

PROTECTING AND SECURING CHEMICAL FACILITIES  
FROM TERRORIST ATTACKS ACT OF 2023

JULY 19, 2023.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

Mr. GREEN of Tennessee, from the Committee on Homeland  
Security, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 4470]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4470) to extend the authorization of the Chemical Facility Anti-Terrorism Standards Program of the Department of Homeland Security, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2023”.

**SEC. 2. EXTENSION OF AUTHORIZATION OF CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM OF THE DEPARTMENT OF HOMELAND SECURITY.**

Section 5 of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Public Law 113–254; 6 U.S.C. 621 note) is amended by striking “2023” and inserting “2025”.

**PURPOSE AND SUMMARY**

The Chemical Facility Anti-Terrorism Standards (CFATS) program identifies and regulates high-risk chemical facilities within the United States to ensure they have security measures in place to reduce the risks associated with certain Chemicals of Interest (COI). Congress authorized the Department of Homeland Security (DHS) to establish the program in 2007, which is now managed by the Cybersecurity and Infrastructure Security Agency (CISA) as the Sector Risk Management Agency (SRMA) for the Chemical Sector.

The current authorization for CFATS expires on July 27, 2023. H.R. 4470 reauthorizes CFATS for two years to extend the program and allow Congress ample time to consider potential reform.

**BACKGROUND AND NEED FOR LEGISLATION**

Since 2007, the CFATS program has provided needed certainty and security for regulated entities, including major sectors of the American economy such as chemical production, chemical distribution and storage, manufacturing, oil and gas refining, utilities, mining, and agricultural goods and services.

CISA uses a multi-tiered risk assessment to identify high-risk facilities and requires these facilities to meet a list of 18 risk-based performance standards (RBPS) that aim to detect and delay, respond to, and manage cyber and physical risks. Facilities are consistently reviewed and may be tiered in or out of the program depending on their risk level. CISA actively works with facilities to ensure the least burdensome regulations are required according to each specific site. Chemical Security Inspectors (CSIs) work in CISA’s Regional Offices across all 50 states to review covered facilities to ensure they meet CFATS requirements.<sup>1</sup>

A facility must comply with CFATS regulations if a COI at or above its screening threshold quantity is held on-site during the manufacturing, storage, and/or distribution of the product. Appendix A of the CFATS regulation lists more than 300 COIs. These security risks include chemicals—if released, stolen, diverted, or used for sabotage—that could have significant adverse consequences for human life or health.<sup>2</sup>

<sup>1</sup> *CFATS Overview*, CISA.GOV, [https://www.cisa.gov/sites/default/files/publications/fs\\_cfats-overview-508.pdf](https://www.cisa.gov/sites/default/files/publications/fs_cfats-overview-508.pdf) (last visited July 5, 2023).

<sup>2</sup> *Appendix A: Chemicals of Interest*, CISA.GOV, <https://www.cisa.gov/resources-tools/programs/chemical-facilityanti-terrorism-standards-cfats/appendix-chemicals-interest> (last visited July 5, 2023).

The CFATS program is the only federal program focused specifically on site security at facilities with certain chemicals. Many covered chemical facilities are required to comply with various environmental and safety regulatory programs administered by other agencies. The purpose of the CFATS program is unique to the homeland security mission and should remain in place to secure our nation's high-risk chemical facilities from terrorist exploitation.

The Committee has questions about the program's methodology for reducing facility risk, cost, and potential redundancies between other programs. In addition, CISA plans to put out a rulemaking to make updates to the program. Reauthorizing CFATS for two years will allow the Committee to review the new regulation and make any necessary changes to the authorizing statute based on those, particularly as CISA plans to enhance the cybersecurity aspects of the program. The Committee is especially interested in evaluating reforms to provide adequate training for CSIs and communication with emergency and first responders. The Committee aims to provide continuity and security in accordance with the interests of the regulated entities, while also providing an opportunity to propose and evaluate reforms.

The two year reauthorization of the program will provide the guidance necessary for impacted private sector entities to plan and invest in their site security, while also providing the Committee time to consider reforms.

#### HEARINGS

The Committee held the following hearing in the 118th Congress that informed H.R. 4470:

On April 27, 2023, the Subcommittee on Cybersecurity and Infrastructure Protection held a hearing entitled "CISA 2025: The State of American Cybersecurity from CISA's Perspective." The Subcommittee received testimony from the Honorable Jen Easterly, Director, Cybersecurity and Infrastructure Security Agency.

The Committee held the following Member briefing in the 118th Congress that informed H.R. 4470:

On May 24, 2023, the Subcommittee on Cybersecurity and Infrastructure Protection held a Member briefing entitled "Reauthorizing the Chemical Facility Anti-Terrorism Standards Program." The Subcommittee received statements from Matt Fridley, Senior Director, Security and Safety, Brenntag North America, Inc.; Jason Roup, Senior Manager, Security Technology and Regulations, BASF Corporation; Richard Erstad, Vice President, General Counsel and Secretary, Hawkins, Inc.; and Jesse "Jay" LeGros, Jr., Vice President (Integrated Operations Division), American Federation of Governmental Employees (AFGE) Local 918.

