



MEMORANDUM

September 6, 2019

To: Subcommittee on Environment and Climate Change Members and Staff

Fr: Committee on Energy and Commerce Staff

Re: Hearing on H.R. 3256, the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019”

On **Wednesday, September 11, 2019, at 10 a.m. in the John D. Dingell Room, 2123 of the Rayburn House Office Building**, the Subcommittee on Environment and Climate Change will hold a legislative hearing on H.R. 3256, the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019.”

I. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS BACKGROUND

Chemical facilities use and store chemical substances that, if released or attacked, can endanger people at the facility and in nearby communities. Terrorists could also steal chemicals from these facilities to create improvised weapons of mass destruction. Since 2007, high risk chemical facilities have been regulated to address these risks under the Chemical Facility Antiterrorism Standards (CFATS) Program, implemented by the Department of Homeland Security (DHS).

Congress originally created the program through the appropriations process in 2006 and intended to sunset it in 2009.¹ DHS finalized the regulations establishing CFATS on April 9, 2007.² Congress extended this program through annual appropriations until passage of the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014”, which modified the program and extended its authority through the beginning of this year. On January 18, 2019, the President signed H.R. 251, the “Chemical Facility Anti-Terrorism Standards Program Extension Act”, which extended the program again through April 2020.

The CFATS program requires high-risk chemical facilities (as defined by DHS) to address risk by meeting risk-based performance standards in 18 areas, including securing site

¹ Pub. L. No. 109-295 (2006).

² Department of Homeland Security, *Chemical Facility Anti-Terrorism Standards*, 72 Fed. Reg. 17688 (Apr. 9, 2007).

assets, preventing theft and diversion, and restricting the area perimeter.³ Owners of chemical facilities that possess more than a specified threshold of certain “chemicals of interest,” must complete a DHS survey known as a Top-Screen. Based on the data from the Top-Screen, DHS determines which facilities are deemed high-risk and thus subject to the program’s risk-based performance standards. All high-risk facilities are sorted into four risk tiers, which determine the risk-based standards that must be met. Owners of covered facilities are then required to prepare vulnerability assessments and site security plans (SSP) that meet the performance standards for their assigned tier. As of September 4, 2019, the CFATS program identifies 3,321 facilities as high-risk, with 167 facilities placed in tier 1 (the highest tier), 79 facilities in tier 2, and the remainder in tiers 3 and 4.⁴

The CFATS law includes several exemptions for categories of facilities: public water systems regulated under the Safe Drinking Water Act; treatment works, as defined in section 212 of the Clean Water Act; facilities regulated pursuant to the Maritime Transportation Security Act of 2002; and any facility owned or operated by the Departments of Defense or Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.⁵ In 2018, Congress enacted new security requirements for drinking water systems as part of the America’s Water Infrastructure Act.⁶

In August 2018, the Government Accountability Office (GAO) issued a report titled, “Critical Infrastructure Protection: DHS Should Take Actions to Measure Reduction in Chemical Facility Vulnerability and Share Information with First Responders.”⁷ The report urges DHS to measure reduction in vulnerability of high-risk facilities. It further urges DHS to use that data to assess the program and encourage wider use of the Infrastructure Protection Gateway (IP Gateway) among first responders and emergency planners for better emergency coordination. The IP Gateway serves as the single interface through which DHS partners can access a large range of integrated infrastructure protection tools and information to conduct comprehensive vulnerability assessments and risk analysis.

II. H.R. 3256, “THE PROTECTING AND SECURING CHEMICAL FACILITIES FROM TERRORIST ATTACKS OF 2019”

Rep. Cedric Richmond (D-LA) introduced H.R. 3256, the “Protecting and Securing Chemical Facilities from Terrorist Attacks of 2019” on June 13, 2019. On June 19, 2019, the

³ Congressional Research Service, *Chemical Facility Anti-Terrorism Standards* (Mar. 2018) (IF10853).

⁴ Email from Legislative Affairs Staff, U.S. Department of Homeland Security, to Minority Staff, House Committee on Energy and Commerce (Sept. 4, 2019).

⁵ See note 3.

⁶ Pub. L. No. 115-270 (2018).

⁷ Government Accountability Office, *Critical Infrastructure Protection: DHS Should Take Actions to Measure Reduction in Chemical Facility Vulnerability and Share Information with First Responders* (Aug. 2018) (GAO-18-538).

Committee on Homeland Security ordered H.R. 3256 reported by a 14-12 roll call vote along party lines. Below is a section by section summary of H.R. 3256:

Section by Section Explanation of H.R. 3256

Section 1. Short title; table of contents.

