

Calendar No. 670115TH CONGRESS
2^D SESSION**S. 3405****[Report No. 115–384]**

To reauthorize the Chemical Facility Anti-Terrorism Standards Program of the Department of Homeland Security.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 4, 2018

Mr. JOHNSON (for himself, Mrs. CAPITO, and Mr. DAINES) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

NOVEMBER 26, 2018

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To reauthorize the Chemical Facility Anti-Terrorism Standards Program of the Department of Homeland Security.

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; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
 3 “Protecting and Securing Chemical Facilities from Ter-
 4 rorist Attacks Act of 2018”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for
 6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Risk-based performance standards.
- Sec. 4. Expedited approval program.
- Sec. 5. CFATS Recognition Program.
- Sec. 6. Frequency of audits and inspections.
- Sec. 7. Personnel surety program.
- Sec. 8. Security risk assessment approach and corresponding tiering method-
 ology.
- Sec. 9. Annual performance reporting.
- Sec. 10. CFATS regulations.
- Sec. 11. Small covered chemical facilities.
- Sec. 12. Explosive materials.
- Sec. 13. Changes in Appendix A to part 27 of title 6, Code of Federal Regula-
 tions.
- Sec. 14. Assessment, report, briefing, and updated retrospective estimate on
 costs.
- Sec. 15. Effective date.
- Sec. 16. Termination.
- Sec. 17. Technical and conforming amendment.

7 **SEC. 2. DEFINITIONS.**

8 Section 2101 of the Homeland Security Act of 2002
 9 (6 U.S.C. 621) is amended—

10 (1) in paragraph (2)(A), by striking “, or that
 11 the Secretary has a reasonable basis to believe
 12 holds,”; and

13 (2) in paragraph (8), by striking “section
 14 2102(e)(4)(B)(i)” and inserting “section 2102(e)(4)
 15 by the Secretary that identifies specific security
 16 measures that are sufficient to meet the risk-based

1 performance standards for facilities in tiers 3 and 4
 2 that elect to utilize the expedited approval pro-
 3 gram”.

4 **SEC. 3. RISK-BASED PERFORMANCE STANDARDS.**

5 Section 2102 of the Homeland Security Act of 2002
 6 (6 U.S.C. 622) is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (2)(C), by inserting “,
 9 evaluate, and maintain” after “establish”; and

10 (B) by adding at the end the following:

11 “(3) LIMITATION.—The risk-based performance
 12 standards established under paragraph (2)(C) shall
 13 not include any standard relating to cybersecurity.”;

14 (2) in subsection (b)(2)—

15 (A) by striking “at least” and inserting
 16 “not less than”;

17 (B) by inserting “not less than” before “1
 18 employee representative”; and

19 (C) by striking “as pertains” and inserting
 20 “pertaining”; and

21 (3) in subsection (e)(3), by striking subpara-
 22 graph (B) and inserting the following:

23 “(B) PREVIOUSLY APPROVED PLANS.—The
 24 Secretary may not require a covered chemical
 25 facility to resubmit a site security plan—

1 “(i) in the case of a covered chemical
 2 facility for which the Secretary approved
 3 the site security plan before the date of en-
 4 actment of the Protecting and Securing
 5 Chemical Facilities from Terrorist Attacks
 6 Act of 2014 (Public Law 113–254; 128
 7 Stat. 2898); solely by reason of the enact-
 8 ment of that Act; or

9 “(ii) in the case of a covered chemical
 10 facility for which the Secretary approved
 11 the site security plan before the date of en-
 12 actment of the Protecting and Securing
 13 Chemical Facilities from Terrorist Attacks
 14 Act of 2018; solely by reason of the enact-
 15 ment of that Act or any amendment made
 16 by that Act.”.

17 **SEC. 4. EXPEDITED APPROVAL PROGRAM.**

18 Section 2102(e)(4) of the Homeland Security Act of
 19 2002 (6 U.S.C. 622(e)(4)) is amended—

20 (1) in subparagraph (A)(i), by striking “sub-
 21 paragraph (C)” and inserting “subparagraph
 22 (C)(i)”;

23 (2) in subparagraph (B)—

24 (A) in clause (i), by striking “Not later
 25 than” and all that follows through “the Sec-

1 retary shall issue” and inserting “The Sec-
2 retary shall maintain”; and

3 (B) by striking clause (iii);

4 (3) in subparagraph (C)—

5 (A) in clause (iii), by redesignating sub-
6 clauses (I) through (III) as items (aa) through
7 (cc), respectively, and adjusting the margins ac-
8 cordingly;

9 (B) by redesignating clauses (i) through
10 (viii) as subclauses (I) through (VIII), respec-
11 tively, and adjusting the margins accordingly;

12 (C) in the matter preceding subclause (I),
13 as so redesignated, by striking “The owner”
14 and inserting the following:

15 “(i) IN GENERAL.—The owner”; and

16 (D) by adding at the end the following:

17 “(ii) RISK-BASED PERFORMANCE
18 STANDARDS.—In submitting a site security
19 plan and certification under subparagraph
20 (A)(i), an owner or operator of an exped-
21 ited approval facility should consider
22 using the guidance for expedited approval
23 facilities to determine appropriate meas-
24 ures for the site security plan of the exped-
25 ited approval facility.”;

1 (4) in subparagraph (D)—

2 (A) in clause (i), by striking “subpara-
3 graph (C)” and inserting “subparagraph
4 (C)(i)”; and

5 (B) in clause (iii)—

6 (i) by striking “30” and inserting
7 “7”; and

8 (ii) by striking “subparagraph (C)”
9 and inserting “subparagraph (C)(i)”; and

10 (5) in subparagraph (F)(i)(I), by striking “sub-
11 paragraph (C)” and inserting “subparagraph
12 (C)(i)”; and

13 (6) by striking subparagraph (I) and inserting
14 the following:

15 “(I) NOTICE BY THE SECRETARY.—The
16 Secretary shall provide notice to each covered
17 chemical facility of the expedited approval pro-
18 gram under this paragraph.”.

19 **SEC. 5. CFATS RECOGNITION PROGRAM.**

20 Section 2102(e) of the Homeland Security Act of
21 2002 (6 U.S.C. 622(e)) is amended by adding the fol-
22 lowing at the end:

23 “(5) CFATS RECOGNITION PROGRAM.—

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

1 “(i) the term ‘CFATS Recognition
2 Program’ means the program established
3 under subparagraph (B);

4 “(ii) the term ‘industry stewardship
5 program’ means an industry stewardship
6 program that provides regulatory recogni-
7 tion to covered chemical facilities that meet
8 industry best practices;

9 “(iii) the term ‘participating facility’
10 means a covered chemical facility that is a
11 member of an industry stewardship pro-
12 gram; and

13 “(iv) the term ‘sponsor organization’
14 means the governing body of an industry
15 stewardship program.

