

WRITTEN STATEMENT OF THE INTERNATIONAL LIQUID TERMINALS ASSOCIATION  
(ILTA)

Senate Homeland Security and Governmental Affairs Committee (HSGAC) Roundtable “Sensibly Reforming the Chemical Facility Anti-Terrorism Standards Program.”

Andrew S. Wright  
Vice President of Legislative Affairs  
June 4, 2019

Chairman Johnson, Ranking Member Peters and Members of the Committee, thank you for the opportunity to participate in today’s roundtable discussion of sensible reforms to the Chemical Facility Anti-Terrorism Standards (CFATS) Program.

The International Liquid Terminals Association (ILTA) is the only trade association focused exclusively on the tank and terminals industry, representing nearly 90 companies with over 600 terminals across all 50 states. ILTA members provide storage and transportation logistics and value-added services for a wide range of liquid commodities, including crude oil, gasoline, diesel, jet fuel, chemicals, renewable fuels, fertilizer, vegetable oil and other food-grade materials. Liquid terminals are critical to the transportation infrastructure that connects producers, manufacturers, retailers and ultimately consumers across the U.S. and into overseas markets in the trade of bulk liquid commodities.

ILTA member companies provide storage and logistics for many bulk liquid products that are inputs for many industries. A subset of these bulk liquids stored by ILTA members are materials covered by CFATS.

ILTA recognizes the crucial role that CFATS plays in maintaining our nation’s security and appreciates the diligence with which the Department of Homeland Security (DHS) - Cybersecurity and Infrastructure Security Agency (CISA) administers this important program. ILTA member companies appreciate the cooperative relationship—spanning multiple Administrations—they have maintained with CISA and its predecessor organization, the National Protection and Programs Directorate. For example, since the reauthorization of CFATS in 2014, DHS has made significant improvements, including streamlining the process for approving security plans and the vetting process for facility access.

As Congress works toward CFATS reauthorization, ILTA would like to offer two important recommendations for improving the program’s effectiveness. In my closing, I will also describe three additional principles that we ask the Committee to consider as it works towards a longer-term reauthorization of the program.

First, as a member of the CFATS industry coalition, ILTA endorses the coalition’s call for longer-term reauthorization. ILTA recommends that Congress establish a multi-year reauthorization cycle for the program, to provide all affected industries with the regulatory certainty needed to plan for prudent investments in their security infrastructure.

The major part of my testimony will be devoted to explaining the importance of an additional ILTA recommendation that pertains to the treatment of gasoline, diesel, and other fuel mixtures under the CFATS program. ILTA strongly urges Congress to include language in CFATS authorization to ensure that gasoline, diesel, and other Class 1, 2 and 3 flammable mixtures are categorized appropriately based on their physical properties.

DHS maintains a list of over 300 Chemicals of Interest (COIs) which are regulated under CFATS. For flammable materials, inclusion in this list is based on a standard rating system for identification of hazardous materials developed by the National Fire Protection Association (NFPA). NFPA is widely acknowledged as the leading authority on fire and related hazards, and the codes and standards it develops are referred to by numerous Authorities Having Jurisdiction (AHJs) at the federal, state, and local levels of government. Through research and consultation with its extensive network of fire protection professionals, NFPA has developed and promulgated over 275 consensus-based codes and standards. NFPA standards are supported by research on the physical properties of subject materials, as well as the practical experiences of thousands of fire-fighting professionals.

DHS has developed its COI list because of the security concerns these materials might pose. All flammable materials identified as COIs have NFPA ratings of Class 4 (extremely flammable). However, the CFATS rules include a notable and problematic exception in their treatment of gasoline (Class 3) and diesel, kerosene and jet fuel (Class 2). In other words, the treatment of gasoline, diesel, and other fuel blends is inconsistent with the most authoritative standard in use today for the characterization of flammable materials.

Faced with overwhelming scientific evidence DHS has recognized that gasoline and other fuels do not pose the same risks as other more flammable liquids. In fact, for nearly a decade, DHS has not required facilities that possess only gasoline, diesel, kerosene and jet fuel to file a “top-screen” report. Other security programs – such as the US Coast Guard’s Maritime Security Transportation Act (MTSA) regulations – do not consider gasoline, diesel, kerosene and jet fuel to be included among “Certain Dangerous Cargos” requiring additional security considerations. In addition, gasoline and other fuel mixtures are not included in the Environmental Protection Agency’s Risk Management Plan or the Occupational Safety and Health Administration’s Process Safety Management regulations for environmental protection and worker safety.

ILTA appreciates that, in practice, DHS recognizes the lower risk associated with gasoline and other fuel blends relative to other materials listed as COIs. At the same time, ILTA and its member companies have sought to correct the mistaken regulatory treatment of gasoline and other fuel blends through regulatory channels for more than ten years. The stated regulatory treatment of gasoline and fuel blends is out of step with the underlying regulatory policy, creating uncertainty for our industry.

Only action by Congress can ensure that gasoline and fuel mixtures receive appropriate treatment in CFATS enforcement under all future Administrations. This can be done by specifying in the statute that DHS may not designate a material as a COI or require a facility to file a “top-screen” or similar report, based on flammability unless the material has an NFPA rating of Class 4. Alternatively, if the Committee would prefer to avoid reference to a third-party designation such as the NFPA rating system itself, it could include in the statute a reference to the actual physical properties of an NFPA Class 4 substance, without referencing the classification itself. Either approach would ensure that DHS is able

to maximize the security of chemical facilities by remaining focused on materials whose attributes make them a plausible security risk.

In closing, I would like to describe three additional principles we believe should guide the next round of CFATS reauthorization.

***The CFATS Program Must Retain a Singular Mission of Reducing the Risk of Terrorism.***

While it may seem obvious for a program that was statutorily created with the words “Anti-Terrorism” and “Security” in its name, ILTA asks Congress to ensure that CFATS remains focused on its mission—protecting chemical facilities from the potential risks of terrorist activity. The mission creep that would result by folding extraneous provisions – even those directed toward laudable goals such as worker safety or environmental protections.-- would serve only to dilute a program whose mission is too critical to be co-opted for other purposes. These other important considerations are best left to other agencies and other statutes with more topical expertise and relevance.

***The CFATS Program Should Protect the Confidentiality of Site Security Information.***

It is vitally important that DHS structures the CFATS program to prevent disclosure of site-specific security information to the public, or to anyone lacking a need-to-know and the required security clearances. A core principle of CFATS is to protect sensitive information from individuals who might pose a threat to the facility’s employees, surrounding community and property. Sensitive information – such as security plans – must remain protected to ensure national security objectives are being met.

***DHS Should Follow Appropriate Notice and Comment Rulemaking Procedures Within CFATS.***

If DHS wants to modify Appendix A, currently, it must undertake notice-and-comment rulemaking. ILTA encourages Congress to maintain this requirement. Changes to the COI list are critical decisions with serious implications for facilities that are subject to CFATS and how they are tiered within the program. Removing the requirement of notice-and-comment rulemaking would reduce transparency in the designation process and deprive DHS of important information as it makes decisions. Changes to the COI must be based on risk and the best scientific data and take into consideration current industry mitigation practices.

Thank you again for the opportunity to provide these views on behalf of the tanks and terminals industry. I look forward to your questions.