

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4007

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## AN ACT

To recodify and reauthorize the Chemical Facility Anti-Terrorism Standards Program.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Chemical Facility Anti-  
3 Terrorism Standards Program Authorization and Ac-  
4 countability Act of 2014”.

5 **SEC. 2. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS**  
6 **PROGRAM.**

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

10 **“TITLE XXI—CHEMICAL FACIL-**  
11 **ITY ANTI-TERRORISM STAND-**  
12 **ARDS**

13 **“SEC. 2101. CHEMICAL FACILITY ANTI-TERRORISM STAND-**  
14 **ARDS PROGRAM.**

15 “(a) PROGRAM ESTABLISHED.—There is in the De-  
16 partment a Chemical Facility Anti-Terrorism Standards  
17 Program. Under such Program, the Secretary shall estab-  
18 lish risk-based performance standards designed to protect  
19 covered chemical facilities and chemical facilities of inter-  
20 est from acts of terrorism and other security risks and  
21 require such facilities to submit security vulnerability as-  
22 sessments and to develop and implement site security  
23 plans.

24 “(b) SECURITY MEASURES.—Site security plans re-  
25 quired under subsection (a) may include layered security  
26 measures that, in combination, appropriately address the

1 security vulnerability assessment and the risk-based per-  
2 formance standards for security for the facility.

3 “(c) APPROVAL OR DISAPPROVAL OF SITE SECURITY  
4 PLANS.—

5 “(1) IN GENERAL.—The Secretary shall review  
6 and approve or disapprove each security vulner-  
7 ability assessment and site security plan under sub-  
8 section (a). The Secretary may not disapprove a site  
9 security plan based on the presence or absence of a  
10 particular security measure, but the Secretary shall  
11 disapprove a site security plan if the plan fails to  
12 satisfy the risk-based performance standards estab-  
13 lished under subsection (a).

14 “(2) ALTERNATIVE SECURITY PROGRAMS.—The  
15 Secretary may approve an alternative security pro-  
16 gram established by a private sector entity or a Fed-  
17 eral, State, or local authority or pursuant to other  
18 applicable laws, if the Secretary determines that the  
19 requirements of such program meet the require-  
20 ments of this section. A covered chemical facility  
21 may meet the site security plan requirement under  
22 subsection (a) by adopting an alternative security  
23 program that has been reviewed and approved by the  
24 Secretary under this paragraph.

1           “(3) SITE SECURITY PLAN ASSESSMENTS.—In  
2           approving or disapproving a site security plan under  
3           this subsection, the Secretary shall employ the risk  
4           assessment policies and procedures developed under  
5           this title. In the case of a covered chemical facility  
6           for which a site security plan has been approved by  
7           the Secretary before the date of the enactment of  
8           this title, the Secretary may not require the resub-  
9           mission of the site security information solely by rea-  
10          son of the enactment of this title.

11          “(4) CONSULTATION.—The Secretary may con-  
12          sult with the Government Accountability Office to  
13          investigate the feasibility and applicability a third  
14          party accreditation program that would work with  
15          industry stakeholders to develop site security plans  
16          that may be applicable to all similarly situated facili-  
17          ties. The program would include the development of  
18          Program-Specific Handbooks for facilities to ref-  
19          erence on site.

20          “(d) COMPLIANCE.—

21                 “(1) AUDITS AND INSPECTIONS.—

22                         “(A) IN GENERAL.—The Secretary shall  
23                         conduct the audit and inspection of covered  
24                         chemical facilities for the purpose of deter-  
25                         mining compliance with this Act. The audit and

1 inspection may be carried out by a non-Depart-  
2 ment or nongovernment entity, as approved by  
3 the Secretary.

4 “(B) REPORTING STRUCTURE.—Any audit  
5 or inspection conducted by an individual em-  
6 ployed by a nongovernment entity shall be as-  
7 signed in coordination with the head of audits  
8 and inspections for the region in which the  
9 audit or inspection is to be conducted. When in  
10 the field, any individual employed by a non-  
11 government entity shall report to the respective  
12 head of audits and inspections for the region in  
13 which the individual is operating.