16 “(B) ESTABLISHMENT.—

17 “(i) IN GENERAL.—Not later than
18 180 days after the date of enactment of
19 this paragraph, the Secretary shall estab-
20 lish a program that shall be known as the
21 CFATS Recognition Program—

22 “(I) with the goal of leveraging
23 CFATS regulations and industry
24 stewardship programs to further en-

1 hance security relating to hazardous
2 chemicals; and

3 ~~“(H) under which the Secretary~~
4 ~~shall—~~

5 ~~“(aa) establish—~~

6 ~~“(AA) eligibility criteria~~
7 ~~under subparagraph (C)(i)~~
8 ~~for industry stewardship~~
9 ~~programs seeking to partici-~~
10 ~~pate in the CFATS Recogni-~~
11 ~~tion Program; and~~

12 ~~“(BB) performance re-~~
13 ~~quirements under subpara-~~
14 ~~graph (C)(ii) for partici-~~
15 ~~pating facilities; and~~

16 ~~“(bb) provide incentives~~
17 ~~under subparagraph (C)(iii) to~~
18 ~~encourage participation in the~~
19 ~~CFATS Recognition Program.~~

20 ~~“(ii) APPLICABILITY OF OTHER~~
21 ~~LAWS.—During the period before the Sec-~~
22 ~~retary has met the deadline under clause~~
23 ~~(i), in developing and issuing, or amending,~~
24 ~~the guidance relating to carrying out the~~
25 ~~CFATS Recognition Program and col-~~

1 lecting information from industry steward-
 2 ship programs, sponsor organizations, and
 3 participating facilities, the Secretary shall
 4 not be subject to—

5 “(I) section 553 of title 5, United
 6 States Code;

7 “(II) subchapter I of chapter 35
 8 of title 44, United States Code; or

9 “(III) section 2107(b) of this
 10 Act.

11 “(C) ELIGIBILITY CRITERIA; FACILITY
 12 PERFORMANCE REQUIREMENTS; INCENTIVES.—

13 “(i) ELIGIBILITY CRITERIA FOR IN-
 14 DUSTRY STEWARDSHIP PROGRAMS.—Not
 15 later than 180 days after the date of en-
 16 actment of this paragraph, the Secretary
 17 shall establish minimum eligibility criteria
 18 for industry stewardship programs desiring
 19 to be considered by the Secretary for par-
 20 ticipation in the CFATS Recognition Pro-
 21 gram that shall include—

22 “(I) a requirement that any in-
 23 dustry stewardship program desiring
 24 to participate in the CFATS Recogni-
 25 tion Program be governed by an in-

1 industry association or technical organi-
2 zation that is an entity described in
3 paragraph (3) or (6) of section 501(c)
4 of the Internal Revenue Code of 1986;

5 “(II) a documented top manage-
6 ment commitment to chemical facility
7 security; and

8 “(III) criteria relating to—

9 “(aa) program auditing re-
10 quirements and frequency;

11 “(bb) security vulnerability
12 assessment requirements and fre-
13 quency;

14 “(cc) security measures, in-
15 cluding—

16 “(AA) detection meas-
17 ures;

18 “(BB) delay measures;

19 “(CC) response meas-
20 ures; and

21 “(DD) security man-
22 agement; and

23 “(dd) reporting required to
24 be done by any industry steward-
25 ship program desiring to partici-

1 pate in the CFATS Recognition
2 Program.

3 “(ii) PERFORMANCE REQUIREMENTS
4 FOR PARTICIPATING FACILITIES.—Not
5 later than 180 days after the date of en-
6 actment of this paragraph, the Secretary
7 shall require that each participating facil-
8 ity—

9 “(I) submit an acknowledgment
10 by the sponsor organization of the in-
11 dustry steward program, of which the
12 participating facility is a member,
13 that the participating facility is—

14 “(aa) a member in good
15 standing of the industry steward-
16 ship program; and

17 “(bb) in full compliance with
18 the requirements of the industry
19 stewardship program;

20 “(II) assess any security vulner-
21 ability of the participating facility
22 using a formal recognized method-
23 ology—

1 “(aa) in the initial security
2 vulnerability assessment of the
3 participating facility;

4 “(bb) not less than every 3
5 years after the initial security
6 vulnerability assessment of the
7 participating facility; and

8 “(cc) if there is a significant
9 change to the security measures
10 of the participating facility; and

11 “(III) develop and maintain a
12 site security plan that—

13 “(aa) addresses any security
14 vulnerability of the participating
15 facility; and

16 “(bb) includes security
17 measures, including—

18 “(AA) detection meas-
19 ures;

20 “(BB) delay measures;

21 “(CC) response meas-
22 ures; and

23 “(DD) security man-
24 agement.

1 “(iii) PROGRAM INCENTIVES.—Not
2 later than 180 days after the date of en-
3 actment of this paragraph, the Secretary
4 shall—

5 “(I) establish incentives for par-
6 ticipation in the CFATS Recognition
7 Program, which shall include—

8 “(aa) a reduction of the
9 Chemical Facility Anti-Terrorism
10 Standards Program risk tier level
11 at which a participating facility
12 is currently tiered;

13 “(bb) a reduction in the fre-
14 quency of compliance inspections;

15 “(cc) streamlined vulner-
16 ability assessment and site secu-
17 rity plan processes; and

18 “(dd) any other regulatory
19 relief as determined appropriate
20 by the Secretary; and

21 “(II) provide written guidance on
22 any incentive established under sub-
23 clause (I).

24 “(D) IMPLEMENTATION.—

1 “(i) APPLICATIONS.—An industry
2 stewardship program desiring to partici-
3 pate in the CFATS Recognition Program
4 shall submit an application to the Sec-
5 retary that contains information relating
6 to—

7 “(I) the industry stewardship
8 program submitting the application
9 and the sponsor organization of the
10 industry stewardship program;

11 “(II) each participating facility
12 that is a member of the industry stew-
13 ardship program; and

14 “(III) whether the industry stew-
15 ardship program meets the eligibility
16 requirements under subparagraph
17 (C)(i).

18 “(ii) DETERMINATION.—

19 “(I) IN GENERAL.—Not later
20 than 60 days after the date on which
21 the Secretary receives an application
22 submitted under clause (i), the Sec-
23 retary shall—

24 “(aa) make a determination
25 as to whether the industry stew-

1 ardship program is eligible to
2 participate in the CFATS Rec-
3 ognition Program; and

4 “(bb) notify the industry
5 stewardship program of the de-
6 termination.

7 “(II) NOTIFICATION RELATING
8 TO DENIAL.—If the Secretary denies
9 an application submitted under clause
10 (i), in the notification of the deter-
11 mination under subclause (I)(bb), the
12 Secretary shall include—

13 “(aa) a statement of each
14 reason for the denial; and

15 “(bb) any action that may
16 be taken by the applicant to
17 qualify the applicant for partici-
18 pation in the CFATS Recogni-
19 tion Program.

20 “(III) REVISED APPLICATIONS.—
21 Not later than 60 days after the date
22 on which an applicant receives a noti-
23 fication of denial under subclause (II),
24 the applicant may submit a revised
25 application.

1 “(E) EVALUATION.—Not later than 18
2 months after the date of enactment of this
3 paragraph, the Secretary shall provide a brief-
4 ing to the Committee on Homeland Security
5 and Governmental Affairs of the Senate and the
6 Committees on Homeland Security and Energy
7 and Commerce of the House of Representatives
8 on the progress in carrying out the CFATS
9 Recognition Program.”.

10 **SEC. 6. FREQUENCY OF AUDITS AND INSPECTIONS.**

11 Section 2102(d)(1) of the Homeland Security Act of
12 2002 (6 U.S.C. 622(d)(1)) is amended—

13 (1) in subparagraph (B), by striking “The Sec-
14 retary” and inserting “Subject to subparagraph (G),
15 the Secretary”; and

16 (2) by adding at the end the following:

17 “(G) FREQUENCY OF AUDITS AND INSPEC-
18 TIONS.—

19 “(i) IN GENERAL.—Except as pro-
20 vided in clause (ii), the Secretary may not
21 conduct any audit or inspection under this
22 paragraph of a covered chemical facility
23 more frequently than once every 2 years.

