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THE CHEMICAL FACILITIES ANTI-TERRORISM  
STANDARDS PROGRAM (CFATS) - A PROGRESS  
REPORT

THURSDAY, JUNE 14, 2018

House of Representatives  
Subcommittee on Environment  
Committee on Energy and Commerce  
Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in  
Room 2123 Rayburn House Office Building, Hon. John Shimkus  
[chairman of the subcommittee] presiding.

Members present: Representatives Shimkus, McKinley, Harper,  
Olson, Johnson, Flores, Walberg, Carter, Duncan, Walden (ex  
officio), Tonko, Ruiz, Peters, Green, DeGette, McNerney,  
Cardenas, Dingell, Matsui, and Pallone (ex officio).

Staff present: Mike Bloomquist, Deputy Staff Director;  
Samantha Bopp, Staff Assistant; Kelly Collins, Staff Assistant;

26 Jerry Couri, Chief Environmental Advisor; Margaret Tucker  
27 Fogarty, Staff Assistant; Jordan Haverly, Policy Coordinator,  
28 Environment; Mary Martin, Deputy Chief Counsel, Energy &  
29 Environment; Sarah Matthews, Press Secretary; Drew McDowell,  
30 Executive Assistant; Peter Spencer, Professional Staff Member,  
31 Energy; Austin Stonebraker, Press Assistant; Hamlin Wade, Special  
32 Advisor, External Affairs; Everett Winnick, Director of  
33 Information Technology; Jean Fruci, Minority Energy and  
34 Environment Policy Advisor; Caitlin Haberman, Minority  
35 Professional Staff Member; Rick Kessler, Minority Senior Advisor  
36 and Staff Director, Energy and Environment; Jourdan Lewis,  
37 Minority Staff Assistant; Alexander Ratner, Minority Policy  
38 Analyst; Tuley Wright, Minority Energy and Environment Policy  
39 Advisor; C.J. Young, Minority Press Secretary; and Catherine  
40 Zander, Minority Environment Fellow.

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41 Mr. Shimkus. The subcommittee will now come to order. The  
42 chair recognizes himself for five minutes for the purpose of an  
43 opening statement.

44 Today, the subcommittee will check on the progress of the  
45 Chemical Facilities Anti-Terrorism Standards Program, or CFATS,  
46 allowing our subcommittee to review the progress of the CFATS  
47 program, including overall implementation by the Department of  
48 Homeland Security as well as overall achievement of benchmark  
49 objectives identified in the past by the Government  
50 Accountability Office.

51 This program, which Congress authorized in the fall of 2006  
52 was a continuation of congressional efforts since the terror  
53 attacks of September 11, 2001, to surgically and directly address  
54 gaps in federal law regarding terrorism or other intentional acts  
55 against high-risk facilities due to their use or possession of  
56 chemicals of concern at levels of concern.

57 The core of this new security-focused law was a  
58 process where DHS issued risk-based performance standards that  
59 required vulnerability assessments and the site security plans  
60 by covered facilities.

61 Most importantly, to avoid overlapping with other federal  
62 programs, CFATS was designed to foster collaboration between  
63 government and regulated parties.

64 Having finally set up this program, many had great optimism  
65 about its possibilities. Unfortunately, the early years of CFATS

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66 program implementation were marked  
67 with several growing pains, some more hurtful than others.

68 No one knows that more that our witness from the Department  
69 of Homeland Security, David Wulf. Very few people have  
70 demonstrated the courage, commitment, and longevity with  
71 the program that he has. He's kind of the Cal Ripken of CFATS.

72 Based on this subcommittee's hearing in March 2014, we know  
73 Mr. Wulf not only set many remedial goals to address issues he  
74 found in the CFATS program, but GAO also found areas that needed  
75 serious attention.

76 GAO provided recommendations to DHS on how to correct these  
77 areas. I look forward to hearing about the progress DHS is making  
78 here from Mr. Wulf on the first panel, and from Christopher Currie  
79 at GAO, who is on the second panel.

80 I also look forward to a meaningful dialogue with our other  
81 witnesses representing CFATS regulated stakeholders as well as  
82 those of organized labor, environmental, and community advocacy  
83 interests.

84 Particularly, I am interested in knowing what steps DHS has  
85 taken to improve its risk assessment methodology and what that  
86 has meant for facility tiering, what DHS has done to become more  
87 effective and efficient carrying out the CFATS  
88 program, and, finally, what steps has DHS taken to improve CFATS  
89 program transparency and communication with regulated  
90 facilities, whether it relates to the facility tiering or employee

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91 screening.

92 In my opinion, CFATS has had four uninterrupted years to  
93 course correct and these are threshold questions that must be  
94 addressed in evaluating whether CFATS is a worthwhile investment  
95 for the United States taxpayer.

96 I know there are some who would like to see the CFATS universe  
97 expand to also do EPA's job, or OSHA's job, or FEMA's job, or  
98 addressed some other way and we have had lively discussions on  
99 the advisability of these changes in the past.

100 My own thinking has been guided by two thoughts. Are these  
101 new requirements advisable as a legally enforceable part of this  
102 program, filling a security gap that does not exist or are they  
103 merely an additive burden without security benefits, and  
104 recognizing the challenges CFATS has faced in the past, CFATS  
105 must excel at its present obligations before being given new  
106 responsibilities.

107 I want to thank our witnesses for being with us today. We  
108 look forward to having your experience, wisdom, and ideas.

109 [The prepared statement of Mr. Shimkus follows:]

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111 \*\*\*\*\*INSERT 1\*\*\*\*\*

112 Mr. Shimkus. With that, I have a minute left. Anyone  
113 seeking time? No one is seeking time so I will yield back and  
114 recognize the ranking member of the subcommittee, Mr. Tonko from  
115 New York, for five minutes.

116 Mr. Tonko. Thank you, Mr. Chair, and thank you to our  
117 witnesses for your testimony, the Department of Homeland  
118 Security's Chemical Facility Anti-Terrorism Standards, or CFATS  
119 program.

120 CFATS is an important part of our nation's counterterrorism  
121 efforts to secure high-risk chemical facilities. The program  
122 was first created in late 2006 through a DHS appropriations bill.

123 In the early years, Congress extended the program through  
124 annual appropriations under the passage of a long-term  
125 authorization in 2014.

126 Without further congressional action the program will  
127 terminate in January of 2019. Under CFATS certain chemical  
128 manufacturing, handling, and storage facilities must implement  
129 risk-based performance standards for vulnerability assessments  
130 and site security plans.

131 Facilities that possess certain chemicals of interest must  
132 be screened by DHS. If a facility is deemed a high risk, it will  
133 be placed in one of four tiers that will establish standards  
134 appropriate to secure the site.

135 As of May 30th of 2018 the CFATS program identifies 3,395  
136 facilities as high risk with 159 in tier one and 78 in tier two.

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While there is complete agreement around the need for a program to keep these chemicals out of the hands of terrorists, even the program's most ardent supporters would admit there have been implementation problems.

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Over the years, DHS has addressed a number of concerns with the program including some of GAO's recommendations which we will hear about today, I am certain.

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As Congress considers reauthorization, this is an opportunity to review the program and consider what is working, working well, and how the program could be improved.

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This includes how we might continue to reduce risks at these sites and ensure that workers, first responders, and local communities have the information they need to stay safe.

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In my view, we should be working to reauthorize CFATS and, hopefully, improving it. But I would caution against a permanent reauthorization. It is rare for us to discuss this program and a permanent reauthorization may result in even less congressional oversight.

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We should also keep in mind that CFATS is not the only federal program to regulate chemical facilities. While others are beyond the scope of DHS, I strongly believe Congress should be looking at all aspects of risks at chemical facilities, not just terrorism.

161

Recent incidents should remind us that our concerns must

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not be limited to security issues alone. We should take a holistic approach to chemical risks which, obviously, includes facility security as well as safety, accounting for the risks to the people working there and living in nearby communities and facilities' resilience.

Chemical fires, explosions, and releases can have serious consequences regardless of whether an incident was an accident, a natural disaster or an act of terrorism.

For example, EPA's risk management plan program is focused on reducing chemical risk in the event of an accidental release.

RMP establishes emergency measures which help local first responders prepare for and respond to a chemical accident.

In January of 2017, the Obama administration finalized an RMP amendments rule but in June of last year EPA delayed that rule's implementation, and a few weeks ago EPA proposed a reconsideration of the RMP program, which would essentially roll back nearly all of the safety measures that were adopted in 2017.

In addition to safety issues, chemical facilities are also vulnerable to climate change and natural disasters as we have seen during Hurricane Harvey when a power outage and equipment failure led to a significant chemical fire at the Arkema facility is Crosby, Texas.

The Chemical Safety Board's post-Arkema report recommended the development of comprehensive industry guidance to help companies assess their risk for potential extreme weather events.

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187           While we all support keeping these facilities secure, I hope  
188 we can also address these critical safety and resilience issues,  
189 and if there is an opportunity to improve CFATS in a way that  
190 close security gaps, reduce risks, better address emerging  
191 threats such as cybersecurity and keep first responders and  
192 workers safer, now is an excellent opportunity to consider those  
193 changes to the program.

194           Again, I thank the chair for calling this hearing and thank  
195 our witnesses for being here today, and I yield back, Mr. Chair.

196           Mr. Johnson. [Presiding.] I thank the gentleman for  
197 yielding back.

198           The chair now recognizes the ranking member of the full  
199 committee, Mr. Pallone, for five minutes.

200           Mr. Pallone. Thank you, Mr. Chairman.

201           It's been over five years since this committee held a hearing  
202 on the Department of Homeland Security's Chemical Facility  
203 Anti-Terrorism Standards, or CFATS.

204           Given CFATS' inauspicious history, I believe we should have  
205 conducted more regular oversight. Existing CFATS authorization  
206 expires on January 2019 so it's important that Congress act to  
207 continue this program.

208           At the same time, there are well-documented gaps in the  
209 current statute that Congress should address instead of simply  
210 rubber stamping an extension of the existing program.

211           I've been an advocate for increased safety and security at

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212 our nation's chemical facilities for many years, well before the  
213 CFATS program was established in 2006.

214 My home state of New Jersey, which has a high population  
215 density, also has a large number of chemical facilities. So the  
216 consequences of insufficient security are dire.

217 The program shouldn't have any gaps, and while it took the  
218 program five years to approve its first chemical facility security  
219 plan, I understand we will hear today that improvements have been  
220 made.

221 Nevertheless, there are still shortfalls in the program that  
222 DHS cannot address without changes to the law. For example,  
223 several significant categories of facilities are exempt from the  
224 standards, such as public water systems and wastewater treatment  
225 plants, and they should be added.

226 We should also reject a suggestion from Senate Republicans  
227 that we exempt explosive manufacturers from this anti-terrorism  
228 program.

229 We also cannot have a conversation about chemical facilities  
230 without discussing the Trump administration's reckless proposal  
231 to dismantle EPA's risk management program, or RMP, improvement  
232 rule.

233 This is a common sense update to a nearly 20-year-old risk  
234 planning and reduction policy for our nation's chemical  
235 facilities. The rule would have improved chemical process  
236 safety, assisted local emergency authorities and planning for

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237 and responding to accidents and improved public awareness of  
238 chemical hazards at regulated facilities.

239         Unfortunately, the administration's decision to walk away  
240 from the RMP improvement rule has widespread and harmful  
241 ramifications. Dangerous incidents at chemical facilities  
242 across the country are happening too often.

243         Forty-six incidents have occurred at RMP facilities since  
244 Administrator Pruitt blocked the RMP improvement rule. Had the  
245 rule been in place, those facilities would have been required  
246 to prepare for and implement safety improvements to reduce the  
247 frequency and severity of those events.

248         The highest profile case occurred in the aftermath of  
249 Hurricane Harvey at the Arkema chemical plant in Crosby, Texas.

250         Heavy rains flooded the facility, causing equipment to fail,  
251 triggering a chemical fire, and releasing hazardous fumes and  
252 smoke into the air.

253         Last month, the Chemical Safety Court released an  
254 investigative report on the incident and found that chemical  
255 facilities are wholly unprepared for extreme weather events like  
256 floods and hurricanes.

257         Improving the resiliency of these facilities will only  
258 become more critical as the climate continues to change. More  
259 frequent flooding and powerful storms associated with unchecked  
260 climate change increase the risk to workers and vulnerable  
261 populations in and around these facilities which too often are

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262 low-income communities and communities of color.

263 Earlier this year, the New York Times reported that more  
264 than 2,500 sites handling toxic chemicals are located in  
265 flood-prone areas across the country.

266 It is clear that far more remains to be done to ensure  
267 chemical facilities are truly resilient to this growing threat.

268 Mr. Chairman, I also believe we must examine federal chemical  
269 safety and security policy holistically. We can't turn a blind  
270 eye to the administration's actions to undermine the efficacy  
271 of EPA's RMP program.

272 Preventing terrorism at these facilities is important, but  
273 accidents and industrial incidents due to extreme weather are  
274 far more common and they should also be given due consideration  
275 by this committee.

276 We have to ensure the safety and security of workers, first  
277 responders, and communities living near our nation's chemical  
278 facilities are being prepared on both fronts.

279 And with that, Mr. Chairman -- I don't think anybody wants  
280 my time -- I'll yield back.

281 Mr. McKinley. [Presiding.] Thank you, and absent the  
282 chairman of the full committee, we will now conclude our -- the  
283 members' opening remarks.

284 The chair would like to remind our members that pursuant  
285 to the committee rules, all members' opening statements be made  
286 part of the record.

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287 [The prepared statement of Mr. Walden follows:]

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289 \*\*\*\*\*INSERT 2\*\*\*\*\*

290 Mr. McKinley. That -- we thank -- we wish to thank the --  
291 all of our witnesses for being here today, taking the time to  
292 testify before this subcommittee.

293 Today's witnesses, beginning with the first panel, will have  
294 the opportunity to give opening statements followed by a round  
295 of questions. You know the drill -- how this works.

296 Our first witness panel for today's hearing includes Mr.  
297 David Wulf, the acting assistant secretary for infrastructure  
298 protection with the Department of Homeland Security.

299 Mr. Wulf, we appreciate you being here today and we will  
300 begin the program with you and you're recognized for your five  
301 minutes to make an opening statement.

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STATEMENT OF DAVE WULF, ACTING DEPUTY ASSISTANT SECRETARY,  
INFRASTRUCTURE PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

STATEMENT OF DAVE WULF

Mr. Wulf. Thank you so much, Mr. Chairman. I really do appreciate the opportunity to be here and thanks as well to Ranking Member Tonko and other members of this committee.

I am excited to be here to provide an update on the progress that the Chemical Facility Anti-Terrorism Standards, or CFATS program, continues to make in fostering security at high-risk chemical facilities across this nation.

When I last testified before this committee in 2013, no question but that the CFATS program was in a very different place, having experienced some significant difficulties in its early years.

But we had at that point implemented a comprehensive corrective action plan and had begun making measurable forward progress.

At the time, I emphasized the importance of long-term authorization for this critical anti-terrorism program and I am very grateful for the leadership that you all provided -- that this committee demonstrated in securing the four-year CFATS authorization that was signed into law in December of 2014.

So as we now find ourselves nearly three and a half years

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327 into the authorization period, I am grateful that this committee  
328 is, again, taking a lead role in ensuring continuing long-term  
329 authorization of CFATS.

330 Now, as I am sure you'll hear me say once or twice today,  
331 the stability that has come along with long-term authorization  
332 has driven unprecedented progress as we have worked with  
333 CFATS-covered facilities to make America's high-risk chemical  
334 infrastructure a truly hard target with literally tens of  
335 thousands of security measures having been put in place at  
336 high-risk chemical facilities across the nation.

337 So the stability afforded by long-term authorization has  
338 facilitated our planning and execution of important programmatic  
339 improvements while it has also afforded regulated industry  
340 stakeholders with the certainty they deserved as they planned  
341 for and made significant investments in CFATS-related security  
342 measures.

343 I am very pleased that you'll be hearing today directly from  
344 CFATS industry stakeholders about their direct experience with  
345 CFATS. Doug Brown, Jamie Conrad, Steve Roberts, along with a  
346 host of industry associations, have been true leaders in promoting  
347 a strong culture of chemical security across the nation and I  
348 really appreciate their presence and that of the other witnesses  
349 here today.

350 As we are all too aware, the threat of chemical terrorism  
351 remains a real and very relevant one. Around the globe, we

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continue to see bad actors seeking to acquire and using in attacks chemicals of the sort that trigger coverage under CFATS and the threat stream continues to reflect that chemical facilities themselves remain an attractive target for terrorist.

I can tell you with certainty that the work we are doing in concert with our committed stakeholders across the wide variety of industries and facilities that compose the CFATS-covered universe is making a real difference in protecting the nation, and having had the opportunity to work closely with my counterparts in other nations and to co-chair the G-7 Global Partnerships' Chemical Security Working Group, I can absolutely tell you that what we are doing here in the United States through CFATS what you have helped build with your support for long-term authorization is absolutely the envy of the world.

With its 18 comprehensive risk-based performance standards and its nonprescriptive flexible approach, CFATS is well suited to enhancing security across the very diverse universe of high-risk chemical facilities.

So what have we been doing to make CFATS even stronger as we have enjoyed the stability of long-term authorization over the past three and a half years?

Well, we have improved processes and we have seen unprecedented progress in the pace of inspections and in the review and approval of facility site security plans, eliminating a backlog of security plan reviews six years ahead of earlier

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377 GAO projections.

378         We have developed and launched an improved risk assessment  
379 methodology that effectively accounts for all relevant elements  
380 of risk and have reassessed the level of risk associated with  
381 nearly 30,000 facilities across the nation.

382         We have implemented the CFATS personnel surety program,  
383 affording the highest tiered CFATS-covered facilities the ability  
384 to ensure that individuals with access to those facilities have  
385 been vetted for terrorist ties and we have significantly reduced  
386 burden across our stakeholder community, having built and  
387 launched a streamlined more user-friendly suite of online tools  
388 through which facilities submit risk assessment or top-screen  
389 surveys and develop their site security plans.

390         So in addition to facilitating all this progress, long-term  
391 authorization as compared to our former reality of authorization  
392 through the annual appropriations process enabled us to continue  
393 to recruit and retain top talent and it reduced the possibility  
394 of another lapse in authority such as occurred during the October  
395 2013 government shut down.

396         In addition to the confusion this situation created among  
397 our industry stakeholders, the need had arisen for us to take  
398 enforcement action to address the national security threat at  
399 a CFATS facility during this period of lapse in appropriations.

400         The underlying statutory authority for such enforcement action  
401 would have been in doubt.

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402 I know this is not a situation that anyone wants to see  
403 repeated. So to finish on a bit more of a positive note, I would,  
404 again, like to thank this committee and your top-notch staff for  
405 your leadership in the CFATS reauthorization process.