14 “(C) REQUIREMENTS FOR NONGOVERN-  
15 MENT PERSONNEL.—If the Secretary arranges  
16 for an audit or inspection under subparagraph  
17 (A) to be carried out by a nongovernment enti-  
18 ty, the Secretary shall require, as a condition of  
19 such arrangement, that any individual who con-  
20 ducts the audit or inspection be a citizen of the  
21 United States and shall prescribe standards for  
22 the qualification of the individuals who carry  
23 out such audits and inspections that are com-  
24 mensurate with the standards for a Government

1 auditor or inspector. Such standards shall in-  
2 clude—

3 “(i) minimum training requirements  
4 for new auditors or inspectors;

5 “(ii) retraining requirements;

6 “(iii) minimum education and experi-  
7 ence levels;

8 “(iv) the submission of information as  
9 required by the Secretary to enable deter-  
10 mination of whether the auditor or inspec-  
11 tor has a conflict of interest;

12 “(v) the maintenance of a secret secu-  
13 rity clearance;

14 “(vi) reporting any issue of non-com-  
15 pliance with this section to the Secretary  
16 within 24 hours; and

17 “(vii) any additional qualifications for  
18 fitness of duty as the Secretary may estab-  
19 lish.

20 “(D) TRAINING OF DEPARTMENT AUDI-  
21 TORS AND INSPECTORS.—The Secretary shall  
22 prescribe standards for the training and re-  
23 training of individuals employed by the Depart-  
24 ment as auditors and inspectors. Such stand-  
25 ards shall include—

1 “(i) minimum training requirements  
2 for new auditors and inspectors;

3 “(ii) retraining requirements; and

4 “(iii) any additional requirements the  
5 Secretary may establish.

6 “(2) NOTICE OF NONCOMPLIANCE.—

7 “(A) NOTICE.—If the Secretary deter-  
8 mines that a covered chemical facility or a  
9 chemical facility of interest is not in compliance  
10 with this section, the Secretary shall—

11 “(i) provide the owner or operator of  
12 the facility with—

13 “(I) written notification (includ-  
14 ing a clear explanation of any defi-  
15 ciency in the security vulnerability as-  
16 sessment or site security plan) by not  
17 later than 14 days after the deter-  
18 mination is made; and

19 “(II) an opportunity for consulta-  
20 tion with the Secretary or the Sec-  
21 retary’s designee; and

22 “(ii) issue an order to comply by such  
23 date as the Secretary determines to be ap-  
24 propriate under the circumstances.

1           “(B) CONTINUED NONCOMPLIANCE.—If  
2 the owner or operator continues to be in non-  
3 compliance after the date specified in such  
4 order, the Secretary may enter an order assess-  
5 ing a civil penalty, an order to cease operations,  
6 or both.

7           “(3) PERSONNEL SURETY.—

8           “(A) PERSONNEL SURETY PROGRAM.—For  
9 purposes of this title, the Secretary shall carry  
10 out a Personnel Surety Program that—

11           “(i) does not require an owner or op-  
12 erator of a covered chemical facility that  
13 voluntarily participates to submit informa-  
14 tion about an individual more than one  
15 time;

16           “(ii) provides a participating owner or  
17 operator of a covered chemical facility with  
18 feedback about an individual based on vet-  
19 ting the individual against the terrorist  
20 screening database, to the extent that such  
21 feedback is necessary for the facility’s com-  
22 pliance with regulations promulgated under  
23 this title; and

24           “(iii) provides redress to an individual  
25 whose information was vetted against the



1           terrorist screening database under the pro-  
2           gram and who believes that the personally  
3           identifiable information submitted to the  
4           Department for such vetting by a covered  
5           chemical facility, or its designated rep-  
6           resentative, was inaccurate.