24 “(ii) CFATS RECOGNITION PRO-
25 GRAM.—In the case of a covered chemical

1 facility that participates in the CFATS
2 Recognition Program under subsection
3 (e)(5) and meets compliance, audit, and in-
4 spection requirements under that program;
5 the Secretary may not conduct any audit
6 or inspection under this paragraph of that
7 covered chemical facility more frequently
8 than once every 3 years.”.

9 **SEC. 7. PERSONNEL SURETY PROGRAM.**

10 Section 2102(d)(2)(A) of the Homeland Security Act
11 of 2002 (6 U.S.C. 622(d)(2)(A)) is amended—

12 (1) in the matter preceding clause (i), by insert-
13 ing “is mandatory for each owner or operator of a
14 covered chemical facility assigned to tier 1 or 2 and
15 optional for each owner or operator of a covered
16 chemical facility assigned to tier 3 or tier 4 that”
17 after “carry out a Personnel Surety Program that”;
18 and

19 (2) in clause (ii), by inserting “who will have
20 access to any chemical of interest designated under
21 Appendix A to part 27 of title 6, Code of Federal
22 Regulations, or any successor thereto,” after “about
23 an individual”.

1 **SEC. 8. SECURITY RISK ASSESSMENT APPROACH AND COR-**
2 **RESPONDING TIERING METHODOLOGY.**

3 Section 2102(e) of the Homeland Security Act of
4 2002 (6 U.S.C. 622(e)) is amended—

5 (1) in paragraph (2)(A), by striking “develop”
6 and inserting “maintain”; and

7 (2) in paragraph (3)—

8 (A) in subparagraph (B)—

9 (i) by striking the period at the end
10 and inserting “, including—”; and

11 (ii) by adding at the end the fol-
12 lowing:

13 “(i) each input and assumption under
14 the tiering methodology;

15 “(ii) the rational for each input; and

16 “(iii) the output of the tiering meth-
17 odology.”; and

18 (B) by adding at the end the following:

19 “(C) **REPORTS.**—Not later than 14 days
20 after the Secretary makes a determination that
21 tiering for a covered chemical facility is
22 changed, or that a covered chemical facility is
23 no longer subject to the requirements under
24 this title, the Secretary shall submit to the
25 owner or operator of the covered chemical facil-
26 ity a written report that contains—

1 “(i) the information described in sub-
2 paragraphs (A) and (B); and

3 “(ii) a statement of the criteria under
4 paragraph (2)(B) and how the security
5 risk of terrorism associated with the cov-
6 ered chemical facility was evaluated under
7 those criteria.”.

8 **SEC. 9. ANNUAL PERFORMANCE REPORTING.**

9 Section 2102(e)(4) of the Homeland Security Act of
10 2002 (6 U.S.C. 622(e)(4)) is amended—

11 (1) in the paragraph heading, by striking
12 “SEMIANNUAL” and inserting “ANNUAL”;

13 (2) in the matter preceding subparagraph (A)—

14 (A) by striking “6 months after the date”
15 and inserting “1 year after the date”;

16 (B) by striking “2014” and inserting
17 “2018”; and

18 (C) by striking “once every 6 months” and
19 inserting “once each year”;

20 (3) by striking subparagraph (C);

21 (4) by redesignating subparagraph (D) as sub-
22 paragraph (C);

23 (5) by inserting after subparagraph (C), as so
24 redesignated, the following:

1 “~~(D)~~ the effectiveness of the Chemical Fa-
2 cility Anti-Terrorism Standards Program at—

3 “~~(i)~~ managing security risks; and

4 “~~(ii)~~ developing and using appropriate
5 metrics and analysis capabilities to meas-
6 ure risk reduction, including—

7 “~~(I)~~ vulnerability and con-
8 sequence mitigation indicators; and

9 “~~(II)~~ outcome metrics that meas-
10 ure cumulative risk reduction over
11 time; and”;

12 ~~(6)~~ by striking subparagraph ~~(E)~~; and

13 ~~(7)~~ by redesignating subparagraph ~~(F)~~ as sub-
14 paragraph ~~(E)~~.

15 **SEC. 10. CFATS REGULATIONS.**

16 Section 2107(b) of the Homeland Security Act of
17 2002 (6 U.S.C. 627(b)) is amended—

18 ~~(1)~~ in paragraph ~~(1)~~, by inserting “(Public Law
19 113–254, 128 Stat. 2919)” after “2014”; and

20 ~~(2)~~ in paragraph ~~(2)~~, by striking “2014” and
21 inserting “2018”.

22 **SEC. 11. SMALL COVERED CHEMICAL FACILITIES.**

23 Section 2108 of the Homeland Security Act of 2002
24 (6 U.S.C. 628) is amended—

25 ~~(1)~~ in subsection ~~(b)~~—

1 (A) by striking “tools, methodologies, or
2 computer software” and inserting “tools and
3 methodologies”; and

4 (B) by striking “cybersecurity,”; and
5 (2) by striking subsection (c).

6 **SEC. 12. EXPLOSIVE MATERIALS.**

7 (a) **IN GENERAL.**—Title XXI of the Homeland Secu-
8 rity Act of 2002 (6 U.S.C. 621 et seq.) is amended by
9 striking section 2109 (6 U.S.C. 629) and inserting the fol-
10 lowing:

11 **“SEC. 2109. EXPLOSIVE MATERIALS.**

12 “The Secretary may not designate any explosive ma-
13 terial subject to regulation by the Department of Justice
14 under chapter 40 of title 18, United States Code, or by
15 the Bureau of Alcohol, Tobacco, Firearms, and Explosives
16 under part 555 of title 27, Code of Federal Regulations,
17 as a chemical of interest under Appendix A to part 27
18 of title 6, Code of Federal Regulations.”.

19 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
20 The table of contents in section 1(b) of the Homeland Se-
21 curity Act of 2002 (Public Law 107–196; 116 Stat. 2135)
22 is amended by striking the item relating to section 2109
23 and inserting the following:

“Sec. 2109. Explosive materials.”.

1 **SEC. 13. CHANGES IN APPENDIX A TO PART 27 OF TITLE 6,**
 2 **CODE OF FEDERAL REGULATIONS.**

3 (a) **IN GENERAL.**—Title XXI of the Homeland Secu-
 4 rity Act of 2002 (6 U.S.C. 621 et seq.), as amended by
 5 section 12 of this Act, is amended by adding at the end
 6 the following:

7 **“SEC. 2110. CHANGES IN APPENDIX A TO PART 27 OF TITLE**
 8 **6, CODE OF FEDERAL REGULATIONS.**

9 “(a) **DEFINITION.**—In this section, the term ‘Appen-
 10 dix A’ means Appendix A to part 27 of title 6, Code of
 11 Federal Regulations, or any successor thereto.

12 “(b) **NOTICE OF PROPOSED RULEMAKING.**—The
 13 Secretary shall publish a notice of proposed rulemaking
 14 in the Federal Register relating to any proposed change
 15 to Appendix A if the Secretary determines that—

16 “(1) a chemical should be designated as a
 17 chemical of interest under Appendix A;

18 “(2) a chemical designated as a chemical of in-
 19 terest under Appendix A should not be so des-
 20 ignated; or

21 “(3) a chemical amount, concentration, or
 22 threshold quantity described in Appendix A should
 23 be modified.”.

