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109TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 109–707, Part 1

CHEMICAL FACILITY ANTI-TERRORISM ACT OF 2006

SEPTEMBER 29, 2006.—Ordered to be printed

Mr. KING of New York, from the Committee on Homeland Security, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 5695]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 5695) to amend the Homeland Security Act of 2002 to provide for the regulation of certain chemical facilities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
The Amendment	2
Purpose and Summary	16
Background and Need for Legislation	16
Hearings	17
Committee Consideration	17
Committee Votes	18
Committee Oversight Findings	27
Statement of General Performance Goals and Objectives	27
New Budget Authority, Entitlement Authority, and Tax Expenditures	27
Congressional Budget Office Estimate	27
Compliance With House Resolution 1000	27
Federal Mandates Statement	27
Advisory Committee Statement	34
Constitutional Authority Statement	34
Applicability to Legislative Branch	34
Section-by-Section Analysis of the Legislation	34
Changes in Existing Law Made by the Bill, as Reported	44
Additional and Dissenting Views	66

49–006

THE AMENDMENT

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 Act of 2006".

SEC. 2. REGULATION OF CHEMICAL FACILITIES.

(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 new title:

"TITLE XVIII—REGULATION OF CHEMICAL FACILITIES

"SEC. 1801. DEFINITIONS.

"In this title, the following definitions apply:

"(1) The term 'environment' has the meaning given the term in section 101 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601).

"(2) The term 'owner or operator of a chemical facility' means any person who owns, leases, or operates a chemical facility.

"(3) The term 'release' has the meaning given the term in section 101 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601).

"(4) The term 'chemical facility security measure' means any action taken to ensure or enhance the security of a chemical facility against a chemical facility terrorist incident, including—

"(A) employee background checks;

"(B) employee training;

"(C) personnel security measures;

"(D) the limitation and prevention of access to controls of the chemical facility;

"(E) protection of the perimeter of the chemical facility or the portion or sector within the facility in which a substance of concern is stored, used or handled, utilizing fences, barriers, guards, or other means;

"(F) installation and operation of cameras or other intrusion detection sensors;

"(G) the implementation of measures to increase computer or computer network security;

"(H) contingency and evacuation plans;

"(I) the relocation or hardening of storage or containment equipment; and

"(J) other security measures to prevent, protect against, or reduce the consequences of a chemical facility terrorist incident.

"(5) The term 'substance of concern' means a chemical substance in quantity and form that—

"(A) is listed under paragraph (3) of section 112(r) of the Clean Air Act (42 U.S.C. 7412(r)) and has not been exempted from designation as a substance of concern by the Secretary under section 4(a); or

"(B) is designated by the Secretary by regulation in accordance with section 1802(a).

"(6) The term 'chemical facility terrorist incident' means—

"(A) an act of terrorism committed against a chemical facility;

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

"(C) the obtaining of a substance of concern by any person for the purposes of releasing the substance off-site in furtherance of an act of terrorism.

"SEC. 1802. DESIGNATION AND RANKING OF CHEMICAL FACILITIES.

"(a) SUBSTANCES OF CONCERN.—

"(1) DESIGNATION BY THE SECRETARY.—The Secretary may—

"(A) designate any chemical substance as a substance of concern;

"(B) exempt any chemical substance from being designated as a substance of concern;

"(C) establish and revise, for purposes of making determinations under subsection (b), the threshold quantity for a chemical substance; or

"(D) require the submission of information with respect to the quantities of substances of concern that are used, stored, manufactured, processed, or distributed by any chemical facility.

"(2) MATTERS FOR CONSIDERATION.—

"(A) IN GENERAL.—In designating or exempting a chemical substance or establishing or adjusting the threshold quantity for a chemical substance under paragraph (1), the Secretary shall consider the potential extent of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, national security, the national economy, or public welfare that would result from a terrorist release of the chemical substance.

"(B) ADOPTION OF CERTAIN THRESHOLD QUANTITIES.—The Secretary may adopt the threshold quantity established under paragraph (5) of subsection (r) of section 112 of the Clean Air Act (42 U.S.C. 7412(r)(5)) for any substance of concern that is also listed under paragraph (3) of that subsection.

"(b) LIST OF SIGNIFICANT CHEMICAL FACILITIES.—

"(1) IN GENERAL.—The Secretary shall maintain a list of significant chemical facilities in accordance with this subsection.

"(2) REQUIRED FACILITIES.—The Secretary shall include on the list maintained under paragraph (1) a chemical facility that has more than the threshold quantity established by the Secretary of any substance of concern.

"(3) AUTHORITY TO DESIGNATE CHEMICAL FACILITIES.—The Secretary may designate a chemical facility not required to be included under paragraph (2) as a significant chemical facility and shall include such a facility on the list maintained under paragraph (1). In designating a chemical facility under this paragraph, the Secretary shall use the following criteria:

"(A) The potential threat or likelihood that the chemical facility will be the target of terrorism.

"(B) The potential extent and likelihood of death, injury or serious adverse effects to human health and safety or to the environment that could result from a chemical facility terrorist incident.

"(C) The proximity of the chemical facility to population centers.

"(D) The potential threat caused by a person obtaining a substance of concern in furtherance of an act of terrorism.

"(E) The potential harm to critical infrastructure, national security, and the national economy from a chemical facility terrorist incident.

"(c) ASSIGNMENT OF CHEMICAL FACILITIES TO RISK-BASED TIERS.—

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

"(2) PROVISION OF INFORMATION.—The Secretary may request, and the owner or operator of a chemical facility shall provide, information necessary for the Secretary to assign a chemical facility to the appropriate tier under paragraph (1).

"(3) NOTIFICATION.—Not later than 60 days after assigning a chemical facility to a tier under this subsection, the Secretary shall notify the chemical facility of the tier to which the facility is assigned and shall provide the facility with the reasons for assignment of the facility to such tier.

"(4) HIGH-RISK CHEMICAL FACILITIES.—At least one of the tiers established by the Secretary for the assignment of chemical facilities under this subsection shall be a tier designated for high-risk chemical facilities.

"(d) PERIODIC REVIEW OF LIST OF CHEMICAL FACILITIES.—

"(1) REQUIREMENT.—Not later than 3 years after the date on which the Secretary develops the list of significant chemical facilities under subsection (b)(1) and every 3 years thereafter, the Secretary shall—

"(A) consider the criteria under subsection (b)(3); and

"(B) determine whether to add a chemical facility to the list of significant chemical facilities maintained under subsection (b)(1) or to remove or change the tier assignment of any chemical facility on such list.

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

"(3) NOTIFICATION.—Not later than 30 days after the date on which the Secretary adds a facility to the list of significant chemical facilities maintained by the Secretary under subsection (b)(1), removes a facility from such list, or changes the tier assignment of any facility on such list, the Secretary shall notify the owner of that facility of that addition, removal, or change.

"SEC. 1803. VULNERABILITY ASSESSMENTS AND FACILITY SECURITY PLANS.

"(a) VULNERABILITY ASSESSMENT AND FACILITY SECURITY PLAN REQUIRED FOR CHEMICAL FACILITIES.—

"(1) REQUIREMENT FOR VULNERABILITY ASSESSMENT AND SECURITY PLAN.—

"(A) REGULATIONS REQUIRED.—The Secretary shall prescribe regulations to—

"(i) establish standards, protocols, and procedures for vulnerability assessments and facility security plans to be required for chemical facilities on the list maintained by the Secretary under section 1802(b)(1);

"(ii) require the owner or operator of each such facility to—

"(I) conduct an assessment of the vulnerability of the chemical facility to a chemical facility terrorist incident;

"(II) prepare and implement a facility security plan that addresses the results of the vulnerability assessment; and

"(III) consult with the appropriate employees of the facility in developing the vulnerability assessment and security plan required under this section; and

"(iii) set deadlines for the completion of vulnerability assessments and facility security plans, such that all such plans and assessments are completed and submitted to the Secretary for approval no later than 3 years after final regulations are issued under this paragraph.

"(B) DEADLINE FOR HIGH-RISK CHEMICAL FACILITIES.—The owner or operator of a facility assigned to the high-risk tier under section 1802(c)(4) shall submit to the Secretary a vulnerability assessment and facility security plan not later than 6 months after the date on which the Secretary prescribes regulations under this subsection.

"(2) CRITERIA FOR REGULATIONS.—The regulations required under paragraph (1) shall—

"(A) be risk-based;

"(B) be performance-based; and

"(C) take into consideration—

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

"(ii) the different quantities and forms of substances of concern stored, used, and handled at chemical facilities; and

"(iii) the matters for consideration under section 1802(a)(2).

"(3) PROVISION OF ASSISTANCE AND GUIDANCE.—The Secretary shall provide assistance and guidance to a chemical facility conducting a vulnerability assessment or facility security plan required under this section.

"(b) MINIMUM REQUIREMENTS FOR HIGH-RISK CHEMICAL FACILITIES.—

"(1) REQUIREMENTS FOR VULNERABILITY ASSESSMENTS.—In the case of a facility assigned to the high-risk tier under section 1802(c)(4), the Secretary shall require that the vulnerability assessment required under this section include each of the following:

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

"(B) The number of individuals at risk of death, injury, or severe adverse effects to human health as a result of a chemical facility terrorist incident at the facility.

"(C) Information related to the criticality of the facility for purposes of assessing the degree to which the facility is critical to the economy or national security of the United States.

"(D) The proximity or interrelationship of the facility to other critical infrastructure.

"(E) Any vulnerability of the facility with respect to—

"(i) physical security;

"(ii) programmable electronic devices, computers, computer or communications networks, or other automated systems used by the facility;

"(iii) alarms, cameras, and other protection systems;

"(iv) communication systems;

"(v) any utility or infrastructure (including transportation) upon which the facility relies to operate safely and securely; or

"(vi) the structural integrity of equipment for storage, handling, and other purposes.

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

"(G) Such other information as the Secretary determines is appropriate.

"(2) REQUIREMENTS FOR FACILITY SECURITY PLANS.—In the case of a facility assigned to the high-risk tier under section 1802(c)(4), the Secretary shall re-

quire that the facility security plan required under this section include each of the following:

"(A) Chemical facility security measures to address the vulnerabilities of the facility to a chemical facility terrorist incident.

"(B) A plan for periodic drills and exercises to be conducted at the facility that include participation by facility employees, local law enforcement agencies, and first responders, as appropriate.

"(C) Equipment, plans, and procedures to be implemented or used by or at the chemical facility in the event of a chemical facility terrorist incident that affects the facility, including site evacuation, release mitigation, and containment plans.

"(D) An identification of any steps taken to coordinate with State and local law enforcement agencies, first responders, and Federal officials on security measures and plans for response to a chemical facility terrorist incident.

"(E) Specify the security officer who will be the point of contact for the National Incident Management System and for Federal, State, and local law enforcement and first responders.

"(F) A description of enhanced security measures during periods of time when the Secretary determines that heightened threat conditions exist.

"(3) PROVISION OF THREAT-RELATED INFORMATION.—The Secretary shall provide in a timely manner, to the maximum extent practicable under applicable authority and in the interests of national security, to an owner or operator of a facility assigned to the high-risk tier under section 1802(c)(4), threat information that is relevant to the facility, including an assessment of the most likely method that could be used by terrorists to exploit any vulnerabilities of the facility and the likelihood of the success of such method.

"(4) RED TEAM EXERCISES.—The Secretary shall conduct red team exercises at facilities selected by the Secretary that have been assigned to the high-risk tier under section 1802(c)(4) such that all chemical facilities designated under that section will undergo a red team exercise during the six-year period that begins on the date on which the Secretary prescribes regulations to carry out this title. The exercises shall be—

"(A) conducted after informing the owner or operator of the facility selected; and

"(B) designed to identify at each selected facility—

"(i) any vulnerabilities of the facility;

"(ii) possible modes by which the facility could be attacked; and

"(iii) any weaknesses in the security plan of the facility.

"(c) SECURITY PERFORMANCE REQUIREMENTS.—

"(1) IN GENERAL.—The Secretary shall establish security performance requirements for the facility security plans required to be prepared by chemical facilities assigned to each risk-based tier established under section 1802(c). The requirements shall—

"(A) require separate and increasingly stringent security performance requirements for facility security plans as the level of risk associated with the tier increases; and

"(B) permit each chemical facility submitting a facility security plan to select a combination of chemical facility security measures that satisfy the security performance requirements established by the Secretary under this subsection.

"(2) CRITERIA.—In establishing the security performance requirements under paragraph (1), the Secretary shall consider the criteria under subsection (a)(2).

"(3) GUIDANCE.—The Secretary shall provide guidance to each chemical facility on the list maintained by the Secretary under section 1802(b)(1) regarding the types of chemical facility security measures that, if applied, could satisfy the requirements under this section.

"(d) CO-LOCATED CHEMICAL FACILITIES.—The Secretary shall allow the owners or operators of two or more chemical facilities that are located geographically close to each other or otherwise co-located to develop and implement coordinated vulnerability assessments and facility security plans, at the discretion of the owner or operator of the chemical facilities.

"(e) PROCEDURES, PROTOCOLS, AND STANDARDS SATISFYING REQUIREMENTS FOR VULNERABILITY ASSESSMENT AND SECURITY PLAN.—

"(1) DETERMINATION BY THE SECRETARY.—In response to a petition by any person, or at the discretion of the Secretary, the Secretary may endorse or recognize procedures, protocols, and standards that the Secretary determines meet all or part of the requirements of this section.

"(2) USE OF PROCEDURES, PROTOCOLS, AND STANDARDS.—

"(A) USE BY INDIVIDUAL FACILITIES.—Upon review and written determination by the Secretary under paragraph (1) that the procedures, protocols, or standards of a chemical facility subject to the requirements of this section satisfy some or all of the requirements of this section, the chemical facility may elect to comply with those procedures, protocols, or standards.

"(B) USE BY CLASSES OF FACILITIES.—At the discretion of the Secretary, the Secretary may identify a class or category of chemical facilities subject to the requirements of this section that may use the procedures, protocols, or standards recognized under this section in order to comply with all or part of the requirements of this section.

"(3) PARTIAL RECOGNITION.—If the Secretary finds that a procedure, protocol, or standard satisfies only part of the requirements of this section, the Secretary may allow a chemical facility subject to the requirements of this section to comply with that procedure, protocol, or standard for purposes of that requirement, but shall require the facility to submit of any additional information required to satisfy the requirements of this section not met by that procedure, protocol, or standard.

"(4) NOTIFICATION.—If the Secretary does not endorse or recognize a procedure, protocol, or standard for which a petition is submitted under paragraph (1), the Secretary shall provide to the person submitting a petition under paragraph (1) written notification that includes an explanation of the reasons why the endorsement or recognition was not made.

"(5) REVIEW.—Nothing in this subsection shall relieve the Secretary (or a designee of the Secretary which may be a third party auditor certified by the Secretary) of the obligation—

"(A) to review a vulnerability assessment and facility security plan submitted by a high-risk chemical facility under this section; and

"(B) to approve or disapprove each assessment or plan on an individual basis.

"(f) OTHER AUTHORITIES.—

"(1) EXISTING AUTHORITIES.—A chemical facility on the list maintained by the Secretary under section 1802(b)(1) that is required to prepare a vulnerability assessment or facility security plan under chapter 701 of title 46, United States Code, or section 1433 of the Safe Drinking Water Act (42 U.S.C. 300i-2) shall not be subject to the requirements of this section, unless the Secretary, after reviewing the vulnerability assessment, facility security plan, or other relevant documents voluntarily offered by the chemical facility (including any updates thereof), finds, in consultation with the appropriate Federal authorities, that the chemical facility requires more stringent performance requirements or red-team exercise under subsection (b)(4).

"(2) COORDINATION.—In the case of any storage required to be licensed under chapter 40 of title 18, United States Code, the Secretary shall prescribe the rules and regulations for the implementation of this section with the concurrence of the Attorney General and avoid unnecessary duplication of regulatory requirements.

"(g) PERIODIC REVIEW BY CHEMICAL FACILITY REQUIRED.—

"(1) SUBMISSION OF REVIEW.—Not later than 3 years after the date on which a vulnerability assessment or facility security plan required under this section is submitted, and at least once every 5 years thereafter (or on such a schedule as the Secretary may establish by regulation), the owner or operator of the chemical facility covered by the vulnerability assessment or facility security plan shall submit to the Secretary a review of the adequacy of the vulnerability assessment or facility security plan that includes a description of any changes made to the vulnerability assessment or facility security plan.