406 We are fond of saying that chemical security is a shared  
407 commitment and, not unlike the role of our industry stakeholders  
408 who have embraced and helped us to build this program in so many  
409 ways and the role of our committed and very talented team at DHS,  
410 the role of Congress and of this committee in shaping and  
411 authorizing CFATS for the long term has been hugely important  
412 and I am looking forward to working further with you as we drive  
413 toward reauthorization this year.

414 So thank you so much, Mr. Chairman. I look forward to your  
415 questions and to the dialogue here today.

416 [The prepared statement of Mr. Wulf follows:]

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418 \*\*\*\*\*INSERT 3\*\*\*\*\*

419 Mr. McKinley. Thank you for your testimony, Mr. Wulf, and  
420 if I could recognize myself for five minutes to begin the question  
421 -- round of questioning.

422 Mr. Wulf, last time you testified before the committee one  
423 of the key issues identified by GAO regarding CFATS was Homeland  
424 Security's approach to calculating risks and in fact they  
425 concluded DHS did not take into consideration all the elements  
426 and consequences of threat risk and vulnerability.

427 Your written testimony mentions an enhanced risk assessment  
428 and tiered methodology that Homeland Security believes more  
429 accurately reflects a facility risk.

430 Has DHS changed its policy to risk analysis?

431 Mr. Wulf. Yes. In fact, Mr. Chairman, we have.

432 So we took very seriously the dialogue we had with this  
433 committee -- took very seriously the recommendations we received  
434 from GAO, recognizing that our previous risk-tiering methodology  
435 was not as comprehensive as they could have been. It was  
436 very focused on the consequences of terrorist attacks and less  
437 so on vulnerability and threat.

438 We commissioned a peer review with a committee drawn from  
439 across -- from a panel of experts from across academia, government  
440 partners, and industry.

441 We received some excellent recommendations as to ways in  
442 which we could enhance our risk-tiering methodology and we set  
443 about doing just that.

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444           So in the fall of 2016, we did in fact launch a new and  
445 improved risk-tiering methodology that accounts for all relevant  
446 elements of risk. So consequence, vulnerability, and threat,  
447 and we set about retiering the universe of chemical facilities  
448 against that new tiering methodology.

449           Mr. McKinley. With this tiering methodology, I am just  
450 curious -- has it been peer reviewed what you've done on that  
451 methodology?

452           Mr. Wulf. Yes. It sure has. So after we developed the  
453 methodology we drew together another group of experts, again,  
454 from across government academia and our industry community to  
455 go over the methodology -- to make recommendations for potential  
456 tweaks before we finalized the methodology.

457           And following that, we embarked upon a verification and  
458 validation process that was conducted by Sandia National Labs,  
459 which advised us that our methodology was in fact sound, was  
460 working as intended, and at that point, we launched upon the  
461 retiering process.

462           Mr. McKinley. Again, back on the tiers, Mr. Wulf, almost  
463 half the group changed tiers onto this new methodology. Fifteen  
464 percent apparently left the program and four became newly  
465 regulated.

466           And so my question is, is what quality reviews and are there  
467 updates occurring to make sure that you are appropriately tiering  
468 everybody that should be in the system and, as the engineering

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469 room counts up the numbers, your numbers total over 100 percent.

470 So I am curious if there is a discrepancy in your math.

471 Mr. Wulf. That is a -- that is a good question. So I would  
472 say the way to look at the math is, you know, looking at the --  
473 looking at the number of facilities that had been previously  
474 tiered, that group should add up to 100 percent.

475 So of that -- of that group, about 36 percent of previously  
476 tiered high-risk facilities stayed put at the same tier level.

477

478 About 48 percent, as I think you mentioned, moved across  
479 tiers from one tier to another and about 15 percent of that  
480 previously tiered population was determined to be no longer high  
481 risk, using the new methodology, and fell out of the high-risk  
482 category.

483 So those three numbers add up to 99 -- 100 percent when you  
484 take into account the decimals. The additional 4 percent is from  
485 the population that had previously been not determined to be high  
486 risk -- those previously untiered facilities.

487 Four percent of those were subsequently determined under  
488 the new methodology to be high risk and moved into the risk tiers.

489 Mr. McKinley. Just in the time that remains -- the 30 some  
490 seconds -- what are you doing to -- how do -- how do we have  
491 confidence that you're appropriately tiering people,  
492 risk-tiering companies.

493 Mr. Wulf. So, you know, the risk-tiering methodology is

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494 a sound one and is very robust and now takes into account all  
495 relevant elements of risk.

496 We have built in -- we have built a system in which human  
497 eyes look at tiering for each facility as we move through the  
498 process and before a final tiering decision is issued and if  
499 anything looks off -- if it appears as though a facility might  
500 have submitted information in a way that doesn't quite make sense,  
501 we are able to reach out directly through our field inspectors,  
502 through our compliance case managers directly, to the facility  
503 to resolve any discrepancies and to ensure that we are in fact  
504 issuing the correct tier.

505 Mr. McKinley. Thank you. Thank you for my question.

506 Now, the -- recognize the ranking member, Mr. Tonko from  
507 New York, for five minutes.

508 Mr. Tonko. Thank you, Mr. Chair.

509 And Mr. Wulf, again, welcome and thank you for your  
510 testimony. I commend you on the progress that has been made over  
511 the recent years.

512 I believe, however there are ways we can continue to reduce  
513 risks and improve the program. I want to reference a few issues  
514 that came up when DHS last testified before this committee on  
515 the CFATS program.

516 This includes the importance of closing security gaps. Is  
517 it true that drinking water and wastewater facilities are  
518 statutorily exempt from the CFATS program?

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519 Mr. Wulf. Water and wastewater facilities are among the  
520 statutory exemptions along with facilities regulated by our  
521 friends in the Coast Guard through the NHTSA program and a handful  
522 of other exemptions.

523 Mr. Tonko. Thank you. And do you think they were exempted  
524 because there are no risks of terrorist attacks on -- at these  
525 sites?

526 Mr. Wulf. I was not -- I was not here when that -- when  
527 that exemption went into effect. Certainly, I think it might  
528 be worth studying whether, you know, what gaps may continue to  
529 -- may exist in that arena. I think that might be a -- might be  
530 a sound next step.

531 Mr. Tonko. Okay. And is it true that nuclear facilities  
532 are also statutorily exempt from the CFATS program?

533 Mr. Wulf. Facilities regulated by the NRC are exempt.

534 Mr. Tonko. And what about federal facilities that have  
535 large amounts of chemicals of interest? Are they exempt?

536 Mr. Wulf. Facilities owned and operated by the Department  
537 of Energy and the Department of Defense, both of which have robust  
538 standards and audit controls of their own, are exempt as well.

539 Mr. Tonko. Just because a facility is not covered by CFATS  
540 does that mean it is not a potential target by terrorists? Should  
541 these sites be monitored at all?

542 Mr. Wulf. So, you know, CFATS is designed -- you know, it's  
543 very focused. It is a risk-based program. It is targeted at

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544 the highest -- you know, those facilities that are assessed to  
545 be at the highest risk of terrorist attack or exploitation so  
546 I think it is a -- you know, it is an appropriate targeting of  
547 our best resources to the facilities that are at the highest risk.

548 That is certainly not to say that other facilities do not  
549 present a risk. We have within the Department of Homeland  
550 Security a suite of voluntary tools and resources that are  
551 available to other chemical facilities through our chemical  
552 sector-specific agency.

553 We have protective security advisors who work with  
554 facilities on a voluntary basis across the nation every day.  
555 So yes, certainly --

556 Mr. Tonko. But that's statutorily imposed. So --

557 Mr. Wulf. Yes. Those are not a statutory requirement.

558 Mr. Tonko. Okay. Obviously, there are very different  
559 security and regulatory regimes at nuclear facilities -- federal  
560 facilities -- and other sites that have received exemptions.

561 But in the past, DHS has expressed concerns over the gaps  
562 created by these exemptions. A number of years ago, DHS testified  
563 that the administration's position to support closing security  
564 gaps at drinking water and waste water facilities -- is that still  
565 the administration's position?

566 Mr. Wulf. I think I would have to take that -- I would have  
567 to take that back.

568 Mr. Tonko. Okay. And does the administration still

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569 support maintaining EPA as the lead agency for drinking water  
570 and waste water facility security with the DHS supporting EPA's  
571 efforts?

572 Mr. Wulf. I think that is another one we would need to take  
573 back.

574 Mr. Tonko. All right. If you can get back to the committee,  
575 please.

576 And can you explain how DHS has worked with EPA in recent  
577 years to encourage improvements in chemical security at water  
578 facilities?

579 Mr. Wulf. So I can speak -- I can speak more broadly to  
580 the work we have done with EPA across the chemical sector. So  
581 as you -- as you probably know, in the wake of the tragic explosion  
582 at west Texas, an executive order on improving chemical security  
583 safety and security was issued.

584 In implementing that order, we developed a national working  
585 group composed of us at DHS along with EPA, OSHA, Bureau of  
586 Alcohol, Tobacco, Firearms, and Explosives and others with a role  
587 in assuring chemical facility safety and security.

588 We took steps to ensure that we were sharing information  
589 as fully as possibly, comparing notes on inspections, comparing  
590 notes on facilities that existed in our relative respective  
591 jurisdictions and ensuring that word was getting out as widely  
592 as possible about all of the -- all of the -- all of the different  
593 regulatory and other requirements.

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594 Mr. Tonko. Okay. I would simply encourage the committee  
595 to consider how we might close some of these security gaps before  
596 we debate creating new ones through additional exemptions and  
597 I think it's important that we have this holistic approach to  
598 cover everyone that might be impacted.

599 With that, I yield back, Mr. Chair.

600 Mr. McKinley. Thank you.

601 And now I recognize my colleague from Mississippi, Mr.  
602 Harper, for five minutes.

603 Mr. Harper. Thank you, Mr. Chairman.

604 Mr. Wulf, thank you for your time being here, and we  
605 appreciate it. It's such an important issue and topic for us  
606 to continue to look at and we know that we all want to be on the  
607 same page, you know, here on where we go, what we look at, and  
608 how we try to strengthen this in the future.

609 One of the issues that was identified by the GAO, and also  
610 a second witness that will be on the next panel, as a place that  
611 needed improvement was compliance, inspections, and enforcement,  
612 and I'd like to know what steps DHS has taken to improve in this  
613 area.

614 Mr. Wulf. I appreciate -- I appreciate the question. We  
615 have made really unprecedented progress in our conduct of  
616 inspections in our review and adjudication of site security plans  
617 and have moved as well in -- as a result have enclosed the backlog  
618 of site security plan reviews and adjudications.

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619           We have moved now into sort of steady state phase of the  
620 program. So, you know, more than 90 percent of the inspections  
621 we are now conducting are the -- for post site security plan  
622 approval, compliance inspection, variety of inspections.

623           So we have -- we have developed standard operating procedures  
624 for these inspections and I will say that the inspections that  
625 are happening across the country are going well almost across  
626 the board.

627           Facilities are taking seriously their obligation to  
628 implement their site security plans. They are putting in place  
629 planned or new security measures in accordance with agreed upon  
630 time lines where issues are being identified or found by  
631 inspectors.

632           Nearly always they are being resolved -- being resolved  
633 quickly and in good faith by the facility. You know, we are not  
634 hesitant though where needed to use the enforcement authorities  
635 with which we have been entrusted.

636           But our overwhelming bias continues to be to work with  
637 facilities that are working with us in good faith to come into  
638 -- to come into compliance.

639           Mr. Harper. Mr. Wulf, let's talk about your -- the  
640 inspectors for just a moment. Is there a -- does DHS have minimum  
641 qualification requirements for inspectors so they could  
642 demonstrate the knowledge and understanding of the facilities  
643 that they encounter and relevant guidance on enforcement

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644 requirements.

645           Do you have those -- do you have the minimum qualifications  
646 there and, if yes, will you provide the committee any written  
647 items the department has governing inspector qualifications and  
648 training?

649           Mr. Wulf. Glad to do that, sir, and absolutely, we have  
650 minimum standards -- a pretty high bar for those standards as  
651 well for our inspectors who go through a comprehensive training  
652 program when they first come on board at DHS and to whom we provide  
653 advanced training throughout their careers on topics -- specific  
654 topics such as cybersecurity or personnel surety background check  
655 focused program among many others.

656           You know, there is an exam at the end of the basic training  
657 and it is rigorous. We also focus heavily on on-the-job training  
658 and on fostering consistency across our inspector cadre and the  
659 inspections they conduct.

660           We have put in place relatively recently a group of senior  
661 inspectors in each of our 10 regions and their job is to sort  
662 of foster training, the development of our inspector cadre and  
663 to ensure that we are -- we are working in a consistent way.  
664 But absolutely glad to provide you information.

665           Mr. Harper. And that would be great. And do you --  
666 obviously, the goal here is that the inspectors -- that if you  
667 had any inspector come in to any facility that there would be  
668 a consistent review and finding, do you sense that the training

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669 you have in place -- the ongoing training for those inspectors  
670 is going to meet that?

671 Mr. Wulf. Yes, I do. I think, you know, it's never  
672 completely perfect. We strive for absolute consistency. We  
673 appreciate the feedback we receive from our industry  
674 stakeholders, you know, many of whom own and operate companies  
675 that have facilities in different parts of the country and, you  
676 know, if we hear things are perhaps a little different in one  
677 part of the country than the other, we work quickly to address  
678 that.

679 You know, in some cases there are reasons for that. It may  
680 be that, you know, one of the kind of game changing things we  
681 have done as an organization is to begin to take more of a corporate  
682 approach to inspections.

683 So we are looking at a number of issues at the corporate  
684 headquarters level so if there are policies that apply across  
685 facilities it may be that a company's facility that is hit from  
686 an inspection standpoint early on in the process it might appear  
687 to that facility that it's getting a little more thorough  
688 treatment than one that's hit later in the process. But that  
689 is likely only because we have --

690 Mr. Harper. My time has expired, Mr. Wulf. My time has  
691 expired. Thank you so much, and I yield back.

692 Mr. Wulf. Thank you so much.

693 Mr. McKinley. Thank you, and now five minutes -- yield five

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694 minutes to my -- one of my latest friends, Mr. Peters from  
695 California, for five minutes.

696 Mr. Peters. Thank you, Mr. Chairman.

697 Thank you, Mr. Wulf, for being here today. I want to commend  
698 you for the improvements in the CFATS program over the last few  
699 years.

700 A longer-term authorization or focus on fixing the known  
701 deficiencies in program management have helped to eliminate the  
702 site security plan backlog and start the process of compliance  
703 inspections.

704 However, a program can only be as good as the statute that  
705 authorized it. So I wanted to talk a little bit about how we  
706 might improve the statute, if you thought that was useful,  
707 starting with effective enforcement.

708 In your testimony, you note that where issues have been  
709 identified during inspections they have nearly always been  
710 quickly remedied where needed. However, we have utilized our  
711 enforcement authorities to incentivize compliance.

712 So can you explain to me, Mr. Wulf, what kind of types of  
713 enforcement mechanisms you've been able to use under the program?

714 Mr. Wulf. So yes, I appreciate the -- I appreciate the  
715 question. So the enforcement process within the program I think  
716 is in line with the -- with the flexible nonprescriptive approach  
717 to the program and, you know, our general -- our general  
718 orientation to work with facilities to foster compliance.

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719           So where issues are identified on inspections, you know,  
720 we work with a facility, assuming the facility is working with  
721 us in good faith to resolve them.

722           So, occasionally, if, for instance, a planned measure that  
723 has been, you know, agreed in the site security plan to be put  
724 into place on a -- on a certain time line has slipped on that  
725 time line, it may be that there has been a change in personnel,  
726 you know, sort of a lack of understanding of what was in the site  
727 security plan.

728           We will, you know, work on, you know, an agreeable quick  
729 time frame to get that planned measure in place and frequently  
730 those sorts of things are resolved at that point.

731           If we get into the enforcement structure, you know, it is  
732 a two-step process. The first step involves the issuance of a  
733 -- essentially, a notice of noncompliance, which gives a facility  
734 formally a certain period of time, generally, not too much time  
735 to come into compliance and I am pleased to say before a penalty  
736 order is issued -- I am pleased to say that 95 percent of the  
737 cases that is enough to bring the facility into compliance.

738           Where if -- if we get to a point where a facility has run  
739 through that period we will go ahead and issue a penalty order.

740           We do take into account facility status as a -- potentially,  
741 a small business, a facility's ability to pay in determining the  
742 ultimate penalty.

743           That has -- it's only happened in a small number of cases.

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744 Mr. Peters. I was going to ask you, so how many times have  
745 you had to use penalties or cease operation orders for facilities  
746 that aren't executing their --

747 Mr. Wulf. So we have issued penalty orders in three  
748 instances at this point.

749 Mr. Peters. Three instances. Okay.

750 And is that -- so that's the number of times you had to enforce  
751 against a noncompliant facility?

752 Mr. Wulf. That's the number of times we have gotten to the  
753 point of --

754 Mr. Peters. To that point, right.

755 Mr. Wulf. -- a penalty, probably in about 70 occasions  
756 begun the process.

757 Mr. Peters. Great. And do you see that the bill that the  
758 -- that act as it's written is -- does it give you enough authority  
759 to do what you have to do? It sounds like that's going fairly  
760 well.

761 Mr. Wulf. I believe that we have -- we have the authority  
762 that we need to do what we need to -- that we need to do to foster  
763 security at America's highest-risk chemical facilities.

764 I think it's a good -- I think it is a -- it is a regulatory  
765 framework that is really well suited to the mission at hand and  
766 to the diversity of the -- of America's chemical infrastructure.

767 Mr. Peters. Great. Just one other topic then -- the  
768 effective and adequate enforcement mechanisms are crucial to

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769 preventing noncompliance. We saw the dangers of noncompliance  
770 when the West Fertilizer Company in West, Texas exploded.

771 Facilities that don't report their holdings to DHS and are  
772 otherwise not identified to the department still pose a risk to  
773 workers, first responders, and surrounding communities.

774 What kind of steps have you taken to address the problem  
775 of these so-called outlier facilities?

776 Mr. Wulf. Yes. So, certainly, a high priority for us,  
777 ensuring that we are getting the word out as widely as possible  
778 to facilities about their obligations to report information to  
779 us through the -- through the top-screen.

780 So we work through industry associations. We participate  
781 in conferences. We drill down to the state and local level  
782 through state industry associations, though recognizing that,  
783 you know, not all chemical facilities, companies are members of  
784 these associations.

