

CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM AUTHORIZATION AND ACCOUNTABILITY ACT OF 2014

JUNE 23, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 4007]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 4007) to recodify and reauthorize the Chemical Facility Anti-Terrorism Standards Program, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Chemical Facility Anti-Terrorism Standards Program Authorization and Accountability Act of 2014”.

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

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

“TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

“SEC. 2101. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM.

“(a) **PROGRAM ESTABLISHED.**—There is in the Department a Chemical Facility Anti-Terrorism Standards Program. Under such Program, the Secretary shall establish risk-based performance standards designed to protect covered chemical facilities and chemical facilities of interest from acts of terrorism and other security risks and require such facilities to submit security vulnerability assessments and to develop and implement site security plans.

“(b) **SECURITY MEASURES.**—Site security plans required under subsection (a) may include layered security measures that, in combination, appropriately address the security vulnerability assessment and the risk-based performance standards for security for the facility.

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

“(1) **IN GENERAL.**—The Secretary shall review and approve or disapprove each security vulnerability assessment and site security plan under subsection (a). The Secretary may not disapprove a site security plan based on the presence or absence of a particular security measure, but the Secretary shall disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established under subsection (a).

“(2) **ALTERNATIVE SECURITY PROGRAMS.**—The Secretary may approve an alternative security program established by a private sector entity or a Federal, State, or local authority or pursuant to other applicable laws, if the Secretary determines that the requirements of such program meet the requirements of this section. A covered chemical facility may meet the site security plan requirement under subsection (a) by adopting an alternative security program that has been reviewed and approved by the Secretary under this paragraph.

“(3) **SITE SECURITY PLAN ASSESSMENTS.**—In approving or disapproving a site security plan under this subsection, the Secretary shall employ the risk assessment policies and procedures developed under this title. In the case of a covered chemical facility for which a site security plan has been approved by the Secretary before the date of the enactment of this title, the Secretary may not require the resubmission of the site security information solely by reason of the enactment of this title.

“(4) **CONSULTATION.**—The Secretary may consult with the Government Accountability Office to investigate the feasibility and applicability a third party accreditation program that would work with industry stakeholders to develop site security plans that may be applicable to all similarly situated facilities. The program would include the development of Program-Specific Handbooks for facilities to reference on site.

“(d) **COMPLIANCE.**—

“(1) **AUDITS AND INSPECTIONS.**—

“(A) **IN GENERAL.**—The Secretary shall conduct the audit and inspection of covered chemical facilities for the purpose of determining compliance with this Act. The audit and inspection may be carried out by a non-Department or nongovernment entity, as approved by the Secretary.

“(B) **REPORTING STRUCTURE.**—Any audit or inspection conducted by an individual employed by a nongovernment entity shall be assigned in coordination with the head of audits and inspections for the region in which the

audit or inspection is to be conducted. When in the field, any individual employed by a nongovernment entity shall report to the respective head of audits and inspections for the region in which the individual is operating.

“(C) REQUIREMENTS FOR NONGOVERNMENT PERSONNEL.—If the Secretary arranges for an audit or inspection under subparagraph (A) to be carried out by a nongovernment entity, the Secretary shall require, as a condition of such arrangement, that any individual who conducts the audit or inspection be a citizen of the United States and shall prescribe standards for the qualification of the individuals who carry out such audits and inspections that are commensurate with the standards for a Government auditor or inspector. Such standards shall include—

- “(i) minimum training requirements for new auditors or inspectors;
- “(ii) retraining requirements;
- “(iii) minimum education and experience levels;
- “(iv) the submission of information as required by the Secretary to enable determination of whether the auditor or inspector has a conflict of interest;
- “(v) the maintenance of a secret security clearance;
- “(vi) reporting any issue of non-compliance with this section to the Secretary within 24 hours; and
- “(vii) any additional qualifications for fitness of duty as the Secretary may establish.

“(D) TRAINING OF DEPARTMENT AUDITORS AND INSPECTORS.—The Secretary shall prescribe standards for the training and retraining of individuals employed by the Department as auditors and inspectors. Such standards shall include—

- “(i) minimum training requirements for new auditors and inspectors;
- “(ii) retraining requirements; and
- “(iii) any additional requirements the Secretary may establish.

“(2) NOTICE OF NONCOMPLIANCE.—

“(A) NOTICE.—If the Secretary determines that a covered chemical facility or a chemical facility of interest is not in compliance with this section, the Secretary shall—

- “(i) provide the owner or operator of the facility with—
 - “(I) written notification (including a clear explanation of any deficiency in the security vulnerability assessment or site security plan) by not later than 14 days after the determination is made; and
 - “(II) an opportunity for consultation with the Secretary or the Secretary’s designee; and
- “(ii) issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances.

“(B) CONTINUED NONCOMPLIANCE.—If the owner or operator continues to be in noncompliance after the date specified in such order, the Secretary may enter an order assessing a civil penalty, an order to cease operations, or both.

“(3) PERSONNEL SURETY.—

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

- “(i) does not require an owner or operator of a covered chemical facility that voluntarily participates to submit information about an individual more than one time;
- “(ii) provides a participating owner or operator of a covered chemical facility with feedback about an individual based on vetting the individual against the terrorist screening database, to the extent that such feedback is necessary for the facility’s compliance with regulations promulgated under this title; and
- “(iii) provides redress to an individual whose information was vetted against the terrorist screening database under the program and who believes that the personally identifiable information submitted to the Department for such vetting by a covered chemical facility, or its designated representative, was inaccurate.

“(B) PERSONNEL SURETY IMPLEMENTATION.—To the extent that a risk-based performance standard under subsection (a) is directed toward identifying individuals with terrorist ties—

- “(i) a covered chemical facility may satisfy its obligation under such standard with respect to an individual by utilizing any Federal screening program that periodically vets individuals against the terrorist

screening database, or any successor, including the Personnel Surety Program under subparagraph (A); and

“(i) the Secretary may not require a covered chemical facility to submit any information about such individual unless the individual—

“(I) is vetted under the Personnel Surety Program; or

“(II) has been identified as presenting a terrorism security risk.

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

“(i) IN GENERAL.—The Secretary shall direct the Security Screening Coordination Office of the Department to coordinate with the National Protection and Programs Directorate to expedite the development of a common credential that screens against the terrorist screening database on a recurrent basis and meets all other screening requirements of this title.

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

“(4) FACILITY ACCESS.—For purposes of the compliance of a covered chemical facility with a risk-based performance standard established under subsection (a), the Secretary may not require the facility to submit any information about an individual who has been granted access to the facility unless the individual—

“(A) was vetted under the Personnel Surety Program; or

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

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

“(e) RESPONSIBILITIES OF THE SECRETARY.—

“(1) IDENTIFICATION OF FACILITIES OF INTEREST.—In carrying out this title, the Secretary shall consult with the heads of other Federal agencies, States and political subdivisions thereof, and relevant business associations to identify all chemical facilities of interest.

“(2) RISK ASSESSMENT.—

“(A) IN GENERAL.—For purposes of this title, the Secretary shall develop a risk assessment approach and corresponding tiering methodology that incorporates all relevant elements of risk, including threat, vulnerability, and consequence.

“(B) CRITERIA FOR DETERMINING SECURITY RISK.—The criteria for determining the security risk of terrorism associated with a facility shall include—

“(i) the relevant threat information;

“(ii) the potential economic consequences and the potential loss of human life in the event of the facility being subject to a terrorist attack, compromise, infiltration, or exploitation; and

“(iii) the vulnerability of the facility to a terrorist attack, compromise, infiltration, or exploitation.

“(3) CHANGES IN TIERING.—Any time that tiering for a covered chemical facility is changed and the facility is determined to no longer be subject to the requirements of this title, the Secretary shall maintain records to reflect the basis for this determination. The records shall include information on whether and how the information that was the basis for the determination was confirmed by the Secretary.

“(f) DEFINITIONS.—In this title:

“(1) The term ‘covered chemical facility’ means a facility that the Secretary identifies as a chemical facility of interest and, based upon review of a Top-Screen, as such term is defined in section 27.105 of title 6 of Code of Federal Regulations, determines meets the risk criteria developed pursuant subsection

(e)(2)(B). Such term does not include any of the following:

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

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

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

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

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

“(2) The term ‘chemical facility of interest’ means a facility that holds, or that the Secretary has a reasonable basis to believe holds, a Chemical of Interest,

as designated under in Appendix A of title 6 of the Code of Federal Regulations, at a threshold quantity that meets relevant risk-related criteria developed pursuant to subsection (e)(2)(B).

“SEC. 2102. PROTECTION AND SHARING OF INFORMATION.

“(a) **IN GENERAL.**—Notwithstanding any other provision of law, information developed pursuant to this title, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46, United States Code.

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

“(c) **SHARING OF INFORMATION WITH FIRST RESPONDERS.**—The Secretary shall provide to State, local, and regional fusion centers (as such term is defined in section 210A(j)(1) of this Act) and State and local government officials, as determined appropriate by the Secretary, such information as is necessary to help ensure that first responders are properly prepared and provided with the situational awareness needed to respond to incidents at covered chemical facilities. Such information shall be disseminated through the Homeland Security Information Network or the Homeland Secure Data Network, as appropriate.

“(d) **ENFORCEMENT PROCEEDINGS.**—In any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this section, and related vulnerability or security information, shall be treated as if the information were classified material.

“SEC. 2103. CIVIL PENALTIES.

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

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

“SEC. 2104. WHISTLEBLOWER PROTECTIONS.

“The Secretary shall publish on the Internet website of the Department and in other materials made available to the public the whistleblower protections that an individual providing such information would have.

“SEC. 2105. RELATIONSHIP TO OTHER LAWS.

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

“(b) **STATES AND POLITICAL SUBDIVISIONS.**—This title shall not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to chemical facility security that is more stringent than a regulation, requirement, or standard of performance issued under this section, or otherwise impair any right or jurisdiction of any State with respect to chemical facilities within that State, unless there is an actual conflict between this section and the law of that State.

“(c) **RAIL TRANSIT.**—

“(1) **DUPLICATIVE REGULATIONS.**—The Secretary shall coordinate with the Assistant Secretary of Homeland Security (Transportation Security Administration) to eliminate any provision of this title applicable to rail security that would duplicate any security measure under the Rail Transportation Security Rule under section 1580 of title 49 of the Code of Federal Regulations, as in effect as of the date of the enactment of this title. To the extent that there is a conflict between this title and any regulation under the jurisdiction of the Transportation Security Administration, the regulation under the jurisdiction of the Transportation Security Administration shall prevail.