"(2) REVIEW OF REVIEW.—The Secretary shall—

"(A) ensure that a review required under paragraph (1) is submitted not later than the applicable date; and

"(B) not later than 6 months after the date on which a review is submitted under paragraph (1), review the review and notify the facility submitting the review of the Secretary's approval or disapproval of the review.

"(h) ROLE OF EMPLOYEES.—As appropriate, vulnerability assessments or facility security plans required under this section should describe the roles or responsibilities that facility employees are expected to perform to prevent or respond to a chemical facility terrorist incident.

"SEC. 1804. RECORD KEEPING; SITE INSPECTIONS.

"(a) RECORD KEEPING.—The Secretary shall require each chemical facility required to submit a vulnerability assessment or facility security plan under section 1803 to maintain a current copy of the assessment and the plan at the facility.

"(b) RIGHT OF ENTRY.—For purposes of carrying out this title, the Secretary (or a designee of the Secretary) shall have, on presentation of credentials, a right of entry to, on, or through any property of a chemical facility on the list maintained by the Secretary under section 1802(a)(1) or any property on which any record required to be maintained under this section is located.

"(c) INSPECTIONS AND VERIFICATIONS.—The Secretary shall, at such time and place as the Secretary determines to be appropriate, conduct or require the conduct of facility security inspections and verifications and may, by regulation, authorize third party inspections and verifications by persons trained and certified by the Secretary for that purpose. Such an inspection or verification shall include a consultation with owners, operators, and employees, as appropriate, and ensure and evaluate compliance with—

"(1) this title and any regulations prescribed to carry out this title; and

"(2) any security standards or requirements adopted by the Secretary in furtherance of the purposes of this title.

"(d) REQUESTS FOR RECORDS.—In carrying out this title, the Secretary (or a designee of the Secretary) may require the submission of or, on presentation of credentials, may at reasonable times obtain access to and copy any documentation necessary for—

"(1) reviewing or analyzing a vulnerability assessment or facility security plan submitted under section 1803; or

"(2) implementing such a facility security plan.

"(e) COMPLIANCE.—If the Secretary determines that an owner or operator of a chemical facility required to submit a vulnerability assessment or facility security plan under section 1803 fails to maintain, produce, or allow access to records or to the property of the chemical facility as required by this section, the Secretary shall issue an order requiring compliance with this section.

"SEC. 1805. ENFORCEMENT.

"(a) SUBMISSION OF INFORMATION.—

"(1) INITIAL SUBMISSION.—The Secretary shall specify in regulations prescribed under section 1803(a), specific deadlines for the submission of the vulnerability assessments and facility security plans required under this title to the Secretary. The Secretary may establish different submission requirements for the different tiers of chemical facilities under section 1802(c).

"(2) MAJOR CHANGES REQUIREMENT.—The Secretary shall specify in regulations prescribed under section 1803(a), specific deadlines and requirements for the submission by a facility required to submit a vulnerability assessment or facility security plan under that section of information describing—

"(A) any change in the use by the facility of more than a threshold amount of any substance of concern; and

"(B) any significant change in a vulnerability assessment or facility security plan submitted by the facility.

"(3) FAILURE TO COMPLY.—If an owner or operator of a chemical facility fails to submit a vulnerability assessment or facility security plan in accordance with this title, the Secretary shall issue an order requiring the submission of a vulnerability assessment or facility security plan in accordance with section 1804(e).

"(b) REVIEW OF SECURITY PLAN.—

"(1) IN GENERAL.—

"(A) DEADLINE FOR REVIEW.—Not later than 180 days after the date on which the Secretary receives a vulnerability assessment or facility security plan under this title, the Secretary shall review and approve or disapprove such assessment or plan.

"(B) DESIGNEE.—The Secretary may designate a person (including a third party entity certified by the Secretary) to conduct a review under this subsection.

"(2) DISAPPROVAL.—The Secretary shall disapprove a vulnerability assessment or facility security plan if the Secretary determines that—

"(A) the vulnerability assessment or facility security plan does not comply with regulations prescribed under section 1803; or

"(B) in the case of a facility security plan, the plan or the implementation of the plan is insufficient to address any vulnerabilities identified in a vulnerability assessment of the chemical facility or associated oversight actions taken under sections 1803 and 1804, including a red team exercise.

"(3) SPECIFIC SECURITY MEASURES NOT REQUIRED.—The Secretary shall not disapprove a facility security plan under this section based solely on the specific chemical facility security measures that the chemical facility selects to meet the

security performance requirements established by the Secretary under section 1803(c).

"(4) PROVISION OF NOTIFICATION OF DISAPPROVAL.—If the Secretary disapproves the vulnerability assessment or facility security plan submitted by a chemical facility under this title or the implementation of a facility security plan by such a facility, the Secretary shall—

"(A) provide the owner or operator of the facility a written notification of the disapproval, that—

"(i) includes a clear explanation of deficiencies in the assessment, plan, or implementation of the plan; and

"(ii) requires the owner or operator of the facility to revise the assessment or plan to address any deficiencies and to submit to the Secretary the revised assessment or plan;

"(B) provide guidance to assist the facility in addressing such deficiency;

"(C) in the case of a facility for which the owner or operator of the facility does not address such deficiencies by such date as the Secretary determines to be appropriate, issue an order requiring the owner or operator to correct specified deficiencies by a specified date; and

"(D) in the case of a facility assigned to the high-risk tier under section 1802(c)(4), consult with the owner or operator of the facility to identify appropriate steps to be taken by the owner or operator to address the deficiencies identified by the Secretary.

"(5) NO PRIVATE RIGHT OF ACTION.—Nothing in this title confers upon any private person a right of action against an owner or operator of a chemical facility to enforce any provision of this title.

"(c) REPORTING PROCESS.—

"(1) ESTABLISHMENT.—The Secretary shall establish, and provide information to the public regarding, a process by which any person may submit a report to the Secretary regarding problems, deficiencies, or vulnerabilities at a chemical facility.

"(2) CONFIDENTIALITY.—The Secretary shall keep confidential the identity of a person that submits a report under paragraph (1) and any such report shall be treated as protected information under section 1808(f) to the extent that it does not consist of publicly available information.

"(3) ACKNOWLEDGMENT OF RECEIPT.—If a report submitted under paragraph (1) identifies the person submitting the report, the Secretary shall respond promptly to such person to acknowledge receipt of the report.

"(4) STEPS TO ADDRESS PROBLEMS.—The Secretary shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps under this title to address any problem, deficiency, or vulnerability identified in the report.

"(5) RETALIATION PROHIBITED.—

"(A) PROHIBITION.—No employer may discharge any employee or otherwise discriminate against any employee with respect to the compensation of, or terms, conditions, or privileges of the employment of, such employee because the employee (or a person acting pursuant to a request of the employee) submitted a report under paragraph (1).

"(B) ENFORCEMENT PROCESS.—The Secretary shall establish—

"(i) a process by which an employee can notify the Secretary of any retaliation prohibited under this paragraph; and

"(ii) a process by which the Secretary may take action as appropriate to enforce this section.

"SEC. 1806. PENALTIES.

"(a) ADMINISTRATIVE PENALTIES.—

"(1) IN GENERAL.—The Secretary may issue an administrative penalty of not more than $250,000 for failure to comply with an order issued by the Secretary under this title.

"(2) PROVISION OF NOTICE.—Before issuing a penalty under paragraph (1), the Secretary shall provide to the person against which the penalty is to be assessed—

"(A) written notice of the proposed penalty; and

"(B) to the extent possible, consistent with the provisions of title 5, United States Code, governing hearings on the record, the opportunity to request, not later than 30 days after the date on which the notice is received, a hearing on the proposed penalty.

"(3) PROCEDURES FOR REVIEW.—The Secretary may prescribe regulations outlining the procedures for administrative hearings and appropriate review, including necessary deadlines.

"(b) CIVIL PENALTIES.—

"(1) IN GENERAL.—The Secretary may bring an action in a United States district court against any owner or operator of a chemical facility that violates or fails to comply with—

"(A) any order issued by the Secretary under this title; or

"(B) any facility security plan approved by the Secretary under this title.

"(2) RELIEF.—In any action under paragraph (1), a court may issue an order for injunctive relief and may award a civil penalty of not more than $50,000 for each day on which a violation occurs or a failure to comply continues.

"(c) CRIMINAL PENALTIES.—An owner or operator of a chemical facility who knowingly and intentionally violates any order issued by the Secretary under this title shall be fined not more than $100,000, imprisoned for not more than 1 year, or both.

"(d) PENALTIES FOR UNAUTHORIZED DISCLOSURE.—Any officer or employee of a Federal, State, or local government agency who, in a manner or to an extent not authorized by law, knowingly discloses any record containing protected information described in section 1808(f) shall—

"(1) be imprisoned not more than 1 year, fined under chapter 227 of title 18, United States Code, or both; and

"(2) if an officer or employee of the Government, be removed from Federal office or employment.

"(e) TREATMENT OF INFORMATION IN ADJUDICATIVE PROCEEDINGS.—In a proceeding under this section, information protected under section 1808, or related vulnerability or security information, shall be treated in any judicial or administrative action as if the information were classified material.

"SEC. 1807. FEDERAL PREEMPTION.

"(a) IN GENERAL.—Nothing in this title shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting chemical facility security that is more stringent than a regulation, requirement, or standard of performance in effect under this title, or shall otherwise impair any right or jurisdiction of any State with respect to chemical facilities within such State unless the State regulation, requirement, or standard of performance would frustrate the purposes of this title.

"(b) OTHER REQUIREMENTS.—Nothing in this title shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance relating to environmental protection, health, or safety.

"(c) APPLICATION FOR REVIEW.—

"(1) IN GENERAL.—A person, State, or local government directly affected by a requirement of a State or local government may submit to the Secretary, as provided in regulations that the Secretary shall prescribe, an application asking the Secretary to decide whether the requirement is preempted by this title.

"(2) NOTICE.—The Secretary shall publish notice of the application in the Federal Register.

"(3) DETERMINATION BY SECRETARY.—The Secretary shall, by not later than 180 days after the date of the publication of the notice under paragraph (2)—

"(A) issue a decision pursuant to the application; or

"(B) publish in the Federal Register—

"(i) a statement of the reason why the Secretary's decision on the application is delayed; and

"(ii) an estimate of the additional time necessary for the decision to be made.

"(4) LIMITATION ON JUDICIAL RELIEF.—After publication of notice under paragraph (2), an applicant may not seek judicial relief on the same or substantially the same issue until the earlier of—

"(A) the date the Secretary issues a decision pursuant to the application; or

"(B) the end of the 180-day period beginning on the date the application is filed.

"(d) JUDICIAL REVIEW.—A person who submits an application under subsection (c), or the State or local government that prescribed or issued the law, regulation, standard, or order that is the subject of such an application, may bring a civil action in an appropriate United States district court for judicial review of the decision of the Secretary made pursuant to the application no later than 60 days after the Secretary issues the decision.

"SEC. 1808. PROTECTION OF INFORMATION.

"(a) PROHIBITION OF PUBLIC DISCLOSURE OF PROTECTED INFORMATION.—

"(1) IN GENERAL.—The Secretary shall ensure that protected information, as described in subsection (f), is not disclosed except as provided in this title.

"(2) SPECIFIC PROHIBITIONS.—In carrying out paragraph (1), the Secretary shall ensure that protected information is not disclosed—

"(A) by any Federal agency under section 552 of title 5, United States Code; or

"(B) under any State or local law.

"(b) REGULATIONS.—

"(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Chemical Facility Anti-Terrorism Act of 2006, the Secretary shall prescribe such regulations, and may issue such orders, as necessary to prohibit the unauthorized disclosure of protected information, as described in subsection (f).

"(2) REQUIREMENTS.—The regulations prescribed under paragraph (1) shall—

"(A) permit information sharing, on a confidential basis, with Federal, State and local law enforcement officials and first responders and chemical facility personnel, as necessary to further the purposes of this title;

"(B) provide for the confidential use of protected information in any administrative or judicial proceeding, including placing under seal any such information that is contained in any filing, order, or other document used in such proceedings that could otherwise become part of the public record;

"(C) limit access to protected information to persons designated by the Secretary; and

"(D) ensure, to the maximum extent practicable, that—

"(i) protected information shall be maintained in a secure location; and

"(ii) access to protected information shall be limited as may be necessary to—

"(I) enable enforcement of this title; or

"(II) address an imminent and substantial threat to security.

"(c) OTHER OBLIGATIONS UNAFFECTED.—Nothing in this section affects any obligation of the owner or operator of a chemical facility to submit or make available information to facility employees, employee organizations, or a Federal, State, or local government agency under, or otherwise to comply with, any other law.

"(d) SUBMISSION OF INFORMATION TO CONGRESS.—Nothing in this title shall be construed as authorizing the withholding of any information from Congress.

"(e) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—Nothing in this title shall be construed as affecting any authority or obligation of a Federal agency to disclose any record or information that the Federal agency obtains from a chemical facility under any other law.

"(f) PROTECTED INFORMATION.—For purposes of this section, protected information includes the following:

"(1) The criteria and data used by the Secretary to assign chemical facilities to risk-based tiers under section 1802 and the tier to which each such facility is assigned.

"(2) The vulnerability assessments and facility security plans submitted to the Secretary under this title.

"(3) Information concerning the security performance requirements for a chemical facility under section 1803(c).

"(4) Any other information generated or collected by a Federal, State, or local government agency or by a chemical facility for the purpose of carrying out or complying with this title—

"(A) that describes any vulnerability of a chemical facility to an act of terrorism;

"(B) that describes the assignment of any chemical facility to a risk-based tier under this title;

"(C) that describes any security measure (including any procedure, equipment, training, or exercise) for the protection of a chemical facility from an act of terrorism; or

"(D) the disclosure of which the Secretary determines would be detrimental to the security of any chemical facility.

"SEC. 1809. CERTIFICATION OF THIRD-PARTY ENTITIES.

"(a) CERTIFICATION OF THIRD-PARTY ENTITIES.—The Secretary may designate a third-party entity to carry out any function under subsection (e)(5) of section 1803, subsection (b) or (c) of section 1804, or subsection (b)(1) of section 1805.

"(b) QUALIFICATIONS.—The Secretary shall establish standards for the qualifications of third-party entities, including knowledge of physical infrastructure protection, cybersecurity, facility security plans, hazard analysis, engineering, and other such factors that the Secretary determines to be necessary.

"(c) PROCEDURES AND REQUIREMENTS FOR PRIVATE ENTITIES.—Before designating a third-party entity to carry out a function under subsection (a), the Secretary shall—

"(1) develop, document, and update, as necessary, minimum standard operating procedures and requirements applicable to such entities designated under subsection (a), including—

"(A) conducting a 90-day independent review of the procedures and requirements (or updates thereto) and the results of the analyses of such procedures (or updates thereto) pursuant to subtitle G of title VIII; and

"(B) upon completion of the independent review under subparagraph (A), designating any procedure or requirement (or any update thereto) as a qualified anti-terrorism technology pursuant to section 862(b);

"(2) conduct safety and hazard analyses of the standard operating procedures and requirements developed under paragraph (1);

"(3) conduct a review of the third party entities' previous business engagements to ensure that no contractual relationship has or will exist that could compromise their independent business judgment in carrying out any functions under subsection(e)(5) of section 1803, subsection (b) or (c) of section 1804, of subsection(b)(1) of section 1805; and

"(4) conduct a review of the third party entities' business practices and disqualify any of these organizations that offer related auditing or consulting services to chemical facilities as private sector vendors.

"(d) TECHNICAL REVIEW AND APPROVAL.—Not later than 60 days after the date on which the results of the safety and hazard analysis of the standard operating procedures and requirements are completed under subsection (c)(2), the Secretary shall—

"(1) complete a technical review of the procedures and requirements (or updates thereto) under sections 862(b) and 863(d)(2); and

"(2) approve or disapprove such procedures and requirements (or updates thereto).

"(e) EFFECT OF APPROVAL.—

"(1) ISSUANCE OF CERTIFICATE OF CONFORMANCE.—In accordance with section 863(d)(3), the Secretary shall issue a certificate of conformance to a third-party entity to perform a function under subsection (a) if the entity—

"(A) demonstrates to the satisfaction of the Secretary the ability to perform functions in accordance with standard operating procedures and requirements (or updates thereto) approved by the Secretary under this section;

"(B) agrees to—

"(i) perform such function in accordance with such standard operating procedures and requirements (or updates thereto); and

"(ii) maintain liability insurance coverage at policy limits and in accordance with conditions to be established by the Secretary pursuant to section 864; and

"(C) signs an agreement to protect the proprietary and confidential information of any chemical facility with respect to which the entity will perform such function.