785 We -- you know, we get creative. We work through --

786 Mr. Peters. I am going to run out of --

787 Mr. Wulf. -- the state and local law enforcement,  
788 preparing lists of facilities and comparing information about  
789 --

790 Mr. Peters. We are out of time. But I have five seconds  
791 for you to tell us if there is anything Congress can improve in  
792 this area. Is there anything you would ask us to improve within  
793 the law?

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794 Mr. Wulf. No. I think -- I think we have what we need from  
795 an outreach standpoint.

796 Mr. Peters. Thank you.

797 Mr. Chairman, I yield back.

798 Mr. McKinley. Thank you, and the chair now recognizes Mr.  
799 Johnson from Ohio for five minutes.

800 Mr. Johnson. Thank you, Mr. Chairman, and Mr. Wulf, thanks  
801 for joining us today.

802 I've heard concerns that any changes to Appendix A through  
803 guidance -- including through guidance might not be subject to  
804 notice and comment.

805 So would changes to Appendix A by guidance be subject to  
806 public notice and comment based on requirements of OMB?

807 Mr. Wulf. So yes, I appreciate the -- appreciate the  
808 question, and Appendix A are a list of chemicals of interest --  
809 320 or some chemicals -- is part of our regulation and so, you  
810 know, under the Administrative Procedures Act it cannot be  
811 adjusted or changed without going through the notice and comment  
812 rulemaking process. So as things currently stand, that would  
813 be the --

814 Mr. Johnson. Even through guidance?

815 Mr. Wulf. Pardon me?

816 Mr. Johnson. Even through guidance.

817 Mr. Wulf. That's right.

818 Mr. Johnson. Okay.

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819 Mr. Wulf. I think it would be considered significant  
820 guidance that would need to go through notice of rulemaking.

821 Mr. Johnson. Okay. Great.

822 Previously, GAO indicated that DHS does not systematically  
823 solicit feedback to assess the effectiveness of outreach efforts  
824 and does not have a mechanism to measure effectiveness of your  
825 outreach activities.

826 Mr. Currie, in his written testimony, indicated that DHS  
827 developed a questionnaire to solicit feedback on outreach with  
828 industry stakeholders.

829 Would you please walk us through the questionnaire and  
830 explain whether it's been effective?

831 Mr. Wulf. Yes. Absolutely. Glad to -- I am glad to do  
832 that.

833 So, you know, we have taken GAO's recommendations seriously.  
834 As you mentioned, we have developed that outreach questionnaire.  
835 I do believe it is effective. We are in the relative early stages  
836 of its deployment.

837 We are using it as we go out to conferences as opposed to  
838 going facility by facility during inspections or compliance  
839 assistance visits.

840 You know, we ask in this questionnaire those who participate  
841 in our engagements to sort of give us some feedback on the content,  
842 on the speaker, on the relevance of the information, on the extent  
843 to which they expect to be using the information to inform their

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844 chemical security risk-based decisions.

845           You know, the challenge sometimes is to get the questionnaire  
846 into the hands of the -- of the people who have actually  
847 participated in the event as, you know, we are guests at these  
848 conferences. We don't necessarily control the attendance --  
849 attendee email distribution lists.

850           So we work with organizers of the conference to push it out.  
851 To this point, we have received upwards of 60 responses back.  
852 Ninety-seven percent of those who responded reported that  
853 information was relevant and highly useful.

854           So we are going to continue to look at how we can expand  
855 the use of the -- of the questionnaire. I think it is very much  
856 a worthwhile tool.

857           Mr. Johnson. Good. Okay.

858           Well, since the last time the department testified before  
859 our committee the Government Accountability Office has made 10  
860 recommendations for improvements to the CFATS program.

861           What progress have you made on those recommendations?

862           Mr. Wulf. I appreciate that, and I appreciate GAO's  
863 engagement and, you know, very helpful oversight and  
864 recommendations over the course of the year.

865           I am confident that we are among the most thoroughly  
866 scrutinized programs in the government and pleased that GAO has  
867 recognized our significant forward progress over the -- over the  
868 year and, you know, happy to report that we are making -- have

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869 made a lot of progress in implementing GAO's recommendations.

870 I think those recommendations, broadly speaking, fall into  
871 a couple of different bins. One of those focused on our risk  
872 assessment process, our tiering methodology.

873 You know, we, as I've mentioned in this hearing, made a lot  
874 of progress in developing our new risk-tiering methodology, one  
875 that comprehensively accounts for all relevant elements of risk.

876 Along with that, we have launched a new and very much  
877 streamlined and user-friendly suite of online tools to facilitate  
878 tiering.

879 I am confident that when GAO issues its next report it will  
880 recommend or it will close out the remaining recommendations  
881 related to our development of our tiering methodology -- the  
882 conduct of the tiering peer review among other tiering-related  
883 issues.

884 The second bin I think concerns, broadly, our internal  
885 processes and controls and, you know, we have made a lot of  
886 progress on that front, too, executing a 95-point action plan  
887 to improve the program, developing standard operating procedures  
888 on things like enforcement and on the conduct of inspections,  
889 developing metrics to measure the effectiveness of the program  
890 and, you know, pleased to report, based upon those metrics,  
891 facilities that are within the program have enhanced their  
892 security very, very measurably under CFATS. It's a program that  
893 is working.

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894 Mr. Johnson. Well, great. Well, thank you for your  
895 responses. I yield back, Mr. Chair.

896 Mr. McKinley. Thank you.

897 And I now recognize our colleague, Mr. Green from Texas,  
898 for five minutes.

899 Mr. Green. Thank you, Mr. Chairman.

900 Secretary Wulf, thank you for being here. I have a very  
901 urban district in Houston in East Harris County that's home to  
902 one of the largest petrochemical complexes in the world so I know  
903 how important CFATS is and I'd like to thank you for your work  
904 in implementing these safety standards, and I'd heard a lot of  
905 good things about the work.

906 I was glad in your earlier testimony or question you  
907 acknowledged that CFATS, because it was called anti-terrorism  
908 standards, was -- we are more likely to have a natural disaster  
909 than we are a terrorist.

910 In fact, in my area, I think we could take care of the  
911 terrorists pretty quickly. As I say in Texas, we don't have any  
912 shortage of small arms. So but Hurricane Harvey that hit our  
913 community -- and I know the other issue was the -- that facility  
914 out in Crosby, Texas, and that's not my area but East Harris County  
915 is.

916 But a lot of our refineries literally were under water in  
917 the Houston Ship Channel and that's what my concern is and maybe  
918 we need to focus on that, although, admittedly, when we passed

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919 the Chemical Facilities Anti-Terrorism Standards program we  
920 didn't think about natural disasters.

921 But now we need to recognize that because about every seven  
922 years in Houston, Texas or southeast Texas we get a tropical storm  
923 or a hurricane, and although the last one with Harvey I don't  
924 know how we could ever plan for 55 inches of rain in four days.

925 So but can you talk about how subjecting CFATS to a yearly  
926 authorization through the appropriations process before 2014 put  
927 a burden on the program?

928 Mr. Wulf. Yes, absolutely. Glad to. You know, until we  
929 -- until we attained long-term authorization, we were -- you know,  
930 we were subject to the -- to the vicissitudes of the appropriations  
931 process.

932 So going from year to year or, worse, from continuing  
933 resolution to continuing resolution. You know, when the  
934 government shut down --

935 Mr. Green. I think every federal agency has that problem.

936 Mr. Wulf. Yes. You know, when the -- when the government  
937 shut down in October or November -- October 2013, you know, our  
938 stakeholders didn't know whether CFATS continued in force.

939 You know, we didn't know whether -- if we needed to take  
940 enforcement action to address a national security threat at a  
941 CFATS facility, whether the underlying statutory authority was  
942 in existence.

943 So long-term authorization in December of 2014 was huge for

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944 us. It enabled us to plan for and execute important improvements  
945 to the program, some of which I have detailed here today.

946 It provided our industry stakeholders with the certainty  
947 that they deserved as they thought through making significant  
948 investments in CFATS-focused security measures.

949 So I cannot underscore enough how important continuing  
950 long-term authorization for the program is.

951 Mr. Green. Do you think we need to put specific language  
952 in there? Because when we have these shut downs that our  
953 committee doesn't have a whole lot to do with since we are not  
954 appropriations.

955 Mr. Wulf. Yes.

956 Mr. Green. But, you know, our military still functions.  
957 Our law enforcement functions. Why would we not want our  
958 terrorism safety or even if there is a natural disaster during  
959 a shut down? So do you think we need specific language to say  
960 that?

961 Mr. Wulf. So I think that the long-term authorization  
962 language -- I think the language we have in the current  
963 authorization does the trick there.

964 But I think you have summed up exactly the importance of  
965 longer-term authorization to continue -- the program continues  
966 in force regardless of what is happening on the appropriations  
967 front.

968 Mr. Green. Do you currently feel that the facilities

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969 labeled high risk have enough incentive through the program to  
970 reduce that risk and do you see facilities switching tiers  
971 commonly after a high risk designation?

972 Mr. Wulf. So, you know, as we have gone through the  
973 retiering process using our new risk tiering methodology, we have  
974 seen some shifting across tiers. We have seen some new facilities  
975 come into the program, some previously designated high-risk  
976 facilities move out of the program.

977 But I do think that kind of organically the CFATS program  
978 promotes the consideration by facilities of -- you know, of safer  
979 processes, you know, consideration of different chemicals.

980 So, you know, there is an incentive for facilities to lower  
981 their level of risk by doing things differently based on the --  
982 based on the CFATS program and, you know, over the course of the  
983 program we have seen about 4,000 programs -- or 4,000 facilities  
984 that have changed their processes, changed their chemical  
985 holdings, and dropped out of high-risk status, which we view as  
986 a good thing.

987 Mr. Green. Well, in a way that's good -- they are responding  
988 to the threat. Has the industry response been in revamping of  
989 the chemical safety assessment tool, or CSAT?

990 Do you feel the program is now easy enough to comply with  
991 if you're a small-scale manufacturer?

992 Mr. Wulf. Yes, I do. I think we made some significant  
993 strides forward with CSAT 2.0, that new online suite of tools.

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994       The amount of time it now takes facilities to work through the  
995 process of submitting a top-screen or a site security plan has  
996 been cut by about 75 percent across the board.

997           The tool is much simpler. It's more of a Turbo Tax sort  
998 of model. Duplicative irrelevant questions are no longer seen  
999 by facilities. So greatly simplified and we have had really  
1000 tremendous feedback from our -- from our industry stakeholders  
1001 on it.

1002           And, you know, in many respects they helped us to develop  
1003 it. They were closest to the pain of working through the old  
1004 system. They were able to help us understand ways in which we  
1005 could simplify it and make it more user friendly.

1006           Mr. Green. Well, I -- Mr. Chairman, thank you for your  
1007 patience. In my area, we don't have those smaller facilities  
1008 that you have.

1009           Mr. Wulf. Yes, I know.

1010           Mr. Green. Chemical plants and refineries who run 250,000  
1011 barrels a day. So but I know that we like to go where the problems  
1012 are, not just be a paper pusher.

1013           So thank you, Mr. Chairman.

1014           Mr. Wulf. Yes. You're in the center of the petrochemical  
1015 universe.

1016           Mr. McKinley. Thank you.

1017           And the chair now recognizes Mr. Duncan from South Carolina  
1018 for his five minutes.

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1019 Mr. Duncan. Thank you, Mr. Chairman.

1020 Back in 2014, I was on the Homeland Security Committee and  
1021 I worked with them to help reauthorize CFATS for four consecutive  
1022 years.

1023 H.R. 4007, Protecting and Securing Chemical Facilities from  
1024 Terrorist Attacks Act of 2014 was under jurisdiction of both  
1025 Homeland and Energy and Commerce.

1026 Now we are back to yearly funding extensions and this creates  
1027 instability for both DHS and companies operating under the  
1028 program.

1029 If Congress were able, Mr. Wulf, to provide multi-year  
1030 authorization like we did back in 2014 how can we ensure DHS will  
1031 update the program as intended?

1032 Mr. Wulf. So we are very incentivized to try to continually  
1033 improve the program. You know, I think a long-term authorization  
1034 gives us the stability that we need to focus on those -- on those  
1035 improvements.

1036 We have made a number of them over the course of the last  
1037 four years. You know, we are eager to push forward through the  
1038 rule making process to engage with our stakeholders through notice  
1039 and comment in a number of different areas --

1040 Mr. Duncan. How can we -- how can we be certain that you  
1041 will take the stakeholders' comments into consideration?

1042 Mr. Wulf. I think we have demonstrated over the course of  
1043 the last four years that we take very seriously our stakeholders'

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1044 comments and that, you know, we seek to involve them in the --  
1045 in the program.

1046           You know, this whole effort is a shared commitment. It  
1047 wouldn't work without the buy-in of our stakeholders. We have  
1048 put into place tens of thousands of security measures at  
1049 facilities across the country.

1050           So, you know, they know -- they know in many ways best ways  
1051 in which we can improve the program. That's why we have involved  
1052 them in the development of the new risk-tiering methodology.

1053           That's why we have involved them in the development of the  
1054 new suite of online tools and their input on those fronts have  
1055 been -- has been invaluable.

1056           Mr. Duncan. I think as long as they know how to comply and  
1057 what you're going to expect of them it makes it easy for them.

1058           Let me shift gears for just a minute. There is a company  
1059 in my home county, Austin Powder, and it's a company facility  
1060 there in Clinton and previously noted how duplicate regulations  
1061 cost them substantial amounts of money.

1062           The facility has explosive regulated both by the ATF and  
1063 by DHS under CFATS. The compliance mandated under CFATS does  
1064 not measurably improve their facility security. It seems ATF  
1065 adequately protects against theft and diversion.

1066           So given the cost of compliance, which stakeholders in the  
1067 explosives industry face in return for no measurable security  
1068 gain, what is, in your opinion -- what is your opinion on exempting

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1069 those in the explosive industry already regulated by ATF from  
1070 the CFATS program?

1071 Mr. Wulf. So we are very, very -- you know, certainly  
1072 sympathetic -- sensitive to concerns about duplicative  
1073 regulation. I think in the case of explosive materials, you know,  
1074 there is regulation in place with ATF.

1075 I think we are talking about a universe of about 30 facilities  
1076 that are regulated both by CFATS for explosives only and also  
1077 by ATF.

1078 You know, I -- ATF and DHS have different programs but I  
1079 think they are both -- they are both solid programs. So, you  
1080 know, we are open to working with the committee on a path forward  
1081 there.

1082 You know, I am not sure I completely agree with the premise  
1083 that, you know, CFATS doesn't provide any additional security  
1084 benefit but there is certainly other -- there are certainly  
1085 measures in place at ATF-regulated facility. I've spent a dozen  
1086 years myself at ATF. You know, a very solid program there. And  
1087 so, you know, among the things that I would not lose too much  
1088 sleep over exiting the program, explosives are one of those.

1089 I will note, though, that ATF's program does not address  
1090 explosives' precursor chemicals. So, you know, I think many of  
1091 those facilities receive benefits still under CFATS with respect  
1092 to the regulation of security of explosives' precursor chemicals  
1093 -- for instance, ammonia nitrate.

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1094 Mr. Duncan. So do you think the redundancy and overlap of  
1095 regulations are okay? I don't hear a whole lot of jurisdictional  
1096 prejudice in your answer there.

1097 We are going to look at that. We are going to look and see,  
1098 because what we are trying to do is make sure that businesses  
1099 aren't faced with multiple compliance burdens when one agency  
1100 can handle it, and we run into that too much in government, I  
1101 think, where you've got this jurisdictional overlap and one agency  
1102 is coveting that and they don't want to give it up when there  
1103 maybe be a better agency that can handle it. And in this case,  
1104 DHS might be the best agency and take it away from ATF -- I don't  
1105 know that -- or vice versa.

1106 Mr. Wulf. Yes. We are happy to -- happy to work with you  
1107 on that.

1108 Mr. Duncan. Thank you.

1109 Mr. Chairman, I yield back.

1110 Mr. McKinley. Thank you. Now I recognize my colleague,  
1111 Mr. McNerney from California, for five minutes.

1112 Mr. McNerney. I don't know if I sense a little reluctance  
1113 in that acknowledgment, Mr. Chairman.

1114 I thank the panelist. Mr. Wulf, I missed your testimony  
1115 and I apologize about that. Now, there are several categories  
1116 of threats. I am going to list a few of them.

1117 There is natural disasters. There is physical attacks.  
1118 There is industrial accidents and cyber attacks. Do you feel

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1119 that cyber attacks are on par with the others in terms of risk  
1120 to public safety and health?

1121 Mr. Wulf. I think cyber is a -- cyber is a very important  
1122 threat vector and I think that, you know, no question but that  
1123 America has critical infrastructure and that includes America's  
1124 chemical infrastructure is in the cross-hairs of, you know, cyber  
1125 criminals.

1126 Mr. McNerney. Well, I've learned from the utility industry  
1127 that there is some difficulty getting information sharing across  
1128 because of security clearance -- lack of security clearance within  
1129 the utility industry mainly because of the length of time it takes  
1130 to get a security clearance.

1131 So you think that that is also an issue with the chemical  
1132 industry is a lack of security clearance within the industry  
1133 prohibiting information sharing that could be helpful in safety  
1134 areas?

1135 Mr. Wulf. I think, certainly, getting appropriate folks  
1136 across the industry cleared to receive classified threat  
1137 information is helpful.

1138 We maintain a program called the private sector clearance  
1139 program through which we grant clearances to folks in the private  
1140 sector to include those who serve on our sector coordinating  
1141 counsels.

1142 So I think, certainly, important and the extent -- to the  
1143 extent we can streamline that process, you know, that's a good

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1144 thing.

1145 Mr. McNerney. Would it be helpful for the legislative  
1146 branch to get involved in streamlining that process or would that  
1147 be cumbersome?

1148 Mr. Wulf. You know, I think we are -- we are -- you know,  
1149 we are working the issue. It is a high priority for us. You  
1150 know, I think it's sort of a process -- a process thing, in my  
1151 view, that, you know, we need to continue to focus like a laser  
1152 beam upon and we are certainly committed to doing that.

1153 Mr. McNerney. Well, supposed someone goes into the  
1154 industry, say, from the Department of Energy with a pretty high  
1155 clearance level -- a Q clearance or some clearance -- top secret  
1156 clearance. How long would it take them to get the clearance to  
1157 get information sharing once they go into industry?

1158 Mr. Wulf. Yes. I would hope not very long. I might have  
1159 to get back to you on exact time lines.

1160 Mr. McNerney. Yes. I have a specific case where it took  
1161 someone with a top secret clearance 18 months to get a secret  
1162 clearance in industry.

