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5 MARKUP ON H.R. 908, FULL IMPLEMENTATION OF THE CHEMICAL

6 FACILITY ANTI-TERRORISM STANDARDS ACT

7 WEDNESDAY, MAY 4, 2011

8 House of Representatives,

9 Subcommittee on Environment and Economy

10 Committee on Energy and Commerce

11 Washington, D.C.

12 The Subcommittee met, pursuant to call, at 12:43 p.m.,
13 in Room 2123 of the Rayburn House Office Building, Hon. John
14 Shimkus [Chairman of the Subcommittee] presiding.

15 Members present: Representatives Shimkus, Murphy,
16 Whitfield, Bass, Latta, Harper, Gardner, Green, Barrow, and
17 Waxman (ex officio).

18 Staff present: Charlotte Baker, Press Secretary; Jim
19 Barnette, General Counsel; Mike Bloomquist, Deputy General
20 Counsel; Anita Bradley, Senior Policy Advisor to Chairman

21 Emeritus; Jerry Couri, Professional Staff Member,
22 Environment; Peter Kielty, Senior Legislative Analyst; Heidi
23 King, Chief Economist; Dave McCarthy, Chief Counsel,
24 Environment/Economy; Carly McWilliams, Legislative Clerk;
25 Katie Novaria, Legislative Clerk; Chris Sarley, Policy
26 Coordinator, Environment and Economy; Peter Spencer,
27 Professional Staff Member, Oversight; Kristin Amerling,
28 Democratic Chief Counsel and Oversight Staff Director; Jen
29 Berenholz, Democratic Chief Clerk; Jackie Cohen, Democratic
30 Counsel; Greg Dotson, Democratic Energy and Environment Staff
31 Director; and Caitlin Haberman, Democratic Policy Analyst.

|
32 Mr. {Shimkus.} The committee will come to order. The
33 chair recognizes himself for an opening statement.

34 While recent reports concerning the death of Osama bin
35 Laden certainly close a major threat from 9/11, the war
36 against terror is far from over and we should be no less
37 resolved to defend ourselves from any future attacks
38 including potential attacks on high-risk facilities with
39 chemicals.

40 According to testimony before the subcommittee last
41 month, we learned that the Chemical Facility Anti-Terrorism
42 Standard program, or CFATS, has so far been a success but
43 still has a long way to go before it is fully implemented.
44 Four years ago when the program was born, we were not sure
45 what to expect so I commend the Department of Homeland
46 Security and the regulated community for working together to
47 make CFATS work.

48 In fact, progress has been so promising, the Department
49 of Homeland Security stated it wants to see CFATS made
50 permanent. The stakeholders, particularly owners, operators
51 within the regulated community of high-risk facilities
52 possessing chemicals, feel similarly as they want to see a
53 lengthy reauthorization with no major changes. I think this
54 is a more than reasonable position considering the combined

55 multibillion-dollar investments of the private sector and DHS
56 over the last decade to secure these facilities from attack,
57 not to mention the fragile state of the economy that we let
58 this program get fully implemented before making serious
59 alterations to it.

60 Today, I will offer an amendment, maybe more, that will
61 make some modest but important changes to H.R. 908. One
62 amendment will authorize up to \$89 million to be appropriated
63 each year for the 7 years contemplated in this bill. This
64 figure is a ceiling, not a floor, and it matches the
65 President's budget request for 2012. In addition, under the
66 announced policy of the Majority Leader, which I fully
67 support, we cannot increase authorization without finding an
68 offset. Since the last appropriated figure for CFATS
69 programs was \$100 million in fiscal year 2011, we comply with
70 this requirement.

71 I also want to mention that my ranking member and I are
72 in communication on issue that are important to him and
73 really to anyone who has ports and facilities on the TWIC
74 card where we have not come to an agreement yet. We do
75 believe we will have agreement of some sort, maybe not 100
76 percent, when we move to the full committee.

77 Some of my colleagues might be tempted to vote ``no''
78 because the bill may not include enough of the provisions

79 they want or hoping to rejoin the debate sooner or they want
80 something else. Others on my side want permanence, but we
81 know we can't get there, so we are trying to meet in the
82 middle to move this legislation forward. I urge my
83 colleagues to favorably report this bill and send the
84 Appropriations Committee a clear signal that the authorizing
85 committee is not abandoning its responsibilities and can
86 handle the program from here.