24 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
 25 The table of contents in section 1(b) of the Homeland Se-
 26 curity Act of 2002 (Public Law 107–196; 116 Stat. 2135)

1 is amended by inserting after the item relating to section
2 2109 the following:

“Sec. 2110. Changes in Appendix A to part 27 of title 6, Code of Federal Reg-
ulations.”.

3 **SEC. 14. ASSESSMENT, REPORT, BRIEFING, AND UPDATED**
4 **RETROSPECTIVE ESTIMATE ON COSTS.**

5 (a) DEFINITIONS.—In this section—

6 (1) the term “applicable committee” means—

7 (A) the Committee on Homeland Security
8 and Governmental Affairs of the Senate;

9 (B) the Committee on Homeland Security
10 of the House of Representatives; and

11 (C) the Committee on Energy and Com-
12 merce of the House of Representatives;

13 (2) the terms “CFATS regulation” and “cov-
14 ered chemical facility” have the meanings given
15 those terms in section 2101 of the Homeland Secu-
16 rity Act of 2002 (6 U.S.C. 621);

17 (3) the term “Chemical Facility Anti-Terrorism
18 Standards Program” means—

19 (A) the Chemical Facility Anti-Terrorism
20 Standards Program initially authorized under
21 section 550 of the Department of Homeland Se-
22 curity Appropriations Act, 2007 (Public Law
23 109–295; 120 Stat. 1355); and

1 (B) the Chemical Facility Anti-Terrorism
2 Standards Program subsequently authorized
3 under section 2102(a) of the Homeland Security
4 Act of 2002 (6 U.S.C. 622(a));

5 (4) the term “Department” means the Department
6 of Homeland Security;

7 (5) the term “inspector” means an individual
8 used by the Department as an inspector for purposes
9 of ensuring compliance with title XXI of the
10 Homeland Security Act of 2002 (6 U.S.C. 621 et
11 seq.); and

12 (6) the term “Secretary” means the Secretary
13 of Homeland Security.

14 (b) THIRD-PARTY ASSESSMENT.—

15 (1) IN GENERAL.—Not later than 90 days after
16 the date of enactment of this Act, using amounts ap-
17 propriated to the Department before the date of en-
18 actment of this Act, the Secretary shall commission
19 a third-party study, which shall be completed not
20 later than 1 year after the date on which the third-
21 party study is commissioned, to assess the effective-
22 ness of the Chemical Facility Anti-Terrorism Stand-
23 ards Program in—

24 (A) managing security risks; and

1 (B) developing and using appropriate
2 metrics and analysis capabilities to measure
3 risk reduction, including—

4 (i) vulnerability and consequence miti-
5 gation indicators; and

6 (ii) outcome metrics that measure cu-
7 mulative risk reduction over time.

8 (2) BRIEFING AND SUBMISSION OF STUDY.—

9 Not later than 90 days after the date on which the
10 third-party study described in paragraph (1) is com-
11 pleted, the Secretary shall—

12 (A) brief each applicable committee on the
13 results of the third-party study; and

14 (B) submit a copy of the completed third-
15 party study to each applicable committee.

16 (c) GAO REPORT.—Not later than 2 years after the
17 date of enactment of this Act, the Comptroller General
18 of the United States shall submit to each applicable com-
19 mittee a report on inspector training that contains rec-
20 ommendations for improving inspector training, including
21 recommendations relating to—

22 (1) how the Department selects inspectors;

23 (2) initial training required for inspectors be-
24 fore the inspectors are selected by the Department
25 to be used to conduct inspections;

1 ~~(3)~~ qualification standards required to be met
2 by inspectors before they are selected by the Depart-
3 ment to be used to conduct inspections;

4 ~~(4)~~ on-the-job training required for inspectors
5 and how that training is documented;

6 ~~(5)~~ final qualification and approval standards
7 required to be met by inspectors before the inspec-
8 tors are initially used by the Department to conduct
9 inspections;

10 ~~(6)~~ continuing qualification standards required
11 to be met by inspectors while the inspectors are used
12 by the Department to conduct inspections; and

13 ~~(7)~~ continuous training required for inspectors
14 while the inspectors are used by the Department to
15 conduct inspections.

16 ~~(d) ANNUAL BRIEFING.—~~Not later than 1 year after
17 the date of enactment of this Act, and each year thereafter
18 for 5 years, the Secretary shall brief each applicable com-
19 mittee on the activities carried out under this section and
20 under title XXI of the Homeland Security Act of 2001
21 (6 U.S.C. 621 et seq.) that shall include—

22 ~~(1)~~ detailed information relating to—

23 ~~(A)~~ as of the date on which the briefing is
24 made—

1 (i) threats to covered chemical facili-
2 ties; and

3 (ii) how chemicals of interest are
4 being utilized by bad actors in the threat
5 environment—

6 (I) in the United States; and

7 (II) globally;

8 (B) how CFATS regulations play a role in
9 making the United States safer; and

10 (C) how the Chemical Facility Anti-Ter-
11 rorism Standards Program is effectively ad-
12 dressing the threat landscape; and

13 (2) data, rationale, and metrics on how the
14 Chemical Facility Anti-Terrorism Standards Pro-
15 gram effectively reduces risks.

16 (e) UPDATED RETROSPECTIVE ESTIMATE ON
17 COSTS.—Not later than 1 year after the date of enactment
18 of this Act, the Secretary shall complete a retrospective
19 estimate of the costs, including costs to the Government,
20 regulated entities, and the public, of carrying out the
21 Chemical Facility Anti-Terrorism Standards Program
22 during the period beginning on the first day of fiscal year
23 2006 and ending on the last day of fiscal year 2018.

1 (f) REPEAL.—Section 3 of the Protecting and Secur-
 2 ing Chemical Facilities from Terrorist Attacks Act of
 3 2014 (Public Law 113–254; 128 Stat. 2917) is repealed.

4 **SEC. 15. EFFECTIVE DATE.**

5 This Act, and the amendments made by this Act,
 6 shall take effect on the date that is 30 days after the date
 7 of enactment of this Act.

8 **SEC. 16. TERMINATION.**

9 The authority provided under title XXI of the Home-
 10 land Security Act of 2002 (6 U.S.C. 621 et seq.), as
 11 amended by this Act, shall terminate on the date that is
 12 5 years after the date of enactment of this Act.

13 **SEC. 17. TECHNICAL AND CONFORMING AMENDMENT.**

14 The table of contents in section 1(b) of the Homeland
 15 Security Act of 2002 (Public Law 107–196; 116 Stat.
 16 2135) is amended, in the item relating to section 2103,
 17 by striking the em dash at the end.

18 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

19 (a) *SHORT TITLE.*—This Act may be cited as the “Pro-
 20 tecting and Securing Chemical Facilities from Terrorist At-
 21 tacks Act of 2018”.

