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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

January 29, 2020

GABRIELLE D'ADAMO SINGER, STAFF DIRECTOR
DAVID M. WEINBERG, MINORITY STAFF DIRECTOR

The Honorable Bennie Thompson
Chairman
Committee on Homeland Security
United States House of Representatives

Dear Chairman Thompson:

Thank you for your letter regarding the future of the Chemical Facility Anti-Terrorism Standards (CFATS) program at the U.S. Department of Homeland Security (DHS).¹ I share your hope that our committees are able to work together and achieve consensus before the CFATS program's authorization expires in April 2020. But I believe we must do so in a manner that addresses the current threat environment and harmonizes the program with the way DHS engages with other critical infrastructure sectors. For these reasons, I write to urge you to work with me to meaningfully reform the CFATS program.

You stated in your letter: "the threats this country faces continue to evolve."² That is certainly true, yet the CFATS program has not been meaningfully reformed since 2014.³ Since I became chairman of the Senate Homeland Security and Governmental Affairs Committee in 2015, we have conducted oversight of the CFATS program by requesting records from more than 30 private and public sources, holding numerous meetings with government and industry stakeholders, and holding oversight hearings.⁴ We have learned a great deal. For example, in 2018, the U.S. Government Accountability Office (GAO) completed a report at our joint request

¹ Letter from Rep. Bennie Thompson, Chairman, H. Comm. on Homeland Sec., to Sen. Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs (Jan. 14, 2020) (on file with Committee staff).

² *Id.*

³ Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, Pub. L. No. 113-254, § 128 Stat. 2898 (2014).

⁴ See, e.g., *Roundtable: Sensibly Reforming the Chemical Facility Anti-Terrorism Standards Program: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 116th Cong. (2019), <https://www.hsgac.senate.gov/sensibly-reforming-the-chemical-facility-anti-terrorism-standards-program>; Letter from Chairman Sen. Ron Johnson and Sen. Mike Enzi to Sec'y Kirstjen Nielsen (Mar. 29, 2019) (CFATS overlap with ATF regulations) (on file with Committee staff); Letter from Chairman Sen. Ron Johnson and Sen. Mike Enzi to Thomas Brandon, Dir., Bureau of Alcohol, Tobacco, Firearms, and Explosives (Mar. 29, 2019) (CFATS overlap with ATF regulations) (on file with Committee staff); Letter from Chairman Sen. Ron Johnson and Ranking Member Sen. Gary Peters to Sec'y Kirstjen Nielsen (Mar. 22, 2019) (Status of DHS's CFATS program audit) (on file with Committee staff); *Roundtable: Examining the Chemical Facility Anti-Terrorism Standards Program: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2018), https://www.hsgac.senate.gov/hearings/roundtable_examining-the-chemical-facility-anti-terrorism-standards-program; Letter from S. Comm. on Homeland Sec. & Governmental Affairs and H. Comm. on Homeland Sec. to U.S. Gov't Accountability Off. (Mar. 13, 2017) (GAO review of the CFATS program) (on file with Committee staff).

that found the CFATS program does not evaluate or measure vulnerability reduction.⁵ Absent that information, DHS does not have “the opportunity to begin assessing how vulnerability is reduced—and by extension, risk lowered—not only for individual high-risk facilities but also for the CFATS program as a whole.”⁶ Fourteen years after its initial authorization, given the substantial amount of money spent by U.S. taxpayers and the chemical industry itself, the CFATS program should be able to measure and identify the risks it has reduced and the benefits it has created.

In addition, my committee identified overlapping and duplicative regulatory regimes between, among others, CFATS and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), that creates confusion and increases costs.⁷ We heard from industry about the benefits of creating a CFATS Recognition Program to provide greater regulatory relief for facilities that also participate in industry stewardship programs and exceed current compliance requirements.⁸ Industry also explained how the CFATS program’s methodology for tiering facilities lacks appropriate transparency and suggested improvements to the implementation of the Personnel Surety Program.⁹

Based on what we learned, last Congress I introduced S. 3405, Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018, which proposed reauthorizing the CFATS program for five years along with reforms necessary to improve DHS’s implementation of the program and proposed regulatory relief for the U.S. chemical industry, all while ensuring our security.¹⁰ The Committee unanimously approved the bill by voice vote on September 26, 2018.¹¹ This bipartisan legislation also had three industry letters of support from the CFATS Coalition, the Fertilizer Institute/Agricultural Retailers Association, and the Institute of Makers of Explosives.¹² Despite this broad and bipartisan support, the House refused to consider the legislation and insisted upon a simple reauthorization of the existing program. As I said on the floor of the Senate at that time, “there [wa]s, basically, a gun to my head, threatening me to take it or leave it.”¹³ So, reluctantly, I agreed to a 15-month reauthorization so that we could have more time to reform the program.

⁵ U.S. Gov’t Accountability Office, GAO-18-538, Critical Infrastructure Protection (Aug. 2018), *available at* <https://www.gao.gov/assets/700/693817.pdf>.

⁶ *Id.*

⁷ *Roundtable: Examining the Chemical Facility Anti-Terrorism Standards Program Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 115th Cong. (2018), *available at* https://www.hsgac.senate.gov/hearings/roundtable_-_examining-the-chemical-facility-anti-terrorism-standards-program.

⁸ *Id.*

⁹ *Id.*

¹⁰ S. 3405, *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018* (115th Cong.).

