

I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin.

CHEMICAL FACILITY ANTI-TERRORISM
STANDARDS PROGRAM

Mr. JOHNSON. Mr. President, I am here today to ask my colleagues to approve a bill to reform and reauthorize the Chemical Facility Anti-Terrorism Standards Program, commonly known as CFATS.

This CFATS Program regulates chemical facilities to help prevent terrorists from carrying out an attack with dangerous chemicals—a worthy goal. However, since 2006, watchdogs have identified significant problems with the program. In 2013, the Government Accountability Office found that CFATS had a 7- to 9-year backlog to review more than 3,000 security plans and a flawed methodology to assess security.

The inspector general and Congress have questioned whether the program successfully reduces risk, enhances security, and warned of serious management problems. That is why each time Congress has reauthorized the program, it has done so only for a limited duration. Coming from a manufacturing background, I agree with that approach. That is exactly how you help ensure continuous improvement.

In 2014, when the program was last set to expire, the Committee on Homeland Security and Governmental Affairs—under the chairmanship of Senator CARPER—and Congress did their job. They did oversight. They made reforms and extended the program for another 4 years, until January 2019.

Under my chairmanship, our committee also took its oversight and reauthorization responsibilities seriously. Over the last 2 years, we have conducted extensive oversight on CFATS to evaluate the program's effectiveness and develop a plan to make it better. We enlisted the help of GAO to conduct a nonpartisan review of the CFATS Program to help inform our work. We held a roundtable with DHS, GAO, a CFATS chemical inspector, and multiple companies and industry groups. We had an important, frank discussion about the program's strengths and weaknesses. The committee also held numerous briefings with chemical facility owners, trade groups, DHS, and other relevant agencies.

After gathering information and talking directly with stakeholders, here is what we have learned: DHS has made significant progress under the 2014 reforms by eliminating the backlog and improving management of the program, but more work is necessary.

It is still far from clear that CFATS actually reduces the risk of terrorist attack, and DHS does not measure whether it actually does so. The program forces some explosive material companies to spend hundreds of thousands of dollars complying with CFATS regulations that are duplicative of Justice Department regulations and sub-

ject companies to frequent, unnecessary site inspections. These practices are extremely costly and neither reduce risk nor enhance security.

The program fails to give credit to companies that already comply with other private sector-specific programs that require high standards of care. Recognizing these exceptional programs would significantly reduce the regulatory burden on companies without reducing security.

DHS needs to do more to make this expedited approval process available to reduce unnecessary costs on both the companies and the American taxpayers, and it needs to be more transparent about how it classifies facilities to help companies understand what rules to even follow.

After conducting this oversight, I introduced a bill to address these issues and reauthorize the program for 5 years. Representatives KATKO, MOOLENAAR, and CUELLAR introduced a similar, bipartisan bill in the House.

Our legislation brings much needed regulatory relief to U.S. businesses by exempting explosive materials that are also regulated by the Bureau of Alcohol, Tobacco, Firearms and Explosives, reducing the frequency of audits and inspections, and reducing the burden of compliance for companies that participate in CFATS' recognition program, all while ensuring safety and security. It improves transparency by requiring DHS to provide information to companies on why their regulatory tier changed. It requires more DHS and independent assessments of how successful the program is at reducing risk and enhancing security. It also reauthorizes the program for 5 years.

After going through a thorough process of discussion and compromise, our committee approved the bill unanimously by voice vote in September.

The bill is supported by a wide range of private sector stakeholders, including the U.S. Chamber of Commerce, the American Chemical Council, the National Association of Manufacturers, and numerous others.

Mr. President, I ask unanimous consent that their letters of support be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows;

SEPTEMBER 25, 2018.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSON: The Chemical Facility Anti-Terrorism Standards (CFATS) Coalition comprises a diverse group of trade associations and companies impacted by CFATS regulations. Coalition members represent major sectors of the American economy, including chemical production, chemical distribution and storage, manufacturing, oil and gas refining, utilities, mining, and agricultural goods and services. The businesses we represent are an integral part of the American economy, making our modern society possible. Our members have no higher priority than ensuring the safety and security of our products, our people, and our communities.

We applaud your leadership on this important security issue by introducing the "Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018" (S. 3405). This legislation is an important marker in the reauthorization process, and we look forward to working with you and your colleagues to develop legislation that will provide additional improvements and efficiencies to the CFATS program. By reauthorizing the program for five years, S. 3405 would provide needed certainty to the regulated community and enhance the security of our nation.