#### COMMITTEE CONSIDERATION

The Committee met on Wednesday, July 12, 2023, a quorum being present, to consider H.R. 4470 and ordered the measure to be favorably reported to the House, as amended, by a recorded vote of 30 yeas to 0 nays.

## COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the recorded votes on the motion to report legislation and the amendments thereto.

1. Amendments En Bloc to the Amendment in the Nature of a Substitute (Mr. Swalwell of California (001), Ms. Jackson Lee of Texas (005), Ms. Clarke of New York (006), Mr. Carter of Louisiana (007), Mr. Carter of Louisiana (008), Mr. Thompson of Mississippi (009). The Amendments En Bloc failed by a recorded vote of 14 Yeas to 16 Nays (Rollcall No. 17)

**YEAS AND NAYS**  
**U.S. House of Representatives**  
**COMMITTEE ON HOMELAND SECURITY**  
**118<sup>th</sup> Congress**

Date: 7/12/23 Vote No. 17

**Vote on**

En Bloc Amendments

YEAS		NAYS
	Mr. McCaul, Texas	X
	Mr. Higgins, Louisiana	X
	Mr. Guest, Mississippi	
	Mr. Bishop, North Carolina	
	Mr. Gimenez, Florida	X
	Mr. Pfluger, Texas	X
	Mr. Garbarino, New York	X
	Ms. Greene, Georgia	X
	Mr. Gonzales, Texas	X
	Mr. LaLota, New York	X
	Mr. Ezell, Mississippi	X
	Mr. D'Esposito, New York	X
	Ms. Lee, Florida	X
	Mr. Luttrell, Texas	X
	Mr. Strong, Alabama	X
	Mr. Brecheen, Oklahoma	X
	Mr. Crane, Arizona	X
X	<i>Mr. Thompson, Mississippi, Ranking Member</i>	
	<i>Ms. Jackson Lee, Texas</i>	
X	<i>Mr. Payne, New Jersey</i>	
X	<i>Mr. Swalwell, California</i>	
X	<i>Mr. Correa, California</i>	
X	<i>Mr. Carter, Louisiana</i>	
X	<i>Mr. Thanedar, Michigan</i>	
X	<i>Mr. Magaziner, Rhode Island</i>	
X	<i>Mr. Ivey, Maryland</i>	
X	<i>Mr. Goldman, New York</i>	
X	<i>Mr. Garcia, California</i>	
X	<i>Mrs. Ramirez, Illinois</i>	
X	<i>Mr. Menendez, New Jersey</i>	
X	<i>Ms. Clarke, New York</i>	
X	<i>Ms. Titus, Nevada</i>	
	Mr. Green, Tennessee, Chairman	X
14	<b>TOTAL</b>	16

2. An amendment to the Amendment in the Nature of a Substitute offered by Mr. Menendez of New Jersey to insert Section 3. The amendment failed by a recorded vote of 14 Yeas to 16 Nays (Rollcall No. 18)

**YEAS AND NAYS**  
**U.S. House of Representatives**  
**COMMITTEE ON HOMELAND SECURITY**  
**118<sup>th</sup> Congress**

Date: 7/12/23 Vote No. 18

Vote on

Menendez Amendment 002

YEAS		NAYS
	Mr. McCaul, Texas	X
	Mr. Higgins, Louisiana	X
	Mr. Guest, Mississippi	
	Mr. Bishop, North Carolina	
	Mr. Gimenez, Florida	X
	Mr. Pfluger, Texas	X
	Mr. Garbarino, New York	X
	Ms. Greene, Georgia	X
	Mr. Gonzales, Texas	X
	Mr. LaLota, New York	X
	Mr. Ezell, Mississippi	X
	Mr. D'Esposito, New York	X
	Ms. Lee, Florida	X
	Mr. Luttrell, Texas	X
	Mr. Strong, Alabama	X
	Mr. Brecheen, Oklahoma	X
	Mr. Crane, Arizona	X
X	<i>Mr. Thompson, Mississippi, Ranking Member</i>	
	<i>Ms. Jackson Lee, Texas</i>	
X	<i>Mr. Payne, New Jersey</i>	
X	<i>Mr. Swalwell, California</i>	
X	<i>Mr. Correa, California</i>	
X	<i>Mr. Carter, Louisiana</i>	
X	<i>Mr. Thanedar, Michigan</i>	
X	<i>Mr. Magaziner, Rhode Island</i>	
X	<i>Mr. Ivey, Maryland</i>	
X	<i>Mr. Goldman, New York</i>	
X	<i>Mr. Garcia, California</i>	
X	<i>Mrs. Ramirez, Illinois</i>	
X	<i>Mr. Menendez, New Jersey</i>	
X	<i>Ms. Clarke, New York</i>	
X	<i>Ms. Titus, Nevada</i>	
	Mr. Green, Tennessee, Chairman	X
14	<b>TOTAL</b>	16

