

In the Senate of the United States,

December 10, 2014.

Resolved, That the bill from the House of Representatives (H.R. 4007) entitled “An Act to recodify and reauthorize the Chemical Facility Anti-Terrorism Standards Program.”, do pass with the following

AMENDMENT:

In lieu of the matter proposed to be inserted, insert the following:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Protecting and Securing*
3 *Chemical Facilities from Terrorist Attacks Act of 2014”.*

4 ***SEC. 2. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS***

5 ***PROGRAM.***

6 *(a) IN GENERAL.—The Homeland Security Act of*
7 *2002 (6 U.S.C. 101 et seq.) is amended by adding at the*
8 *end the following:*

1 **“TITLE XXI—CHEMICAL FACILITY**
2 **ANTI-TERRORISM STANDARDS**

3 **“SEC. 2101. DEFINITIONS.**

4 *“In this title—*

5 *“(1) the term ‘CFATS regulation’ means—*

6 *“(A) an existing CFATS regulation; and*

7 *“(B) any regulation or amendment to an*
8 *existing CFATS regulation issued pursuant to*
9 *the authority under section 2107;*

10 *“(2) the term ‘chemical facility of interest’*
11 *means a facility that—*

12 *“(A) holds, or that the Secretary has a rea-*
13 *sonable basis to believe holds, a chemical of inter-*
14 *est, as designated under Appendix A to part 27*
15 *of title 6, Code of Federal Regulations, or any*
16 *successor thereto, at a threshold quantity set pur-*
17 *suant to relevant risk-related security principles;*
18 *and*

19 *“(B) is not an excluded facility;*

20 *“(3) the term ‘covered chemical facility’ means a*
21 *facility that—*

22 *“(A) the Secretary—*

23 *“(i) identifies as a chemical facility of*
24 *interest; and*

1 “(ii) based upon review of the facility’s
2 Top-Screen, determines meets the risk cri-
3 teria developed under section 2102(e)(2)(B);
4 and

5 “(B) is not an excluded facility;

6 “(4) the term ‘excluded facility’ means—

7 “(A) a facility regulated under the Mari-
8 time Transportation Security Act of 2002 (Pub-
9 lic Law 107–295; 116 Stat. 2064);

10 “(B) a public water system, as that term is
11 defined in section 1401 of the Safe Drinking
12 Water Act (42 U.S.C. 300f);

13 “(C) a Treatment Works, as that term is de-
14 fined in section 212 of the Federal Water Pollu-
15 tion Control Act (33 U.S.C. 1292);

16 “(D) a facility owned or operated by the
17 Department of Defense or the Department of En-
18 ergy; or

19 “(E) a facility subject to regulation by the
20 Nuclear Regulatory Commission, or by a State
21 that has entered into an agreement with the Nu-
22 clear Regulatory Commission under section 274
23 b. of the Atomic Energy Act of 1954 (42 U.S.C.
24 2021(b)) to protect against unauthorized access

1 *of any material, activity, or structure licensed by*
2 *the Nuclear Regulatory Commission;*

3 “(5) the term ‘existing CFATS regulation’
4 *means—*

5 “(A) a regulation promulgated under sec-
6 *tion 550 of the Department of Homeland Secu-*
7 *rity Appropriations Act, 2007 (Public Law 109–*
8 *295; 6 U.S.C. 121 note) that is in effect on the*
9 *day before the date of enactment of the Pro-*
10 *tecting and Securing Chemical Facilities from*
11 *Terrorist Attacks Act of 2014; and*

12 “(B) a Federal Register notice or other pub-
13 *lished guidance relating to section 550 of the De-*
14 *partment of Homeland Security Appropriations*
15 *Act, 2007 that is in effect on the day before the*
16 *date of enactment of the Protecting and Securing*
17 *Chemical Facilities from Terrorist Attacks Act of*
18 *2014;*

19 “(6) the term ‘expedited approval facility’ means
20 *a covered chemical facility for which the owner or op-*
21 *erator elects to submit a site security plan in accord-*
22 *ance with section 2102(c)(4);*

23 “(7) the term ‘facially deficient’, relating to a
24 *site security plan, means a site security plan that*
25 *does not support a certification that the security*

1 *measures in the plan address the security vulner-*
2 *ability assessment and the risk-based performance*
3 *standards for security for the facility, based on a re-*
4 *view of—*

5 *“(A) the facility’s site security plan;*

6 *“(B) the facility’s Top-Screen;*

7 *“(C) the facility’s security vulnerability as-*
8 *essment; or*

9 *“(D) any other information that—*

10 *“(i) the facility submits to the Depart-*
11 *ment; or*

12 *“(ii) the Department obtains from a*
13 *public source or other source;*

14 *“(8) the term ‘guidance for expedited approval*
15 *facilities’ means the guidance issued under section*
16 *2102(c)(4)(B)(i);*

17 *“(9) the term ‘risk assessment’ means the Sec-*
18 *retary’s application of relevant risk criteria identified*
19 *in section 2102(e)(2)(B);*

20 *“(10) the term ‘terrorist screening database’*
21 *means the terrorist screening database maintained by*
22 *the Federal Government Terrorist Screening Center or*
23 *its successor;*

1 “(11) the term ‘tier’ has the meaning given the
2 term in section 27.105 of title 6, Code of Federal Reg-
3 ulations, or any successor thereto;

4 “(12) the terms ‘tiering’ and ‘tiering method-
5 ology’ mean the procedure by which the Secretary as-
6 signs a tier to each covered chemical facility based on
7 the risk assessment for that covered chemical facility;

8 “(13) the term ‘Top-Screen’ has the meaning
9 given the term in section 27.105 of title 6, Code of
10 Federal Regulations, or any successor thereto; and

11 “(14) the term ‘vulnerability assessment’ means
12 the identification of weaknesses in the security of a
13 chemical facility of interest.

14 **“SEC. 2102. CHEMICAL FACILITY ANTI-TERRORISM STAND-**
15 **ARDS PROGRAM.**

16 “(a) PROGRAM ESTABLISHED.—

17 “(1) IN GENERAL.—There is in the Department
18 a Chemical Facility Anti-Terrorism Standards Pro-
19 gram.

20 “(2) REQUIREMENTS.—In carrying out the
21 Chemical Facility Anti-Terrorism Standards Pro-
22 gram, the Secretary shall—

23 “(A) identify—

24 “(i) chemical facilities of interest; and

25 “(ii) covered chemical facilities;

1 “(B) require each chemical facility of inter-
2 est to submit a Top-Screen and any other infor-
3 mation the Secretary determines necessary to en-
4 able the Department to assess the security risks
5 associated with the facility;

6 “(C) establish risk-based performance stand-
7 ards designed to address high levels of security
8 risk at covered chemical facilities; and

9 “(D) require each covered chemical facility
10 to—

11 “(i) submit a security vulnerability as-
12 sessment; and

13 “(ii) develop, submit, and implement a
14 site security plan.

15 “(b) SECURITY MEASURES.—

16 “(1) IN GENERAL.—A facility, in developing a
17 site security plan as required under subsection (a),
18 shall include security measures that, in combination,
19 appropriately address the security vulnerability as-
20 sessment and the risk-based performance standards
21 for security for the facility.