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

“SEC. 2106. REPORTS.

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

“(1) Certification by the Secretary that the Secretary has made significant progress in the identification of all chemical facilities of interest pursuant to section 2101(e)(1), including a description of the steps taken to achieve such progress and the metrics used to measure it, information on whether facilities that submitted Top-Screens as a result of such efforts were tiered and in what tiers they were placed, and an action plan to better identify chemical facilities of interest and bring those facilities into compliance.

“(2) Certification by the Secretary that the Secretary has developed a risk assessment approach and corresponding tiering methodology pursuant to section 2101(e)(2).

“(3) An assessment by the Secretary of the implementation by the Department of any recommendations made by the Homeland Security Studies and Analysis Institute as outlined in the Institute’s Tiering Methodology Peer Review (Publication Number: RP12–22–02).

“(b) **SEMIANNUAL GAO REPORT.**—During the 3-year period beginning on the date of the enactment of this title, the Comptroller General of the United States shall submit a semiannual report to Congress containing the assessment of the Comptroller General of the implementation of this title. The Comptroller General shall submit the first such report by not later than the date that is 180 days after the date of the enactment of this title.

“SEC. 2107. CFATS REGULATIONS.

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

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

“(c) **DEFINITION OF CFATS REGULATIONS.**—In this section, the term ‘CFATS regulations’ means the regulations prescribed pursuant to section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 120 Stat. 1388; 6 U.S.C. 121 note), as well as all Federal Register notices and other published guidance concerning section 550 of the Department of Homeland Security Appropriations Act, 2007.

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

“(1) identifying chemicals of interest;

“(2) designating chemicals of interest; and

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

“SEC. 2108. SMALL COVERED CHEMICAL FACILITIES.

“(a) **IN GENERAL.**—The Secretary may provide guidance and, as appropriate, tools, methodologies, or computer software, to assist small covered chemical facilities in developing their physical security.

“(b) **REPORT.**—The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on best practices that may assist small chemical facilities, as defined by the Secretary, in development of physical security best practices.

“(c) **DEFINITION.**—For purposes of this section, the term ‘small covered chemical facility’ means a covered chemical facility that has fewer than 350 employees employed at the covered chemical facility, and is not a branch or subsidiary of another entity.

“SEC. 2109. OUTREACH TO CHEMICAL FACILITIES OF INTEREST.

“Not later than 90 days after the date of the enactment of this title, the Secretary shall establish an outreach implementation plan, in coordination with the heads of other appropriate Federal and State agencies and relevant business associations, to identify chemical facilities of interest and make available compliance assistance materials and information on education and training.

“SEC. 2110. AUTHORIZATION OF APPROPRIATIONS.

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

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

(c) THIRD-PARTY ASSESSMENT.—Using amounts authorized to be appropriated under section 2110 of the Homeland Security Act of 2002, as added by subsection (a), the Secretary of Homeland Security shall commission a third-party study to assess vulnerabilities to acts of terrorism associated with the Chemical Facility Anti-Terrorism Standards program, as authorized pursuant to section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109-295; 120 Stat. 1388; 6 U.S.C. 121 note).

(d) METRICS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress a plan for the utilization of metrics to assess the effectiveness of the Chemical Facility Anti-Terrorism Standards program to reduce the risk of a terrorist attack or other security risk to those citizens and communities surrounding covered chemical facilities. The plan shall include benchmarks on when the program will begin utilizing the metrics and how the Department of Homeland Security plans to use the information to inform the program.

SEC. 3. EFFECTIVE DATE.

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

PURPOSE AND SUMMARY

H.R. 4007 authorizes the Department of Homeland Security’s Chemical Facility Anti-Terrorism Standards program (CFATS) for three years at present funding levels in order to provide the stability and certainty both the Department and industry argue is necessary to ensure the program’s success, while at the same time, using the authorization as a vehicle to mandate certain fundamental programmatic improvements. CFATS was enacted under an Appropriations rider, Pub. Law 109–295, the Department of Homeland Security Appropriations Act of 2007, Sec. 550, and has technically never been authorized. Thus, chemical facility security hangs in the balance with each new appropriations cycle. H.R. 4007 incorporates CFATS into the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.), under Title XXI, and gives the program official status under law.

BACKGROUND AND NEED FOR LEGISLATION

Chemical facilities continually rank among the highest-risk targets for terrorists because an attack on a chemical facility could result in large-scale physical damage and catastrophic loss of life. To protect against this threat, Congress in 2007 authorized the Department of Homeland Security (DHS) to develop a set of risk assessment standards for chemical facilities, and to implement a set of corresponding regulations to ensure the physical security of those at highest risk. The result was the Chemical Facility Anti-Terrorism Standards (CFATS) program, which was established and funded for three years under Sec. 550 of Pub. L. 109–295, the Homeland Security Appropriation Act of 2007.

In the first five years of CFATS existence, the DHS Infrastructure Security Compliance Division (ISCD), a component of the De-

partment's National Protection and Programs Directorate (NPPD), struggled to implement the program. Both the Government Accountability Office (GAO) and DHS Office of Inspector General (OIG) shed light on some serious shortcomings that had hamstrung the Department's efforts to effectively and efficiently carry out the CFATS mission. Specifically, GAO and OIG reported that inadequate tools, management issues, and an absence of appropriate metrics had undermined the program's effectiveness.

Yet over the course of the last two years, and under new leadership, ISCD has made significant progress. The management team has taken very seriously the recommendations made by GAO and OIG, and has accordingly made important improvements, including enhanced engagement with the regulated community and industry stakeholders; a streamlined Site Security Plan review process; stronger coordination with State and local chemical facility regulators and fellow Federal agencies to identify outlier facilities; and the development of a solid plan to increase the pace of site security authorizations, approvals, and inspections. Additionally, ISCD has taken steps to execute the Action Plan laid out by GAO in April 2013 by initiating and completing a "Tiering Methodology Peer Review." All of these improvements have subsequently been recognized and commended by GAO and OIG.

Given the progress ISCD has made in moving the CFATS program forward, and taking into account the immense investment of resources industry has already made in an effort to comply with the CFATS regulatory scheme, the Committee believes now is the right time to authorize CFATS in the short term, with an eye towards permanently authorizing the program.

The Committee's approach in crafting H.R. 4007 was intentionally modest. Some have argued that the program should, for all intents and purposes, be dismantled and replaced by a more comprehensive regulatory scheme. Yet past attempts to do just that have failed. As GAO, industry stakeholders, and the Department itself have all recognized, at this stage, a major overhaul of the program would create a significant setback to chemical facility security, arresting ISCD's momentum at a critical phase. By contrast, a multi-year authorization would provide needed stability for advancing incremental progress, while instilling oversight and accountability that is needed to ensure continued improvement.

Thus, H.R. 4007 mandates critical improvements, including fixing the program's risk assessment methodology; developing an efficient and workable Personnel Surety requirement; ensuring that the full universe of chemical facilities is known to the Department; and drawing down the tremendous backlog of facility inspections ISCD currently faces, among other things. Moreover, H.R. 4007 requires GAO to conduct an ongoing assessment of ISCD's progress in implementing these directives throughout the course of the authorization term.

The Committee's intent in passing this bill is not to give DHS a blank check. Rather, this authorization is intended as a trial. NPPD must solidify certain foundational elements of the CFATS program in order to establish its continued viability—and it must do so within a short timeframe. Over the course of three years, the Committee will have the opportunity, through hearings and other mechanisms, to hold NPPD's new leadership to account for imple-

menting the improvements mandated in the legislation, and to assess the program's merit going forward.

In short, H.R. 4007 codifies the parts of Sec. 550, the original CFATS enacting statute, that are currently working, while mandating changes aimed at improving the efficiency and effectiveness of the program with the hope that the Committee will, in three years time, feel confident that CFATS should be permanently authorized.

HEARINGS

On August 1, 2013, the Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies held a hearing entitled "West Fertilizer, Off the Grid: The Problem of Unidentified Chemical Facilities." The Subcommittee received testimony from Mr. David Wulf, ISCD Director, National Protection and Programs Directorate, U.S. Department of Homeland Security; Mr. Stephen L. Caldwell, Director, Homeland Security and Justice, U.S. Government Accountability Office; Mr. Donnie Dippel, President, Texas Ag Industries Association; Mr. Paul Derig, Environmental Health and Safety Manager III, J.R. Simplot Company, *testifying on behalf of the Agricultural Retailers Association*; Mr. Timothy J. Scott, Chief Security Officer, Corporate Director, Emergency Services and Security, The Dow Chemical Company; and Mr. Sean Moulton, Director, Open Government Policy, Center for Effective Government.

On February 27, 2014, the Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies held a hearing on H.R. 4007. The Subcommittee received testimony from Ms. Caitlin Durkovich, Assistant Secretary, Infrastructure Protection, U.S. Department of Homeland Security; *accompanied by Mr. David Wulf, Deputy Director, Infrastructure Security Compliance Division; Mr. Stephen L. Caldwell, Director, Homeland Security and Justice, U.S. Government Accountability Office; Ms. Marcia Hodges, Chief Inspector, Office of Inspector General, U.S. Department of Homeland Security; Mr. Clyde Miller, Director for Corporate Security, BASF Corporation, testifying on behalf of BASF and The American Chemistry Council; Ms. Kate Hampford Donahue, President, Hampford Research, Inc., testifying on behalf of the Society of Chemical Manufacturers and Affiliates; and Ms. Anna Fendley, Legislative Representative, United Steelworkers.*

COMMITTEE CONSIDERATION

The Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies met on April 3, 2014, to consider H.R. 4007, and ordered the measure to be forwarded to the Full Committee with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MR. MEEHAN (#1); was AGREED TO, as amended, by voice vote.

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1A); was AGREED TO by voice vote.

Insert opening quotation marks before each provisions of section 2 through 9, insert closing quotation marks and a following period at the end of section 9, and before section 2 (page 1, after line 4), and insert the following (and make appropriate technical and conforming changes):

Sec. 2. Amendment to Homeland Security Act of 2002 to Provide For the Regulation of Security Practices at Chemical Facilities.

The Homeland Security Act of 2002 is amended by adding at the end the following: "Title XXI-Regulation of Security Practices at Chemical Facilities".

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MR. PERRY (#1B); was AGREED TO by a recorded vote of 5 yeas and 3 nays (Roll Call Vote No. 1).

Page 3, starting on line 12, strike paragraph (1) and inserting a new paragraph entitled "(1) Audits and Inspections."

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1C); was NOT AGREED TO by voice vote.