3. An amendment to the Amendment in the Nature of a Substitute offered by Mr. Payne of New Jersey to insert Section 3. The amendment failed by a recorded vote of 14 Yeas to 16 Nays (Rollcall No. 19)

**YEAS AND NAYS**  
**U.S. House of Representatives**  
**COMMITTEE ON HOMELAND SECURITY**  
**118<sup>th</sup> Congress**

Date: 7/12/23 Vote No. 19

**Vote on**

Payne Amendment 003

YEAS		NAYS
	Mr. McCaul, Texas	X
	Mr. Higgins, Louisiana	X
	Mr. Guest, Mississippi	
	Mr. Bishop, North Carolina	
	Mr. Gimenez, Florida	X
	Mr. Pfluger, Texas	X
	Mr. Garbarino, New York	X
	Ms. Greene, Georgia	X
	Mr. Gonzales, Texas	X
	Mr. LaLota, New York	X
	Mr. Ezell, Mississippi	X
	Mr. D'Esposito, New York	X
	Ms. Lee, Florida	X
	Mr. Luttrell, Texas	X
	Mr. Strong, Alabama	X
	Mr. Brecheen, Oklahoma	X
	Mr. Crane, Arizona	X
X	<i>Mr. Thompson, Mississippi, Ranking Member</i>	
	<i>Ms. Jackson Lee, Texas</i>	
X	<i>Mr. Payne, New Jersey</i>	
X	<i>Mr. Swalwell, California</i>	
X	<i>Mr. Correa, California</i>	
X	<i>Mr. Carter, Louisiana</i>	
X	<i>Mr. Thanedar, Michigan</i>	
X	<i>Mr. Magaziner, Rhode Island</i>	
X	<i>Mr. Ivey, Maryland</i>	
X	<i>Mr. Goldman, New York</i>	
X	<i>Mr. Garcia, California</i>	
X	<i>Mrs. Ramirez, Illinois</i>	
X	<i>Mr. Menendez, New Jersey</i>	
X	<i>Ms. Clarke, New York</i>	
X	<i>Ms. Titus, Nevada</i>	
	Mr. Green, Tennessee, Chairman	X
14	<b>TOTAL</b>	16

4. An amendment to the Amendment in the Nature of a Substitute offered by Mr. Magaziner of Rhode Island to insert Section 3. The amendment failed by a recorded vote of 14 Yeas to 16 Nays (Rollcall No. 20)

**YEAS AND NAYS**  
**U.S. House of Representatives**  
**COMMITTEE ON HOMELAND SECURITY**  
**118<sup>th</sup> Congress**

Date: 7/12/23 Vote No. 20

**Vote on**

Magaziner Amendment 004

YEAS		NAYS
	Mr. McCaul, Texas	X
	Mr. Higgins, Louisiana	X
	Mr. Guest, Mississippi	
	Mr. Bishop, North Carolina	
	Mr. Gimenez, Florida	X
	Mr. Pfluger, Texas	X
	Mr. Garbarino, New York	X
	Ms. Greene, Georgia	X
	Mr. Gonzales, Texas	X
	Mr. LaLota, New York	X
	Mr. Ezell, Mississippi	X
	Mr. D'Esposito, New York	X
	Ms. Lee, Florida	X
	Mr. Luttrell, Texas	X
	Mr. Strong, Alabama	X
	Mr. Brecheen, Oklahoma	X
	Mr. Crane, Arizona	X
X	<i>Mr. Thompson, Mississippi, Ranking Member</i>	
	<i>Ms. Jackson Lee, Texas</i>	
X	<i>Mr. Payne, New Jersey</i>	
X	<i>Mr. Swalwell, California</i>	
X	<i>Mr. Correa, California</i>	
X	<i>Mr. Carter, Louisiana</i>	
X	<i>Mr. Thanedar, Michigan</i>	
X	<i>Mr. Magaziner, Rhode Island</i>	
X	<i>Mr. Ivey, Maryland</i>	
X	<i>Mr. Goldman, New York</i>	
X	<i>Mr. Garcia, California</i>	
X	<i>Mrs. Ramirez, Illinois</i>	
X	<i>Mr. Menendez, New Jersey</i>	
X	<i>Ms. Clarke, New York</i>	
X	<i>Ms. Titus, Nevada</i>	
	Mr. Green, Tennessee, Chairman	X
14	<b>TOTAL</b>	16

5. An amendment to the Amendment in the Nature of a Substitute offered by Mr. Swalwell of California to insert Section 3. The amendment failed by a recorded vote of 14 Yeas to 16 Nays (Rollcall No. 21)

**YEAS AND NAYS**  
**U.S. House of Representatives**  
**COMMITTEE ON HOMELAND SECURITY**  
**118<sup>th</sup> Congress**

