

Suspend the Rules and Pass the Bill, H.R. 4007, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

113TH CONGRESS
2^D SESSION

H. R. 4007

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 2014

Mr. MEEHAN (for himself, Mr. McCAUL, Mr. KING of New York, Mr. GENE GREEN of Texas, Mrs. MILLER of Michigan, and Mr. ROGERS of Alabama) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS**
2 **PROGRAM.**

3 (a) IN GENERAL.—The Homeland Security Act of
4 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
5 end the following:

6 **“TITLE XXI—CHEMICAL FACIL-**
7 **ITY ANTI-TERRORISM STAND-**
8 **ARDS**

9 **“SEC. 2101. CHEMICAL FACILITY ANTI-TERRORISM STAND-**
10 **ARDS PROGRAM.**

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

20 “(b) SECURITY MEASURES.—Site security plans re-
21 quired under subsection (a) may include layered security
22 measures that, in combination, appropriately address the
23 security vulnerability assessment and the risk-based per-
24 formance standards for security for the facility.

25 “(c) APPROVAL OR DISAPPROVAL OF SITE SECURITY
26 PLANS.—

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

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

21 “(3) SITE SECURITY PLAN ASSESSMENTS.—In
22 approving or disapproving a site security plan under
23 this subsection, the Secretary shall employ the risk
24 assessment policies and procedures developed under
25 this title. In the case of a covered chemical facility

1 for which a site security plan has been approved by
2 the Secretary before the date of the enactment of
3 this title, the Secretary may not require the resub-
4 mission of the site security information solely by rea-
5 son of the enactment of this title.

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

15 “(d) COMPLIANCE.—

16 “(1) AUDITS AND INSPECTIONS.—

17 “(A) IN GENERAL.—The Secretary shall
18 conduct the audit and inspection of covered
19 chemical facilities for the purpose of deter-
20 mining compliance with this Act. The audit and
21 inspection may be carried out by a non-Depart-
22 ment or nongovernment entity, as approved by
23 the Secretary.

24 “(B) REPORTING STRUCTURE.—Any audit
25 or inspection conducted by an individual em-

1 employed by a nongovernment entity shall be as-
2 signed in coordination with the head of audits
3 and inspections for the region in which the
4 audit or inspection is to be conducted. When in
5 the field, any individual employed by a non-
6 government entity shall report to the respective
7 head of audits and inspections for the region in
8 which the individual is operating.

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

22 “(i) minimum training requirements
23 for new auditors or inspectors;

24 “(ii) retraining requirements;

1 “(iii) minimum education and experi-
2 ence levels;

3 “(iv) the submission of information as
4 required by the Secretary to enable deter-
5 mination of whether the auditor or inspec-
6 tor has a conflict of interest;

7 “(v) the maintenance of a secret secu-
8 rity clearance;

9 “(vi) reporting any issue of non-com-
10 pliance with this section to the Secretary
11 within 24 hours; and

12 “(vii) any additional qualifications for
13 fitness of duty as the Secretary may estab-
14 lish.

15 “(D) TRAINING OF DEPARTMENT AUDI-
16 TORS AND INSPECTORS.—The Secretary shall
17 prescribe standards for the training and re-
18 training of individuals employed by the Depart-
19 ment as auditors and inspectors. Such stand-
20 ards shall include—

21 “(i) minimum training requirements
22 for new auditors and inspectors;

23 “(ii) retraining requirements; and

24 “(iii) any additional requirements the
25 Secretary may establish.

1 “(2) NOTICE OF NONCOMPLIANCE.—

2 “(A) NOTICE.—If the Secretary deter-
3 mines that a covered chemical facility or a
4 chemical facility of interest is not in compliance
5 with this section, the Secretary shall—

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

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

14 “(II) an opportunity for consulta-
15 tion with the Secretary or the Sec-
16 retary’s designee; and

17 “(ii) issue an order to comply by such
18 date as the Secretary determines to be ap-
19 propriate under the circumstances.

20 “(B) CONTINUED NONCOMPLIANCE.—If
21 the owner or operator continues to be in non-
22 compliance after the date specified in such
23 order, the Secretary may enter an order assess-
24 ing a civil penalty, an order to cease operations,
25 or both.

1 “(3) PERSONNEL SURETY.—

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

5 “(i) does not require an owner or op-
6 erator of a covered chemical facility that
7 voluntarily participates to submit informa-
8 tion about an individual more than one
9 time;

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

18 “(iii) provides redress to an individual
19 whose information was vetted against the
20 terrorist screening database under the pro-
21 gram and who believes that the personally
22 identifiable information submitted to the
23 Department for such vetting by a covered
24 chemical facility, or its designated rep-
25 resentative, was inaccurate.