"(2) LITIGATION AND RISK MANAGEMENT PROTECTIONS.—A third-party entity that maintains liability insurance coverage at policy limits and in accordance with conditions to be established by the Secretary pursuant to section 864 and receives a certificate of conformance under paragraph (1) shall receive all applicable litigation and risk management protections under sections 863 and 864.

"(3) RECIPROCAL WAIVER OF CLAIMS.—A reciprocal waiver of claims shall be deemed to have been entered into between a third-party entity that receives a certificate of conformance under paragraph (1) and its contractors, subcontractors, suppliers, vendors, customers, and contractors and subcontractors of customers involved in the use or operation of any function performed by the third-party entity under subparagraph (a).

"(4) INFORMATION FOR ESTABLISHING LIMITS OF LIABILITY INSURANCE.—A third-party entity seeking a certificate of conformance under paragraph (1) shall provide to the Secretary necessary information for establishing the limits of liability insurance required to be maintained by the entity under section 864(a).

"(f) MONITORING.—The Secretary shall regularly monitor and inspect the operations of a third-party entity that performs a function under subsection (a) to ensure that the entity is meeting the minimum standard operating procedures and requirements established under subsection (c) and any other applicable requirement under this section.

"(g) RESTRICTION ON DESIGNATION.—No individual may be designated to carry out any function under this title with respect to any facility with which that individual

was affiliated as an officer, director, or employee during the three-year period preceding the date of such designation.

"SEC. 1810. METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.

"(a) METHOD TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.—For purposes of this section, the term 'method to reduce the consequences of a terrorist attack' includes—

"(1) input substitution;

"(2) catalyst or carrier substitution;

"(3) process redesign (including reuse or recycling of a substance of concern);

"(4) product reformulation;

"(5) procedure simplification;

"(6) technology modification;

"(7) use of less hazardous substances or benign substances;

"(8) use of smaller quantities of substances of concern;

"(9) reduction of hazardous pressures or temperatures;

"(10) reduction of the possibility and potential consequences of equipment failure and human error;

"(11) improvement of inventory control and chemical use efficiency; and

"(12) reduction or elimination of the storage, transportation, handling, disposal, and discharge of substances of concern.

"(b) ASSESSMENT REQUIRED.—

"(1) IN GENERAL.—The owner or operator of a facility assigned to the high-risk tier under section 1802(c)(4), shall conduct an assessment of methods to reduce the consequences of a terrorist attack on that chemical facility.

"(2) INCLUDED INFORMATION.—An assessment under this subsection shall include information on—

"(A) each method of reducing the consequences of a terrorist attack considered for implementation at the chemical facility, including—

"(i) the quantity of any substance of concern considered for reduction or elimination and the form of any considered replacement for such substance of concern; and

"(ii) any technology or process considered for modification and a description of the considered modification;

"(B) the degree to which each such method could, if implemented, reduce the potential extent of death, injury, or serious adverse effects to human health, and the environment; and

"(C) a description of any specific considerations that led to the implementation or rejection of each such method, including—

"(i) requirements under this title;

"(ii) cost;

"(iii) liability for a chemical facility terrorist incident;

"(iv) cost savings, including whether the method would eliminate or reduce other security costs or requirements;

"(v) the availability of a replacement for a substance of concern, technology, or process that would be eliminated or altered as a result of the implementation of the method;

"(vi) the applicability of any considered replacement for the substance of concern, technology, or process to the chemical facility; and

"(vii) any other factor that the owner or operator of the chemical facility considered in judging the practicability of each method to reduce the consequences of a terrorist attack.

"(3) DEADLINE.—The deadlines for submission and review of an assessment for a facility described in this subsection shall be the same as the deadline for submission and review of the facility security plan or relevant documents submitted to the Secretary by the facility for the purposes of complying with section 1803.

"(c) REVIEW AND IMPLEMENTATION.—

"(1) REVIEW.—Not later than 180 days after receiving an assessment described in subsection (b), the Secretary shall review the assessment and provide written notice to the owner or operator of a chemical facility required to conduct an assessment under subsection (b) if the Secretary determines that the assessment described in subsection (b) is inadequate.

"(2) CONSULTATION.—The Secretary shall consult with the heads of other Federal, State, and local agencies, including the Chemical Safety and Hazard Investigation Board and the Environmental Protection Agency, in determining whether the assessment described in subsection (b) is adequate.

"(3) IMPLEMENTATION.—The owner or operator of a chemical facility required to conduct an assessment under subsection (b) shall implement methods to re-

duce the consequences of a terrorist attack on the chemical facility if the Secretary determines, based on an assessment in subsection (b), that the implementation of methods to reduce the consequences of a terrorist attack at the high-risk chemical facility

"(A) would significantly reduce the risk of death, injury, or serious adverse effects to human health or the environment resulting from a terrorist release;

"(B) can feasibly be incorporated into the operation of the facility; and

"(C) would not significantly and demonstrably impair the ability of the owner or operator of the facility to continue the business of the facility.

"(4) RECONSIDERATION.—

"(A) IN GENERAL.—An owner or operator of a chemical facility that determines that it is unable to comply with the Secretary's determination under subsection (c)(3) shall, within 60 days of receipt of the Secretary's determination, provide to the Panel on Methods to Reduce the Consequences of a Terrorist Attack a written explanation that includes the reasons thereto.

"(B) REVIEW.—Not later than 60 days of receipt of an explanation submitted under subsection (c)(4)(A), the Panel on Methods to Reduce the Consequences of a Terrorist Attack, after an opportunity for the owner or operator of a chemical facility to meet with the Panel on Methods to Reduce the Consequences of a Terrorist Attack, shall provide a written determination regarding the adequacy of the explanation, and shall, if appropriate, include recommendations to the chemical facility that would assist the facility in its assessment and implementation.

"(C) NOTIFICATION.—Not later than 60 days after the date of the receipt of the written determination described under subsection (c)(4)(B), the owner or operator of the chemical facility shall provide to the Secretary written notification of the owner or operator's plans to implement methods to reduce the consequences of a terrorist attack recommended by the Panel on Methods to Reduce the Consequences of a Terrorist Attack.

"(D) COMPLIANCE.—If the facility does not implement the recommendations made by the Panel on Methods to Reduce the Consequences of a Terrorist Attack, the Secretary may, within 60 days of receipt of the plans described in subsection (4)(C), issue an order requiring the owner or operator to implement such methods by a specified date.

"(E) PANEL ON METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.—The Panel on Methods to Reduce the Consequences of a Terrorist Attack shall be chaired by the Secretary (or the Secretary's designee) and shall include representatives, chosen by the Secretary, of other appropriate Federal and State agencies, independent security experts and the chemical industry.

"(d) ALTERNATIVE APPROACHES CLEARINGHOUSE.—

"(1) ESTABLISHMENT.—The Secretary shall establish a publicly available clearinghouse for the compilation and dissemination of information on the use and availability of methods to reduce the consequences of a terrorist attack at a chemical facility.

"(2) INCLUSIONS.—The clearinghouse required under paragraph (1) shall include information on—

"(A) general and specific types of such methods;

"(B) combinations of chemical sources, substances of concern, and hazardous processes or conditions for which such methods could be appropriate;

"(C) the availability of specific methods to reduce the consequences of a terrorist attack;

"(D) the costs and cost savings resulting from the use of such methods;

"(E) technological transfer;

"(F) the availability of technical assistance; and

"(G) such other information as the Secretary determines is appropriate.

"(3) COLLECTION OF INFORMATION.—The Secretary shall collect information for the clearinghouse—

"(A) from documents submitted by owners or operators pursuant to this title;

"(B) by surveying owners or operators who have registered their facilities pursuant to part 68 of title 40 Code of Federal Regulations (or successor regulations); and

"(C) through such other methods as the Secretary deems appropriate.

"(4) PUBLIC AVAILABILITY.—Information available publicly through the clearinghouse shall not identify any specific facility or violate the protection of information provisions under section 1808.

"(e) PROTECTED INFORMATION.—An assessment prepared under subsection (b) is protected information for the purposes of section 1808(f).

"SEC. 1811. ANNUAL REPORT TO CONGRESS.

"(a) ANNUAL REPORT.—Not later than one year after the date of enactment of the Chemical Facility Anti-Terrorism Act of 2006 and annually thereafter, the Secretary shall publish a report on progress in achieving compliance with this title, including—

"(1) an assessment of the effectiveness of the facility security plans developed under this title;

"(2) any lessons learned in implementing this title (including as a result of a red-team exercise); and

"(3) any recommendations of the Secretary to improve the programs, plans, and procedures under this title, including the feasibility of programs to increase the number of economically disadvantaged businesses eligible to perform third party entity responsibilities pursuant to sections 1803(e)(5), 1804(b) and (c), and 1805(b)(1).

"(b) PROTECTED INFORMATION.—A report under this section may not include information protected under section 1808.

"SEC. 1812. APPLICABILITY.

"This title shall not apply to—

"(1) any facility that is owned and operated by the Department of Defense, the Department of Justice, or the Department of Energy;

"(2) the transportation in commerce, including incidental storage, of any substance of concern regulated as a hazardous material under chapter 51 of title 49, United States Code; or

"(3) any facility that is owned or operated by a licensee or certificate holder of the Nuclear Regulatory Commission.

"SEC. 1813. SAVINGS CLAUSE.

"Nothing in this title is intended to affect section 112 of the Clean Air Act (42 U.S.C. 7412), the Clean Water Act, the Resource Conservation and Recovery Act, the National Environmental Policy Act of 1969, and the Occupational Safety and Health Act.

"SEC. 1814. OFFICE OF CHEMICAL FACILITY SECURITY.

"There is in the Department an Office of Chemical Facility Security. The head of the Office of Chemical Facility Security is responsible for carrying out the responsibilities of the Secretary under this title.".

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

"TITLE XVIII—REGULATION OF CHEMICAL FACILITIES

"Sec. 1801. Definitions.
"Sec. 1802. Designation and ranking of chemical facilities.
"Sec. 1803. Vulnerability assessments and facility security plans.
"Sec. 1804. Record keeping; site inspections.
"Sec. 1805. Enforcement.
"Sec. 1806. Penalties.
"Sec. 1807. Federal preemption.
"Sec. 1808. Protection of information.
"Sec. 1809. Certification of third-party entities.
"Sec. 1810. Methods to reduce the consequences of a terrorist attack.
"Sec. 1811. Annual report to Congress.
"Sec. 1812. Applicability.
"Sec. 1813. Savings clause.
"Sec. 1814. Office of Chemical Facility Security.".

SEC. 3. REPORT TO CONGRESS.

(a) UPDATED REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security 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 an update of the national strategy for the chemical sector that was required to be submitted by the Secretary to the Committee on Appropriations of the House of Representatives and the Committee of Appropriations of the Senate by not later than February 10, 2006.

(b) PROTECTED INFORMATION.—A report under this section may not include information protected under section 1808 of the Homeland Security Act of 2002, as added by section 2.

SEC. 4. INSPECTOR GENERAL REPORT.

(a) REPORT REQUIRED.—Not later than 1 year after the date on which the regulations required to be prescribed under this Act are prescribed, the Inspector General

of the Department of Homeland Security shall submit a report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate that reviews the effectiveness of the implementation of title XVIII of the Homeland Security Act of 2002, as added by section 2, including the effectiveness of facility security plans required under such title and any recommendations to improve the programs, plans, and procedures required under such title, including the feasibility of programs to increase the number of economically disadvantaged businesses eligible to perform third party entity responsibilities pursuant to sections 1803(e)(5), 1804(b) and (c), and 1805(b)(1) of such title.

(b) CLASSIFIED ANNEX.—The Inspector General may issue a classified annex to the report if the Inspector General determines a classified annex is necessary.

SEC. 5. DEADLINE FOR REGULATIONS.

(a) INTERIM FINAL RULE AUTHORITY.—The Secretary of Homeland Security shall issue an interim final rule as a temporary regulation implementing section 1803(a) of the Homeland Security Act of 2002, as added by this Act, within one year after the date of enactment of this section, without regard to chapter 5 of title 5, United States Code. All regulations prescribed under the authority of this subsection that are not earlier superseded by final regulations shall expire not later than 2 years after the date of enactment of this Act.

(b) INITIATION OF RULEMAKING.—The Secretary may initiate a rulemaking to implement this Act (including the amendments made by this Act) as soon as practicable after the date of enactment of this section. The final rule issued pursuant to that rulemaking may supersede the interim final rule promulgated under this subsection.

SEC. 6. CHEMICAL FACILITY TRAINING PROGRAM.

(a) IN GENERAL.—Subtitle A of title VIII of the Homeland Security Act of 2002 (6 U.S.C. 361) is amended by adding at the end the following new section:

"SEC. 802. CHEMICAL FACILITY TRAINING PROGRAM.

"(a) IN GENERAL.—The Secretary, acting through the Departmental official with general responsibility for training and in coordination with components of the Department with chemical facility security expertise, shall establish a Chemical Facility Security Training Program (hereinafter in this section referred to as the 'Program') for the purpose of enhancing the capabilities of chemical facilities to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual acts of terrorism.

"(b) REQUIREMENTS.—The Program shall provide voluntary training that—

"(1) reaches multiple disciplines, including Federal, State, and local government officials, chemical facility owners, operators and employees and governmental and nongovernmental emergency response providers;

"(2) utilizes multiple training mediums and methods;

"(3) addresses chemical facility security and facility security plans, including—

"(A) facility security plans and procedures for differing threat levels;

"(B) physical security, security equipment and systems, access control, and methods for preventing and countering theft;

"(C) recognition and detection of weapons and devices;

"(D) security incident procedures, including procedures for communicating with emergency response providers;

"(E) evacuation procedures and use of appropriate personal protective equipment; and

"(F) other requirements that the Secretary deems appropriate.

"(4) is consistent with, and supports implementation of, the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, and other national initiatives;

"(5) includes consideration of existing security and hazardous chemical training programs including Federal or industry programs; and

"(6) is evaluated against clear and consistent performance measures.

"(c) NATIONAL VOLUNTARY CONSENSUS STANDARDS.—The Secretary shall—

"(1) support the promulgation, and regular updating as necessary of national voluntary consensus standards for chemical facility security training ensuring that training is consistent with such standards; and

"(2) ensure that the training provided under this section is consistent with such standards.

"(d) TRAINING PARTNERS.—In developing and delivering training under the Program, the Secretary shall—

"(1) work with government training programs, facilities, academic institutions, industry and private organizations, employee organizations, and other relevant entities that provide specialized, state-of-the-art training; and

"(2) utilize, as appropriate, training provided by industry, public safety academies, Federal programs, employee organizations, State and private colleges and universities, and other facilities."

(b) CLERICAL AMENDMENT.— The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 801 the following:

"Sec. 802. Chemical facility training program.".

PURPOSE AND SUMMARY

The purpose of H.R. 5695 is to provide for the regulation of certain chemical facilities, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

There are approximately 15,000 chemical facilities in the United States. They manufacture, process, and distribute hundreds of chemicals on a daily basis. Chemicals, in some form, touch 96 percent of manufactured goods in the country. While chemical facilities are an integral part of the National economy, some of these facilities store potentially dangerous chemicals that could be used in a terrorist attack.

On June 15, 2005, the Subcommittee on Economic Security, Infrastructure Protection & Cybersecurity, held a hearing on chemical facility security, receiving testimony from the Department of Homeland Security's Assistant Secretary for Infrastructure Protection, representatives of the chemical industry, and individuals from academic institutions. During the hearing, the Assistant Secretary and others testified that securing the chemical sector must be a priority for homeland security because of the potential toxicity of certain chemicals, their proximity to populations, and because the chemical sector is a crucial part of the National economy.

Through its oversight of the Department, the Committee has found that many facilities in the chemical industry have already taken steps to secure their facilities through voluntary measures. The Department, as the lead federal agency for the chemical sector under Homeland Security Presidential Directive 7 (HSPD–7, Critical Infrastructure Identification, Prioritization, and Protection), has focused on leveraging these existing private sector efforts, prioritizing the estimated 15,000 chemical facilities in the country into four tiers based on risk, and directing the most resources and attention on the top tiers.

