available information.

3 “(B) NOTICE.—In a case in which it is
4 necessary to disclose the identity of or any iden-
5 tifying information relating to an individual
6 who submits a report under paragraph (1) be-
7 cause it is essential to investigate the informa-
8 tion contained in the report or because of com-
9 pulsory legal process, the Secretary shall pro-
10 vide timely advance notice to the individual of
11 such disclosure.”;

12 (C) by amending paragraph (3) to read as
13 follows:

14 “(3) RESPONSE TO REPORTS.—If a report sub-
15 mitted under paragraph (1) contains information
16 identifying the individual making the report, the
17 Secretary, or the designee of the Secretary shall, by
18 not later than 15 days after the date on which the
19 report is received, respond to the individual directly
20 and acknowledge receipt of the report.”;

21 (D) in paragraph (5)—

22 (i) by amending subparagraph (C) to
23 read as follows:

24 “(C) OPPORTUNITY FOR REVIEW.—In any
25 action under paragraph (4) that is based on in-

1 formation received under the procedure estab-
2 lished under paragraph (1), the Secretary shall
3 provide for review of the action if a petition for
4 review is filed within 20 calendar days of the
5 date of issuance of the order for the action.”;
6 and

7 (ii) in subparagraph (D)—

8 (I) by striking “unless the Sec-
9 retary determines” and inserting “,
10 except that the Secretary may provide
11 for a 30-day extension if the Secretary
12 determines”;

13 (II) by striking “that the viola-
14 tion providing a basis for the action
15 continues to exist.” and inserting
16 “that—”; and

17 (III) by adding at the end the
18 following new clauses:

19 “(i) the violation providing a basis for
20 the action continues to exist; or

21 “(ii) such period is insufficient to
22 complete the review of the action.”; and

23 (E) in paragraph (6)—

24 (i) in subparagraph (A)—

1 (I) by striking “discharge an em-
2 ployee or otherwise discriminate
3 against an employee with respect to
4 the compensation provided to, or
5 terms, conditions, or privileges of the
6 employment of, the employee because
7 the employee (or an individual acting
8 pursuant to a request of the em-
9 ployee) submitted a report under
10 paragraph (1).” and inserting “dis-
11 charge an employee or otherwise dis-
12 criminate against an employee or
13 former employee with respect to the
14 compensation provided to, or terms,
15 conditions, or privileges associated
16 with current or past employment of,
17 the employee or former employee be-
18 cause the employee or former em-
19 ployee (or an individual acting pursu-
20 ant to a request of the employee or
21 former employee) submitted a report
22 under paragraph (1).”;

23 (ii) in subparagraph (B), in the mat-
24 ter preceding clause (i), by—

1 (I) inserting “or former em-
2 ployee” after “An employee”; and

3 (II) inserting “or former em-
4 ployee (or an individual acting pursu-
5 ant to a request of the employee or
6 former employee)” after “the em-
7 ployee”; and

8 (iii) by adding at the end the fol-
9 lowing new subparagraph:

10 “(C) PROCEDURE AND REMEDY.—

11 “(i) IN GENERAL.—The Secretary
12 shall establish a procedure for the review
13 and investigation of complaints of reprisals
14 prohibited under subparagraph (A) and for
15 remedies for violations of such subpara-
16 graph.

17 “(ii) JUDICIAL REMEDIES.—Nothing
18 in this title shall be construed to deny a
19 individual who submits a complaint for any
20 reprisal prohibited under subparagraph (A)
21 from seeking a judicial remedy against the
22 owner or operator of the chemical facility
23 of interest as long as the individual has ex-
24 hausted administrative remedies.”; and

25 (2) by striking subsection (d).

1 **SEC. 7. CHEMICAL SECURITY ADVISORY COMMITTEE.**

2 (a) IN GENERAL.—Title XXI of the Homeland Secu-
3 rity Act of 2002 (6 U.S.C. 621 et seq.) is amended by
4 adding at the end the following new section:

5 **“SEC. 2110. CHEMICAL SECURITY ADVISORY COMMITTEE.**

6 “(a) ESTABLISHMENT.—The Secretary shall estab-
7 lish a standing Chemical Security Advisory Committee to
8 advise the Secretary on the implementation of this title.

9 “(b) MEMBERSHIP.—

10 “(1) IN GENERAL.—The Advisory Committee
11 shall be comprised of 12 members selected by the
12 Secretary, which shall include at least one individual
13 who is a multi-disciplinary stakeholder with scientific
14 or other expertise representing each of the following:

15 “(A) Industry.

16 “(B) Academia.

17 “(C) Labor.

18 “(D) Emergency response providers.

19 “(E) Local emergency planners.

20 “(F) Environmental, community, or public
21 health advocates, particularly for communities
22 with high concentrations of covered chemical fa-
23 cilities.

24 “(G) Cybersecurity and information policy.

1 “(2) TERMS.—Each member shall be appointed
2 for an initial term of three years and may be re-
3 appointed for one additional three-year term.

4 “(3) CHAIR.—The Committee shall have a
5 chair, who shall be selected by the members of the
6 Committee.

7 “(4) PAY.—Members shall serve without pay.

8 “(5) QUORUM.—A majority of members of the
9 Advisory Committee shall constitute a quorum but a
10 lesser number may hold hearings.

11 “(c) SUBCOMMITTEES.—The Advisory Committee
12 may establish subcommittees to assesses and recommend
13 improvements to the risk tiering methodology for chemical
14 facilities, the risk-based performance standards for chem-
15 ical facilities, risk reduction strategies, and other aspects
16 of the program under this title as the Secretary deter-
17 mines appropriate.

18 “(d) INFORMATION PROTECTION.—Members of Advi-
19 sory Committee shall maintain information protections
20 pursuant to section 2103 of this Act. Any member who
21 needs to access classified information to carry out assess-
22 ments and recommendations for improving the risk tiering
23 methodology for chemical facilities shall have an appro-
24 priate security clearance.

1 “(e) ANNUAL REPORT.—Not later than January 30
2 each year, the chair shall submit to the Committee on
3 Homeland Security and Governmental Affairs of the Sen-
4 ate and to the Committee on Homeland Security and the
5 Committee on Energy and Commerce of the House of
6 Representatives a report on the activities of the Com-
7 mittee during the year preceding the year during which
8 the report is submitted.

9 “(f) APPLICABILITY OF FACA.—The Federal Advi-
10 sory Committee Act (5 U.S.C. App.) shall not apply to
11 the Committee established under this section.”.

12 (b) CLERICAL AMENDMENT.—The table of contents
13 in section 1(b) of such Act is amended by inserting after
14 the item relating to section 2109 the following new item:

“2110. Chemical Security Advisory Committee.”.

15 **SEC. 8. IMPLEMENTATION PLAN AND REPORT TO CON-**
16 **GRESS.**

17 (a) IMPLEMENTATION PLAN.—Not later than 120
18 days after the date of the enactment of this Act, the Sec-
19 retary of Homeland Security shall develop, and submit to
20 Congress, an implementation plan outlining how the Sec-
21 retary plans to—

22 (1) aggregate, anonymize, and analyze data col-
23 lected from covered chemical facilities or chemical
24 facilities of interest to identify practices that such

1 facilities have employed to successfully reduce or re-
2 move terrorism-related chemical security risks;

3 (2) develop voluntary, publicly available, prac-
4 tices based on such data, which may be updated as
5 necessary, to guide facility owners and operators in
6 preventing, reducing, and managing security risks;
7 and

8 (3) disseminate such practices to chemical facil-
9 ity owners and operators through an appropriate
10 medium or system, including by making such prac-
11 tices available to the public to the greatest extent
12 practicable.

13 (b) REPORT.—

14 (1) INITIAL REPORT.—Not later than two years
15 after the date of the enactment of this Act, the Sec-
16 retary shall submit to Congress a report on the sta-
17 tus of implementation plan required under sub-
18 section (a), a description of the voluntary, publicly
19 available, practices identified, and the system or me-
20 dium used to disseminate such practices to chemical
21 facility owners and operators.

22 (2) ANNUAL UPDATES.—Not later than one
23 year after the submission of the report required
24 under paragraph (1), and annually thereafter, the
25 Secretary shall submit to Congress information on

1 changes to the voluntary practices information dis-
2 seminated and bases for such changes, information
3 on feedback collected from facility owners and opera-
4 tors regarding the extent to which voluntary prac-
5 tices were adopted, and information on what impact
6 the dissemination of voluntary practices have had on
7 the effectiveness of the program.

