

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4007**

OFFERED BY Mr. Meehan

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) PROGRAM ESTABLISHED.—There is in the De-
8 partment of Homeland Security a Chemical Facility Anti-
9 Terrorism Standards Program. Under such Program, the
10 Secretary of Homeland Security shall establish risk-based
11 performance standards designed to protect covered chem-
12 ical facilities from acts of terrorism and other security
13 risks and require such facilities to submit security vulner-
14 ability assessments and to develop and implement site se-
15 curity plans.

16 (b) SECURITY MEASURES.—Site security plans re-
17 quired under subsection (a) may include layered security
18 measures that, in combination, appropriately address the

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

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

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

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

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

11 (d) COMPLIANCE.—

12 (1) AUDITS AND INSPECTIONS.—The Secretary
13 shall arrange for the audit and inspection of covered
14 chemical facilities for the purpose of determining
15 compliance with this Act. Under any such arrange-
16 ment, the audit and inspection may be carried out
17 by a non-Department or nongovernment entity, as
18 approved by the Secretary.

19 (2) NOTICE OF NONCOMPLIANCE.—If the Sec-
20 retary determines that a covered chemical facility is
21 not in compliance with this section, the Secretary
22 shall provide the owner or operator of the facility
23 with written notification (including a clear expla-
24 nation of any deficiency in the security vulnerability
25 assessment or site security plan) and opportunity for

1 consultation with the Secretary or the Secretary's
2 designee, and shall issue an order to comply by such
3 date as the Secretary determines to be appropriate
4 under the circumstances. If the owner or operator
5 continues to be in noncompliance after the date
6 specified in such order, the Secretary may enter an
7 order assessing a civil penalty, an order to cease op-
8 erations, or both.

9 (3) PERSONNEL SURETY.—To the extent that
10 any risk-based performance standard under sub-
11 section (a) is directed toward identifying individuals
12 with terrorist ties—

13 (A) a covered chemical facility may satisfy
14 its obligation under such standard with respect
15 to an individual by utilizing any Federal screen-
16 ing program that periodically vets individuals
17 against the terrorist screening database, or any
18 successor, including the Department of Home-
19 land Security Personnel Surety Program; and

20 (B) the Secretary may not require a cov-
21 ered chemical facility to submit any information
22 about such individual unless the individual—

23 (i) is vetted under the Department of
24 Homeland Security Personnel Surety Pro-
25 gram; or

1 (ii) has been identified as presenting a
2 terrorism security risk.

3 (4) FACILITY ACCESS.—For purposes of the
4 compliance of a covered chemical facility with a risk-
5 based performance standard established under sub-
6 section (a), the Secretary may not require the facil-
7 ity to submit any information about an individual
8 who has been granted access to the facility unless
9 the individual—

10 (A) was vetted under the Department of
11 Homeland Security Personnel Surety Program;
12 or

13 (B) has been identified as presenting a ter-
14 rorism security risk.

15 (5) AVAILABILITY OF INFORMATION.—The Sec-
16 retary shall share with the owner or operator of a
17 covered chemical facility such information as the
18 owner or operator needs to comply with this section.

19 (e) RESPONSIBILITIES OF THE SECRETARY.—

20 (1) IDENTIFICATION OF FACILITIES OF INTER-
21 EST.—In carrying out this Act, the Secretary shall
22 consult with the heads of other Federal agencies,
23 States and political subdivisions thereof, and rel-
24 evant business associations to identify all chemical
25 facilities of interest.

1 (2) RISK ASSESSMENT.—

2 (A) IN GENERAL.—For purposes of this
3 Act, the Secretary shall develop a risk assess-
4 ment approach and corresponding tiering meth-
5 odology that incorporates all relevant elements
6 of risk, including threat, vulnerability, and con-
7 sequence.

8 (B) CRITERIA FOR DETERMINING SECUR-
9 RITY RISK.—The criteria for determining the
10 security risk of terrorism associated with a fa-
11 cility shall include—

- 12 (i) the relevant threat information;
- 13 (ii) the potential economic con-
14 sequences and the potential loss of human
15 life in the event of the facility being sub-
16 ject to a terrorist attack, compromise, infil-
17 tration, or exploitation; and
- 18 (iii) the vulnerability of the facility to
19 a terrorist attack, compromise, infiltration,
20 or exploitation.

21 (f) COVERED CHEMICAL FACILITY.—In this Act, the
22 term “covered chemical facility” means a chemical facility
23 that the Secretary designates as a chemical facility of in-
24 terest under subsection (e)(1) and determines presents a

1 high level of security risk. Such term does not include any
2 of the following:

3 (1) A facility regulated pursuant to the Mari-
4 time Transportation Security Act of 2002 (Public
5 Law 107–295).

6 (2) A Public Water System, as such term is de-
7 fined by section 1401 of the Safe Drinking Water
8 Act (Public Law 93–523; 42 U.S.C. 300f).

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

12 (4) Any facility owned or operated by the De-
13 partment of Defense or the Department of Energy.

14 (5) Any facility subject to regulation by the Nu-
15 clear Regulatory Commission.

16 **SEC. 3. PROTECTION AND SHARING OF INFORMATION.**

17 (a) IN GENERAL.—Notwithstanding any other provi-
18 sion of law, information developed pursuant to this Act,
19 including vulnerability assessments, site security plans,
20 and other security related information, records, and docu-
21 ments shall be given protections from public disclosure
22 consistent with similar information developed by chemical
23 facilities subject to regulation under section 70103 of title
24 46, United States Code.