7           “(B) PERSONNEL SURETY IMPLEMENTA-  
8           TION.—To the extent that a risk-based per-  
9           formance standard under subsection (a) is di-  
10          rected toward identifying individuals with ter-  
11          rorist ties—

12                 “(i) a covered chemical facility may  
13                 satisfy its obligation under such standard  
14                 with respect to an individual by utilizing  
15                 any Federal screening program that peri-  
16                 odically vets individuals against the ter-  
17                 rorist screening database, or any successor,  
18                 including the Personnel Surety Program  
19                 under subparagraph (A); and

20                 “(ii) the Secretary may not require a  
21                 covered chemical facility to submit any in-  
22                 formation about such individual unless the  
23                 individual—

24                         “(I) is vetted under the Per-  
25                         sonnel Surety Program; or

1                   “(II) has been identified as pre-  
2                   senting a terrorism security risk.

3                   “(C) RESPONSIBILITIES OF SECURITY  
4                   SCREENING COORDINATION OFFICE.—

5                   “(i) IN GENERAL.—The Secretary  
6                   shall direct the Security Screening Coordi-  
7                   nation Office of the Department to coordi-  
8                   nate with the National Protection and Pro-  
9                   grams Directorate to expedite the develop-  
10                  ment of a common credential that screens  
11                  against the terrorist screening database on  
12                  a recurrent basis and meets all other  
13                  screening requirements of this title.

14                  “(ii) REPORT.—Not later than March  
15                  1, 2015, and annually thereafter, the Sec-  
16                  retary shall submit to Congress a report on  
17                  the progress of the Secretary in meeting  
18                  the requirements of clause (i).

19                  “(4) FACILITY ACCESS.—For purposes of the  
20                  compliance of a covered chemical facility with a risk-  
21                  based performance standard established under sub-  
22                  section (a), the Secretary may not require the facil-  
23                  ity to submit any information about an individual  
24                  who has been granted access to the facility unless  
25                  the individual—

1           “(A) was vetted under the Personnel Sur-  
2           ety Program; or

3           “(B) has been identified as presenting a  
4           terrorism security risk.

5           “(5) AVAILABILITY OF INFORMATION.—The  
6           Secretary shall share with the owner or operator of  
7           a covered chemical facility such information as the  
8           owner or operator needs to comply with this section.

9           “(e) RESPONSIBILITIES OF THE SECRETARY.—

10           “(1) IDENTIFICATION OF FACILITIES OF INTER-  
11           EST.—In carrying out this title, the Secretary shall  
12           consult with the heads of other Federal agencies,  
13           States and political subdivisions thereof, and rel-  
14           evant business associations to identify all chemical  
15           facilities of interest.

16           “(2) RISK ASSESSMENT.—

17           “(A) IN GENERAL.—For purposes of this  
18           title, the Secretary shall develop a risk assess-  
19           ment approach and corresponding tiering meth-  
20           odology that incorporates all relevant elements  
21           of risk, including threat, vulnerability, and con-  
22           sequence.

23           “(B) CRITERIA FOR DETERMINING SECUR-  
24           ITY RISK.—The criteria for determining the

1 security risk of terrorism associated with a fa-  
2 cility shall include—

3 “(i) the relevant threat information;

4 “(ii) the potential economic con-  
5 sequences and the potential loss of human  
6 life in the event of the facility being sub-  
7 ject to a terrorist attack, compromise, infil-  
8 tration, or exploitation; and

9 “(iii) the vulnerability of the facility  
10 to a terrorist attack, compromise, infiltra-  
11 tion, or exploitation.

12 “(3) CHANGES IN TIERING.—Any time that  
13 tiering for a covered chemical facility is changed and  
14 the facility is determined to no longer be subject to  
15 the requirements of this title, the Secretary shall  
16 maintain records to reflect the basis for this deter-  
17 mination. The records shall include information on  
18 whether and how the information that was the basis  
19 for the determination was confirmed by the Sec-  
20 retary.

21 “(f) DEFINITIONS.—In this title:

22 “(1) The term ‘covered chemical facility’ means  
23 a facility that the Secretary identifies as a chemical  
24 facility of interest and, based upon review of a Top-  
25 Screen, as such term is defined in section 27.105 of

1 title 6 of Code of Federal Regulations, determines  
2 meets the risk criteria developed pursuant subsection  
3 (e)(2)(B). Such term does not include any of the fol-  
4 lowing:

5 “(A) A facility regulated pursuant to the  
6 Maritime Transportation Security Act of 2002  
7 (Public Law 107–295).

