

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4007
OFFERED BY M . _____**

Strike all after the enacting clause and insert the following:

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

1 covered chemical facilities and chemical facilities of inter-
2 est from acts of terrorism and other security risks and
3 require such facilities to submit security vulnerability as-
4 sessments and to develop and implement site security
5 plans.

6 “(b) SECURITY MEASURES.—Site security plans re-
7 quired under subsection (a) may include layered security
8 measures that, in combination, appropriately address the
9 security vulnerability assessment and the risk-based per-
10 formance standards for security for the facility.

11 “(c) APPROVAL OR DISAPPROVAL OF SITE SECURITY
12 PLANS.—

13 “(1) IN GENERAL.—The Secretary shall review
14 and approve or disapprove each security vulner-
15 ability assessment and site security plan under sub-
16 section (a). The Secretary may not disapprove a site
17 security plan based on the presence or absence of a
18 particular security measure, but the Secretary shall
19 disapprove a site security plan if the plan fails to
20 satisfy the risk-based performance standards estab-
21 lished under subsection (a).

22 “(2) ALTERNATIVE SECURITY PROGRAMS.—The
23 Secretary may approve an alternative security pro-
24 gram established by a private sector entity or a Fed-
25 eral, State, or local authority or pursuant to other

1 applicable laws, if the Secretary determines that the
2 requirements of such program meet the require-
3 ments of this section. A covered chemical facility
4 may meet the site security plan requirement under
5 subsection (a) by adopting an alternative security
6 program that has been reviewed and approved by the
7 Secretary under this paragraph.

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

18 “(d) COMPLIANCE.—

19 “(1) AUDITS AND INSPECTIONS.—

20 “(A) IN GENERAL.—The Secretary shall
21 arrange for the audit and inspection of covered
22 chemical facilities for the purpose of deter-
23 mining compliance with this Act. Under any
24 such arrangement, the audit and inspection
25 may be carried out by a non-Department or

1 nongovernment entity, as approved by the Sec-
2 retary.

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

16 “(i) minimum training requirements
17 for new auditors or inspectors;

18 “(ii) retraining requirements;

19 “(iii) minimum education and experi-
20 ence levels;

21 “(iv) the submission of information as
22 required by the Secretary to enable deter-
23 mination of whether the auditor or inspec-
24 tor has a conflict of interest;

1 “(v) the maintenance of a secret secu-
2 rity clearance; and

3 “(vi) any additional qualifications for
4 fitness of duty as the Secretary may estab-
5 lish.

6 “(2) NOTICE OF NONCOMPLIANCE.—If the Sec-
7 retary determines that a covered chemical facility or
8 a chemical facility of interest is not in compliance
9 with this section, the Secretary shall provide the
10 owner or operator of the facility with written notifi-
11 cation (including a clear explanation of any defi-
12 ciency in the security vulnerability assessment or site
13 security plan) and opportunity for consultation with
14 the Secretary or the Secretary’s designee, and shall
15 issue an order to comply by such date as the Sec-
16 retary determines to be appropriate under the cir-
17 cumstances. If the owner or operator continues to be
18 in noncompliance after the date specified in such
19 order, the Secretary may enter an order assessing a
20 civil penalty, an order to cease operations, or both.

21 “(3) PERSONNEL SURETY.—

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

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

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

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

22 “(B) PERSONNEL SURETY IMPLEMENTA-
23 TION.—To the extent that a risk-based per-
24 formance standard under subsection (a) is di-

1 rected toward identifying individuals with ter-
2 rorist ties—

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

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

15 “(I) is vetted under the Per-
16 sonnel Surety Program; or

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

19 “(C) RESPONSIBILITIES OF SECURITY
20 SCREENING COORDINATION OFFICE.—

21 “(i) IN GENERAL.—The Secretary
22 shall direct the Security Screening Coordi-
23 nation Office of the Department to coordi-
24 nate with the National Protection and Pro-
25 grams Directorate to expedite the develop-

1 ment of a common credential that screens
2 against the terrorist screening database on
3 a recurrent basis and meets all other
4 screening requirements of this title.

5 “(ii) REPORT.—Not later than March
6 1, 2015, and annually thereafter, the Sec-
7 retary shall submit to Congress a report on
8 the progress of the Secretary in meeting
9 the requirements of clause (i).

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

17 “(A) was vetted under the Personnel Sur-
18 ety Program; or

19 “(B) has been identified as presenting a
20 terrorism security risk.

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

25 “(e) RESPONSIBILITIES OF THE SECRETARY.—

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

7 “(2) RISK ASSESSMENT.—

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

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

18 “(i) the relevant threat information;

19 “(ii) the potential economic con-
20 sequences and the potential loss of human
21 life in the event of the facility being sub-
22 ject to a terrorist attack, compromise, infil-
23 tration, or exploitation; and

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

4 “(f) DEFINITIONS.—In this title:

5 “(1) The term ‘covered chemical facility’ means
6 a facility that the Secretary identifies as a chemical
7 facility of interest and, based upon review of a Top-
8 Screen, as such term is defined in section 27.105 of
9 title 6 of Code of Federal Regulations, determines
10 meets the risk criteria developed pursuant subsection
11 (e)(2)(B). Such term does not include any of the fol-
12 lowing:

13 “(A) A facility regulated pursuant to the
14 Maritime Transportation Security Act of 2002
15 (Public Law 107–295).

16 “(B) A Public Water System, as such term
17 is defined by section 1401 of the Safe Drinking
18 Water Act (Public Law 93–523; 42 U.S.C.
19 300f).