8 **SEC. 9. STUDY ON RISKS POSED BY EXCLUDED FACILITIES.**

9 (a) STUDY REQUIRED.—The Secretary of Homeland
10 Security shall enter into an agreement with a non-Depart-
11 ment of Homeland Security entity for the conduct of an
12 independent assessment of—

13 (1) the implications for national security and
14 homeland security of exempting from regulation
15 under title XXI of the Homeland Security Act of
16 2002 (6 U.S.C. 621 et seq.) excluded facilities, as
17 such term is defined in section 2101(4) of such Act;

18 (2) the implications for such excluded facilities
19 of exempting such facilities from regulation; and

20 (3) the implications of exempting such facilities
21 from regulation for the communities located in the
22 same geographic areas as such facilities.

23 (b) REPORT TO CONGRESS.—Not later than 16
24 months after entering into an agreement under subsection
25 (a), the Secretary of Homeland Security shall submit to

1 the appropriate congressional committees a report that in-
2 cludes the findings and recommendations of the inde-
3 pendent assessment required by subsection (a).

4 (c) APPROPRIATE CONGRESSIONAL COMMITTEES.—
5 In this section, the term “appropriate congressional com-
6 mittees” means—

7 (1) the Committee on Homeland Security and
8 Governmental Affairs of the Senate; and

9 (2) the Committee on Homeland Security and
10 the Committee on Energy and Commerce of the
11 House of Representatives.

12 **SEC. 10. STUDY ON FEASIBILITY OF WAIVER PROGRAM.**

13 (a) STUDY REQUIRED.—The Secretary of Homeland
14 Security shall conduct a study to assess the feasibility and
15 desirability of establishing a process under which certain
16 chemical facilities, as determined by the Secretary, may
17 apply to for a waiver of certain regulatory requirements
18 under title XXI of the Homeland Security Act of 2002
19 (6 U.S.C. 621 et seq.) upon showing that—

20 (1) the requirements under such title are cov-
21 ered, to the same extent and in the same manner,
22 under another Federal regulatory program;

23 (2) the facility is in full and complete compli-
24 ance with such other Federal regulatory program, as

1 shown through timely scheduled inspections, audits,
2 and other supporting evidence; and

3 (3) the facility has not, during the five-year pe-
4 riod preceding the date on which a waiver is re-
5 quested, been subject to an enforcement action
6 brought by the Federal regulator overseeing such
7 regulatory program or been found to be noncompli-
8 ant with any aspect of such regulatory program.

9 (b) REPORT TO CONGRESS.—Not later than two
10 years after the date of the enactment of this Act, the Sec-
11 retary of Homeland Security shall submit to the appro-
12 priate congressional committees a report that includes de-
13 tailed findings regarding the establishment of the process
14 described in subsection (a) and, if appropriate, rec-
15 ommendations for implementation.

16 (c) APPROPRIATE CONGRESSIONAL COMMITTEES.—
17 In this section, the term “appropriate congressional com-
18 mittees” means—

19 (1) the Committee on Homeland Security and
20 Governmental Affairs of the Senate; and

21 (2) the Committee on Homeland Security and
22 the Committee on Energy and Commerce of the
23 House of Representatives.

1 **SEC. 11. REVIEW OF POTENTIAL EFFECTS OF ATTACKS ON**
2 **COVERED CHEMICAL FACILITIES ON OTHER**
3 **CRITICAL INFRASTRUCTURE.**

4 (a) REVIEW REQUIRED.—The Director of the Cyber-
5 security and Infrastructure Security Agency shall—

6 (1) conduct a review of the risk assessment ap-
7 proach and corresponding tiering methodology for
8 covered chemical facilities required pursuant to sec-
9 tion 2102(e)(2) of the Homeland Security Act of
10 2002, as amended by this Act, and assess the extent
11 to which the approach and tiering methodology takes
12 into account—

13 (A) the nature of the area surrounding the
14 chemical facility, the presence of nearby facili-
15 ties or other critical infrastructure, and other
16 features of the community that could contribute
17 to the consequences of a terrorist attack or ex-
18 ploitation of chemicals of interest; and

19 (B) the potential effects on the health and
20 economic conditions of communities dispropor-
21 tionately vulnerable to the consequences of a
22 terrorist attack or exploitation of chemicals of
23 interest; and

24 (2) develop a plan to ensure that when the
25 tiering methodology is next updated, the nature of
26 the surrounding area, the presence of nearby facili-

1 ties or other critical infrastructure, and other fea-
2 tures of the community that could contribute to the
3 consequences of a terrorist attack or exploitation of
4 chemicals of interest and impacts on communities
5 disproportionately vulnerable to the consequences of
6 a terrorist attack or exploitation of chemicals of in-
7 terest are better integrated.

8 (b) REPORT TO CONGRESS.—

9 (1) IN GENERAL.—Not later than one year
10 after the date of the enactment of this Act, the Di-
11 rector shall submit to the appropriate congressional
12 committees a report on the review and plan required
13 under subsection (a).

14 (2) APPROPRIATE CONGRESSIONAL COMMIT-
15 TEES.—In this section, the term “appropriate con-
16 gressional committees” means—

17 (A) the Committee on Homeland Security
18 and Governmental Affairs of the Senate; and

19 (B) the Committee on Homeland Security
20 and the Committee on Energy and Commerce
21 of the House of Representatives.

22 **SEC. 12. COMPTROLLER GENERAL REPORTS.**

23 (a) EVALUATION OF EFFECTIVENESS OF RISK-
24 BASED PERFORMANCE STANDARDS.—

1 (1) STUDY AND REPORT.—Not later than 18
2 months after the date of the enactment of this Act,
3 the Comptroller General of the United States shall
4 conduct a study and submit to the appropriate con-
5 gressional committees a report on the effectiveness
6 of the risk-based performance standards used by the
7 Department of Homeland Security under title XXI
8 of the Homeland Security Act of 2002 (6 U.S.C.
9 621 et seq.) in protecting businesses, employees, the
10 economy, the public, and national security against
11 existing and evolving threats of concern.

12 (2) CONTENTS OF REPORT.—The report re-
13 quired by paragraph (1) shall address—

14 (A) the sufficiency of security risk deter-
15 minations and countermeasures under title XXI
16 of the Homeland Security Act of 2002 (6
17 U.S.C. 621 et seq.); and

18 (B) the need for revised or additional
19 methods to address evolving security risks.

20 (b) EVALUATION OF INFORMATION MANAGEMENT.—
21 Not later than one year after the date of the enactment
22 of this Act, the Comptroller General of the United States
23 shall conduct a study and submit to the appropriate con-
24 gressional committees a report on—

1 (1) how the Secretary of Homeland Security
2 documents, maintains, and uses information on
3 tiering changes pursuant to section 2102(e)(3) of
4 the Homeland Security Act of 2002 (6 U.S.C.
5 622(e)(3)); and

6 (2) how management, maintenance, utility, and
7 use of the information could be improved to better
8 identify and disseminate practices to reduce chemical
9 security risks.

10 (c) EVALUATION OF PRACTICES TO REDUCE CHEM-
11 ICAL SECURITY RISKS.—Not later than 18 months after
12 the date of the enactment of this Act, the Comptroller
13 General of the United States shall submit to the appro-
14 priate congressional committees a report on the effective-
15 ness of the development and distribution by the Secretary
16 of Homeland Security of practices to address chemical se-
17 curity risks and of any actions taken or results produced
18 in response to such practices.

19 (d) APPROPRIATE CONGRESSIONAL COMMITTEES.—
20 In this section, the term “appropriate congressional com-
21 mittees” means—

22 (1) the Committee on Homeland Security and
23 Governmental Affairs of the Senate; and

1 (2) the Committee on Homeland Security and
2 the Committee on Energy and Commerce of the
3 House of Representatives.

4 **SEC. 13. VOLUNTARY MECHANISM FOR REPORTING**
5 **DRONES AND OTHER EMERGING THREATS.**

6 (a) IN GENERAL.—Not later than 120 days after the
7 date of the enactment of this Act, the Secretary of Home-
8 land Security, acting through the Director of the Cyberse-
9 curity and Infrastructure Security Agency, shall establish
10 a secure communications and information technology in-
11 frastructure or platform that allows facility owners and
12 operators to report, on a voluntary basis, information on
13 emerging threats, including terrorism threats posed by un-
14 manned aircraft systems (as defined in section 331(9) of
15 the FAA Modernization and Reform Act of 2012 (Public
16 Law 112–95; 49 U.S.C. 40101 note)) to covered chemical
17 facilities.