Date: 7/12/23 Vote No. 21

**Vote on**

Swalwell Amendment 010

YEAS		NAYS
	Mr. McCaul, Texas	X
	Mr. Higgins, Louisiana	X
	Mr. Guest, Mississippi	
	Mr. Bishop, North Carolina	
	Mr. Gimenez, Florida	X
	Mr. Pfluger, Texas	X
	Mr. Garbarino, New York	X
	Ms. Greene, Georgia	X
	Mr. Gonzales, Texas	X
	Mr. LaLota, New York	X
	Mr. Ezell, Mississippi	X
	Mr. D'Esposito, New York	X
	Ms. Lee, Florida	X
	Mr. Luttrell, Texas	X
	Mr. Strong, Alabama	X
	Mr. Brecheen, Oklahoma	X
	Mr. Crane, Arizona	X
X	<i>Mr. Thompson, Mississippi, Ranking Member</i>	
	<i>Ms. Jackson Lee, Texas</i>	
X	<i>Mr. Payne, New Jersey</i>	
X	<i>Mr. Swalwell, California</i>	
X	<i>Mr. Correa, California</i>	
X	<i>Mr. Carter, Louisiana</i>	
X	<i>Mr. Thanedar, Michigan</i>	
X	<i>Mr. Magaziner, Rhode Island</i>	
X	<i>Mr. Ivey, Maryland</i>	
X	<i>Mr. Goldman, New York</i>	
X	<i>Mr. Garcia, California</i>	
X	<i>Mrs. Ramirez, Illinois</i>	
X	<i>Mr. Menendez, New Jersey</i>	
X	<i>Ms. Clarke, New York</i>	
X	<i>Ms. Titus, Nevada</i>	
	Mr. Green, Tennessee, Chairman	X
14	<b>TOTAL</b>	16

6. A motion by Mr. Green of Tennessee to report H.R. 4470, as amended, to the House with a favorable recommendation, was agreed to by a vote of 30 Yeas and 0 Nays (Rollcall No. 22)

**YEAS AND NAYS**  
**U.S. House of Representatives**  
**COMMITTEE ON HOMELAND SECURITY**  
**118<sup>th</sup> Congress**

Date: 7/12/23 Vote No. 22

**Vote on**

Motion to Favorably Report H.R. 4470 to the House

YEAS		NAYS
X	Mr. McCaul, Texas	
X	Mr. Higgins, Louisiana	
	Mr. Guest, Mississippi	
	Mr. Bishop, North Carolina	
X	Mr. Gimenez, Florida	
X	Mr. Pfluger, Texas	
X	Mr. Garbarino, New York	
X	Ms. Greene, Georgia	
X	Mr. Gonzales, Texas	
X	Mr. LaLota, New York	
X	Mr. Ezell, Mississippi	
X	Mr. D'Esposito, New York	
X	Ms. Lee, Florida	
X	Mr. Luttrell, Texas	
X	Mr. Strong, Alabama	
X	Mr. Brecheen, Oklahoma	
X	Mr. Crane, Arizona	
X	<i>Mr. Thompson, Mississippi, Ranking Member</i>	
	<i>Ms. Jackson Lee, Texas</i>	
X	<i>Mr. Payne, New Jersey</i>	
X	<i>Mr. Swalwell, California</i>	
X	<i>Mr. Correa, California</i>	
X	<i>Mr. Carter, Louisiana</i>	
X	<i>Mr. Thanedar, Michigan</i>	
X	<i>Mr. Magaziner, Rhode Island</i>	
X	<i>Mr. Ivey, Maryland</i>	
X	<i>Mr. Goldman, New York</i>	
X	<i>Mr. Garcia, California</i>	
X	<i>Mrs. Ramirez, Illinois</i>	
X	<i>Mr. Menendez, New Jersey</i>	
X	<i>Ms. Clarke, New York</i>	
X	<i>Ms. Titus, Nevada</i>	
X	Mr. Green, Tennessee, Chairman	
30	<b>TOTAL</b>	0

## COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X, are incorporated in the descriptive portions of this report.

## CORRESPONDENCE WITH OTHER COMMITTEES

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC, July 18, 2023.*

Hon. MARK E. GREEN, MD,  
*Chairman, Committee on Homeland Security,*  
*Washington, DC.*

DEAR CHAIRMAN GREEN: I write to you concerning H.R. 4470, the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2023,” which was referred in addition to the Committee on Energy and Commerce. I wanted to notify you that the Committee will forgo action on the bill so that it may proceed expeditiously to the House floor for consideration.

This is done with the understanding that the Committee’s jurisdictional interests over this and similar legislation are in no way diminished or altered. In addition, the Committee reserves the right to seek conferees on H.R. 4470 and requests your support when such a request is made.

I would appreciate your response confirming this understanding with respect to H.R. 4470 and ask that a copy of our exchange of letters on this matter be included in the committee report on the bill or in the *Congressional Record* during consideration of the bill on the House floor.