22 (b) *TABLE OF CONTENTS.*—The table of contents for
 23 this Act is as follows:

- Sec. 1. Short title; table of contents.*
- Sec. 2. Definitions.*
- Sec. 3. Expedited approval program.*
- Sec. 4. CFATS Recognition Program.*
- Sec. 5. Frequency of audits and inspections.*

- Sec. 6. *Personnel surety program.*
 Sec. 7. *Security risk assessment approach and corresponding tiering methodology.*
 Sec. 8. *Annual performance reporting.*
 Sec. 9. *Specific products and mixtures containing chemicals of interest.*
 Sec. 10. *CFATS regulations.*
 Sec. 11. *Explosive materials.*
 Sec. 12. *Changes to Appendix A to part 27 of title 6, Code of Federal Regulations.*
 Sec. 13. *Assessment, report, briefing, and updated retrospective estimate on costs.*
 Sec. 14. *Effective date.*
 Sec. 15. *Termination.*
 Sec. 16. *Technical and conforming amendment.*

1 **SEC. 2. DEFINITIONS.**

2 *Section 2101(8) of the Homeland Security Act of 2002*
 3 *(6 U.S.C. 621(8)) is amended by striking “section*
 4 *2102(c)(4)(B)(i)” and inserting “section 2102(c)(4) by the*
 5 *Secretary that identifies specific security measures that are*
 6 *sufficient to meet the risk-based performance standards for*
 7 *facilities in tiers 3 and 4 that elect to utilize the expedited*
 8 *approval program”.*

9 **SEC. 3. EXPEDITED APPROVAL PROGRAM.**

10 *Section 2102(c)(4) of the Homeland Security Act of*
 11 *2002 (6 U.S.C. 622(c)(4)) is amended—*

12 *(1) in subparagraph (A)(i), by striking “sub-*
 13 *paragraph (C)” and inserting “subparagraph (C)(i)”;*

14 *(2) in subparagraph (B)—*

15 *(A) in clause (i), by striking “Not later*
 16 *than” and all that follows through “the Sec-*
 17 *retary shall issue” and inserting “The Secretary*
 18 *shall maintain”;* and

19 *(B) by striking clause (iii);*

20 *(3) in subparagraph (C)—*

1 (A) in clause (iii), by redesignating sub-
 2 clauses (I) through (III) as items (aa) through
 3 (cc), respectively, and adjusting the margins ac-
 4 cordingly;

5 (B) by redesignating clauses (i) through
 6 (viii) as subclauses (I) through (VIII), respec-
 7 tively, and adjusting the margins accordingly;

8 (C) in the matter preceding subclause (I),
 9 as so redesignated, by striking “The owner” and
 10 inserting the following:

11 “(i) *IN GENERAL.*—The owner”; and

12 (D) by adding at the end the following:

13 “(ii) *RISK-BASED PERFORMANCE*
 14 *STANDARDS.*—In submitting a site security
 15 plan and certification under subparagraph
 16 (A)(i), an owner or operator of an expedited
 17 approval facility should consider using the
 18 guidance for expedited approval facilities to
 19 determine appropriate measures for the site
 20 security plan of the expedited approval fa-
 21 cility.”;

22 (4) in subparagraph (D)—

23 (A) in clause (i), by striking “subparagraph
 24 (C)” and inserting “subparagraph (C)(i)”; and

25 (B) in clause (iii)—

1 (i) by striking “30” and inserting “7”;

2 and

3 (ii) by striking “subparagraph (C)”

4 and inserting “subparagraph (C)(i)”;

5 (5) in subparagraph (F)(i)(I), by striking “sub-

6 paragraph (C)” and inserting “subparagraph (C)(i)”;

7 and

8 (6) by striking subparagraph (I) and inserting

9 the following:

10 “(I) NOTICE BY THE SECRETARY.—The Sec-

11 retary shall provide notice to each covered chem-

12 ical facility of the expedited approval program

13 under this paragraph.”.

14 **SEC. 4. CFATS RECOGNITION PROGRAM.**

15 Section 2102(c) of the Homeland Security Act of 2002

16 (6 U.S.C. 622(c)) is amended by adding the following at

17 the end:

18 “(5) CFATS RECOGNITION PROGRAM.—

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

20 “(i) the term ‘CFATS Recognition Pro-

21 gram’ means the program established under

22 subparagraph (B);

23 “(ii) the term ‘participating facility’

24 means a covered chemical facility that is a

1 member of a participating industry stew-
2 ardship program;

3 “(iii) the term ‘participating industry
4 stewardship program’ means an industry
5 stewardship program that—

6 “(I) meets the eligibility require-
7 ments under subparagraph (C)(i); and

8 “(II) is accepted by the Secretary
9 to participate in the CFATS Recogni-
10 tion Program; and

11 “(iv) the term ‘sponsor organization’
12 means the governing body of a partici-
13 pating industry stewardship program.

14 “(B) ESTABLISHMENT.—

15 “(i) IN GENERAL.—Not later than 270
16 days after the date of enactment of this
17 paragraph, the Secretary shall establish a
18 program that shall be known as the CFATS
19 Recognition Program—

20 “(I) with the goal of leveraging
21 CFATS regulations and industry stew-
22 ardship programs to further enhance
23 security relating to hazardous chemi-
24 cals; and

1 “(II) *under which the Secretary*
2 *shall—*

3 “(aa) *establish—*

4 “(AA) *eligibility cri-*
5 *teria under subparagraph*
6 *(C)(i) for industry steward-*
7 *ship programs seeking to*
8 *participate in the CFATS*
9 *Recognition Program; and*

10 “(BB) *performance re-*
11 *quirements under subpara-*
12 *graph (C)(ii) for partici-*
13 *pating facilities;*

14 “(bb) *provide incentives*
15 *under subparagraph (C)(iii) to*
16 *encourage participation in the*
17 *CFATS Recognition Program;*
18 *and*

19 “(cc) *issue such guidance as*
20 *the Secretary deems necessary or*
21 *appropriate for the implementa-*
22 *tion of the CFATS Recognition*
23 *Program.*

24 “(ii) *APPLICABILITY OF OTHER*
25 *LAWS.—During the period before the Sec-*

1 retary has met the deadline under clause
2 (i), in developing and issuing, or amending,
3 the guidance relating to carrying out the
4 CFATS Recognition Program and collecting
5 information from industry stewardship pro-
6 grams, sponsor organizations, and partici-
7 pating facilities, the Secretary shall not be
8 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 Act.

14 “(C) *ELIGIBILITY CRITERIA; FACILITY PER-*
15 *FORMANCE REQUIREMENTS; INCENTIVES.—*

16 “(i) *ELIGIBILITY CRITERIA FOR INDUS-*
17 *TRY STEWARDSHIP PROGRAMS.—Not later*
18 *than 270 days after the date of enactment*
19 *of this paragraph, the Secretary shall estab-*
20 *lish minimum eligibility criteria for indus-*
21 *try stewardship programs desiring to be*
22 *considered by the Secretary for participa-*
23 *tion in the CFATS Recognition Program*
24 *that shall include—*

1 “(I) a requirement that any in-
2 dustry stewardship program desiring
3 to participate in the CFATS Recogni-
4 tion Program be governed by an indus-
5 try association or technical organiza-
6 tion that is an entity described in
7 paragraph (3) or (6) of section 501(c)
8 of the Internal Revenue Code of 1986;

9 “(II) a documented top manage-
10 ment commitment to chemical facility
11 security;

12 “(III) criteria relating to—

13 “(aa) program auditing re-
14 quirements and frequency;

15 “(bb) security vulnerability
16 assessment requirements and fre-
17 quency; and

18 “(cc) security measures that
19 align with the risk-based perform-
20 ance standards established under
21 subsection (a)(2)(C), including—

22 “(AA) detection meas-
23 ures;

24 “(BB) delay measures;