18 (b) PLATFORM CAPABILITIES.—The Secretary shall
19 ensure that the secure communications and information
20 technology infrastructure or platform established pursuant
21 to subsection (a) is designed to support data mining and
22 other advanced analytic tools to access, receive, and ana-
23 lyze data and information to facilitate the reporting of the
24 information described in subsection (a).

1 **SEC. 14. REGULATIONS REGARDING SPECIFIC PRODUCTS**
2 **AND MIXTURES CONTAINING CHEMICALS OF**
3 **INTEREST.**

4 Not later than one year after the date of the enact-
5 ment of this Act, the Secretary of Homeland Security shall
6 prescribe regulations to enact a process through which the
7 Secretary can be petitioned to exclude a product or mix-
8 ture under subsection (f) of section 2102 of the Homeland
9 Security Act, as added by section 3. In collecting informa-
10 tion from petitioners under such subsection, the Secretary
11 shall not be subject to subchapter I of chapter 35 of title
12 44, United States Code, or section 553 of title 5, United
13 States Code.

14 **SEC. 15. PREVIOUSLY APPROVED FACILITIES.**

15 In the case of a chemical facility that is a covered
16 chemical facility under title XXI of the Homeland Security
17 Act of 2002 for which the Secretary of Homeland Security
18 approved a site security plan under such title before the
19 date of enactment of this Act, the Secretary shall not re-
20 quire the facility to resubmit the site security plan solely
21 by reason of the enactment of this Act or the amendments
22 made by this Act.

23 **SEC. 16. TERMINATION.**

24 Section 5 of the Protecting and Securing Chemical
25 Facilities From Terrorist Attacks Act of 2014 (Public
26 Law 113–254; 6 U.S.C. 621 note) is amended by striking

130

37

- 1 “the date that is 4 years after the effective date of this
- 2 Act” and inserting “May 1, 2025”.

○

August 23, 2019

The Honorable Frank Pallone
Chairman, House Committee on Energy and
Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Greg Walden
Ranking Member, House Committee on
Energy and Commerce
2322 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Pallone and Ranking Member Walden:

We write to thank the Committee on Energy and Commerce for the opportunity to comment on the reauthorization of the Chemical Facilities Anti-Terrorism Standards (CFATS).

The continuing findings of the U.S. Chemical Safety and Hazard Investigation Board (CSB) and the recent industrial disasters in Wisconsin (Husky), Texas (ITC) and Pennsylvania (Philadelphia Energy Solutions) illustrate that a major industrial chemical release, fire, or explosion can endanger workers and communities and can cause the closure of important industrial facilities. CFATS is a critical program to defend against these incidents.

Reauthorizing CFATS represents an important opportunity to strengthen its effectiveness. We believe the existing statute should be improved in several areas: it should include water treatment and maritime-covered facilities, for example, and should include a requirement that the Department of Homeland Security (DHS) verify statements submitted by facilities that claim to no longer fall within the jurisdiction of CFATS. In addition to these and other specific improvements, we offer six broad goals for the bill, each of which we would welcome the opportunity to discuss with the Committee.

I. Engage workers in decision-making.

CFATS should include clear employee participation rights, expanding upon those that are now required under California's October 2017 Process Safety Management (PSM) regulation for petroleum refineries.¹ These provisions should include the right of employees to:

- Select their representatives who participate in security planning and implementation;
- Participate throughout all phases of security planning and implementation;
- Accompany DHS compliance officers during CFATS inspections;
- be provided with facility information as necessary to participate in security planning and implementation;
- Be made aware that they are working at a CFATS-covered facility and to understand their rights under CFATS; and

¹ California Code of Regulations (CCR) Title 8, Subchapter 7, General Industry Safety Orders, §5189.1. *Process Safety Management for Petroleum Refineries*. Available online: <https://www.dir.ca.gov/OSHSB/documents/Process-Safety-Management-for-Petroleum-Refineries-txtbrdconsider.pdf>. See subsection (q), *Employee Participation*, at pp. 24-25.

- Act as whistleblowers when necessary, without fear of retaliation. This right should extend to former employees, employee representatives, contractors, and contractor employees and it should include timelines for DHS to respond to claims of retaliation—as well as a clear remedy procedure for those who are found to have been retaliated against.

II. Emphasize risk-reduction over management.

The CFATS program is a chemical *management* framework, which is based on the assumption that hazardous chemicals and processes cannot be eliminated or reduced and must therefore be “surrounded” by layers of security. A *risk-reduction* framework, on the other hand, is based on the assumption that the use of hazardous chemicals and processes should be reduced or eliminated to the greatest extent feasible, and that doing so reduces the facility’s desirability as a target of opportunity.

Both approaches are useful in the security context; the industry’s Center for Chemical Process Safety (CCPS), however, points out that risk-reduction measures—which seek to “minimize, substitute, moderate or simplify” hazardous processes—“form a protocol by which the risks associated with the loss of containment of hazardous materials or energy can be significantly reduced, and in some cases eliminated.”² The CCPS risk-reduction guidance document that highlights the importance of risk-reduction measures was produced and peer reviewed by technical experts from U.S. chemical and oil companies and government agencies.

In fact, the experience under CFATS illustrates that industry fully recognizes the value of risk-reduction measures. DHS reports that thousands of high-risk facilities have chosen to meet their CFATS obligations by implementing risk-reduction measures, including:

- Consolidating hazardous chemicals from multiple sites into one or two sites;
- Replacing a hazardous chemical with a less hazardous one;
- Reducing the total quantity of hazardous chemicals held onsite; or
- Switching to a less concentrated form of a chemical.³

Assuming DHS substantiates the veracity of these claims, these approaches represent the practical implementation of risk-reduction measures by CFATS-covered facilities.

The reauthorization of CFATS represents an opportunity to codify and advance risk-reduction as a primary line of defense for our nation’s process industries. To do so, CFATS will need to require covered facilities to demonstrate the security implications of their operations through site security plans that include risk-reduction measures to minimize, substitute, moderate, or simplify chemicals and processes.

² American Institute of Chemical Engineers Center for Chemical Process Safety, *Inherently Safer Chemical Processes: A Life Cycle Approach*, 2nd Edition, 2009. Authorship and peer review by public agencies and representatives technical experts Chevron Energy Technology Company, 3M, Celanese Chemical, Lubrizol Corporation, Air Products and Chemicals, Rohm and Haas, DuPont, Eastman Chemical, Shell Chemical, Bayer Material Science, Eli Lilly, BP, Monsanto, Olin Corporation, INEOS Olefins and Polymers, Rhodia.

³ DHS Under Secretary Suzanne E. Spaulding, “Correspondence to the Honorable Bennie G. Thompson, ranking member, Committee on Homeland Security,” January 11, 2017. Page 6, item 12.

CFATS site security plans will need to include explicit requirements of facilities to investigate, assess, implement and document risk-reduction measures, primarily because these strategies may involve significant up-front investments by a facility. Altering an industrial process to reduce the use of a hazardous chemical, for example, or to reduce its temperature or pressure, usually requires many more changes in engineering compared to erecting a fence, and managers can find it difficult to propose these changes when more expedient management approaches (such as fencing, lighting, and security personnel) are fully permissible under CFATS. Moreover, resources sunk into fences, lighting and security can become a barrier to the adoption of risk-reduction measures, even when risk-reduction measures are demonstrably more effective and durable.

III. Account for vulnerable communities.

Dangerous industrial facilities are concentrated in the nation's most vulnerable communities. The Center for Effective Government reported in 2016 that across the nation, "people of color make up nearly half the population in fence-line zones (11.4 million)."⁴ These communities consequently are at greater risk of harm from an intentional attack on a chemical facility.

The bill should require that the unique risks facing these communities be incorporated into the CFATS program, including in site security planning and facility risk-tiering. The bill should require involvement of representatives from fenceline communities in a CFATS advisory committee, which should be charged with providing guidance to DHS on strategies to better assess, reduce and mitigate security risks. The bill should also require community protection elements such as real-time fenceline release monitoring and community alert and notification systems.