Sincerely,

CATHY McMORRIS RODGERS,  
*Chair.*

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC, July 18, 2023.*

Hon. CATHY RODGERS,  
*Chairman, Committee on Energy and Commerce,*  
*House of Representatives, Washington, DC.*

DEAR CHAIRMAN RODGERS: Thank you for your letter regarding H.R. 4470, the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2023,” of which the Committee on Energy and Commerce received an additional referral. I appreciate your support in bringing this legislation before the House of Representatives, and that the Committee on Energy and Commerce will forego further consideration of the bill.

The Committee on Homeland Security concurs with the mutual understanding that by foregoing consideration of this bill at this time, the Committee on Energy and Commerce does not waive jurisdiction over the subject matter contained in this legislation in the future. In addition, should a conference on this bill be nec-

essary, I would support your request to have the Committee on the Energy and Commerce represented on the conference committee.

I will include our letters on H.R. 4470 in the Committee report on this measure and in the *Congressional Record* during floor consideration of this bill. I look forward to working with you on this legislation and appreciate your cooperation on this matter.

Sincerely,

MARK E. GREEN, MD,  
*Chairman.*

CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET  
AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII and section 308(a) of the Congressional Budget Act of 1974, and with respect to the requirements of clause 3(c)(3) of rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

FEDERAL MANDATES STATEMENT

An estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the Congressional Record upon its receipt by the Committee.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 4470 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the objective of H.R. 4470 is to reauthorize the CFATS program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED  
TARIFF BENEFITS

In compliance with rule XXI, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that H.R. 4470 does not relate to the terms and conditions of employment or access to public services or accom-

modations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

This section states the Act may be cited as the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2023.”

*Section. 2. Extension of authorization of Chemical Facility Anti-Terrorism Standards program of the Department of Homeland Security*

This section amends Section 5 of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (Public Law 113–254; 6 U.S.C. 621 note) by striking “2023” and inserting “2025”.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**PROTECTING AND SECURING CHEMICAL FACILITIES  
FROM TERRORIST ATTACKS ACT OF 2014**

\* \* \* \* \*

**SEC. 5. TERMINATION.**

The authority provided under title XXI of the Homeland Security Act of 2002, as added by section 2(a), shall terminate on July 27, **[2023]** 2025.

## MINORITY VIEWS

While Committee Democrats strongly support the Chemical Facility Anti-Terrorism Standards (CFATS) program, we are disappointed that Committee Republicans have once again failed to engage meaningfully in reauthorization and chose to ignore the many challenges that have plagued this program for years. As a result, Congress seems poised to pass yet another short-term CFATS extension—an option that has gone from last resort to status quo.

While H.R. 4470 would prevent the CFATS program from lapsing, it also punts on a number of major, long-standing issues that this Committee has uncovered through years of diligent oversight. Committee Democrats offered 10 targeted amendments to H.R. 4470 to address these persistent challenges in measured, reasonable ways that would not disturb the program or place new obligations on regulated facilities. Republicans rejected all 10 amendments.

To understand the urgency of addressing these issues, it is important to remember why CFATS was created in the first place, and the vital role it plays in our national security.

CFATS was established in response to warnings from national security experts of credible terrorist threats to U.S. chemical plants. Research suggests more than 130 million Americans—and one-third of U.S. schoolchildren—live, work, and go to school in the “vulnerability zone” of a worst-case chemical disaster.<sup>1</sup> Studies also show that high-risk facilities tend to be concentrated in low-income communities and communities of color.<sup>2</sup> After the 9/11 attacks, reports surfaced that one of the hijackers had been scouting chemical plant sites, and media outlets began reporting on a slew of government studies showing the potential gravity of a terrorist attack on a chemical plant.<sup>3</sup> One leaked Army Surgeon General study estimated that a terrorism-related chemical release in a densely populated area could kill or injure as many as 2.4 million Americans.<sup>4</sup>

Despite these dire warnings, it took Congress years to act—and even then, it only did so at the request of then-DHS Secretary Michael Chertoff, and with validation from the Government Account-

<sup>1</sup> See, e.g., Paul Orum, Richard Moore, Michele Roberts, and Joaquín Sánchez, *Who's in Danger? Race, Poverty, and Chemical Disasters*, Environmental Justice and Health Alliance for Chemical Policy Reform, (May 2014), <http://comingcleaninc.org/assets/media/images/Reports/Who%27s%20in%20Danger%20Report%20FINAL.pdf> (examining public filings under the EPA's Risk Management Program, a similar program that applies to facilities with threshold quantities of specified dangerous chemicals); Amanda Frank and Seth Moulton, *Kids in Danger Zones: One in Three U.S. Schoolchildren at Risk from Chemical Catastrophes*, Center for Effective Government, (September 2014), <http://www.foreffectivegov.org/sites/default/files/kids-in-danger-zones-report.pdf>.

<sup>2</sup> Orum et al., *supra* note 5, at 6.

