

**Improving Chemical Facility Security through H.R. 4007,
the Protecting and Securing Chemical Facilities
from Terrorist Attacks Act of 2014**

In July, the Senate Homeland Security & Governmental Affairs Committee passed out of committee H.R. 4007, a bill by Chairman Tom Carper and Ranking Member Dr. Tom Coburn to reauthorize and overhaul the Chemical Facility Anti-Terrorism Standards (CFATS) program.

The Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 builds on a measure by Congressmen Michael McCaul and Patrick Meehan to enhance the Department of Homeland Security's (DHS) ongoing efforts to address problems in the CFATS program and provide the major changes necessary to fix the program. H.R. 4007 would implement many of the recommendations in [*Chemical Insecurity: An Assessment of Efforts to Secure the Nation's Chemical Facilities from Terrorist Threats*](#), a new oversight report Dr. Coburn released detailing DHS's struggle to implement CFATS.

Backlog

One of the key findings of the report was that CFATS has failed to inspect over 99% of "high risk" facilities for compliance with security requirements. In part, this has stemmed from DHS delaying approval of facility security plans, in many cases for years.

H.R. 4007 would include a new Expedited Approval Program to provide faster approval of lower risk chemical facilities' security plans. In place of the current system, lower risk facilities could develop security plans based on prescriptive guidance developed by DHS and certify compliance. H.R. 4007 sets strict deadlines for participating in the optional expedited approval program, and strict deadlines for DHS to evaluate expedited approval plans. H.R. 4007 would also allow using qualified, third-party inspectors to accelerate facility inspections.

Risk Assessment

The report also found CFATS may be regulating the wrong facilities. By failing to accurately assess chemical facilities using the three components of risk — threat, consequence, and vulnerability — DHS does not know which facilities with toxic or flammable chemicals are at the highest risk of a terrorist attack. As a result, the Department may be leaving more dangerous facilities unchecked, while policing the facilities at lower risk.

H.R. 4007 would require DHS to fix its risk assessment and incorporate all three elements of risk, [implementing the second recommendation in Dr. Coburn's report](#). H.R. 4007 would also require DHS to provide Congress with an assessment of its implementation of the recommendations in a recent internal peer review of the risk assessment process.

Outliers & Compliance

Some facilities may be dodging CFATS chemical security regulations by avoiding detection from DHS, putting our nation at greater risk to the threat of chemical terrorism. DHS has struggled to identify and bring these "outlier" facilities into compliance with CFATS requirements because of limited enforcement authorities and previous lack of collaboration with other agencies and groups.

H.R. 4007 would give DHS the authority to immediately fine facilities that try to avoid CFATS regulations by evading detection by DHS, implementing the fourth recommendation in Dr. Coburn's report. H.R. 4007 would also require DHS to develop and implement a plan to identify outliers, including consulting with other agencies, business associations, and labor organizations across the country. The bill would reauthorize CFATS for four years — ensuring facilities can't delay compliance until after the program expires — and includes new, narrowly tailored whistleblower protections for private employees to report chemical security violations to DHS.

Reducing Systemic Risk, Metrics, & Oversight

The report also found the current design of the CFATS program may shift risk to other parts of the supply chain not covered by CFATS, and calls on DHS to better consider risks to other parts of the supply chain. Because the program does not consider how it affects risk in other parts of the chemical supply chain, there is little evidence that overall security has increased. Because DHS fails to keep effective metrics on the CFATS program, there is no way of knowing whether CFATS is actually reducing our risk of chemical terrorism.

To improve our understanding of the effects of CFATS on chemical security, H.R. 4007 would require DHS to track when and why facilities are removed from CFATS regulations, and report metrics to Congress on its progress in satisfying the bill's requirements, achieving Dr. Coburn's fifth recommendation. H.R. 4007 would also require annual GAO reports on the CFATS program for three years, including on new measures implemented by the bill. In order to ensure Congress continues to provide oversight of CFATS, H.R. 4007 would automatically sunset in four years without Congressional renewal — forcing Congress to come back to check that the fixes worked. Last, the bill would require a third-party study of chemical sector vulnerabilities to terrorism.

Working with the Private Sector

The final two findings in *Chemical Insecurity* were that CFATS creates an unnecessary burden on the companies it regulates, particularly smaller companies, and does not effectively leverage chemical security expertise in the private sector. The CFATS program requires small companies, often with fewer than fifty employees, to submit thousands of pages of forms to DHS, and submit their employees to multiple duplicative background checks.

H.R. 4007 seeks to improve DHS's engagement with the private sector and help it better leverage their expertise through the Expedited Approval Program by leveraging private sector expertise, and through fixing the CFATS employee screening requirements (personnel surety) to prevent duplication with other agencies. The bill will also provide DHS special authority to assist smaller covered chemical facilities in complying with CFATS and develop best practices for those facilities, implementing Dr. Coburn's seventh and final recommendation.

This release and the Chemical Insecurity report are available online at:
<http://www.coburn.senate.gov/public/index.cfm/2014/7/federal-chemical-security-program-in-shambles-new-report-says>