IV. Give emergency responders the tools they need.

We strongly support the 2017 Risk Management Program (RMP) amendments—also known as the Chemical Disaster Rule—and we urge EPA to implement those amendments, rather than continuing to delay and weaken them. *If fully implemented*, those amendments will begin to address the deficiencies in industrial chemical information that face the nation's emergency responders, and which have emerged as a result of weaknesses in the Emergency Planning and Community Right-to-Know Act (EPCRA), with its reliance on Local Emergency Response Committees (LEPCs).⁵

The reauthorization of CFATS represents an opportunity to improve the effectiveness of emergency responders by: (1) requiring facilities to generate, document and effectively transmit actionable chemical and process information to fire departments and other first responders, including employees and their union representatives at self-responding facilities;

⁴ Center for Effective Government, *Living in the Shadow of Danger: Poverty, Race, and Unequal Chemical Facility Hazards*, 2016. Available online: www.foreffectivegov.org/sites/default/files/shadow-of-danger-highrespdf.pdf. Accessed December 2018.

⁵ Purifoy DM (2013). EPCRA: A Retrospective on the Environmental Right-to-Know Act. *Yale J. Health Policy Law Ethics*. 13(2):375-417. Available online: <https://www.ncbi.nlm.nih.gov/pubmed/24340825>.

and (2) requiring facilities to provide access to emergency response personnel, on request, for pre-incident planning and training purposes. The current CFATS program does not meet these objectives.

Having access to a facility for pre-incident planning and training, together with clear information about the chemicals and processes used on site, are necessary to ensure the most effective emergency response possible by firefighters to an industrial incident.

V. Avoid voluntary programs and Secretarial exemptions.

The bill should avoid provisions that allow facilities to implement voluntary programs under CFATS. Voluntary initiatives tend to motivate only the most responsible companies to invest in the targeted outcome (such as site security), which can result in laggard companies gaining a competitive advantage, at the expense of worker and community safety.

The bill should avoid provisions that give the DHS Secretary new, unmitigated authority to exempt facilities or chemicals from the CFATS program. These provisions undermine the credibility of the CFATS program and, over time, could lead to unequal treatment within and among industry sectors. CFATS must be fully enforceable, including through civil suits against DHS for failure to implement the program.

VI. Ensure independent program evaluation.

CFATS should provide for independent evaluation of the scope and sufficiency of risk determinations and countermeasures in order to address evolving threats, such as weaponized drones and cybersecurity.

Closing

It is essential that Congress take action to protect workers, emergency responders, communities, and the nation's industrial infrastructure from the threat of an intentional attack. The findings of the Government Accountability Office illustrate that the CFATS program is making progress in meeting this objective, but that much more can and should be done.

We would welcome the opportunity to discuss actions the Committee can take to strengthen security at the nation's chemical facilities, consistent with this letter, including by ensuring full implementation of—and drawing lessons from—the 2017 RMP Amendments. We believe those lessons and the information compiled in connection with that rule are relevant to the reauthorization of CFATS.⁶

⁶ NEJAC Letter, May 2019. Available online: <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-1993>; comments of Earthjustice, filed on behalf of Air Alliance Houston, Cal. Communities Against Toxics, Clean Air Council, Clean Wisconsin, Coalition For A Safe Environment, Colorado Latino Forum, Coming Clean, Community In-Power & Development Association, Del Amo Action Committee, Environmental Integrity Project, Environmental Justice Health Alliance for Chemical Policy Reform, Louisiana Bucket Brigade, Ohio Valley Environmental Coalition, People Concerned About Chemical Safety, Sierra Club, Texas Environmental Justice Advocacy Services, Union of Concerned Scientists, Utah Physicians for a Healthy Environment, and Western Resource Advocates, August 2018. Available online: <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-1969>; comments of United

Finally, we refer the Committee to the comments (and the related responses to questions for the record) submitted in connection with the CFATS proceedings of the House Homeland Security Committee.⁷

We commend the Committee for its efforts, and we urge you to consider the priorities we've outlined above.

Sincerely,

Alaska Community Action on Toxics
 Asbestos Disease Awareness Organization (ADAO)
 Association of Occupational and Environmental Clinics
 BlueGreen Alliance
 Breast Cancer Prevention Partners
 California Communities Against Toxics
 Center for Science and Democracy at the Union of Concerned Scientists
 Citizens' Environmental Coalition
 Clean Air Council
 Clean Power Lake County
 Clean Water Action
 Coalition for a Safe Environment
 COCO-Coalition of Community Organizations
 Coming Clean
 Communications Workers of America, AFL-CIO
 Community Housing and Empowerment Connections Inc.
 Del Amo Action Committee
 Earthjustice
 Empire State Consumer Project
 Environmental Health Strategy Center
 Environmental Justice Health Alliance for Chemical Policy Reform
 Faith in Place Action Fund
 Greenpeace USA
 Health Care Without Harm
 Interfaith Worker Justice San Diego

Steelworkers International Union, August 2018. Available online: <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-1970>; comments of Lt. Gen. Honore *et al.* Available online: <https://www.regulations.gov/document?D=EPA-HQ-OEM-2015-0725-1631>; comments of the Coalition to Prevent Chemical Disasters, Oct. 29, 2014. Available online: <http://preventchemicaldisasters.org/wp-content/uploads/2016/05/coalition-to-prevent-chemical-disasters-rfi-comments-10-29-2014-final.pdf>;

⁷ Comments of the BlueGreen Alliance, March 12, 2019. Available online: <https://www.bluegreenalliance.org/wp-content/uploads/2019/03/031218-BlueGreen-Alliance-CFATS-Testimony-vFINAL.pdf>; comments of the International Chemical Workers Union Council, March 12, 2019. Available online: <https://docs.house.gov/meetings/HM/HM08/20190312/109050/HHRG-116-HM08-Wstate-MorawetzJ-20190312.pdf>; comments of People Concerned About Chemical Safety, March 12, 2019. Available online: <https://docs.house.gov/meetings/HM/HM08/20190312/109050/HHRG-116-HM08-Wstate-NixonP-20190312.pdf>.

Just Transition Alliance
Louisiana Bucket Brigade
Minority Workforce Development Coalition
New Jersey Work Environment Council
OVEC-Ohio Valley Environmental Coalition
People Concerned about Chemical Safety
PhilaPOSH
Public Citizen
RICOSH
Science and Environmental Health Network
Sciencecorps
Texas Environmental Justice Advocacy Services (t.e.j.a.s.)
United Food and Commercial Workers International Union (UFCW)
United Steelworkers Union
UPSTREAM
Utah Physicians for a Healthy Environment
Western New York Council on Occupational Safety and Health
WisCOSH, Inc.
Women's Voices for the Earth



Ross E. Eisenberg
 Vice President
 Energy & Resources Policy

September 11, 2019

The Honorable Paul Tonko
 Chairman
 Committee on Energy and Commerce
 Subcommittee on Environment and
 Climate Change
 U.S. House of Representatives
 Washington, DC 20515

The Honorable John Shimkus
 Ranking Member
 Committee on Energy and Commerce
 Subcommittee on Environment and
 Climate Change
 U.S. House of Representatives
 Washington, DC 20515

Dear Chairman Tonko and Ranking Member Shimkus:

The National Association of Manufacturers (NAM), the nation's largest industrial trade association, representing 14,000 small, medium and large manufacturers in every industrial sector and in all 50 states, has 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 April 18, 2020. The NAM strongly supports efforts to ensure the continuity of the CFATS program. However, as this Subcommittee considers reauthorization of the statute, the NAM is pleased to provide input on the current program and H.R. 3256, the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019*. For manufacturers, legislation to reauthorize CFATS must provide regulatory certainty without harming 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. Security investments are not only required by law but also a core component of manufacturers' 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; electrical utilities; and aerospace and defense. 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 which, due to its unpredictability, acted as a barrier to much-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.

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The authorization of CFATS in 2014 represented a turning point for the program. It set an important precedent: by removing CFATS from the appropriations track, Congress was for the first time able 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 by CFATS 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

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

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 in 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-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.

Congress Must Not Erode the Purpose of the CFATS Program

The CFATS program is the only federal program focused on facility site security with COIs, and this must remain as the program's only purpose. On June 19, the House Homeland Security Committee approved H.R. 3256, the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act* and this Subcommittee will now consider the legislation. While the NAM applauds Congress' commitment to reauthorizing the CFATS program, we are concerned that certain elements of H.R. 3256 could jeopardize the integrity of the program. H.R. 3256 would make extensive changes to the CFATS program by, but not limited to, potentially expanding the intent of the program beyond site security and compromising the confidentiality of chemical-threat vulnerability information. Congress must ensure that CFATS reauthorization legislation only strengthens, not weakens, facility site security.

