

115TH CONGRESS
2D SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. JOHNSON introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

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

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Risk based performance standards.
- Sec. 4. Expedited approval program.
- Sec. 5. CFATS Recognition Program.

- Sec. 6. Frequency of audits and inspections.
- Sec. 7. Personnel surety program.
- Sec. 8. Security risk assessment approach and corresponding tiering methodology.
- Sec. 9. Annual performance reporting.
- Sec. 10. CFATS regulations.
- Sec. 11. Small covered chemical facilities.
- Sec. 12. Explosive materials.
- Sec. 13. Changes in Appendix A to part 27 of title 6, Code of Federal Regulations.
- Sec. 14. Assessment, report, briefing, and updated retrospective estimate on costs.
- Sec. 15. Effective date.
- Sec. 16. Termination.
- Sec. 17. Technical and conforming amendment.

1 **SEC. 2. DEFINITIONS.**

2 Section 2101 of the Homeland Security Act of 2002
3 (6 U.S.C. 621) is amended—

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

7 (2) in paragraph (8), by striking “section
8 2102(e)(4)(B)(i)” and inserting “section 2102(e)(4)
9 by the Secretary that identifies specific security
10 measures that are sufficient to meet the risk-based
11 performance standards for facilities in tiers 3 and 4
12 that elect to utilize the expedited approval pro-
13 gram”.

14 **SEC. 3. RISK BASED PERFORMANCE STANDARDS.**

15 Section 2102 of the Homeland Security Act of 2002
16 (6 U.S.C. 622) is amended—

17 (1) in subsection (a)—

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

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

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

7 (2) in subsection (b)(2)—

8 (A) by striking “at least” and inserting
9 “not less than”;

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

12 (C) by striking “as pertains” and inserting
13 “pertaining”; and

14 (3) in subsection (c)(3), by striking subpara-
15 graph (B) and inserting the following:

16 “(B) PREVIOUSLY APPROVED PLANS.—The
17 Secretary may not require a covered chemical
18 facility to resubmit a site security plan—

19 “(i) in the case of a covered chemical
20 facility for which the Secretary approved
21 the site security plan before the date of en-
22 actment of the Protecting and Securing
23 Chemical Facilities from Terrorist Attacks
24 Act of 2014 (Public Law 113–254; 128

1 Stat. 2898), solely by reason of the enact-
2 ment of that Act; or

3 “(ii) in the case of a covered chemical
4 facility for which the Secretary approved
5 the site security plan before the date of en-
6 actment of the Protecting and Securing
7 Chemical Facilities from Terrorist Attacks
8 Act of 2018, solely by reason of the enact-
9 ment of that Act or any amendment made
10 by that Act.”.

11 **SEC. 4. EXPEDITED APPROVAL PROGRAM.**

12 Section 2102(c)(4) of the Homeland Security Act of
13 2002 (6 U.S.C. 622(c)(4)) is amended—

14 (1) in subparagraph (A)(i), by striking “sub-
15 paragraph (C)” and inserting “subparagraph
16 (C)(i)”;

17 (2) in subparagraph (B)—

18 (A) in clause (i), by striking “Not later
19 than” and all that follows through “the Sec-
20 retary shall issue” and inserting “The Sec-
21 retary shall maintain”; and

22 (B) by striking clause (iii);

23 (3) in subparagraph (C)—

24 (A) in clause (iii), by redesignating sub-
25 clauses (I) through (III) as items (aa) through

1 (cc), respectively, and adjusting the margins ac-
2 cordingly;

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

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

9 “(i) IN GENERAL.—The owner”; and

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

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

20 (4) in subparagraph (D)—

21 (A) in clause (i), by striking “subpara-
22 graph (C)” and inserting “subparagraph
23 (C)(i)”; and

24 (B) in clause (iii)—

1 (i) by striking “30” and inserting
2 “7”; and

3 (ii) by striking “subparagraph (C)”
4 and inserting “subparagraph (C)(i)”;

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

8 (6) by striking subparagraph (I) and inserting
9 the following:

10 “(I) NOTICE BY THE SECRETARY.—The
11 Secretary shall provide notice to each covered
12 chemical facility of the expedited approval pro-
13 gram under this paragraph.”.

14 **SEC. 5. CFATS RECOGNITION PROGRAM.**

15 Section 2102(e) of the Homeland Security Act of
16 2002 (6 U.S.C. 622(e)) is amended by adding the fol-
17 lowing at the end:

18 “(5) CFATS RECOGNITION PROGRAM.—

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

20 “(i) the term ‘CFATS Recognition
21 Program’ means the program established
22 under subparagraph (B);

23 “(ii) the term ‘industry stewardship
24 program’ means an industry stewardship
25 program that provides regulatory recogni-

1 for industry stewardship
2 programs seeking to partici-
3 pate in the CFATS Recogni-
4 tion Program; and

5 “(BB) performance re-
6 quirements under subpara-
7 graph (C)(ii) for partici-
8 pating facilities; and

9 “(bb) provide incentives
10 under subparagraph (C)(iii) to
11 encourage participation in the
12 CFATS Recognition Program.