8 “(B) A Public Water System, as such term  
9 is defined by section 1401 of the Safe Drinking  
10 Water Act (Public Law 93–523; 42 U.S.C.  
11 300f).

12 “(C) A Treatment Works, as such term is  
13 defined in section 212 of the Federal Water  
14 Pollution Control Act (Public Law 92–500; 33  
15 U.S.C. 12920).

16 “(D) Any facility owned or operated by the  
17 Department of Defense or the Department of  
18 Energy.

19 “(E) Any facility subject to regulation by  
20 the Nuclear Regulatory Commission.

21 “(2) The term ‘chemical facility of interest’  
22 means a facility that holds, or that the Secretary  
23 has a reasonable basis to believe holds, a Chemical  
24 of Interest, as designated under in Appendix A of  
25 title 6 of the Code of Federal Regulations, at a

1 threshold quantity that meets relevant risk-related  
2 criteria developed pursuant to subsection (e)(2)(B).

3 **“SEC. 2102. PROTECTION AND SHARING OF INFORMATION.**

4 “(a) IN GENERAL.—Notwithstanding any other pro-  
5 vision of law, information developed pursuant to this title,  
6 including vulnerability assessments, site security plans,  
7 and other security related information, records, and docu-  
8 ments shall be given protections from public disclosure  
9 consistent with similar information developed by chemical  
10 facilities subject to regulation under section 70103 of title  
11 46, United States Code.

12 “(b) SHARING OF INFORMATION WITH STATES AND  
13 LOCAL GOVERNMENTS.—This section does not prohibit  
14 the sharing of information developed pursuant to this title,  
15 as the Secretary deems appropriate, with State and local  
16 government officials possessing the necessary security  
17 clearances, including law enforcement officials and first  
18 responders, for the purpose of carrying out this title, if  
19 such information may not be disclosed pursuant to any  
20 State or local law.

21 “(c) SHARING OF INFORMATION WITH FIRST RE-  
22 SPONDERS.—The Secretary shall provide to State, local,  
23 and regional fusion centers (as such term is defined in  
24 section 210A(j)(1) of this Act) and State and local govern-  
25 ment officials, as determined appropriate by the Secretary,

1 such information as is necessary to help ensure that first  
2 responders are properly prepared and provided with the  
3 situational awareness needed to respond to incidents at  
4 covered chemical facilities. Such information shall be dis-  
5 seminated through the Homeland Security Information  
6 Network or the Homeland Secure Data Network, as ap-  
7 propriate.

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

14 **“SEC. 2103. CIVIL PENALTIES.**

15       “(a) VIOLATIONS.—Any person who violates an order  
16 issued under this title shall be liable for a civil penalty  
17 under section 70119(a) of title 46, United States Code.

18       “(b) RIGHT OF ACTION.—Nothing in this title con-  
19 fers upon any person except the Secretary a right of action  
20 against an owner or operator of a covered chemical facility  
21 to enforce any provision of this title.

22 **“SEC. 2104. WHISTLEBLOWER PROTECTIONS.**

23       “The Secretary shall publish on the Internet website  
24 of the Department and in other materials made available

1 to the public the whistleblower protections that an indi-  
2 vidual providing such information would have.

3 **“SEC. 2105. RELATIONSHIP TO OTHER LAWS.**

4       “(a) OTHER FEDERAL LAWS.—Nothing in this title  
5 shall be construed to supersede, amend, alter, or affect  
6 any Federal law that regulates the manufacture, distribu-  
7 tion in commerce, use, sale, other treatment, or disposal  
8 of chemical substances or mixtures.

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 regu-  
12 lation, requirement, or standard of performance with re-  
13 spect to chemical facility security that is more stringent  
14 than a regulation, requirement, or standard of perform-  
15 ance issued under this section, or otherwise impair any  
16 right or jurisdiction of any State with respect to chemical  
17 facilities within that State, unless there is an actual con-  
18 flict between this section and the law of that State.