87 Thus far, CFATS has proven to be a successful weapon in
88 the fight against terrorist attacks and acts. The regulated
89 community now accepts it. We should give both the government
90 and the private sector the cleanest long-term certainty they
91 need to progress and make CFATS work well for security and
92 economic reasons. I urge an ``aye'' vote to report H.R. 908
93 to the full committee.

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

95 ***** COMMITTEE INSERT *****

|
96 Mr. {Shimkus.} I now recognize my friend, Mr. Green
97 from Texas, for an opening statement.

98 Mr. {Green.} Mr. Chairman, thank you for holding the
99 markup on H.R. 908, legislation to reauthorize the CFATS
100 program.

101 The legislation is vital to the district that I
102 represent. We represent the largest concentration of
103 chemical-producing facilities in the United States in our
104 district. We also represent the workers at these plants, and
105 most of them live in our district. Because I represent both
106 the producers and the workers, I take this legislation very
107 seriously as it is so important to the safety of my
108 constituents.

109 Over the past few weeks, my staff and Chairman Waxman's
110 staff have tried to come to an agreement on several issues
111 with the majority. Today, with the possible exception of one
112 issue I raised on the continuity on background checks, these
113 issues have not been resolved. I want to maintain the Energy
114 and Commerce Committee's jurisdiction over CFATS, and I
115 signed on to the underlying bill H.R. 908 with the
116 understanding that the majority and minority would work with
117 our staffs on several provisions. We are continuing to work
118 on these issues, and I remain hopeful we will have agreement

119 between now and the full committee.

120 For me, this legislation is not about political games,
121 it is about safety in our country, especially in our
122 district, and again, we have the largest complex in the
123 country. I have a willingness to work with the majority. If
124 they decide not to take me up on the offer, you have the
125 votes to move the bill no matter what, but I think we would
126 have a much better bill if the majority and the minority
127 would work together. I have no problem with moving it to the
128 full committee so we can have some more time to work. Yield
129 back my time.

130 [The prepared statement of Mr. Green follows:]

131 ***** COMMITTEE INSERT *****

|
132 Mr. {Shimkus.} The gentleman yields back his time, and
133 the chair thanks him.

134 The chair reminds members that pursuant to the committee
135 rules, all members' opening statements will be made part of
136 the record. Are there further opening statements? My
137 colleague from Pennsylvania, Mr. Murphy, is recognized.

138 Mr. {Murphy.} Thank you, Mr. Chairman.

139 The United States has been the world's biggest
140 manufacturing Nation for over a century, but this year in
141 2011 we lost that esteem to China. The chemical industry
142 alone has lost 90,000 jobs in the last 5 years. Today,
143 however, it is readying for insurgence. The abundance of
144 domestic natural gas has placed America's chemical makers
145 close to the feedstock needed for everything from fertilizers
146 to paints to plastics to resins. The success of these
147 domestic chemical employers is essential to our Nation's
148 economic recovery.

149 So if the President is serious about his call to double
150 exports in 5 years, then look at the chemical industry, where
151 we can see the jobs success we all seek. This successful
152 \$674 billion American chemical enterprise accounts for more
153 than one-tenth of United States exports and provides
154 approximately 780,000 jobs in the United States.

155 For the year 2010, U.S. chemical exports increased by 17
156 percent, turning a \$100 million trade deficit into a \$3.7
157 billion trade surplus. Therefore, any federal policy to keep
158 our plants secure, families safe and the public protected
159 must also produce the regulatory certainty and stability
160 needed so chemical employers can continue to safely grow and
161 create jobs, and I might add, we can control chemical plant
162 security for plants in the United States but we have no
163 control for chemical plants outside the United States.

164 Here in the United States, the safety of these
165 facilities is non-negotiable. For example, a disinfectant
166 plant in New York City had the potential to affect more than
167 12 million people in a 14-mile radius of terrorists were to
168 attack that plant. Prior to and in the months and years
169 after 9/11, one could have walked right into that chemical
170 plant with a camera, take pictures, steal secrets and never
171 once be questioned. That is unacceptable, and since then the
172 problems have been fixed. But in order to maintain this
173 trajectory towards keeping the safety and security of
174 chemical plants as a high priority, we need long-term
175 authorization of this bill. CFATS specifically corrects the
176 vulnerabilities.