22 “(2) EMPLOYEE INPUT.—To the greatest extent
23 practicable, a facility’s security vulnerability assess-
24 ment and site security plan shall include input from
25 at least 1 facility employee and, where applicable, 1

1 *employee representative from the bargaining agent at*
2 *that facility, each of whom possesses, in the deter-*
3 *mination of the facility’s security officer, relevant*
4 *knowledge, experience, training, or education as per-*
5 *tains to matters of site security.*

6 “(c) *APPROVAL OR DISAPPROVAL OF SITE SECURITY*
7 *PLANS.—*

8 “(1) *IN GENERAL.—*

9 “(A) *REVIEW.—Except as provided in*
10 *paragraph (4), the Secretary shall review and*
11 *approve or disapprove each site security plan*
12 *submitted pursuant to subsection (a).*

13 “(B) *BASES FOR DISAPPROVAL.—The Sec-*
14 *retary—*

15 “(i) *may not disapprove a site security*
16 *plan based on the presence or absence of a*
17 *particular security measure; and*

18 “(ii) *shall disapprove a site security*
19 *plan if the plan fails to satisfy the risk-*
20 *based performance standards established*
21 *pursuant to subsection (a)(2)(C).*

22 “(2) *ALTERNATIVE SECURITY PROGRAMS.—*

23 “(A) *AUTHORITY TO APPROVE.—*

24 “(i) *IN GENERAL.—The Secretary may*
25 *approve an alternative security program es-*

1 *established by a private sector entity or a*
2 *Federal, State, or local authority or under*
3 *other applicable laws, if the Secretary deter-*
4 *mines that the requirements of the program*
5 *meet the requirements under this section.*

6 *“(ii) ADDITIONAL SECURITY MEAS-*
7 *URES.—If the requirements of an alter-*
8 *native security program do not meet the re-*
9 *quirements under this section, the Secretary*
10 *may recommend additional security meas-*
11 *ures to the program that will enable the*
12 *Secretary to approve the program.*

13 *“(B) SATISFACTION OF SITE SECURITY*
14 *PLAN REQUIREMENT.—A covered chemical facil-*
15 *ity may satisfy the site security plan require-*
16 *ment under subsection (a) by adopting an alter-*
17 *native security program that the Secretary has—*

18 *“(i) reviewed and approved under sub-*
19 *paragraph (A); and*

20 *“(ii) determined to be appropriate for*
21 *the operations and security concerns of the*
22 *covered chemical facility.*

23 *“(3) SITE SECURITY PLAN ASSESSMENTS.—*

24 *“(A) RISK ASSESSMENT POLICIES AND PRO-*
25 *CEDURES.—In approving or disapproving a site*

1 *security plan under this subsection, the Sec-*
2 *retary shall employ the risk assessment policies*
3 *and procedures developed under this title.*

4 “(B) *PREVIOUSLY APPROVED PLANS.—In*
5 *the case of a covered chemical facility for which*
6 *the Secretary approved a site security plan be-*
7 *fore the date of enactment of the Protecting and*
8 *Securing Chemical Facilities from Terrorist At-*
9 *tacks Act of 2014, the Secretary may not require*
10 *the facility to resubmit the site security plan*
11 *solely by reason of the enactment of this title.*

12 “(4) *EXPEDITED APPROVAL PROGRAM.—*

13 “(A) *IN GENERAL.—A covered chemical fa-*
14 *ility assigned to tier 3 or 4 may meet the re-*
15 *quirement to develop and submit a site security*
16 *plan under subsection (a)(2)(D) by developing*
17 *and submitting to the Secretary—*

18 “(i) *a site security plan and the cer-*
19 *tification described in subparagraph (C); or*

20 “(ii) *a site security plan in conform-*
21 *ance with a template authorized under sub-*
22 *paragraph (H).*

23 “(B) *GUIDANCE FOR EXPEDITED APPROVAL*
24 *FACILITIES.—*

1 “(i) *IN GENERAL.*—Not later than 180
2 *days after the date of enactment of the Pro-*
3 *tecting and Securing Chemical Facilities*
4 *from Terrorist Attacks Act of 2014, the Sec-*
5 *retary shall issue guidance for expedited ap-*
6 *proval facilities that identifies specific secu-*
7 *rity measures that are sufficient to meet the*
8 *risk-based performance standards.*

9 “(ii) *MATERIAL DEVIATION FROM*
10 *GUIDANCE.*—If a security measure in the
11 *site security plan of an expedited approval*
12 *facility materially deviates from a security*
13 *measure in the guidance for expedited ap-*
14 *proval facilities, the site security plan shall*
15 *include an explanation of how such security*
16 *measure meets the risk-based performance*
17 *standards.*

18 “(iii) *APPLICABILITY OF OTHER LAWS*
19 *TO DEVELOPMENT AND ISSUANCE OF INI-*
20 *TIAL GUIDANCE.*—During the period before
21 *the Secretary has met the deadline under*
22 *clause (i), in developing and issuing, or*
23 *amending, the guidance for expedited ap-*
24 *proval facilities under this subparagraph*
25 *and in collecting information from expe-*

1 *dited approval facilities, the Secretary shall*
2 *not be subject to—*

3 *“(I) section 553 of title 5, United*
4 *States Code;*

5 *“(II) subchapter I of chapter 35 of*
6 *title 44, United States Code; or*

7 *“(III) section 2107(b) of this title.*

8 *“(C) CERTIFICATION.—The owner or oper-*
9 *ator of an expedited approval facility shall sub-*
10 *mit to the Secretary a certification, signed under*
11 *penalty of perjury, that—*

12 *“(i) the owner or operator is familiar*
13 *with the requirements of this title and part*
14 *27 of title 6, Code of Federal Regulations,*
15 *or any successor thereto, and the site secu-*
16 *rity plan being submitted;*

17 *“(ii) the site security plan includes the*
18 *security measures required by subsection*
19 *(b);*

20 *“(iii)(I) the security measures in the*
21 *site security plan do not materially deviate*
22 *from the guidance for expedited approval*
23 *facilities except where indicated in the site*
24 *security plan;*

1 “(II) any deviations from the guidance
2 for expedited approval facilities in the site
3 security plan meet the risk-based perform-
4 ance standards for the tier to which the fa-
5 cility is assigned; and

6 “(III) the owner or operator has pro-
7 vided an explanation of how the site secu-
8 rity plan meets the risk-based performance
9 standards for any material deviation;

10 “(iv) the owner or operator has visited,
11 examined, documented, and verified that the
12 expedited approval facility meets the cri-
13 teria set forth in the site security plan;

14 “(v) the expedited approval facility has
15 implemented all of the required performance
16 measures outlined in the site security plan
17 or set out planned measures that will be im-
18 plemented within a reasonable time period
19 stated in the site security plan;

20 “(vi) each individual responsible for
21 implementing the site security plan has
22 been made aware of the requirements rel-
23 evant to the individual’s responsibility con-
24 tained in the site security plan and has

1 *demonstrated competency to carry out those*
2 *requirements;*

3 “(vii) *the owner or operator has com-*
4 *mitted, or, in the case of planned measures*
5 *will commit, the necessary resources to fully*
6 *implement the site security plan; and*

7 “(viii) *the planned measures include*
8 *an adequate procedure for addressing events*
9 *beyond the control of the owner or operator*
10 *in implementing any planned measures.*

11 “(D) *DEADLINE.—*

12 “(i) *IN GENERAL.—Not later than 120*
13 *days after the date described in clause (ii),*
14 *the owner or operator of an expedited ap-*
15 *proval facility shall submit to the Secretary*
16 *the site security plan and the certification*
17 *described in subparagraph (C).*

18 “(ii) *DATE.—The date described in*
19 *this clause is—*

20 “(I) *for an expedited approval fa-*
21 *cility that was assigned to tier 3 or 4*
22 *under existing CFATS regulations be-*
23 *fore the date of enactment of the Pro-*
24 *tecting and Securing Chemical Facili-*
25 *ties from Terrorist Attacks Act of 2014,*

1 *the date that is 210 days after the date*
2 *of enactment of that Act; and*

3 “(II) *for any expedited approval*
4 *facility not described in subclause (I),*
5 *the later of—*

6 “(aa) *the date on which the*
7 *expedited approval facility is as-*
8 *signed to tier 3 or 4 under sub-*
9 *section (e)(2)(A); or*