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

1 “(D) Any facility owned or operated by the
2 Department of Defense or the Department of
3 Energy.

4 “(E) Any facility subject to regulation by
5 the Nuclear Regulatory Commission.

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

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

14 “(a) IN GENERAL.—Notwithstanding any other pro-
15 vision of law, information developed pursuant to this title,
16 including vulnerability assessments, site security plans,
17 and other security related information, records, and docu-
18 ments shall be given protections from public disclosure
19 consistent with similar information developed by chemical
20 facilities subject to regulation under section 70103 of title
21 46, United States Code.

22 “(b) SHARING OF INFORMATION WITH STATES AND
23 LOCAL GOVERNMENTS.—This section does not prohibit
24 the sharing of information developed pursuant to this title,
25 as the Secretary deems appropriate, with State and local

1 government officials possessing the necessary security
2 clearances, including law enforcement officials and first
3 responders, for the purpose of carrying out this title, if
4 such information may not be disclosed pursuant to any
5 State or local law.

6 “(c) SHARING OF INFORMATION WITH FIRST RE-
7 SPONDERS.—The Secretary shall provide to State, local,
8 and regional fusion centers (as such term is defined in
9 section 210A(j)(1) of this Act) such information as is nec-
10 essary to help ensure that first responders are properly
11 prepared and provided with the situational awareness
12 needed to respond to incidents at covered chemical facili-
13 ties. Such information shall be disseminated through the
14 Homeland Security Information Network.

15 “(d) ENFORCEMENT PROCEEDINGS.—In any pro-
16 ceeding to enforce this section, vulnerability assessments,
17 site security plans, and other information submitted to or
18 obtained by the Secretary under this section, and related
19 vulnerability or security information, shall be treated as
20 if the information were classified material.

21 **“SEC. 2103. CIVIL PENALTIES.**

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

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

5 **“SEC. 2104. RELATIONSHIP TO OTHER LAWS.**

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

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

21 “(c) RAIL TRANSIT.—

22 “(1) DUPLICATIVE REGULATIONS.—The Sec-
23 retary shall coordinate with the Assistant Secretary
24 of Homeland Security (Transportation Security Ad-
25 ministration) to eliminate any provision of this title

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

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

19 **“SEC. 2105. REPORTS.**

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

1 “(1) Certification by the Secretary that the Sec-
2 retary has made significant progress in the identi-
3 fication of all chemical facilities of interest pursuant
4 to section 2101(e)(1), including a description of the
5 steps taken to achieve such progress and the metrics
6 used to measure it.

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

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

17 “(b) SEMIANNUAL GAO REPORT.—During the 2-
18 year period beginning on the date of the enactment of this
19 title, the Comptroller General of the United States shall
20 submit a semiannual report to Congress containing the as-
21 sessment of the Comptroller General of the implementa-
22 tion of this title. The Comptroller General shall submit
23 the first such report by not later than the date that is
24 180 days after the date of the enactment of this title.

1 **“SEC. 2106. 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. 2107. AUTHORIZATION OF APPROPRIATIONS.**

4 “‘There is authorized to be appropriated to carry out
5 this title \$87,436,000 for each of fiscal years 2015, 2016,
6 and 2017.’”.

7 (b) CLERICAL AMENDMENT.—The table of contents
8 in section 1(b) of such Act is amended by adding at the
9 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. Relationship to other laws.

“Sec. 2105. Reports.

“Sec. 2106. CFATS regulations.

“Sec. 2107. Authorization of appropriations.”.

10 **SEC. 3. REGULATION OF THE SALE AND TRANSFER OF AM-**
11 **MONIUM NITRATE.**

12 Section 899B of the Homeland Security Act of 2002
13 (6 U.S.C. 488a) is amended—

14 (1) in subsection (a)—

15 (A) by inserting “of ownership rights”
16 after “transfer”; and

17 (B) by inserting “, and the transfer of pos-
18 session of ammonium nitrate to entities that
19 provide application services for ammonium ni-
20 trate,” after “ammonium nitrate facility”; and

1 (2) by striking subsection (f) and inserting the
2 following new subsections:

3 “(f) EXEMPTIONS.—

4 “(1) EXPLOSIVE PURPOSES.—The Secretary
5 may exempt from this subtitle a person producing,
6 selling, or purchasing ammonium nitrate exclusively
7 for use in the production of an explosive under a li-
8 cense or permit issued under chapter 40 of title 18,
9 United States Code.

10 “(2) TRANSPORTATION ACTIVITIES.—The Sec-
11 retary shall exempt a person engaged in transpor-
12 tation activities covered by chapter 51 of title 49,
13 United States Code, or issued a transportation secu-
14 rity card pursuant to section 70105 of title 46 U.S.
15 Code, from the requirements of subsections (c) and
16 (d).

17 “(g) RECORDKEEPING.—Nothing in this section shall
18 impede an ammonium nitrate facility from—

19 “(1) executing the recordkeeping or identity
20 verification requirements under subsection (e); or

21 “(2) collecting recordkeeping information or
22 identity verification information from any person ac-
23 quiring ammonium nitrate from the facility, includ-
24 ing persons otherwise exempt from any requirement
25 of this section under subsection (f).”.

1 **SEC. 4. EFFECTIVE DATE.**

2 This Act, and the amendments made by this Act,
3 shall take effect on the date that is 30 days after the date
4 of the enactment of this Act.