Page 3, line 12, insert before "The Secretary" the following: "The Secretary shall audit and inspect chemical facilities subject to regulation under this Act for the purposes of determining compliance with this Act."

Page 3, line 17, strike "a non-Department or non-government entity" and insert "another government entity".

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1D); was NOT AGREED TO by voice vote.

In section 2(a), strike "and require such facilities to submit security vulnerability assessments and to develop and implement site security plans" and insert ", assign such facilities to risk-based tiers, require such facilities to submit vulnerability assessments and to develop and implement site security plans, approve or disapprove the security vulnerability assessments and site security plans submitted by such facilities, audit and inspect such facilities, and enforce compliance with the requirements of this Act".

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1E); was NOT AGREED TO by voice vote.

In Section 2, strike subsection (f).

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1F); was WITHDRAWN by unanimous consent.

Page 11, after line 21, insert a new section (and renumber the subsequent sections accordingly): entitled "Sec. 9. Assessment of Chemical Facility Anti-Terrorism Standards Exemptions.

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1G); was NOT AGREED TO by a recorded vote of 3 yeas and 5 nays (Roll Call Vote No. 2).

Page 7, after line 15, insert a new subsection entitled "(g) Personnel Surety Program."

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1H); was AGREED TO by voice vote.

Strike section 2 and redesignate sections 8 through 11 as sections 7 through 10, respectively.

Page 11, line 24-25, strike "for each fiscal year" and insert "for each of fiscal years 2015, 2016, and 2017".

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1I) was NOT AGREED TO by voice vote.

In section 2, redesignate subsections (d) through (f) as subsections (e) through (g), respectively, and insert after subsection (c) a new subsection entitled "(d) Assistance to High Risk Chemical Facilities."

In subsection (g) of section 2, as redesignated, strike "subsection (e)(1)" and insert "subsection (f)(1)";

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MR. HORSFORD (#1J); NOT AGREED TO by a recorded vote of 3 yeas and 5 nays (Roll Call Vote No. 3).

Page 2, line 2, after the period insert the following "The preparation of a security vulnerability assessment and site security plan, as required under subsection (a), shall include, to the greatest extent possible, at least one supervisory employee and at least one non-supervisory employee of the covered chemical facility, and at least one employee representative from each bargaining agent at the covered chemical facility, if any, who possesses relevant knowledge, experience, training, or education."

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MR. HORSFORD (#1K); NOT AGREED TO by a recorded vote of 3 yeas and 5 nays (Roll Call Vote No. 4).

Insert after section 2 a new section entitled "Sec. 4. Whistleblower Protections."

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1L); was WITHDRAWN by unanimous consent.

Page 5, after line 14, insert a new paragraph entitled "(5) Exemption for certain personnel engaged in transportation activities."

The Committee met on April 30, 2014, to consider H.R. 4007, and ordered the measure to be reported to the House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The following amendments were offered:

An Amendment in the Nature of a Substitute to H.R. 4007 offered by MR. MEEHAN (#1); was AGREED TO, amended, by voice vote. An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MR. MEEHAN (#1A); was AGREED TO by voice vote.

Strike section 3.; was AGREED TO by voice vote.

An en bloc amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MR. THOMPSON OF MISSISSIPPI (#1B); was AGREED TO by voice vote.

Consisting of the following amendments:

Page 5, line 13, insert "not later than 14 days after the determination was made" after "security plan".

Page 17, before line 10, insert a new subsection entitled "(c) Third-party Assessment".

An en bloc amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. LORETTA SANCHEZ OF CALIFORNIA (#1C); was AGREED TO by voice vote.

Consisting of the following amendments:

Page 10, after line 3, insert a new paragraph entitled "(3) Changes in Tiering."

Page 17, after line 2, insert the following new section (and renumber the subsequent section and revise the table of contents amendment accordingly):

"Sec. 2107. Outreach to Chemical Facilities of Interest."

Page 15, line 6, insert before the period the following: “, information on whether facilities that submitted Top-Screens as a result of such efforts were tiered and in what tiers they were placed, and an action plan to better identify chemical facilities of interest and bring those facilities into compliance”.

Page 17, before line 10, insert a new subsection entitled (c) Metrics.”

An en bloc amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1D); was AGREED TO by voice vote.

Consisting of the following amendments:

Page 3, lines 20-21, strike “shall arrange for” and insert “shall conduct”.

Page 3, lines 23-24, strike “Under such arrangement, the” and insert “The”.

Page 4, line after line 2, insert the following new subparagraph (and renumber the subsequent subparagraph accordingly):

“(B) Reporting Structure.”

Page 5, line 2, strike: “and”.

Page 5, after line 2, insert the following (and renumber the subsequent clause accordingly):

“(vi) reporting any issue of non-compliance with this section to the Secretary within 24 hours; and”.

Page 5 after line 5, insert a new subparagraph entitled “(C) Training of Department Auditors and Inspectors.”

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. CLARKE (#1E); was AGREED TO, as modified, by voice vote.

Page 13, after line 4, insert the following new section (and renumber the subsequent section and revise the table of contents amendment accordingly):

“Sec. 2104. Whistleblower Protections.”

An en bloc amendment to the Amendment in the Nature of a Substitute to H.R. 4007 offered by MS. JACKSON LEE (#1F); was AGREED TO by voice vote.

Consisting of the following amendments:

Page 5, after line 5, insert a new Subparagraph entitled “(C) Consultation.”

Page 17, after line 2, insert the following (and renumber the subsequent sections and revise the table of contents amendment accordingly):

A new section entitled “Sec. 2107. Small Covered Chemical Facilities.”

An amendment to the Amendment in the Nature of a Substitute to H.R. 4007 on the roster by MR. HIGGINS (#1G); was ADOPTED by unanimous consent.

Page 12, line 9, after “section 210A(j)(1) of this Act)” insert the following: “and State and local government officials, as determined appropriate by the Secretary,”.

Page 12, line 14, after “Homeland Security Information Network” insert the following: “or Homeland Secure Data Network, as appropriate”.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

The Committee on Homeland Security considered H.R. 4007 on April 30, 2014, no recorded votes were requested during Full Committee consideration.

The Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies considered H.R. 4007 on April 3, 2014, and took the following votes:

SUBCOMMITTEE ON CYBERSECURITY, INFRASTRUCTURE PROTECTION,
AND SECURITY TECHNOLOGIES
ROLL CALL 1

Amendment offered by Mr. Perry—on agreeing to the amendment to the amendment in the Nature of a Substitute offered by Mr. Perry (#1B).
Agreed to: 5 yeas and 3 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. Meehan, Chair	X		Ms. Clarke, Ranking Member	X	
Mr. Rogers of Alabama	X		Mr. Keating	X	
Mr. Marino	X		Mr. Vela		
Mr. Chaffetz			Mr. Horsford		X
Mr. Daines	X				
Mr. Perry, Vice Chair	X				
Vote Total:				5	3

SUBCOMMITTEE ON CYBERSECURITY, INFRASTRUCTURE PROTECTION,
AND SECURITY TECHNOLOGIES
ROLL CALL 2

Amendment offered by Ms. Clarke—on agreeing to the amendment to the amendment in the Nature of a Substitute offered by Ms. Clarke (#1G).
Not Agreed to: 3 yeas and 5 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. Meehan, Chair		X	Ms. Clarke, Ranking Member	X	
Mr. Rogers of Alabama		X	Mr. Keating	X	
Mr. Marino		X	Mr. Vela		
Mr. Chaffetz			Mr. Horsford	X	
Mr. Daines		X			
Mr. Perry, Vice Chair		X			
Vote Total:				3	5

SUBCOMMITTEE ON CYBERSECURITY, INFRASTRUCTURE PROTECTION,
AND SECURITY TECHNOLOGIES
ROLL CALL 3

Amendment offered by Mr. Horsford—on agreeing to the amendment to the amendment in the Nature of a Substitute offered by Mr. Horsford (#1J).
Not Agreed to: 3 yeas and 5 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. Meehan, Chair	X		Ms. Clarke, Ranking Member	X	
Mr. Rogers of Alabama	X		Mr. Keating	X	
Mr. Marino		X	Mr. Vela		
Mr. Chaffetz			Mr. Horsford	X	
Mr. Daines	X				
Mr. Perry, Vice Chair		X			
Vote Total:				3	5

SUBCOMMITTEE ON CYBERSECURITY, INFRASTRUCTURE PROTECTION,
AND SECURITY TECHNOLOGIES
ROLL CALL 4

Amendment offered by Mr. Horsford—on agreeing to the amendment to the amendment in the Nature of a Substitute offered by Mr. Horsford (#1K).
 Not Agreed to: 3 yeas and 5 nays.

Representative	Yea	Nay	Representative	Yea	Nay
Mr. Meehan, Chair		X	Ms. Clarke, Ranking Member	X	
Mr. Rogers of Alabama		X	Mr. Keating	X	
Mr. Marino		X	Mr. Vela		
Mr. Chaffetz			Mr. Horsford	X	
Mr. Daines		X			
Mr. Perry, Vice Chair		X			
Vote Total:				3	5

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the rules of the House of Representatives, the Committee finds that H.R. 4007, the Chemical Facility Anti-Terrorism Standards Program Authorization and Accountability Act of 2014, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 30, 2014.

Hon. MICHAEL MCCAUL,
*Chairman, Committee on Homeland Security,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4007, the Chemical Facilities Anti-Terrorism Standards Program Authorization and Accountability Act of 2014.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jason Wheelock.

Sincerely,

DOUGLAS ELMENDORF.

Enclosure.

H.R. 4007—Chemical Facilities Anti-Terrorism Standards Program Authorization and Accountability Act of 2014

H.R. 4007 would make permanent the Department of Homeland Security’s (DHS’s) authority to regulate security at certain chemical facilities in the United States. Under the Chemical Facility Anti-Terrorism Standards (CFATS) program, DHS collects and reviews information from chemical facilities in the United States to determine which facilities present security risks. Facilities determined to present a high level of security risk are then required to develop a Site Security Plan (SSP). DHS in turn conducts inspections to validate the adequacy of a facility’s SSP and their compliance with it. The program is set to end on October 4, 2014.

H.R. 4007 would authorize appropriations of slightly more than \$87 million annually for the CFATS program over the 2015–2017 period. That program received \$81 million in 2014. Based on the proposed authorization level for the 2015–2017 period and adjusting for inflation, CBO estimates that the continued implementation of CFATS would require appropriations of \$90 million in 2018 and \$93 million in 2019. Assuming appropriation of the authorized and estimated amounts, CBO estimates that implementing H.R. 4007 would cost \$427 million over the 2015–2019 period.