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.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ross Eisenberg".

Ross Eisenberg
Vice President
Energy & Resources Policy



**National Association of SARA Title III
Program Officials**
Concerned with the Emergency Planning and Community Right-to-Know Act

September 10, 2019

Electronically Submitted

U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Environment and Climate Change

Re: H.R. 3256 – “Protecting and Securing Chemical Facilities from
Terrorist Attacks Act of 2019”

Dear Members and Staff:

We have reviewed H.R. 3256 with great interest and request that you support this Bill.

The National Association of SARA Title III Program Officials (NASTIPO) is made up of members and staff of State Emergency Response Commissions (SERCs), Tribal Emergency Response Commissions (TERCs), Local Emergency Planning Committees (LEPCs), various federal agencies, and private industry. Members include state, tribal, or local government employees as well as private sector representatives with Emergency Planning and Community Right to Know (EPCRA) program responsibilities, such as health, occupational safety, first response, environmental, and emergency management. The membership is dedicated to working together to prepare for possible emergencies and disasters involving hazardous materials, whether they are accidental releases or a result of terrorist attacks.

The CFATS program has been of interest to us since it was created, and we have routinely interacted with DHS and the relevant field staff over the years. In the last few years we have been pleased with the increasing openness

of the program and the willingness to share at least facility identification information. Many LEPC chairs and members have even obtained confidential vulnerability information (CVI) certifications to enhance our access to critical information and assure security for the facility's information.

The reason for this is simple. A chemical release requires emergency response regardless of the cause. As the universe of facilities that are subject to the CFATS program is different than the universe of facilities covered by the Risk Management Plan regulations and the Emergency Planning and Community Right-to-Know Act, the CFATS program allows us to identify potential risks in the communities we serve that might have otherwise not been apparent.

While emergency response is important, we are equally concerned about chemical release prevention. Efforts within the facility to identify sources of potential releases and then to design their facility or modify their operations to prevent the releases are critical. Involving the employees in security planning, as this bill requires, will be very helpful in this regard as it creates awareness of the consequences of a chemical release.

It is also true that planning for potential chemical releases, regardless of cause, cannot be effectively done solely within the facility. They need the support of LEPCs and fire departments in their communities to truly examine the areas of potential releases and the consequences of those release. In many cases, the best way to accomplish this effort is through good emergency preplanning done in conjunction with local first responders and the LEPC. It is for this reason that we strongly support the provisions of the Bill that enhance information sharing with communities.

Chemical release incidents don't just happen to facilities. They happen to communities and the entire community must deal with the incident. Regardless of cause, it is the community and facility that first respond to any incident.

Communities and responders cannot prepare for incidents when they lack relevant information on the risk and possible consequences. This Bill will go a long way towards improving this situation.

Thank you.

Timothy R Gablehouse
Past-President/Dir. Government Affairs
410 17th St, Ste 275
Denver CO 80202
(303) 572-0050



September 11, 2019

The Honorable Paul Tonko
Chairman
Subcommittee on Environment
and Climate Change
2125 Rayburn House Building
Washington, DC 20515

The Honorable John Shimkus
Ranking Member
Subcommittee on Environment
and Climate Change
2322 Rayburn House Building
Washington, DC 20515

Via Email

Re: Hearing on H.R. 3256, the "Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019"

Dear Chairman Tonko and Ranking Member Shimkus:

Thank you for holding today's hearing on [H.R. 3256](#), the "*Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019*."

The Chemical Facility Anti-Terrorism Standards (CFATS) program provides an important framework to ensure covered facilities are taking appropriate steps to be secure. The Fertilizer Institute¹ (TFI) and Agricultural Retailers Association² (ARA) represent facilities that are subject to the CFATS program because they manufacture, store, handle, and sell certain CFATS chemicals of interest (COI), such as anhydrous ammonia, ammonium nitrate, sodium nitrate, and potassium nitrate. These important fertilizers are needed to feed the crops that feed the world. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

TFI and ARA represent companies that own and operate large manufacturing facilities and thousands of small agricultural retail facilities, the latter of whom provide essential agronomic services and sell crop inputs, including fertilizer, to American farmers. The U.S. fertilizer industry generates more than \$154 billion in economic benefit annually and provides approximately 89,000 direct jobs and 406,000 indirect jobs for a total of 495,000 U.S. jobs.

The U.S. Department of Homeland Security (DHS) has estimated that over 3,500 facilities are presently subject to the CFATS program. TFI and ARA estimate that this includes as many as 1,000 fertilizer manufacturers and agricultural retail facilities, with retail facilities accounting for the overwhelming majority of covered facilities. Agricultural retail facilities are primarily located in rural communities and often have just 5-10 employees at a location.

Under the CFATS program, the DHS identifies chemicals which present potential security concerns. As previously mentioned, included on this list are a few fertilizers, including ammonia, ammonium nitrate, sodium nitrate, and potassium nitrate.

The safe and secure handling of fertilizers is a high priority for TFI, ARA, and our members. We actively participate in and sponsor numerous safety and security initiatives, including [ResponsibleAg](#), [TRANSCAER](#), and the [Fertilizer Safety and Health Partners Alliance](#) with the Occupational Safety and Health Administration (OSHA).

ResponsibleAg -- which is a joint effort between TFI and ARA -- exists to enhance understanding and compliance by agricultural retailers with a variety of federal regulations, including the CFATS program. Each participating facility receives an initial assessment of compliance with current federal regulations. Any noted compliance deficiencies must be corrected by the facility before it may be designated as certified under the program. The assessments are then conducted every three years.

ResponsibleAg is a voluntary, industry-driven initiative. Since its creation only four years ago, approximately one-third of the industry has signed-up to participate. To date, over 2,602 facilities are registered with the ResponsibleAg program, over 1,334 of these facilities have been certified, 229 auditors have been trained, and 3,044 audits have been completed. Over 70,000 issues have been identified and addressed at facilities across the nation. Our industry is continuously improving its already strong safety and security record. For example, [TFI's 2018 State of the Industry report](#)¹ data shows that we are twice as safe as our industry peers in the chemical manufacturing and merchant wholesaler industries.

In the context of the CFATS program, ResponsibleAg ensures facilities are taking the necessary steps to be secure and compliant with current federal regulations. We believe it is appropriate for industry stewardship programs -- such as ResponsibleAg, which is making positive contributions to the CFATS program -- to be recognized in a reauthorization bill.

As Congress works to reauthorize the CFATS program, we have the following recommendations.

- Recognition of industry stewardship programs.
- Maintain CFATS focus on site security. Our facilities are also regulated by the Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and other federal entities. Expanding CFATS to include functions handled; for example, by EPA or OSHA, would create duplicative regulations, confusion, and erode focus on the important role DHS has regarding site security.
- Enhance transparency between DHS and the regulated community. For example, DHS recently completed a process for reclassifying facilities. As a result, some of our member facilities were reclassified into a higher risk classification. What was not clear to some of our members was the underlying basis for the new categorizations. We believe this should be a more transparent effort between DHS and individual facilities, allowing for a more thorough discussion of the security risks posed by individual facilities. This could ultimately bolster the quality of site security plans.
- Any updates or modifications to Appendix A should be subject to a comprehensive notice and comment rulemaking under the Administrative Procedures Act. We have

¹ [State of the Fertilizer Industry report](#) tracks industry performance on key environmental, economic, and social indicators, such as safety, energy and environment, and jobs.

encountered some confusing rulemaking interpretations, particularly how the program addresses ammonium nitrate and ammonium nitrate mixtures. The uncertainty regarding which mixtures are or are not subject to CFATS has been the subject of many discussions, but thus far has not been resolved to the satisfaction of our members, who have received little explanation from DHS about how they come to these conclusions.

- Facility owner and operators should retain discretion to determine how site security information is shared. We should and do ensure first responders have the necessary facility information to be able to respond to an incident, but that facility information should be handled on a secure platform accessible only to those that need to know.
- The personnel surety program (PSP) should not be expanded to risk groups Tier 3 and Tier 4. This would be an exponential expansion of the program from the less than 200 facilities presently covered to more than 3,500. TFI and ARA recommend that Congress consider making PSP optional for Tier 3 and Tier 4.