1 “(CC) *cybersecurity*
2 *measures;*

3 “(DD) *response meas-*
4 *ures; and*

5 “(EE) *security manage-*
6 *ment; and*

7 “(dd) *reporting required to*
8 *be done by any industry steward-*
9 *ship program desiring to partici-*
10 *pate in the CFATS Recognition*
11 *Program.*

12 “(ii) *PERFORMANCE REQUIREMENTS*
13 *FOR PARTICIPATING FACILITIES.—The Sec-*
14 *retary shall require that each participating*
15 *facility—*

16 “(I) *submit an acknowledgment*
17 *by the sponsor organization of the par-*
18 *ticipating industry steward program,*
19 *of which the participating facility is a*
20 *member, that the participating facility*
21 *is—*

22 “(aa) *a member in good*
23 *standing of the participating in-*
24 *dustry stewardship program; and*

1 “(bb) in full compliance with
2 the requirements of the partici-
3 pating industry stewardship pro-
4 gram; and

5 “(II) promptly notify the Sec-
6 retary if the participating facility
7 ceases to be—

8 “(aa) a member in good
9 standing of the participating in-
10 dustry stewardship program; or

11 “(bb) in full compliance with
12 the requirements of the partici-
13 pating industry stewardship pro-
14 gram.

15 “(iii) PROGRAM INCENTIVES.—Not
16 later than 270 days after the date of enact-
17 ment of this paragraph, the Secretary
18 shall—

19 “(I) establish incentives for par-
20 ticipation in the CFATS Recognition
21 Program, which shall include—

22 “(aa) a reduction in the fre-
23 quency of compliance inspections,
24 except—

1 “(AA) in the case of any
2 inspection relating to any
3 planned measure in the site
4 security plan of a partici-
5 pating facility that has not
6 been fully implemented; or

7 “(BB) in a case in
8 which a participating facil-
9 ity is not in full compliance
10 with the requirements under
11 the Chemical Facility Anti-
12 Terrorism Standards Pro-
13 gram;

14 “(bb) streamlined vulner-
15 ability assessment and site secu-
16 rity plan processes; and

17 “(cc) any other regulatory re-
18 lief as determined appropriate by
19 the Secretary; and

20 “(II) provide written guidance on
21 any incentive established under sub-
22 clause (I).

23 “(D) EVALUATION.—Not later than 1 year
24 after the date on which the CFATS Recognition
25 Program is established under subparagraph

1 *(B)(i), the Secretary shall provide a briefing to*
 2 *the Committee on Homeland Security and Gov-*
 3 *ernmental Affairs of the Senate and the Commit-*
 4 *tees on Homeland Security and Energy and*
 5 *Commerce of the House of Representatives on the*
 6 *progress in carrying out the CFATS Recognition*
 7 *Program.”.*

8 **SEC. 5. FREQUENCY OF AUDITS AND INSPECTIONS.**

9 *Section 2102(d)(1) of the Homeland Security Act of*
 10 *2002 (6 U.S.C. 622(d)(1)) is amended—*

11 *(1) in subparagraph (B), in the matter pre-*
 12 *ceding clause (i), by striking “The Secretary” and in-*
 13 *serting “Subject to subparagraph (G), the Secretary”;*
 14 *and*

15 *(2) by adding at the end the following:*

16 *“(G) FREQUENCY OF AUDITS AND INSPEC-*
 17 *TIONS.—*

18 *“(i) IN GENERAL.—Except as provided*
 19 *in clauses (ii) and (iii), the Secretary may*
 20 *not conduct any audit or inspection under*
 21 *this paragraph of a covered chemical facil-*
 22 *ity more frequently than once every 2 years.*

23 *“(ii) CFATS RECOGNITION PRO-*
 24 *GRAM.—Except as provided in clause (iii),*
 25 *in the case of a covered chemical facility*

1 that participates in the CFATS Recognition
2 Program under subsection (c)(5) and meets
3 compliance, audit, and inspection require-
4 ments under that program, the Secretary
5 may not conduct any audit or inspection
6 under this paragraph of that covered chem-
7 ical facility more frequently than once every
8 3 years.

9 “(iii) *INCREASED FREQUENCY OF AU-*
10 *DITS AND INSPECTIONS.*—The Secretary
11 may conduct audits and inspections more
12 frequently than provided in clauses (i) and
13 (ii) when—

14 “(I) the covered chemical facility
15 has identified planned enhancements
16 that have not yet been validated by an
17 audit or inspection;

18 “(II) a deficiency or infraction at
19 the covered chemical facility has been
20 identified that may result in an en-
21 forcement action against the covered
22 chemical facility;

23 “(III) an elevated or specific
24 threat has been identified;

1 “(IV) a security incident or sus-
2 picious activity has occurred at the
3 covered chemical facility; or

4 “(V) the Secretary determines that
5 an inspection or audit is warranted by
6 exigent circumstances.”.

7 **SEC. 6. PERSONNEL SURETY PROGRAM.**

8 Section 2102(d)(2)(A) of the Homeland Security Act
9 of 2002 (6 U.S.C. 622(d)(2)(A)) is amended—

10 (1) in the matter preceding clause (i), by insert-
11 ing “is mandatory for each owner or operator of a
12 covered chemical facility assigned to tier 1 or 2 and
13 optional for each owner or operator of a covered
14 chemical facility assigned to tier 3 or tier 4 that”
15 after “carry out a Personnel Surety Program that”;
16 and

17 (2) in clause (ii), by inserting “who will have
18 access to any chemical of interest designated under
19 Appendix A to part 27 of title 6, Code of Federal Reg-
20 ulations, or any successor thereto,” after “about an
21 individual”.

22 **SEC. 7. SECURITY RISK ASSESSMENT APPROACH AND COR-**
23 **RESPONDING TIERING METHODOLOGY.**

24 Section 2102(e) of the Homeland Security Act of 2002
25 (6 U.S.C. 622(e)) is amended—

1 (1) in paragraph (2)(A), by striking “develop”
2 and inserting “maintain”; and

3 (2) in paragraph (3)—

4 (A) in subparagraph (B)—

5 (i) by striking the period at the end
6 and inserting “, including—”; and

7 (ii) by adding at the end the following:

8 “(i) each input and assumption under
9 the tiering methodology;

10 “(ii) the rationale for each input; and

11 “(iii) the output of the tiering method-
12 ology.”; and

13 (B) by adding at the end the following:

14 “(C) *REPORTS*.—Not later than 30 days
15 after the Secretary makes a determination that
16 tiering for a covered chemical facility is changed,
17 or that a covered chemical facility is no longer
18 subject to the requirements under this title, the
19 Secretary shall submit to the owner or operator
20 of the covered chemical facility a written report
21 that contains—

22 “(i) the information described in sub-
23 paragraphs (A) and (B); and

24 “(ii) a controlled unclassified state-
25 ment—

1 “(I) of the criteria under para-
2 graph (2)(B) and how the security risk
3 of terrorism associated with the covered
4 chemical facility was evaluated under
5 those criteria; and

6 “(II) that includes any chemical-
7 terrorism vulnerability information (as
8 defined in section 27.105 of title 6,
9 Code of Federal Regulations, or any
10 successor thereto) relating to the deter-
11 mination.

12 “(D) PUBLIC DISCLOSURE.—Reports sub-
13 mitted to the owner or operator of the covered
14 chemical facility to which the report pertains
15 under subparagraph (C) shall be protected from
16 public disclosure under section 2103.”.