13 “(ii) APPLICABILITY OF OTHER
14 LAWS.—During the period before the Sec-
15 retary has met the deadline under clause
16 (i), in developing and issuing, or amending,
17 the guidance relating to carrying out the
18 CFATS Recognition Program and col-
19 lecting information from industry steward-
20 ship programs, sponsor organizations, and
21 participating facilities, the Secretary shall
22 not be subject to—

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

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

3 “(III) section 2107(b) of this
4 Act.

5 “(C) ELIGIBILITY CRITERIA; FACILITY
6 PERFORMANCE REQUIREMENTS; INCENTIVES.—

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

16 “(I) a requirement that any in-
17 dustry stewardship program desiring
18 to participate in the CFATS Recogni-
19 tion Program be governed by an in-
20 dustry association or technical organi-
21 zation that is an entity described in
22 paragraph (3) or (6) of section 501(c)
23 of the Internal Revenue Code of 1986;

1 “(II) a documented top manage-
2 ment commitment to chemical facility
3 security;

4 “(III) criteria relating to—

5 “(aa) program auditing re-
6 quirements and frequency;

7 “(bb) security vulnerability
8 assessment requirements and fre-
9 quency; and

10 “(cc) security measures, in-
11 cluding—

12 “(AA) detection meas-
13 ures;

14 “(BB) delay measures;

15 “(CC) response meas-
16 ures; and

17 “(DD) security man-
18 agement; and

19 “(dd) reporting required to
20 be done by any industry steward-
21 ship program desiring to partici-
22 pate in the CFATS Recognition
23 Program.

24 “(ii) PERFORMANCE REQUIREMENTS
25 FOR PARTICIPATING FACILITIES.—Not

1 later than 180 days after the date of en-
2 actment of this paragraph, the Secretary
3 shall require that each participating facil-
4 ity—

5 “(I) submit an acknowledgment
6 by the sponsor organization of the in-
7 dustry steward program, of which the
8 participating facility is a member,
9 that the participating facility is—

10 “(aa) a member in good
11 standing of the industry steward-
12 ship program; and

13 “(bb) in full compliance with
14 the requirements of the industry
15 stewardship program;

16 “(II) assess any security vulner-
17 ability of the participating facility
18 using a formal recognized method-
19 ology—

20 “(aa) in the initial security
21 vulnerability assessment of the
22 participating facility;

23 “(bb) not less than every 3
24 years after the initial security

1 vulnerability assessment of the
2 participating facility; and

3 “(cc) if there is a significant
4 change to the security measures
5 of the participating facility; and

6 “(III) develop and maintain a
7 site security plan that—

8 “(aa) addresses any security
9 vulnerability of the participating
10 facility; and

11 “(bb) includes security
12 measures, including—

13 “(AA) detection meas-
14 ures;

15 “(BB) delay measures;

16 “(CC) response meas-
17 ures; and

18 “(DD) security man-
19 agement.

20 “(iii) PROGRAM INCENTIVES.—Not
21 later than 180 days after the date of en-
22 actment of this paragraph, the Secretary
23 shall—

1 “(bb) notify the industry
2 stewardship program of the de-
3 termination.

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

10 “(aa) a statement of each
11 reason for the denial; and

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

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

23 “(E) EVALUATION.—Not later than 18
24 months after the date of enactment of this
25 paragraph, the Secretary shall provide a brief-

1 ing to the Committee on Homeland Security
2 and Governmental Affairs of the Senate and the
3 Committees on Homeland Security and Energy
4 and Commerce of the House of Representatives
5 on the progress in carrying out the CFATS
6 Recognition Program.”.

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

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

10 (1) in subparagraph (B), by striking “The Sec-
11 retary” and inserting “Subject to subparagraph (G),
12 the Secretary”; and

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

14 “(G) FREQUENCY OF AUDITS AND INSPEC-
15 TIONS.—

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

21 “(ii) CFATS RECOGNITION PRO-
22 GRAM.—In the case of a covered chemical
23 facility that participates in the CFATS
24 Recognition Program under subsection
25 (c)(5) and meets compliance, audit, and in-

1 specification requirements under that program,
2 the Secretary may not conduct any audit
3 or inspection under this paragraph of that
4 covered chemical facility more frequently
5 than once every 3 years.”.

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

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

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

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

21 **SEC. 8. SECURITY RISK ASSESSMENT APPROACH AND COR-**
22 **RESPONDING TIERING METHODOLOGY.**

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

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

3 (2) in paragraph (3)—

4 (A) in subparagraph (B)—

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

7 (ii) by adding at the end the fol-
8 lowing:

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

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

12 “(iii) the output of the tiering meth-
13 odology.”; and

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

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

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

1 “(ii) developing and using appropriate
2 metrics and analysis capabilities to meas-
3 ure risk reduction, including—

4 “(I) vulnerability and con-
5 sequence mitigation indicators; and

6 “(II) outcome metrics that meas-
7 ure cumulative risk reduction over
8 time; and”;

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

10 (7) by redesignating subparagraph (F) as sub-
11 paragraph (E).