Despite the efforts of both the Department and industry, the Secretary of Homeland Security has stated that the existing patchwork of authorities does not permit the Department to regulate the industry effectively. The current protection efforts are voluntary and while many facilities have implemented plans, some have not. Furthermore, the Department has no authority to require a facility to implement a facility security plan, nor the ability to ensure compliance. The Department has requested that Congress expand the Department's authority, to include regulatory power over the security of chemical facilities. Through the Committee's oversight of the Department's existing authorities and the patchwork of efforts by industry, it is the sense of the Committee that new authority must be granted to the Department, to regulate chemical facility security.

HEARINGS

The Subcommittee on Economic Security, Infrastructure Protection, and Cybsersecurity held a hearing on H.R. 5695 on June 28, 2006. The Subcommittee received testimony from the Honorable Michael A.L. Balboni, State Senator, New York State Senate; Mr. P.J. Crowley, Senior Fellow and Director of National Defense and Homeland Security, Center for American Progress; Mr. Scott Berger, Director of the Center for Chemical Process Safety, American Institute of Chemical Engineers; and Mr. Marty Durbin, Director of Federal Affairs, American Chemistry Council.

On June 15, 2005, the Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity held a hearing entitled "Preventing Terrorist Attacks on America's Chemical Plants." The Subcommittee received testimony from Mr. Robert Stephan, Assistant Secretary for Infrastructure Protection, U.S. Department of Homeland Security; Mr. Frank J. Cilluffo, Director Homeland Security Policy Institute, The George Washington University; Mr. Stephen Bandy, Manager, Corporate Safety & Security, Marathon Ashland Petroleum LLC, testifying on behalf of National Petrochemical and Refiners Association (NPRA) and American Petroleum Institute (API); Mr. Marty Durbin, Managing Director of Security and Operations, American Chemistry Council; Mr. Allen Summers, President and CEO, Asmark Inc., testifying on behalf of The Fertilizer Institute; and Mr. Sal DePasquale, Security Specialist, CH2M Hill & University of Georgia.

COMMITTEE CONSIDERATION

H.R. 5695 was introduced by Mr. Daniel E. Lungren of California, Mr. Thompson of Mississippi, Mr. Shays, Ms. Loretta Sanchez of California, Mr. Linder, Ms. Harman, Mr. McCaul of Texas, Ms. Jackson-Lee of Texas, Mr. Simmons, Mrs. Christensen, and Mr. Fossella on June 28, 2006, and referred to the Committee on Homeland Security and the Committee on Energy and Commerce. Within the Committee on Homeland Security, H.R. 5695 was referred to the Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity on June 28, 2006.

The Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity held a hearing on H.R. 5695 on June 28, 2006. The Subcommittee received testimony from the Honorable Michael A.L. Balboni, State Senator, New York State Senate; Mr. P.J. Crowley, Senior Fellow and Director of National Defense and Homeland Security, Center for American Progress; Mr. Scott Berger, Director of the Center for Chemical Process Safety, American Institute of Chemical Engineers; and Mr. Marty Durbin, Director of Federal Affairs, American Chemistry Council.

On July 11, 2006, the Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity of the Committee on Homeland Security met in open markup session, a quorum being present, and ordered H.R. 5695 to be forwarded with a favorable recommendation to the Full Committee for consideration, as amended, by voice vote. The Subcommittee approved the bill, as amended, by a record vote of 16 yeas and 2 nays (Rollcall Vote No. 10).

COMMITTEE VOTES

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

The Committee on Homeland Security met in open markup session, a quorum being present, on Thursday, July 27, and Friday, July 28, 2006, to consider H.R. 5695, to amend the Homeland Security Act of 2002 to provide for the regulation of certain chemical facilities, and for other purposes. The Committee took the following actions:

H.R. 5695, to amend the Homeland Security Act of 2002 to provide for the regulation of certain chemical facilities, and for other purposes; was ordered to be reported to the House favorably, as amended, by voice vote.

A Committee Print reflecting the text of H.R. 5695, as amended by the Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity was AGREED TO, as amended, by voice vote.

The following amendments were offered:

An Amendment in the Nature of a Substitute (#1) offered by Mr. King; was AGREED TO, as amended, by voice vote. A unanimous consent request by Mr. King to consider the Amendment in the Nature of a Substitute as base text for purposes of amendment, was not objected to.

An amendment offered by Mr. Markey to the Amendment in the Nature of a Substitute offered by Mr. King (#1A); at the appropriate place in the proposed title XVIII, insert a new section entitled "Sec. ____. Methods to Reduce the Consequences of A Terrorist Attack."; was WITHDRAWN by unanimous consent.

An amendment offered by Mr. Langevin to the Amendment in the Nature of a Substitute offered by Mr. King (#1B); strike the proposed section 1807 and insert a new section entitled "Sec. 1807. State and Other Laws."; was WITHDRAWN by unanimous consent.

An amendment offered by Mr. Langevin to the Amendment in the Nature of a Substitute offered by Mr. King (#1C); strike the proposed section 1807 and insert a new section entitled "Sec. 1807. State and Other Laws."; was AGREED TO by voice vote.

An amendment offered by Mr. Markey to the Amendment in the Nature of a Substitute offered by Mr. King (#1D); at the appropriate place in the proposed title XVIII, insert a new section entitled "Sec. ____. Methods to Reduce the Consequences of A Terrorist Attack."; was AGREED TO by voice vote.

An en bloc amendment offered by Ms. Jackson-Lee to the Amendment in the Nature of a Substitute offered by Mr. King (#1E); page 29, line 9, before "opportunity" insert the following: "to the extent possible, consistent with the provisions of title 5, United States Code, governing hearings on the record."; and page 40, after line 25, insert a new subsection entitled "(g) Restriction on Designation."; was AGREED TO by voice vote.

An amendment offered by Ms. Harman to the Amendment in the Nature of a Substitute offered by Mr. King (#1F); after the proposed section 1812, insert a new section entitled "Sec. 1813. Office of Chemical Facility Security."; was AGREED TO by voice vote.

The Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity of the Committee on Homeland Security met in open markup session, a quorum being present, on Tuesday, July 11, 2006, to consider H.R. 5695, to amend the Homeland Security Act of 2002 to provide for the regulation of certain chemical facilities, and for other purposes. The Subcommittee took the following actions:

H.R. 5695, to amend the Homeland Security Act of 2002 to provide for the regulation of certain chemical facilities, and for other purposes; was ordered to be forwarded with a favorable recommendation to the Full Committee for consideration, as amended, by voice vote.

H.R. 5695, to amend the Homeland Security Act of 2002 to provide for the regulation of certain chemical facilities, and for other purposes; was adopted, as amended, by a record vote of 16 yeas and 2 nays (Rollcall Vote No. 10).

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE PROTECTION, AND CYBERSECURITY

Date: July 11, 2006 Convened: _____

Adjourned: _____

Meeting on : Markup of H.R. 5695, Chemical Facility Anti-Terrorism Act of 2006 on agreeing, as amended

☐ Attendance ☒Recorded Vote Vote Number: 10 Total: Yeas 16 Nays 2

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska	✔			*Ms. Loretta Sanchez* *California*	✔		
Mr. Lamar S. Smith Texas	✔			*Mr. Edward J. Markey* *Massachusetts*		✔	
Mr. John Linder Georgia	✔			*Mr. Norman D. Dicks* *Washington*		✔	
Mr. Mark E. Souder Indiana	✔			*Mr. Peter A. DeFazio* *Oregon*	✔		
Mr. Mike Rogers Alabama	✔			*Ms. Zoe Lofgren* *California*	✔		
Mr. Stevan Pearce New Mexico	✔			*Ms. Sheila Jackson-Lee* *Texas*	✔		
Ms. Katherine Harris Florida	✔			*Mr. James R. Langevin* *Rhode Island*	✔		
Mr. Bobby Jindal Louisiana	✔						
				Mr. Bennie G. Thompson *Mississippi, (Ex Officio)*	✔		
Mr. Peter T. King New York, (Ex Officio)	✔						
Mr. Daniel E. Lungren California, Chairman	✔						
				Total	16	2	

The following amendments were offered:

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

An en bloc amendment offered by Mr. Thompson to the Amendment in the Nature of a Substitute (#1A), to make additions relating to "facility employees"; and insert a new "Sec. 5. Chemical Facility Training Program."; was AGREED TO by voice vote.

An amendment offered by Mr. Langevin to the Amendment in the Nature of a Substitute (#1B); to strike the proposed section 1807 and insert a new "Sec. 1807. State and Other Laws."; was NOT AGREED TO, by a record vote of 8 yeas and 10 nays (Rollcall Vote No. 8).

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE PROTECTION, AND CYBERSECURITY

Date: July 11, 2006 Convened: _____

Adjourned: _____

Meeting on : Markup of H.R. 5695, Chemical Facility Anti-Terrorism Act of 2006, question on amendment #1B offered by Mr. Langevin

☐ Attendance ☒ Recorded Vote Vote Number: 8 Total: Yeas 8 Nays 10

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska		✔		*Ms. Loretta Sanchez* *California*	✔		
Mr. Lamar S. Smith Texas		✔		*Mr. Edward J. Markey* *Massachusetts*	✔		
Mr. John Linder Georgia		✔		*Mr. Norman D. Dicks* *Washington*	✔		
Mr. Mark E. Souder Indiana		✔		*Mr. Peter A. DeFazio* *Oregon*	✔		
Mr. Mike Rogers Alabama		✔		*Ms. Zoe Lofgren* *California*	✔		
Mr. Stevan Pearce New Mexico		✔		*Ms. Sheila Jackson-Lee* *Texas*	✔		
Ms. Katherine Harris Florida		✔		*Mr. James R. Langevin* *Rhode Island*	✔		
Mr. Bobby Jindal Louisiana		✔					
				Mr. Bennie G. Thompson *Mississippi, (Ex Officio)*	✔		
Mr. Peter T. King New York, (Ex Officio)		✔					
Mr. Daniel E. Lungren California, Chairman		✔					
				Total	8	10	

An amendment offered by Mr. Markey to the Amendment in the Nature of a Substitute (#1C); at the appropriate place in the proposed title XVIII, insert a new section entitled "Sec. ____. Methods to Reduce the Consequences of a Terrorist Attack"; was NOT AGREED TO, by a record vote of 8 yeas and 10 nays (Rollcall Vote No. 7).

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE PROTECTION, AND CYBERSECURITY

Date: July 11, 2006 Convened: _____

Adjourned: _____

Meeting on : Markup of H.R. 5695, Chemical Facility Anti-Terrorism Act of 2006, question on amendment #1C offered by Mr. Markey

☐ Attendance ☒ Recorded Vote Vote Number: 7 Total: Yeas 8 Nays 10

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska		✔		*Ms. Loretta Sanchez* *California*	✔		
Mr. Lamar S. Smith Texas		✔		*Mr. Edward J. Markey* *Massachusetts*	✔		
Mr. John Linder Georgia		✔		*Mr. Norman D. Dicks* *Washington*	✔		
Mr. Mark E. Souder Indiana		✔		*Mr. Peter A. DeFazio* *Oregon*	✔		
Mr. Mike Rogers Alabama		✔		*Ms. Zoe Lofgren* *California*	✔		
Mr. Stevan Pearce New Mexico		✔		*Ms. Sheila Jackson-Lee* *Texas*	✔		
Ms. Katherine Harris Florida		✔		*Mr. James R. Langevin* *Rhode Island*	✔		
Mr. Bobby Jindal Louisiana		✔					
				Mr. Bennie G. Thompson *Mississippi, (Ex Officio)*	✔		
Mr. Peter T. King New York, (Ex Officio)		✔					
Mr. Daniel E. Lungren California, Chairman		✔					
				Total	8	10	

An amendment offered by Ms. Jackson-Lee to the Amendment in the Nature of a Substitute (#1F); on page 40, line 10, and on page 42, line 18, insert statements relating to "the feasibility of programs to increase the numbers of businesses eligible to perform third party auditor responsibilities pursuant to sections 1803(e)(5), 1804(b) and (c), and 1805(b)(1)"; was AGREED TO, by voice vote.

An amendment offered by Ms. Jackson-Lee to the Amendment in the Nature of a Substitute (#1D); to make conforming corrections, and on page 11, after line 9, insert a new subsection (D) relating to a certification acknowledging penalties under section 1806; was NOT AGREED TO, by voice vote.

An amendment offered by Ms. Jackson-Lee to the Amendment in the Nature of a Substitute (#1E); on page 28, line 21, strike "a hearing on the proposed penalty" and insert the following: "an agency hearing on the record to contest the imposition of the proposed penalty"; was NOT AGREED TO, by a record vote of 8 yeas and 10 nays (Rollcall Vote No. 9).

COMMITTEE ON HOMELAND SECURITY
U.S. House of Representatives
109th Congress

SUBCOMMITTEE ON ECONOMIC SECURITY, INFRASTRUCTURE PROTECTION, AND CYBERSECURITY

Date: July 11, 2006 Convened: _____

Adjourned: _____

Meeting on : Markup of H.R. 5695, Chemical Facility Anti-Terrorism Act of 2006, question on amendment #1F offered by Ms. Jackson-Lee

☐ Attendance ☒ Recorded Vote Vote Number: 9 Total: Yeas 8 Nays 10

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Don Young Alaska		✔		*Ms. Loretta Sanchez* *California*	✔		
Mr. Lamar S. Smith Texas		✔		*Mr. Edward J. Markey* *Massachusetts*	✔		
Mr. John Linder Georgia		✔		*Mr. Norman D. Dicks* *Washington*	✔		
Mr. Mark E. Souder Indiana		✔		*Mr. Peter A. DeFazio* *Oregon*	✔		
Mr. Mike Rogers Alabama		✔		*Ms. Zoe Lofgren* *California*	✔		
Mr. Stevan Pearce New Mexico		✔		*Ms. Sheila Jackson-Lee* *Texas*	✔		
Ms. Katherine Harris Florida		✔		*Mr. James R. Langevin* *Rhode Island*	✔		
Mr. Bobby Jindal Louisiana		✔					
				Mr. Bennie G. Thompson *Mississippi, (Ex Officio)*	✔		
Mr. Peter T. King New York, (Ex Officio)		✔					
Mr. Daniel E. Lungren California, Chairman		✔					
				Total	8	10	

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.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

The purpose of H.R. 5695, the Chemical Facility Anti-Terrorism Act of 2006, is to provide for the regulation of the security of certain chemical facilities by the Department of Homeland Security.

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. 5695, the Chemical Facility Anti-Terrorism Act of 2006, 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.

COMPLIANCE WITH HOUSE RESOLUTION 1000

In compliance with H. Res. 1000, adopted on September 14, 2006, the Committee finds that H.R. 5695 does not provide authority, including budget authority, or recommend the exercise of authority, including budget authority, for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to a non-Federal entity.

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.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 31, 2006.

Hon. PETER T. KING,
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. 5695, the Chemical Facility Anti-Terrorism Act of 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for Federal costs), Melissa Merrell (for the State and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

ROBERT P. MURPHY,
(for Donald B. Marron, Acting Director.)

Enclosure.

H.R. 5695—Chemical Facility Anti-Terrorism Act of 2006

Summary: H.R. 5695 would authorize the Department of Homeland Security (DHS) to regulate the security of chemical facilities across the United States. Under the bill, DHS would identify such facilities and estimate the level of risk they pose to the nation's security. DHS would develop regulations to require the owners and operators of those facilities to perform vulnerability assessments and to establish site security plans. The legislation would establish a chemical security office at DHS headquarters that would be responsible for overseeing the requirements under this legislation, including conducting audits and inspections of the nation's chemical facilities. In addition, DHS would be responsible for maintaining the information it receives on chemical facilities in a secure location. Finally, H.R. 5695 would require DHS to establish a program to train government officials and owners and operators of chemical facilities to inspect and evaluate chemical facilities and to oversee security and evacuation plans at those facilities.

CBO estimates that implementing H.R. 5695 would cost $230 million over the next five years for DHS to regulate and oversee an estimated 15,000 to 18,000 chemical facilities, assuming appropriation of the necessary amounts. Enacting H.R. 5695 could affect direct spending and receipts because the bill would establish new civil and criminal penalties against owners and operators of chemical facilities and officers or employees of federal, state, or local government agencies who fail to comply with the bill's requirements. However, CBO estimates that any collections from such civil and criminal penalties would not be significant.