1 “(B) PERSONNEL SURETY IMPLEMENTA-
2 TION.—To the extent that a risk-based per-
3 formance standard under subsection (a) is di-
4 rected toward identifying individuals with ter-
5 rorist ties—

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

14 “(ii) the Secretary may not require a
15 covered chemical facility to submit any in-
16 formation about such individual unless the
17 individual—

18 “(I) is vetted under the Per-
19 sonnel Surety Program; or

20 “(II) has been identified as pre-
21 sented a terrorism security risk.

22 “(C) RESPONSIBILITIES OF SECURITY
23 SCREENING COORDINATION OFFICE.—

24 “(i) IN GENERAL.—The Secretary
25 shall direct the Security Screening Coordi-

1 nation Office of the Department to coordi-
2 nate with the National Protection and Pro-
3 grams Directorate to expedite the develop-
4 ment of a common credential that screens
5 against the terrorist screening database on
6 a recurrent basis and meets all other
7 screening requirements of this title.

8 “(ii) REPORT.—Not later than March
9 1, 2015, and annually thereafter, the Sec-
10 retary shall submit to Congress a report on
11 the progress of the Secretary in meeting
12 the requirements of clause (i).

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

20 “(A) was vetted under the Personnel Sur-
21 ety Program; or

22 “(B) has been identified as presenting a
23 terrorism security risk.

24 “(5) AVAILABILITY OF INFORMATION.—The
25 Secretary shall share with the owner or operator of

1 a covered chemical facility such information as the
2 owner or operator needs to comply with this section.

3 “(e) RESPONSIBILITIES OF THE SECRETARY.—

4 “(1) IDENTIFICATION OF FACILITIES OF INTER-
5 EST.—In carrying out this title, the Secretary shall
6 consult with the heads of other Federal agencies,
7 States and political subdivisions thereof, and rel-
8 evant business associations to identify all chemical
9 facilities of interest.

10 “(2) RISK ASSESSMENT.—

11 “(A) IN GENERAL.—For purposes of this
12 title, the Secretary shall develop a risk assess-
13 ment approach and corresponding tiering meth-
14 odology that incorporates all relevant elements
15 of risk, including threat, vulnerability, and con-
16 sequence.

17 “(B) CRITERIA FOR DETERMINING SECUR-
18 ITY RISK.—The criteria for determining the
19 security risk of terrorism associated with a fa-
20 cility shall include—

21 “(i) the relevant threat information;

22 “(ii) the potential economic con-
23 sequences and the potential loss of human
24 life in the event of the facility being sub-

1 ject to a terrorist attack, compromise, infil-
2 tration, or exploitation; and

3 “(iii) the vulnerability of the facility
4 to a terrorist attack, compromise, infiltra-
5 tion, or exploitation.

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

15 “(f) DEFINITIONS.—In this title:

16 “(1) The term ‘covered chemical facility’ means
17 a facility that the Secretary identifies as a chemical
18 facility of interest and, based upon review of a Top-
19 Screen, as such term is defined in section 27.105 of
20 title 6 of Code of Federal Regulations, determines
21 meets the risk criteria developed pursuant subsection
22 (e)(2)(B). Such term does not include any of the fol-
23 lowing:

1 “(A) A facility regulated pursuant to the
2 Maritime Transportation Security Act of 2002
3 (Public Law 107–295).

4 “(B) A Public Water System, as such term
5 is defined by section 1401 of the Safe Drinking
6 Water Act (Public Law 93–523; 42 U.S.C.
7 300f).

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

12 “(D) Any facility owned or operated by the
13 Department of Defense or the Department of
14 Energy.

15 “(E) Any facility subject to regulation by
16 the Nuclear Regulatory Commission.

17 “(2) The term ‘chemical facility of interest’
18 means a facility that holds, or that the Secretary
19 has a reasonable basis to believe holds, a Chemical
20 of Interest, as designated under in Appendix A of
21 title 6 of the Code of Federal Regulations, at a
22 threshold quantity that meets relevant risk-related
23 criteria developed pursuant to subsection (e)(2)(B).