10 “(bb) *the date that is 210*
11 *days after the date of enactment*
12 *of the Protecting and Securing*
13 *Chemical Facilities from Terrorist*
14 *Attacks Act of 2014.*

15 “(iii) *NOTICE.—An owner or operator*
16 *of an expedited approval facility shall no-*
17 *tify the Secretary of the intent of the owner*
18 *or operator to certify the site security plan*
19 *for the expedited approval facility not later*
20 *than 30 days before the date on which the*
21 *owner or operator submits the site security*
22 *plan and certification described in subpara-*
23 *graph (C).*

24 “(E) *COMPLIANCE.—*

1 “(i) *IN GENERAL.*—*For an expedited*
2 *approval facility submitting a site security*
3 *plan and certification in accordance with*
4 *subparagraphs (A), (B), (C), and (D)*—

5 “(I) *the expedited approval facil-*
6 *ity shall comply with all of the re-*
7 *quirements of its site security plan;*
8 *and*

9 “(II) *the Secretary*—

10 “(aa) *except as provided in*
11 *subparagraph (G), may not dis-*
12 *approve the site security plan;*
13 *and*

14 “(bb) *may audit and inspect*
15 *the expedited approval facility*
16 *under subsection (d) to verify*
17 *compliance with its site security*
18 *plan.*

19 “(ii) *NONCOMPLIANCE.*—*If the Sec-*
20 *retary determines an expedited approval fa-*
21 *ility is not in compliance with the require-*
22 *ments of the site security plan or is other-*
23 *wise in violation of this title, the Secretary*
24 *may enforce compliance in accordance with*
25 *section 2104.*

1 “(F) *AMENDMENTS TO SITE SECURITY*
2 *PLAN.*—

3 “(i) *REQUIREMENT.*—

4 “(I) *IN GENERAL.*—*If the owner*
5 *or operator of an expedited approval*
6 *facility amends a site security plan*
7 *submitted under subparagraph (A), the*
8 *owner or operator shall submit the*
9 *amended site security plan and a cer-*
10 *tification relating to the amended site*
11 *security plan that contains the infor-*
12 *mation described in subparagraph (C).*

13 “(II) *TECHNICAL AMENDMENTS.*—
14 *For purposes of this clause, an amend-*
15 *ment to a site security plan includes*
16 *any technical amendment to the site*
17 *security plan.*

18 “(ii) *AMENDMENT REQUIRED.*—*The*
19 *owner or operator of an expedited approval*
20 *facility shall amend the site security plan*
21 *if—*

22 “(I) *there is a change in the de-*
23 *sign, construction, operation, or main-*
24 *tenance of the expedited approval facil-*
25 *ity that affects the site security plan;*

1 “(II) the Secretary requires addi-
2 tional security measures or suspends a
3 certification and recommends addi-
4 tional security measures under sub-
5 paragraph (G); or

6 “(III) the owner or operator re-
7 ceives notice from the Secretary of a
8 change in tiering under subsection
9 (e)(3).

10 “(iii) *DEADLINE*.—An amended site
11 security plan and certification shall be sub-
12 mitted under clause (i)—

13 “(I) in the case of a change in de-
14 sign, construction, operation, or main-
15 tenance of the expedited approval facil-
16 ity that affects the security plan, not
17 later than 120 days after the date on
18 which the change in design, construc-
19 tion, operation, or maintenance oc-
20 curred;

21 “(II) in the case of the Secretary
22 requiring additional security measures
23 or suspending a certification and rec-
24 ommending additional security meas-
25 ures under subparagraph (G), not later

1 *than 120 days after the date on which*
2 *the owner or operator receives notice of*
3 *the requirement for additional security*
4 *measures or suspension of the certifi-*
5 *cation and recommendation of addi-*
6 *tional security measures; and*

7 *“(III) in the case of a change in*
8 *tiering, not later than 120 days after*
9 *the date on which the owner or oper-*
10 *ator receives notice under subsection*
11 *(e)(3).*

12 *“(G) FACIALLY DEFICIENT SITE SECURITY*
13 *PLANS.—*

14 *“(i) PROHIBITION.—Notwithstanding*
15 *subparagraph (A) or (E), the Secretary*
16 *may suspend the authority of a covered*
17 *chemical facility to certify a site security*
18 *plan if the Secretary—*

19 *“(I) determines the certified site*
20 *security plan or an amended site secu-*
21 *rity plan is facially deficient; and*

22 *“(II) not later than 100 days*
23 *after the date on which the Secretary*
24 *receives the site security plan and cer-*
25 *tification, provides the covered chem-*

1 ical facility with written notification
2 that the site security plan is facially
3 deficient, including a clear explanation
4 of each deficiency in the site security
5 plan.

6 “(ii) *ADDITIONAL SECURITY MEAS-*
7 *URES.—*

8 “(I) *IN GENERAL.—If, during or*
9 *after a compliance inspection of an ex-*
10 *pedited approval facility, the Secretary*
11 *determines that planned or imple-*
12 *mented security measures in the site*
13 *security plan of the facility are insuffi-*
14 *cient to meet the risk-based perform-*
15 *ance standards based on misrepresen-*
16 *tation, omission, or an inadequate de-*
17 *scription of the site, the Secretary*
18 *may—*

19 “(aa) *require additional se-*
20 *curity measures; or*

21 “(bb) *suspend the certifi-*
22 *cation of the facility.*

23 “(II) *RECOMMENDATION OF ADDI-*
24 *TIONAL SECURITY MEASURES.—If the*
25 *Secretary suspends the certification of*

1 *an expedited approval facility under*
2 *subclause (I), the Secretary shall—*

3 *“(aa) recommend specific ad-*
4 *ditional security measures that, if*
5 *made part of the site security*
6 *plan by the facility, would enable*
7 *the Secretary to approve the site*
8 *security plan; and*

9 *“(bb) provide the facility an*
10 *opportunity to submit a new or*
11 *modified site security plan and*
12 *certification under subparagraph*
13 *(A).*

14 *“(III) SUBMISSION; REVIEW.—If*
15 *an expedited approval facility deter-*
16 *mines to submit a new or modified site*
17 *security plan and certification as au-*
18 *thorized under subclause (II)(bb)—*

19 *“(aa) not later than 90 days*
20 *after the date on which the facil-*
21 *ity receives recommendations*
22 *under subclause (II)(aa), the facil-*
23 *ity shall submit the new or modi-*
24 *fied plan and certification; and*

1 “(bb) not later than 45 days
2 after the date on which the Sec-
3 retary receives the new or modi-
4 fied plan under item (aa), the
5 Secretary shall review the plan
6 and determine whether the plan is
7 facially deficient.

8 “(IV) DETERMINATION NOT TO IN-
9 CLUDE ADDITIONAL SECURITY MEAS-
10 URES.—

11 “(aa) REVOCATION OF CER-
12 TIFICATION.—If an expedited ap-
13 proval facility does not agree to
14 include in its site security plan
15 specific additional security meas-
16 ures recommended by the Sec-
17 retary under subclause (II)(aa),
18 or does not submit a new or modi-
19 fied site security plan in accord-
20 ance with subclause (III), the Sec-
21 retary may revoke the certifi-
22 cation of the facility by issuing
23 an order under section
24 2104(a)(1)(B).