H.R. 5695 contains several intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA), because it would require the owners and operators of certain facilities, including those that provide public drinking water and wastewater treatment, to submit information to the Secretary and to undertake measures to protect against the unauthorized release of chemical substances. It also would exempt certain security plans and documents from state and local laws that provide public access to information and preempt any state or local regulation that would interfere with the security activities authorized by this bill.

Because some of the mandates are dependent upon future actions of the DHS, CBO cannot determine their exact costs. However, based on information from DHS and representatives of public water facilities, CBO estimates that, because it is likely those public facilities would be assigned to the lowest tier of risk and that DHS likely would consider activities that the facilities are currently doing to be sufficient to meet the requirements of this bill, additional costs for those public facilities would not be significant. CBO estimates that the total cost for state and local governments to comply with those security requirements and the preemptions of authority would be small and therefore would not exceed the annual threshold established in UMRA ($64 million for intergovernmental mandates in 2006, adjusted annually for inflation).

H.R. 5695 also would impose private-sector mandates, as defined in UMRA, on owners and operators of certain chemical facilities and certain individuals affiliated with those facilities. Based on in-

formation from industry and government sources, CBO expects that the aggregate direct cost of complying with those mandates would exceed the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 5695 is shown in the following table. For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2006, that the necessary amounts will be appropriated for each year, and that outlays will follow historical spending patterns for similar activities. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2006	2007	2008	2009	2010	2011
SPENDING SUBJECT TO APPROPRIATION						
DHS Spending on Security of Chemical Sites Under Current Law:						
Budget Authority [a]	15	0	0	0	0	0
Estimated Outlays	10	5	0	0	0	0
Proposed Changes:						
Regulation Development, Review of Vulnerability Assessments, and Emergency Response Plans:						
Estimated Authorization Level	0	13	1	1	1	1
Estimated Outlays	0	11	3	1	1	1
Establish Chemical Security Office and Regional Offices for Site Audits and Inspections:						
Estimated Authorization Level	0	*	30	45	45	45
Estimated Outlays	0	*	30	45	45	45
Maintain Chemical Site Information:						
Estimated Authorization Level	0	20	2	2	2	2
Estimated Outlays	0	18	4	2	2	2
Chemical Facility Security Training Program:						
Estimated Authorization Level	0	0	5	5	5	5
Estimated Outlays	0	0	5	5	5	5
Total Proposed Changes:.						
Estimated Authorization Level	0	33	38	53	53	53
Estimated Outlays	0	29	42	53	53	53
DHS Spending on Security of Chemical Sites Under H.R. 5695:						
Estimated Authorization Level [a]	15	33	38	53	53	53
Estimated Outlays	10	34	42	53	53	53

[a] The 2006 level is the amount appropriated for DHS to address security issues at chemical facilities in that year.
Note: * = less than $500,000.

Basis of estimate: CBO estimates that implementing this legislation would cost $29 million in 2007 and $230 million over the 2007–2011 period, subject to appropriation of the necessary amounts. In addition, CBO estimates that enacting H.R. 5695 could have an insignificant effect on direct spending and receipts by creating new criminal and civil penalties related to compliance with the bill's provisions.

Regulation development and risk assessment

H.R. 5695 would require DHS to develop various regulations identifying facilities as chemical sources, determining the risk to the nation's security associated with those facilities, setting security performance standards for chemical facilities, and detailing the requirements for vulnerability assessments and security plans for chemical facilities. CBO estimates that implementing these provisions of the legislation would cost $17 million over the next five years, subject to appropriation of the necessary amounts.

Based on information from DHS, CBO estimates that over the 2007–2008 period, efforts to develop necessary regulations would require about 15 staff-years at a cost of about $2 million, and $8 million for related contractor support for information technology, meeting and conference planning, and assistance in conducting various studies. In addition, under the bill, facilities that involve higher security risks would have to undergo a more detailed facility assessment. Currently, DHS is in the process of developing a risk assessment framework known as Risk Analysis and Management for Critical Asset Protection (RAMCAP). According to DHS, additional funding would be required to refine and manage the RAMCAP process to meet the bill's requirements for assessing risk. Based on information from DHS, CBO estimates that $3 million in 2007 and $1 million a year in subsequent years would be needed for additional training and technical modifications to RAMCAP to comply with requirements of H.R. 5695.

Chemical security office and regional offices

The bill would direct DHS to create a chemical security office. The new office would be responsible for planning, management, assignment of facilities to risk tiers, review and maintenance of site vulnerability assessments and plans, training of private auditors and inspectors, and enforcement. In addition, DHS expects that up to 10 field offices would be established near various clusters of chemical facilities to oversee audits and inspections of the facilities that would be conducted by both field office staff and private auditors and inspectors who have been certified and funded by DHS. Under the bill, most of the nation's 15,000 to 18,000 chemical facilities would be audited or inspected over the next 10 years. In total, CBO estimates that these efforts would cost $165 million over the 2007–2011 period, subject to appropriation of the necessary amounts.

Based on information from DHS, CBO expects that the chemical security office would be operational by 2008 and fully staffed by 2009. We estimate that the office would require a staff of 20 with a first-year cost of about $2 million, and would need about $13 million for contractor support and information technology in 2008. In subsequent years, CBO estimates that $20 million would be required, including $5 million for a staff of 50 and $15 million for contractor costs, travel expenses, and information technology.

According to DHS, the agency would spend less than $500,000 in 2007 to study how the field offices should be structured to meet the requirements of this legislation. DHS would need additional resources to audit and inspect chemical facilities and to oversee large-scale emergency response exercises and to coordinate efforts with local first responders. CBO estimates that DHS would spend about $15 million in 2008 to begin these effects, using a staff of 35 at a cost of about $4 million and $11 million for contractor support, travel expenses, and information technology. After these initial efforts, we estimate that DHS would spend about $10 million on a staff of about 100 plus $15 million for related costs each year over the 2009–2011 period.

Maintain chemical site information

Based on information from DHS, CBO estimates that DHS would need about $20 million in 2007 to construct facilities to store the site chemical information it collects in a secure environment and to provide funding for information technology and support services for tracking such information. In subsequent years, CBO estimates that DHS would require $2 million to provide ongoing support to maintain the site information.

Chemical facility security training program

H.R. 5695 would require DHS to establish a chemical security training program for federal, state, and local officials, operators and employees of chemical facilities, and emergency response providers. This voluntary program would include training on the preparation of facility security plans and procedures, detection of weapons and devices, and evacuation procedures.

Based on information from DHS, CBO estimates that implementing this training program would cost about $5 million annually beginning in 2008. Such funding would cover the salaries and expenses associated with about two DHS employees and contractor costs required to run the program.

Estimated impact on state, local, and tribal governments: H.R. 5695 contains several intergovernmental mandates as defined in UMRA. First, it would require owners and operators of certain chemical facilities to undertake specific measures to protect against terrorist attacks, criminal acts, or other categories of chemical releases based on regulations to be developed by DHS. Because the sites would be selected from public and private entities (including public drinking water and wastewater treatment facilities), the bill would impose intergovernmental mandates as defined in UMRA.

The bill also contains two preemptions of state and local authority. It would exempt certain security plans and documents from state and local laws that provide public access to information and preempt any state or local regulation that would interfere with the security activities authorized by this bill.

CBO estimates that the total cost for state and local governments to comply with the security requirements and the preemptions of authority would be small and therefore would not exceed the annual threshold established in UMRA ($64 million for intergovernmental mandates in 2006, adjusted annually for inflation).

Requirement for vulnerability assessments and security plans

H.R. 5695 would require that owners and operators of affected facilities conduct an assessment of the vulnerability of their facility, identify the hazards that may result from a substance's release, and develop and implement a security plan to prevent or respond to those releases. H.R. 5695 would further require that owners and operators certify completion of both the assessment and plan, submit copies to DHS, maintain records at the facility, and complete a periodic review of the assessment and plan.

According to government and industry representatives, many of the facilities potentially affected by the bill's provisions are currently engaged in activities similar to those that would be required under H.R. 5695. Such facilities are acting either in response to the terrorist attacks of September 11, 2001, as a condition of member-

ship with chemical industry associations, or to comply with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the Maritime Transportation Security Act, or other federal regulations. The bill would exempt from these new requirements many of those public facilities, unless the Secretary determines that more security actions are necessary. Information from DHS indicates that public water facilities likely would be assigned to the lowest tier of risk and that the department likely would consider activities that the facilities are currently doing to be sufficient. Assuming public facilities would not be required to undertake significant new activities, CBO expects that these mandates would impose little additional costs on those facilities.

Estimated impact on the private sector: H.R. 5695 would impose private-sector mandates, as defined in UMRA, on owners and operators of certain chemical facilities and certain individuals affiliated with those facilities. Based on information from industry and government sources, CBO expects that the aggregate direct cost of complying with those mandates would exceed the annual threshold established by UMRA for private-sector mandates ($128 million in 2006, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

Chemical facilities

H.R. 5695 would require the Secretary of Homeland Security to establish a list of significant chemical facilities based on criteria in the bill, and assign each such facility to one of at least four risk-based tiers. If requested by the Secretary, an owner or operator of a chemical facility on the list would be required to provide information necessary for the Secretary to assign the chemical facility to the appropriate risk-based tier. The Secretary of DHS would be required to prescribe regulations to establish security standards and procedures for facilities on the list and require the owner or operator of each chemical facility to:

- Conduct an assessment of the vulnerability of the chemical facility to a terrorist incident;
- Prepare and implement a facility security plan that addresses the results of the vulnerability assessment; and
- Consult with appropriate employees of their facility in developing the vulnerability assessment and security plan.

Those assessments and plans would be required to be completed and submitted to the Secretary no later than three years after the final regulations are issued.

The bill would require the owner or operator of a chemical facility assigned to the high-risk tier to submit a vulnerability assessment and facility security plan not later than six months after the date on which the Secretary prescribes the regulations. The owner or operator of a high-risk chemical facility also would be required to conduct a specific assessment of methods to reduce the consequences of a terrorist attack on the facility. If the Secretary determines that methods to reduce the consequences of a terrorist attack are needed, the owner or operator of the high-risk facility would be required to implement such methods.

The bill would require the owner or operator of any chemical facility on the list to maintain a current copy of the assessment and plan at the facility. The owner or operator of the chemical facility

also would be required to allow the Secretary of DHS (or a designee), the right of entry to, on, or through their property for security inspections and verifications. In addition, not later than three years after an assessment or plan is required to be submitted, and at least once every five years thereafter, the owner or operator would be required to submit a review of the adequacy of the vulnerability assessment or facility security plan that includes a description of any changes made to the assessment or plan.

According to industry and government sources, a large number of facilities are currently engaged in activities similar to the types of assessments and planning that would be required under this bill. According to those sources, approximately 15,000 to 18,000 chemical facilities would be affected by the new security regulations. While the direct cost of complying with those mandates would depend on the regulations to be issued by DHS, based on information from industry and government sources, CBO expects that the incremental cost to comply with the security standards outlined in the bill would be substantial and would exceed the annual threshold established in UMRA in at least one of the first five years those requirements are in effect.

Whistleblower protection

The bill also would prohibit an owner or operator of a chemical facility from discharging any employee, or otherwise discriminating against such employees with respect to compensation, terms, conditions, or privileges of their employment because the employee submitted a report to the Secretary regarding problems, deficiencies, or vulnerabilities at a chemical facility.

Based on information from government sources, CBO estimates that the owners or operators of chemical facilities would incur minimal direct cost, if any, to comply with such protection requirements for their employees.

Restriction on individuals affiliated with a chemical facility

The bill also would impose a new mandate by prohibiting an individual from being designated to carry out certain functions under this bill with respect to any facility with which that individual was affiliated as an officer, director, or employee during the three-year period preceding the date of such designation. Based on information from industry sources, CBO estimates that the direct cost to comply with this mandate would be minimal, if any.

Previous CBO Estimate: On July 25, 2006, CBO transmitted a cost estimate for S. 2145, the Chemical Facilities Anti-Terrorism Act of 2006, as ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on June 26, 2006. S. 2145 and H.R. 5695 would essentially impose the same requirements on DHS. However, S. 2145 includes a provision requiring DHS to regulate the handling and purchase of ammonium nitrate, and H.R. 5695 includes a provision requiring DHS to establish a chemical security training program. These differences are reflected in the cost estimates.

The private-sector mandates in the two bills are similar. S. 2145 would impose an additional mandate on owners or operators of certain chemical facilities by requiring them to prepare and implement an emergency response plan and would impose mandates on

producers, sellers, and purchasers of ammonium nitrate that are not included in this bill. In addition, S. 2145 does not contain the restriction on certain individuals affiliated with a chemical facility.

Estimate prepared by: Federal Costs: Susanne S. Mehlman. Impact on State, Local, and Tribal Governments: Melissa Merrell. Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

ADVISORY COMMITTEE STATEMENT

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

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 1, which grants Congress the power to provide for the common Defense of the United States.

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 Act may be cited as the "Chemical Facility Anti-Terrorism Act of 2006."

Section 2. Regulation of chemical facilities

The Homeland Security Act of 2002 (Public Law 107–296) is amended by adding the following new title: Title XVIII, Regulation of Chemical Facilities. This new title is comprised of sections 1801–1813, discussed below.

Section 1801. Definitions

This section provides definitions to be used in the title.

Section 1802. Designation and ranking of chemical facilities

Under this section, the Secretary of Homeland Security may designate or exempt a chemical substance as a substance of concern and determine the "threshold" quantities that are used, stored, manufactured, processed, or distributed by a chemical facility. The bill directs the Secretary to consider the potential for death, injury, or serious adverse effects to human health, the environment, critical infrastructure, national security, the economy, or public welfare from a terrorist release of that substance of concern. The Secretary is required to maintain a list of "significant chemical facilities" which possess more than threshold quantities of substances of concern. The Secretary shall consider the following factors in designating a facility a "significant chemical facility": the potential

threat or likelihood of an act of terrorism at the facility; the potential extent of death, serious injury, or adverse effects to health or safety that would result from such an attack; the facility's proximity to population centers; the potential threat of the facility's chemical substances being obtained and used in an act of terrorism; and the potential harm to critical infrastructure, national security, the economy, or public welfare resulting from a terrorist incident at the facility. Each significant chemical facility will be assigned to one of at least four risk-based tiers with at least one tier being a high-risk tier. Facilities will be notified within 30 days of their designation. Periodic reviews are required every 3 years and the Secretary may add, remove, or change the tier assignment.

The purpose of this section is to direct the identification, evaluation, and designation of chemical substances and quantities that meet specific criteria of possible harm in the event of a terrorist release. Once evaluated, the Secretary should ensure that those facilities using, storing, manufacturing, distributing, or processing the substances of concern are identified as a "significant" chemical facility. It is the sense of the Committee however, that chemical facilities may be added to this list even if they do not have more than threshold amount of a substance of concern based on other criteria. These "significant" chemical facilities will then be assigned into a risk-based tier. It is the Committee's intent that there be a number of tiers, with each tier representing an incremental amount of risk (i.e. at one end a "low-risk" tier and at the other end a "highest-risk" tier). This section permits the Secretary to obtain the necessary information to assign a chemical facility to the list of "significant" chemical facilities or to a risk-based tier; however, the Committee intends this information collection to be limited to information only necessary to tier assignment.

Section 1803. Vulnerability assessments and facility security plans

This section requires the Secretary of Homeland Security to prescribe regulations that are risk-based and performance-based, and that establish standards, protocols, and procedures for vulnerability assessments and facility security plans for significant chemical facilities listed under section 1802(b)(1). The regulations are to consider cost and technical feasibility; the quantities of a substance of concern that are stored, used, or handled; and the potential for death, injury, or serious adverse effects to human health, the environment, critical infrastructure, national security, the economy, or public welfare that would result from a terrorist release. Assistance and guidance will be provided for vulnerability assessments and facility security plans. This section sets deadlines for high-risk chemical facilities and all other chemical facilities.

The Committee intends that while all chemical facilities that are listed as "significant" will be required to do vulnerability assessments and facility security plans, the requirements should be different based on the level of risk they present. Thus, a chemical facility in a lower-risk tier may be allowed to utilize a web-based vulnerability assessment and facility security plan form while high-risk tiers may be required to do more in-depth analysis. The Committee intends the regulations to be risk-based (i.e., differing requirements based on the risk-based tier to which the facility is assigned), performance-based (i.e., based on the overall level of secu-

rity required—not specific security measures), and take into account other factors listed above. In providing guidance and assistance to the facilities, the Secretary may use discretion in the amount and form of guidance and assistance.

