

113TH CONGRESS
2^D SESSION

H. R. 4007

IN THE SENATE OF THE UNITED STATES

JULY 9, 2014

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

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:

KAREN L. HAAS,

Clerk.