19       “(c) RAIL TRANSIT.—

20               “(1) DUPLICATIVE REGULATIONS.—The Sec-  
21 retary shall coordinate with the Assistant Secretary  
22 of Homeland Security (Transportation Security Ad-  
23 ministration) to eliminate any provision of this title  
24 applicable to rail security that would duplicate any  
25 security measure under the Rail Transportation Se-



1 security Rule under section 1580 of title 49 of the  
2 Code of Federal Regulations, as in effect as of the  
3 date of the enactment of this title. To the extent  
4 that there is a conflict between this title and any  
5 regulation under the jurisdiction of the Transpor-  
6 tation Security Administration, the regulation under  
7 the jurisdiction of the Transportation Security Ad-  
8 ministration shall prevail.

9 “(2) EXEMPTION FROM TOP-SCREEN.—A rail  
10 transit facility or a rail facility, as such terms are  
11 defined in section 1580.3 of title 49 of the Code of  
12 Federal Regulations, to which subpart 3 of such title  
13 applies pursuant to section 1580.100 of such title  
14 shall not be required to complete a Top-Screen as  
15 such term is defined in section 27.105 of title 6 of  
16 the Code of Federal Regulations.

17 **“SEC. 2106. REPORTS.**

18 “(a) REPORT TO CONGRESS.—Not later than 18  
19 months after the date of the enactment of this title, the  
20 Secretary shall submit to Congress a report on the Chem-  
21 ical Facilities Anti-Terrorism Standards Program. Such  
22 report shall include each of the following:

23 “(1) Certification by the Secretary that the Sec-  
24 retary has made significant progress in the identi-  
25 fication of all chemical facilities of interest pursuant

1 to section 2101(e)(1), including a description of the  
2 steps taken to achieve such progress and the metrics  
3 used to measure it, information on whether facilities  
4 that submitted Top-Screens as a result of such ef-  
5 forts were tiered and in what tiers they were placed,  
6 and an action plan to better identify chemical facili-  
7 ties of interest and bring those facilities into compli-  
8 ance.

9 “(2) Certification by the Secretary that the Sec-  
10 retary has developed a risk assessment approach and  
11 corresponding tiering methodology pursuant to sec-  
12 tion 2101(e)(2).

13 “(3) An assessment by the Secretary of the im-  
14 plementation by the Department of any rec-  
15 ommendations made by the Homeland Security  
16 Studies and Analysis Institute as outlined in the In-  
17 stitute’s Tiering Methodology Peer Review (Publica-  
18 tion Number: RP12–22–02).

19 “(b) SEMIANNUAL GAO REPORT.—During the 3-  
20 year period beginning on the date of the enactment of this  
21 title, the Comptroller General of the United States shall  
22 submit a semiannual report to Congress containing the as-  
23 sessment of the Comptroller General of the implementa-  
24 tion of this title. The Comptroller General shall submit

1 the first such report by not later than the date that is  
2 180 days after the date of the enactment of this title.

3 **“SEC. 2107. CFATS REGULATIONS.**

4 “(a) IN GENERAL.—The Secretary is authorized, in  
5 accordance with chapter 5 of title 5, United States Code,  
6 to promulgate regulations implementing the provisions of  
7 this title.

8 “(b) EXISTING CFATS REGULATIONS.—In carrying  
9 out the requirements of this title, the Secretary shall use  
10 the CFATS regulations, as in effect immediately before  
11 the date of the enactment of this title, that the Secretary  
12 determines carry out such requirements, and may issue  
13 new regulations or amend such regulations pursuant to  
14 the authority in subsection (a).

15 “(c) DEFINITION OF CFATS REGULATIONS.—In this  
16 section, the term ‘CFATS regulations’ means the regula-  
17 tions prescribed pursuant to section 550 of the Depart-  
18 ment of Homeland Security Appropriations Act, 2007  
19 (Public Law 109–295; 120 Stat. 1388; 6 U.S.C. 121  
20 note), as well as all Federal Register notices and other  
21 published guidance concerning section 550 of the Depart-  
22 ment of Homeland Security Appropriations Act, 2007.

