

Committee Print

A BILL

To amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chemical Facility Anti-
5 Terrorism Act of 2008”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) The Nation's chemical sector represents a
5 target that terrorists could exploit to cause death,
6 injury, or serious adverse effects to human health,
7 the environment, critical infrastructure, national se-
8 curity, the national economy, and public welfare.

9 (2) Facilities that are vulnerable to such at-
10 tacks, and whose consequences are listed above must
11 be protected.

12 (3) The Secretary of Homeland Security has
13 statutory authority pursuant to section 550 of the
14 Department of Homeland Security Appropriations
15 Act, 2007 (Public Law 109-295) to regulate the se-
16 curity practices at chemical facilities that are at sig-
17 nificant risk of being terrorist targets.

18 (4) The Secretary of Homeland Security issued
19 interim final regulations called the Chemical Facility
20 Anti-Terrorism Standards (CFATS), which became
21 effective on June 8, 2007.

22 (5) Under current law, the statutory authority
23 of the Secretary of Homeland Security to regulate
24 security practices at chemical facilities and the
25 CFATS regulations will sunset in October of 2009.

1 (b) PURPOSE.—The purpose of this Act is to give
2 permanent status to the CFATS regulations and to pro-
3 vide further Congressional guidance for the future imple-
4 mentation of such regulations.

5 **SEC. 3. EXTENSION, MODIFICATION, AND RECODIFICATION**
6 **OF AUTHORITY OF SECRETARY OF HOME-**
7 **LAND SECURITY TO REGULATE SECURITY**
8 **PRACTICES AT CHEMICAL FACILITIES.**

9 (a) IN GENERAL.—The Homeland Security Act of
10 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
11 end the following new title:

12 **“TITLE XXI—REGULATION OF SE-**
13 **CURITY PRACTICES AT CHEM-**
14 **ICAL FACILITIES**

15 **“SEC. 2101. DEFINITIONS.**

16 “In this title, the following definitions apply:

17 “(1) The term ‘environment’ has the meaning
18 given the term in section 101 of the Comprehensive
19 Environmental Response Compensation and Liability
20 Act of 1980 (42 U.S.C. 9601).

21 “(2) The term ‘chemical facility’ means any fa-
22 cility at which a chemical is stored or located.

23 “(3) The term ‘owner or operator of a chemical
24 facility’ means any of the following:

1 “(A) The person who owns a chemical fa-
2 cility.

3 “(B) The person who leases such a facility.

4 “(C) The person who operates such a facil-
5 ity.

6 “(4) The term ‘release’ has the meaning given
7 the term in section 101 of the Comprehensive Envi-
8 ronmental Response Compensation and Liability Act
9 of 1980 (42 U.S.C. 9601).

10 “(5) The term ‘chemical facility security meas-
11 ure’ means any action taken to ensure or enhance
12 the security of a chemical facility against a chemical
13 facility terrorist incident, including—

14 “(A) employee background checks;

15 “(B) employee training;

16 “(C) personnel security measures;

17 “(D) the limitation and prevention of ac-
18 cess to controls of the chemical facility;

19 “(E) protection of the perimeter of the
20 chemical facility or the portion or sector within
21 the facility in which a substance of concern is
22 stored, used, or handled, by utilizing fences,
23 barriers, guards, or other means;

24 “(F) installation and operation of cameras
25 or other intrusion detection sensors;

1 “(G) the implementation of measures to
2 increase computer or computer network secu-
3 rity, including supervisory control and data ac-
4 quisition systems, process control systems, and
5 other automated systems used by the facility;

6 “(H) contingency and evacuation plans;

7 “(I) early warning system;

8 “(J) the relocation or hardening of storage
9 or containment equipment;

10 “(K) methods to reduce the consequences
11 of a terrorist attack, as defined in section
12 2110(a);

13 “(L) coordination and communications
14 with State, local, and tribal emergency response
15 providers; and

16 “(M) other security measures to prevent,
17 protect against, mitigate or reduce the con-
18 sequences of a chemical facility terrorist inci-
19 dent.