Since the inception of the CFATS program in 2007, our industries have invested millions of dollars and instituted thousands of new security measures at our facilities. The "Protecting and Securing Chemical Facilities from Terrorist Attacks Act" of 2014 (P.L. 113-254), which for the first time provided CFATS a multi-year authorization, further enhanced these efforts by establishing regulatory certainty to both industry and the Department of Homeland Security (DHS). This stability allowed DHS to increase efficiencies in the program while streamlining the information submission process for regulated facilities.

On January 19, 2019, the current authorization will expire. The CFATS Coalition wants to ensure the continued viability of the CFATS program without interruption and the introduction of S. 3405 is a significant first step in this process. Thank you for your leadership on this issue and we look forward to working with you towards a successful CFATS reauthorization.

Sincerely,

Agricultural Retailers Association, American Fuel & Petrochemical Manufacturers, American Petroleum Institute, Institute of Makers of Explosives, International Warehouse Logistics Association, National Association of Chemical Distributors, Society of Chemical Manufacturers & Affiliates, U S Chamber of Commerce, American Chemistry Council, American Gas Association, Edison Electric Institute, International Liquid Terminals Association, Interstate Natural Gas Association of America, National Association of Manufacturers, National Mining Association, The Fertilizer Institute.

SEPTEMBER 21, 2018.

Re ARA and TFI Support for Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018 (S. 3405).

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

Hon. CLAIRE McCASKILL,
Ranking Member, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSON AND RANKING MEMBER McCASKILL: The Agricultural Retailers Association (ARA) and The Fertilizer Institute (TFI) strongly support the "Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018" (S. 3405).

Thousands of ARA and TFI member facilities are subject to the Chemical Facility Anti-Terrorism Standards (CFATS) program administered by the Department of Homeland Security (DHS) because they store, handle, and sell certain CFATS chemicals of interest (COI), such as anhydrous ammonia and ammonium nitrate.

Safety and security of facilities—to protect workers and the surrounding communities—is paramount to ARA and TFI members. That is why ARA, TFI, and our members created the ResponsibleAg stewardship program. ResponsibleAg is a voluntary, industry-led initiative committed to helping

agribusinesses properly store and handle farm input supplies. The program helps members ensure they are compliant with federal environmental, health, safety, security, and transportation regulations, including CFATS, to keep employees, customers and communities safe.

The CFATS program provides an important framework to ensure facilities are taking appropriate steps to be safe and secure. The current Congressional authorization for CFATS is set to expire in January of 2019. Any lapse in authorization of the CFATS program would subject our members to uncertainty in an already volatile agricultural market and environment.

S. 3405 makes several improvements to the CFATS program. We are pleased to see the legislation requires DHS to conduct notice and comment rulemakings to make changes to Appendix A. This requirement will ensure a thorough exchange of information is done so the most informed decisions can be made.

ARA and TFI also appreciate the inclusion of Section 7, which would make the Personnel Surety Program requirements of CFATS optional for tier 3 and 4 facilities. Tiers 3 and 4 facilities do not face the same insider threat possibility as tiers 1 and 2. This provision gives industry the flexibility to find a personnel surety solution that best fits their facility and security needs.

ARA and TFI also strongly support Section 5, entitled, "CFATS Recognition Program." This portion of the legislation will allow DHS to utilize and focus limited resources, while incentivizing other facilities to voluntarily come into compliance through stewardship programs. Stewardship programs, like ResponsibleAg, are already working to identify gaps in CFATS compliance at agricultural retail facilities. When gaps in compliance are identified, ResponsibleAg works with the facility on a timely and thorough corrective action plan to bring that facility into compliance. A "CFATS Recognition Program" would be a great "win-win" and strengthen the collaborative partnership between industry and government.

Finally, thank you for your leadership regarding reauthorization of the CFATS program. We appreciate all of you and your staffs' efforts to make a good government program better.

Should you have any questions, please reach out to our staff, Kyle Liske at ARA.

Sincerely,

DAREN COPPOCK,
President and CEO,
Agricultural Retailers
Association.

CHRIS JAHN,
President and CEO,
The Fertilizer Institute.

INSTITUTE OF MAKERS OF EXPLOSIVES,
Washington, DC, September 12, 2018.

Hon. RON JOHNSON,
U.S. Senate,
Washington, DC.

DEAR SENATOR JOHNSON: Yesterday our nation marked another somber milestone, the 17th anniversary of the terrorist attacks of September 11, 2001. That tragedy led to great changes in our government, including the establishment of the Department of Homeland Security (DHS). As directed by Congress, DHS focuses on securing high-risk chemical plants through the Chemical Facility Anti-Terrorism Standards (CFATS) program. The members of the Institute of Makers of Explosives (IME) fully support your legislation that reauthorizes this important program, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018 (S. 3405), and we urge the Senate to approve the legislation.