23 “(d) AUTHORITY.—The Secretary shall exclusively  
24 rely upon authority provided in this title for determining  
25 compliance with this title in—

- 1           “(1) identifying chemicals of interest;  
2           “(2) designating chemicals of interest; and  
3           “(3) determining security risk associated with a  
4           chemical facility.

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

6           “(a) IN GENERAL.—The Secretary may provide guid-  
7           ance and, as appropriate, tools, methodologies, or com-  
8           puter software, to assist small covered chemical facilities  
9           in developing their physical security.

10          “(b) REPORT.—The Secretary shall submit to the  
11          Committee on Homeland Security of the House of Rep-  
12          resentatives and the Committee on Homeland Security  
13          and Governmental Affairs of the Senate a report on best  
14          practices that may assist small chemical facilities, as de-  
15          fined by the Secretary, in development of physical security  
16          best practices.

17          “(c) DEFINITION.—For purposes of this section, the  
18          term ‘small covered chemical facility’ means a covered  
19          chemical facility that has fewer than 350 employees em-  
20          ployed at the covered chemical facility, and is not a branch  
21          or subsidiary of another entity.

22   **“SEC. 2109. OUTREACH TO CHEMICAL FACILITIES OF IN-**  
23                                   **TEREST.**

24          “Not later than 90 days after the date of the enact-  
25          ment of this title, the Secretary shall establish an outreach

1 implementation plan, in coordination with the heads of  
 2 other appropriate Federal and State agencies and relevant  
 3 business associations, to identify chemical facilities of in-  
 4 terest and make available compliance assistance materials  
 5 and information on education and training.

6 **“SEC. 2110. AUTHORIZATION OF APPROPRIATIONS.**

7 “There is authorized to be appropriated to carry out  
 8 this title \$81,000,000 for each of fiscal years 2015, 2016,  
 9 and 2017.”.

10 (b) CLERICAL AMENDMENT.—The table of contents  
 11 in section 1(b) of such Act is amended by adding at the  
 12 end the following:

“TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

“Sec. 2101. Chemical Facility Anti-Terrorism Standards Program.

“Sec. 2102. Protection and sharing of information.

“Sec. 2103. Civil penalties.

“Sec. 2104. Whistleblower protections.

“Sec. 2105. Relationship to other laws.

“Sec. 2106. Reports.

“Sec. 2107. CFATS regulations.

“Sec. 2108. Small covered chemical facilities.

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

“Sec. 2110. Authorization of appropriations.”.

13 (c) THIRD-PARTY ASSESSMENT.—Using amounts au-  
 14 thorized to be appropriated under section 2110 of the  
 15 Homeland Security Act of 2002, as added by subsection  
 16 (a), the Secretary of Homeland Security shall commission  
 17 a third-party study to assess vulnerabilities to acts of ter-  
 18 rorism associated with the Chemical Facility Anti-Ter-  
 19 rorism Standards program, as authorized pursuant to sec-  
 20 tion 550 of the Department of Homeland Security Appro-

1 priations Act, 2007 (Public Law 109–295; 120 Stat.  
2 1388; 6 U.S.C. 121 note).

3 (d) METRICS.—Not later than 180 days after the  
4 date of the enactment of this Act, the Secretary shall sub-  
5 mit to Congress a plan for the utilization of metrics to  
6 assess the effectiveness of the Chemical Facility Anti-Ter-  
7 rorism Standards program to reduce the risk of a terrorist  
8 attack or other security risk to those citizens and commu-  
9 nities surrounding covered chemical facilities. The plan  
10 shall include benchmarks on when the program will begin  
11 utilizing the metrics and how the Department of Home-  
12 land Security plans to use the information to inform the  
13 program.

14 **SEC. 3. EFFECTIVE DATE.**

15 This Act, and the amendments made by this Act,  
16 shall take effect on the date that is 30 days after the date  
17 of the enactment of this Act.

Passed the House of Representatives July 8, 2014.

Attest:

*Clerk.*



113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

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