20 “(6) The term ‘substance of concern’ means a
21 chemical substance in quantity and form that is des-
22 ignated by the Secretary by regulation under section
23 2102(a) as a chemical substance to be considered for
24 regulation under this title.

1 “(7) The term ‘chemical facility terrorist inci-
2 dent’ means—

3 “(A) an act of terrorism committed at,
4 near, or against a chemical facility;

5 “(B) the release of a substance of concern
6 from a chemical facility into the surrounding
7 area as a consequence of an act of terrorism; or

8 “(C) the obtaining of a substance of con-
9 cern by any person for the purposes of releasing
10 the substance off-site in furtherance of an act
11 of terrorism.

12 **“SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF**
13 **CHEMICAL FACILITIES.**

14 “(a) SUBSTANCES OF CONCERN.—

15 “(1) DESIGNATION BY THE SECRETARY.—The
16 Secretary may—

17 “(A) designate any chemical substance as
18 a substance of concern;

19 “(B) establish and revise, for purposes of
20 making determinations under subsection (b),
21 the threshold quantity for a substance of con-
22 cern; or

23 “(C) require the submission of information
24 with respect to the quantities of substances of
25 concern that are used, stored, manufactured,

1 processed, or distributed by any chemical facil-
2 ity.

3 “(2) MATTERS FOR CONSIDERATION.—In desig-
4 nating a chemical substance or establishing or ad-
5 justing the threshold quantity for a chemical sub-
6 stance under paragraph (1), the Secretary shall con-
7 sider the potential extent of death, injury, and seri-
8 ous adverse effects to human health, the environ-
9 ment, critical infrastructure, national security, the
10 national economy, and public welfare that would re-
11 sult from a chemical facility terrorist incident.

12 “(b) LIST OF COVERED CHEMICAL FACILITIES.—

13 “(1) LIST REQUIRED.—The Secretary shall
14 maintain a list of covered chemical facilities in ac-
15 cordance with this subsection.

16 “(2) COVERED CHEMICAL FACILITIES.—For
17 purposes of this title, a covered chemical facility is
18 a chemical facility that has more than the threshold
19 quantity established by the Secretary of any sub-
20 stance of concern, or that the Secretary designates
21 as a covered chemical facility based on the following
22 criteria:

23 “(A) The potential threat or likelihood that
24 the chemical facility will be the target of ter-
25 rorism.

1 “(B) The potential extent and likelihood of
2 death, injury, or serious adverse effects to
3 human health and safety or to the environment
4 that could result from a chemical facility ter-
5 rorist incident.

6 “(C) The proximity of the chemical facility
7 to population centers.

8 “(D) The potential threat caused by a per-
9 son obtaining a substance of concern in further-
10 ance of an act of terrorism.

11 “(E) The potential harm to critical infra-
12 structure, national security, and the national
13 economy from a chemical facility terrorist inci-
14 dent.

15 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO
16 RISK-BASED TIERS.—

17 “(1) ASSIGNMENT.—The Secretary shall assign
18 each chemical facility on the list of covered chemical
19 facilities under subsection (b) to one of at least four
20 risk-based tiers established by the Secretary.

21 “(2) PROVISION OF INFORMATION.—The Sec-
22 retary may request, and the owner or operator of a
23 chemical facility shall provide, information necessary
24 for the Secretary to assign a chemical facility to the
25 appropriate tier under paragraph (1).

1 “(3) NOTIFICATION.—Not later than 60 days
2 after assigning a chemical facility to a tier under
3 this subsection, the Secretary shall notify the owner
4 or operator of the chemical facility of the tier to
5 which the facility is assigned and shall provide the
6 facility with the reasons for assignment of the facil-
7 ity to such tier.

8 “(4) HIGH-RISK CHEMICAL FACILITIES.—At
9 least one of the tiers established by the Secretary for
10 the assignment of chemical facilities under this sub-
11 section shall be a tier designated for high-risk chem-
12 ical facilities.