1163 Mr. Wulf. Yes, that's -- yes, not good.

1164 Mr. McNerney. Okay. Well, I'd like to follow up on that  
1165 and hear specifically how that that's going to be --

1166 Mr. Wulf. Happy to talk with you more about that program.

1167 Mr. McNerney. Okay. Do you think that there is -- on a  
1168 different subject, is there resistance to safety regulations by

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1169 industry of regulations that actually provide safety to the  
1170 public?

1171 Mr. Wulf. So we are -- you know, although our  
1172 security-focused regulation has positive benefits from a safety  
1173 standpoint, you know, I don't know if I am in a position to talk  
1174 about the extent to which there may or may not be resistance to  
1175 EPA's or OSHA's safety-focused regulations.

1176 I would hope not. I think there is a strong culture across  
1177 the chemical industry of safety and security. So my expectation  
1178 is that, you know, they are meeting requirements across the board.

1179 Mr. McNerney. Right. I mean, it just takes one bad player  
1180 to cause an accident to hurt the whole industry.

1181 Mr. Wulf. Yes. Absolutely.

1182 Mr. McNerney. So I think we both and industry understand  
1183 that and are anxious to work with regulatory bodies such as yours.

1184 Mr. Wulf. Yes.

1185 Mr. McNerney. Okay. Mr. Chairman, I am going to yield  
1186 back. I'll give you a minute.

1187 Mr. McKinley. Thank you.

1188 Now the chair recognizes Mr. Flores from Texas for five  
1189 minutes.

1190 Mr. Flores. I thank the chairman and I thank this  
1191 subcommittee for holding this important hearing.

1192 On April 18th, 2013 one of the communities in my district,  
1193 that being West, Texas experienced a disastrous explosion that

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1194 took 15 lives. Twelve of them were first responders. So this  
1195 -- CFATS is important to me and to my district.

1196 Furthermore, it was really disturbing to learn from the  
1197 findings that were released three years later that this wasn't  
1198 an industrial accident. It was actually arson.

1199 That said, the citizens of West deserve great credit for  
1200 how they've been resilient in rebuilding their community and the  
1201 rebound of West today is really remarkable.

1202 As the current authorization for CFATS is set to expire in  
1203 January of next year, we must carefully consider how the program  
1204 is measured and what improvements should be made or could be made  
1205 in the reauthorizing legislation.

1206 I want to thank all of today's witnesses for their insight  
1207 in this hearing. And so now I'll move to my question for Mr.  
1208 Wulf.

1209 Some people argued that the greater public sharing of  
1210 chemical vulnerability information -- or the CVI, as we call it  
1211 -- is necessary for communities to be better prepared.

1212 So, Mr. Wulf, I have three subquestions under that. First  
1213 of all, to whom does Section 2103 currently allow access to CVI?

1214 Mr. Wulf. So that section of the statute currently allows  
1215 access to state and local government officials who essentially  
1216 have a need to know that information in performing their official  
1217 duties in the first response arena -- emergency planning arena.

1218 Mr. Flores. Do you think -- so the next question would be

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1219 do you think it's wise to have CVI publicly disclosed?

1220 Mr. Wulf. I do not. You know, the reason we developed the  
1221 chemical terrorism vulnerability information protection regime  
1222 was to keep close hold among those who have a need to know  
1223 information about high-risk chemical facilities and the chemical  
1224 holdings at those sites.

1225 Mr. Flores. Okay. And so that brings us to the next one.  
1226 Some people have suggested that local emergency planning  
1227 commissions should have access to CVI. Is there a reason to not  
1228 provide it to them?

1229 Mr. Wulf. So local emergency planning commissions perform  
1230 an important function. But they vary in their -- in their  
1231 composition. So there are certainly folks who are members of  
1232 local emergency planning missions who do have a need to know  
1233 information about high-risk chemical facilities and chemical  
1234 holdings.

1235 So those emergency -- those first responders, those  
1236 emergency planners, we absolutely want to ensure that they have  
1237 the information they need to perform their -- to perform their  
1238 official duties.

1239 But we need to balance that with the -- with the need to  
1240 ensure that we are not sharing so broadly that we make it easy  
1241 for terrorists and other adversaries to obtain information to  
1242 effectively have a roadmap to America's highest risk facilities.

1243 Mr. Flores. If you have first responders that are CVI

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1244 trained, would it be appropriate to share the information with  
1245 those first responders?

1246 Mr. Wulf. Absolutely.

1247 Mr. Flores. Okay. Mr. Chairman, this has been helpful and  
1248 I thank you.

1249 I yield back the balance of my time.

1250 Mr. McKinley. Thank you very much, and now the chair  
1251 recognizes Mr. Cardenas from California for five minutes.

1252 Mr. Cardenas. Thank you very much, Mr. Chairman. I  
1253 appreciate the opportunity to discuss this very, very important  
1254 issue that affects all Americans.

1255 Thank you for being here, Mr. Wulf. Earlier this year at  
1256 a subcommittee hearing before the House Committee on Homeland  
1257 Security, chemical safety advocate Paul Oram testified that  
1258 facility owners should be required to develop and maintain  
1259 employee input plans.

1260 Mr. Oram commented that, and I quote, "Employees are often  
1261 the most vulnerable in the chemical release but also the most  
1262 knowledgeable about problems and remedies."

1263 So with that, has DHS encouraged or required facility owners  
1264 to consult with employees when developing security vulnerability  
1265 assessments?

1266 Mr. Wulf. So I appreciate the question. You know, we  
1267 certainly urge companies -- we urge high-risk facilities to  
1268 involve their employees in development of site security plans

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1269 and I would say that almost across the board employees are involved  
1270 in the development of those plans.

1271           You know, the 2014 long-term authorization act makes clear  
1272 that to the extent practicable, facilities should be involving  
1273 employee and my expectation and my general understanding is that  
1274 facilities are doing just that.

1275           I mean, facility employees are the ones developing plans.

1276           Mr. Cardenas. So the facilities' owners -- these plants  
1277 voluntarily give that feedback to you? If it's not one of the  
1278 checklist things that the department asks, by the way, do you  
1279 have an employee input plan on your site?

1280           Mr. Wulf. It is not a checklist thing. We are not -- we  
1281 are not really a checklist program. But we are, you know, a  
1282 program that engages very constructively with facilities. So  
1283 that is voluntary feedback. That's the experience --

1284           Mr. Cardenas. Okay.

1285           Mr. Wulf. -- of our inspectors working with these  
1286 facilities.

1287           Mr. Cardenas. So that feedback right now is ad hoc? It's  
1288 just as --

1289           Mr. Wulf. I don't know if I'd characterize it as ad hoc,  
1290 and we're -- you know, no one -- there is not a check box.

1291           Mr. Cardenas. Okay. Well, I'll describe it as ad hoc if  
1292 there is not a formal process. Five years ago when we last --  
1293 the last oversight hearings on the CFATS program then under

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1294 Secretary Rand Beers noted on the record that the department's  
1295 strategic communications plan may eventually include, and I  
1296 quote, "systematic outreach to facilities including employees  
1297 at the facilities."

1298 Has systematic outreach become the norm in the CFATS program?

1299 Mr. Wulf. Yes. I am pleased -- I am pleased to say that  
1300 it has and we have an outreach engagement plan. We identify areas  
1301 of priority from year to year and we focus on ensuring that we  
1302 are getting the word out to those relevant communities and that  
1303 certainly includes to the -- to the organized labor -- relevant  
1304 organized labor communities.

1305 Mr. Cardenas. Mr. Oram also stated that public confidence  
1306 is critical to the success of the CFATS program and the secrecy  
1307 is not in the best interest of the communities.

1308 I couldn't agree more. As a parent, I would not want to  
1309 know if I lived down the street from a facility that that puts  
1310 my family at risk. I would want to know as much as I can -- as  
1311 much as we believe possible.

1312 Do you agree that this is important to proactively engage  
1313 communities living near or next to these facilities?

1314 Mr. Wulf. So I think, again, it's a balance. I think we  
1315 need to ensure that those who are charged with protecting our  
1316 communities, our first responders, our emergency planners have  
1317 the information that they need.

1318 You know, the balance, though, is in ensuring that we are

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1319 not making sensitive information so widely available that it can  
1320 be accessed by those who would seek to do harm to the community.

1321 So it's a balance.

1322 Mr. Cardenas. So what, if any, specific steps has DHS taken  
1323 to improve community outreach and engagement through the CFATS  
1324 program?

1325 Mr. Wulf. So, you know, we are -- as part of our outreach  
1326 engagement plan we are out talking to local emergency planning  
1327 committees. You know, those can include members of -- and  
1328 frequently do include members of the community and public  
1329 officials, first responders, emergency planners. That is one  
1330 of the main means by which we are out across the -- across the  
1331 relevant communities.

1332 Mr. Cardenas. Thank you. I can't stress enough how  
1333 important it is for employees and local members of the community  
1334 to be involved in disaster assessment and preparedness process.

1335 These individuals are the ones bearing the greatest risk.  
1336 They work, live, shop, walk to school, pray, and drive to jobs  
1337 near these facilities and they might be at high risk and they  
1338 need to know about that. And yet, they are often left in the  
1339 dark when it comes to disaster preparedness. Their voices are  
1340 critical to the facility and community safety and I hope that  
1341 we can work together to improve engagement efforts under the  
1342 CFATS.

1343 So I appreciate your time. Thank you very much. I yield

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1344 back.

1345 Mr. Wulf. Thank you.

1346 Mr. McKinley. Thank you very much.

1347 The chair recognizes Mr. Walberg from Michigan for five  
1348 minutes.

1349 Mr. Walberg. Thank you, Mr. Chairman, and thank you, Mr.  
1350 Wulf, for being here.

1351 In your written testimony you indicate that DHS has conducted  
1352 over 3,500 compliance inspections and that, and I quote your  
1353 statement, "Nearly across the board results of these inspections  
1354 have been positive."

1355 That's good. Could you elaborate a little bit more for us?

1356 Mr. Wulf. Yes. No, I am glad to.

1357 So we are in sort of steady state compliance inspection  
1358 phase. Most of the inspections we are doing across the country  
1359 are, you know, post-site security plan approval inspections.

1360 So we are assessing the extent to which facilities are doing  
1361 what they signed up to do in developing their site security plans,  
1362 whether they are implementing those plans, whether they are  
1363 putting in place new security measures along the time lines agreed  
1364 to in the plans and I'd say almost across the board that is  
1365 absolutely happening. That has been our experience in conducting  
1366 these inspections.

1367 Where we have identified issues nearly always we are able  
1368 to resolve those with the -- with the facility in pretty short

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1369 order.

1370           So, you know, the chemical industry stakeholder community  
1371 is taking its obligations seriously under CFATS. Those  
1372 facilities that have been identified as being at the highest risk  
1373 of terrorist attack or exploitation that are covered by CFATS  
1374 are taking their obligations seriously and are implementing their  
1375 plans.

1376           They have put into place literally tens of thousands of  
1377 security measures at facilities across the -- across the country.

1378           So, you know, really appreciate their commitment to the program  
1379 and their buy-in.

1380           Mr. Walberg. Do you sense and your inspectors sense that  
1381 they see you as a partner with them -- that it's a benefit and  
1382 not a burden?

1383           Mr. Wulf. I do. Yes, I do. And I think, you know, the  
1384 program is one that lends itself to a little bit of that  
1385 partnership approach. Certainly, you know, we are -- we are  
1386 regulators.

1387           But this is a nonprescriptive regulatory framework. So we  
1388 are in a position to work with facilities to identify security  
1389 measures within a site security plan that work for that -- that  
1390 make sense, given that specific facility's unique circumstance.

1391           So, you know, really pleased to be able to work with  
1392 facilities that way, and we will say also that we prioritize not  
1393 just being out there to conduct inspections but to provide

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1394 compliance assistance.

1395           So to talk with facilities, to talk with those who own and  
1396 operate those facilities about options for meeting the -- meeting  
1397 the spirit of the 18 CFATS risk-based performance standards.

1398           So, you know, I think it is a -- it is a really unique and  
1399 -- I want to say uniquely effective program that is well suited  
1400 to the diversity of the nation's chemical industry  
1401 infrastructure.

1402           Mr. Walberg. I encourage that. We certainly know of other  
1403 entities that are involved in regulating and inspecting at the  
1404 work site, at the business, that have no -- there is no  
1405 relationship. This seems to be a partner relationship.

1406           Mr. Wulf. Yes.

1407           Mr. Walberg. This is an important --

1408           Mr. Wulf. Absolutely, and we rely on our industry  
1409 stakeholders very much to help us think through potential  
1410 improvements to the program, to develop, you know, new tools like  
1411 our new and improved suite of online tools through which  
1412 top-screens and site security plans are developed to help us  
1413 develop things like our new risk-tiering methodology.

1414           So, you know, in a lot of ways it is a thriving partnership  
1415 relationship with our entire stakeholder community. I am very  
1416 grateful for that.

1417           Mr. Walberg. Thank you.

1418           Your written testimony notes that where necessary DHS has

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1419 utilized our enforcement authorities to incentivize compliance.

1420 Can you elaborate on that? Explain that a little more?

1421 Mr. Wulf. Yes. I am glad to.

1422 So we have a two-step enforcement process. You know, as  
1423 I mentioned, the vast majority of the time we are able to resolve  
1424 issues without getting into the enforcement process.

1425 But in about 70 instances over the history of the program  
1426 we have begun the -- we have begun the process. We have issued  
1427 a notice of not compliance that, under the law, gives a facility  
1428 a specific amount of time to come into compliance.

1429 I am happy to say that most of time that is sufficient where  
1430 other -- you know, where cooperative work with the facility has  
1431 worked to nudge the facility into compliance.

1432 But if that doesn't work we are -- you know, we will go ahead  
1433 and issue a penalty order, and in all cases -- and it's only three  
1434 cases in which we have had to get to the penalty order -- you  
1435 know, that has been the thing that has compelled compliance.

1436 So we are -- your know, our overwhelming bias is to work  
1437 with facilities and, certainly, the vast majority of facilities  
1438 out there are acting, in my experience, in good faith and are  
1439 committed to the program and understand -- committed to meeting  
1440 their obligations under CFATS.

1441 But in the small number of instances where that is not  
1442 happening, you know, we will go ahead and use those enforcement  
1443 authorities.

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1444 Mr. Walberg. Thank you.

1445 I yield back.

1446 Mr. McKinley. Thank you very much.

1447 Now the chair recognizes Ms. Matsui from one of the three  
1448 possible states of California for the next five minutes.

1449 Ms. Matsui. I think we are still going to be united -- still  
1450 one state.

1451 Thank you, Mr. Chairman. Today we have talked a lot about  
1452 the industries and facilities that we calmly associate with  
1453 chemicals.

1454 But the CFATS program also covers many types of facilities  
1455 that we don't always think of as using high-risk chemicals like  
1456 hospitals and universities.

1457 In Sacramento, we have four major hospital systems including  
1458 an academic medical center, which represents the second largest  
1459 employer in the district.

1460 So I am pleased that DHS has emphasized the importance of  
1461 stakeholder involvement, and I've also heard that the agency and  
1462 hospitals in California collaborate well.

1463 You've emphasized the CFATS as a nonprescriptive regulatory  
1464 framework, which gives flexibility to regulated facilities.

1465 What are some of the unique challenges that hospitals face  
1466 under CFATS and how has DHS worked with hospitals to tailor  
1467 security measures to those challenges?

1468 Mr. Wulf. And I appreciate that question. You're

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1469 absolutely right. The universe of facilities covered under CFATS  
1470 is a very broad one.

1471 So, you know, we prioritize getting out across the relevant  
1472 communities and working to address the unique circumstances of  
1473 facilities such as hospitals.

1474 So hospitals, you know, college university campuses can't  
1475 necessarily be secured in the same way as, you know, a more  
1476 traditional chemical manufacturing or chemical distribution  
1477 site.

1478 We need to maintain reasonably open access to the site.  
1479 You have members of the public coming in and out so, you know,  
1480 what we have -- what we have recommended in cases like that and  
1481 in -- you know, in the -- in the conduct of our compliance  
1482 assistance with those sites is taking kind of an asset-based  
1483 approach to security.

1484 So you're not necessarily constructing a perimeter around  
1485 the entirety of the hospital but ensuring that where those  
1486 sensitive chemicals are being held you have the requisite security  
1487 in place. So that tends to be the approach for facilities such  
1488 as hospitals.

1489 Ms. Matsui. Okay. Thank you.

1490 I understand the CFATS has improved its risk-based  
1491 performance standards and risk calculations based upon actual  
1492 threat level and facility vulnerability.

1493 It makes me wonder -- as climate change is increasing the

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1494 frequency and severity of extreme weather if the CFATS couldn't  
1495 be used to address weather-related vulnerabilities.

1496 Recently, the Chemical Safety Board released their  
1497 investigative report on the Arkema chemical plant fire and  
1498 explosion in Crosby, Texas.

1499 The CSB found that the plant was not adequately prepared  
1500 for the extreme flooding that occurred during Hurricane Harvey  
1501 and that a number of equipment failures occurred as a result.

1502 The CSB also indicated that other facilities in flood prone  
1503 areas face similar problems and made recommendations on how to  
1504 address some of these risks.

1505 I think that many of these recommendations are relevant to  
1506 CFATS facilities. Do you believe that the damage extreme weather  
1507 causes facilities covered by CFATS is a serious threat to the  
1508 safety of surrounding communities?

1509 Mr. Wulf. I think, certainly, natural hazards are just that  
1510 and, you know, we have certainly seen them impact chemical  
1511 facilities.

1512 Ms. Matsui. Okay. Do you think a CFATS security plan  
1513 should consider the threat of severe weather and help protect  
1514 facility worker and communities? Why or why not?

1515 Mr. Wulf. So I think it's important that CFATS be able to  
1516 stay focused on security. It is a security-focused  
1517 anti-terrorism program.

1518 But I -- you know, I will note that there is a lot about

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1519 the CFATS program and about security measures that are put into  
1520 place or that are required to be put in place at CFATS-covered  
1521 facilities that has a positive impact in addressing, you know,  
1522 the facilities' resilience in the face of natural disasters.

1523         So, you know, we require facilities to develop response  
1524 plans, to conduct training, to conduct exercise, to conduct  
1525 exercises to make contact with their local first responders and  
1526 all of those things are equally important in both the terrorism  
1527 context, in the deliberate manmade attack context, as well as  
1528 in the natural disaster context and we have seen it play out in  
1529 instances in which, for instance, a tornado hit a CFATS-covered  
1530 facility in Illinois and it was very well prepared.

1531         Ms. Matsui. So you're really preparing -- in essence, to  
1532 really coordinate these activities more in the sense of part of  
1533 the program to review how to do this so, in a sense, it's part  
1534 of the program?