Founded in 1913, IME is the safety and security institute for the commercial explosives industry, a charge we do not take lightly, as evidenced by the industry's excellent security track record and work with the Bureau of Alcohol, Tobacco, Firearms, and Explosives, among other agencies. IME represents manufacturers of commercial explosives and other companies that distribute explosives or provide related services. Commercial explosives are used in every state and are distributed worldwide. The ability to manufacture and distribute these products safely and securely is critical to this industry and to the mining, construction, and oil & gas industries that use our products. IME takes an active role in promoting responsible practices through the full life cycle of commercial explosives and regularly publishes, updates, and distributes free of charge, our series of Safety Library Publications (SLPs), including SLP 27, Security in Manufacturing, Transportation, Storage and Use of Commercial Explosives, to the benefit of our workers and the general public.

Your leadership, as demonstrated by including improvements identified during the June CFATS roundtable oversight hearing which you chaired, is greatly appreciated. The commercial explosives industry looks forward to work with you and the Committee to reauthorize the CFATS program. We believe that S. 3405 enhances national security while reducing blatantly duplicative regulations; clearing the path for government to focus resources on highest priority threats to our national security while allowing industry to invest their time and resources in a regulatory system that has proven to be effective.

IME fully endorses S. 3405 and urge the Senate to pass this common-sense solution without delay. We welcome the opportunity to work with you to advance this important legislation.

Respectfully,

JOHN BOLING,

Vice President of Government Affairs.

Mr. JOHNSON. Having gone through all this work, all this oversight, taking that responsibility seriously, I recently have been asked to support a 1-year reauthorization of the program without any reforms. Without any consultation, Secretary Nielsen just sent me a letter completely ignoring the work our committee has done and informing of her support for a "short-term" extension.

Today, I was told the House plans to pass not a 1-year but a 2-year extension with no reforms. The House is claiming they cannot possibly consider reforms because there is simply not enough time, because they haven't done any oversight, because they didn't mark up a bill in this Congress. Yet the House Committee on Homeland Security has had years to act.

My committee did the work. We did act. Now I am being threatened with a false choice: Either reauthorize the program as is, without much needed reforms, or let it die. In fact, there is a much better third choice: Pass S. 3405, the bill our committee passed unanimously, the bill that provides unanimous reforms that strike the right balance between security and efficiency.

Again, our committee did the work. We did act. And I have to tell all my colleagues here, this is the only option I will support.

UNANIMOUS CONSENT REQUEST—
CALENDAR NO. 670, S. 3405

Mr. JOHNSON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 670, S. 3405. I further ask that the committee-reported substitute amendment be withdrawn; the Johnson substitute amendment at the desk be considered and agreed to; the bill, as amended, be considered read a third time and passed; and the motions to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

The Senator from Delaware.

Mr. CARPER. Thank you, Mr. President.

In the wake of 9/11, Congress took a fresh—I want us to walk back in time a little bit to how we actually got here today.

In the wake of 9/11, Congress took a fresh look at some of our Nation's vulnerabilities and realized that our country's chemical facilities—part of our industry that our Presiding Officer knows a lot about—realized that our country's chemical facilities could be potential targets for terrorist attacks. So we created the Chemical Facility Anti-Terrorism Standards Program, known as CFATS, to better protect high-risk chemical facilities from those looking to do us harm.

My recollection is not perfect, but my recollection is that among the people who were the prime authors of that were, I believe, Senator COLLINS from Maine and possibly Senator Lieberman from Connecticut, the senior Democrat and senior Republican on the Homeland Security Committee at that time. The program that was created—I believe, and I hope I am not mistaken, with their guidance and leadership at that time, roughly 10 years ago—started out with some stumbles out of the gate, as some of you may recall. The Department of Homeland Security—then a younger organization—lacked the trust of industry. The program also lacked a long-term authorization. There was a fair amount of concern about predictability, and we know how businesses like predictability and certainty, which is understandable.

In 2014, Senator Coburn and I, the chairman of the committee at the time—and he was the ranking member—we had what turned out to be a great partnership on a lot of issues, including this one. We worked with industry stakeholders, the Department of Homeland Security, their folks, labor groups, and others in order to provide CFATS with a clear statutory authorization laying out the roles and responsibilities of chemical facility owners in securing their sites against attack.

What was first created when CFATS was a brandnew bill becoming a brandnew law was obviously not perfect. That is why we came back roughly 5 years later to perfect it. What we did in 2014—I think that is the right year—what we did then was not perfect