

Ross E. Eisenberg

Vice President

Energy & Resources Policy

September 11, 2019

The Honorable Paul Tonko
Chairman
Committee on Energy and Commerce
Subcommittee on Environment and
Climate Change
U.S. House of Representatives
Washington, DC 20515

The Honorable John Shimkus
Ranking Member
Committee on Energy and Commerce
Subcommittee on Environment and
Climate Change
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Tonko and Ranking Member Shimkus:

The National Association of Manufacturers (NAM), the nation's largest industrial trade association, representing 14,000 small, medium and large manufacturers in every industrial sector and in all 50 states, has a substantial interest and concern regarding requirements of facility site security programs, including compliance with the Department of Homeland Security's (DHS) Chemical Facility Anti-Terrorism Standards (CFATS) program. The current CFATS program, established by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act (P.L. 113-254), will sunset on April 18, 2020. The NAM strongly supports efforts to ensure the continuity of the CFATS program. However, as this Subcommittee considers reauthorization of the statute, the NAM is pleased to provide input on the current program and H.R. 3256, the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019*. For manufacturers, legislation to reauthorize CFATS must provide regulatory certainty without harming the intent of the program.

Manufacturers are deeply committed to the communities in which they live and serve. Across the nation, they have demonstrated a firm resolve in protecting critical infrastructure, their facilities and key assets from terrorist exploitation. Securing the homeland is a partnership that involves government at all levels, the private sector and concerned citizens across the country that are committed to action. Security investments are not only required by law but also a core component of manufacturers' business operations. The NAM represents 2,152 CFATS-regulated facilities that span across major industrial sectors, such as oil and gas refining; chemical production and distribution; mining; agricultural goods and services; electrical utilities; and aerospace and defense. As CFATS-regulated facilities, these sites are engaged in the manufacturing, storage and distribution of what DHS considers chemicals of interest (COI).

Prior to the CFATS program's authorization in 2014, DHS's authority to regulate high-risk facilities was dependent on Congress approving an act of appropriations. Since its enactment in 2007, CFATS was bound to the appropriations process which, due to its unpredictability, acted as a barrier to much-needed improvements to the program. DHS and industry were thrust into an environment steeped with regulatory uncertainty. Such programmatic uncertainty is detrimental because industry relies on stability to make sound, long-term investments and meet regulatory requirements.

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The authorization of CFATS in 2014 represented a turning point for the program. It set an important precedent: by removing CFATS from the appropriations track, Congress was for the first time able to make significant improvements to the program. These improvements included the following:

- **Mandating congressional oversight**, requiring the Secretary of Homeland Security and Comptroller General to provide Congress with progress updates on the implementation of the CFATS program.
- **Fostering continued information sharing** between manufacturers and state and local officials to enhance security.
- **Requiring DHS to develop a security risk assessment approach and revised tiering methodology** for CFATS-regulated facilities that considers facility vulnerabilities and threat information as well as potential economic harm and loss of life.
- **Modernizing the screening process** for individuals seeking access to secure facilities. Utilization of the Personnel Surety Program eliminates duplicative regulatory requirements for facility owners and operators who need to vet individuals against the terrorist screening database.
- **Establishing an Expedited Approval Program (EAP)** for Tier 3 and 4 facilities. The EAP enables lower-tiered facilities to accelerate their site security plans through DHS's approval process.

The NAM Supports a Multiyear CFATS Reauthorization

Manufacturers believe that the multiyear congressional authorization by CFATS in 2014 was a pivotal moment for the longevity of the program. The NAM believes Congress should do so again. A multiyear reauthorization would continue to provide DHS with the ability to efficiently and effectively operate the CFATS program. Importantly, manufacturers would also greatly benefit from such regulatory certainty. This would enable industry to confidently make appropriate, economically justifiable, long-term investments to protect facilities' threat and vulnerability conditions.

CFATS Reauthorization Must Safeguard Facility Site Security Information

The current CFATS statute requires sharing information "with state and local government officials possessing a need to know and the necessary security clearances, including law enforcement officials and first responders."¹ The NAM supports continued information sharing between manufacturers and federal, state and local officials to enhance security.

Manufacturers are committed to doing their part to protect their facilities, personnel, surrounding communities and the environment. According to an NAM member company, information applicable to the safe response to an incident is shared with appropriate response organizations based on risk. With regards to unplanned events, information such as chemical inventories, facility layout and available onsite emergency equipment/capabilities are shared

¹ Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014. Pub. L. 113-254. Sec. 2103: Protection and Sharing of Information.

with appropriate first responders to ensure they are adequately prepared if an emergency arises. Facilities collaborate with agencies to plan and execute drills and exercises, as well as regularly participate in local emergency planning meetings.

However, it is imperative that the submitters of confidential information to the government and first responders have a corresponding right to expect that the confidentiality of such information shall be preserved and properly protected against public disclosure. CFATS reauthorization should not expand Section 2103 of the statute (“Protection and Sharing of Information”) to permit public disclosure of facility site security information. Chemical-threat vulnerability information, such as security system designs, control system schematics, worst-case scenario discharge data, COI records and tactical response information for emergency personnel, must be safeguarded from potential threats or individuals actively seeking to do harm. The only individuals that should have access to facility site security information are those who have appropriate security credentials and clearances. The NAM is concerned about the resultant harm to the industry, facility personnel, the surrounding community and environment and the nation at large when disclosure is indiscriminate and fails to protect sensitive and confidential business information.

Manufacturers Must Be Consulted on Proposed CFATS Regulatory Changes

The NAM believes that public participation in the agency decision-making process is an essential mechanism that ensures political accountability. Starting with the Administrative Procedure Act and enhanced by a series of executive orders, rules and procedures spanning multiple presidential administrations, the federal government has recognized the importance of public participation in rulemaking and non-regulatory proceedings.

In this same vein, manufacturers must continue to be consulted on proposed regulatory changes to the CFATS program. For example, if DHS suggests alterations to Appendix A: Chemicals of Interest, these alterations must be subject to notice and comment rulemaking. Stakeholder engagement and participation is vital to the regulated community because changes to Appendix A could impact whether facilities are considered CFATS-regulated sites. In addition, DHS’s decision to modify Appendix A must be based on level of risk, sound scientific data and a comprehensive cost-benefit analysis.

Congress Must Not Erode the Purpose of the CFATS Program

The CFATS program is the only federal program focused on facility site security with COIs, and this must remain as the program’s only purpose. On June 19, the House Homeland Security Committee approved H.R. 3256, the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act* and this Subcommittee will now consider the legislation. While the NAM applauds Congress’ commitment to reauthorizing the CFATS program, we are concerned that certain elements of H.R. 3256 could jeopardize the integrity of the program. H.R. 3256 would make extensive changes to the CFATS program by, but not limited to, potentially expanding the intent of the program beyond site security and compromising the confidentiality of chemical-threat vulnerability information. Congress must ensure that CFATS reauthorization legislation only strengthens, not weakens, facility site security.

Conclusion

Manufacturers have established a strong record of facility security and strive to further protect the communities in which they live and serve. Facility security will remain a top priority

for manufacturers, and as such, the NAM supports the continuity of the CFATS program. CFATS reauthorization must provide manufacturers with the regulatory certainty to make the necessary investments in their facilities and meet compliance requirements.

Very truly yours,



Ross Eisenberg
Vice President
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