1 “(bb) *EFFECT OF REVOCATION.*—*If the Secretary revokes*
2 *the certification of an expedited*
3 *approval facility under item (aa)*
4 *by issuing an order under section*
5 *2104(a)(1)(B)—*

6 “(AA) *the order shall re-*
7 *quire the owner or operator*
8 *of the facility to submit a*
9 *site security plan or alter-*
10 *native security program for*
11 *review by the Secretary re-*
12 *view under subsection (c)(1);*
13 *and*

14 “(BB) *the facility shall*
15 *no longer be eligible to certify*
16 *a site security plan under*
17 *this paragraph.*

18 “(V) *FACIAL DEFICIENCY.*—*If the*
19 *Secretary determines that a new or*
20 *modified site security plan submitted*
21 *by an expedited approval facility*
22 *under subclause (III) is facially defi-*
23 *cient—*
24

1 “(aa) not later than 120
2 days after the date of the deter-
3 mination, the owner or operator
4 of the facility shall submit a site
5 security plan or alternative secu-
6 rity program for review by the
7 Secretary under subsection (c)(1);
8 and

9 “(bb) the facility shall no
10 longer be eligible to certify a site
11 security plan under this para-
12 graph.

13 “(H) TEMPLATES.—

14 “(i) IN GENERAL.—The Secretary may
15 develop prescriptive site security plan tem-
16 plates with specific security measures to
17 meet the risk-based performance standards
18 under subsection (a)(2)(C) for adoption and
19 certification by a covered chemical facility
20 assigned to tier 3 or 4 in lieu of developing
21 and certifying its own plan.

22 “(ii) APPLICABILITY OF OTHER LAWS
23 TO DEVELOPMENT AND ISSUANCE OF INI-
24 TIAL SITE SECURITY PLAN TEMPLATES AND
25 RELATED GUIDANCE.—During the period

1 *before the Secretary has met the deadline*
2 *under subparagraph (B)(i), in developing*
3 *and issuing, or amending, the site security*
4 *plan templates under this subparagraph, in*
5 *issuing guidance for implementation of the*
6 *templates, and in collecting information*
7 *from expedited approval facilities, the Sec-*
8 *retary shall not be subject to—*

9 *“(I) section 553 of title 5, United*
10 *States Code;*

11 *“(II) subchapter I of chapter 35 of*
12 *title 44, United States Code; or*

13 *“(III) section 2107(b) of this title.*

14 *“(iii) RULE OF CONSTRUCTION.—Noth-*
15 *ing in this subparagraph shall be construed*
16 *to prevent a covered chemical facility from*
17 *developing and certifying its own security*
18 *plan in accordance with subparagraph (A).*

19 *“(I) EVALUATION.—*

20 *“(i) IN GENERAL.—Not later than 18*
21 *months after the date of enactment of the*
22 *Protecting and Securing Chemical Facili-*
23 *ties from Terrorist Attacks Act of 2014, the*
24 *Secretary shall take any appropriate action*
25 *necessary for a full evaluation of the expe-*

1 *dited approval program authorized under*
2 *this paragraph, including conducting an*
3 *appropriate number of inspections, as au-*
4 *thorized under subsection (d), of expedited*
5 *approval facilities.*

6 *“(ii) REPORT.—Not later than 18*
7 *months after the date of enactment of the*
8 *Protecting and Securing Chemical Facili-*
9 *ties from Terrorist Attacks Act of 2014, the*
10 *Secretary shall submit to the Committee on*
11 *Homeland Security and Governmental Af-*
12 *airs of the Senate and the Committee on*
13 *Homeland Security and the Committee on*
14 *Energy and Commerce of the House of Rep-*
15 *resentatives a report that contains—*

16 *“(I)(aa) the number of eligible fa-*
17 *cilities using the expedited approval*
18 *program authorized under this para-*
19 *graph; and*

20 *“(bb) the number of facilities that*
21 *are eligible for the expedited approval*
22 *program but are using the standard*
23 *process for developing and submitting*
24 *a site security plan under subsection*
25 *(a)(2)(D);*

1 “(II) any costs and efficiencies as-
2 sociated with the expedited approval
3 program;

4 “(III) the impact of the expedited
5 approval program on the backlog for
6 site security plan approval and au-
7 thorization inspections;

8 “(IV) an assessment of the ability
9 of expedited approval facilities to sub-
10 mit facially sufficient site security
11 plans;

12 “(V) an assessment of any impact
13 of the expedited approval program on
14 the security of chemical facilities; and

15 “(VI) a recommendation by the
16 Secretary on the frequency of compli-
17 ance inspections that may be required
18 for expedited approval facilities.

19 “(d) COMPLIANCE.—

20 “(1) AUDITS AND INSPECTIONS.—

21 “(A) DEFINITIONS.—In this paragraph—

22 “(i) the term ‘nondepartmental’—

23 “(I) with respect to personnel,
24 means personnel that is not employed
25 by the Department; and

1 “(II) with respect to an entity,
2 means an entity that is not a compo-
3 nent or other authority of the Depart-
4 ment; and

5 “(ii) the term ‘nongovernmental’—

6 “(I) with respect to personnel,
7 means personnel that is not employed
8 by the Federal Government; and

9 “(II) with respect to an entity,
10 means an entity that is not an agency,
11 department, or other authority of the
12 Federal Government.

13 “(B) *AUTHORITY TO CONDUCT AUDITS AND*
14 *INSPECTIONS.*—*The Secretary shall conduct au-*
15 *ditions or inspections under this title using—*

16 “(i) employees of the Department;

17 “(ii) nondepartmental or nongovern-
18 mental personnel approved by the Sec-
19 retary; or

20 “(iii) a combination of individuals de-
21 scribed in clauses (i) and (ii).

22 “(C) *SUPPORT PERSONNEL.*—*The Secretary*
23 *may use nongovernmental personnel to provide*
24 *administrative and logistical services in support*
25 *of audits and inspections under this title.*

1 “(D) *REPORTING STRUCTURE.*—

2 “(i) *NONDEPARTMENTAL AND NON-*
3 *GOVERNMENTAL AUDITS AND INSPEC-*
4 *TIONS.*—*Any audit or inspection conducted*
5 *by an individual employed by a nondepart-*
6 *mental or nongovernmental entity shall be*
7 *assigned in coordination with a regional*
8 *supervisor with responsibility for super-*
9 *vising inspectors within the Infrastructure*
10 *Security Compliance Division of the De-*
11 *partment for the region in which the audit*
12 *or inspection is to be conducted.*

13 “(ii) *REQUIREMENT TO REPORT.*—
14 *While an individual employed by a non-*
15 *departmental or nongovernmental entity is*
16 *in the field conducting an audit or inspec-*
17 *tion under this subsection, the individual*
18 *shall report to the regional supervisor with*
19 *responsibility for supervising inspectors*
20 *within the Infrastructure Security Compli-*
21 *ance Division of the Department for the re-*
22 *gion in which the individual is operating.*

23 “(iii) *APPROVAL.*—*The authority to*
24 *approve a site security plan under sub-*
25 *section (c) or determine if a covered chem-*

1 *ical facility is in compliance with an ap-*
2 *proved site security plan shall be exercised*
3 *solely by the Secretary or a designee of the*
4 *Secretary within the Department.*

5 *“(E) STANDARDS FOR AUDITORS AND IN-*
6 *SPECTORS.—The Secretary shall prescribe stand-*
7 *ards for the training and retraining of each in-*
8 *dividual used by the Department as an auditor*
9 *or inspector, including each individual employed*
10 *by the Department and all nondepartmental or*
11 *nongovernmental personnel, including—*

12 *“(i) minimum training requirements*
13 *for new auditors and inspectors;*

14 *“(ii) retraining requirements;*

15 *“(iii) minimum education and experi-*
16 *ence levels;*

17 *“(iv) the submission of information as*
18 *required by the Secretary to enable deter-*
19 *mination of whether the auditor or inspec-*
20 *tor has a conflict of interest;*

21 *“(v) the proper certification or certifi-*
22 *cations necessary to handle chemical-ter-*
23 *rorism vulnerability information (as de-*
24 *defined in section 27.105 of title 6, Code of*

1 *Federal Regulations, or any successor there-*
2 *to);*

3 “(vi) *the reporting of any issue of non-*
4 *compliance with this section to the Sec-*
5 *retary within 24 hours; and*