1535         Mr. Wulf. I don't believe it makes sense to make it a formal  
1536 part of the program. I think it's important that we retain our  
1537 focus on security. But, again, I think their security and safety  
1538 are very much complementary.

1539         There are agencies that focus, you know, squarely on the  
1540 safety issues on those hazards. We work very closely with the  
1541 likes of EPA, OSHA, with our friends at FEMA, within the Department  
1542 of Homeland Security.

1543         So I think as a federal government community we are committed

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1544 -- very much committed to that.

1545 Ms. Matsui. Okay. Thank you very much.

1546 I yield back.

1547 Mr. McKinley. Thank you. And now the chair recognizes the  
1548 chairman of the full committee, the gentleman from Oregon, Mr.  
1549 Walden, five minutes.

1550 The Chairman. Thank you very much, Mr. Chairman, and thanks  
1551 to you for holding this hearing and, Mr. Wulf, thank you for being  
1552 here. We appreciate your guidance.

1553 I just have a couple of questions. You've been with the  
1554 program a long time -- I won't say a very long time -- a long  
1555 time, and, frankly, many people credit your leadership -- your  
1556 leadership and your committed staff with the gains the program  
1557 has made in recent years.

1558 So, you know, we go through this with different agencies  
1559 and, frankly, depending on who's in charge doesn't seem to matter  
1560 sometimes which -- who's in the White House.

1561 So this isn't a partisan issue because we have seen it in  
1562 other agencies. But having seen how a less committed senior  
1563 political leadership can wreak havoc on a program, how do we know  
1564 these reforms are permanent?

1565 Mr. Wulf. Thank you. Thank you, Mr. Chairman. I  
1566 appreciate very much the kind words. We have a great team in  
1567 place within our program and great buy-in and commitment across  
1568 our industry stakeholder community. So it's very much -- very

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1569 much a team effort.

1570 I can tell you that, you know, our new senior political  
1571 leadership with the change of administration is very, very  
1572 committed to the future of CFATS.

1573 It remains a priority within this -- with this  
1574 administration, very focused on ensuring that we are able to  
1575 maintain positive momentum that we have the resources we need  
1576 to do just that.

1577 So, you know, we remain focused like a laser beam. We have  
1578 nothing -- I've seen nothing but support from the -- from the  
1579 upper reaches of the department and the administration.

1580 The Chairman. Right. And some of the witnesses on the  
1581 second panel in their testimony -- their testimony today on CFATS  
1582 -- have made -- that they say that CFATS has made serious  
1583 improvements in problems it was facing four years ago.

1584 What do you attribute the progress of CFATS program over  
1585 the course of the last four years?

1586 Mr. Wulf. I appreciate that question.

1587 I think, first and foremost, I attribute the progress we  
1588 have been able to make to the -- to the environment of stability  
1589 that has been fostered by long-term authorization on which this  
1590 committee showed so much leadership in 2014.

1591 So that gave us the stability that we needed to plan for  
1592 and execute many of the improvements I've detailed here today.  
1593 It afforded our industry stakeholders the certainty they

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1594 deserved as they were thinking through making significant  
1595 investments in CFATS-focused security measures.

1596 I would say also I would credit a lot of the progress to  
1597 the spirit of openness and transparency which we have strived  
1598 to operate over the past -- over the past four years.

1599 So, you know, we have a very strong relationship with our  
1600 industry stakeholders. We take their feedback very seriously.  
1601 We involve them in efforts to improve the -- improve the program.  
1602 We very much value their input.

1603 And, thirdly, I would just -- I would point maybe to a  
1604 willingness to change processes -- to, you know, not stick with,  
1605 you know, with the status quo to do game changing things like  
1606 take a corporate approach to inspection activity, to take a fresh  
1607 look at our suite of online tools and see what we can do about  
1608 making them more user friendly, more streamlined, and more useful  
1609 in the development of top-screen risk assessment surveys and site  
1610 security plans.

1611 So all of the above but, you know, at its core, you know,  
1612 the stability of that long-term authorization has been absolutely  
1613 key.

1614 The Chairman. Well, and as chairman of the full committee,  
1615 you have my assurance that we are going to move expeditiously  
1616 to reauthorize this work.

1617 Mr. Wulf. We appreciate that.

1618 The Chairman. We know of its critical importance. You keep

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1619 this up, you may get cloned and your staff too because not every  
1620 program and agency achieves these kinds of results.

1621 So we do appreciate your leadership and that of your team  
1622 and you look forward to working with you so we meet our deadlines  
1623 here and get this reauthorized.

1624 So with that, Mr. Chairman, I'd yield back.

1625 Mr. McKinley. Thank you very much.

1626 The chair recognizes Ms. DeGette from Colorado for five  
1627 minutes.

1628 Ms. DeGette. Thank you, Mr. Chairman.

1629 Thank you for coming today, Mr. Wulf. Right outside of my  
1630 -- right on the border of my district is the Suncour oil refinery.

1631

1632 There are 53,000 people that live within a three-mile radius  
1633 of that refinery and that includes over 5,000 children under five  
1634 years old who are particularly susceptible to air toxins.

1635 The neighborhood that's the closest to the refinery,  
1636 Elyria-Swansea, has a population that's over 80 percent Latino  
1637 with over 25 percent of the residents living with incomes below  
1638 the poverty line, and as you know, these characteristics are  
1639 pretty common for neighborhoods that are nearby industrial  
1640 facilities.

1641 So I wanted to ask you would you agree that while security  
1642 is important for all chemical facilities, additional  
1643 considerations like mitigation are necessary when you're dealing

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1644 with urban facilities with large populations next -- right nearby.  
1645 Security is not the only issue that these institutions or that  
1646 these refineries and others are facing.

1647 Mr. Wulf. Well, sure. Yes. Absolutely.

1648 Ms. DeGette. And one thing that happened over at Suncour  
1649 we have had problems with interruptions from the external power  
1650 supply and, as you know, even brief disruptions to the power supply  
1651 can cause harmful chemical emissions.

1652 In October 2016, the Suncour refinery suffered an accidental  
1653 power failure that led to release of a yellow cloud of smoke,  
1654 which closed the highway and caused 14 local schools to go into  
1655 lockdown.

1656 And then they had a second power outage in March 2017 which  
1657 released more than 500 pounds of sulfur dioxide gas and a hundred  
1658 pounds of hydrogen sulfide gas.

1659 So my question is -- I know, you look a little puzzled because  
1660 -- but I am wanting to know is power supply security a  
1661 consideration when the Department of Homeland Security considers  
1662 site security plans submitted by high-risk facilities?

1663 Mr. Wulf. So, yes, the power supply is certainly something  
1664 that --

1665 Ms. DeGette. Is one of the things?

1666 Mr. Wulf. -- something to be considered and also  
1667 considering what contingencies are in place it is certainly  
1668 important from a security perspective when the power goes out.

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1669 Ms. DeGette. Okay. Does DHS have specific recommendations  
1670 for providing a secure power supply under CFATS?

1671 Mr. Wulf. I will get back to you on that, certainly.

1672 Ms. DeGette. Thank you. Okay. Now, DHS is not allowed  
1673 to disapprove of the site security plan because it lacks specific  
1674 security measures. Is that right?

1675 Mr. Wulf. That is -- that is correct. It's a  
1676 nonprescriptive program so we work with facilities to assess what  
1677 makes sense and meets the intent of the relevant risk-based  
1678 performance standards.

1679 Ms. DeGette. So would you consider a facility secure if  
1680 it suffered a significant chemical release due to a brief power  
1681 outage or would that show that the facility might be susceptible  
1682 to deliberate disruption? Would you look at that?

1683 Mr. Wulf. It would be something we would look at, certainly.

1684 Ms. DeGette. Now, the CFATS program is intended to protect  
1685 chemical facilities from terrorist attacks. Is that right?

1686 Mr. Wulf. That is correct, to protect against terrorist  
1687 attack or exploitation. The majority of the facilities we have  
1688 in the program that have been designated at high risk are  
1689 designated as such owing to the threat of theft or diversion of  
1690 chemicals --

1691 Ms. DeGette. Okay.

1692 Mr. Wulf. -- and taking -- their being taken offsite and  
1693 deployed.

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1694 Ms. DeGette. Off site. So the Suncour refinery incidents  
1695 I talked about before caused by accidental power outages they  
1696 would be included in the scope of the program though, right?

1697 Power outages that are causing chemical releases.

1698 Mr. Wulf. Yes. I mean, the power situation and resilience  
1699 in the face of power -- you know, ensuring that the security  
1700 systems are resilience is important.

1701 Ms. DeGette. Now, what about emissions caused by  
1702 negligence, natural disasters, or other types of actions? That  
1703 would not be included?

1704 Mr. Wulf. That is not within our purview. But, you know,  
1705 as I've mentioned here, many of the measures that we require to  
1706 be put in place through CFATS such as the conduct of training,  
1707 exercise the development of response plans that are applicable  
1708 --

1709 Ms. DeGette. They would -- they would --

1710 Mr. Wulf. -- in both the natural disaster context or, you  
1711 know, manmade attacks.

1712 Ms. DeGette. They would have that potential spillover  
1713 effect, right?

1714 Mr. Wulf. Right. Right. A complementary -- a  
1715 complementary --

1716 Ms. DeGette. Yes. But, Mr. Chairman, the reason why I  
1717 bring this up is because I think it's -- security is really  
1718 important to me but there is so many other issues.

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1719 I would hope that we can also come to bipartisan agreement  
1720 on how we address these toxic releases, because in my district  
1721 and many other districts in the country, there -- people are living  
1722 right next to these plants and even if it's not a terrorist attack  
1723 or a natural disaster, they are at risk of contamination every  
1724 day.

1725 So I would hope that would be another issue that we could  
1726 work on in this committee.

1727 Thank you, and I yield back.

1728 Mr. McKinley. Thank you very much, and I hope we can  
1729 continue that dialogue on that.

1730 Now the chair recognizes from Texas Mr. Olson for five  
1731 minutes.

1732 Mr. Olson. I thank the chair, and welcome, Mr. Wulf.

1733 As you know, I am a congressman from Texas 22. I like to  
1734 call that the suburbs of the energy capital of the entire world,  
1735 the massive petrochemical complex along the Port of Houston and  
1736 Houston ship channel.

1737 Mr. Wulf. Absolutely.

1738 Mr. Olson. As you know, there are lots of nasty chemicals  
1739 on our highways and our railroads. In fact, this last month,  
1740 Houston had the anniversary but remembered that -- see, was it  
1741 in 1976 had a tanker turn over a truck with ammonia.

1742 Six people died. Over 60 were hospitalized. That was right  
1743 by Interstate 610 U.S. 59, right by the Galleria.

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1744 I know that's not CFATS, but my point is those chemicals  
1745 are all over our roads, and that's just ammonia going through  
1746 -- going by traffic.

1747 It's been talked about, some of the issues with the Crosby  
1748 fire during Hurricane Harvey. I want to talk about cyber attacks,  
1749 because the bad guys now are adjusting to attack us through  
1750 cyberspace.

1751 What happened at Crosby was a failure of the backup system.  
1752 They had backup power but they didn't test enough. They fired  
1753 up for maybe a minute or two -- hey, it's working. It had to work.

1754

1755 It didn't. And as you know, the chemical -- once you lost  
1756 control of the process it was going to come through and have an  
1757 emission.

1758 And so terrorists could easily hack into there and open up  
1759 those things, do exactly what they did -- what nature did. So  
1760 how is CFATS adapting to terror attacks through cyberspace?

1761 Mr. Wulf. Yes, you're absolutely right. Cyber attacks --  
1762 very significant threat vector. You know, chemical facilities,  
1763 you know, vary in the level to which cyber systems are integrated  
1764 with their industrial control systems, with their process  
1765 systems, and, for that matter, with their security systems.

1766 But there certainly exists a decent population of facilities  
1767 where those systems are very much integrated and so one of our  
1768 risk-based performance standards -- and I think this was in place

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1769 before -- you know, before any folks were thinking about  
1770 cybersecurity -- one of the 18 risk-based performance standards  
1771 under CFATS focuses specifically on cybersecurity.

1772 Mr. Olson. All right. Good.

1773 Mr. Wulf. So we have trained a large number of our  
1774 inspectors to work with facilities that have the fuller  
1775 integration of cyber systems with their industrial control  
1776 systems.

1777 We have cyber experts on our staff at headquarters who review  
1778 those facility site security plans and provide guidance to the  
1779 inspectors in the -- in the field.

1780 You know, we ask facilities to put in place sound  
1781 cybersecurity practices or other site security things -- a very  
1782 important part of our program.

1783 Mr. Olson. Thank you. That is music to my ears.

1784 More of a softball question for you. As you noted, CFATS  
1785 was authorized a little over one decade ago. Looking back, could  
1786 you talk about the single biggest lesson learned that you've had  
1787 the first years of the program? What's one thing you've learned  
1788 over those first couple years?

1789 Mr. Wulf. So I think the most important thing is that, you  
1790 know, it takes a community to secure America's chemical  
1791 infrastructure -- that it's not something we can do alone and  
1792 it's not something we can do without the feedback of our -- of  
1793 our industry stakeholders.

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1794           So, you know, the importance of transparency, the importance  
1795 of openness, the importance of a -- you know, a community wide  
1796 approach.

1797           A shared commitment to chemical security is absolutely key  
1798 and I think as a result we have seen a great deal of buy-in and  
1799 a great deal of commitment across our community of owners and  
1800 operators of high-risk chemical facilities.

1801           Mr. Olson. Thank you. That brings up the next question  
1802 and that is domestic community. How about international  
1803 community?

1804           I mean, as you note in your opening statement, the threats  
1805 we have seen in our homeland have spiked up following attacks  
1806 -- terrorist attacks overseas.

1807           NATO and our allies in Europe are dealing with these attacks  
1808 every single day as are allies all across the world. Can you  
1809 discuss how our CFATS program compares with their programs and  
1810 are we exchanging data with NATO, with other countries? Are they  
1811 exchanging with us? Are we working together to address this  
1812 problem?

1813           Mr. Wulf. That's a great question, and we are prioritizing  
1814 international outreach. So I actually have the privilege of  
1815 chairing a G-7 global partnership working group on chemical  
1816 security.

1817           We are -- we are engaging with our European Union partners  
1818 and a number of other nations to sort of share best practices,

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1819 to compare notes on chemical security.

1820 I will tell you that, you know, what we are doing here is  
1821 in many, many ways the envy of the -- of the world -- significantly  
1822 more comprehensive.

1823 You know, they -- there is a large threat out there. You  
1824 know, we have been relatively privileged not to have, you know,  
1825 as many chemical-focused attacks. But no question, you know,  
1826 adversaries around the world continue to seek out and to use in  
1827 attacks chemicals of exactly the sort that trigger coverage under  
1828 CFATS.

1829 So, you know, we need to remain vigilant. There are other  
1830 approaches to securing certain chemicals, in particular, IED  
1831 precursor chemicals. In Europe, that seemed to be making some  
1832 headway. I think we want to learn from our colleagues over there  
1833 what is working as we think through potentially new approaches  
1834 at the -- at the point of sale to high threat IED precursor  
1835 chemicals, whether, you know, of a voluntary or a regulatory  
1836 nature and that's probably another hearing for another day. But  
1837 we learn a lot from our international colleagues and I think they  
1838 learn a lot from us.

1839 Mr. Olson. I thank you. So my time is expired.

1840 A final closing comment -- you always have a standing  
1841 invitation to come to Houston, Texas, see all that stuff with  
1842 your own eyes. Also, enjoy the best barbecue at the Swinging  
1843 Door in Fort Bend County and also the best Mexican breakfast at

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1844 Bob's Taco Station in Rosenberg, Texas.

1845 Mr. Wulf. Okay. What was the first one? I want to make

1846 --

1847 Mr. McKinley. Okay.

1848 Mr. Olson. The Swinging Door -- Swinging Door. That's in

1849 Richmond. Bob's Taco Station is in Rosenberg.

1850 Mr. Wulf. All right. We are down there quite a bit so I

1851 will --

1852 Mr. Olson. Yield back.

1853 [Laughter.]

1854 Mr. McKinley. Thank you.

1855 Mr. Olson. Thank you, Chairman.

1856 Mr. McKinley. The chair now recognizes the very patient

1857 member from Georgia, Mr. Carter, for his five minutes.

1858 Mr. Carter. Well, it's certainly going to be hard to follow

1859 that but I'll do my best.

1860 Thank you, Mr. Wulf, for being here. I appreciate it.

1861 I want to echo the comments of the chair of the full  
1862 committee. Just from listening to you, it appears that you have  
1863 a firm grasp of this and have a handle on it and I appreciate  
1864 that. That's good to know.

1865 I wanted to ask you, it appears that improvements have been  
1866 made in the program as it's gone along, and from what I understand  
1867 in some of my reading that since the implementation of CFATS the  
1868 GAO makes a number of recommendations that appear to have improved

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1869 the program, and I just wanted to ask you specifically about two  
1870 things -- vulnerability and economic consequences. Those two  
1871 things are of concern to me and I just wanted to ask have you  
1872 -- have you changed your overview of these two things,  
1873 particularly of economic consequences? Or the management of the  
1874 program -- have you tried to address this at all?

1875 Because I believe that GAO had noted that that was one thing  
1876 that was not taken into consideration enough and that was the  
1877 economic consequences.

1878 Mr. Wulf. That's exactly right. So GAO made a number of  
1879 recommendations related to tiering and, you know, we have taken  
1880 them all very much to heart in developing our new and improved  
1881 risk tiering methodology which does take a more comprehensive  
1882 -- a significantly more comprehensive approach to addressing all  
1883 relevant elements of risk to include consequence, vulnerability  
1884 as well, looking at the sort of inherent vulnerabilities  
1885 associated with facilities on a facility by facility basis --  
1886 things like, you know, how chemicals are stored, the types of  
1887 containers, among many other things, and threat.

1888 With respect to economic consequences, we have studied this  
1889 very hard in response to the -- in response to the recommendation  
1890 and I think just makes sense to have done that -- done that anyway.

1891 You know, our ultimate conclusion was that the threshold,  
1892 which is actually a classified threshold for significant economic  
1893 consequences to the nation from an attack on a specific chemical

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1894 facility is a pretty high one.

1895 And so, you know, it was -- it was based on a review of the  
1896 facilities in our program. They were not facilities that -- you  
1897 know, on which an attack would move the needle from a risk tiering  
1898 perspective with respect to economic consequences.

1899 So it is not included in our tiering methodology right now  
1900 but we have the resources. We have the knowledge from the study  
1901 to include it as needed if we get to a point where economic  
1902 consequences are, potentially, significant enough from one attack  
1903 on a single facility.

