

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-3641
Minority (202) 225-2927

June 12, 2023

The Honorable Jen Easterly
Director
Cybersecurity and Infrastructure Security Agency
U.S. Department of Homeland Security
245 Murray Lane
Washington, DC 20528

Dear Director Easterly:

On October 4, 2006, the legal authority creating the Chemical Facility Anti-Terrorism Standards (CFATS) program first became effective.¹ CFATS requires certain facilities, whose possession or planned possession of chemicals at or above certain levels determined to present “high levels of security risk,” to assess their vulnerabilities and implement security measures to minimize terrorism risks posed by those vulnerabilities. These facilities can fall under numerous types of industries and sectors, including chemical manufacturing, storage and distribution, energy and utilities, agriculture and food, explosives, mining, electronics, plastics, colleges and universities, laboratories, paint and coatings, and healthcare and pharmaceuticals.

On July 27, 2023, the statutory authority undergirding the entire CFATS program is scheduled to sunset.² In anticipation of any congressional efforts to extend the CFATS’s program, we would like to better understand the current operation of CFATS.

Please respond to the following questions:

1. Three years ago, Congress was concerned about the transparency of the CFATS tier process.
 - a. What steps has the Cybersecurity & Infrastructure Security Agency (CISA) taken to improve transparency of and understanding about the tier process among regulated stakeholders?
 - b. If CISA has taken steps to improve transparency, has CISA conducted outreach to stakeholders and others to determine if those steps improved understanding?

¹ Section 550, of Public Law 109-295; the Department of Homeland Security Appropriations Act of 2007.

² Public Law 113-254.


2. Congress is also very concerned about protecting the sensitive vulnerability and site security plan information of high-risk chemical facilities from public disclosure.
 - a. What steps, if any, has CISA taken in the last three years to change the way it protects chemical-terrorism vulnerability information (CVI)?
 - b. Does CISA have plans to change the scope or treatment of CVI?
 - c. What actions, if any, is CISA taking to communicate with other federal entities on that entity's treatment and use of CVI as part of their programs?
3. There are reports that CISA may soon begin a rulemaking that impacts the CFATS program, including changing the risk methodology, the list of chemicals and their thresholds under Appendix A, and cybersecurity. Please confirm, for each of those three specific areas:
 - a. Whether CISA will be proposing a new rule in this area?
 - b. Whether the new rule will propose to make changes in this area?
 - c. The need identified and the precise purpose for each of these proposed changes.
 - d. The timeline for action on these changes and whether they will be subject to the Administrative Procedures Act or some other legal set of guidelines?
4. In the past, the Government Accountability Office (GAO) has identified certain deficiencies in the implementation of the CFATS program.
 - a. Has CISA remedied, to GAO's satisfaction, all identified deficiencies? If not, which ones are still outstanding?
 - b. Does CISA employ training standards for CFATS inspection and compliance officers, including the use of minimum qualification requirement for inspectors to demonstrate knowledge and understanding of CFATS facilities?
5. CISA has several regional offices that carry out CFATS-related responsibilities.
 - a. What action(s) does CISA's main office in Washington, D.C. take to ensure that the regional offices are uniformly implementing CFATS across the country?
 - b. Is there an accountability process to prevent one region from operating a very different program from another?
6. The issue of drone activity around CFATS regulated facilities is getting increased attention. What actions has CISA taken and what plans does CISA have to address this matter?
7. CISA is proposing to reinstitute the statutorily required³ regulation on the sale of ammonium nitrate (AN).
 - a. Has CISA taken steps to understand the impact such regulations will have on CFATS-regulated facilities?

³ Public Law 110-161

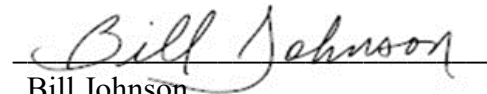
- b. If so, please detail the efforts CISA has undertaken, including as part of compliance with Executive Orders, to address the burden of these regulations and any overlap that they may engender?
- c. How is this effort different than the prior efforts, starting with the first proposed rule in 2011?
- d. Has CISA taken steps to understand the impact the absence of such regulation has had on its ability to combat terrorism?

Please provide us answers no later than June 27, 2023. If you have any questions, please do not hesitate to contact Mary Martin or Jerry Couri of the Majority Committee staff at (202) 225-3641, or Caitlin Haberman or Anthony Gutierrez of the Minority Committee staff at (202) 225-2927.

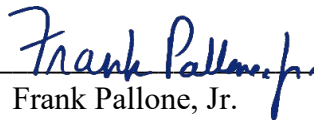
Sincerely,



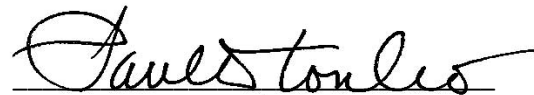
Cathy McMorris Rodgers
Chair
Committee on Energy and Commerce



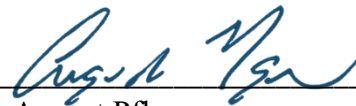
Bill Johnson
Chair
Subcommittee on Environment,
Manufacturing, and Critical Materials



Frank Pallone, Jr.
Ranking Member
Committee on Energy and Commerce



Paul D. Tonko
Ranking Member
Subcommittee on Environment,
Manufacturing, and Critical Materials



August Pfluger
Member of Congress