6 “(vii) *any additional qualifications for*
7 *fitness of duty as the Secretary may re-*
8 *quire.*

9 “(F) *CONDITIONS FOR NONGOVERNMENTAL*
10 *AUDITORS AND INSPECTORS.—If the Secretary*
11 *arranges for an audit or inspection under sub-*
12 *paragraph (B) to be carried out by a nongovern-*
13 *mental entity, the Secretary shall—*

14 “(i) *prescribe standards for the quali-*
15 *fication of the individuals who carry out*
16 *such audits and inspections that are com-*
17 *mensurate with the standards for similar*
18 *Government auditors or inspectors; and*

19 “(ii) *ensure that any duties carried out*
20 *by a nongovernmental entity are not inher-*
21 *ently governmental functions.*

22 “(2) *PERSONNEL SURETY.—*

23 “(A) *PERSONNEL SURETY PROGRAM.—For*
24 *purposes of this title, the Secretary shall estab-*

1 *lish and carry out a Personnel Surety Program*
2 *that—*

3 “(i) *does not require an owner or oper-*
4 *ator of a covered chemical facility that vol-*
5 *untarily participates in the program to*
6 *submit information about an individual*
7 *more than 1 time;*

8 “(ii) *provides a participating owner or*
9 *operator of a covered chemical facility with*
10 *relevant information about an individual*
11 *based on vetting the individual against the*
12 *terrorist screening database, to the extent*
13 *that such feedback is necessary for the facil-*
14 *ity to be in compliance with regulations*
15 *promulgated under this title; and*

16 “(iii) *provides redress to an indi-*
17 *vidual—*

18 “(I) *whose information was vetted*
19 *against the terrorist screening database*
20 *under the program; and*

21 “(II) *who believes that the person-*
22 *ally identifiable information submitted*
23 *to the Department for such vetting by*
24 *a covered chemical facility, or its des-*
25 *ignated representative, was inaccurate.*

1 “(B) *PERSONNEL SURETY PROGRAM IMPLE-*
2 *MENTATION.—To the extent that a risk-based*
3 *performance standard established under sub-*
4 *section (a) requires identifying individuals with*
5 *ties to terrorism—*

6 “(i) *a covered chemical facility—*

7 “(I) *may satisfy its obligation*
8 *under the standard by using any Fed-*
9 *eral screening program that periodi-*
10 *cally vets individuals against the ter-*
11 *rorist screening database, or any suc-*
12 *cessor program, including the Per-*
13 *sonnel Surety Program established*
14 *under subparagraph (A); and*

15 “(II) *shall—*

16 “(aa) *accept a credential*
17 *from a Federal screening program*
18 *described in subclause (I) if an*
19 *individual who is required to be*
20 *screened presents such a creden-*
21 *tial; and*

22 “(bb) *address in its site secu-*
23 *rity plan or alternative security*
24 *program the measures it will take*
25 *to verify that a credential or doc-*

1 *umentation from a Federal*
2 *screening program described in*
3 *subclause (I) is current;*

4 *“(i) visual inspection shall be suffi-*
5 *cient to meet the requirement under clause*
6 *(i)(II)(bb), but the facility should consider*
7 *other means of verification, consistent with*
8 *the facility’s assessment of the threat posed*
9 *by acceptance of such credentials; and*

10 *“(iii) the Secretary may not require a*
11 *covered chemical facility to submit any in-*
12 *formation about an individual unless the*
13 *individual—*

14 *“(I) is to be vetted under the Per-*
15 *sonnel Surety Program; or*

16 *“(II) has been identified as pre-*
17 *senting a terrorism security risk.*

18 *“(C) RIGHTS UNAFFECTED.—Nothing in*
19 *this section shall supersede the ability—*

20 *“(i) of a facility to maintain its own*
21 *policies regarding the access of individuals*
22 *to restricted areas or critical assets; or*

23 *“(ii) of an employing facility and a*
24 *bargaining agent, where applicable, to nego-*
25 *tiate as to how the results of a background*

1 *check may be used by the facility with re-*
2 *spect to employment status.*

3 “(3) *AVAILABILITY OF INFORMATION.*—*The Sec-*
4 *retary shall share with the owner or operator of a*
5 *covered chemical facility any information that the*
6 *owner or operator needs to comply with this section.*

7 “(e) *RESPONSIBILITIES OF THE SECRETARY.*—

8 “(1) *IDENTIFICATION OF CHEMICAL FACILITIES*
9 *OF INTEREST.*—*In carrying out this title, the Sec-*
10 *retary shall consult with the heads of other Federal*
11 *agencies, States and political subdivisions thereof, rel-*
12 *evant business associations, and public and private*
13 *labor organizations to identify all chemical facilities*
14 *of interest.*

15 “(2) *RISK ASSESSMENT.*—

16 “(A) *IN GENERAL.*—*For purposes of this*
17 *title, the Secretary shall develop a security risk*
18 *assessment approach and corresponding tiering*
19 *methodology for covered chemical facilities that*
20 *incorporates the relevant elements of risk, includ-*
21 *ing threat, vulnerability, and consequence.*

22 “(B) *CRITERIA FOR DETERMINING SECUR-*
23 *ITY RISK.*—*The criteria for determining the se-*
24 *curity risk of terrorism associated with a covered*
25 *chemical facility shall take into account—*

1 “(i) relevant threat information;

2 “(ii) potential severe economic con-
3 sequences and the potential loss of human
4 life in the event of the facility being subject
5 to attack, compromise, infiltration, or ex-
6 ploitation by terrorists; and

7 “(iii) vulnerability of the facility to at-
8 tack, compromise, infiltration, or exploi-
9 tation by terrorists.

10 “(3) CHANGES IN TIERING.—

11 “(A) MAINTENANCE OF RECORDS.—The
12 Secretary shall document the basis for each in-
13 stance in which—

14 “(i) tiering for a covered chemical fa-
15 cility is changed; or

16 “(ii) a covered chemical facility is de-
17 termined to no longer be subject to the re-
18 quirements under this title.

19 “(B) REQUIRED INFORMATION.—The
20 records maintained under subparagraph (A)
21 shall include information on whether and how
22 the Secretary confirmed the information that
23 was the basis for the change or determination de-
24 scribed in subparagraph (A).

1 “(4) *SEMIANNUAL PERFORMANCE REPORTING.*—
2 *Not later than 6 months after the date of enactment*
3 *of the Protecting and Securing Chemical Facilities*
4 *from Terrorist Attacks Act of 2014, and not less fre-*
5 *quently than once every 6 months thereafter, the Sec-*
6 *retary shall submit to the Committee on Homeland*
7 *Security and Governmental Affairs of the Senate and*
8 *the Committee on Homeland Security and the Com-*
9 *mittee on Energy and Commerce of the House of Rep-*
10 *resentatives a report that includes, for the period cov-*
11 *ered by the report—*

12 “(A) *the number of covered chemical facili-*
13 *ties in the United States;*

14 “(B) *information—*

15 “(i) *describing—*

16 “(I) *the number of instances in*
17 *which the Secretary—*

18 “(aa) *placed a covered chem-*
19 *ical facility in a lower risk tier;*
20 *or*

21 “(bb) *determined that a facil-*
22 *ity that had previously met the*
23 *criteria for a covered chemical fa-*
24 *ility under section 2101(3) no*
25 *longer met the criteria; and*

1 “(II) the basis, in summary form,
2 for each action or determination under
3 subclause (I); and

4 “(ii) that is provided in a sufficiently
5 anonymized form to ensure that the infor-
6 mation does not identify any specific facil-
7 ity or company as the source of the infor-
8 mation when viewed alone or in combina-
9 tion with other public information;

10 “(C) the average number of days spent re-
11 viewing site security or an alternative security
12 program for a covered chemical facility prior to
13 approval;

14 “(D) the number of covered chemical facili-
15 ties inspected;

16 “(E) the average number of covered chem-
17 ical facilities inspected per inspector; and

18 “(F) any other information that the Sec-
19 retary determines will be helpful to Congress in
20 evaluating the performance of the Chemical Fa-
21 cility Anti-Terrorism Standards Program.