1 (b) SHARING OF INFORMATION WITH STATES AND
2 LOCAL GOVERNMENTS.—This section does not prohibit
3 the sharing of information developed pursuant to this Act,
4 as the Secretary deems appropriate, with State and local
5 government officials possessing the necessary security
6 clearances, including law enforcement officials and first
7 responders, for the purpose of carrying out this Act, if
8 such information may not be disclosed pursuant to any
9 State or local law.

10 (c) SHARING OF INFORMATION WITH FIRST RE-
11 SPONDERS.—The Secretary shall provide to State, local,
12 and regional fusion centers such information as is nec-
13 essary to help ensure that first responders are properly
14 prepared and provided with the situational awareness
15 needed to respond to incidents at covered chemical facili-
16 ties. Such information shall be disseminated through the
17 Homeland Security Information Network.

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

1 **SEC. 4. CIVIL PENALTIES.**

2 (a) VIOLATIONS.—Any person who violates an order
3 issued under this Act shall be liable for a civil penalty
4 under section 70119(a) of title 46, United States Code.

5 (b) RIGHT OF ACTION.—Nothing in this Act confers
6 upon any person except the Secretary a right of action
7 against an owner or operator of a covered chemical facility
8 to enforce any provision of this Act.

9 **SEC. 5. RELATIONSHIP TO OTHER LAWS.**

10 (a) OTHER FEDERAL LAWS.—Nothing in this Act
11 shall be construed to supersede, amend, alter, or affect
12 any Federal law that regulates the manufacture, distribu-
13 tion in commerce, use, sale, other treatment, or disposal
14 of chemical substances or mixtures.

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

1 **SEC. 6. REPORTS.**

2 (a) REPORT TO CONGRESS.—Not later than 18
3 months after the date of the enactment of this Act, the
4 Secretary shall submit to Congress a report on the Chem-
5 ical Facilities Anti-Terrorism Standards Program. Such
6 report shall include each of the following:

7 (1) Certification by the Secretary that the Sec-
8 retary has made significant progress in the identi-
9 fication of all chemical facilities of interest pursuant
10 to section 2(e)(1), including a description of the
11 steps taken to achieve such progress and the metrics
12 used to measure it.

13 (2) Certification by the Secretary that the Sec-
14 retary has developed a risk assessment approach and
15 corresponding tiering methodology pursuant to sec-
16 tion 2(e)(2).

17 (3) An assessment by the Secretary of the im-
18 plementation by the Department of Homeland Secu-
19 rity of any recommendations made by the Homeland
20 Security Studies and Analysis Institute as outlined
21 in the Institute's Tiering Methodology Peer Review
22 (Publication Number: RP12-22-02).

23 (b) SEMIANNUAL GAO REPORT.—During the 2-year
24 period beginning on the date of the enactment of this Act,
25 the Comptroller General of the United States shall submit
26 a semiannual report to Congress containing the assess-

1 ment of the Comptroller General of the implementation
2 of this Act. The Comptroller General shall submit the first
3 such report by not later than the date that is 180 days
4 after the date of the enactment of this Act.

5 **SEC. 7. TERMINATION.**

6 Except as provided under section 10(b) of this Act,
7 the authority under this Act shall terminate on the date
8 that is 3 years after the date of the enactment of this
9 Act.

10 **SEC. 8. USE OF EXISTING CFATS REGULATIONS.**

11 (a) IN GENERAL.—In carrying out the requirements
12 of this Act, the Secretary may, to the extent that the Sec-
13 retary determines is appropriate, use any of the CFATS
14 regulations, as in effect immediately before the date of the
15 enactment of this Act, that the Secretary determines carry
16 out such requirements.

17 (b) CFATS REGULATIONS.—In this section, the term
18 “CFATS regulations” means the regulations prescribed
19 pursuant to section 550 of the Department of Homeland
20 Security Appropriations Act (Public Law 109–295; 120
21 Stat. 1388; 6 U.S.C. 121 note).

22 **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

23 There is authorized to be appropriated to carry out
24 sections 1 through 8 of this Act \$87,436,000 for each fis-
25 cal year.

1 **SEC. 10. REGULATION OF THE SALE AND TRANSFER OF AM-**
2 **MONIUM NITRATE.**

3 (a) IN GENERAL.—Section 899B of the Homeland
4 Security Act of 2002 (6 U.S.C. 488a) is amended—

5 (1) in subsection (a)—

6 (A) by inserting “of ownership rights”
7 after “transfer”; and

8 (B) by inserting “, and the transfer of pos-
9 session of ammonium nitrate to entities that
10 provide application services for ammonium ni-
11 trate,”; and

12 (2) by striking subsection (f) and inserting the
13 following:

14 “(f) EXEMPTIONS.—

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

21 “(2) TRANSPORTATION ACTIVITIES.—The Sec-
22 retary shall exempt from this subtitle a person en-
23 gaged in transportation activities covered by chapter
24 51 of title 49, United States Code, or regulated pur-
25 suant to section 114(d) of such title, who the Sec-
26 retary determines, on the basis appropriate of Fed-

1 eral security programs, does not pose a threat to
2 homeland security.”.

3 (b) EXEMPTION FROM TERMINATION PROVISION.—

4 Section 7 of this Act does not apply to the amendments
5 made by subsection (a).

6 **SEC. 11. EFFECTIVE DATE.**

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