	By fiscal year, in millions of dollars—					
	2015	2016	2017	2018	2019	2015–2019
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	87	87	87	90	93	445
Estimated Outlays	46	76	98	102	105	427

Note. Numbers do not add to totals because of rounding.

Enacting H.R. 4007 could result in the collection of additional civil penalties, which are recorded as revenues and deposited in the Treasury; therefore, pay-as-you-go procedures apply. However, CBO estimates that such collections would be insignificant. Enacting the bill would not affect direct spending.

H.R. 4007 would extend intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on owners and operators of public and private facilities where certain chemicals are present. Current law requires owners and operators to assess the vulnerability of their facilities to a terrorist incident and to prepare and implement facility security plans. This bill would make permanent the authority for DHS to regulate those facilities by establishing minimum standards to protect facilities from acts of terrorism and other security risks. Because public and private entities already meet the requirements of similar regulations, CBO estimates that the aggregate additional costs to comply with the mandates would be small and would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$76 million and \$152 million, respectively, in 2014, adjusted for inflation).

The CBO staff contacts for this estimate are Jason Wheelock (for federal costs), Melissa Merrell (for the intergovernmental impact), and Marin Burnett (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4007 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The Infrastructure Security Compliance Division (ISCD) must reduce its backlog of facility audits and inspections and make significant progress in identifying the full universe of chemical facilities of interest in the United States. The Secretary must report to Congress on progress in both regards within 18 months of this Title's enactment. ISCD must also develop a workable risk assessment and tiering methodology based on the Homeland Security Studies and Analysis Institute Tiering Methodology Peer Review (Publication Number: RP12-22-02), and the Secretary must report to Congress on the Division's progress in doing so within 18 months of this Title's enactment. In addition, the Secretary must define and submit to Congress a report on best practices that may assist small chemical facilities, as defined by the Secretary, in the development of physical security measures in order to facilitate small facility compliance.

DUPLICATIVE FEDERAL PROGRAMS

The Committee finds that H.R. 4007 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 4007 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 4007 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that the bill may be cited as the “Chemical Facility Anti-Terrorism Standards Program Authorization and Accountability Act of 2014.”

Sec. 2. Chemical Facility Anti-Terrorism Standards Program

This section modifies the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) Title XXI—Chemical Facility Anti-Terrorism Standards.

SECTION 2101. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM

Subsection (a) Program established

This subsection directs the Secretary of Homeland Security (the Secretary) to establish standards to ensure the security of chemical facilities through the Chemical Facility Anti-Terrorism Standards Program (CFATS). The Secretary shall establish risk-based performance standards to protect covered chemical facilities from acts of terrorism and other security risks, require covered facilities to submit to the Department of Homeland Security (DHS) vulnerability assessments, and assist in developing and implementing site security plans.

The key elements of this subsection were included in the original CFATS authorizing statute, Pub. Law 109–295, the Department of Homeland Security Appropriations Act of 2007, Sec. 550, hereinafter referred to as “Sec. 550”. Thus, this subsection’s language is simply intended to reiterate the purpose of the CFATS program and the Secretary’s general charge to develop risk-based performance standards. Given that CFATS has been in effect since 2007, the Secretary has already developed these standards, and this legislation does not intend to direct the Secretary to develop anything new in that regard. This legislation seeks to codify that language in the United States Code, and to change it only in the specific instances described below.

Subsection (b) Security measures

The security measures described in this subsection highlight the basic requirements for a site security plan, and are unchanged in pertinent part from Sec. 550. Site security plans should include a layered security approach to appropriately address the security vulnerability assessment and risk-based performance standards for the facility.

Subsection (c) Approval or disapproval of site security plans

Under this subsection, the Secretary is directed to evaluate and approve site security plans described under subsection (a). The Secretary may not, however, require the presence or absence of particular measures, as long as the risk-based performance standards established under subsection (a) are satisfied. This subsection further instructs that the Secretary may approve alternative security programs (ASP), if they satisfy all the requirements of the subsection. The approval and disapproval process for site security plans reflects current practice and is consistent with the original provisions of Sec. 550.

The original CFATS legislation authorized DHS to approve ASPs “established by private sector entities,” among others, and the draft CFATS rules issued in December 2006 anticipated DHS being able to approve “an Alternative Security Program for covered facilities.” However, the DHS 2007 Interim Final Rule inexplicably changed course and required ASPs to be approved on a facility-by-facility basis—largely eliminating any benefit from an ASP.

This provision seeks to address DHS’s 2007 change in course, and bring CFATS back into alignment with the original intent of the legislation by following the lead of the U.S. Coast Guard’s Maritime Transportation Security Act (MTSA) protocol. The Coast Guard regulations provide for ASPs to be approved for certain types of facilities or vessels, and the Coast Guard has approved a variety of ASPs submitted by industry trade associations. Facilities and vessels owned or operated by members of those associations can choose to use the relevant ASP in lieu of developing an individual facility or vessel security plan.

Following that model, section 2101(c)(2) clarifies that DHS can approve an ASP for a class or type of facilities, and that facilities of that class or type have the option of adopting such an ASP in lieu of developing a facility-specific Site Security Plan. The Committee intends that DHS will promptly revise its regulations to allow this to occur. Approval of generic ASPs will save facilities significant resources. It will also simplify and expedite DHS’s review and approval of facility plans.

Expanding on this idea, this section allows the Secretary to consult with the Government Accountability Office (GAO) in order to explore the feasibility of developing a pre-approved site security template, which could potentially be used by multiple similarly-situated facilities. The Secretary is not authorized to compel facilities themselves to participate in this process, however. They may do so voluntarily, but have no obligation. This possible approach is intended to lighten the burden on industry—not increase it.

Finally, this subsection creates a “grandfather clause” to provide that a site security plan, which has been approved by the Secretary prior to the date of enactment of this title, need not be reevaluated solely by reason of that enactment. In other words, those facilities that have already had their site security plans approved will not be required to resubmit site security information or to repeat the approval process.

Subsection (d) compliance

This subsection aims to facilitate DHS-industry coordination and simplify the compliance process. It allows non-Department and

nongovernment facility auditors and inspectors to be leveraged, upon approval by the Secretary. In April 2013, GAO estimated that at its present pace, it could take the DHS Infrastructure Security Compliance Division (ISCD) upwards of 7 years to complete audits and inspections of the 3,120 facilities that have already been assigned a final tier. ISCD is in the process of looking at ways to successfully hire, train and deploy additional ISCD-specific auditors and inspectors. But at present, ISCD simply does not have the workforce to get the job done in a timely way. In order to improve this situation, the legislation allows the Secretary to utilize both non-Department auditors and inspectors—that is, auditors and inspectors who do similar work for a different agencies, the U.S. EPA or the Occupational Safety and Health Administration (OSHA), for example—and nongovernment professional auditors and inspectors (contractors), as approved by the Secretary, to supplement ISCD's internal cadre.

In the interest of ensuring consistent standards and procedures with regard to audits and inspections, this subsection further directs the Secretary to prescribe standards for the qualification of the individuals who carry out such audits and inspections that are commensurate with the standards for a government auditor or inspector, and to prescribe standards for the training and retraining of individuals employed by the Department as auditors and inspectors, as well.

Finally, the legislation specifies that any nongovernment inspector shall be assigned in coordination with the head of audits and inspections for the region in which the audit or inspection is to be conducted, and shall report to the respective head of audits and inspections for the region in which the individual is operating. This provision ensures that while a contractor may not be an employee of the Government, they are still under the Government's auspices in carrying out his audits and inspections. The ultimate responsibility still rests with the Secretary.

This subsection also provides that if a facility is found to be non-compliant the Secretary must first present the facility with written notice of that non-compliance before issuing fines or penalties. However, in the event of continued non-compliance the Secretary may order a facility to cease operations. These provisions are consistent with language included in Sec. 550.

To further improve workability and efficiency, the legislation sets parameters for the Personnel Surety requirement under the CFATS regulations (Risk Based Performance Standard [RBPS] 12). Industry stakeholders have long protested that despite the simple, straightforward language of RBPS 12, the Department has been imposing on facilities onerous obligations that go well beyond the scope of what is actually needed to meet the requirement. Members of the Committee agree. The specific RBPS 12 provision at issue has been (iv), regarding “[m]easures designed to identify persons with terrorist ties.”

In a series of Federal Register notices published in compliance with the Paperwork Reduction Act, DHS has described its plans for a Personnel Surety Program (PSP), to be implemented as part of the Chemical Security Assessment Tool website, which would allow facilities to submit information regarding covered individuals for checking against the Terrorist Screening Data Base (TSDB). A va-

riety of other Federal security screening programs currently perform such checks. Nonetheless, DHS announced that it would not approve a Site Security Plan that seeks to satisfy RBPS–12(iv) by allowing an individual to present a similarly-vetted credential. Rather, DHS insisted that facilities (or other entities acting on the facility’s behalf) submit information on such individuals through the PSP website, at least 48 hours prior to such a person’s initial access to the facility. DHS maintains that this is necessary to allow it to determine if the presented credential is still valid.

The Committee believes that such a submission requirement is redundant and unnecessary. Accordingly, subparagraphs (A) and (B) of section 2101(d)(3) provide that a facility may satisfy its obligation under RBPS–12(iv) by relying upon presentation and visual validation of any credential issued by a Federal screening program that periodically vets individuals against the TSDB. A facility cannot be required to submit information about an individual to DHS unless the person has been identified as presenting a terrorism security risk.

Section 2102(d)(4) ensures that DHS does not attempt to re-impose this requirement as an access control security measure, separate from any notion of personnel surety.

The Committee is aware that the DHS Office of Screening Coordination has been considering how DHS component agencies might work together to establish a single credential that an individual could use to satisfy any DHS program regarding identity or other background checking purposes. Rather than issuing separate credentials or requiring the repeated submission of information, different DHS programs could issue program-specific endorsements to that credential. The Committee strongly supports this initiative, which holds the promise of reversing the unfortunate proliferation of credentials and screening programs that we have witnessed over the past decade and a half. Section 2101(d)(3)(C) directs the Secretary to submit a report describing its progress by March 1, 2015 and annually thereafter.

Additionally, this subsection provides a participating owner or operator of a covered chemical facility with feedback about an individual based on vetting the individual against the TSDB, to the extent that such feedback is necessary for the facility’s compliance with CFATS regulations. The regulated community has argued that the security of a facility is jeopardized when an owner or operator unknowingly allows access to a suspected terrorist. Yet to date, DHS has refused to tell facility owners and operators when an individual with access has come up as a TSDB match. The concern from DHS’s perspective is that the Department does not want to potentially interfere with an open CIA or FBI operation that might involve the individual in question. The conditional disclosure of information expressed in this section represents a compromise reached between industry and DHS. This compromise allows DHS to notify a facility owner or operator that a suspected terrorist has access to their facility if that individual presents a threat to the facility’s physical security in such a way as to undermine the facility’s efforts to comply with the regulations promulgated under this title.