This section also requires high-risk tier facilities to conduct vulnerability assessments and prepare and implement facility security plans that address the results of the vulnerability assessment within 6 months from the date the regulations are issued. Vulnerability assessments must identify any hazard that could result from a terrorist incident and the number of individuals who would be put at risk by such an incident, and must include information about the facility's criticality to the economy or national security and its proximity or interrelationship to other critical infrastructure. Vulnerability assessments must also identify any vulnerabilities of the facility's physical security; computers; communication networks or systems; automated systems; electronics; alarms; cameras; or protection systems; utilities or other infrastructure; and storage, handling, or other equipment's structural integrity. Vulnerability assessments must also include information related to any threat information the Secretary has provided to the facility.

This section requires high-risk tier facility security plans to at a minimum include: measures to address vulnerabilities to a terrorist incident; drills and exercises which include first responders and local law enforcement; equipment, plans, and procedures to be used in a terrorist incident including site evacuation, release mitigation, and containment plans; coordination with State, local law enforcement, first responders, and Federal officials; and other actions required by the Secretary.

The Committee intends that facilities should be able to utilize their existing emergency response plans mandated under existing statutes to fulfill part of the requirements under this section. The intent of requiring that emergency response plans be incorporated into the facility security plans is to have the owner and operator of the chemical facility consider the totality of measures necessary to be prepared for a terrorist attack, including the response to an attack should one occur. The Committee also believes that this information will be important for the Secretary to consider in total.

This section requires the Secretary to provide threat-related information to the maximum extent practicable to facilities in high-risk tiers and conduct red team exercises on a periodic basis. The Committee recognizes that threat information may take two forms—specific and generic—and that in the majority of cases, there will be no specific threat information for a particular chemical facility. Therefore, the Committee believes that providing generic threat information to facilities would meet the requirements of this section. It is the Committee's belief that red-team exercises (also known as "alternative analysis") will be a useful tool for the Secretary and the high-risk chemical facility to identify vulnerabilities in the facility security plan.

This section requires the Secretary to establish security performance requirements through regulations with separate and increasingly stringent requirements as the level of risk increases. The Secretary is required to permit facilities to select a combination of security measures to meet the requirements. Two or more co-located facilities may develop and coordinate vulnerability assessments

and facility security plans at the discretion of the owner or operator of the facilities. The Committee intends that the security performance requirements under this section be based on both risk and performance. The Committee believes that the security performance requirement should differ for each tier and should increase as the level of risk for each tier increases. The security performance requirement should set a level of security that the Secretary expects facilities within that tier to reach, but should not require specific security measures. The regulations promulgated should allow facilities to select security measures to meet the overall security performance requirement.

A person may petition the Secretary to approve the use of existing procedures, protocols, and standards to fulfill the requirements for vulnerability assessments and facility security plans. The Committee recognizes that many facilities have already conducted vulnerability assessments and facility security plans under existing programs. The Secretary should recognize these existing efforts (which may be programs adopted by private industry or programs adopted by Federal, State, or local agencies) if they meet some or all of the Secretary's requirements.

This section also exempts facilities already subject to the Safe Drinking Water Act (P.L. 93–523) and the Maritime Transportation Safety Act of 2002 (P.L. 107–295), unless the Secretary, after a review of the vulnerability assessment and in consultation with appropriate authorities, finds that the chemical facility requires more stringent security measures or red-team exercises. The Secretary is required to coordinate with the Attorney General on facilities that are licensed to store explosive materials under Chapter 40 of Title 18 U.S.C.

The Committee intends that this section will largely exempt most facilities covered under these two acts. However, the Committee recognizes that there may be cases where the Secretary feels that based on the level of risk presented by a facility, additional security measures are required. Such additional requirements should be imposed in coordination with the appropriate Federal authorities and only after the vulnerability assessment and facility security plan has been reviewed. It is the sense of the Committee that in the case where the Secretary decides more stringent requirements are necessary, the requirements should build upon existing plans.

Finally, facilities are required to review their plans not later than 3 years after they are submitted and must also submit a review of the adequacy of the vulnerability assessment or facility security plan at least once every 5 years. Additionally, vulnerability assessments and facility security plans should describe the role or responsibilities that facility employees are expected to perform in the event of a terrorist attack.

Section 1804. Record keeping; Site inspections

This section directs the Secretary of Homeland Security to require a facility to keep a current copy of the vulnerability assessment and facility security plan. It provides the Secretary a right of entry, upon presentation of credentials, for the Department to conduct security verifications and inspections. The Secretary may authorize third party entities that are trained and certified by the Secretary to ensure and evaluate compliance with regulations, se-

curity standards, and requirements under this title. Failure to maintain, produce, or allow access to records or to the property shall result in an order requiring compliance.

The Committee has determined that the Secretary's right of entry to a chemical facility for inspection and verification is a critical element of the Department's regulatory authority to ensure the security of our Nation's chemical facilities. The requirement for current copies of the vulnerability assessments, site security plans, and other records are essential elements of determining compliance with Departmental regulations and standards. The Committee recognizes that inspections may include more than 15,000 facilities and that the Secretary may require the assistance of private third-party entities trained, authorized, and certified by the Department to ensure compliance.

Section 1805. Enforcement

This section requires the Department of Homeland Security to set specific deadlines for a facility to submit vulnerability assessments and facility security plans, which may differ according to the risk-based tier. The regulations will require the facilities to notify the Secretary of Homeland Security if there is any change in the threshold amount of a substance of concern and any significant change in a vulnerability assessment and facility security plan previously submitted. If a facility fails to submit required vulnerability assessments and facility security plans, the Secretary shall issue an order requiring the submission. The Secretary is required to review and approve/disapprove a vulnerability assessment or a facility security plan no later than 180 days from the date of receipt. The Secretary may designate a third party verifier to conduct such a review. A vulnerability assessment or facility security plan shall be disapproved if it does not comply with the regulations or if the facility security plan does not sufficiently address any assessed vulnerabilities or associated oversight actions under section 1803 or 1804 (including the results of a red-team exercise) or the threat of a terrorist incident. However, this section specifies that a facility security plan shall not be disapproved based solely on the specific security measures that a facility selects to meet the security performance requirements established under the regulations.

It is the intent of this Committee that the Secretary may not require specific security measures to be carried out by a chemical facility. The bill requires security performance requirements to be developed by the Secretary for each tier and allows the chemical facility to choose the specific security measures necessary to meet those requirements.

This section also directs that if the Secretary disapproves a vulnerability assessment or facility security plan, the disapproval must be communicated in writing and provide with a clear explanation of the deficiencies in the assessment plan or implementation and provide guidance to the facility with respect to addressing the deficiency. If the Secretary disapproves a vulnerability assessment or facility security plan of a facility in a high-risk tier, the Secretary must consult with the facility to identify appropriate steps to address the deficiency by a specific date. If that date is not met, the Secretary shall issue an order requiring the deficiencies to be met. A facility must thereafter submit a revision.

This section bars third party rights of action against an owner or operator of a chemical facility to enforce any provision of this title. This section also requires the Secretary to establish a reporting process for any person to notify the Department regarding problems, deficiencies, or vulnerabilities at a chemical facility. This section directs that no employer may discharge any employee or otherwise discriminate against any employee because the employee made such a report. The Secretary will establish a process for the employee to notify the Secretary of such retaliation and for the Secretary to take actions as appropriate.

Section 1806. Penalties

This section authorizes the Secretary of Homeland Security to issue administrative penalties of not more than $250,000 for a failure to comply with an order. This section requires written notice of the penalty and the opportunity for the person to request a hearing on the proposed penalty, not later that thirty days after the date on which the notice is received. The Secretary may prescribe regulations for the procedures for administrative hearings and appropriate review, including deadlines.

The Secretary may bring an action in a U.S. district court against a facility that violates or fails to comply with any order, directive, or facility security plan. A court may issue an order for injunctive relief and a civil penalty of not more than $50,000 for each day a violation or failure to comply continues.

Criminal penalties may be brought against an owner or operator who knowingly and intentionally violates any order of the Secretary. Such violators may be fined not more than $100,000 and imprisoned for not more than 1 year, or both.

This section also creates penalties for Federal, State, or local employees who disclose protected information. Any employee who violates this provision shall be imprisoned not more than 1 year, fined under 18 U.S.C., and be removed from employment.

Information submitted to, or obtained by the Secretary under this title, or related vulnerability or security information, shall be treated as classified material in any adjudicative proceeding.

Section 1807. Federal preemption

This section provides that nothing in this title shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting chemical facility security that is more stringent than a regulation, requirement, or standard of performance in effect under this title, unless such regulation, requirement, or standard of performance would frustrate the purposes of this title.

Using the precedent set forth in the Maritime Transportation Security Act of 2002 (P.L. 107–295) and the implementing regulations (68 Fed. Reg. 39277, "National Maritime Security Initiatives"), the Committee believes that the "frustrate the federal purpose" standard is the appropriate standard as it gives the Federal Government the ability and flexibility to establish regulations that provide a uniform, streamlined set of standards that promote the Federal Government's policy objectives in this area while permitting States to set forth complementary laws, regulations, or standards that may be tailored to individual state interests.

The Committee does not believe that a State law would frustrate the purposes of this title solely if such State law requires a chemical facility to use or consider using a modification, process, substitution, or reduction of substance of concern for the purposes of reducing the consequences of a terrorist incident.

This Section also makes clear that this title relates to chemical facility security only and in no way affects any environmental protection, health, or safety standards or regulations of a State or a political subdivision thereof, or the ability of a State or a political subdivision thereof to legislate in such areas.

This Section also provides that a person, State, or local government directly affected by a requirement of such entity may apply to the Secretary for a decision on preemption. The Secretary is required to respond to such an application within 180 days. A person who makes such an application may apply to the appropriate U.S. district court for a review of the decision no later than 60 days after the Secretary issues the decision.

It is the intent of this Committee to give the Secretary the authority and discretion to make the initial determination of whether a State or local government law, regulation, or standard frustrates the purposes of this title, while providing a forum of appeal for an aggrieved party to the Federal courts. The Secretary will publish notice in the Federal Register of any application by a party for a determination by the Secretary. Parties who seek to appeal the Secretary's determination regarding preemption must file suit within sixty days of the Secretary's decision. This administrative review provision will provide legal certainty, avoid costly litigation, and encourage state and local governments to work with the Department to develop complementary regulatory programs.

Section 1808. Protection of information

The Secretary of Homeland Security shall ensure that protected information is not disclosed by any Federal agency under the Freedom of Information Act (5 U.S.C. §552) or under any State or local law. Within 1 year of enactment, the Secretary will prescribe regulations or orders to prohibit unauthorized disclosure of protected information. For the purposes of this title, protected information includes: criteria and data used by the Secretary to assign chemical facilities to risk-based tiers; submitted vulnerability assessments and facility security plans; information concerning security performance requirements; any other information generated or collected by a Federal, State, or local government agency or by a chemical facility that describes any vulnerability to an act of terrorism, a security measure, or other information that, if disclosed, would be detrimental to the security of a chemical facility.

This section requires that the regulations: permit, as necessary, information sharing with Federal, State, and local law enforcement, first responders and chemical facility personnel; allow confidential use of protected information in administrative or judicial proceedings under the title; limit access to protected information to persons designated by the Secretary; and ensure that protected information be maintained in a secure location and be used solely for the purposes of this title. This section does not relieve any facility of any obligation to comply with other Federal, State, or local laws requiring submission of information and requires the sharing of in-

formation with Congress. Any authority or obligation of a Federal agency to disclose a record or information under any other law is not affected.

The Committee regards protection of information as critically important to the security of the Nation's chemical facilities and stresses that the public disclosure of a facility's vulnerabilities, facility security plans, security performance information, or security measures could provide a potential roadmap to terrorists. The Committee has incorporated specific provisions that direct the Secretary to ensure that information sharing with Federal, State, and local law enforcement, first responders and chemical facility personnel is facilitated; however, access to protected information must be limited and kept secure. It is the sense of the Committee that a facility's obligation to comply with other laws regarding submission of information or disclosure of any information under any other law is not affected by this title.

Section 1809. Certification of third party entities

This section requires the Secretary of Homeland Security to certify third party entities to be used to carry out certain validation and compliance sections of this title. The Secretary will certify conformance with operating procedures and requirements and the demonstrated ability to perform validations. Qualified thirty party entities may receive certain protection under the SAFETY Act (Section 861 of P.L. 107–296). Additionally, to avoid conflicts of interest, this section restricts third parties that may qualify.

The Committee intends that this section will ensure that the Secretary provides guidelines and certification to entities designated to carry out certain sections of this title. The Secretary may allow a third-party entity to carry out functions under sections 1803(e)(5), 1804(b) or (c), and section 1805(b)(1). The Committee believes that the Secretary should utilize third-party entities as appropriate to assist in evaluating vulnerability assessments, facility security plans, and monitoring compliance for a large bulk of the lower risk tiered facilities.

The Committee intends that if an entity is able to conform to the requirements set out in this section, the entity should receive protection under the SAFETY Act, in particular the litigation and risk management protection under sections 863 and 864 of the Homeland Security Act of 2002 (P.L. 107–296). It is the sense of the Committee that individuals who will be reviewing plans or ensuring compliance with such plans (i.e., carrying out the duties designated for third-party entities) should not presently or in the future, have a conflict of interest, nor should they have served in an official capacity for a facility they would be responsible for reviewing.

Section 1810. Methods to reduce the consequence of a terrorist attack

This section requires owners and operators of high-risk chemical facilities assigned under section 1802(c)(4) to conduct an assessment of methods to reduce the consequences of a terrorist attack. These assessments are required to be submitted to the Secretary of Homeland Security who must review and approve the assessments within 180 days. The owner or operator may be required to

implement alternative methods if and only if the Secretary determines that the methods would: significantly reduce the risk of death or injury from a terrorist release; the methods can be feasibly incorporated in the operation of the facility; and the methods would not impair the ability of the owner and operator to continue in business. A determination by the Secretary that an owner or operator must implement such methods may be appealed to the Panel on Methods to Reduce the Consequences of a Terrorist Attack. This panel shall be headed by the Secretary, and shall include representatives of other Federal agencies, security experts, and the chemical industry. The assessments submitted shall be considered protected information under section 1808(f).

It is the intent of this Committee that before a method described under this section be required to be implemented, the Secretary must prove that such method significantly reduces the risk of an attack, can feasibly be incorporated into the operation of the facility and would not significantly impair the ability of the owner and operator to continue in business.

In considering the requirement that the method significantly reduces the risk of death, injury, or serious adverse effects to human health and the environment, the Secretary shall take into consideration not only the reduction in risk to the specific facility under consideration, but shall take into consideration the overall risk to the chemical manufacturing and production system and shall consider the possibility of risk being shifted to other locations or modes in making such determinations. In considering the final two requirements of feasibility and continuity of operations, the Secretary must take into consideration potential loss of work time, changes in productivity, the cost and scale of the proposed methods, the ability of the proposed method to function at least as well as the current methods, and the technological feasibility of such proposed methods. It is not the Committee's intent that facilities should be required to adopt new, unproven, or non-existent technologies, processes, or procedures.

This section also establishes an Alternative Approaches Clearinghouse, which provides public information on methods to reduce the consequences of a terrorist attack described in this section. The Committee intends this clearinghouse to be a source of general information and should not include any sensitive information that could be exploited by an individual, including facility specific information.

Section 1811. Annual report to Congress

This section directs that the Secretary of Homeland Security shall, beginning not later than one year from enactment, and annually thereafter, submit a report to Congress on the progress of implementation of this title; assessments of the effectiveness of the facility security plans developed; lessons learned; and recommendations of the Secretary.

Section 1812. Applicability

This section states that this title shall not apply to any facility owned and operated by the Departments of Defense, Justice, or Energy or any facility that is owned or operated by a licensee or certificate holder of the Nuclear Regulatory Commission. This title

shall not apply to the transportation in commerce (including incidental storage) of a substance of concern which is regulated as a hazardous material under Chapter 51 of title 49 U.S. Code.