13 “(d) PERIODIC REVIEW OF LIST OF COVERED CHEM-
14 ICAL FACILITIES.—

15 “(1) REQUIREMENT.—Not later than 2 years
16 after the date of the enactment of the Chemical Fa-
17 cility Anti-Terrorism Act of 2008, and annually
18 thereafter, the Secretary shall—

19 “(A) consider the criteria under subsection
20 (b)(2); and

21 “(B) determine whether to add a chemical
22 facility to the list of covered chemical facilities
23 maintained under subsection (b)(1) or to re-
24 move or change the tier assignment of any
25 chemical facility on such list.

1 “(2) **AUTHORITY TO REVIEW.**—The Secretary
2 may, at any time, after considering the criteria
3 under subsection (b)(2), add a chemical facility to
4 the list of covered chemical facilities maintained
5 under subsection (b)(1) or remove or change the tier
6 assignment of any chemical facility on such list.

7 “(3) **NOTIFICATION.**—Not later than 30 days
8 after the date on which the Secretary adds a facility
9 to the list of covered chemical facilities maintained
10 by the Secretary under subsection (b)(1), removes a
11 facility from such list, or changes the tier assign-
12 ment of any facility on such list, the Secretary shall
13 notify the owner of that facility of that addition, re-
14 moval, or change.

15 **“SEC. 2103. VULNERABILITY ASSESSMENTS AND FACILITY**
16 **SECURITY PLANS.**

17 “(a) **VULNERABILITY ASSESSMENT AND FACILITY**
18 **SECURITY PLAN REQUIRED FOR CHEMICAL FACILI-**
19 **TIES.**—

20 “(1) **REQUIREMENT FOR VULNERABILITY AS-**
21 **SESSMENT AND SECURITY PLAN.**—

22 “(A) **REGULATIONS REQUIRED.**—The Sec-
23 retary shall prescribe regulations to—

24 “(i) establish standards, protocols,
25 and procedures for vulnerability assess-

1 ments and facility security plans to be re-
2 quired for covered chemical facilities on the
3 list maintained by the Secretary under sec-
4 tion 2102(b)(1);

5 “(ii) require the owner or operator of
6 each such facility to—

7 “(I) conduct an assessment of
8 the vulnerability of the chemical facil-
9 ity to a chemical facility terrorist inci-
10 dent, including an assessment of the
11 consequences if the identified
12 vulnerabilities are exploited;

13 “(II) prepare and implement a
14 facility security plan for that facility
15 that addresses the results of the vul-
16 nerability assessment; and

17 “(III) consult with the appro-
18 priate employees of the facility in de-
19 veloping the vulnerability assessment
20 and security plan required under this
21 clause; and

22 “(iii) set deadlines for the completion
23 of vulnerability assessments and facility se-
24 curity plans, such that all such plans and
25 assessments are completed and submitted

1 to the Secretary for approval no later than
2 1 year after final regulations are issued
3 under this paragraph.

4 “(B) DEADLINE FOR HIGH-RISK CHEMICAL
5 FACILITIES.—The owner or operator of a facil-
6 ity assigned to a high-risk tier under section
7 2102(c)(4) shall submit to the Secretary the
8 vulnerability assessment and facility security
9 plan required under this subsection not later
10 than 6 months after the date on which the Sec-
11 retary prescribes regulations under this sub-
12 section.

13 “(2) CRITERIA FOR REGULATIONS.—The regu-
14 lations required under paragraph (1) shall—

15 “(A) be risk-based;

16 “(B) be performance-based; and

17 “(C) take into consideration—

18 “(i) the cost and technical feasibility
19 of compliance by a chemical facility with
20 the requirements under this title;

21 “(ii) the different quantities and
22 forms of substances of concern stored,
23 used, and handled at chemical facilities;
24 and

1 “(iii) the criteria under section
2 2102(a)(2).