Finally, this subsection requires any such program to make available redress to an individual who wishes to challenge a determination based on DHS vetting.

Subsection (e) Responsibilities of the Secretary

The explosion of the West Fertilizer facility in West, Texas in April 2013 brought to light the troubling fact that there were potentially thousands of small chemical facilities across the country that were unknown to DHS, and not compliant with CFATS regulations. The Committee's Subcommittee on Cybersecurity, Infrastructure Protection and Security Technologies (CIPST) subsequently held a hearing on the topic of "outliers" to assess the root of the problem from the perspectives of both the Department and the regulated community. What the hearing and additional investigation revealed was that the problem involved shortcomings in DHS' outreach and education at the local level, as well as a failure of the Federal agencies that regulate chemical facilities to share information among themselves.

In response to the West, Texas tragedy, the National Protection and Programs Directorate (NPPD) developed an Outreach and Engagement Strategy and Implementation Plan to raise awareness of CFATS and the concern of outlier facilities, and has begun working with other Federal agencies to facilitate data matching and technology systems compatibility. The Committee intends to enhance the Department's efforts and expedite its success in identifying the full universe of chemical facilities of interest by mandating further communication with Federal agencies, in addition to increased outreach to State and local authorities with knowledge of chemical facilities located in their areas.

This subsection also ensures that DHS is taking into account all relevant risk information when developing its risk assessment standards and corresponding tiering methodology, and instructs that the Secretary must maintain records of a change to any facility's tiering status, to include the rationale behind the change. In its April 2013 report on ISCD's progress, GAO recommended that DHS should enhance its risk assessment approach to incorporate all elements of risk, and conduct a peer review to help ensure that ISCD is effectively doing so. DHS concurred with that recommendation, and has taken steps to address it, including commissioning a Peer Review which was published in September, 2013 (The Homeland Security Studies and Analysis Institute's Tiering Methodology Peer Review, Publication Number: RP12-22-02). In this subsection, the legislation directs the Secretary to implement the GAO's recommendation to consider all areas of risk in developing risk assessments in order to more accurately reflect the core criteria of risk: threat; consequence, to include both economic consequences and fatalities; and vulnerability. The legislation further directs the Secretary to maintain records of any changes to a facility's tiering designation in order to ensure that sensible rationale was used in making the change, and to reinforce consistent standards.

Under Section 2106 the legislation directs the Secretary to certify, within 18 months of the date of enactment of this title, that a risk assessment approach has been developed, and corresponding tiering methodology pursuant to this subsection and to include in

that certification an assessment of the Department's efforts to implement the recommendations made in the Peer Review.

Subsection (f) Definitions

This subsection specifies what facilities are considered to be "covered chemical facilities" and which are exempted, and what facilities are considered to be "chemical facilities of interest."

As discussed, the West Fertilizer explosion brought to light the problem of noncompliant outlier facilities. During the CIPST Subcommittee's hearing on the issue, and its subsequent meetings with ISCD principals, it became evident that ISCD did not have clear authority to identify chemical facilities that had not affirmatively communicated with the Department by submitting a Top Screen. CFATS relies on facilities to initiate the compliance process through their Top Screen submissions. Thus, when a facility fails to do so, ISCD technically has no relationship with that facility. This lack of a relationship contributes to the outlier phenomenon. DHS should not need to wait for a chemical facility to take the first step in order to help ensure its security—because, as in the case of West Fertilizer, some facilities never do. In an effort to bridge the gap and solve the problem, the Committee has established a new category of facility: the "chemical facility of interest." With the authority to reach out to a facility of interest, ISCD is no longer limited to a purely passive role in identifying facilities that may be at risk. If the Secretary has reason to believe a facility is holding threshold quantities of dangerous chemicals, he may now initiate contact with that facility and order the submission of a Top Screen. It should be noted, however, that the facility will only qualify as a regulated—or "covered"—facility if, after having submitted its Top Screen, the Department determines that the facility meets the relevant risk criteria. If the facility does not meet that standard, it will not be considered a "covered chemical facility."

This subsection also maintains the exemptions already in place for facilities regulated under MTSA or the Safe Drinking Water Act; wastewater treatment works regulated under the Federal Water Pollution Control Act; facilities owned or operated by the Department of Defense or the Department of Energy; and facilities regulated by the Nuclear Regulatory Commission. The Committee did not alter these exemptions from Sec. 550. First required by Congress to do vulnerability assessments and emergency response plans in 2002 under the Public Health Security and Bioterrorism Preparedness and Response Act (Safe Drinking Water Act Sections 1433–1435), drinking water facilities are covered under a mature regulatory scheme that is working well. Moreover, according to the DHS Inspector General, the United States contains approximately 52,000 community water systems and 16,500 wastewater treatment facilities. Thus, although some have called for a removal of these exemptions, the Committee believes that to expand the CFATS mission to cover an additional 70,000 facilities—at precisely the time when the program is working to successfully manage its basic responsibilities—would be misguided.

Section 2102. Protection and sharing of information

Another lesson learned from the tragedy at West, Texas was that first responders are not always properly trained or adequately pre-

pared to fight chemical fires. Various chemicals and other hazardous materials call for various techniques in handling them. For example, because ammonium nitrate is an oxidizing material (decomposes under certain conditions to yield oxygen and increase a fire's intensity) smothering agents such as inert gases, steam, foam, dry chemicals, sand, etc. will have no effect, whereas anhydrous ammonia fires can be extinguished by the use of dry chemicals, carbon dioxide, or a water spray. Employing improper techniques to fight a chemical fire can have disastrous consequences. As the U.S. Chemical Safety Board's investigation of the West explosion noted, West volunteer firefighters were not made aware of the explosion hazard from the ammonium nitrate stored at West Fertilizer, and were caught in harm's way when the blast occurred.

However, as recognized in subsections (a), (b) and (d) under this section, information about the exact location, nature and placement of hazardous chemicals is often kept classified in the interest of protecting homeland security. Should these details fall into the hands of a terrorist, for example, the results could be catastrophic. Information of this kind must be kept secure. In the interest of balancing these two equally important considerations—the safety and lives of first responders and the sensitive nature of chemical facilities information—the Committee directs the Secretary to provide Chemical-terrorism Vulnerability Information (CVI) to State and local government officials possessing proper clearances, and to State and local Fusion Centers for dissemination to first responders, as needed. Fusion Centers are designed to facilitate the sharing of sensitive information in a secure and responsible way.

It should be noted that Section 2102(c) is not expressly made subject to section 2102(b). Thus, it is possible that, for example, a firefighter who does not possess a security clearance might be provided CVI by operation of section 2102(c). However, the Committee emphatically does not intend for subsection 2102(c) to operate as a loophole that undercuts the protections provided by section 2102(b). It is for that reason that we have specified that information may only be disseminated by Fusion Centers, via the Homeland Security Information Network (HSIN) or the Homeland Secure Data Network (HSDN). The Committee will monitor the operation of this subsection to ensure that statutory protections for CVI are not loosened in practice.

Section 2103. Civil penalties

This section provides that civil penalties may be assessed against a person who violates an order under this title, and that no one, save the Secretary, may bring an action against the owner or operator of a covered facility to enforce any of the title's provision. These penalties are consistent with Sec. 550.

Section 2104. Whistleblower protections

With regard to notifying the Department of failures to comply with CFATS regulations, whistleblowers can play an important role. Those employees who are on site and involved in a facility's day-to-day operations are sometimes in the best position to spot a security violation. Yet whistleblowers are often reticent to come forward for fear of retaliation from their employers.

There are many State laws protecting whistleblowers from their private sector employers. Yet the average worker may not be aware those protections exist. Although the DHS Chemical Security webpage does display information on the “CFATS Chemical Facility Security Tip Line,” the information posted there with regard to whistleblower protections is scant. The posting simply reads, “You may report concerns on voicemail anonymously.”

In the interest of encouraging whistleblowers to come forward, this section requires that whistleblower protections available to chemical facilities employees are clearly articulated on the website, and published in relevant DHS materials.

Some Committee Members felt that DHS should develop a program-specific whistleblower scheme in order to encourage more robust reporting. However, in the security context, employees may not—and should not—always have the sensitive security information that would explain why certain actions are or are not being taken. If the whistleblower investigative process allows discovery of security sensitive information, the process could be exploited to access this sensitive security information by any party, and in essence remove the security protection that needs to exist for the information. Moreover, if an action were to be brought, proceedings could result in public disclosure, intentional or otherwise, of sensitive security information. Such release is contrary to the very spirit of security programs like CFATS, because it is the limitation on access to information that protects against “increased risk of terrorist and other criminal activity.” Thus, a CFATS-specific whistleblower protection scheme would be inadvisable without a great deal more consideration of unintended consequences and how sensitive information can be protected within such a framework.

Section 2105. Relationship to other laws

This section specifies the parameters of preemption, directs the Secretary to coordinate with the Transportation Security Administration (TSA) to avoid duplicative rail transit regulation, and exempts rail facilities from CFATS. This will help to ensure that duplicative regulation is minimized.

The Committee’s meetings with industry stakeholders highlighted the fact ISCD’s regulation of rail transit was in fact duplicative of TSA’s regulation. Under the Aviation and Transportation Security Act (ATSA) and delegated authority from the Secretary of Homeland Security, TSA has far-reaching responsibility and authority for “security in all modes of transportation . . . including security responsibilities . . . over modes of transportation that are exercised by the Department of Transportation.” The Rail Transportation Security Rule under section 1580 of title 49 of the Code of Federal Regulations provides for the secure transport of hazardous materials. Therefore, where any CFATS regulation applicable to rail transit is duplicative of a TSA regulation, the CFATS regulation will be considered unnecessary and the TSA regulation will control. The same shall apply to rail facilities, which will not be required to register under CFATS.

This section further provides that nothing in this title supersedes Federal law governing the manufacture, sale or handling of chemical substances or mixtures. Moreover, States and political subdivisions may adopt more stringent requirements with respect to chem-

ical facility security, unless there is an actual conflict between this section and the law of that State or subdivision. This provision is consistent with language included in Sec. 550.

