October 23, 2018

The Honorable Michael McCaul
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Bennie Thompson
Ranking Member
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Chairman McCaul, Chairman Walden, Ranking Member Thompson, and Ranking Member Pallone:

We write regarding S. 3405, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018.¹ This bill will reauthorize the Chemical Facility Anti-Terrorism Standards (CFATS) program at the Department of Homeland Security (DHS) with commonsense reforms to secure chemical facilities while reducing the regulatory burden on the private sector.

During the 113th Congress, the Senate Committee on Homeland Security and Governmental Affairs, House Committee on Homeland Security, and House Committee on Energy and Commerce worked together to reauthorize and reform the CFATS program, although the reauthorization is set to expire in January 2019.² At that time, the CFATS program faced significant challenges, including long backlogs to review security plans, a flawed tiering methodology, program management issues, and questions about whether the program was effectively reducing risk and enhancing security.³

The CFATS program currently regulates over 3,000 chemical facilities nationwide.⁴ Although DHS has improved its management of the CFATS program over the past four years,

¹ S. 3405, Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018.
such as eliminating the estimated nine-year backlog of reviewing facilities’ unique site security plans, it is evident that the program needs additional reforms. On June 12, 2018, the Senate Committee on Homeland Security and Governmental Affairs held a roundtable that included DHS, the U.S. Government Accountability Office, a CFATS chemical inspector, and a variety of companies and industry groups.

During the roundtable, stakeholders provided feedback on how to further improve the CFATS program. For example, industry stakeholders expressed concerns about duplicative regulatory regimes between DHS and the Bureau of Alcohol, Tobacco, Firearms, and Explosives; advised that DHS should not make terror screening mandatory for Tier 3 and Tier 4 facilities; complained about inadequate communication from DHS about changes in facilities’ tiering; and discussed how a CFATS recognition program can provide greater regulatory relief. We also heard from a CFATS chemical inspector on basic and continuous training issues and need for improvement, particularly with respect to cybersecurity. In addition, the Committee’s oversight has shown a need for DHS to report on new metrics that will show if the program is effectively measuring risk reduction and addressing the current threat environment.


In the coming weeks, we hope the committees of jurisdiction will continue to work together, as they have throughout this Congress, to find areas of agreement to reauthorize and improve the CFATS program. The purpose of the reauthorization process must be to improve

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5 Id.
6 Id.
7 Id.
8 Id.
9 Id.
12 Id.
13 Committee Business Meeting, S. Comm. On Homeland Sec. & Governmental Affairs, 115th Congress, (September 26, 2018).
federal regulatory programs incorporating lessons learned from Congressional oversight. S. 3405 provides a path for the CFATS program to continue for an additional five years without inflicting burdensome and duplicative regulations on DHS’s industry partners. If Congress fails to reform the CFATS program, we believe the program should expire and not continue to be reauthorized via annual appropriations.

We look forward to working with you to reauthorize the CFATS program with commonsense reforms before the conclusion of the 115th Congress. Thank you for your attention to this important subject.

Sincerely,

Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs

cc: The Honorable Mitch McConnell
    Senate Majority Leader

    The Honorable Charles Schumer
    Senate Minority Leader

    The Honorable Paul Ryan
    Speaker of the House
    U.S. House of Representatives

    The Honorable Nancy Pelosi
    Minority Leader
    U.S. House of Representatives

    The Honorable Claire McCaskill
    Ranking Member
    United States Senate Committee on Homeland Security and Governmental Affairs

    The Honorable Richard Shelby
    Chairman, United States Senate Committee on Appropriations

    The Honorable Patrick Leahy
    Vice Chairman, United States Senate Committee on Appropriations

Shelley Moore Capito
Chairman
Subcommittee on Homeland Security
Committee on Appropriations
The Honorable Jon Tester
Ranking Member, Subcommittee on Homeland Security
United States Senate Committee on Appropriations

The Honorable Rodney Frelinghuysen
Chairman, U.S. House of Representatives Committee on Appropriations

The Honorable Nita Lowey
Ranking Member, U.S. House of Representatives Committee on Appropriations

The Honorable Kevin Yoder
Chairman, Subcommittee on Homeland Security
U.S. House of Representatives Committee on Appropriations

The Honorable Lucille Roybal-Allard
Ranking Member, Subcommittee on Homeland Security
U.S. House of Representatives Committee on Appropriations.