17 **SEC. 8. ANNUAL PERFORMANCE REPORTING.**

18 Section 2102(e)(4) of the Homeland Security Act of
19 2002 (6 U.S.C. 622(e)(4)) is amended—

20 (1) in the paragraph heading, by striking
21 “SEMIANNUAL” and inserting “ANNUAL”;

22 (2) in the matter preceding subparagraph (A)—

23 (A) by striking “6 months after the date”
24 and inserting “1 year after the date”;

1 (B) by striking “2014” and inserting
2 “2018”; and

3 (C) by striking “once every 6 months” and
4 inserting “once each year”;

5 (3) by striking subparagraph (C);

6 (4) by redesignating subparagraph (D) as sub-
7 paragraph (C);

8 (5) by inserting after subparagraph (C), as so
9 redesignated, the following:

10 “(D) the effectiveness of the Chemical Facil-
11 ity Anti-Terrorism Standards Program at—

12 “(i) managing security risks; and

13 “(ii) developing and using appropriate
14 metrics and analysis capabilities to meas-
15 ure risk reduction, including—

16 “(I) vulnerability and consequence
17 mitigation indicators; and

18 “(II) outcome metrics that meas-
19 ure cumulative risk reduction over
20 time; and”;

21 (6) by striking subparagraph (E); and

22 (7) by redesignating subparagraph (F) as sub-
23 paragraph (E).

1 **SEC. 9. SPECIFIC PRODUCTS AND MIXTURES CONTAINING**
2 **CHEMICALS OF INTEREST.**

3 *Section 2102(e) of the Homeland Security Act of 2002*
4 *(6 U.S.C. 622(e)) is amended by adding at the end the fol-*
5 *lowing:*

6 “(5) *SPECIFIC PRODUCTS AND MIXTURES CON-*
7 *TAINING CHEMICALS OF INTEREST.—*

8 “(A) *DEFINITIONS.—In this paragraph—*

9 “(i) *the term ‘chemical of interest’*
10 *means a chemical designated as a chemical*
11 *of interest under Appendix A to part 27 of*
12 *title 6, Code of Federal Regulations, or any*
13 *successor thereto; and*

14 “(ii) *the term ‘covered product or mix-*
15 *ture’ means a specific product or mixture*
16 *that contains a chemical of interest at or*
17 *above the minimum concentration listed*
18 *under Appendix A to part 27 of title 6,*
19 *Code of Federal Regulations, or any suc-*
20 *cessor thereto.*

21 “(B) *IN GENERAL.—The Secretary may ex-*
22 *clude a covered product or mixture from the des-*
23 *ignation as a chemical of interest for the pur-*
24 *poses of the definition of the term ‘chemical facil-*
25 *ity of interest’ if, in the sole and unreviewable*
26 *discretion of the Secretary, the Secretary deter-*

1 *mines that the covered product or mixture does*
2 *not present the same hazards for which the chem-*
3 *ical of interest contained in the covered product*
4 *or mixture was designated as a chemical of in-*
5 *terest.*

6 “(C) *REGULATIONS.*—

7 “(i) *PROMULGATION.*—*Not later than 1*
8 *year after the date of enactment of this*
9 *paragraph, the Secretary shall promulgate*
10 *regulations to prescribe a process under*
11 *which an interested party may petition the*
12 *Secretary for exclusion of a covered product*
13 *or mixture under subparagraph (B).*

14 “(ii) *FEDERAL INFORMATION POL-*
15 *ICY.*—*In collecting information from peti-*
16 *tioners pursuant to this subparagraph, the*
17 *Secretary shall not be subject to subchapter*
18 *I of chapter 35 of title 44, United States*
19 *Code.”.*

20 **SEC. 10. CFATS REGULATIONS.**

21 *Section 2107(b) of the Homeland Security Act of 2002*
22 *(6 U.S.C. 627(b)) is amended—*

23 *(1) in paragraph (1), by inserting “(Public Law*
24 *113–254; 128 Stat. 2919)” after “2014”; and*

1 (2) in paragraph (2), by striking “2014” and in-
2 serting “2018”.

3 **SEC. 11. EXPLOSIVE MATERIALS.**

4 (a) *IN GENERAL.*—Title XXI of the Homeland Secu-
5 rity Act of 2002 (6 U.S.C. 621 et seq.) is amended by strik-
6 ing section 2109 (6 U.S.C. 629) and inserting the following:

7 **“SEC. 2109. EXPLOSIVE MATERIALS.**

8 “(a) *IN GENERAL.*—The Secretary may not designate
9 any explosive material regulated by the Department of Jus-
10 tice under chapter 40 of title 18, United States Code, or
11 by the Bureau of Alcohol, Tobacco, Firearms, and Explo-
12 sives under part 555 of title 27, Code of Federal Regula-
13 tions, as a chemical of interest under Appendix A to part
14 27 of title 6, Code of Federal Regulations, or any successor
15 thereto.

16 “(b) *EXPLOSIVE MATERIAL REGULATED AFTER DES-*
17 *IGNATION.*—If any explosive material that is designated as
18 a chemical of interest under Appendix A to part 27 of title
19 6, Code of Federal Regulations, or any successor thereto,
20 becomes regulated by the Department of Justice under chap-
21 ter 40 of title 18, United States Code, or by the Bureau
22 of Alcohol, Tobacco, Firearms, and Explosives under part
23 555 of title 27, Code of Federal Regulations, or any suc-
24 cessor thereto, the Secretary shall remove the designation
25 of such explosive material as a chemical of interest.”.

1 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—*The*
 2 *table of contents in section 1(b) of the Homeland Security*
 3 *Act of 2002 (Public Law 107–196; 116 Stat. 2135) is*
 4 *amended by striking the item relating to section 2109 and*
 5 *inserting the following:*

“*Sec. 2109. Explosive materials.*”.

6 **SEC. 12. CHANGES TO APPENDIX A TO PART 27 OF TITLE 6,**
 7 **CODE OF FEDERAL REGULATIONS.**

8 (a) *IN GENERAL.*—*Title XXI of the Homeland Secu-*
 9 *rity Act of 2002 (6 U.S.C. 621 et seq.), as amended by sec-*
 10 *tion 11 of this Act, is amended by adding at the end the*
 11 *following:*

12 **“SEC. 2110. CHANGES TO APPENDIX A TO PART 27 OF TITLE**
 13 **6, CODE OF FEDERAL REGULATIONS.**

14 “(a) *DEFINITION.*—*In this section, the term ‘Appendix*
 15 *A’ means Appendix A to part 27 of title 6, Code of Federal*
 16 *Regulations, or any successor thereto.*

17 “(b) *NOTICE OF PROPOSED RULEMAKING.*—*The Sec-*
 18 *retary shall publish a notice of proposed rulemaking in the*
 19 *Federal Register relating to any proposed change to Appen-*
 20 *dix A if the Secretary determines that—*

21 “(1) *a chemical should be designated as a chem-*
 22 *ical of interest under Appendix A;*

23 “(2) *a chemical designated as a chemical of in-*
 24 *terest under Appendix A should not be so designated;*

25 *or*

1 “(3) a chemical amount, concentration, or
2 threshold quantity described in Appendix A should be
3 modified.”.