Section 2106. Reports

One of the chief objectives of this legislation is to hold DHS accountable for implementing the CFATS program efficiently and effectively. With that in mind, the legislation requires the Secretary to report back to Congress on the Department's progress in carrying out the specific directives set forth in this title. The report shall detail the steps the Department has taken to satisfy the directives, as well as the metrics the Department has used to measure progress. Specifically, the Secretary is required to report on the identification of outliers, the development of a risk assessment approach that comports with the directive under subsection 2101(e)(2), and efforts to implement recommendations made in the Peer Review with regard to risk assessment and tiering methodology.

Here, the Committee intends for the Secretary will have to provide hard data to support any claims, and more detail needs to be provided than simply "progress is being made".

Further, the legislation requires GAO to monitor the Department's progress in implementing all of the directives issued under this title. GAO will provide to Congress its first report 180 days after enactment, and every 6 months thereafter. The Committee's intent in commissioning such regular reporting is to ensure that the Committee is fully aware of the Department's progress, or lack thereof, as it is occurring. This "real time" familiarity with CFATS operations will enable the Committee to tailor its oversight to ensure compliance with this title.

Section 2107. CFATS Regulations

This section provides that the Secretary shall use the CFATS regulations already in effect in order to carry out the requirements of this title, so long as the Secretary determines they are appropriate. In other words, DHS is directed not to reissue its CFATS regulations, or undertake new rulemaking, unless it is absolutely necessary in order to implement a part of this title.

This section also stipulates that the Secretary shall rely on the authority provided in this title to identify and designate chemicals of interest and relevant security risks. In August 2013, the President issued Executive Order 13650, "Improving Chemical Facility Safety and Security" (EO). The EO's stated purpose is to investigate what "additional measures can be taken by executive departments and agencies with regulatory authority to further improve chemical facility safety and security in coordination with owners and operators."

The Committee agrees that more must be done to improve chemical facility safety and security, and is very supportive of certain initiatives introduced in the EO. Indeed, this title reinforces many of them, such as increasing coordination with State and local partners; supporting first responders; and improving information sharing among Federal agencies.

However, the Committee has two specific concerns. First, any conflation of "safety" and "security" should be avoided. Chemical fa-

cility “safety” and the “physical security” of chemical facilities are distinct concerns, and they require distinct approaches. Facility safety issues reside with the Environmental Protection Agency (EPA), which is charged with protecting human health and the environment, and with OSHA, which is charged with ensuring that employers provide a safe and healthful workplace. By contrast, DHS is specifically and uniquely equipped to mitigate the risk of terrorism. While coordination among the agencies responsible for regulating chemical facilities in various capacities can be useful (in sharing data about the existence of facilities in order to identify outliers, for example), to confuse their distinct missions is inadvisable.

The Committee’s second concern is that the EO could result in an expansion of CFATS authority at precisely the time when it is striving to manage its current responsibilities. Although the EO itself states, “Nothing in this order shall be construed to impair or otherwise affect the authority granted by law to a department, agency, or head thereof,” the Committee reiterates that fact in this section. The Committee will exercise its responsibility to evaluate the recommendations resulting from the EO, and provide guidance to DHS accordingly.

Section 2108. Small covered chemical facilities

This section defines a “small covered chemical facility” as a facility with 350 employees or fewer. This designation is important because chemical facilities can be vastly different from one another in terms of their operations and security measures, depending on their size. Yet, according to industry stakeholders, DHS often thinks in terms of a “one size fits all” approach. Small, independently-owned facilities often do not have the resources, either in terms of capital or manpower, to conduct a security assessment in the same way that facilities owned by a large corporation do. Thus, in order to assist small facilities, the legislation requires the Secretary to report to Congress with recommended best practices for small facilities, specifically. In addition, this section allows the Secretary to provide voluntary assistance and guidance to small covered chemical facilities in the development of their physical security plans. This section is not intended to put any additional burden on small chemical facilities, nor is the Secretary authorized to impose any particular security measures. This section is only intended to provide a potential resource to small facilities. Implementation of any methodologies or best practices the Secretary might recommend would remain at the discretion of the facility.

Section 2109. Outreach to chemical facilities of interest

This section builds on Section 2101(e) by directing the Secretary to develop an implementation plan for outreach to chemical facilities of interest in order to minimize the number of outliers. Once again, the Committee expects DHS to provide more than vague assurances that something is being done. Here, the legislation requires that DHS develop and submit to Congress a well thought out plan, with tangible steps for achievement.

Through its Subcommittee hearing on the subject of outliers, the Committee learned that solving the problem of unidentified chemical facilities is far from insurmountable. As discussed, DHS has al-

ready begun to address the issue. But the legislation here directs the Secretary to take more than a piecemeal approach. Rather, the Secretary must develop a comprehensive strategy for bringing all outliers into the fold.

Section 2110. Authorization of appropriations

This section sets a funding level for the CFATS program for \$87,436,000 for each of fiscal years 2015, 2016 and 2017. This is the funding amount requested in the President's FY15 Budget Request to Congress, which reflected a modest increase of \$3.4 million over the FY14 enacted amount. The Committee supports this funding level because the increase will be directed toward enhancing efforts by ISCD to identify outlier facilities and implementing modifications to the tiering methodology based on recommendations made in the Peer Review.

This section further directs the Secretary to commission a third-party study assessing the effectiveness of the current CFATS framework with regard to acts of terrorism, specifically. This directive reflects the Committee's interest in ensuring that the CFATS program sufficiently incorporates assessments for acts of terrorism into its basic framework. Threat assessment plays a critical role in the development and management of Homeland Security programs, allowing the Department to dedicate its limited resources to its various programs in a manner that is consistent with the specific threats each program is designed to mitigate. Vulnerabilities are more likely to exist where threat assessments are disconnected from, or not properly incorporated into, the organizing principles of program. The third party assessment required in this section shall examine CFATS programming for the degree to which it successfully aligns its priorities with ongoing threat assessment.

Finally, this section directs the Secretary to develop a plan for the utilization of metrics to assess the effectiveness of the CFATS program, specifically with regard to those citizens and communities surrounding covered chemical facilities.

Sec. 3. Effective date

This section states that the Act shall take effect 30 days after the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. Short title; table of contents.

* * * * *

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.

* * * * *

TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

SEC. 2101. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM.

(a) *PROGRAM ESTABLISHED.*—There is in the Department a Chemical Facility Anti-Terrorism Standards Program. Under such Program, the Secretary shall establish risk-based performance standards designed to protect covered chemical facilities and chemical facilities of interest from acts of terrorism and other security risks and require such facilities to submit security vulnerability assessments and to develop and implement site security plans.

(b) *SECURITY MEASURES.*—Site security plans required under subsection (a) may include layered security measures that, in combination, appropriately address the security vulnerability assessment and the risk-based performance standards for security for the facility.

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

(1) *IN GENERAL.*—The Secretary shall review and approve or disapprove each security vulnerability assessment and site security plan under subsection (a). The Secretary may not disapprove a site security plan based on the presence or absence of a particular security measure, but the Secretary shall disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established under subsection (a).

(2) *ALTERNATIVE SECURITY PROGRAMS.*—The Secretary may approve an alternative security program established by a private sector entity or a Federal, State, or local authority or pursuant to other applicable laws, if the Secretary determines that the requirements of such program meet the requirements of this section. A covered chemical facility may meet the site security plan requirement under subsection (a) by adopting an alternative security program that has been reviewed and approved by the Secretary under this paragraph.

(3) *SITE SECURITY PLAN ASSESSMENTS.*—In approving or disapproving a site security plan under this subsection, the Secretary shall employ the risk assessment policies and procedures developed under this title. In the case of a covered chemical facility for which a site security plan has been approved by the Secretary before the date of the enactment of this title, the Secretary may not require the resubmission of the site security information solely by reason of the enactment of this title.

(4) *CONSULTATION.*—The Secretary may consult with the Government Accountability Office to investigate the feasibility and applicability a third party accreditation program that would work with industry stakeholders to develop site security plans that may be applicable to all similarly situated facilities. The program would include the development of Program-Specific Handbooks for facilities to reference on site.

(d) *COMPLIANCE.*—

(1) *AUDITS AND INSPECTIONS.*—

(A) *IN GENERAL.*—The Secretary shall conduct the audit and inspection of covered chemical facilities for the purpose of determining compliance with this Act. The audit and inspection may be carried out by a non-Department or non-government entity, as approved by the Secretary.

(B) *REPORTING STRUCTURE.*—Any audit or inspection conducted by an individual employed by a nongovernment entity shall be assigned in coordination with the head of audits and inspections for the region in which the audit or inspection is to be conducted. When in the field, any individual employed by a nongovernment entity shall report to the respective head of audits and inspections for the region in which the individual is operating.

(C) *REQUIREMENTS FOR NONGOVERNMENT PERSONNEL.*—If the Secretary arranges for an audit or inspection under subparagraph (A) to be carried out by a nongovernment entity, the Secretary shall require, as a condition of such arrangement, that any individual who conducts the audit or inspection be a citizen of the United States and shall prescribe standards for the qualification of the individuals who carry out such audits and inspections that are commensurate with the standards for a Government auditor or inspector. Such standards shall include—

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

(ii) retraining requirements;

(iii) minimum education and experience levels;

(iv) the submission of information as required by the Secretary to enable determination of whether the auditor or inspector has a conflict of interest;

(v) the maintenance of a secret security clearance;

(vi) reporting any issue of non-compliance with this section to the Secretary within 24 hours; and

(vii) any additional qualifications for fitness of duty as the Secretary may establish.

(D) *TRAINING OF DEPARTMENT AUDITORS AND INSPECTORS.*—The Secretary shall prescribe standards for the training and retraining of individuals employed by the Department as auditors and inspectors. Such standards shall include—

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

(ii) retraining requirements; and

(iii) any additional requirements the Secretary may establish.

(2) *NOTICE OF NONCOMPLIANCE.*—

(A) *NOTICE.*—If the Secretary determines that a covered chemical facility or a chemical facility of interest is not in compliance with this section, the Secretary shall—

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

(I) written notification (including a clear explanation of any deficiency in the security vulnerability assessment or site security plan) by not later than 14 days after the determination is made; and

(II) an opportunity for consultation with the Secretary or the Secretary's designee; and

(ii) issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances.

(B) *CONTINUED NONCOMPLIANCE.*—If the owner or operator continues to be in noncompliance after the date specified in such order, the Secretary may enter an order assessing a civil penalty, an order to cease operations, or both.