¹¹ *Committee Business Meeting*, S. Comm. On Homeland Sec. & Governmental Affairs, 115th Cong. (Sept. 26, 2018).

¹² Letter from Agricultural Retailers Association, et. al., to Chairman Ron Johnson (Sept. 25, 2018) (Chemical Facility Anti-Terrorism Standards support letter) (on file with Committee staff); Letter from John Boling to Chairman Sen. Ron Johnson (Sept. 12, 2018) (Institute of Makers of Explosives support letter) (on file with Committee staff); Letter from Daren Coppock and Chris Jahn to Chairman Sen. Ron Johnson (Sept. 21, 2018) (Agricultural Retailers Association and the Fertilizer Institute support letter) (on file with Committee staff).

¹³ 164 Cong. Rec. Vol. S7227 (Nov. 29, 2018) (statement of Chairman Ron Johnson).

Since the passage of the 15-month extension, I led a bipartisan letter asking the GAO to conduct a review of fragmentation, overlap, and duplication within the CFATS program;¹⁴ held another CFATS committee hearing;¹⁵ submitted oversight requests to DHS and ATF regarding their overlapping regulations of the industry;¹⁶ and sent an oversight letter requesting additional information about a proposed DHS audit program.¹⁷ Information received to date highlights the same issues within the program that we identified during the 115th Congress, and industry is still calling for reforms to the program.¹⁸ Yet, despite all of this work, here we are again: the House is insisting that I agree to a simple reauthorization of the entire program, rather than make reforms.

More spending and more regulation does not equate to more security. Rather, a business-as-usual approach risks complacency and a false sense of security. The CFATS program needs to evolve to align with the Cybersecurity and Critical Infrastructure Security Agency's (CISA) "focus around raising awareness among the broader community on the need for critical infrastructure security and resilience and enhancing their current efforts. Public-private partnerships are vital to this effort as everyone has a role in securing the nation's critical infrastructure."¹⁹ These types of public-private partnerships are intended to be non-regulatory.²⁰ However, the CFATS program is one of only three regulatory programs at DHS, and the only one under CISA.²¹ We need to examine reforms that will harmonize the CFATS program with how CISA engages with the other 15 critical infrastructure sectors.

¹⁴ Letter from S. Comm. on Homeland Sec. & Governmental Affairs to U.S. Gov't Accountability Office (Aug. 20, 2019) (GAO review of fragmentation, overlap, and duplication within that CFATS program) (on file with Committee staff).

¹⁵ *Roundtable: Sensibly Reforming the Chemical Facility Anti-Terrorism Standards Program: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 116th Cong. (2019).

¹⁶ Letter from Chairman Sen. Ron Johnson and Sen. Mike Enzi to Sec'y Kirstjen Nielsen (Mar. 29, 2019) (CFATS overlap with ATF regulations) (on file with Committee staff). *See also* Letter from Chairman Johnson and Sen. Mike Enzi to Thomas Brandon, Dir., Bureau of Alcohol, Tobacco, Firearms, and Explosives (Mar. 29, 2019) (CFATS overlap with ATF regulations) (on file with Committee staff).

¹⁷ Letter from Chairman Sen. Ron Johnson and Ranking Member Sen. Gary Peters to Sec'y Kirstjen Nielsen (Mar. 22, 2019) (Status of DHS's CFATS program audit) (on file with Committee staff).

¹⁸ *Roundtable: Sensibly Reforming the Chemical Facility Anti-Terrorism Standards Program: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs*, 116th Cong. (2019). *See also* HSGAC Majority and Minority Staff Meeting with the CFATS Coalition (June 20, 2019). *See also* Letter from Agricultural Retailers Association, et. al., to Chairman Ron Johnson and Ranking Member Gary Peters (Jan. 28, 2020) (on file with Committee staff).

¹⁹ *Infrastructure Security*, CISA, <https://www.cisa.gov/infrastructure-security>.

²⁰ U.S. Congressional Research Service. *Critical Infrastructure: Emerging Trends and Policy Considerations for Congress* (R45809; July 8, 2019), by Brian E. Humphreys. Available from: https://www.crs.gov/Reports/R45809?source=search&guid=95324cf466404a278cf7f60acd797c79&index=2#_Toc13759799.

²¹ *Id.* ("The Homeland Security Act created an organization—DHS—with wide-ranging responsibilities, but relatively narrow regulatory mandates. The Transportation Security Administration has (but does not exercise) regulatory oversight over oil and gas pipeline security. The Coast Guard regulates certain aspects of port security—a mission that long predates the transfer of the service to DHS under the Homeland Security Act. Finally, CISA directly regulates certain chemical facilities under the Chemical Facilities Anti-Terrorism Standards program to prevent terrorist exploitation of the chemical industry.")

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We have nearly three months until the CFATS program's authorization terminates, and should work together to consider how to reform the program. We should not settle for yet another clean reauthorization that kicks the can down the road.

Sincerely,

A handwritten signature in blue ink that reads "Ron Johnson". The signature is fluid and cursive, with a large loop at the end of the name.

Ron Johnson
Chairman

cc: The Honorable Gary Peters
Ranking Member
Committee on Homeland Security and Governmental Affairs, U.S. Senate

The Honorable Michael Rogers
Ranking Member
Committee on Homeland Security, U.S. House of Representatives