<sup>3</sup> “Chemical Plants Are Feared as Targets,” *Washington Post*, (Dec. 16, 2001), [https://www.washingtonpost.com/archive/politics/2001/12/16/chemical-plants-are-feared-as-targets/82044d35-a3ff-499a-b4c1-3174854e80a4/?utm\\_term=.2aff31c408cd](https://www.washingtonpost.com/archive/politics/2001/12/16/chemical-plants-are-feared-as-targets/82044d35-a3ff-499a-b4c1-3174854e80a4/?utm_term=.2aff31c408cd).

<sup>4</sup> “Study Assesses Risk of Attack on Chemical Plant,” *Washington Post*, (Mar. 12, 2002), <https://www.washingtonpost.com/archive/politics/2002/03/12/study-assesses-risk-of-attack-on-chemical-plant/dc3a51ae-9988-459a-a6f7-00b26ccb5a56/>.

ability Office (GAO) that “chemical facilities are among the most attractive targets for terrorists,”<sup>5</sup> yet “DHS does not have the authority to require chemical facilities to . . . implement security measures.”<sup>6</sup>

The original CFATS authorization came in the form of appropriations language directing DHS to develop regulations to secure high-risk chemical facilities against terrorist attacks.<sup>7</sup> The resulting regulations were flexible and non-prescriptive; they required facilities with certain quantities of dangerous chemicals to report to DHS, conduct a vulnerability assessment, and adopt a Site Security Plan that adhered to a broad set of security guidelines.<sup>8</sup>

The program was extended—on an annual basis—through appropriations acts until 2014, when Congress passed the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, authorizing it for 4 years.<sup>9</sup> Since that time, CFATS has been extended multiple times through shorter-term, change-the-date extensions without any substantive improvements to the underlying legislative authority.<sup>10</sup> These short-term extensions are better than nothing, but they do not support long-term planning and strategy, and they routinely create uncertainty for the program and its regulated community.

Still, there is ample evidence that CFATS has made the country safer. Through CFATS, DHS is able to work collaboratively with high-risk facilities as they implement security measures, address vulnerabilities, and reduce risks. Further, DHS coordinates with interagency partners like the Environmental Protection Agency and the Occupational Safety and Health Administration to identify “outlier” facilities that might otherwise fall through the cracks. Perhaps most importantly, since CFATS was created in 2007, the number of high-risk facilities has dropped by half—from more than 7,000 to 3,200 today. This indicates that CFATS is yielding real security value for chemical sector stakeholders, as well as the families, workers, and communities that might otherwise be in harm’s way.

We agree with our Republican colleagues that reauthorizing CFATS is a national security imperative. No one is served by allowing this vital security program to lapse.

At the same time, the program that exists today is riddled with operational challenges, security gaps, and statutory ambiguities that desperately need to be addressed—some of which have been on this Committee’s radar for almost a decade. These long-standing

<sup>5</sup> *DHS Is Addressing Security at Chemical Facilities, but Additional Authority Is Needed, Testimony Before the S. Comm. on Env’t & Pub. Works* (June 21, 2006) (statement for the record by John B. Stephenson, Nat. Res. & Env’t, GAO), <https://www.gao.gov/assets/gao-06-899t.pdf>.

<sup>6</sup> *DHS is Taking Steps to Enhance Security at Chemical Facilities, but Additional Authority is Needed*, GAO-06-150, (Jan. 27, 2006), <https://www.gao.gov/assets/gao-06-150.pdf>.

<sup>7</sup> Department of Homeland Security Appropriations Act, 2007, Pub. L. 109-295, § 550, 120 Stat. 1355 (2006).

<sup>8</sup> Chemical Facility Anti-Terrorism Standards, 72 Fed. Reg. 17688 (Apr. 9, 2007) (codified at 6 C.F.R. pt. 27).

<sup>9</sup> Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, Pub. L. 113-254, 128 Stat. 2898 (2014).

<sup>10</sup> Chemical Facility Anti-Terrorism Standards Program Extension Act, Pub. L. 116-2, 133 Stat. 5 (2019); Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. 116-136, § 16007, 134 Stat. 281, 546 (2020); An Act to extend the Chemical Facility Anti-Terrorism Standards Program of the Department of Homeland Security, and for other purposes, Pub. L. 116-150, 134 Stat. 679 (2020) (extending the program for a period of 3 years through July 27, 2023).

issues have not—and will not—fix themselves. It is therefore deeply disappointing that the Committee is being asked to reauthorize CFATS without any changes. And yet again, we would not be in this predicament if Committee Republicans—preoccupied with MAGA investigations—had acted in a timely fashion.

When I became Chair of this Committee again in 2019, CFATS was just a few weeks away from sunset. I introduced a short-term extension bill on the second day of the Congress, and it became law by January 18th of that year.<sup>11</sup> In February 2019, the Committee held a hearing with DHS officials responsible for administering CFATS, as well as an expert witness from GAO to elaborate on their extensive body of work on CFATS.<sup>12</sup> The next month, the Committee followed that hearing with a private-sector panel, featuring a wide range of chemical security experts, chemical sector stakeholders, labor unions, and environmental justice advocates.<sup>13</sup> Witnesses raised concerns about several issues, including:

- the lack of coordination and information sharing with first responders;
- the adequacy of training for chemical inspectors, particularly on cybersecurity;
- the focus on physical security rather than cybersecurity and questions about the value of cybersecurity audits performed by untrained inspectors;
- the methodology DHS uses to assess risk and assign facilities to risk tiers;
- potential security gaps presented by CFATS statutory exemptions; and
- local emergency response capacity to respond to a terrorist attack at a chemical facility, particularly in areas with multiple CFATS facilities or other critical infrastructure nearby.