1904 Mr. Carter. Let me ask you just a couple of simple  
1905 questions, if you will. How do you determine who is to comply?  
1906 Is that incumbent upon the business itself or do you determine  
1907 that or what?

1908 Mr. Wulf. Yes. So the way the process works is that  
1909 facilities that have holdings of one or more of our 320 chemicals  
1910 of interest that are in the regulation identify -- sort of  
1911 self-identify if they have those chemical holdings at or above  
1912 the specified threshold or at or above the specified  
1913 concentration.

1914 They submit to us what we call a top-screen, so basic  
1915 information about the facility, about the chemical holdings, and  
1916 we run that through our risk tiering methodology and make a  
1917 determination as to whether the facility, based on the totality  
1918 of the circumstances of its facility, of its chemical holdings,

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1919 of its location as relevant -- whether it's in an urban or rural  
1920 area, whether that facility is at high risk of terrorist attack  
1921 or exploitation, and if it is -- and about 10 percent of the  
1922 facilities that submit this paperwork to us ultimately are  
1923 determined to be high risk -- if a facility is issued that  
1924 determination we then issue it a risk tier.

1925           So it's placed in one of our four risk tiers and then embarks  
1926 upon the process of collaborating with us as it develops a site  
1927 security plan that's ultimately approved and then entering into  
1928 the regular cycle of compliance --

1929           Mr. Carter. So it is incumbent upon the business to initiate  
1930 it?

1931           Mr. Wulf. It is.

1932           Mr. Carter. Okay.

1933           Mr. Wulf. But we prioritize getting the word out about those  
1934 reporting obligations because the community of those who hold  
1935 chemicals is very diverse.

1936           Mr. Carter. I see. Right.

1937           Mr. Wulf. So it's not only the traditional chemical  
1938 manufacturers.

1939           Mr. Carter. Well, very quickly, because I want to get this  
1940 in. I have two major seaports in my district.

1941           That seems like that's -- that would be a bugaboo to try  
1942 to really have an overview of that --

1943           Mr. Wulf. Yes. No, that's --

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1944 Mr. Carter. -- of everything that's going through those  
1945 ports.

1946 Mr. Wulf. Yes. There is a lot of chemical infrastructure  
1947 on the water at the -- at the ports. Our friends at the Coast  
1948 Guard have the responsibility actually --

1949 Mr. Carter. Okay.

1950 Mr. Wulf. -- for managing that. So facilities that are  
1951 regulated by the Coast Guard are specifically exempted from CFATS.

1952 Mr. Carter. Right.

1953 Mr. Wulf. So we work very closely with the Coast Guard.

1954 Mr. Carter. Good. Thank you very much.

1955 Mr. Wulf. Absolutely.

1956 Mr. Carter. And I yield back.

1957 Mr. McKinley. Thank you very much.

1958 Now, if I could, you've been -- you've been going here almost  
1959 two-plus hours on this thing. But let me just conclude with one  
1960 question, if I could -- the privilege of the chair.

1961 I want to clarify your answer to Congressman Johnson about  
1962 the listing of items on Appendix 1, because I've spoken to several  
1963 chemical manufacturers in our district and they claim that the  
1964 -- on Appendix 1 is this designation of high priority chemicals  
1965 -- you understand that.

1966 They claim the existing statute is silent over whether or  
1967 not the response -- whether it's subject to notice in rulemaking  
1968 versus the sole discretion of DHS.

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1969 I thought you said that it had to go through notice in  
1970 rulemaking. I just want for the record -- for the record you  
1971 saying it does go under --

1972 Mr. Wulf. Yes. So it is -- yes. It is -- it is part of  
1973 our regulation and so I have a crack team of lawyers who tell  
1974 me that as a result of its status in the regulation it is subject  
1975 to notice and comment rulemaking pursuant to the administrative  
1976 procedures.

1977 Mr. McKinley. So these manufacturers maybe are just  
1978 mistaken where they think it's silent?

1979 Mr. Wulf. Yes. It may not be explicitly addressed in the  
1980 -- in the statute but there are other -- you know, other legal  
1981 frameworks that apply to it.

1982 Mr. McKinley. Okay. Thank you very much. Thank you.

1983 Mr. Wulf. Absolutely.

1984 Mr. McKinley. Seeing that there are no further members  
1985 wishing to participate and ask questions, I'd like to thank our  
1986 witness again for being here today.

1987 And with that, we will end the first panel.

1988 Mr. Wulf. Thank you so much.

1989 [Pause.]

1990 Mr. McKinley. So if we could, we call up the second panel  
1991 now -- and your placards.

1992 [Pause.]

1993 Okay. We want to thank our witnesses for being here today,

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1994 as we went through the first -- many of you just went through  
1995 the first panel and so we begin the second panel so -- and your  
1996 taking the time to testify before this subcommittee.

1997 Today's witnesses will have the opportunity to give opening  
1998 statements followed by a round of questions from the members that  
1999 are present.

2000 Our second panel today -- for today's hearing includes Chris  
2001 Currie, director of the Emergency Management National  
2002 Preparedness and Critical Infrastructure Protection, Homeland  
2003 Security, and the Justice Team in the U.S. Government  
2004 Accountability Office; Mr. Brown, president and CEO of Brown  
2005 Chemical Company; we also have Mike Wilson, national director  
2006 for occupational and environmental health in BlueGreen Alliance;  
2007 Mr. Roberts, principal of Chemical Security Group, LLC; and Mr.  
2008 Conrad -- James Conrad, the principal of Conrad Law and Policy  
2009 Council on behalf of the Society of Chemical Manufacturers and  
2010 Affiliates; and lastly, Yvette Arellano -- did I pronounce that  
2011 properly -- Arellano -- the policy research and grassroots  
2012 advocate of the Texas Environmental Justice and Advocacy  
2013 Services.

2014 So we appreciate you. The committee -- subcommittee  
2015 appreciates all of you for being here today and the patience of  
2016 working with us on this, and we will begin the panel discussion  
2017 with Mr. Currie for his opening statement of five minutes.

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STATEMENTS OF CHRIS P. CURRIE, DIRECTOR, EMERGENCY MANAGEMENT,  
NATIONAL PREPAREDNESS, AND CRITICAL INFRASTRUCTURE PROTECTION,  
HOMELAND SECURITY AND JUSTICE TEAM, U.S. GOVERNMENT  
ACCOUNTABILITY OFFICE; DOUG BROWN, PRESIDENT AND COO, BROWN  
CHEMICAL COMPANY; DR. MIKE WILSON, NATIONAL DIRECTOR,  
OCCUPATIONAL AND ENVIRONMENTAL HEALTH, BLUEGREEN ALLIANCE; STEVE  
ROBERTS, PRINCIPAL, CHEMICAL SECURITY GROUP, LLC; JAMES CONRAD,  
PRINCIPAL, CONRAD LAW AND POLICY COUNSEL, ON BEHALF OF SOCIETY  
OF CHEMICAL MANUFACTURERS AND AFFILIATES; YVETTE ARELLANO, POLICY  
RESEARCH AND GRASSROOTS ADVOCATE, TEXAS ENVIRONMENTAL JUSTICE  
ADVOCACY SERVICES

STATEMENT OF CHRIS P. CURRIE

Mr. Currie. Thank you, Mr. Chairman, Ranking Member Tonko,  
other members of the committee that are here.

I think this hearing is really well-timed. CFATS is over  
10 years old. We have spent almost a billion dollars of taxpayer  
money implementing it, getting it up and running, and industry  
has spent its own dollars doing the same thing.

GAO has been assessing this program for almost a decade,  
and I want to be clear that, you know, we have no position on  
reauthorization. That's a decision for Congress.

Our jobs, as always, is to help you make those decisions  
with information on how well programs like this are working.

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2043 In that regard, it's no secret that this program has had  
2044 challenges.

2045 Today, after numerous GAO recommendations and heavy  
2046 oversight by Congress, CFATS has addressed many of the management  
2047 challenges it faced early on. I think DHS deserves a lot of credit  
2048 for that. I think Congress deserves a lot of credit for the  
2049 oversight.

2050 I'd like to summarize just some of our past work and where  
2051 DHS is in addressing the recommendations. First, just  
2052 identifying facilities originally that could have been subject  
2053 to this regulation was daunting and a huge challenge.

2054 In 2014, we identified, through our own work, chemical  
2055 facilities that were not required -- were not reporting ammonium  
2056 nitrate holdings, for example, to DHS as they were required to  
2057 do.

2058 We recommended the DHS work with EPA, other agencies, and  
2059 states to better share their separate data sources to close this  
2060 gap. Since then, DHS implemented this recommendation and  
2061 identified 1,000 additional facilities that should have complied  
2062 with CFATS.

2063 Assessing facility risk levels, as was discussed a lot on  
2064 the first panel, and improving site security plans has also been  
2065 a complicated process.

2066 Specifically, we recommended that DHS improve its process  
2067 for assessing facility risk, or tiering, as was mentioned, and

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2068 have this process peer reviewed, and DHS has taken steps to address  
2069 these issues as well.

2070 DHS also eliminated the backlog for reviewing and approving  
2071 facility site plans, which at one point we estimated to be seven  
2072 to nine years long.

2073 More recently, DHS overhauled and streamlined its tools for  
2074 gathering information from facilities and assessing the risk and,  
2075 according to most industry officials and facilities we have talked  
2076 to so far, the new tool is much easier to use and understand.

2077 As of June 2008, DHS told us they've processed hearing  
2078 results for all but 226 facilities nationwide. Compliance  
2079 inspections are also a critical piece of the program. These  
2080 inspections ensure that facilities are implementing and  
2081 maintaining the security measures in their plans.

2082 In our 2015 report, at that time DHS had only done 83 of  
2083 these inspections. They recently told us the number is now up  
2084 to over 3,500, and this is promising, but DHS still hasn't fully  
2085 implemented our recommendation to establish a final procedure  
2086 for conducting these inspections.

2087 They have one in draft that they are using and they tell  
2088 us they expect to finalize that later this year. However, just  
2089 fixing past problems is not enough to declare victory. Now it's  
2090 an important time, I think, to shift our mind set from establishing  
2091 the functional components of a regulatory program to questions  
2092 about what do we expect from CFATS in the future.

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2093 Many of these will be addressed in the report we plan to  
2094 issue next month. First, it's critical that the CFATS program  
2095 be able to measure over time how risk and vulnerability are  
2096 actually being reduced and not just focus on outputs like  
2097 inspection numbers.

2098 In the past, we have found weakness in how the program  
2099 measures performance and we continue to assess their progress  
2100 in this area.

2101 Second, the program must evolve and can't be static. New  
2102 security threats such as cyber have to be constantly considered.

2103 Also, the program is in a unique position to help the industry  
2104 by communicating these threats and best practices.

2105 Further, a balance must be struck between sharing  
2106 information and protecting security. For example, recently  
2107 deadly incidents show how important it is that first responders  
2108 know what they are responding to at these facilities and how to  
2109 address it.

2110 We are assessing these and other issues in our ongoing work  
2111 and, as I mentioned, we expect a report out on those specific  
2112 things next month.

2113 This concludes my statement and I look forward to the  
2114 discussion.

2115 [The prepared statement of Mr. Currie follows:]

2116

2117 \*\*\*\*\*INSERT 4\*\*\*\*\*

2118 Mr. McKinley. Thank you, Mr. Currie.

2119 And now the chair recognizes Mr. Brown for his five minutes.



2120 STATEMENT OF DOUG BROWN

2121

2122 Mr. Brown. Good morning, Vice Chairman McKinley, and  
2123 Ranking Member Tonko, and members of the subcommittee.

2124 My name is Doug Brown and I am president and CEO of Brown  
2125 Chemical, a chemical distributor based in Oakland, New Jersey.

2126 I am also the current chairman of the National Association of  
2127 Chemical Distributors -- NACD.

2128 I thank you for holding this important hearing today on the  
2129 Chemical Facility Anti-Terrorism Standards program and I am  
2130 pleased to provide testimony.

2131 Brown Chemical was founded in 1936. It is a fourth  
2132 generation family-owned and operated business with 14 employees.

2133 We operate facilities in Oakland and Patterson, New Jersey.

2134 Brown Chemical direct sells, distributes, or packages over  
2135 350 products to approximately 400 customers in 41 states. We've  
2136 been practising NACD's responsible distribution since its  
2137 inception in 1991 when it became mandatory for all association  
2138 members.

2139 This comprehensive program addresses environmental, health,  
2140 safety, and security risks. Members companies are third-party  
2141 verified to ensure the highest quality of performance in these  
2142 areas.

2143 While security has always been an inherent element of  
2144 responsible distribution, after the September 11 terrorist

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2145 attacks NACD specifically added security elements to the program  
2146 and the association continues to enhance these requirements.

2147 In 2013, NACD added a specific security code to responsible  
2148 distribution and consolidated many prior requirements and  
2149 improved others.

2150 Brown Chemical supports a long-term reauthorization of  
2151 CFATS. I believe the CFATS program has made the chemical industry  
2152 in our nation more secure.

2153 Since the program's establishment in 2007, the industry has  
2154 invested significant capital and training resources for its  
2155 enhanced security measures at our facilities.

2156 While these investments did not help grow my business, they  
2157 nonetheless ensured the security of my company, our employees,  
2158 and the community.

2159 It is undeniable there were growing pains in the first few  
2160 years of CFATS. The Department of Homeland Security has worked  
2161 hard to address these issues and has made substantial improvements  
2162 to run the program more efficiently.

2163 One reason for the success of the CFATS program is the fact  
2164 that DHS has taken the time to truly learn about the diversity  
2165 of the chemical industry and work with companies on security  
2166 measures that meet the CFATS risk-based performance standards.

2167 DHS has taken a collaborative common sense approach in  
2168 implementing the program while providing flexibility to each  
2169 unique chemical facility in doing so.

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The clear objective of the CFATS program is to help facilities be more secure while not taking a punitive approach.

DHS has excelled in outreach to the industry in three key ways: by publishing numerous fact sheets and lessons learned documents, by interacting with facility owners and operators during the chemical sector security summits and other industry meetings, and always making inspectors and headquarters personnel available to talk through issues and answer questions.

The 2014 reauthorization of the CFATS program, which, for the first time provided CFATS a multi-year authorization, further enhanced security efforts by providing regulatory certainty to both industry and DHS.

This stability allowed DHS to increase efficiencies in the program while streamlining the information submission process for regulated facilities.

I believe the CFATS program is strong and needs minimal change. One priority I can recommend is to require that any changes to the Appendix A chemicals of interest list remain subject to notice and comment rulemaking.

Changes to the COI list could have major impacts on my business operations and security investments. Changes may be needed upon discovery of new threat information. But it is important for regulated companies like mine to be able to provide information to DHS and explain the impacts of any proposed changes.

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2195 I also support the creation of a program under which DHS  
2196 would recognize companies that meet certain criteria such as  
2197 participation and an environmental health, safety, and security  
2198 program like responsible distribution.

2199 By acknowledging responsible distributors through measures  
2200 like less frequent inspections, DHS would then be able to  
2201 prioritize resources on the noncompliant outliers that may pose  
2202 a greater security risk.

2203 Brown Chemical supports the CFATS program and looks forward  
2204 to working with the subcommittee on legislation to reauthorize  
2205 this important regulation. A multi-year reauthorization of  
2206 CFATS will provide the certainty needed to enhance the security  
2207 of my chemical facilities and our nation.

2208 On behalf of Brown Chemical, I appreciate this opportunity  
2209 to present our views on this important issue and I look forward  
2210 to your questions.

2211 [The prepared statement of Mr. Brown follows:]

2212

2213 \*\*\*\*\*INSERT 5\*\*\*\*\*

2214 Mr. McKinley. Thank you, Mr. Brown.

2215 And then next on the panel, Mr. Wilson with BlueGreen

2216 Alliance -- your opening statement, please.

2217 STATEMENT OF DR. MIKE WILSON

2218

2219 Mr. Wilson. Thank you, Mr. Chairman, Ranking Member Tonko,  
2220 and distinguished members.

2221 My name is Michael Wilson. I am the national director for  
2222 occupational and environmental health at the BlueGreen Alliance.

2223

2224 On behalf of our organization, our national labor and  
2225 environmental partners, and the millions of members and  
2226 supporters they represent, I want to thank you for convening the  
2227 hearing today and for your interest in chemical safety and  
2228 security.

2229 I am familiar with the risks of industrial hazards because  
2230 I had the privilege of working for 13 years as a professional  
2231 firefighter, paramedic, and EMT, during which time I responded  
2232 to about 10,000 emergency calls.

2233 I worked in a city with heavy industry centered around  
2234 agriculture, so there were many facilities that used chlorine  
2235 and ammonia and other agricultural chemicals.

2236 Responding to an incident at one of these facilities meant  
2237 grappling with a lot of uncertainty because the facilities weren't  
2238 required to invite us in and involve us in planning or training  
2239 for an emergency.

2240 In general, I would say they relied on us if they had an  
2241 emergency but they were reluctant to help us improve the safety

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and effectiveness of our response. Without a doubt, emergency response is a necessary aspect of chemical safety and security.

But it's an indicator of a failure. It's a measure of last resort where thoughtful planning and prevention have broken down.

EPA reported this year that most serious chemical accidents are preventable if the necessary precautions and actions are taken and yet serious industrial chemical accidents continue to occur every two and a half days across our nation.

Last year, EPA estimated that about 177 million Americans live close enough to an industrial facility to be affected by a chemical accident and that these risks fall disproportionately on low-income and minority communities.

CFATS responds to this problem by requiring companies to surround dangerous chemicals with security measures and yet, as many experts have noted, these measures require continual updating to thwart the efforts of a motivated actor.

Perhaps it is in response to this challenge with security measures that thousands of facilities seem to be shifting to prevention strategies.

DHS noted last year that companies reported taking action to prevent risks on about 250 dangerous chemicals by replacing those chemicals with safer ones, reducing the quantities held on site, or switching to less concentrated formulations.

If DHS is confident in the veracity of these claims, these

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actions do more than manage risks. They actually reduce the risk footprint, and in this way they provide protection not only from an intentional attack but also from an extreme weather event, earthquake, power outage, or mechanical failure risks that we've heard from several members today.

On the other hand, there are about 3,400 facilities that have remained in the CFATS high-risk tier and which pose a substantial risk to workers and communities.

Changes to the CFATS program are needed to reward the leaders and move the laggards up. CFATS could be strengthened with updated requirements in four areas: one, risk management; two, risk prevention; three, meaningful participation by rank and file worker representatives; and four, emergency response.

The state of California, the third largest refining state in the country, adopted these approaches last year in a sweeping new refinery safety regulation, which was motivated by a large flammable vapor explosion at the Richmond Chevron refinery.