Section 1813. Savings clause

This section directs that nothing in this title is intended to affect section 112 of the Clean Air Act (42 U.S.C. 7401 et seq.), the Clean Water Act, the Resource Conservation and Recovery Act of 1976 (P.L. 94–580), the National Environmental Policy Act of 1969 (P.L. 91–190), or the Occupational Safety and Health Act of 1970 (P.L. 91–596).

Section 1814. Office of Chemical Facility Security

This section creates within the Department of Homeland Security an Office of Chemical Facility Security to administer and carry out the responsibilities of the Secretary of Homeland Security under this title. The Office would carry out the responsibilities of the Secretary in this bill. It is the sense of the Committee that the Office of Chemical Facility Security would be best located under the Assistant Secretary for Infrastructure Protection.

Section 3. Report to Congress

This section requires that not later than one year after the date of enactment, the Secretary of Homeland Security shall submit a report to Congress updating the national strategy for the chemical sector.

The national strategy for the chemical sector was required by the Department of Homeland Security Appropriations Act, 2006 (P.L. 109–90). It called for an analysis of the resources needed to implement and enforce mandatory security requirements. It is the Committee's intent that this report be updated and resubmitted to the Committee. The Committee notes that the Sector Specific Plan for the Chemical Sector may meet this requirement.

Section 4. Inspector General report

This section requires the Department of Homeland Security Inspector General, not later than 1 year after the date of enactment, to submit a report to Congress on the effectiveness of implementation, and an assessment of the facility security plans required, along with any further recommendations. The Committee recognizes that the Inspector General may need to include a classified annex, if necessary.

Section 5. Deadline for regulations

This section requires the Secretary of Homeland Security to issue interim final regulations within 1 year of enactment and to issue final regulations within 2 years of enactment.

Section 6. Chemical facility training program

This section directs the Secretary of Homeland Security to establish a Chemical Facility Security Training Program for the purpose of enhancing the capabilities of chemical facilities to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual acts of terrorism.

The Chemical Facility Security Training Program created by this section will use multiple mediums to provide validated, voluntary training to emergency response providers and chemical facility personnel and management. Specifically, the training program will address a variety of chemical facility security issues, including: (1) chemical facility security plans and procedures; (2) chemical facility security force operations and management; (3) physical security and access control at chemical facilities including methods to prevent and counter theft; (4) recognition and detection of weapons and devices; (5) procedures for communication with emergency response providers; and (6) evacuation procedures.

The training program established must be consistent with, and support implementation of, the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, and other national initiatives. It must include consideration of existing security and hazardous chemical training programs and should leverage those programs to the greatest extent practicable. This section requires national voluntary consensus standards be developed and that the Secretary work with training partners in developing and delivering the program.

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.

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TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

Sec. 801. Office for State and Local Government Coordination.
Sec. 802. Chemical facility training program.

* * * * * * *

TITLE XVIII—REGULATION OF CHEMICAL FACILITIES

Sec. 1801. Definitions.
Sec. 1802. Designation and ranking of chemical facilities.
Sec. 1803. Vulnerability assessments and facility security plans.
Sec. 1804. Record keeping; site inspections.
Sec. 1805. Enforcement.
Sec. 1806. Penalties.
Sec. 1807. Federal preemption.
Sec. 1808. Protection of information.
Sec. 1809. Certification of third-party entities.
Sec. 1810. Methods to reduce the consequences of a terrorist attack.
Sec. 1811. Annual report to Congress.

Sec. 1812. Applicability.
Sec. 1813. Savings clause.
Sec. 1814. Office of Chemical Facility Security.

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TITLE VIII—COORDINATION WITH NON-FEDERAL ENTITIES; INSPECTOR GENERAL; UNITED STATES SECRET SERVICE; COAST GUARD; GENERAL PROVISIONS

Subtitle A—Coordination with Non-Federal Entities

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SEC. 802. CHEMICAL FACILITY TRAINING PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Departmental official with general responsibility for training and in coordination with components of the Department with chemical facility security expertise, shall establish a Chemical Facility Security Training Program (hereinafter in this section referred to as the "Program") for the purpose of enhancing the capabilities of chemical facilities to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual acts of terrorism.

(b) REQUIREMENTS.—The Program shall provide voluntary training that—

(1) reaches multiple disciplines, including Federal, State, and local government officials, chemical facility owners, operators and employees and governmental and nongovernmental emergency response providers;

(2) utilizes multiple training mediums and methods;

(3) addresses chemical facility security and facility security plans, including—

(A) facility security plans and procedures for differing threat levels;

(B) physical security, security equipment and systems, access control, and methods for preventing and countering theft;

(C) recognition and detection of weapons and devices;

(D) security incident procedures, including procedures for communicating with emergency response providers;

(E) evacuation procedures and use of appropriate personal protective equipment; and

(F) other requirements that the Secretary deems appropriate.

(4) is consistent with, and supports implementation of, the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, and other national initiatives;

(5) includes consideration of existing security and hazardous chemical training programs including Federal or industry programs; and

(6) is evaluated against clear and consistent performance measures.

(c) NATIONAL VOLUNTARY CONSENSUS STANDARDS.—The Secretary shall—

(1) support the promulgation, and regular updating as necessary of national voluntary consensus standards for chemical facility security training ensuring that training is consistent with such standards; and

(2) ensure that the training provided under this section is consistent with such standards.

(d) TRAINING PARTNERS.—In developing and delivering training under the Program, the Secretary shall—

(1) work with government training programs, facilities, academic institutions, industry and private organizations, employee organizations, and other relevant entities that provide specialized, state-of-the-art training; and

(2) utilize, as appropriate, training provided by industry, public safety academies, Federal programs, employee organizations, State and private colleges and universities, and other facilities.

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TITLE XVIII—REGULATION OF CHEMICAL FACILITIES

SEC. 1801. DEFINITIONS.

In this title, the following definitions apply:

(1) The term "environment" has the meaning given the term in section 101 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601).

(2) The term "owner or operator of a chemical facility" means any person who owns, leases, or operates a chemical facility.

(3) The term "release" has the meaning given the term in section 101 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9601).

(4) The term "chemical facility security measure" means any action taken to ensure or enhance the security of a chemical facility against a chemical facility terrorist incident, including—

(A) employee background checks;

(B) employee training;

(C) personnel security measures;

(D) the limitation and prevention of access to controls of the chemical facility;

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

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

(G) the implementation of measures to increase computer or computer network security;

(H) contingency and evacuation plans;

(I) the relocation or hardening of storage or containment equipment; and

(J) other security measures to prevent, protect against, or reduce the consequences of a chemical facility terrorist incident.

(5) The term "substance of concern" means a chemical substance in quantity and form that—

(A) is listed under paragraph (3) of section 112(r) of the Clean Air Act (42 U.S.C. 7412(r)) and has not been exempted from designation as a substance of concern by the Secretary under section 4(a); or

(B) is designated by the Secretary by regulation in accordance with section 1802(a).

(6) The term "chemical facility terrorist incident" means—

(A) an act of terrorism committed against a chemical facility;

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

(C) the obtaining of a substance of concern by any person for the purposes of releasing the substance off-site in furtherance of an act of terrorism.

SEC. 1802. DESIGNATION AND RANKING OF CHEMICAL FACILITIES.

(a) SUBSTANCES OF CONCERN.—

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

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

(B) exempt any chemical substance from being designated as a substance of concern;

(C) establish and revise, for purposes of making determinations under subsection (b), the threshold quantity for a chemical substance; or

(D) require the submission of information with respect to the quantities of substances of concern that are used, stored, manufactured, processed, or distributed by any chemical facility.

(2) MATTERS FOR CONSIDERATION.—

(A) IN GENERAL.—In designating or exempting a chemical substance or establishing or adjusting the threshold quantity for a chemical substance under paragraph (1), the Secretary shall consider the potential extent of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, national security, the national economy, or public welfare that would result from a terrorist release of the chemical substance.

(B) ADOPTION OF CERTAIN THRESHOLD QUANTITIES.—The Secretary may adopt the threshold quantity established under paragraph (5) of subsection (r) of section 112 of the Clean Air Act (42 U.S.C. 7412(r)(5)) for any substance of concern that is also listed under paragraph (3) of that subsection.

(b) LIST OF SIGNIFICANT CHEMICAL FACILITIES.—

(1) IN GENERAL.—The Secretary shall maintain a list of significant chemical facilities in accordance with this subsection.

(2) REQUIRED FACILITIES.—The Secretary shall include on the list maintained under paragraph (1) a chemical facility that has more than the threshold quantity established by the Secretary of any substance of concern.

(3) AUTHORITY TO DESIGNATE CHEMICAL FACILITIES.—The Secretary may designate a chemical facility not required to be included under paragraph (2) as a significant chemical facility and shall include such a facility on the list maintained under paragraph (1). In designating a chemical facility under this paragraph, the Secretary shall use the following criteria:

(A) The potential threat or likelihood that the chemical facility will be the target of terrorism.

(B) The potential extent and likelihood of death, injury or serious adverse effects to human health and safety or to the environment that could result from a chemical facility terrorist incident.

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

(D) The potential threat caused by a person obtaining a substance of concern in furtherance of an act of terrorism.

(E) The potential harm to critical infrastructure, national security, and the national economy from a chemical facility terrorist incident.

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

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

(2) PROVISION OF INFORMATION.—The Secretary may request, and the owner or operator of a chemical facility shall provide, information necessary for the Secretary to assign a chemical facility to the appropriate tier under paragraph (1).

(3) NOTIFICATION.—Not later than 60 days after assigning a chemical facility to a tier under this subsection, the Secretary shall notify the chemical facility of the tier to which the facility is assigned and shall provide the facility with the reasons for assignment of the facility to such tier.

(4) HIGH-RISK CHEMICAL FACILITIES.—At least one of the tiers established by the Secretary for the assignment of chemical facilities under this subsection shall be a tier designated for high-risk chemical facilities.

(d) PERIODIC REVIEW OF LIST OF CHEMICAL FACILITIES.—

(1) REQUIREMENT.—Not later than 3 years after the date on which the Secretary develops the list of significant chemical facilities under subsection (b)(1) and every 3 years thereafter, the Secretary shall—

(A) consider the criteria under subsection (b)(3); and

(B) determine whether to add a chemical facility to the list of significant chemical facilities maintained under subsection (b)(1) or to remove or change the tier assignment of any chemical facility on such list.

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

(3) NOTIFICATION.—Not later than 30 days after the date on which the Secretary adds a facility to the list of significant chemical facilities maintained by the Secretary under subsection (b)(1), removes a facility from such list, or changes the tier assignment of any facility on such list, the Secretary shall notify the owner of that facility of that addition, removal, or change.

SEC. 1803. VULNERABILITY ASSESSMENTS AND FACILITY SECURITY PLANS.

(a) VULNERABILITY ASSESSMENT AND FACILITY SECURITY PLAN REQUIRED FOR CHEMICAL FACILITIES.—

(1) REQUIREMENT FOR VULNERABILITY ASSESSMENT AND SECURITY PLAN.—

(A) REGULATIONS REQUIRED.—The Secretary shall prescribe regulations to—

(i) establish standards, protocols, and procedures for vulnerability assessments and facility security plans to be required for chemical facilities on the list maintained by the Secretary under section 1802(b)(1);

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

(I) conduct an assessment of the vulnerability of the chemical facility to a chemical facility terrorist incident;

(II) prepare and implement a facility security plan that addresses the results of the vulnerability assessment; and

(III) consult with the appropriate employees of the facility in developing the vulnerability assessment and security plan required under this section; and

(iii) set deadlines for the completion of vulnerability assessments and facility security plans, such that all such plans and assessments are completed and submitted to the Secretary for approval no later than 3 years after final regulations are issued under this paragraph.

(B) DEADLINE FOR HIGH-RISK CHEMICAL FACILITIES.—The owner or operator of a facility assigned to the high-risk tier under section 1802(c)(4) shall submit to the Secretary a vulnerability assessment and facility security plan not later than 6 months after the date on which the Secretary prescribes regulations under this subsection.

(2) CRITERIA FOR REGULATIONS.—The regulations required under paragraph (1) shall—

(A) be risk-based;

(B) be performance-based; and

(C) take into consideration—

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

(ii) the different quantities and forms of substances of concern stored, used, and handled at chemical facilities; and

(iii) the matters for consideration under section 1802(a)(2).

(3) PROVISION OF ASSISTANCE AND GUIDANCE.—The Secretary shall provide assistance and guidance to a chemical facility conducting a vulnerability assessment or facility security plan required under this section.

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

(1) REQUIREMENTS FOR VULNERABILITY ASSESSMENTS.—In the case of a facility assigned to the high-risk tier under section 1802(c)(4), the Secretary shall require that the vulnerability assessment required under this section include each of the following:

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

(B) The number of individuals at risk of death, injury, or severe adverse effects to human health as a result of a chemical facility terrorist incident at the facility.

(C) Information related to the criticality of the facility for purposes of assessing the degree to which the facility is critical to the economy or national security of the United States.

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

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

(i) physical security;

(ii) programmable electronic devices, computers, computer or communications networks, or other automated systems used by the facility;

(iii) alarms, cameras, and other protection systems;

(iv) communication systems;

(v) any utility or infrastructure (including transportation) upon which the facility relies to operate safely and securely; or

(vi) the structural integrity of equipment for storage, handling, and other purposes.

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

(G) Such other information as the Secretary determines is appropriate.

(2) REQUIREMENTS FOR FACILITY SECURITY PLANS.—In the case of a facility assigned to the high-risk tier under section 1802(c)(4), the Secretary shall require that the facility security plan required under this section include each of the following:

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

(B) A plan for periodic drills and exercises to be conducted at the facility that include participation by facility employees, local law enforcement agencies, and first responders, as appropriate.

(C) Equipment, plans, and procedures to be implemented or used by or at the chemical facility in the event of a chemical facility terrorist incident that affects the facility, including site evacuation, release mitigation, and containment plans.

(D) An identification of any steps taken to coordinate with State and local law enforcement agencies, first responders, and Federal officials on security measures and plans for response to a chemical facility terrorist incident.

(E) Specify the security officer who will be the point of contact for the National Incident Management System and for Federal, State, and local law enforcement and first responders.

(F) A description of enhanced security measures during periods of time when the Secretary determines that heightened threat conditions exist.

(3) PROVISION OF THREAT-RELATED INFORMATION.—The Secretary shall provide in a timely manner, to the maximum extent practicable under applicable authority and in the interests of national security, to an owner or operator of a facility assigned to the high-risk tier under section 1802(c)(4), threat information that is relevant to the facility, including an assessment of the most likely method that could be used by terrorists to exploit any vulnerabilities of the facility and the likelihood of the success of such method.

(4) RED TEAM EXERCISES.—The Secretary shall conduct red team exercises at facilities selected by the Secretary that have been assigned to the high-risk tier under section 1802(c)(4) such that all chemical facilities designated under that section will undergo a red team exercise during the six-year period that begins on the date on which the Secretary prescribes regulations to carry out this title. The exercises shall be—

(A) conducted after informing the owner or operator of the facility selected; and

(B) designed to identify at each selected facility—

(i) any vulnerabilities of the facility;

(ii) possible modes by which the facility could be attacked; and

(iii) any weaknesses in the security plan of the facility.

(c) SECURITY PERFORMANCE REQUIREMENTS.—

(1) IN GENERAL.—The Secretary shall establish security performance requirements for the facility security plans required to be prepared by chemical facilities assigned to each risk-based tier established under section 1802(c). The requirements shall—

(A) require separate and increasingly stringent security performance requirements for facility security plans as the level of risk associated with the tier increases; and

(B) permit each chemical facility submitting a facility security plan to select a combination of chemical facility secu-

rity measures that satisfy the security performance requirements established by the Secretary under this subsection.

(2) CRITERIA.—In establishing the security performance requirements under paragraph (1), the Secretary shall consider the criteria under subsection (a)(2).

(3) GUIDANCE.—The Secretary shall provide guidance to each chemical facility on the list maintained by the Secretary under section 1802(b)(1) regarding the types of chemical facility security measures that, if applied, could satisfy the requirements under this section.

(d) CO-LOCATED CHEMICAL FACILITIES.—The Secretary shall allow the owners or operators of two or more chemical facilities that are located geographically close to each other or otherwise co-located to develop and implement coordinated vulnerability assessments and facility security plans, at the discretion of the owner or operator of the chemical facilities.