12 **SEC. 10. CFATS REGULATIONS.**

13 Section 2107(b) of the Homeland Security Act of
14 2002 (6 U.S.C. 627(b)) is amended—

15 (1) in paragraph (1), by inserting “(Public Law
16 113–254; 128 Stat. 2919)” after “2014”; and

17 (2) in paragraph (2), by striking “2014” and
18 inserting “2018”.

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

20 Section 2108 of the Homeland Security Act of 2002
21 (6 U.S.C. 628) is amended—

22 (1) in subsection (b)—

23 (A) by striking “tools, methodologies, or
24 computer software” and inserting “tools and
25 methodologies”; and

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

3 **SEC. 12. EXPLOSIVE MATERIALS.**

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

8 **“SEC. 2109. EXPLOSIVE MATERIALS.**

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

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

“Sec. 2109. Explosive materials.”.

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

23 (a) IN GENERAL.—Title XXI of the Homeland Secu-
24 rity Act of 2002 (6 U.S.C. 621 et seq.), as amended by

1 section 12 of this Act, is amended by adding at the end
2 the following:

3 **“SEC. 2110. CHANGES IN APPENDIX A TO PART 27 OF TITLE**
4 **6, CODE OF FEDERAL REGULATIONS.**

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

8 “(b) NOTICE OF PROPOSED RULEMAKING.—The
9 Secretary shall publish a notice of proposed rulemaking
10 in the Federal Register relating to any proposed change
11 to Appendix A if the Secretary determines that—

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

14 “(2) a chemical designated as a chemical of in-
15 terest under Appendix A should not be so des-
16 ignated; or

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

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—
21 The table of contents in section 1(b) of the Homeland Se-
22 curity Act of 2002 (Public Law 107–196; 116 Stat. 2135)
23 is amended by inserting after the item relating to section
24 2109 the following:

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

1 **SEC. 14. ASSESSMENT, REPORT, BRIEFING, AND UPDATED**
2 **RETROSPECTIVE ESTIMATE ON COSTS.**

3 (a) DEFINITIONS.—In this section—

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

5 (A) the Committee on Homeland Security
6 and Governmental Affairs of the Senate;

7 (B) the Committee on Homeland Security
8 of the House of Representatives; and

9 (C) the Committee on Energy and Com-
10 merce of the House of Representatives;

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

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

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

22 (B) the Chemical Facility Anti-Terrorism
23 Standards Program subsequently authorized
24 under section 2102(a) of the Homeland Secu-
25 rity Act of 2002 (6 U.S.C. 622(a));

1 (4) the term “Department” means the Depart-
2 ment of Homeland Security;

3 (5) the term “inspector” means an individual
4 used by the Department as an inspector for pur-
5 poses of ensuring compliance with title XXI of the
6 Homeland Security Act of 2002 (6 U.S.C. 621 et
7 seq.); and

8 (6) the term “Secretary” means the Secretary
9 of Homeland Security.

10 (b) THIRD-PARTY ASSESSMENT.—

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

20 (A) managing security risks; and

21 (B) developing and using appropriate
22 metrics and analysis capabilities to measure
23 risk reduction, including—

24 (i) vulnerability and consequence miti-
25 gation indicators; and

1 (ii) outcome metrics that measure cu-
2 mulative risk reduction over time.

3 (2) BRIEFING AND SUBMISSION OF STUDY.—

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

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

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

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

17 (1) how the Department selects inspectors;

18 (2) initial training required for inspectors be-
19 fore the inspectors are selected by the Department
20 to be used to conduct inspections;

21 (3) qualification standards required to be met
22 by inspectors before they are selected by the Depart-
23 ment to be used to conduct inspections;

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

1 (II) globally;

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

4 (C) how the Chemical Facility Anti-Ter-
5 rorism Standards Program is effectively ad-
6 dressing the threat landscape; and

7 (2) data, rationale, and metrics on how the
8 Chemical Facility Anti-Terrorism Standards Pro-
9 gram effectively reduces risks.

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

18 (f) **REPEAL.**—Section 3 of the Protecting and Secur-
19 ing Chemical Facilities from Terrorist Attacks Act of
20 2014 (Public Law 113–254; 128 Stat. 2917) is repealed.

21 **SEC. 15. EFFECTIVE DATE.**

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

1 **SEC. 16. TERMINATION.**

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

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

7 The table of contents in section 1(b) of the Homeland
8 Security Act of 2002 (Public Law 107–196; 116 Stat.
9 2135) is amended, in the item relating to section 2103,
10 by striking the em dash at the end.