

United States Senate

WASHINGTON, DC 20510

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*.

² Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, Pub. L. No. 113-254, 128 Stat. 2898 (2014).

³ U.S. Gov't Accountability Office, Rep. No. 13-353, *Critical Infrastructure Protection* (April 2013), <https://www.gao.gov/products/gao-13-353>; *see also* U.S. Gov't Accountability Office, Rep. No. 15-614, *Critical Infrastructure Protection* (July 2015), <https://www.gao.gov/products/GAO-15-614>; U.S. Gov't Accountability Office, Rep. No. 13-801T, *Critical Infrastructure Protection* (Aug. 2013), <https://www.gao.gov/products/GAO-13-801T>; U.S. Gov't Accountability Office, Rep. No. 14-608T, *Critical Infrastructure Protection* (May 2014), <https://www.gao.gov/products/GAO-14-608T>; Sen. Tom Coburn of Sen. Comm. on Homeland Sec. & Governmental Affairs, 113th Cong., *Chemical Insecurity*, (Comm. Print 2014), *available at* https://www.hsgac.senate.gov/imo/media/doc/Chemical_Insecurity.pdf.

⁴ CFATS Monthly Statistics, Department of Homeland Security (October 3, 2018), <https://www.dhs.gov/cfats-monthly-statistics>.

such as eliminating the estimated nine-year backlog of reviewing facilities' unique site security plans,⁵ 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.⁶

During the roundtable, stakeholders provided feedback on how to further improve the CFATS program.⁷ 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.⁸ We also heard from a CFATS chemical inspector on basic and continuous training issues and need for improvement, particularly with respect to cybersecurity.⁹ 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.¹⁰

Incorporating this feedback from CFATS stakeholders, Chairman Johnson introduced S. 3405 on September 4, 2018.¹¹ Senator Capito is a cosponsor. S. 3405 reauthorizes the CFATS program for five years and brings much-needed regulatory relief to the U.S. chemical industry while effectively balancing safety and security.¹² On September 26, 2018, the Senate Committee on Homeland Security and Governmental Affairs unanimously reported S. 3405 favorably by voice vote.¹³ On September 28, 2018, Rep. Katko, Rep. Moolenaar, and Rep. Cuellar introduced H.R. 6992, a bipartisan House companion.¹⁴

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

⁵ CFATS HSGAC Staff Briefing (June 1, 2018); *see also* U.S. Government Accountability Office, Rep. No. 13-353, Critical Infrastructure Protection, (April 2013), <https://www.gao.gov/products/gao-13-353>.

⁶ *Examining the Chemical Facility Anti-Terrorism Standards Program: Hearing Before the S. Comm. On Homeland Sec. & Governmental Affairs*, 115th Cong. (2018).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Analysis of metrics in the CFATS Semi-Annual Performance Reports to Congress, as required by the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, Pub. L. No. 113-254, 128 Stat. 2898 (2014). (on file with Comm. staff). *See also* THE NATIONAL ACADEMIES OF SCIENCES, ENGINEERING, AND MEDICINE, REDUCING THE THREAT OF IMPROVISED EXPLOSIVE DEVICE ATTACKS BY RESTRICTING ACCESS TO EXPLOSIVE PRECURSOR CHEMICALS, (National Academies Press) (2017). *See also*: <https://www.nap.edu/catalog/24862/reducing-the-threat-of-improvised-explosive-device-attacks-by-restricting-access-to-explosive-precursor-chemicals>.

¹¹ S. 3405, *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018*.

¹² *Id.*

¹³ *Committee Business Meeting, S. Comm. On Homeland Sec. & Governmental Affairs*, 115th Congress. (September 26, 2018).

¹⁴ H.R. 6992, *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2018*.

The Honorable Michael McCaul, Greg Walden, Bennie Thompson, and Frank Pallone

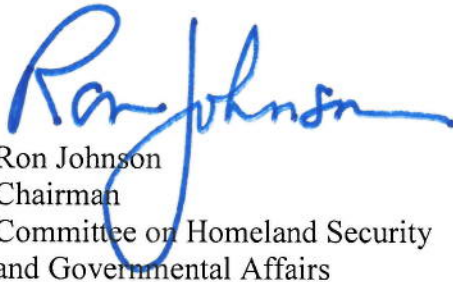
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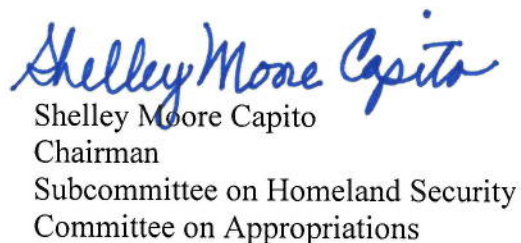
federal regulatory programs incorporating lessons learned from Congressional oversight. S. 3405 provides a path for the CFATS program to continue for an additional five years without inflicting burdensome and duplicative regulations on DHS's industry partners. If Congress fails to reform the CFATS program, 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



Shelley Moore Capito
Chairman
Subcommittee on Homeland Security
Committee on Appropriations

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

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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