That incident created a 100 square meter vapor cloud that ignited and endangered the lives of 19 workers and caused some 15,000 people down wind of the plant to seek medical attention.

California's comprehensive new regulation is informed by the industry's own best engineering and management practices developed over the last 20 years and largely shifts from a risk management to risk prevention framework.

While California is improving the safety of refineries in

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2292 communities, however, U.S. EPA is proposing to substantially  
2293 weaken the federal chemical disaster rule by rolling back most  
2294 of its key provisions, including all 10 of its prevention  
2295 requirements.

2296         These changes will endanger the lives of my former co-workers  
2297 in the U.S. Fire Service. They will endanger workers and millions  
2298 of community members and their families who live around our  
2299 nation's chemical facilities. The chemical disaster rule should  
2300 be retained in its original form, not weakened or delayed, as  
2301 the administration has proposed.

2302         We can and must prevent chemical accidents. I urge you to  
2303 use the reauthorization of CFATS as an opportunity to strengthen  
2304 the program. The results would be fewer explosions, fewer  
2305 injuries and deaths, and a far more resilient industrial  
2306 infrastructure.

2307         In closing, I would like to thank you again for this hearing  
2308 and for granting me the opportunity to appear, and I will be happy  
2309 to answer any questions.

2310         Thank you.

2311         [The prepared statement of Mr. Wilson follows:]

2312

2313 \*\*\*\*\*INSERT 6\*\*\*\*\*

2314 Mr. Harper. [Presiding.] Thank you, Dr. Wilson.

2315 The chair will now recognize Mr. Roberts for the purposes

2316 of an opening statement. You're recognized for five minutes.

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2317 STATEMENT OF STEVE ROBERTS

2318

2319 Mr. Roberts. Thank you. Good afternoon, Mr. Chairman,  
2320 Ranking Member Tonko, and other distinguished members of the  
2321 subcommittee.

2322 As a security consultant and lawyer, I've been fortunate  
2323 to participate and work in the CFATS program from the very  
2324 beginning since 2007, more than 11 years ago now, and have seen  
2325 during that time and have participated in countless -- dozens  
2326 of refineries, chemical plants, paint and coating manufacturers,  
2327 agricultural facilities, aerospace and defense -- a range of CFATS  
2328 facilities that Mr. Wulf spoke about earlier in this testimony.

2329 Against this backdrop, I am pleased to offer the following  
2330 comments for the committee's consideration: first, reauthorize  
2331 CFATS for multiple years; second, further enhance the  
2332 transparency of the risk tiering process; third, update the CFATS  
2333 rulemaking process; and fourth, ensure that there is greater  
2334 consistency among inspectors and the inspection process.

2335 First, reauthorize CFATS. When the first standalone CFATS  
2336 legislation was introduced four years ago, we find ourselves back  
2337 now at the same time, as that legislation nears the end of its  
2338 life.

2339 I can certainly say that industry needs the certainty of  
2340 CFATS and reauthorization of CFATS to continue to make its  
2341 investments in the program and continue to implement the program.

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2342 I think DHS also needs the certainty of CFATS to ensure its  
2343 long-term viability of programmatic changes.

2344 Second, with respect to transparency and risk determination  
2345 process, which we've heard about quite a bit today, ISCD has  
2346 certainly improved the transparency of its risk process.

2347 They have done many things to help the regulated community  
2348 understand why they may be tiered or not tiered, and includes  
2349 things like webinars, fact sheets, and the like.

2350 Most significantly -- and I think it goes -- and the agency  
2351 should get a lot of credit -- you are willing to call up the agency  
2352 and have a so-called technical consultation, essentially asking  
2353 why am I tiered -- is there something that I could do -- is there  
2354 something I need to know -- is there something that's correct  
2355 or perhaps incorrect in this process.

2356 And while often that doesn't change the needle, unless there  
2357 was some kind of error omission, the mere process of being able  
2358 to have that conversation with the agency is very helpful and  
2359 welcome.

2360 That sort of dialogue was not allowed -- was not permitted  
2361 -- was not welcome many years ago at the beginning of the CFATS  
2362 program and I think the current leadership has a lot to do with  
2363 that and should be recognized.

2364 That's not to suggest that I or the facilities for which  
2365 I work always agree with the process. In fact, many times,  
2366 especially with respect to the most recent CSAT 2.0 resteeering

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2367 process, companies have said to me, why am I tiered -- can I appeal  
2368 that tiering decision -- and the answer is no. The regulation  
2369 does not provide for any kind of appeal mechanism.

2370 In fact, allowing a straight appeal would probably swallow  
2371 the regulation. DHS would spend all of its time on appeals and  
2372 not being able to articulate and move forward with the program.

2373 So I don't think a straight appeal would be appropriate.

2374 But some further -- something more formal than a technical  
2375 consultation but less -- something less than a formal appeal would  
2376 certainly help facilities to understand is there something they  
2377 can do, especially on the consequence side of the house, for  
2378 release sites -- for sites that have release flammable or toxic  
2379 inhalation hazard materials -- to bring that risk down, re-file  
2380 a top-screen, and perhaps get a different result. Right now,  
2381 we are not able to effectively do that beyond the technical  
2382 consultation.

2383 Third, the rulemaking process -- as we've noted today, CFATS  
2384 has been around for now 11 years. The regulations have not  
2385 changed one word in that 11-year period, and whether it be Appendix  
2386 A or other key aspects of the rule, in order to change that rule,  
2387 to update it, to align it to certain things, that process would  
2388 need to go through the rulemaking process.

2389 DHS started that process in the fall of 2014 -- the summer  
2390 of 2014 through an advanced notice of proposed rulemaking. But  
2391 that process has now stalled. If we take a look at the current

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2392 rulemaking agenda for the Department of Homeland Security just  
2393 published recently, we now see CFATS has been moved to the list  
2394 of long-term actions.

2395 I would urge the committee to suggest, to require that  
2396 rulemaking occur so we can update the program necessarily in very  
2397 material ways that need to occur for both, in my view, industry  
2398 and for DHS.

2399 Fourth, as we've heard a little bit and including from Mr.  
2400 Currie, ISCD should opt to make authorization inspections --  
2401 compliance inspections more consistent, more uniform -- ensure  
2402 that the same level of knowledge, of rigor, of completeness of  
2403 those processes.

2404 ISCD has done a lot towards that and I certainly think --  
2405 and have worked with many of these inspectors -- they are  
2406 professional, they are courteous, they are very easy going many  
2407 times and friendly.

2408 However, that does not always translate into the same process  
2409 from site to site, from region to region, even within the same  
2410 region. That inconsistency sometimes and lack of -- differences  
2411 in knowledge, understanding the actual tools that DHS uses, the  
2412 CSAT process, the different approaches to how an inspection  
2413 actually occurs -- the level of detail or lack thereof -- is a  
2414 ongoing source of frustration for many businesses, many  
2415 companies, especially those that operate facilities from region  
2416 to region and very clearly see and question why we see so many

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2417 differences boots on the ground among the inspection team.

2418 DHS has recognized that. We hear from them that they are  
2419 going to take steps and are taking steps, as the GAO has also  
2420 recognized, to improve and enhance that process, going forward.

2421 But I think more is needed. I think further training is  
2422 needed -- minimum standards and better consistency horizontally  
2423 between the regions and vertically between headquarters and the  
2424 regions themselves.

2425 So with that, I appreciate the opportunity to testify,  
2426 holding this important hearing, and be pleased to answer any  
2427 questions you may have.

2428 [The prepared statement of Mr. Roberts follows:]

2429

2430 \*\*\*\*\*INSERT 7\*\*\*\*\*

2431 Mr. Harper. Thank you, Mr. Roberts. We appreciate that.  
2432 And Mr. Conrad, we'll now recognize you for five minutes  
2433 for the purposes of an opening statement.

2434 Thank you.

2435 Mr. Conrad, could you pull that microphone around in front  
2436 of you a little bit? Thank you.

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2437 STATEMENT OF JAMES CONRAD

2438

2439 Mr. Conrad. The button. There we go.

2440 For over a decade, I have been counsel to the Society for  
2441 Chemical Manufacturers and Affiliates, the only U.S.-based trade  
2442 association dedicated solely to the specialty and fine chemical  
2443 industry.

2444 For the previous 14 years, I was an in-house lawyer at the  
2445 American Chemistry Council and so I've been working on chemical  
2446 facility security since before 9/11 and I've been continuously  
2447 involved in the CFATS process since it was first enacted in 2006.

2448 I've also chaired the ABA's administrative law and  
2449 regulatory practice section. I am pleased to be able to provide  
2450 today with SOCMA's perspective on CFATS.

2451 CFATS protects high-risk chemical facilities and their  
2452 surrounding communities by ensuring that security measures are  
2453 in place to reduce the risk of successful terrorist acts.

2454 More than half of SOCMA's 115 manufacturing members are  
2455 regulated under the program. We strongly supported and we urge  
2456 Congress to reauthorize the program now before its authorization  
2457 expires this coming January.

2458 A one-year reauthorization, however, is not desirable  
2459 because regulatory certainty is crucial to business planning.

2460 Complying with CFATS is expensive and time consuming, especially  
2461 for small businesses. SOCMA's members want the program to be

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2462 consistent and predictable, and a multi-year reauthorization  
2463 would give them that assurance.

2464 Through the years, the CFATS program has undergone dramatic  
2465 changes. The early years were a significant challenge for  
2466 everyone, but the program has vastly improved under the direction  
2467 of Deputy Assistant Secretary Wulf, whose earlier accomplishments  
2468 gave Congress the confidence to reauthorize CFATS for four years  
2469 in 2014.

2470 SOCMA believes that the program's continued progress is  
2471 directly attributable to Mr. Wulf's leadership and justifies  
2472 another reauthorization for a comparable period of years.

2473 The most significant recent improvement in CFATS is Version  
2474 2.0 of the Chemical Security Assessment Tool, or CSAT. The  
2475 original CSAT process was clunky and difficult to use, took  
2476 significant amounts of time and resources to complete.

2477 The number-one recommendation of SOCMA's CFATS comments in  
2478 2014 was that DHS fix it, and DHS has now done that dramatically,  
2479 and our members uniformly report that it's much easier to use  
2480 and far less resource intensive while still giving DHS the  
2481 information it needs.

2482 This improvement is extremely important for SOCMA members,  
2483 70 percent of which are small businesses. Most of these  
2484 businesses cannot afford to have dedicated regulatory compliance  
2485 staff nor can they hire -- afford to hire consultants to do the  
2486 job for them.

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2487 While I've thus far applauded DHS's efforts, SOCMA does have  
2488 some concerns. It first relates to how DHS tiers or assigns risk  
2489 levels to facilities based on their CSAT submissions.

2490 When Congress reauthorized CFATS, it instructed DHS to,  
2491 quote, "share with the owner or operator of a covered chemical  
2492 facility any information that the owner or operator needs to  
2493 comply with this section."

2494 Congress could revise this language to create a clearer  
2495 obligation for DHS to share with the facility the exact reason  
2496 for its tier assignment. That would help them understand how  
2497 they could lower their risk tiers.

2498 The second concern is the personnel surety program.  
2499 Currently, PSP only applies to tier one and two facilities, but  
2500 DHS is considering applying it to tiers three and four.

2501 SOCMA believes this is premature. These facilities, by  
2502 definition, pose lower risks and the PSP program continues to  
2503 impose burdens in terms of time and delay.

2504 SOCMA believes DHS should work with the Department of Justice  
2505 and the FBI to rigorously assess both what risks are avoided and  
2506 what costs are imposed by the process, and we think such a  
2507 multi-agency review is necessary before we expand it further.

2508 We also believe CFATS should recognize voluntary industry  
2509 programs that enhance the safety and security of hazardous  
2510 chemicals and thus complement what the CFATS program does.

2511 The leading chemical industry trade associations have

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2512 organized and implementing demanding stewardship initiatives  
2513 such as SOCMA's ChemStewards to manage and improve environmental  
2514 health, safety, and security performance -- a public-private  
2515 partnership that leveraged these industry stewardship programs  
2516 like ChemStewards to benefit both chemical facilities and the  
2517 public.

2518         And then last, I will emphasize a point that's been made  
2519 before about the continuing importance to use rulemaking in  
2520 amending Appendix A, and I will agree with Director Wulf.

2521         Currently, the Administrative Procedure Act requires  
2522 Appendix A to be changed through rulemaking because it's already  
2523 part of the rule, and so that will continue to be the case, unless  
2524 that were to be changed by this -- by new legislation, which we  
2525 would not support because it's important for facilities to be  
2526 able to get the information to the DHS that it needs to understand  
2527 them.

2528         The bottom line is that CFATS is working and working far  
2529 more successfully and efficiently than a lot of other regulatory  
2530 programs.

2531         CFATS inspectors generally interact well with facilities  
2532 and the agency has an effective compliance assistance program.

2533         Facilities are more secure and the public is safer today because  
2534 of this program.

2535         Congress should reauthorize it to maintain that progress.

2536         Thank you.

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2537 [The prepared statement of Mr. Conrad follows:]

2538

2539 \*\*\*\*\*INSERT 8\*\*\*\*\*

2540 Mr. Harper. Thank you, Mr. Conrad.

2541 The chair will now recognize Ms. Arellano for five minutes

2542 for the purposes of an opening statement.

2543 Welcome.

2544 STATEMENT OF YVETTE ARELLANO

2545

2546 Ms. Arellano. Thank you, Chairs and Ranking Members, of  
2547 the Energy and Commerce Committee and Subcommittee on the  
2548 Environment.

2549 Thank you for this opportunity to speak on the proposed rule  
2550 to roll back and eliminate critical protections for my community  
2551 in Houston Texas that are part of EPA's 2017 chemical disaster  
2552 rule.

2553 I am disappointed that the EPA and its rulemaking has chosen  
2554 to only hold one hearing in Washington, D.C., making it difficult  
2555 for voices like those in my community to be heard.

2556 But I am relieved that I can bring my experience to this  
2557 hearing. My name is Yvette Arellano. I am here on behalf of  
2558 Texas Environmental Justice Advocacy Services.

2559 We are a nonprofit working to educate and mobilize our  
2560 community in southeast Houston, including Manchester and the  
2561 surrounding neighborhoods, which have high concentrations of  
2562 chemical facilities.

2563 The EPA is required to regulate effectively under the risk  
2564 management plan and CFATS. This exposes our communities which  
2565 include significant communities of color and low-income families  
2566 to more toxic air, pollution, and disproportionate harm from  
2567 chemical disasters.

2568 As illustrated too well from Hurricane Harvey, too often

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2569 we experience a toxic flood on top of the threats we already face  
2570 from hurricanes and heavy rains. That comes on top of disparate  
2571 health and safety impacts we already face around the year because  
2572 EPA refuses to do its job to protect us from the frequent toxic  
2573 releases and pollution these facilities send across the fence  
2574 line into our communities.

2575 At Hartman Park, which is right across the street from the  
2576 Valero refinery, communities painted a mural reflecting that  
2577 nearly every child that plays in the park is in the shadow of  
2578 a nearby chemical facility -- a far cry from what people at this  
2579 hearing see out of their window in Capitol Hill and D.C.

2580 Communities in Manchester never know which incident requires  
2581 evacuation or sheltering in place. We hear the sirens go off.

2582 I heard the sirens go off, or alarms go off, for a vote and that  
2583 sent my stress levels high.

2584 People live in constant fear of releases or incidences while  
2585 their children are playing outside. In hurricane seasons, it's  
2586 bad enough that families have to prepare for their lights to go  
2587 out and ensuring that they have enough food and water.

2588 No one should have to shelter in place due to a hurricane  
2589 as toxic chemicals flood their homes, wondering what to do if  
2590 facilities down the street will have a catastrophic explosion,  
2591 chemical fire, chemical release, as what happened in our community  
2592 and neighborhoods during Harvey. People deserve the right to  
2593 know the information necessary to make informed decisions for

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2594 them and their families.

2595       The chemical disaster rule contains important safeguards  
2596 that would help communities like mine and across the country with  
2597 common sense provisions, most importantly, for our already over  
2598 exposed communities.

2599       We need this fully effective right now and we need to require  
2600 facilities to take action to prevent fires, explosions, and  
2601 disasters including by ensuring they actually look for safer ways  
2602 to operate before a disaster starts. It also would have increased  
2603 the availability of basic information we need to know, like  
2604 chemical safety data sheets and emergency response contacts so  
2605 communities can try to find ways to protect ourselves if a serious  
2606 incident happens.

2607       Community members should get the information from each  
2608 incident they're exposed to without delay and it's essential for  
2609 facilities to do real incident investigation reports that they  
2610 cannot ignore in planning to prevent future problems.

2611       I want to highlight that the rule finalized in early 2019  
2612 and came afterward by the EPA and after over a hundred groups  
2613 working with TEJAS called for action, starting in 2011, as  
2614 disasters were happening across the country and people in  
2615 Washington, D.C. didn't seem to pay attention.

2616       It also provided for a better coordination through sharing  
2617 information first responders need and assuring practice  
2618 notification and exercises happen to prepare without delay.

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2619 EPA cannot justify repealing all of the prevention and  
2620 weakening other important requirements and it has refused to face  
2621 the fact that it's taking away protections meant to save lives  
2622 and prevent harm, especially to communities like ours, right  
2623 across the fence line from chemical facilities.

2624 These rollbacks don't come without community costs as fires,  
2625 toxic releases across the country on this administration's watch,  
2626 especially Arkema -- the Arkema explosion in Crosby after  
2627 Hurricane Harvey, demonstrated.

2628 A lack of information puts the surrounding community and  
2629 first responders in jeopardy. First responders on the scene had  
2630 to be evacuated and received medical treatment for inhaling  
2631 dangerous chemicals from the blast.

2632 Community members are still dealing with the aftermath of  
2633 chemical debris which is visible on their lawns and cars. The  
2634 Valero refinery and other nearby facilities released a spike of  
2635 benzene and other toxic chemicals. But most of these were missed  
2636 because EPA and states turned off or moved most of the air  
2637 monitors.

2638 I urge this committee to consider the impacts on your  
2639 neighbors, on our neighbors, our families, without critical  
2640 protections like those in the chemical disaster rule and ask you  
2641 to call on President Trump and the administration and  
2642 Administrator Pruitt to drop the hazardous plan that the EPA is  
2643 considering which would revoke lifesaving protections for

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2644 communities across the country, preventing children and  
2645 vulnerable communities from chemical disasters.

2646 The way EPA originally found was necessary should not be  
2647 a partisan issue and we call on Congress and EPA to protect  
2648 communities, not chemical companies.

2649 Communities across the country remain in harm's way and  
2650 especially -- this is especially scary as we drive around Houston  
2651 with billboards saying hurricane season has begun -- be prepared.