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

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

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

19 “(c) SHARING OF INFORMATION WITH FIRST RE-
20 SPONDERS.—The Secretary shall provide to State, local,
21 and regional fusion centers (as such term is defined in
22 section 210A(j)(1) of this Act) and State and local govern-
23 ment officials, as determined appropriate by the Secretary,
24 such information as is necessary to help ensure that first
25 responders are properly prepared and provided with the
26 situational awareness needed to respond to incidents at

1 covered chemical facilities. Such information shall be dis-
2 seminated through the Homeland Security Information
3 Network or the Homeland Secure Data Network, as ap-
4 propriate.

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

11 **“SEC. 2103. CIVIL PENALTIES.**

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

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

19 **“SEC. 2104. WHISTLEBLOWER PROTECTIONS.**

20 “The Secretary shall publish on the Internet website
21 of the Department and in other materials made available
22 to the public the whistleblower protections that an indi-
23 vidual providing such information would have.

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

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

7 “(b) STATES AND POLITICAL SUBDIVISIONS.—This
8 title shall not preclude or deny any right of any State or
9 political subdivision thereof to adopt or enforce any regu-
10 lation, requirement, or standard of performance with re-
11 spect to chemical facility security that is more stringent
12 than a regulation, requirement, or standard of perform-
13 ance issued under this section, or otherwise impair any
14 right or jurisdiction of any State with respect to chemical
15 facilities within that State, unless there is an actual con-
16 flict between this section and the law of that State.

17 “(c) RAIL TRANSIT.—

18 “(1) DUPLICATIVE REGULATIONS.—The Sec-
19 retary shall coordinate with the Assistant Secretary
20 of Homeland Security (Transportation Security Ad-
21 ministration) to eliminate any provision of this title
22 applicable to rail security that would duplicate any
23 security measure under the Rail Transportation Se-
24 curity Rule under section 1580 of title 49 of the
25 Code of Federal Regulations, as in effect as of the
26 date of the enactment of this title. To the extent

1 that there is a conflict between this title and any
2 regulation under the jurisdiction of the Transpor-
3 tation Security Administration, the regulation under
4 the jurisdiction of the Transportation Security Ad-
5 ministration shall prevail.

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

14 **“SEC. 2106. REPORTS.**

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

20 “(1) Certification by the Secretary that the Sec-
21 retary has made significant progress in the identi-
22 fication of all chemical facilities of interest pursuant
23 to section 2101(e)(1), including a description of the
24 steps taken to achieve such progress and the metrics
25 used to measure it, information on whether facilities

1 that submitted Top-Screens as a result of such ef-
2 forts were tiered and in what tiers they were placed,
3 and an action plan to better identify chemical facili-
4 ties of interest and bring those facilities into compli-
5 ance.

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

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

16 “(b) SEMIANNUAL GAO REPORT.—During the 3-
17 year period beginning on the date of the enactment of this
18 title, the Comptroller General of the United States shall
19 submit a semiannual report to Congress containing the as-
20 sessment of the Comptroller General of the implementa-
21 tion of this title. The Comptroller General shall submit
22 the first such report by not later than the date that is
23 180 days after the date of the enactment of this title.

1 **“SEC. 2107. CFATS REGULATIONS.**

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

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

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

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

24 “(1) identifying chemicals of interest;

25 “(2) designating chemicals of interest; and

1 “(3) determining security risk associated with a
2 chemical facility.

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

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

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

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

20 **“SEC. 2109. OUTREACH TO CHEMICAL FACILITIES OF IN-**
21 **TEREST.**

22 “Not later than 90 days after the date of the enact-
23 ment of this title, the Secretary shall establish an outreach
24 implementation plan, in coordination with the heads of
25 other appropriate Federal and State agencies and relevant

1 business associations, to identify chemical facilities of in-
2 terest and make available compliance assistance materials
3 and information on education and training.

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

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

8 (b) CLERICAL AMENDMENT.—The table of contents
9 in section 1(b) of such Act is amended by adding at the
10 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.”.

11 (c) THIRD-PARTY ASSESSMENT.—Using amounts au-
12 thorized to be appropriated under section 2110 of the
13 Homeland Security Act of 2002, as added by subsection
14 (a), the Secretary of Homeland Security shall commission
15 a third-party study to assess vulnerabilities to acts of ter-
16 rorism associated with the Chemical Facility Anti-Ter-
17 rorism Standards program, as authorized pursuant to sec-
18 tion 550 of the Department of Homeland Security Appro-
19 priations Act, 2007 (Public Law 109–295; 120 Stat.
20 1388; 6 U.S.C. 121 note).

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

12 **SEC. 3. EFFECTIVE DATE.**

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