(3) *PERSONNEL SURETY.*—

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

(i) does not require an owner or operator of a covered chemical facility that voluntarily participates to submit information about an individual more than one time;

(ii) provides a participating owner or operator of a covered chemical facility with feedback about an individual based on vetting the individual against the terrorist screening database, to the extent that such feedback is necessary for the facility's compliance with regulations promulgated under this title; and

(iii) provides redress to an individual whose information was vetted against the terrorist screening database under the program and who believes that the personally identifiable information submitted to the Department for such vetting by a covered chemical facility, or its designated representative, was inaccurate.

(B) *PERSONNEL SURETY IMPLEMENTATION.*—To the extent that a risk-based performance standard under subsection (a) is directed toward identifying individuals with terrorist ties—

(i) a covered chemical facility may satisfy its obligation under such standard with respect to an individual by utilizing any Federal screening program that periodically vets individuals against the terrorist screening database, or any successor, including the Personnel Surety Program under subparagraph (A); and

(ii) the Secretary may not require a covered chemical facility to submit any information about such individual unless the individual—

(I) is vetted under the Personnel Surety Program; or

(II) has been identified as presenting a terrorism security risk.

(C) *RESPONSIBILITIES OF SECURITY SCREENING COORDINATION OFFICE.*—

(i) *IN GENERAL.*—*The Secretary shall direct the Security Screening Coordination Office of the Department to coordinate with the National Protection and Programs Directorate to expedite the development of a common credential that screens against the terrorist screening database on a recurrent basis and meets all other screening requirements of this title.*

(ii) *REPORT.*—*Not later than March 1, 2015, and annually thereafter, the Secretary shall submit to Congress a report on the progress of the Secretary in meeting the requirements of clause (i).*

(4) *FACILITY ACCESS.*—*For purposes of the compliance of a covered chemical facility with a risk-based performance standard established under subsection (a), the Secretary may not require the facility to submit any information about an individual who has been granted access to the facility unless the individual—*

(A) *was vetted under the Personnel Surety Program; or*

(B) *has been identified as presenting a terrorism security risk.*

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

(e) *RESPONSIBILITIES OF THE SECRETARY.*—

(1) *IDENTIFICATION OF FACILITIES OF INTEREST.*—*In carrying out this title, the Secretary shall consult with the heads of other Federal agencies, States and political subdivisions thereof, and relevant business associations to identify all chemical facilities of interest.*

(2) *RISK ASSESSMENT.*—

(A) *IN GENERAL.*—*For purposes of this title, the Secretary shall develop a risk assessment approach and corresponding tiering methodology that incorporates all relevant elements of risk, including threat, vulnerability, and consequence.*

(B) *CRITERIA FOR DETERMINING SECURITY RISK.*—*The criteria for determining the security risk of terrorism associated with a facility shall include—*

(i) *the relevant threat information;*

(ii) *the potential economic consequences and the potential loss of human life in the event of the facility being subject to a terrorist attack, compromise, infiltration, or exploitation; and*

(iii) *the vulnerability of the facility to a terrorist attack, compromise, infiltration, or exploitation.*

(3) *CHANGES IN TIERING.*—*Any time that tiering for a covered chemical facility is changed and the facility is determined to no longer be subject to the requirements of this title, the Secretary shall maintain records to reflect the basis for this determination. The records shall include information on whether and how the information that was the basis for the determination was confirmed by the Secretary.*

(f) *DEFINITIONS.*—*In this title:*

(1) *The term “covered chemical facility” means a facility that the Secretary identifies as a chemical facility of interest and, based upon review of a Top-Screen, as such term is defined in section 27.105 of title 6 of Code of Federal Regulations, determines meets the risk criteria developed pursuant subsection (e)(2)(B). Such term does not include any of the following:*

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

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

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

(D) *Any facility owned or operated by the Department of Defense or the Department of Energy.*

(E) *Any facility subject to regulation by the Nuclear Regulatory Commission.*

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

SEC. 2102. PROTECTION AND SHARING OF INFORMATION.

(a) *IN GENERAL.*—*Notwithstanding any other provision of law, information developed pursuant to this title, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46, United States Code.*

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

(c) *SHARING OF INFORMATION WITH FIRST RESPONDERS.*—*The Secretary shall provide to State, local, and regional fusion centers (as such term is defined in section 210A(j)(1) of this Act) and State and local government officials, as determined appropriate by the Secretary, such information as is necessary to help ensure that first responders are properly prepared and provided with the situational awareness needed to respond to incidents at covered chemical facilities. Such information shall be disseminated through the Homeland Security Information Network or the Homeland Secure Data Network, as appropriate.*

(d) *ENFORCEMENT PROCEEDINGS.*—*In any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this section, and related vulnerability or security information, shall be treated as if the information were classified material.*

SEC. 2103. CIVIL PENALTIES.

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

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

SEC. 2104. WHISTLEBLOWER PROTECTIONS.

The Secretary shall publish on the Internet website of the Department and in other materials made available to the public the whistleblower protections that an individual providing such information would have.

SEC. 2105. RELATIONSHIP TO OTHER LAWS.

(a) *OTHER FEDERAL LAWS.*—Nothing in this title shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.

(b) *STATES AND POLITICAL SUBDIVISIONS.*—This title shall not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to chemical facility security that is more stringent than a regulation, requirement, or standard of performance issued under this section, or otherwise impair any right or jurisdiction of any State with respect to chemical facilities within that State, unless there is an actual conflict between this section and the law of that State.

(c) RAIL TRANSIT.—

(1) *DUPLICATIVE REGULATIONS.*—The Secretary shall coordinate with the Assistant Secretary of Homeland Security (Transportation Security Administration) to eliminate any provision of this title applicable to rail security that would duplicate any security measure under the Rail Transportation Security Rule under section 1580 of title 49 of the Code of Federal Regulations, as in effect as of the date of the enactment of this title. To the extent that there is a conflict between this title and any regulation under the jurisdiction of the Transportation Security Administration, the regulation under the jurisdiction of the Transportation Security Administration shall prevail.

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

SEC. 2106. REPORTS.

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

(1) Certification by the Secretary that the Secretary has made significant progress in the identification of all chemical facilities of interest pursuant to section 2101(e)(1), including a de-

scription of the steps taken to achieve such progress and the metrics used to measure it, information on whether facilities that submitted Top-Screens as a result of such efforts were tiered and in what tiers they were placed, and an action plan to better identify chemical facilities of interest and bring those facilities into compliance.

(2) Certification by the Secretary that the Secretary has developed a risk assessment approach and corresponding tiering methodology pursuant to section 2101(e)(2).

(3) An assessment by the Secretary of the implementation by the Department of any recommendations made by the Homeland Security Studies and Analysis Institute as outlined in the Institute's Tiering Methodology Peer Review (Publication Number: RP12-22-02).

(b) SEMIANNUAL GAO REPORT.—During the 3-year period beginning on the date of the enactment of this title, the Comptroller General of the United States shall submit a semiannual report to Congress containing the assessment of the Comptroller General of the implementation of this title. The Comptroller General shall submit the first such report by not later than the date that is 180 days after the date of the enactment of this title.

SEC. 2107. CFATS REGULATIONS.

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

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

(c) DEFINITION OF CFATS REGULATIONS.—In this section, the term “CFATS regulations” means the regulations prescribed pursuant to section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109-295; 120 Stat. 1388; 6 U.S.C. 121 note), as well as all Federal Register notices and other published guidance concerning section 550 of the Department of Homeland Security Appropriations Act, 2007.

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

- (1) identifying chemicals of interest;*
- (2) designating chemicals of interest; and*
- (3) determining security risk associated with a chemical facility.*

SEC. 2108. SMALL COVERED CHEMICAL FACILITIES.

(a) IN GENERAL.—The Secretary may provide guidance and, as appropriate, tools, methodologies, or computer software, to assist small covered chemical facilities in developing their physical security.

(b) REPORT.—The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on best practices that may assist small chemical facili-

ties, as defined by the Secretary, in development of physical security best practices.

(c) DEFINITION.—For purposes of this section, the term “small covered chemical facility” means a covered chemical facility that has fewer than 350 employees employed at the covered chemical facility, and is not a branch or subsidiary of another entity.

SEC. 2109. OUTREACH TO CHEMICAL FACILITIES OF INTEREST.

Not later than 90 days after the date of the enactment of this title, the Secretary shall establish an outreach implementation plan, in coordination with the heads of other appropriate Federal and State agencies and relevant business associations, to identify chemical facilities of interest and make available compliance assistance materials and information on education and training.

SEC. 2110. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this title \$87,436,000 for each of fiscal years 2015, 2016, and 2017.

COMMITTEE CORRESPONDENCE

MICHAEL T. McCAUL, TEXAS
CHAIRMANBENNIE G. THOMPSON, MISSISSIPPI
RANKING MEMBER

One Hundred Thirteenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

June 20, 2014

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

Thank you for your letter regarding H.R. 4007, the "Chemical Facility Anti-Terrorism Standards Program Authorization and Accountability Act of 2014", and your decision to forego further consideration of the bill.

I greatly appreciate all of the work our two committees have done regarding the negotiations over provisions in H.R. 4007. I remain encouraged that we could find common ground on provisions that are in the shared jurisdiction and mutual interest of our two committees. I acknowledge and agree that foregoing further consideration on this legislation in no way alters or diminishes the jurisdiction of the Committee on Energy and Commerce. I also concur with you that forgoing action on H.R. 4007 does not in any way prejudice the Committee on Energy and Commerce with respect to its jurisdictional prerogatives on this bill or similar legislation in the future. In addition, I would support your effort to seek the appointment of an appropriate number of conferees to any House-Senate conference involving H.R. 4007 or similar legislation.

Finally, I will include your letter and this response in the report accompanying H.R. 4007 as well as the *Congressional Record* during consideration of this bill on the House floor. I appreciate your cooperation regarding this legislation, and I look forward to working with the Committee on Energy and Commerce as H.R. 4007 moves through the legislative process.

Sincerely,

A handwritten signature in black ink that reads "Michael T. McCaul".

Michael T. McCaul
Chairman

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
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COMMITTEE ON ENERGY AND COMMERCE
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Majority (207) 225-2927
Minority (202) 225-3641

June 20, 2014

The Honorable Michael T. McCaul
Chairman
Committee on Homeland Security
176 Ford House Office Building
Washington, D.C. 20515

Dear Chairman McCaul,

I write concerning H.R. 4007, the "Chemical Facility Anti-Terrorism Standards Program Authorization and Accountability Act of 2014," which was ordered reported by Committee on Homeland Security on April 30, 2014. I wanted to notify you that the Committee on Energy and Commerce will forgo action on the bill so that it may proceed expeditiously to the House floor for consideration.