22 **“SEC. 2103. PROTECTION AND SHARING OF INFORMATION.**

23 “(a) *IN GENERAL.*—Notwithstanding any other provi-
24 sion of law, information developed under this title, includ-
25 ing vulnerability assessments, site security plans, and other

1 *security related information, records, and documents shall*
2 *be given protections from public disclosure consistent with*
3 *the protection of similar information under section*
4 *70103(d) of title 46, United States Code.*

5 “(b) *SHARING OF INFORMATION WITH STATES AND*
6 *LOCAL GOVERNMENTS.*—*Nothing in this section shall be*
7 *construed to prohibit the sharing of information developed*
8 *under this title, as the Secretary determines appropriate,*
9 *with State and local government officials possessing a need*
10 *to know and the necessary security clearances, including*
11 *law enforcement officials and first responders, for the pur-*
12 *pose of carrying out this title, provided that such informa-*
13 *tion may not be disclosed pursuant to any State or local*
14 *law.*

15 “(c) *SHARING OF INFORMATION WITH FIRST RE-*
16 *SPONDERS.*—

17 “(1) *REQUIREMENT.*—*The Secretary shall pro-*
18 *vide to State, local, and regional fusion centers (as*
19 *that term is defined in section 210A(j)(1)) and State*
20 *and local government officials, as the Secretary deter-*
21 *mines appropriate, such information as is necessary*
22 *to help ensure that first responders are properly pre-*
23 *pared and provided with the situational awareness*
24 *needed to respond to security incidents at covered*
25 *chemical facilities.*

1 “(2) *DISSEMINATION.*—*The Secretary shall dis-*
2 *seminate information under paragraph (1) through a*
3 *medium or system determined by the Secretary to be*
4 *appropriate to ensure the secure and expeditious dis-*
5 *semination of such information to necessary selected*
6 *individuals.*

7 “(d) *ENFORCEMENT PROCEEDINGS.*—*In any pro-*
8 *ceeding to enforce this section, vulnerability assessments,*
9 *site security plans, and other information submitted to or*
10 *obtained by the Secretary under this title, and related vul-*
11 *nerability or security information, shall be treated as if the*
12 *information were classified information.*

13 “(e) *AVAILABILITY OF INFORMATION.*—*Notwith-*
14 *standing any other provision of law (including section*
15 *552(b)(3) of title 5, United States Code), section 552 of title*
16 *5, United States Code (commonly known as the ‘Freedom*
17 *of Information Act’)* shall not apply to information pro-
18 *tected from public disclosure pursuant to subsection (a) of*
19 *this section.*

20 “(f) *SHARING OF INFORMATION WITH MEMBERS OF*
21 *CONGRESS.*—*Nothing in this section shall prohibit the Sec-*
22 *retary from disclosing information developed under this*
23 *title to a Member of Congress in response to a request by*
24 *a Member of Congress.*

1 **“SEC. 2104. CIVIL ENFORCEMENT.**

2 “(a) *NOTICE OF NONCOMPLIANCE.*—

3 “(1) *NOTICE.*—*If the Secretary determines that a*
4 *covered chemical facility is not in compliance with*
5 *this title, the Secretary shall—*

6 “(A) *provide the owner or operator of the*
7 *facility with—*

8 “(i) *not later than 14 days after date*
9 *on which the Secretary makes the deter-*
10 *mination, a written notification of non-*
11 *compliance that includes a clear expla-*
12 *nation of any deficiency in the security vul-*
13 *nerability assessment or site security plan;*
14 *and*

15 “(ii) *an opportunity for consultation*
16 *with the Secretary or the Secretary’s des-*
17 *ignee; and*

18 “(B) *issue to the owner or operator of the*
19 *facility an order to comply with this title by a*
20 *date specified by the Secretary in the order,*
21 *which date shall be not later than 180 days after*
22 *the date on which the Secretary issues the order.*

23 “(2) *CONTINUED NONCOMPLIANCE.*—*If an owner*
24 *or operator remains noncompliant after the proce-*
25 *dures outlined in paragraph (1) have been executed,*
26 *or demonstrates repeated violations of this title, the*

1 *Secretary may enter an order in accordance with this*
2 *section assessing a civil penalty, an order to cease op-*
3 *erations, or both.*

4 “(b) *CIVIL PENALTIES.*—

5 “(1) *VIOLATIONS OF ORDERS.*—*Any person who*
6 *violates an order issued under this title shall be liable*
7 *for a civil penalty under section 70119(a) of title 46,*
8 *United States Code.*

9 “(2) *NON-REPORTING CHEMICAL FACILITIES OF*
10 *INTEREST.*—*Any owner of a chemical facility of in-*
11 *terest who fails to comply with, or knowingly submits*
12 *false information under, this title or the CFATS regu-*
13 *lations shall be liable for a civil penalty under section*
14 *70119(a) of title 46, United States Code.*

15 “(c) *EMERGENCY ORDERS.*—

16 “(1) *IN GENERAL.*—*Notwithstanding subsection*
17 *(a) or any site security plan or alternative security*
18 *program approved under this title, if the Secretary*
19 *determines that there is an imminent threat of death,*
20 *serious illness, or severe personal injury, due to a vio-*
21 *lation of this title or the risk of a terrorist incident*
22 *that may affect a chemical facility of interest, the*
23 *Secretary—*

24 “(A) *shall consult with the facility, if prac-*
25 *ticable, on steps to mitigate the risk; and*

1 “(B) may order the facility, without notice
2 or opportunity for a hearing, effective imme-
3 diately or as soon as practicable, to—

4 “(i) implement appropriate emergency
5 security measures; or

6 “(ii) cease or reduce some or all oper-
7 ations, in accordance with safe shutdown
8 procedures, if the Secretary determines that
9 such a cessation or reduction of operations
10 is the most appropriate means to address
11 the risk.

12 “(2) *LIMITATION ON DELEGATION.*—The Sec-
13 retary may not delegate the authority under para-
14 graph (1) to any official other than the Under Sec-
15 retary responsible for overseeing critical infrastruc-
16 ture protection, cybersecurity, and other related pro-
17 grams of the Department appointed under section
18 103(a)(1)(H).

19 “(3) *LIMITATION ON AUTHORITY.*—The Secretary
20 may exercise the authority under this subsection only
21 to the extent necessary to abate the imminent threat
22 determination under paragraph (1).