177 Under the Chemical Facility Anti-Terrorism Standards, or
178 CFATS, more than 4,000 chemical plants and refineries and

179 even hospitals and colleagues have made significant
180 improvements towards keeping our communities safe. In fact,
181 since 9/11, the domestic chemical industry has spent an
182 estimated \$8 billion in plant security, and under the
183 existing framework will spend another \$8 billion. A long-
184 term authorization will give the industry the certainty
185 needed to make upfront capital investments and continue
186 growing and succeeding.

187 Without this bill, however, our concern is that
188 companies will run the risk of making costly decisions today
189 that might run afoul of new and confusing regulatory
190 standards of tomorrow. So I thank my colleague, Gene Green,
191 for working with me on this bill as well as Chairman Shimkus
192 and Chairman Upton and hope we can bring this measure to the
193 full Energy and Commerce Committee for consideration. Let us
194 pass this much-needed legislation and ensure a key part of
195 our homeland security policy is kept in place while also
196 maintaining and growing jobs here at home.

197 And with that, I yield back.

198 [The prepared statement of Mr. Murphy follows:]

199 ***** COMMITTEE INSERT *****

|
200 Mr. {Shimkus.} The gentleman yields back his time. Are
201 there any other members seeking an opening statement on the
202 bill?

|

203 H.R. 908

204 Mr. {Shimkus.} If not, the chair calls up H.R. 908 and

205 asks the clerk to report.

206 The {Clerk.} H.R. 908, to extend the authority of the

207 Secretary of Homeland Security to maintain the Chemical

208 Facility Anti-Terrorism Standards program.

209 [H.R. 908 follows:]

210 ***** INSERT 1 *****

|
211 Mr. {Shimkus.} Without objection, the first reading of
212 the bill is dispensed with and the bill will be open for
213 amendment at any point. So ordered.

214 Following Chairman Upton's protocols for markups, are
215 there any bipartisan amendments to the bill? If not, the
216 chair recognizes himself to offer an amendment relating to
217 the authorization levels and asks the clerk to report.

218 The {Clerk.} An amendment offered by Mr. Shimkus.

219 [The amendment follows:]

220 ***** INSERT 2 *****

|
221 Mr. {Shimkus.} Without objection, the reading of the
222 amendment is dispensed with and the chair recognizes himself
223 for 5 minutes in support of the amendment.

224 As Ranking Member Waxman pointed out at a hearing last
225 month, the Majority Leader's protocols require that for a
226 bill to be scheduled for House Floor consideration, it must
227 not increase current authorizations for appropriations. H.R.
228 908 did not include an authorization figure because the
229 appropriations for the CFATS for 2011 had not been decided at
230 introduction. Without an offsetting cut, and it must not
231 authorize for appropriations such sums as may be necessary,
232 as we debated a lot in the last Congress, silence in a bill
233 on authorizations of appropriations is treated as ``such
234 sums'' authority.

235 According to the Department of Homeland Security, the
236 CFATS program received \$89.928 million for fiscal year 2011.
237 This amendment sets the authorization for appropriations at
238 \$89.92 million in each fiscal year authorized under the bill.
239 With adoption of this amendment, H.R. 908 meets the
240 requirements for consideration by the full House.

241 And I am asking unanimous consent to correct in essence
242 a drafting error for the end of the amendment which
243 originally had 2018, and we would like it to state 2017.

244 Without objection, so ordered.

245 Is there further discussion on the amendment? If there
246 is no further discussion, the vote occurs on the amendment.
247 All those in favor will signify by saying aye. All those
248 opposed, no. The ayes have it. The amendment is agreed to.

249 Are there any other amendments to be considered? If
250 there are no further amendments, the question now occurs on
251 favorably reporting the bill to the full committee. All
252 those in favor, say aye. All those opposed, no. In the
253 opinion of the chair, the ayes have it. The ayes have it,
254 and the bill is favorably reported.

255 Without objection, staff is authorized to make technical
256 and conforming changes to the bill approved by the
257 subcommittee today. Hearing no objection, so ordered.

258 The chair thanks all member and staff. The subcommittee
259 stands adjourned.

260 [Whereupon, at 12:55 p.m., the Subcommittee was
261 adjourned.]