By August 2019, this Committee had moved a comprehensive, vetted reauthorization bill that would have addressed these issues and improved the security value of the program, with extensive input from chemical security stakeholders.<sup>14</sup> Unfortunately, after months of negotiations, the legislation stalled due to partisan gridlock, and Committee Democrats had to stomach a short-term extension, the purpose of which was to give Congress *more* time to examine problems that we already knew existed.

This Congress, regrettably, the Committee has not held a single dedicated hearing on the CFATS program. While Chairman Green has initiated a GAO report to evaluate the CFATS program, this Committee already has a robust oversight history with this program and multiple GAO findings to draw from. We do not need another GAO report to tell us what we already know: There are problems with the CFATS program that Congress must address.

<sup>11</sup> Chemical Facility Anti-Terrorism Standards Program Extension Act, *supra* note 12.

<sup>12</sup> *Securing Our Nation's Chemical Facilities: Building on the Progress of the CFATS Program*, Hearing Before the H. Comm. on Homeland Sec., 116th Cong. (Feb. 27, 2019).

<sup>13</sup> *Securing Our Nation's Chemical Facilities: Stakeholder Perspectives on Improving the CFATS Program*, Hearing Before the Subcomm. on Cybersecurity & Infrastructure Prot. of the H. Comm. on Homeland Sec., 116th Cong. (Mar. 12, 2019).

<sup>14</sup> Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019, H.R. 3256, 116th Cong. (2019).

FIRST RESPONDER COORDINATION, INFORMATION SHARING, AND  
CAPACITY

In April 2013, an explosion at a fertilizer plant in West, Texas, killed more than a dozen first responders and leveled neighboring buildings. DHS had no knowledge of the facility, even though the facility had reported threshold quantities of CFATS chemicals to other Federal and State regulators.<sup>15</sup> The U.S. Chemical Safety Board found that first responders lacked vital information about the West Fertilizer Company's complete chemical holdings and the holdings' properties that would have enabled them to make informed decisions in response to the facility's fire and explosion.<sup>16</sup>

In 2018, GAO found that DHS was still not doing enough to ensure that CFATS facilities coordinate and engage with local first responders.<sup>17</sup> Many emergency response providers were not even aware that there were CFATS facilities in their communities, and some had not even heard of the program. Even where coordination had occurred, many first responders did not know what chemicals were stored onsite or how to handle those chemicals safely during an emergency. It also remains unclear if communities with multiple CFATS facilities have local emergency response capacity to respond to a terrorist attack or incident at a CFATS facility.

To improve coordination and outreach to first responders, Representative Donald M. Payne, Jr., offered an amendment to require that DHS disapprove any Site Security Plan that does not cite the name, number, and other information about the local emergency response provider and include a documented policy to contact them at least annually. Further, the amendment would have required DHS to audit compliance with this section at least annually. Republicans rejected the Payne amendment.

To improve information sharing with first responders, Representative Seth Magaziner offered an amendment to require DHS to make available, upon request, protected CFATS information (e.g., Site Security Plans, vulnerability assessments) to State and local government officials (including law enforcement and emergency response providers) on CFATS facilities in their jurisdiction unless it would be subject to disclosure under State or local laws. Republicans rejected the Magaziner amendment.

To better understand local emergency response capacity, Representative Sheila Jackson Lee offered an amendment requiring the DHS Science and Technology Directorate to evaluate emergency response capacity in areas with high concentrations of CFATS facilities—including whether they have adequate evacuation plans, shelter-in-place protocols, and chemical training—and identify opportunities to provide additional support and training as necessary. Republicans rejected the Jackson Lee amendment.

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<sup>15</sup> *West Fertilizer Company Fire and Explosion Investigation Report (Final)*, U.S. Chem. Safety & Hazard Investigation Bd., (Jan. 2016), <https://www.csb.gov/file.aspx?DocumentId=5983>.

<sup>16</sup> *Id.* at 116–117.

<sup>17</sup> *DHS Should Take Actions to Measure Reduction in Chemical Facility Vulnerability and Share Information with First Responders*, GAO–18–538 (Aug 8, 2018), <https://www.gao.gov/assets/gao-18-538.pdf>.