2652 [The prepared statement of Ms. Arellano follows:]

2653

2654 \*\*\*\*\*COMMITTEE INSERT 9\*\*\*\*\*

2655 Mr. Harper. Your time has expired. I apologize.

2656 We'll give you opportunity during the questioning. Thank  
2657 you very much.

2658 It's now time for the members to ask questions. I want to  
2659 thank each of you for your appearance here and for your insight  
2660 and the experience that you bring.

2661 And Mr. Roberts, I would like to ask you a question first.  
2662 We've from GAO that one of the challenges faced by DHS with the  
2663 implementation of CFATS is compliance enforcement.

2664 Your written testimony points out that there's inconsistency  
2665 with inspections and enforcement from region to region. Can you  
2666 elaborate some on that and perhaps give us some suggestions on  
2667 how to correct that?

2668 Mr. Roberts. Certainly. So there is -- let me emphasize  
2669 again the inspectors are, with almost without fail, are extremely  
2670 helpful.

2671 They're friendly, professional, but there continues to be  
2672 a lack of, it seems, consistent knowledge in various areas of  
2673 the program, including the specific way the regulation itself  
2674 may work -- the confusion oftentimes between what regulation is  
2675 and implementing guidance.

2676 As we know, CFATS is a risk-based performance standard.  
2677 That means that DHS can't prescribe the particularly security  
2678 measure a facility must implement or may not -- or does not need  
2679 to implement for plan approval, and we've had many instances over

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2680 the years, especially as DHS has upticked, obviously, it's  
2681 compliance inspections in the last few years where the specific  
2682 manner and nature of those inspections simply is not the same  
2683 region to region and even within the same region.

2684 Some of that may go back to training. Some of it may go  
2685 back to the prior biases or lack thereof of the inspector who  
2686 may come from a prior federal background.

2687 Some of that goes to, on a positive side, with familiarity  
2688 of an inspector with the site so they may not feel the need to  
2689 continue to go very deeply sometimes.

2690 But the way a particular inspector assesses things seems  
2691 to lack any real consistency from site to site, region to region.

2692 Mr. Harper. And I appreciate the way you have elaborated  
2693 on that. So is this a -- is this a training issue that we are  
2694 talking about or is it just something that, because of the  
2695 different experiences, we can't correct?

2696 Mr. Roberts. No, I think it absolutely is a couple of  
2697 things. One is training -- training around the actual rule --  
2698 training around the CSAT portal -- how it works.

2699 We've had instances where inspectors would ask a facility  
2700 to do something in their top-screen that is not possible because  
2701 the top-screen doesn't allow that type of data to be inputted.  
2702 So that just shows me that that particular inspector may not  
2703 understand how the top-screen itself works.

2704 Certainly, training of the regulation -- the top-screen

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2705 tool, the CSAT suite of tools that Mr. Wulf mentioned -- certainly,  
2706 the guidance -- difference between guidance and regulation, and  
2707 I think, as DHS has indicated, as GAO has indicated, as DHS has  
2708 said in other occasions, they are putting together some more  
2709 specific directives, some more specific guidance material for  
2710 their inspectors.

2711 I think this is one area where actually a checklist would  
2712 be helpful in terms of understanding what an inspection should  
2713 do, what we should look for, the level and detail an inspection  
2714 should occur, site to site, region to region, regardless of the  
2715 particular nuances of the facility. There are some basic things  
2716 that should occur every time.

2717 Mr. Harper. Thanks, Mr. Roberts.

2718 Mr. Conrad, if I may ask you -- I know we've had some that  
2719 would argue that information from CFATS-regulated facilities is  
2720 not available to people who should know it. What would be your  
2721 response to that?

2722 Mr. Conrad. I would say that if that's true it's because  
2723 the systems we have in place to make that happen aren't working.  
2724 There is a statute, the EPCRA -- the Environmental -- the Emergency  
2725 Planning and Community Right to Know Act -- that originated in  
2726 this committee whose sole focus is to make sure that state and  
2727 local emergency planning bodies and fire departments are provided  
2728 with all the information that they need to plan for emergencies  
2729 of whatever sort -- natural as well as security related -- and

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2730 to be able to respond to them, and the statute is just -- couldn't  
2731 be clearer that, for example, those facilities shall promptly  
2732 provide information necessary for developing and implementing  
2733 the emergency plan.

2734         So it's not qualified, and it requires submission of lists  
2735 of safety data sheets or the safety data sheets themselves,  
2736 inventories of chemicals, or, upon request, the maximum and  
2737 average amounts of a chemical on the site, where it's stored,  
2738 how it's stored, and that information, in turn, can be made  
2739 available to the public.

2740         And specifically with respect to fire departments, it says  
2741 that the owner or operator with the facility shall allow the fire  
2742 department to conduct an on-site inspection of the facility and  
2743 shall provide to the fire department specific location  
2744 information on hazardous chemicals at the facility.

2745         So we think the statute is sound. It may well be appropriate  
2746 for this committee to conduct oversight on why it is the LEPAS  
2747 perform less -- more or less well in certain areas. But it  
2748 certainly -- the CFATS program doesn't restrict any of that.

2749         To the contrary, the statute that you all passed four years  
2750 ago expressly preserves all those sorts of information disclosure  
2751 statutes from any effect by a result of the CFATS program.

2752         In fact, the guidance -- this is the CVI guidance from DHS  
2753 from the Bush administration, no less, state -- note, state,  
2754 local, and tribal officials including first responders must have

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2755 access to any information that is necessary to plan for and respond  
2756 to an emergency event at a chemical facility.

2757 It's equally important that this information is available  
2758 in a form that is readily accessible and easily disseminated.  
2759 In most cases, a facility can provide this information that  
2760 contains all necessary operational and facility-specific  
2761 information and excludes CVI.

2762 But then, as Mr. Wulf said, there's a way for sharing CVI,  
2763 too. So the systems that -- the legal system, I think, is sound.  
2764 It's just a question of whether it's really working well.

2765 Mr. Harper. Thank you very much, Mr. Conrad.

2766 The chair will now recognize the gentleman from New York,  
2767 Mr. Tonko, the ranking member of the subcommittee.

2768 Mr. Tonko.

2769 Mr. Tonko. Thank you, Mr. Chair.

2770 I believe we must acknowledge that the CFATS program is not  
2771 comprehensive and that security gaps do indeed exist.

2772 Director Currie, can you give us a sense of the quality of  
2773 information given to first responders near CFATS facilities?

2774 Mr. Currie. Yes, sir.

2775 So actually in our ongoing review that we'll issue a report  
2776 on next month we are looking at that very issue and it relates  
2777 to what Mr. Conrad is saying.

2778 He's right that there's never been an assessment of the  
2779 process itself under CFATS for how well they're coordinating with

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2780 the local emergency planning committees and what they're  
2781 providing.

2782 That's exactly what we are looking at. We are digging into  
2783 that process to figure out how they're coordinating with those  
2784 committees and what information specifically those committees  
2785 and first responders are actually getting.

2786 And so, you know, we'll report on that next month.

2787 Mr. Tonko. You will share that with this committee?

2788 Mr. Currie. Yes, sir.

2789 Mr. Tonko. The subcommittee, please.

2790 Have they always had all the information in preparation  
2791 necessary to respond to incidents at these facilities?

2792 Mr. Currie. Well, I think one of the things we are looking  
2793 at, as we've talked about today, you know, the CFATS program has  
2794 only been around 10 years and some of these other programs have  
2795 been around much longer.

2796 So, you know, in the early stages of the program that was  
2797 not the focus. The focus was getting facilities enrolled and  
2798 things like that.

2799 So, you know, this is something that's evolved over time.  
2800 Nobody's really looked at it, and so that's why we are taking  
2801 a look at it.

2802 It's an extremely important issue. I mean, these are life  
2803 and death situations and it's important they have the information  
2804 they need to respond.

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2805 Mr. Tonko. Thank you. If first responders do not have all  
2806 the necessary information, it makes those security gaps even  
2807 worse.

2808 Dr. Wilson, what is your sense on some of the security gaps  
2809 in the CFATS program? Do you have any thoughts on the exemptions  
2810 that exist in the program?

2811 Mr. Wilson. Sure. I think with regard to exemptions, we  
2812 heard earlier around waste water -- waste treatment nuclear and  
2813 maritime, and I think it's worth assessing whether and to what  
2814 extent security is an element of the safety programs in those  
2815 -- in those sectors.

2816 And the reason I say that is that in practice, I think there's  
2817 a cultural and operational divide between safety engineering and  
2818 security provisions and yet security and engineering are  
2819 interrelated.

2820 So good engineering design drives down both safety and  
2821 security risks but security is often missing from engineering  
2822 practice.

2823 So last month, the American Institute of Chemical Engineers  
2824 -- sorry -- had its conference with a keynote address by the FBI,  
2825 and the reason for that appearance by FBI was to encourage  
2826 engineers to include security in their scope of practice rather  
2827 than relegating it, in a way, to traditional barriers, monitoring,  
2828 and response approaches.

2829 And so I think it would be worth evaluating if these exempted

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2830 sectors are meeting the CFATS 18 performance standards and if  
2831 they're effectively integrating security into engineering  
2832 practice.

2833 Mr. Tonko. So, from that, I can assume that first responders  
2834 often -- that they may not know exactly what is at a facility  
2835 before having to respond to the incident?

2836 Mr. Wilson. It's a -- I would say it's a perennial problem.  
2837 Despite the requirements of the Emergency Planning Community  
2838 Right to Know Act, there are gaps in information, in particular  
2839 in transmitting information to first responders.

2840 One of the problems with the local emergency planning  
2841 committee structure is that the members of those committees are  
2842 serving voluntarily and yet there is a lot asked of those members.

2843 I served as the state's representative -- the state  
2844 Department of Industrial Relations representative -- to our state  
2845 emergency response committee in California and saw firsthand the  
2846 difficulty that those members of the local committees -- the  
2847 challenges that they carried in trying to implement the  
2848 requirements of a EPCRA and transmitting information effectively  
2849 and so forth.

2850 Mr. Tonko. I have concerns with EPA's recent decisions  
2851 around the RMP rule. Can you discuss some of the provisions that  
2852 were delayed and what would be rolled back from the latest RMP  
2853 proposal?

2854 Mr. Wilson. There are 10 provisions having to do with

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2855 incident prevention that are being proposed for removal from the  
2856 program, and we could go through and catalog each of those.

2857         They, I think, are the -- I think are the most fundamental  
2858 and most sort of protective aspects of the RMP that have been  
2859 -- that have been proposed.

2860         And as I said earlier, one of the reasons I am very concerned  
2861 about that is because of the fact that prevention elements provide  
2862 protection against multiple threats, and we've heard from many  
2863 members today about not only the threat of an intentional attack  
2864 against a facility but the very real threat of a natural disaster,  
2865 of an earthquake -- as we are in California -- of a mechanical  
2866 failure, and we heard of power outage and so forth.

2867         And so prevention elements or prevention requirements drive  
2868 down that risk footprint in the face of all of those threats.

2869         Those are proposed to be thoroughly removed under the RMP  
2870 proposal that we are hearing from the administration.

2871         Mr. Tonko. Thank you, Dr. Wilson.

2872         With that, I yield back.

2873         Mr. Harper. The gentleman yields back.

2874         The chair will now recognize the gentleman from Texas, Mr.  
2875 Green, for five minutes.

2876         Mr. Green. Thank you, Mr. Chairman. I want to thank our  
2877 panel for being here today.

2878         As I said earlier in our first witness, CFATS was created  
2879 because of what happened in West Texas. But as we found out that

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2880 -- and I think the last thing I heard that that was arson and  
2881 still being investigated -- but our real challenge is from natural  
2882 disasters, like you just said -- earthquakes in California,  
2883 hurricanes and tropical storms in the Gulf of Mexico. That's  
2884 what I would like to focus more on and see how we can correct  
2885 it.

2886         The -- I have a district in East Harris County, and Ms.  
2887 Arellano is very correct -- Manchester has a chemical plant on  
2888 the west side, a tank farm on the north side before the Houston  
2889 ship channel, and a refinery to the east side, and on the south  
2890 they're covered by railroad tracks.

2891         And that's where Houston literally started back in the 1830s  
2892 and 1840s. The Manchester area was actually called Harrisburg  
2893 before there was a city of Houston.

2894         And so we see a lot of these challenges in urban areas where  
2895 industry is literally right next door to people who have lived  
2896 there and it's in Manchester for 50 years. I know two generations  
2897 at least in that community.

2898         One of the concerns I had was that during our Hurricane Harvey  
2899 -- and I guess I should understand that when it was coming in,  
2900 our air monitors were shut down.

2901         I've been told that I have probably the most air monitored  
2902 district in the country because we have EPA. We have the city  
2903 of Houston there they have jurisdiction. We have the county of  
2904 Harris with a pollution control agency and, of course, the state

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2905 of Texas, and it's not just the air monitors but the other issue  
2906 is that most of the rising water was literally on the bottom of  
2907 those plants and refineries and chemical plants because of the  
2908 55 inches of rain in four days -- how can you do it?

2909         The other problem, though -- and I hope the industry is  
2910 listening because we've talked about it -- is that we have huge  
2911 tanks that hold product, either crude oil or refined product,  
2912 and the way they're filled up is that they have floating roofs.

2913

2914         The problem is when you get that much water on that roof,  
2915 those rooves actually turn and you end up -- whatever the emissions  
2916 come from that, but it also can overflow because of the heavy  
2917 rain.

2918         So we've got a lot of challenges in our area and to keep  
2919 working with it, but we used to have community groups, and I hardly  
2920 hear about them anymore -- Manchester, Pasadena, Bay Town -- the  
2921 community groups, and I would go to those meetings sometimes and  
2922 the industry would come in and sit down with their neighbors along  
2923 the fence line, and I am not so sure those are still going. Is  
2924 that -- is that still active in other parts of the country and  
2925 maybe not in our area?

2926         Mr. Wilson. Is that -- is that question to me?

2927         Mr. Green. Yes.

2928         Mr. Wilson. I am not aware of those kinds of meetings taking  
2929 place and -- but I, you know, absolutely, you know, agree with

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2930 your characterization of the problem.

2931         One of the things that California has done in its refinery  
2932 safety regulations has required companies to look at inherently  
2933 safer technologies wherever feasible and it has also required,  
2934 and I think in the example that you have just given, risk  
2935 management strategies that require redundancy and independence  
2936 of safeguards to prevent a cascade of failures so, for example,  
2937 in the event of a power failure, losing safeguards, one after  
2938 the other.

2939         And, you know, of course, you know, California is the third  
2940 largest refining state and is, you know, producing jet fuel and  
2941 gasoline. It's inherently hazardous, and so we felt it was  
2942 important to be very clear about the importance of introducing  
2943 and requiring, actually, independence and --

2944         Mr. Green. Let me -- I only have 26 seconds.

2945         Mr. Wilson. Sorry.

2946         Mr. Green. And I agree, because even with the Arkema problem  
2947 -- wasn't in our district but the redundancies weren't there.

2948         In fact, our Harris County district attorney has launched an  
2949 investigation into that plant and see why it didn't.

2950         Ms. Arellano, in your testimony, you talked a lot about how  
2951 communities like ours in Houston face additional challenges  
2952 during natural disasters due to their proximity to these plants.

2953         What recommendations would you do for industry to improve  
2954 their relationship with community groups and civic clubs, because

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2955 I know -- I visit Manchester civic club as often as I can and,  
2956 typically, one of our refinery staff is there to answer questions.

2957 What would -- what are some of the suggestions TEJAS would  
2958 tell us that we could do and inform people in the neighborhood  
2959 but also, you know, just how we can do this better?

2960 Because those refineries and chemical plants are probably  
2961 not going to move because they've been there for 50 years.

2962 Ms. Arellano. These industry partners, they do come out  
2963 to the civic associations. But they talk about scholarships.

2964 They talk about fire, indoor air pollutants. They'll hand out  
2965 fire detectors.

2966 But they won't talk about the latest expansion. They won't  
2967 talk about a permit notice they had out -- like the one they have  
2968 out that would increase hydrogen cyanide from 52 tons to 512 tons.

2969 They'll go ahead and they'll speak about a backpack giveaway  
2970 event but not give any real information. So I would say having  
2971 true and real information going between industry partners and  
2972 neighboring communities is vital to this process.

2973 The other thing that I would like people to consider is a  
2974 cumulative analysis of the TCQ is supposed to have some sort of  
2975 cumulative analysis program.

2976 It's important for us to know exactly the impacts of all  
2977 the neighbors. Just like you said, there is Contanda Chemical,  
2978 it's 87 CO carbon storage tanks with a capacity of a thousand  
2979 to 74,000 barrels of chemical product.

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2980 At Valero Refining, it has 164,000 barrels per calendar day  
2981 of refining, and then the sulfuric acid plant that's Eco Services,  
2982 original Rhodia.

2983 So it's important for us to know the impacts of all of these  
2984 aggregated together. RMP facilities have, you know, these  
2985 radiuses.

2986 But we are not accounting for the toxic impacts on the  
2987 communities, and adding all that information, to not say that  
2988 four facilities are exposing the community to 10 cancer-causing  
2989 substances but instead saying this community is exposed to 40,  
2990 and taking into account that all of them have safety hazards and  
2991 all of them have chemical releases, they all are exposed to fires  
2992 and incidences whether it is -- people keep talking about these  
2993 terrorist attacks but the communities are exposed to daily toxics.

2994

2995 They're exposed -- they're more frequently exposed to fires  
2996 from chemical releases and fugitive emissions than they are a  
2997 terror attack.

2998 So I would hope that this committee considers these everyday  
2999 problems with community members in the decision to keep going  
3000 forward and give people the opportunity to make their own  
3001 decisions -- safe ones for them and their families.

3002 Mr. Harper. The gentleman's time has expired.

3003 Seeing that there are no further members wishing to ask  
3004 questions, I want to thank each of you for being here today and

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3005 for the knowledge and information that you have shared with us.  
3006 It's very, very helpful.

3007 Before we conclude, I would like to ask for unanimous consent  
3008 to submit the following document for the record -- a letter from  
3009 the Chemical Facility Anti-Terrorism Standards Coalition.

3010 Without objection, so ordered.

3011 [The information follows:]

3012

3013 \*\*\*\*\*COMMITTEE INSERT 10\*\*\*\*\*

3014 Mr. Harper. And pursuant to committee rules, I remind  
3015 members that they have 10 business days to submit additional  
3016 questions for the record, and should you get any of those questions  
3017 I would ask that you submit your responses within 10 days -- 10  
3018 business days from the receipt of such questions.

3019 Without objection, the subcommittee is adjourned.

3020 [Whereupon, at 12:44 p.m., the committee was adjourned.]