23 “(4) *DUE PROCESS FOR FACILITY OWNER OR OP-*
24 *ERATOR.*—

1 “(A) *WRITTEN ORDERS.*—*An order issued*
2 *by the Secretary under paragraph (1) shall be in*
3 *the form of a written emergency order that—*

4 “(i) *describes the violation or risk that*
5 *creates the imminent threat;*

6 “(ii) *states the security measures or*
7 *order issued or imposed; and*

8 “(iii) *describes the standards and pro-*
9 *cedures for obtaining relief from the order.*

10 “(B) *OPPORTUNITY FOR REVIEW.*—*After*
11 *issuing an order under paragraph (1) with re-*
12 *spect to a chemical facility of interest, the Sec-*
13 *retary shall provide for review of the order under*
14 *section 554 of title 5 if a petition for review is*
15 *filed not later than 20 days after the date on*
16 *which the Secretary issues the order.*

17 “(C) *EXPIRATION OF EFFECTIVENESS OF*
18 *ORDER.*—*If a petition for review of an order is*
19 *filed under subparagraph (B) and the review*
20 *under that paragraph is not completed by the*
21 *last day of the 30-day period beginning on the*
22 *date on which the petition is filed, the order*
23 *shall vacate automatically at the end of that pe-*
24 *riod unless the Secretary determines, in writing,*

1 *that the imminent threat providing a basis for*
2 *the order continues to exist.*

3 “(d) *RIGHT OF ACTION.*—*Nothing in this title confers*
4 *upon any person except the Secretary or his or her designee*
5 *a right of action against an owner or operator of a covered*
6 *chemical facility to enforce any provision of this title.*

7 **“SEC. 2105. WHISTLEBLOWER PROTECTIONS.**

8 “(a) *PROCEDURE FOR REPORTING PROBLEMS.*—

9 “(1) *ESTABLISHMENT OF A REPORTING PROCE-*
10 *DURE.*—*Not later than 180 days after the date of en-*
11 *actment of the Protecting and Securing Chemical Fa-*
12 *cilities from Terrorist Attacks Act of 2014, the Sec-*
13 *retary shall establish, and provide information to the*
14 *public regarding, a procedure under which any em-*
15 *ployee or contractor of a chemical facility of interest*
16 *may submit a report to the Secretary regarding a vio-*
17 *lation of a requirement under this title.*

18 “(2) *CONFIDENTIALITY.*—*The Secretary shall*
19 *keep confidential the identity of an individual who*
20 *submits a report under paragraph (1) and any such*
21 *report shall be treated as a record containing pro-*
22 *TECTED information to the extent that the report does*
23 *not consist of publicly available information.*

24 “(3) *ACKNOWLEDGMENT OF RECEIPT.*—*If a re-*
25 *port submitted under paragraph (1) identifies the in-*

1 *dividual making the report, the Secretary shall*
2 *promptly respond to the individual directly and shall*
3 *promptly acknowledge receipt of the report.*

4 “(4) *STEPS TO ADDRESS PROBLEMS.—The Sec-*
5 *retary—*

6 “(A) *shall review and consider the informa-*
7 *tion provided in any report submitted under*
8 *paragraph (1); and*

9 “(B) *may take action under section 2104 of*
10 *this title if necessary to address any substan-*
11 *tiated violation of a requirement under this title*
12 *identified in the report.*

13 “(5) *DUE PROCESS FOR FACILITY OWNER OR OP-*
14 *ERATOR.—*

15 “(A) *IN GENERAL.—If, upon the review de-*
16 *scribed in paragraph (4), the Secretary deter-*
17 *mines that a violation of a provision of this title,*
18 *or a regulation prescribed under this title, has*
19 *occurred, the Secretary may—*

20 “(i) *institute a civil enforcement under*
21 *section 2104(a) of this title; or*

22 “(ii) *if the Secretary makes the deter-*
23 *mination under section 2104(c), issue an*
24 *emergency order.*

1 “(B) *WRITTEN ORDERS.*—*The action of the*
2 *Secretary under paragraph (4) shall be in a*
3 *written form that—*

4 “(i) *describes the violation;*

5 “(ii) *states the authority under which*
6 *the Secretary is proceeding; and*

7 “(iii) *describes the standards and pro-*
8 *cedures for obtaining relief from the order.*

9 “(C) *OPPORTUNITY FOR REVIEW.*—*After*
10 *taking action under paragraph (4), the Secretary*
11 *shall provide for review of the action if a peti-*
12 *tion for review is filed within 20 calendar days*
13 *of the date of issuance of the order for the action.*

14 “(D) *EXPIRATION OF EFFECTIVENESS OF*
15 *ORDER.*—*If a petition for review of an action is*
16 *filed under subparagraph (C) and the review*
17 *under that subparagraph is not completed by the*
18 *end of the 30-day period beginning on the date*
19 *the petition is filed, the action shall cease to be*
20 *effective at the end of such period unless the Sec-*
21 *retary determines, in writing, that the violation*
22 *providing a basis for the action continues to*
23 *exist.*

24 “(6) *RETALIATION PROHIBITED.*—

1 “(A) *IN GENERAL.*—An owner or operator
2 of a chemical facility of interest or agent thereof
3 may not discharge an employee or otherwise dis-
4 criminate against an employee with respect to
5 the compensation provided to, or terms, condi-
6 tions, or privileges of the employment of, the em-
7 ployee because the employee (or an individual
8 acting pursuant to a request of the employee)
9 submitted a report under paragraph (1).

10 “(B) *EXCEPTION.*—An employee shall not
11 be entitled to the protections under this section
12 if the employee—

13 “(i) knowingly and willfully makes
14 any false, fictitious, or fraudulent statement
15 or representation; or

16 “(ii) uses any false writing or docu-
17 ment knowing the writing or document con-
18 tains any false, fictitious, or fraudulent
19 statement or entry.

20 “(b) *PROTECTED DISCLOSURES.*—Nothing in this title
21 shall be construed to limit the right of an individual to
22 make any disclosure—

23 “(1) protected or authorized under section
24 2302(b)(8) or 7211 of title 5, United States Code;

1 “(2) protected under any other Federal or State
2 law that shields the disclosing individual against re-
3 taliation or discrimination for having made the dis-
4 closure in the public interest; or

5 “(3) to the Special Counsel of an agency, the in-
6 spector general of an agency, or any other employee
7 designated by the head of an agency to receive disclo-
8 sures similar to the disclosures described in para-
9 graphs (1) and (2).

10 “(c) *PUBLICATION OF RIGHTS.*—The Secretary, in
11 partnership with industry associations and labor organiza-
12 tions, shall make publicly available both physically and on-
13 line the rights that an individual who discloses information,
14 including security-sensitive information, regarding prob-
15 lems, deficiencies, or vulnerabilities at a covered chemical
16 facility would have under Federal whistleblower protection
17 laws or this title.

18 “(d) *PROTECTED INFORMATION.*—All information
19 contained in a report made under this subsection (a) shall
20 be protected in accordance with section 2103.

21 “**SEC. 2106. RELATIONSHIP TO OTHER LAWS.**

22 “(a) *OTHER FEDERAL LAWS.*—Nothing in this title
23 shall be construed to supersede, amend, alter, or affect any
24 Federal law that—

1 “(1) regulates (including by requiring informa-
2 tion to be submitted or made available) the manufac-
3 ture, distribution in commerce, use, handling, sale,
4 other treatment, or disposal of chemical substances or
5 mixtures; or

6 “(2) authorizes or requires the disclosure of any
7 record or information obtained from a chemical facil-
8 ity under any law other than this title.

9 “(b) STATES AND POLITICAL SUBDIVISIONS.—This
10 title shall not preclude or deny any right of any State or
11 political subdivision thereof to adopt or enforce any regula-
12 tion, requirement, or standard of performance with respect
13 to chemical facility security that is more stringent than a
14 regulation, requirement, or standard of performance issued
15 under this section, or otherwise impair any right or juris-
16 diction of any State with respect to chemical facilities with-
17 in that State, unless there is an actual conflict between this
18 section and the law of that State.

19 “**SEC. 2107. CFATS REGULATIONS.**

20 “(a) GENERAL AUTHORITY.—The Secretary may, in
21 accordance with chapter 5 of title 5, United States Code,
22 promulgate regulations or amend existing CFATS regula-
23 tions to implement the provisions under this title.