Section 1 provides the title of the bill may be cited as the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019”.

SEC. 2. Definitions.

Section 2 makes technical changes to definitions in current law.

SEC. 3. Chemical Facility Anti-Terrorism Standards Program.

Section 3 makes several substantive changes to the program. Subsection (a) requires DHS to verify information submitted by covered chemical facilities before reducing the tier assignments of those facilities and establishes a voluntary security program for facilities not covered by CFATS requirements. Subsection (b) directs facility owners and operators to include employees in security planning and to inform employees that the facility is covered by the CFATS program. Subsection (c) requires DHS to disapprove any site security plan that fails the verification required by subsection (a) or that does not contain contact information for local emergency planning officials and a policy to contact such officials annually regarding emergency response procedures. Subsection (d) eliminates the Expedited Approval Program in current law, which has not been used to date. Subsection (e) makes technical changes to the audit and inspection authority in current law and mandates audits include compliance with requirements to prepare and share emergency response plans. Subsection (f) makes changes to DHS’s risk assessment methodology for assigning facilities to risk tiers to ensure that risks of all malicious acts, not just terrorism, are covered. It also broadens the harms considered beyond loss of human life and severe economic consequences. Subsection (f) also requires DHS to share more threat information with state and local emergency response officials and to publish information on practices that can assist chemical facilities in preventing, reducing, and mitigating chemical security risks. Subsection (g) gives the Secretary of Homeland Security authority to exempt specific products and mixtures containing chemicals of interest above threshold quantities if the Secretary determines that the specific product or mixture does not present a security risk.

SEC. 4. Protecting and sharing of information.

Section 4 makes changes in the information protection provisions of the CFATS program, including more explicit requirements to share protected information with state and local emergency planning officials, Members of Congress, and GAO.

SEC. 5. Civil enforcement.

Section 5 amends the civil enforcement provisions of the CFATS program to speed up enforcement actions and make technical corrections.

SEC. 6. Whistleblower protection.

Section 6 makes changes in the whistleblower provisions of the CFATS program to create a review process and remedies for employees who experience retaliation as a result of reporting

potential violations of CFATS requirements. The process and remedies laid out in this section would be administered by the Secretary of Homeland Security.

SEC. 7. Chemical Security Advisory Committee.

Section 7 establishes a Chemical Security Advisory Committee with representatives from industry, academia, labor, emergency response officials, and environmental, community, or public health advocates.

SEC. 8. Implementation plan and report to Congress.

Section 8 requires an annual report to Congress on practices undertaken by covered chemical facilities to prevent, reduce, or manage their security risks.

SEC. 9. Study on risks posed by excluded facilities.

Section 9 directs DHS to contract for an independent assessment of the security risks posed by chemical facilities excluded from the CFATS program.

SEC. 10. Study on feasibility of waiver program.

Section 10 requires DHS to study the feasibility of establishing a waiver program to allow facilities to request a waiver of CFATS requirements because of compliance with other federal regulatory programs.

SEC. 11. Review of potential effects of attacks on covered chemical facilities on other critical infrastructure.

Section 11 directs DHS to review how its risk assessment and tiering methodology accounts for the risks posed by chemical facilities to other critical infrastructure.

SEC. 12. Comptroller General reports.

Section 12 requires GAO reports on the effectiveness of the CFATS standards, information management under the CFATS program, and DHS's implementation of requirements to publicize best practices.

SEC. 13. Voluntary mechanism for reporting drones and other emerging threats.

Section 13 establishes a voluntary program for facility owners and operators to report drone sightings.

SEC. 14. Regulations regarding specific products and mixtures containing chemicals of interest.

Section 14 requires that the Secretary of Homeland Security establish a process to allow petitions for the exclusion of specific products or mixtures from the CFATS program.

SEC. 15. Previously approved facilities.

Section 15 states that covered chemical facilities need not submit new site security plans solely because of the adoption of the legislation.

SEC. 16. Termination.

Section 16 extends the authority of the CFATS program through May 1, 2025.

III. WITNESSES

The following witnesses have been invited to testify:

Panel I

David Wulf

Acting Deputy Assistant Secretary for Infrastructure Protection
Department of Homeland Security

Panel II

Matthew Fridley

Corporate Manager of Safety, Health, and Security
Brenntag North America, Inc.
On behalf of National Association of Chemical Distributors

Michele Roberts

National Co-Coordinator
Environmental Justice Health Alliance (EJHA)

John Paul Smith

Legislative Representative
United Steelworkers (USW)

Scott Welch

Chief Security Office and Global Director of Emergency Services and Security
Dow Chemical Company
On behalf of American Chemistry Council