This is being done with the understanding that the Committee on Energy and Commerce is not waiving any of its jurisdiction, and the Committee will not be prejudiced with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I would appreciate your response to this letter, confirming this understanding, and ask that a copy of our exchange of letters on this matter be included in the *Congressional Record* during consideration of H.R. 4007 on the House floor.

Sincerely,


Fred Upton
Chairman

ADDITIONAL VIEWS

We are pleased to support the Committee-approved version of H.R. 4007, “The Chemical Facility Anti-Terrorism Standards Authorization and Accountability Act of 2014”. Upon introduction, the Democratic Members of the Committee on Homeland Security identified a number of fundamental weaknesses in the bill but, through the legislative process, were pleased that Democratic amendments were accepted that not only address those weaknesses but also significantly improve the measure.

At the February 27, 2014 legislative hearing held in the Cybersecurity, Infrastructure Protection, and Security Technologies (CIPST) Subcommittee, Ranking Member Yvette Clarke highlighted the following four fundamental weaknesses in the bill, as introduced: (1) a requirement that authorization for the Chemical Facility Anti-Terrorism Standards (CFATS) program terminate after two years; (2) the absence of an authorization of appropriations; (3) the failure to codify this critical infrastructure protection program in the Homeland Security Act; and (4) the perpetuation of the statutory prohibition of any Department of Homeland Security (DHS) regulation of security at water facilities, wastewater facilities and other possible targets that have been in place since the Fiscal Year 2007 appropriation bill. Additionally, Democrats raised concerns about worker participation, the extent to which whistleblower protections would attach for a private sector worker who puts their job at risk by coming forward to report a CFATS violation, and the prospect that CFATS audits and inspections would be carried out by nongovernmental persons.

At the conclusion of the April 3, 2014 CIPST markup, three of the four fundamental weaknesses that CIPST Ranking Member Clarke identified were resolved. Thanks to the leadership of CIPST Ranking Member Clarke and the other Subcommittee Democrats, the Subcommittee-approved version codified CFATS authority in the Homeland Security Act, authorized appropriations for the program, and no longer required the authority to sunset. The one remaining weakness that necessitated further action by the Full Committee was the statutory exemptions barring the regulation of water, wastewater, and other critical infrastructure chemical facilities without consideration of the associated homeland security risks.

EXEMPTIONS

Every Secretary of Homeland Security since Secretary Michael Chertoff has expressed an interest in removing the exemptions from CFATS regulation on water facilities, wastewater facilities, and other possible terrorist targets. The exemptions were hastily agreed to in 2006 to overcome jurisdictional roadblocks to DHS receiving the statutory authority to establish a chemical security pro-

gram. Democratic efforts to remove these exemptions were bolstered when at the April 30, 2014 Full Committee markup, Chairman Michael McCaul and the Majority accepted an amendment offered by Ranking Member Bennie G. Thompson to direct the Department to commission a third-party study to assess the vulnerabilities to acts of terrorism associated with the limited authority granted to the CFATS program, under its original authorization. We were pleased that, during the discussion of the amendment, Chairman McCaul agreed that the terrorism vulnerabilities at water facilities should be specifically addressed in the study and that the study will be important to inform the Congress, as it considers what to do to secure water facilities in the future.

OUTLINER CHALLENGE

According to the bill's authors, H.R. 4007 was developed in response to the tragic events in West, Texas, in April of 2013, when an agricultural fertilizer distribution facility caught fire and exploded, destroying many homes and businesses, killing 15 first responders, and injuring over 200 in the town.¹ We are pleased that the bill gives the Department new authority to compel certain actions by facilities that DHS has "a reasonable basis to believe" holds regulated substances in threshold quantities. We believe that this new authority will allow DHS to proactively engage outlier facilities and bring them into compliance.

Since consideration of this legislation by the Full Committee on April 30, 2014, the interagency working group convened by the President (pursuant to Chemical Security Executive Order 13650) to respond to the West, Texas incident, issued long-awaited recommendations that warrant consideration in the days and months to come. To the extent that the recommendations call for regulatory and legislative action to ensure that the CFATS program is effective, we would hope that, as H.R. 4007 moves through the legislative process, the recommendations would receive due consideration. Regardless of the Working Group's recommendations, changes are anticipated for the CFATS program insofar as the Department is expected to publish an Advanced Notice of Proposed Rulemaking in August to commence the process of updating the CFATS regulations, which have not changed since they were issued in 2007.

We would also note that shortly after the Full Committee took action on H.R. 4007, a report was published by a broad-based coalition led by the Environmental Justice and Health Alliance for Chemical Policy Reform that brings into sharp focus the vulnerability zones for chemical disasters and the populations that would be impacted. Entitled, "Who's In Danger?," the report lays out important information about the demographic characteristics of populations within the "vulnerability zones" of entire industry sectors that manufacture chemicals, treat water or wastewater, produce bleach, generate electric power, refine petroleum, produce pulp and paper, or otherwise have large numbers of people living in the path

¹ On April 22nd, the Chemical Safety Board issued its Preliminary Report on the West incident concluded that "(the fire and explosion) resulted from the failure of a company to take the necessary steps to avert a preventable fire and explosion and from the inability of federal, state and local regulatory agencies to identify a serious hazard and correct it." (Lax Oversight Cited as Factor in Deadly Blast at Texas Plant," Manny Fernandez, New York Times, (April 22, 2014).

of a potential worst-case chemical release. The report also includes first-person accounts of the challenges faced by citizens in the vulnerability zones. As H.R. 4007 moves to the House Floor, we would urge Members to review this report, as it presents diverse voices on a shared area of concern.

WORKER PARTICIPATION AND WHISTLEBLOWER RIGHTS

During consideration of H.R. 4007, Democratic Members offered a number of amendments to strengthen the voices of chemical workers under this program. At the Subcommittee markup, the Majority rejected an amendment to ensure that workers who often have the best picture of a facility's vulnerabilities are brought into the vulnerability assessment and site security plan process. At the April 3, 2014 markup, another amendment to guarantee that when a worker comes forward to report vulnerabilities or CFATS compliance issues, they are shielded against retaliation or any harm by their employer was also rejected. At the time, the amendment seeking to grant whistleblower protection failed even though it was clear that some of the Members were unsure as to what protections, if any exist, for individuals that submit reports to the CFATS tip-line.

Subsequent to the Subcommittee markup, the Committee followed up with the Department and learned that there were no baseline protections that attach in all cases. In response, at the Full Committee markup, an amendment offered by CIPST Ranking Member Clarke to require DHS to publish on the Internet and in other materials made available to the public the whistleblower protections that attach for an individual that reports a vulnerability or other violation to DHS under the CFATS program was approved. Though acceptance of this amendment represents a step forward, we strongly believe that the provision of whistleblower rights under this program is essential to its success. DHS has finite audit and inspection resources, it is essential that an environment be fostered where a vigilant individual can come forward without jeopardizing their job.

THE USE OF CONTRACTORS

We were troubled that H.R. 4007, as introduced, created the impression that DHS would not undertake the audits and inspections of chemical facilities with approved site security plans. It directed the Department to "*arrange for the audit and inspection*" of covered chemical facilities to determine regulatory compliance and explicitly allowed the Department to contract with private firms to carry out this important compliance responsibility. In 2007, during comment on the CFATS interim final rule, several stakeholders expressed concerns at the prospect of the Department using of third-party inspectors.² As of October 23, 2012, the CFATS program had just over 100 Chemical Security Inspectors located in 10 regional

²As described by DHS, these concerns included potential conflicts of interest among third-party inspectors and members of the regulated community, maintenance of confidentiality of facility business and security information, potential variation in training and inspection standards between federal and third-party inspectors, and DHS establishment of qualifications, certification, and indemnification of third-party inspectors. Other stakeholders identified that DHS use of third-party inspectors might increase the rate at which MIS approved site security planning and implementation at regulated facilities.

areas across the United States³ and have been represented by the American Federation of Government Employees union since March 2011. During the Subcommittee markup, Ranking Member Clarke attempted to scale back this provision and underscore that audits and inspections were inherently governmental functions. This effort was rebuffed by the Subcommittee Republicans.

We are pleased that at Full Committee, Ranking Member Clarke's efforts at setting expectations and requirements for contractors, should DHS decide to use them, were successful. Clarke amendments were accepted to: (1) clarify that audits and inspections are the Department of Homeland Security's responsibility, though agreements with other governmental and qualified non-governmental entities can be entered into to carry out this responsibility; (2) require the activities of any non-governmental auditor or inspector to be overseen by the person in charge of CFATS audits and inspections for that region; (3) require any non-government auditor or inspector to report any issue of noncompliance with the program's rules to the Department within 24 hours; and (4) require the Department to set standards for training contract auditors and inspectors.

PERSONNEL SURETY

We are pleased that the bill addresses concerns we have repeatedly expressed about the Department's approach to one of the risk-based performance based standards (RBPS) in the program—personnel surety.⁴ Members of Congress on both sides of the aisle have roundly criticized the Department's proposed Personnel Surety Program (PSP) as being too prescriptive and expansive. In an effort to provide flexibility to the regulated community, as is available with respect to the seventeen other performance standards under this program, the bill states that a covered chemical facility may use "any federal terrorist screening program that periodically vets individuals against the terrorist screening database" to satisfy the requirements of a personnel surety performance standard. We were pleased that the Majority saw fit to include language offered by CIPST Ranking Member Clarke in the version of the bill considered at Full Committee to clarifying the scope of the Department's personnel surety program. Specifically, it set baseline requirements for the program to allow participating facilities to send information once, get feedback, and ensure that redress is made available to impacted individuals. Interestingly, this language was voted down on a recorded vote in Subcommittee.

There are a number of other provisions authored by Democratic Members of the Committee that enhanced the bill in significant ways and reflect the cooperative, bipartisan nature of Committee consideration. We look forward to working with the Majority to au-

³The DHS had an additional 13 regional and district commanders to oversee the Chemical Security Inspectors. Office of Inspector General, Department of Homeland Security, *Effectiveness of the Infrastructure Security Compliance Division's Management Practices to Implement the Chemical Facility Anti-Terrorism Standards Program*, OIG-13-55, March 2013.

⁴The DHS has issued an information collection request proposing a personnel surety program, 78 *Federal Register* 17680-17701 (March 22, 2013).

authorize this vital infrastructure protection program and ensure it has the resources necessary to be effective.

Sincerely,

BENNIE G. THOMPSON,
Ranking Member.
YVETTE D. CLARKE,
*Cybersecurity, Infrastructure
Protection, and Security
Technologies.*

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