24 “(b) EXISTING CFATS REGULATIONS.—

1 “(1) *IN GENERAL.*—*Notwithstanding section 4(b)*
2 *of the Protecting and Securing Chemical Facilities*
3 *from Terrorist Attacks Act of 2014, each existing*
4 *CFATS regulation shall remain in effect unless the*
5 *Secretary amends, consolidates, or repeals the regula-*
6 *tion.*

7 “(2) *REPEAL.*—*Not later than 30 days after the*
8 *date of enactment of the Protecting and Securing*
9 *Chemical Facilities from Terrorist Attacks Act of*
10 *2014, the Secretary shall repeal any existing CFATS*
11 *regulation that the Secretary determines is duplica-*
12 *tive of, or conflicts with, this title.*

13 “(c) *AUTHORITY.*—*The Secretary shall exclusively rely*
14 *upon authority provided under this title in—*

15 “(1) *determining compliance with this title;*

16 “(2) *identifying chemicals of interest; and*

17 “(3) *determining security risk associated with a*
18 *chemical facility.*

19 **“SEC. 2108. SMALL COVERED CHEMICAL FACILITIES.**

20 “(a) *DEFINITION.*—*In this section, the term ‘small cov-*
21 *ered chemical facility’ means a covered chemical facility*
22 *that—*

23 “(1) *has fewer than 100 employees employed at*
24 *the covered chemical facility; and*

1 “(1) identify chemical facilities of interest; and
 2 “(2) make available compliance assistance mate-
 3 rials and information on education and training.”.

4 **(b) CLERICAL AMENDMENT.**—*The table of contents in*
 5 *section 1(b) of the Homeland Security Act of 2002 (Public*
 6 *Law 107–196; 116 Stat. 2135) is amended by adding at*
 7 *the end the following:*

 “**TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS**

 “Sec. 2101. Definitions.

 “Sec. 2102. Chemical Facility Anti-Terrorism Standards Program.

 “Sec. 2103. Protection and sharing of information.—

 “Sec. 2104. Civil enforcement.

 “Sec. 2105. Whistleblower protections.

 “Sec. 2106. Relationship to other laws.

 “Sec. 2107. CFATS regulations.

 “Sec. 2108. Small covered chemical facilities.

 “Sec. 2109. Outreach to chemical facilities of interest.”.

8 **SEC. 3. ASSESSMENT; REPORTS.**

9 **(a) DEFINITIONS.**—*In this section—*

10 (1) the term “Chemical Facility Anti-Terrorism
 11 Standards Program” means—

12 (A) the Chemical Facility Anti-Terrorism
 13 Standards program initially authorized under
 14 section 550 of the Department of Homeland Se-
 15 curity Appropriations Act, 2007 (Public Law
 16 109–295; 6 U.S.C. 121 note); and

17 (B) the Chemical Facility Anti-Terrorism
 18 Standards Program subsequently authorized
 19 under section 2102(a) of the Homeland Security
 20 Act of 2002, as added by section 2;

1 (2) *the term “Department” means the Depart-*
2 *ment of Homeland Security; and*

3 (3) *the term “Secretary” means the Secretary of*
4 *Homeland Security.*

5 (b) *THIRD-PARTY ASSESSMENT.—Using amounts ap-*
6 *propriated to the Department before the date of enactment*
7 *of this Act, the Secretary shall commission a third-party*
8 *study to assess vulnerabilities of covered chemical facilities,*
9 *as defined in section 2101 of the Homeland Security Act*
10 *of 2002 (as added by section 2), to acts of terrorism.*

11 (c) *REPORTS.—*

12 (1) *REPORT TO CONGRESS.—Not later than 18*
13 *months after the date of enactment of this Act, the*
14 *Secretary shall submit to the Committee on Home-*
15 *land Security and Governmental Affairs of the Senate*
16 *and the Committee on Homeland Security and the*
17 *Committee on Energy and Commerce of the House of*
18 *Representatives a report on the Chemical Facility*
19 *Anti-Terrorism Standards Program that includes—*

20 (A) *a certification by the Secretary that the*
21 *Secretary has made significant progress in the*
22 *identification of all chemical facilities of interest*
23 *under section 2102(e)(1) of the Homeland Secu-*
24 *rity Act of 2002, as added by section 2, includ-*
25 *ing—*

1 (i) a description of the steps taken to
2 achieve that progress and the metrics used
3 to measure the progress;

4 (ii) information on whether facilities
5 that submitted Top-Screens as a result of
6 the identification of chemical facilities of
7 interest were tiered and in what tiers those
8 facilities were placed; and

9 (iii) an action plan to better identify
10 chemical facilities of interest and bring
11 those facilities into compliance with title
12 XXI of the Homeland Security Act of 2002,
13 as added by section 2;

14 (B) a certification by the Secretary that the
15 Secretary has developed a risk assessment ap-
16 proach and corresponding tiering methodology
17 under section 2102(e)(2) of the Homeland Secu-
18 rity Act of 2002, as added by section 2;

19 (C) an assessment by the Secretary of the
20 implementation by the Department of the rec-
21 ommendations made by the Homeland Security
22 Studies and Analysis Institute as outlined in the
23 Institute's Tiering Methodology Peer Review
24 (Publication Number: RP12-22-02); and

1 (D) a description of best practices that may
2 assist small covered chemical facilities, as de-
3 fined in section 2108(a) of the Homeland Secu-
4 rity Act of 2002, as added by section 2, in the
5 development of physical security best practices.

6 (2) ANNUAL GAO REPORT.—

7 (A) IN GENERAL.—During the 3-year pe-
8 riod beginning on the date of enactment of this
9 Act, the Comptroller General of the United
10 States shall submit to Congress an annual report
11 that assesses the implementation of this Act and
12 the amendments made by this Act.

13 (B) INITIAL REPORT.—Not later than 180
14 days after the date of enactment of this Act, the
15 Comptroller General shall submit to Congress the
16 first report under subparagraph (A).

17 (C) SECOND ANNUAL REPORT.—Not later
18 than 1 year after the date of the initial report
19 required under subparagraph (B), the Comp-
20 troller General shall submit to Congress the sec-
21 ond report under subparagraph (A), which shall
22 include an assessment of the whistleblower pro-
23 tections provided under section 2105 of the
24 Homeland Security Act of 2002, as added by sec-
25 tion 2, and—

1 (i) describes the number and type of
2 problems, deficiencies, and vulnerabilities
3 with respect to which reports have been sub-
4 mitted under such section 2105;

5 (ii) evaluates the efforts of the Sec-
6 retary in addressing the problems, defi-
7 ciencies, and vulnerabilities described in
8 subsection (a)(1) of such section 2105; and

9 (iii) evaluates the efforts of the Sec-
10 retary to inform individuals of their rights,
11 as required under subsection (c) of such sec-
12 tion 2105.

13 (D) *THIRD ANNUAL REPORT.*—Not later
14 than 1 year after the date on which the Comp-
15 troller General submits the second report re-
16 quired under subparagraph (A), the Comptroller
17 General shall submit to Congress the third report
18 under subparagraph (A), which shall include an
19 assessment of—

20 (i) the expedited approval program au-
21 thorized under section 2102(c)(4) of the
22 Homeland Security Act of 2002, as added
23 by section 2; and

24 (ii) the report on the expedited ap-
25 proval program submitted by the Secretary

1 *under subparagraph (I)(ii) of such section*
2 *2102(c)(4).*

3 **SEC. 4. EFFECTIVE DATE; CONFORMING REPEAL.**

4 *(a) EFFECTIVE DATE.—This Act, and the amendments*
5 *made by this Act, shall take effect on the date that is 30*
6 *days after the date of enactment of this Act.*

7 *(b) CONFORMING REPEAL.—Section 550 of the Depart-*
8 *ment of Homeland Security Appropriations Act, 2007*
9 *(Public Law 109–295; 120 Stat. 1388), is repealed as of*
10 *the effective date of this Act.*

11 **SEC. 5. TERMINATION.**

12 *The authority provided under title XXI of the Home-*
13 *land Security Act of 2002, as added by section 2(a), shall*
14 *terminate on the date that is 4 years after the effective date*
15 *of this Act.*

Attest:

Secretary.

113TH CONGRESS
2^D SESSION

H.R. 4007

AMENDMENT