Thank you again for holding this hearing and for the opportunity to submit comments on H.R. 3256, the "Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019". TFI and ARA strongly support efforts to enact a long-term reauthorization of the CFATS program and we look forward to working with you.

Sincerely,



Chris Jahn
President and CEO
The Fertilizer Institute



Darrin Coppock
President and CEO
Agricultural Retailers Association

ⁱ TFI represents the nation's fertilizer industry, which includes companies that are engaged in all aspects of the fertilizer supply chain. TFI's full-time staff, based in Washington, D.C., serves its members through legislative, educational, technical, economic information and public communication programs. TFI's members play a key role in producing and distributing vital crop nutrients, such as nitrogen, phosphorus and potassium. These products are used to replenish soils throughout the United States and elsewhere to facilitate the production of healthy and abundant supplies of food, fiber and fuel. Fertilizer is a key ingredient in feeding a growing global population, which is expected to surpass 9.5 billion people by 2050. Half of all food grown around the world today is made possible through the use of fertilizer.

ⁱⁱ ARA is a not-for-profit trade association that represents the nation's agricultural retailers and distributors. ARA members provide goods and services to farmers and ranchers which include: fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Retail and distribution facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

Mr. David Wulf, Associate Director for Chemical Security
U.S. Department of Homeland Security
Page 1

Subcommittee on Environment and Climate Change
Hearing on
“Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019”
September 11, 2019

Mr. David Wulf
Associate Director for Chemical Security
U.S. Department of Homeland Security

The Honorable John Shimkus (R-IL)

1. Do you think there should be penalties imposed on those people who obtain CVI and knowing make it public?

RESPONSE:

2. Could you please describe what is already required of CFATS-regulated facilities regarding sharing information with first responders?

RESPONSE:

- a. Does the Department have the bandwidth to check in on every CFATS facility to verify that they are appropriately coordinating with their local first responders?

RESPONSE:

3. When you are changing a facility’s tier – whether higher or lower; what does the CFATS program do to verify that the information is correct before a change is made?

RESPONSE:

- a. Is there any reason to only check on lowering the tier assignment, but not raising it?

RESPONSE:

4. Some have advocated shrinking the time that DHS must issue a violation from 14 days to 3 days and limit the ability of the facility time to get into compliance from 180 days to 30 days.

- a. From your experience, are these workable changes?

RESPONSE:

- b. If not, what is a more appropriate timeline?

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RESPONSE:

5. CFATS requires regulated facilities to consult, to the extent practicable, with employees when compiling their security vulnerability assessments and site security plans.
 - a. How does the Department interpret language that requires the CFATS program to consider employee input when deciding whether a facility meets the risk-based performance standards?

RESPONSE:

- b. Do you see a requirement like this forcing DHS to review items that do not ultimately impact site security plan approval?

RESPONSE:

The Honorable Greg Walden (R-OR)

1. This committee has heard testimony in the past that industry believe the tiering process is not as transparent as it needs to be when making risk determinations.
 - a. How do you respond to concerns like that?

RESPONSE:

- b. How can DHS work with owners and operators of CFATS facilities to make them more aware of possible threats, including insider ones?

RESPONSE:

2. Is there a risk to the surrounding community if information is shared too broadly?

RESPONSE:

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Subcommittee on Environment and Climate Change
Hearing on
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Mr. Scott Whelchel
Chief Security Office and Global Director of Emergency Services and Security
Dow

The Honorable John Shimkus (R-IL)

1. How are facilities coordinating with or otherwise sharing information with emergency responders and state and local government officials?

RESPONSE: *Dow, like all ACC members, have an established Community Outreach Program focused on protecting the environment, health, and safety of the community and increasing confidence in the safe use of chemical technology through:*

- *Communicating clearly and transparently*
- *Engaging in conversations*
- *Collaborating*
- *Conducting research*

Stakeholders include, but are not limited to:

- *Employees on site*
- *Residents & community representatives*
- *Local & state authorities*
- *Law enforcement agencies*
- *Local emergency planning organizations (LEPCs)*
- *Community Advisory Panels (CAPs)*
- *Educational institutions*
- *Media*
- *Customers*
- *Suppliers*
- *Tenants*

Each Dow location must have a documented Community Outreach Program through which it can share details on:

- *Site operations*
- *Products, applications & innovation*
- *Product distribution*
- *Corporate Social Responsibility*
- *Projects to protect the community's safety, health, and environment*

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Maintain dialog with stakeholders regarding:

- *Emergency Response Plans (internal & external)*
 - *Preparedness plans*
 - *Distribution emergency response*
 - *Emergency drills*
 - *Chemical inventories*
 - *Reduction of waste and emissions*
 - *Reduction of water and energy consumption*
 - *Process safety systems*
 - *Questions, concerns and expectations*
 - *Opportunities to educate and improve community confidence*
- a. Should persons getting access to Chemical Vulnerability Information (CVI) have both a need to know and be trained in handling CVI?

RESPONSE: *Yes*

- b. In addition to CFATS, are there other Federal laws that require facility owners and operators to share information with first responders? I am referring to the Toxic Substances Control Act, CERCLA and Toxic Release Inventory reporting, the Emergency Planning and Community Right to Know Act, and the Clean Air Act's accidental release program.

RESPONSE: *Yes. Examples include, but not limited to:*

- *EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 304: Emergency Notification*
- *EPA EPCRA Section 311: Safety Data Sheets (SDSs)*
- *EPA EPCRA Section 312: Tier I, II*
- *EPA EPCRA Section 313: Toxic Release Inventory (TRI)*
- *EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 103: Release Reporting*
- *EPA Clean Air Act Section 112(r): Accidental Release Prevention, Risk Management Program*
- *EPA Toxic Substances Control Act (TSCA) Section 8: Chemical Data Reporting*
- *DOT Hazardous Materials Regulations, 49 CFR Parts 171-180: Emergency Response and Release Reporting*
- *OSHA Hazard Communication Standard, 29 CFR 1910.1200*
- *OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard, 29 CFR 1910.120*
- *OSHA Process Safety Management (PSM) Standard, 29 CFR 1910.119*

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- c. Is it true that biggest difference between CFATS and those other laws I just mentioned is that CFATS requires creation and production of documents about how the chemicals are protected from theft or diversion?

RESPONSE: *Yes. The CFATS program steps include: identifying threats, vulnerabilities, assessing risk, and applying countermeasures. The specific information derived from this process, for all facilities, could result in a "play book" for any adversary to circumvent the security measures that result from the approach. An analogous approach is often referred to as "Operational Security" or OPSEC. Essentially, this is a systematic method used to identify, control, and protect critical information and subsequently analyze actions associated with security activities to protect your information and activities from those with nefarious intent (criminals, terrorists, etc.)*

- d. Would it concern you if this information was being shared more broadly than it is now?

RESPONSE: *Yes. See rationale above*

- i. How so?

RESPONSE: *See rationale above.*

- ii. What about as it relates to risks to the facility and the surrounding community?

RESPONSE: *The security measures implemented at facilities also protect the surrounding community from the risk of the highest consequence scenarios.*

2. Some have argued that DHS should be required to verify information submitted by a CFATS-covered chemical facility before lowering that facility's high-risk tiering or removing them from the program.

- a. Do you think this is necessary?

RESPONSE: *I agree that this could be a needed step, although DHS should be able to implement a random selection approach or less than 100% inspection approach to account for resource constraints.*

- b. Should DHS be required to verify information before increasing a facility's tier?

RESPONSE: *Yes. Historically, DHS' risk tiering methodology has been a bit of a "black box" with inconsistent outputs from nearly identical tiering inputs. DHS should be more transparent when it comes to tiering decisions. The site security*

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management should be included in tiering decisions that affect his facility and personnel. And it is, in fact, the site security manager who has the ultimate responsibility for making critical security management decisions.

3. H.R. 3256 removes the factor of “practicality,” making it an absolute requirement that CFATS facility owners and operators consult with their employees on vulnerability assessments and site security plans. In addition, the legislation compelling those consultations to recordkeeping rules and insisting that DHS base approval of a site security plan on the level of employee participation and input – rather than meeting the risk-based performance standards.

- a. Is there a general rule to how facility owners and operators interface with their employees on this kind of thing (i.e. collective bargaining)?