TRAINING FOR CFATS CHEMICAL SECURITY INSPECTORS, INCLUDING  
CYBERSECURITY

For years, Congress has heard that training provided to CFATS Chemical Security Inspectors (CSIs) is inadequate, outdated, and relies too heavily on on-the-job training. Moreover, inspectors are pushed to make hasty decisions or hit target numbers for inspections, ultimately prioritizing volume and speed over quality of inspections.<sup>18</sup> CSIs particularly lack training in cybersecurity, where threats and adversary tactics are constantly evolving and identifying noncompliance requires specialized expertise. At a Subcommittee roundtable in May, the CSI union representative reiterated these same complaints and suggested that DHS is unlikely to make changes unless statutorily required to do so.<sup>19</sup>

Representative Robert Menendez offered an amendment to require DHS to update its training program at least every 3 years and incorporate new minimum training opportunities for newly hired inspectors and existing employees, including annual refresher training, continuing education and professional development tools, training on chemical hazards, and other areas that would improve the value of inspections. Republicans rejected the Menendez amendment.

Representative Eric Swalwell offered an amendment to require that DHS provide training sufficient for CSIs to audit compliance with respect to all risk-based performance standards, including cybersecurity, and offer proper credentials and certifications necessary to carry out cybersecurity audits. Republicans rejected the Swalwell amendment.

CYBERSECURITY

The CFATS program is almost entirely focused on physical security rather than cybersecurity, even though cyberattacks on chemical facilities and other critical infrastructure has escalated rapidly in recent years. In 2020, GAO found that even the minimal cybersecurity guidance contained in CFATS *Risk-Based Performance Standards Guidance* was more than 10 years old.<sup>20</sup>

Representative Swalwell offered an amendment to require that DHS review its current CFATS cybersecurity guidance against the Cybersecurity and Infrastructure Security Agency's (CISA) more recent Cross-Sector Cybersecurity Performance Goals,<sup>21</sup> identify any disparities, and report to Congress with recommendations to address them. Republicans rejected the Swalwell amendment.

BASELINE FREQUENCY OF INSPECTIONS

Representative Yvette D. Clarke offered an amendment to require that DHS continue its current practice of inspecting CFATS

<sup>18</sup> *Examining the Chemical Facility Anti-Terrorism Standards Program, Roundtable Before the S. Comm. on Homeland Sec. & Gov't Aff.*, 115th Cong. (June 12, 2018) (statement of Jesse LeGros, Jr., Vice President, Infrastructure Protection, AFGE National Local #918).

<sup>19</sup> Member Briefing with Representatives of the Chemical Sector Industry, Subcomm. on Cybersecurity & Infrastructure Prot. of the H. Comm. on Homeland Sec., 118th Cong. (May 24, 2023).

<sup>20</sup> *Actions Needed to Enhance DHS Oversight of Cybersecurity at High-Risk Chemical Facilities*, GAO-20-453 (May 14, 2020), <https://www.gao.gov/assets/gao-20-453.pdf>.

<sup>21</sup> CISA, *Cross-Sector Cybersecurity Performance Goals*, <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals> (last visited July 14, 2023).

facilities for compliance at least every 24 months, in response to concerns that DHS might reduce the frequency of inspections—or use alternative inspection tools (*e.g.*, virtual consultations)—to cut costs. Republicans rejected the Clarke amendment.

#### DRONE REPORTING

Representative Troy A. Carter offered an amendment to require that DHS develop a secure communications platform to allow CFATS owners and operators to voluntarily report information on emerging threats, including terrorism threats, posed by unmanned aircraft systems. Republicans rejected the Carter amendment.

#### EVALUATING CFATS RISK ASSESSMENT METHODOLOGY

Representative Carter offered a second amendment requiring GAO to evaluate the CFATS risk assessment methodology and assess whether it considers the full range of public health and safety consequences that could arise from a terrorist attack on a CFATS facility, including, *e.g.*, air quality impacts and potential adverse health consequences for disproportionately vulnerable communities. Republicans rejected the second Carter amendment.

#### STUDY ON EXCLUDED FACILITIES

I offered an amendment requiring DHS to enter into an agreement with a non-Departmental entity to conduct an independent assessment of the national security implications of the current list of CFATS statutory exemptions for facilities regulated by the Maritime and Transportation Security Act, the Nuclear Regulatory Commission, public water systems and wastewater treatment systems, as well as facilities owned or operated by the Department of Defense or Department of Energy. Republicans rejected my amendment.

Before voting against these amendments, many of our Republican colleagues—and even the Chairman—expressed their desire to support these amendments, but they feared it might complicate reauthorization prospects with the Senate. By contrast, Democrats believe the Committee has an obligation to advance security improvements to the CFATS program. We also believe that the House of Representatives is a chamber co-equal to the Senate, and we should not cede the Committee’s authorization prerogatives to our Senate colleagues.

This Committee has the power to reach consensus and put forth thoughtful, impactful legislation when it tries. Unfortunately, with this stop-gap measure, it is clear Committee Republicans—focused almost entirely on MAGA agenda items like impeaching DHS Secretary Alejandro Mayorkas—are unwilling to expend needed effort to strengthen the program to make the homeland more secure.

BENNIE G. THOMPSON.