3 “(b) MINIMUM REQUIREMENTS FOR HIGH-RISK
4 CHEMICAL FACILITIES.—

5 “(1) REQUIREMENTS FOR VULNERABILITY AS-
6 SESSMENTS.—In the case of a facility assigned to a
7 high-risk tier under section 2102(c)(4), the Sec-
8 retary shall require that the vulnerability assessment
9 required under this section for that facility include
10 each of the following:

11 “(A) The identification of any hazard that
12 could result from a chemical facility terrorist
13 incident at the facility.

14 “(B) The number of individuals at risk of
15 death, injury, or severe adverse effects to
16 human health as a result of a worst case chem-
17 ical facility terrorist incident at the facility.

18 “(C) Information related to the criticality
19 of the facility for purposes of assessing the de-
20 gree to which the facility is critical to the econ-
21 omy or national security of the United States.

22 “(D) The proximity or interrelationship of
23 the facility to other critical infrastructure.

24 “(E) Any vulnerability of the facility with
25 respect to—

1 “(i) physical security;

2 “(ii) programmable electronic devices,
3 computers, computer or communications
4 networks, Supervisory Control and Data
5 Acquisition systems, Process Control Sys-
6 tems, or other automated systems used by
7 the facility;

8 “(iii) alarms, cameras, and other pro-
9 tection systems;

10 “(iv) communication systems;

11 “(v) insider threats;

12 “(vi) any utility or infrastructure (in-
13 cluding transportation) upon which the fa-
14 cility relies to operate safely and securely;
15 and

16 “(vii) the structural integrity of equip-
17 ment for storage, handling, and other pur-
18 poses.

19 “(F) Any information relating to threats
20 relevant to the facility that is provided by the
21 Secretary in accordance with paragraph (3).

22 “(G) Such other information as the Sec-
23 retary determines is appropriate.

24 “(2) REQUIREMENTS FOR FACILITY SECURITY
25 PLANS.—In the case of a facility assigned to a high-

1 risk tier under section 2102(c)(4), the Secretary
2 shall require that the facility security plan required
3 under this section for that facility include each of
4 the following:

5 “(A) Chemical facility security measures to
6 address the vulnerabilities of the facility to a
7 chemical facility terrorist incident.

8 “(B) A plan and schedule for periodic
9 drills and exercises to be conducted at the facil-
10 ity that include participation by appropriate fa-
11 cility employees, local law enforcement agencies,
12 and emergency response providers.

13 “(C) Equipment, plans, and procedures to
14 be implemented or used by or at the chemical
15 facility in the event of a chemical facility ter-
16 rorist incident that affects the facility, including
17 site evacuation, release mitigation, and contain-
18 ment plans.

19 “(D) An identification of any steps taken
20 to coordinate with State, local, and tribal law
21 enforcement agencies, first responders, and
22 Federal officials on security measures and plans
23 for response to a chemical facility terrorist inci-
24 dent.

1 “(E) A specification of the security officer
2 who will be the point of contact for the Na-
3 tional Incident Management System and for
4 Federal, State, local, and tribal law enforce-
5 ment and emergency response providers.

6 “(F) A description of enhanced security
7 measures to be used during periods of time
8 when the Secretary determines that heightened
9 threat conditions exist.

10 “(G) A review and, as appropriate, a plan
11 to implement methods to reduce the con-
12 sequences of a terrorist attack, as that term is
13 defined in section 2110(a).

14 “(3) PROVISION OF THREAT-RELATED INFOR-
15 MATION.—The Secretary shall provide in a timely
16 manner, to the maximum extent practicable under
17 applicable authority and in the interests of national
18 security, to an owner, operator, or security officer of
19 a facility assigned to the high-risk tier under section
20 2102(c)(4), or another appropriate person, threat in-
21 formation that is relevant to the facility, including
22 an assessment of the most likely method that could
23 be used by terrorists to exploit any vulnerabilities of
24 the facility and the likelihood of the success of such
25 method.