RESPONSE: *Security planning is a multi-discipline undertaking. It requires the combined expertise of professionals in: security, human resources, legal, manufacturing operations, environmental, health services, safety and others. In addition, planning should involve employees at all levels. The main difference is the exposure of sensitive information consistent with the practice of “need to know” to maintain the OPSEC discussed above. For example, there is minimal need to discuss the details of cybersecurity to a warehouse inventory specialist unless her role has relevant cyber risk associated with it and her awareness of those threats and vulnerabilities bring value to the plan. Conversely, the cybersecurity professional has minimal need to know the detailed location of chemical inventories in the warehouse.*

No distinction is or should be made on the responsibility to share information with stakeholders based on their status as a collective bargaining worker or not.

- b. Do you think “impracticable” consultations should be forced upon owners and operators?

RESPONSE: *Absolutely not. This is inconsistent with the risk-based approach that makes the CFATS program so successful. Further, it does nothing to strengthen the security controls of the facility and introduces additional administrative burden and resource needs.*

- c. What is the practical effect of an absolute mandate of this kind on smaller facilities and facilities with contentious labor situations?

RESPONSE: *Smaller facilities have fewer resources to comply and would potentially need to make unwanted trade-offs for compliance. In other words, they would have to pick and choose which elements of the regulation to spend more effort on. The documenting of who was involved in the planning along with the “collective bargaining” requirement begins to outweigh the non-prescriptive but*

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higher value actions of the regulation.

4. Questions about the Personnel Surety (or identity verification against the Terrorist Screening Data Base for the lay people) have constantly been an issue with CFATS. After having finished with the highest risk, high risk facilities – Tiers 1 and 2; DHS is now implementing these requirements at the lower risk, high risk facilities – Tiers 3 and 4 – which are the lion's share of CFATS regulated facilities.

- a. How should DHS handle these facilities regarding personnel surety?

RESPONSE: *Very little is known about what benefit there has been from DHS' implementation of personnel surety for tiers 1 and 2. What conclusions can be drawn regarding benefit-cost analysis? What validation does DHS see regarding the risk of sharing sensitive personal identifying data? There also remains a high level of uncertainty and skepticism on the part of industry on whether DHS would promptly notify the company of a positive hit on the TSDB. DHS and other authorities should involve industry personnel in positions of trust with the follow-on actions after a positive hit.*

ACC members implement a host of background checks on its personnel as required by CFATS and independently based on company/industry standards. In addition to checking for terrorist ties, CFATS requires criminal background checks, verification of identity and legal U.S. employment verification. The incremental benefit associated with terrorist screening, compared to the cost and time of collecting, protecting and managing personal information on hundreds and thousands of employees and contractors is questionable. In addition, the increase in security vulnerability of sending that information over the internet to DHS seems to outweigh any incremental value.

- b. Would relaxing background checks at these facilities encourage terrorists to target them? Why?

RESPONSE: *All CFATS facilities should be required to conduct criminal background checks, employment verification and identity. However, terrorist screening should be optional for lower risk Tiers 3 and 4, for the reasons stated above. .*

DHS should conduct a complete cost-benefit analysis to demonstrate that the value of terrorist screening outweighs the costs. As they currently have not implemented at Tiers 3 and 4, this would not constitute a "relaxing" of security checks at facilities.

CFATS facilities employ a host of security layers to protect their assets including security guards, background checks, monitoring and access control. Each of these layers of protection provide a substantial deterrent to would-be terrorists. As

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such, CFATS facilities present a highly hardened target, which is why we haven't seen a terrorist attack on a chemical plant in the United States. Unfortunately other mechanisms are in place today that make it far too simple to purchase hazardous chemicals over the internet from China. The Federal Government should focus its attention and resources on protecting our communities from real risks.

5. CFATS recently updated its risk methodology to incorporate all the elements of risk contained in the National Infrastructure Protection Plan definition of risk: vulnerability, threat, and consequence.

- a. H.R. 3256 seeks to have this methodology redefined. Is this a good idea?

RESPONSE: *The current risk methodology is consistent with the NIPP definition of risk and has produced a more accurate and more consistent result. We are unaware of why this change is being sought and what deficiency it is trying to fix. It does not need to be changed.*

- b. What is the practical effect of changing the definition of risk and why would it be a bad idea?

RESPONSE: *Any substantive change to the definition of risk would initiate a complete re-tiering of hundreds, if not thousands of facilities. This type of upheaval is unnecessary and would create extreme uncertainty in the regulated community. Again, it is not clear what problem is being solved by such a radical departure from the traditional definition of risk.*

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**Subcommittee on Environment and Climate Change
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**Mr. Matthew Fridley
Corporate Manager of Safety, Health, and Security
Brenntag North America, Inc.**

The Honorable John Shimkus (R-IL)

1. How are facilities coordinating with or otherwise sharing information with emergency responders and state and local government officials?

RESPONSE: LEPC, TIER II, etc.

At Brenntag, we are required to communicate with and invite local fire and police departments to our facilities per Department of Homeland Security (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program regulations, as well as be active members of the Local Emergency Planning Committees per National Association of Chemical Distributors' (NACD) Responsible Distribution or American Chemistry Council's (ACC) Responsible Care certifications. Additionally, Brenntag works closely with many of our facilities' local emergency responders to conduct live full-scale exercises. The last full-scale exercise Brenntag conducted was in the Southwest, in which a suspicious package was placed on-site and our facility activated its internal emergency response plan. At this exercise, Brenntag hosted numerous local emergency response agencies on-site, including the local bomb and arson unit, Federal Bureau of Investigation (FBI), Transportation Security Administration, and DHS inspectors. Moreover, Brenntag invited the facility's local member of the U.S. House of Representatives and/or the member's staff to attend the full-scale exercise to provide them the opportunity to receive a first-hand view of how the industry is working with the emergency response community. Unfortunately, neither the representative nor the staff attended the event.

- a. Should persons getting access to Chemical Vulnerability Information (CVI) have both a need to know and be trained in handling CVI?

RESPONSE:

Yes. If the information is CVI and specifically discusses a facility's security program, any persons getting access to CVI should require both a need to know and be trained in handling CVI. If members of the emergency response community are simply interested in familiarizing themselves with our facilities by touring a site in their locality, I do not believe those requirements would be necessary because they would not be gaining access to CVI.

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- b. In addition to CFATS, are there other federal laws that require facility owners and operators to share information with first responders? I am referring to the Toxic Substances Control Act, CERCLA and Toxic Release Inventory reporting, the Emergency Planning and Community Right to Know Act, and the Clean Air Act's accidental release program.

RESPONSE:

- EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 304: Emergency Notification
- EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 311: Safety Data Sheets (SDSs)
- EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 312: Tier I, II
- EPA Emergency Preparedness and Community Right to Know Act (EPCRA) Section 313: Toxic Release Inventory (TRI)
- EPA Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 103: Release Reporting
- EPA Clean Air Act: Risk Management Program
- EPA Toxic Substances Control Act (TSCA): Chemical Data Reporting
- DOT Hazardous Materials Regulations: Emergency Response and Release Reporting
- OSHA Hazard Communication Standard
- OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Standard
- OSHA Process Safety Management (PSM) Standard

Additionally, I believe the above information is confusing to many first responders because of the multiple formats and various mechanisms facilities must use to communicate that information. For those reasons, I believe facility operators and government agencies need to provide the information in one format to afford the first responders the clarity they need during an emergency.

- c. Is it true the biggest difference between CFATS and those other laws I just mentioned is that CFATS requires creation and production of documents about how the chemicals are protected from theft or diversion?

RESPONSE:

Correct. The other reporting regulations are specifically intended to communicate what hazards a facility has on-site so the emergency responders are best equipped to know how to respond to an event (spill, fire, etc.). The CFATS program is correctly intended to communicate with DHS how certain high-risk facilities are protecting those products from terrorist acts.

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The purpose of the CFATS program in comparison to the other laws mentioned above is completely different.

- d. Would it concern you if this information was being shared more broadly than it is now?

RESPONSE:
Absolutely.

- i. How so?

RESPONSE:

If the information is shared publicly, what would be the point to have a security plan? A facility's security information is a blueprint for how a facility protects its employees, the facility, and the surrounding communities. If this were to become common public knowledge, then the risk facilities face against acts of terrorism would increase immensely.

- ii. What about as it relates to risks to the facility and the surrounding community?