4 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The
5 table of contents in section 1(b) of the Homeland Security
6 Act of 2002 (Public Law 107–196; 116 Stat. 2135) is
7 amended by inserting after the item relating to section 2109
8 the following:

“Sec. 2110. Changes to Appendix A to part 27 of title 6, Code of Federal Regula-
tions.”.

9 **SEC. 13. ASSESSMENT, REPORT, BRIEFING, AND UPDATED**
10 **RETROSPECTIVE ESTIMATE ON COSTS.**

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

12 (1) the term “applicable committee” means—

13 (A) the Committee on Homeland Security
14 and Governmental Affairs of the Senate;

15 (B) the Committee on Homeland Security of
16 the House of Representatives; and

17 (C) the Committee on Energy and Com-
18 merce of the House of Representatives;

19 (2) the terms “CFATS regulation” and “covered
20 chemical facility” have the meanings given those
21 terms in section 2101 of the Homeland Security Act
22 of 2002 (6 U.S.C. 621);

23 (3) the term “Chemical Facility Anti-Terrorism
24 Standards Program” means—

1 (A) *the Chemical Facility Anti-Terrorism*
2 *Standards Program initially authorized under*
3 *section 550 of the Department of Homeland Se-*
4 *curity Appropriations Act, 2007 (Public Law*
5 *109–295; 120 Stat. 1355); and*

6 (B) *the Chemical Facility Anti-Terrorism*
7 *Standards Program subsequently authorized*
8 *under section 2102(a) of the Homeland Security*
9 *Act of 2002 (6 U.S.C. 622(a));*

10 (4) *the term “Department” means the Depart-*
11 *ment of Homeland Security;*

12 (5) *the term “inspector” means an individual*
13 *used by the Department as an inspector for purposes*
14 *of ensuring compliance with title XXI of the Home-*
15 *land Security Act of 2002 (6 U.S.C. 621 et seq.); and*

16 (6) *the term “Secretary” means the Secretary of*
17 *Homeland Security.*

18 (b) *THIRD-PARTY ASSESSMENT.—*

19 (1) *IN GENERAL.—Not later than 90 days after*
20 *the date of enactment of this Act, using amounts ap-*
21 *propriated to the Department before the date of enact-*
22 *ment of this Act, the Secretary shall commission a*
23 *third-party study, which shall be completed not later*
24 *than 1 year after the date on which the third-party*
25 *study is commissioned, to assess the effectiveness of*

1 *the Chemical Facility Anti-Terrorism Standards Pro-*
2 *gram in—*

3 *(A) managing security risks;*

4 *(B) developing and using appropriate*
5 *metrics and analysis capabilities to measure risk*
6 *reduction, including—*

7 *(i) vulnerability and consequence miti-*
8 *gation indicators; and*

9 *(ii) outcome metrics that measure cu-*
10 *mulative risk reduction over time; and*

11 *(C) engaging with and making necessary*
12 *information available to first responders and*
13 *emergency planners and, if necessary, improving*
14 *the degree of situational awareness of first re-*
15 *sponders and emergency planners that is needed*
16 *to prepare for and respond to security incidents*
17 *at high-risk chemical facilities.*

18 *(2) BRIEFING AND SUBMISSION OF STUDY.—Not*
19 *later than 90 days after the date on which the third-*
20 *party study described in paragraph (1) is completed,*
21 *the Secretary shall—*

22 *(A) brief each applicable committee on the*
23 *results of the third-party study; and*

24 *(B) submit a copy of the completed third-*
25 *party study to each applicable committee.*

1 (c) *GAO REPORT.*—Not later than 2 years after the
2 date of enactment of this Act, the Comptroller General of
3 the United States shall submit to each applicable committee
4 a report on inspector training that contains recommenda-
5 tions for improving inspector training, including rec-
6 ommendations relating to—

7 (1) *how the Department selects inspectors;*

8 (2) *initial training required for inspectors before*
9 *the inspectors are selected by the Department to be*
10 *used to conduct inspections;*

11 (3) *qualification standards required to be met by*
12 *inspectors before they are selected by the Department*
13 *to be used to conduct inspections;*

14 (4) *on-the-job training required for inspectors*
15 *and how that training is documented;*

16 (5) *final qualification and approval standards*
17 *required to be met by inspectors before the inspectors*
18 *are initially used by the Department to conduct in-*
19 *spections;*

20 (6) *continuing qualification standards required*
21 *to be met by inspectors while the inspectors are used*
22 *by the Department to conduct inspections;*

23 (7) *continuous training required for inspectors*
24 *while the inspectors are used by the Department to*
25 *conduct inspections; and*

1 (8) *improving cybersecurity training.*

2 (d) *ANNUAL BRIEFING.*—*Not later than 1 year after*
3 *the date of enactment of this Act, and each year thereafter*
4 *for 5 years, the Secretary shall brief each applicable com-*
5 *mittee on the activities carried out under this section and*
6 *under title XXI of the Homeland Security Act of 2002 (6*
7 *U.S.C. 621 et seq.) that shall include—*

8 (1) *detailed information relating to—*

9 (A) *as of the date on which the briefing is*
10 *made—*

11 (i) *threats to covered chemical facili-*
12 *ties; and*

13 (ii) *how chemicals of interest are being*
14 *utilized by bad actors in the threat environ-*
15 *ment—*

16 (I) *in the United States; and*

17 (II) *globally;*

18 (B) *how CFATS regulations play a role in*
19 *making the United States safer; and*

20 (C) *how the Chemical Facility Anti-Ter-*
21 *rорism Standards Program is effectively address-*
22 *ing the threat landscape; and*

23 (2) *data, rationale, and metrics on how the*
24 *Chemical Facility Anti-Terrorism Standards Pro-*
25 *gram effectively reduces risks.*

1 (e) *UPDATED RETROSPECTIVE ESTIMATE ON COSTS.*—
2 *Not later than 1 year after the date of enactment of this*
3 *Act, the Secretary shall complete a retrospective estimate*
4 *of the costs, including costs to the Government, regulated*
5 *entities, and the public, of carrying out the Chemical Facil-*
6 *ity Anti-Terrorism Standards Program during the period*
7 *beginning on the first day of fiscal year 2006 and ending*
8 *on the last day of fiscal year 2018.*

9 (f) *REPEAL.*—*Section 3 of the Protecting and Securing*
10 *Chemical Facilities from Terrorist Attacks Act of 2014*
11 *(Public Law 113–254; 128 Stat. 2917) is repealed.*

12 **SEC. 14. EFFECTIVE DATE.**

13 *This Act, and the amendments made by this Act, shall*
14 *take effect on the date that is 30 days after the date of enact-*
15 *ment of this Act.*

16 **SEC. 15. TERMINATION.**

17 *The authority provided under title XXI of the Home-*
18 *land Security Act of 2002 (6 U.S.C. 621 et seq.), as amend-*
19 *ed by this Act, shall terminate on the date that is 5 years*
20 *after the date of enactment of this Act.*

21 **SEC. 16. TECHNICAL AND CONFORMING AMENDMENT.**

22 *The table of contents in section 1(b) of the Homeland*
23 *Security Act of 2002 (Public Law 107–196; 116 Stat. 2135)*
24 *is amended, in the item relating to section 2103, by striking*
25 *the em dash at the end.*

Calendar No. 670

115TH CONGRESS
2^D SESSION

S. 3405

[Report No. 115-384]

A BILL

To reauthorize the Chemical Facility Anti-Terrorism Standards Program of the Department of Homeland Security.

NOVEMBER 26, 2018

Reported with an amendment