RESPONSE:

If the inventory of facilities becomes more public, it would provide a virtual shopping list and/or set of targets for someone who wants to acquire those materials for malicious purposes. I agree with the notion that the emergency response agencies need this information, but I would caution against communicating the amounts and products these facilities store to the general public.

2. Some have argued that DHS should be required to verify information submitted by a CFATS-covered chemical facility before lowering that facility's high-risk tiering or removing them from the program.

- a. Do you think this is necessary?

RESPONSE:

I have no issues with DHS verifying submitted information by a CFATS-covered chemical facility prior to lowering high-risk tiering or removing them from the CFATS program. This approach would keep everyone on the same level.

- b. Should DHS be required to verify information before increasing a facility's tier?

RESPONSE:

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Yes, same as above.

3. H.R. 3256 removes the factor of “practicality,” making it an absolute requirement that CFATS facility owners and operators consult with their employees on vulnerability assessments and site security plans. In addition, the legislation compels those consultations to recordkeeping rules and insists that DHS base approval of a site security plan on the level of employee participation and input – rather than meeting the risk-based performance standards.

- a. Is there a general rule to how facility owners and operators interface with their employees on this kind of thing (i.e. collective bargaining)?

RESPONSE:

Yes. At Brenntag, we consult with numerous employees to develop our site security plan (SSP) program (regardless of union representation). Brenntag bases decisions of employee involvement and engagement on which employee(s) possess(es) the relevant knowledge of the specific issue area that is being filled out. Brenntag does not engage only one person for the entire SSP, as one person will not have all the information or a need to know that information. As an example, Brenntag will not ask the operator about cybersecurity, just as we would not ask our cybersecurity person about operations. We simply cannot develop good working SSP without others' involvement.

- b. Do you think “impracticable” consultations should be forced upon owners and operators?

RESPONSE:

Absolutely not. It does nothing to assist in strengthening the security program.

- c. What is the practical effect of an absolute mandate of this kind on smaller facilities and facilities with contentious labor situations?

RESPONSE:

My belief is an absolute mandate of this kind on smaller facilities, as well as facilities with contentious labor situations, will only further an already contentious situation. It is important to note the intentionally nonprescriptive nature of the CFATS program regulation. This nonprescriptive approach allows each CFATS-covered facility – which can differ vastly from site to site – the ability to determine what decisions are best for them to meet regulatory requirements. There are many ways for a facility to meet a standard, and if we implement this process it will not allow for the facility to decide what is best based on the situation and budget.

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- d. Should any outside consultant have a familiarity with the plant, a need to know CVI information, and be CVI-trained in order to participate in any consultation like this?

RESPONSE:

Absolutely. Anyone who participates in developing SSP should all be held to the same standards of protecting this vital information. I would be hard-pressed including someone who is not an employee from my facilities in the process of developing SSP.

4. H.R. 3256 contains provisions that require the CFATS program to cull actions taken by facilities to reduce their threats, anonymize the data, and make it public.
- a. Are you concerned that a performance-based program that is supposed to be technology and practice neutral is now issuing standard of care suggestions advocating specific technologies or actions?

RESPONSE:

Yes. The CFATS program has been nonprescriptive, allowing the industry to decide what is best for each individual facility. There is no one-size-fits-all approach to security and with issuing standards of care on a specific technology. Issuing standard of care suggestions advocating specific technologies or actions will lead to more confusion and a weakening of a facility's security program.

- b. What would be the legal implication of such an effort by DHS on your facilities?

RESPONSE:

Efforts such as these to the CFATS program would be a huge financial cost to everyone. The industry has already spent millions of dollars on programs that we believed met DHS standards and were given DHS's approval. If the industry must go back and rework programs to fit into a box, we would have a very hard time doing so.

5. H.R. 3256 permits DHS to establish a voluntary program for non-CFATS-regulated facilities to address potential chemical security risks. What are your thoughts on such a provision?

RESPONSE:

Personally, I do not have any issues with a voluntary program, if the voluntary best practices do not become legislative later. Brenntag already utilizes these voluntary activities through our Responsible Distribution/Responsible Care program, and this would be a great opportunity to leverage those programs within NACD, ACC, etc. to start working with DHS on ways to incorporate those best practices into this voluntary program.

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6. How do you differentiate between what is safety and what is security?

RESPONSE:

Safety is regulated by OSHA. Security is a DHS program. It is very clear and easy to understand.

- a. Why is that distinction important for CFATS?

RESPONSE:

It is extremely important for the CFATS program. Safety is regulated by a variety of organizations (OSHA, DOT, EPA) and if this (security) standard starts to regulate the safety aspect, you will inevitably start to have duplicative and conflicting regulations — further adding to the industry's confusion on how to manage it. This standard must maintain its security focus and allow the other agencies to focus on their core competencies.

- b. With other federal and state agencies covering those areas, do you think it is wise for CFATS to engage in safety-related activities?

RESPONSE:

Absolutely not! DHS's focus as an agency is not safety, just as OSHA's focus as an agency is not security.

7. As a general matter, do you think it is wise to make compliance with specific subclasses of risk-based security standards a predicate for approval of a site security plan?

RESPONSE:

All the subclasses do nothing to help secure our facilities or community. The focus should stay on the Risk Based Performance Standards that are specific to the security of the Chemicals of Interest (COI) and facilities.

8. CFATS recently updated its risk methodology to incorporate all the elements of risk contained in the National Infrastructure Protection Plan definition of risk: vulnerability, threat, and consequence.

- a. H.R. 3256 seeks to have this methodology redefined. Is this a good idea?

RESPONSE:

I am against any changes to the methodology that would alter the process and cause retiering. Only a few short years ago, DHS updated the tiering methodology that caused many facilities to be retiered. Thus, it required those facilities to update their SSP with additional security capital being spent and past security investment to be unnecessary, outdated or obsolete. We must stop moving the goal line on the industry.

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- b. What is the practical effect of changing the definition of risk and why would it be a bad idea?

RESPONSE:

Any changes to the methodology that would potentially lead to another round of retiring would have a huge negative economic impact on the industry.

- 9. Some people suggest Local Emergency Planning Commissions should have access to CVI. How does CFATS currently address informing state and local governments, including law enforcement and first responders about CVI?

RESPONSE:

This question would be better answered by DHS regarding how they currently provide this CVI information to law enforcement and first responders — namely, through the Infrastructure Protection (IP) Gateway, which is operated by DHS and not accessible to regulated facilities.

- a. Why is it important for people receiving CVI to have a need to know and be CVI-trained?

RESPONSE:

It is critical that everyone who has access has a CVI. Proper CVI approval and training is the only way to maintain and control our nation's facilities' security programs. Without these conditions and controls in place, no one would have any idea who possesses the information.

- 10. There has been discussion at the hearing about eliminating or downsizing chemicals in manufacturing plants, changing processes, or keeping stocks off-site.

- a. Please speak to the risk tradeoffs this presents?

RESPONSE:

The obvious benefit for safety and security is the ability to eliminate or downsize the need for a certain chemical. The issue in my industry is that we are directly impacted by our customers' needs. As a distributor, we have little influence over our customers' process or demand. We must have the products and quantities that they need to operate, or we lose business. We do work with our customers offering solutions for alternatives, but we must be able to provide our customers what they want when they need it to meet their business needs. We have been able to consolidate inventory to locations that make business sense. Nevertheless, there is a safety/security tradeoff for having larger stockpiles of chemicals in a certain area, as well as transporting these chemicals over the road more frequently and in larger

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quantities.

- b. Will this make you facility more secure from theft and diversion?

RESPONSE:

The elimination of certain chemicals could have a benefit from a theft/diversion standpoint. However, again, our business is directly tied to our customers' needs and requirements. So, if we have more than one COI that is a theft/diversion chemical we could be subject to DHS CFATS requirements for more than one COI that is a theft/diversion risk. We do have processes that review our customers' needs to our stocking level. We do not store large quantities of chemicals without having a business to which to sell those products. Inventory is money, and we do not want to have our dollars tied up in something that we are not going to sell.

- c. How will requirements like this affect just-in-time deliveries and American manufacturing overall?

RESPONSE:

As a chemical distributor, we are the warehouse that supplies product in a just-in-time fashion. Chemical distributors supply our customers on demand; thus, we must keep certain quantities available to supply the manufacturing industry. This process shifts the safety/security away from the manufacturing industry and puts more of a burden on the distribution industry.