(e) PROCEDURES, PROTOCOLS, AND STANDARDS SATISFYING REQUIREMENTS FOR VULNERABILITY ASSESSMENT AND SECURITY PLAN.—

(1) DETERMINATION BY THE SECRETARY.—In response to a petition by any person, or at the discretion of the Secretary, the Secretary may endorse or recognize procedures, protocols, and standards that the Secretary determines meet all or part of the requirements of this section.

(2) USE OF PROCEDURES, PROTOCOLS, AND STANDARDS.—

(A) USE BY INDIVIDUAL FACILITIES.—Upon review and written determination by the Secretary under paragraph (1) that the procedures, protocols, or standards of a chemical facility subject to the requirements of this section satisfy some or all of the requirements of this section, the chemical facility may elect to comply with those procedures, protocols, or standards.

(B) USE BY CLASSES OF FACILITIES.—At the discretion of the Secretary, the Secretary may identify a class or category of chemical facilities subject to the requirements of this section that may use the procedures, protocols, or standards recognized under this section in order to comply with all or part of the requirements of this section.

(3) PARTIAL RECOGNITION.—If the Secretary finds that a procedure, protocol, or standard satisfies only part of the requirements of this section, the Secretary may allow a chemical facility subject to the requirements of this section to comply with that procedure, protocol, or standard for purposes of that requirement, but shall require the facility to submit of any additional information required to satisfy the requirements of this section not met by that procedure, protocol, or standard.

(4) NOTIFICATION.—If the Secretary does not endorse or recognize a procedure, protocol, or standard for which a petition is submitted under paragraph (1), the Secretary shall provide to the person submitting a petition under paragraph (1) written notification that includes an explanation of the reasons why the endorsement or recognition was not made.

(5) REVIEW.—Nothing in this subsection shall relieve the Secretary (or a designee of the Secretary which may be a third party auditor certified by the Secretary) of the obligation—

(A) to review a vulnerability assessment and facility security plan submitted by a high-risk chemical facility under this section; and

(B) to approve or disapprove each assessment or plan on an individual basis.

(f) OTHER AUTHORITIES.—

(1) EXISTING AUTHORITIES.—A chemical facility on the list maintained by the Secretary under section 1802(b)(1) that is required to prepare a vulnerability assessment or facility security plan under chapter 701 of title 46, United States Code, or section 1433 of the Safe Drinking Water Act (42 U.S.C. 300i-2) shall not be subject to the requirements of this section, unless the Secretary, after reviewing the vulnerability assessment, facility security plan, or other relevant documents voluntarily offered by the chemical facility (including any updates thereof), finds, in consultation with the appropriate Federal authorities, that the chemical facility requires more stringent performance requirements or red-team exercise under subsection (b)(4).

(2) COORDINATION.—In the case of any storage required to be licensed under chapter 40 of title 18, United States Code, the Secretary shall prescribe the rules and regulations for the implementation of this section with the concurrence of the Attorney General and avoid unnecessary duplication of regulatory requirements.

(g) PERIODIC REVIEW BY CHEMICAL FACILITY REQUIRED.—

(1) SUBMISSION OF REVIEW.—Not later than 3 years after the date on which a vulnerability assessment or facility security plan required under this section is submitted, and at least once every 5 years thereafter (or on such a schedule as the Secretary may establish by regulation), the owner or operator of the chemical facility covered by the vulnerability assessment or facility security plan shall submit to the Secretary a review of the adequacy of the vulnerability assessment or facility security plan that includes a description of any changes made to the vulnerability assessment or facility security plan.

(2) REVIEW OF REVIEW.—The Secretary shall—

(A) ensure that a review required under paragraph (1) is submitted not later than the applicable date; and

(B) not later than 6 months after the date on which a review is submitted under paragraph (1), review the review and notify the facility submitting the review of the Secretary's approval or disapproval of the review.

(h) ROLE OF EMPLOYEES.—As appropriate, vulnerability assessments or facility security plans required under this section should describe the roles or responsibilities that facility employees are expected to perform to prevent or respond to a chemical facility terrorist incident.

SEC. 1804. RECORD KEEPING; SITE INSPECTIONS.

(a) RECORD KEEPING.—The Secretary shall require each chemical facility required to submit a vulnerability assessment or facility security plan under section 1803 to maintain a current copy of the assessment and the plan at the facility.

(b) RIGHT OF ENTRY.—For purposes of carrying out this title, the Secretary (or a designee of the Secretary) shall have, on presentation of credentials, a right of entry to, on, or through any property of a

chemical facility on the list maintained by the Secretary under section 1802(a)(1) or any property on which any record required to be maintained under this section is located.

(c) INSPECTIONS AND VERIFICATIONS.—The Secretary shall, at such time and place as the Secretary determines to be appropriate, conduct or require the conduct of facility security inspections and verifications and may, by regulation, authorize third party inspections and verifications by persons trained and certified by the Secretary for that purpose. Such an inspection or verification shall include a consultation with owners, operators, and employees, as appropriate, and ensure and evaluate compliance with—

(1) this title and any regulations prescribed to carry out this title; and

(2) any security standards or requirements adopted by the Secretary in furtherance of the purposes of this title.

(d) REQUESTS FOR RECORDS.—In carrying out this title, the Secretary (or a designee of the Secretary) may require the submission of or, on presentation of credentials, may at reasonable times obtain access to and copy any documentation necessary for—

(1) reviewing or analyzing a vulnerability assessment or facility security plan submitted under section 1803; or

(2) implementing such a facility security plan.

(e) COMPLIANCE.—If the Secretary determines that an owner or operator of a chemical facility required to submit a vulnerability assessment or facility security plan under section 1803 fails to maintain, produce, or allow access to records or to the property of the chemical facility as required by this section, the Secretary shall issue an order requiring compliance with this section.

SEC. 1805. ENFORCEMENT.

(a) SUBMISSION OF INFORMATION.—

(1) INITIAL SUBMISSION.—The Secretary shall specify in regulations prescribed under section 1803(a), specific deadlines for the submission of the vulnerability assessments and facility security plans required under this title to the Secretary. The Secretary may establish different submission requirements for the different tiers of chemical facilities under section 1802(c).

(2) MAJOR CHANGES REQUIREMENT.—The Secretary shall specify in regulations prescribed under section 1803(a), specific deadlines and requirements for the submission by a facility required to submit a vulnerability assessment or facility security plan under that section of information describing—

(A) any change in the use by the facility of more than a threshold amount of any substance of concern; and

(B) any significant change in a vulnerability assessment or facility security plan submitted by the facility.

(3) FAILURE TO COMPLY.—If an owner or operator of a chemical facility fails to submit a vulnerability assessment or facility security plan in accordance with this title, the Secretary shall issue an order requiring the submission of a vulnerability assessment or facility security plan in accordance with section 1804(e).

(b) REVIEW OF SECURITY PLAN.—

(1) IN GENERAL.—

(A) DEADLINE FOR REVIEW.—Not later than 180 days after the date on which the Secretary receives a vulner-

ability assessment or facility security plan under this title, the Secretary shall review and approve or disapprove such assessment or plan.

(B) DESIGNEE.—The Secretary may designate a person (including a third party entity certified by the Secretary) to conduct a review under this subsection.

(2) DISAPPROVAL.—The Secretary shall disapprove a vulnerability assessment or facility security plan if the Secretary determines that—

(A) the vulnerability assessment or facility security plan does not comply with regulations prescribed under section 1803; or

(B) in the case of a facility security plan, the plan or the implementation of the plan is insufficient to address any vulnerabilities identified in a vulnerability assessment of the chemical facility or associated oversight actions taken under sections 1803 and 1804, including a red team exercise.

(3) SPECIFIC SECURITY MEASURES NOT REQUIRED.—The Secretary shall not disapprove a facility security plan under this section based solely on the specific chemical facility security measures that the chemical facility selects to meet the security performance requirements established by the Secretary under section 1803(c).

(4) PROVISION OF NOTIFICATION OF DISAPPROVAL.—If the Secretary disapproves the vulnerability assessment or facility security plan submitted by a chemical facility under this title or the implementation of a facility security plan by such a facility, the Secretary shall—

(A) provide the owner or operator of the facility a written notification of the disapproval, that—

(i) includes a clear explanation of deficiencies in the assessment, plan, or implementation of the plan; and

(ii) requires the owner or operator of the facility to revise the assessment or plan to address any deficiencies and to submit to the Secretary the revised assessment or plan;

(B) provide guidance to assist the facility in addressing such deficiency;

(C) in the case of a facility for which the owner or operator of the facility does not address such deficiencies by such date as the Secretary determines to be appropriate, issue an order requiring the owner or operator to correct specified deficiencies by a specified date; and

(D) in the case of a facility assigned to the high-risk tier under section 1802(c)(4), consult with the owner or operator of the facility to identify appropriate steps to be taken by the owner or operator to address the deficiencies identified by the Secretary.

(5) NO PRIVATE RIGHT OF ACTION.—Nothing in this title confers upon any private person a right of action against an owner or operator of a chemical facility to enforce any provision of this title.

(c) REPORTING PROCESS.—

(1) ESTABLISHMENT.—The Secretary shall establish, and provide information to the public regarding, a process by which any person may submit a report to the Secretary regarding problems, deficiencies, or vulnerabilities at a chemical facility.

(2) CONFIDENTIALITY.—The Secretary shall keep confidential the identity of a person that submits a report under paragraph (1) and any such report shall be treated as protected information under section 1808(f) to the extent that it does not consist of publicly available information.

(3) ACKNOWLEDGMENT OF RECEIPT.—If a report submitted under paragraph (1) identifies the person submitting the report, the Secretary shall respond promptly to such person to acknowledge receipt of the report.

(4) STEPS TO ADDRESS PROBLEMS.—The Secretary shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps under this title to address any problem, deficiency, or vulnerability identified in the report.

(5) RETALIATION PROHIBITED.—

(A) PROHIBITION.—No employer may discharge any employee or otherwise discriminate against any employee with respect to the compensation of, or terms, conditions, or privileges of the employment of, such employee because the employee (or a person acting pursuant to a request of the employee) submitted a report under paragraph (1).

(B) ENFORCEMENT PROCESS.—The Secretary shall establish—

(i) a process by which an employee can notify the Secretary of any retaliation prohibited under this paragraph; and

(ii) a process by which the Secretary may take action as appropriate to enforce this section.

SEC. 1806. PENALTIES.

(a) ADMINISTRATIVE PENALTIES.—

(1) IN GENERAL.—The Secretary may issue an administrative penalty of not more than $250,000 for failure to comply with an order issued by the Secretary under this title.

(2) PROVISION OF NOTICE.—Before issuing a penalty under paragraph (1), the Secretary shall provide to the person against which the penalty is to be assessed—

(A) written notice of the proposed penalty; and

(B) to the extent possible, consistent with the provisions of title 5, United States Code, governing hearings on the record, the opportunity to request, not later than 30 days after the date on which the notice is received, a hearing on the proposed penalty.

(3) PROCEDURES FOR REVIEW.—The Secretary may prescribe regulations outlining the procedures for administrative hearings and appropriate review, including necessary deadlines.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—The Secretary may bring an action in a United States district court against any owner or operator of a chemical facility that violates or fails to comply with—

(A) any order issued by the Secretary under this title; or

(B) any facility security plan approved by the Secretary under this title.

(2) RELIEF.—In any action under paragraph (1), a court may issue an order for injunctive relief and may award a civil penalty of not more than $50,000 for each day on which a violation occurs or a failure to comply continues.

(c) CRIMINAL PENALTIES.—An owner or operator of a chemical facility who knowingly and intentionally violates any order issued by the Secretary under this title shall be fined not more than $100,000, imprisoned for not more than 1 year, or both.

(d) PENALTIES FOR UNAUTHORIZED DISCLOSURE.—Any officer or employee of a Federal, State, or local government agency who, in a manner or to an extent not authorized by law, knowingly discloses any record containing protected information described in section 1808(f) shall—

(1) be imprisoned not more than 1 year, fined under chapter 227 of title 18, United States Code, or both; and

(2) if an officer or employee of the Government, be removed from Federal office or employment.

(e) TREATMENT OF INFORMATION IN ADJUDICATIVE PROCEEDINGS.—In a proceeding under this section, information protected under section 1808, or related vulnerability or security information, shall be treated in any judicial or administrative action as if the information were classified material.

SEC. 1807. FEDERAL PREEMPTION.

(a) IN GENERAL.—Nothing in this title shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting chemical facility security that is more stringent than a regulation, requirement, or standard of performance in effect under this title, or shall otherwise impair any right or jurisdiction of any State with respect to chemical facilities within such State unless the State regulation, requirement, or standard of performance would frustrate the purposes of this title.

(b) OTHER REQUIREMENTS.—Nothing in this title shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance relating to environmental protection, health, or safety.

(c) APPLICATION FOR REVIEW.—

(1) IN GENERAL.—A person, State, or local government directly affected by a requirement of a State or local government may submit to the Secretary, as provided in regulations that the Secretary shall prescribe, an application asking the Secretary to decide whether the requirement is preempted by this title.

(2) NOTICE.—The Secretary shall publish notice of the application in the Federal Register.

(3) DETERMINATION BY SECRETARY.—The Secretary shall, by not later than 180 days after the date of the publication of the notice under paragraph (2)—

(A) issue a decision pursuant to the application; or

(B) publish in the Federal Register—

(i) a statement of the reason why the Secretary's decision on the application is delayed; and

(ii) an estimate of the additional time necessary for the decision to be made.

(4) LIMITATION ON JUDICIAL RELIEF.—After publication of notice under paragraph (2), an applicant may not seek judicial relief on the same or substantially the same issue until the earlier of—

(A) the date the Secretary issues a decision pursuant to the application; or

(B) the end of the 180-day period beginning on the date the application is filed.

(d) JUDICIAL REVIEW.—A person who submits an application under subsection (c), or the State or local government that prescribed or issued the law, regulation, standard, or order that is the subject of such an application, may bring a civil action in an appropriate United States district court for judicial review of the decision of the Secretary made pursuant to the application no later than 60 days after the Secretary issues the decision.

SEC. 1808. PROTECTION OF INFORMATION.

(a) PROHIBITION OF PUBLIC DISCLOSURE OF PROTECTED INFORMATION.—

(1) IN GENERAL.—The Secretary shall ensure that protected information, as described in subsection (f), is not disclosed except as provided in this title.

(2) SPECIFIC PROHIBITIONS.—In carrying out paragraph (1), the Secretary shall ensure that protected information is not disclosed—

(A) by any Federal agency under section 552 of title 5, United States Code; or

(B) under any State or local law.

(b) REGULATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of the Chemical Facility Anti-Terrorism Act of 2006, the Secretary shall prescribe such regulations, and may issue such orders, as necessary to prohibit the unauthorized disclosure of protected information, as described in subsection (f).

(2) REQUIREMENTS.—The regulations prescribed under paragraph (1) shall—

(A) permit information sharing, on a confidential basis, with Federal, State and local law enforcement officials and first responders and chemical facility personnel, as necessary to further the purposes of this title;

(B) provide for the confidential use of protected information in any administrative or judicial proceeding, including placing under seal any such information that is contained in any filing, order, or other document used in such proceedings that could otherwise become part of the public record;

(C) limit access to protected information to persons designated by the Secretary; and

(D) ensure, to the maximum extent practicable, that—

(i) protected information shall be maintained in a secure location; and

(ii) access to protected information shall be limited as may be necessary to—

(I) enable enforcement of this title; or

(II) address an imminent and substantial threat to security.

(c) OTHER OBLIGATIONS UNAFFECTED.—Nothing in this section affects any obligation of the owner or operator of a chemical facility to submit or make available information to facility employees, employee organizations, or a Federal, State, or local government agency under, or otherwise to comply with, any other law.

(d) SUBMISSION OF INFORMATION TO CONGRESS.—Nothing in this title shall be construed as authorizing the withholding of any information from Congress.

(e) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—Nothing in this title shall be construed as affecting any authority or obligation of a Federal agency to disclose any record or information that the Federal agency obtains from a chemical facility under any other law.

(f) PROTECTED INFORMATION.—For purposes of this section, protected information includes the following:

(1) The criteria and data used by the Secretary to assign chemical facilities to risk-based tiers under section 1802 and the tier to which each such facility is assigned.

(2) The vulnerability assessments and facility security plans submitted to the Secretary under this title.

(3) Information concerning the security performance requirements for a chemical facility under section 1803(c).

(4) Any other information generated or collected by a Federal, State, or local government agency or by a chemical facility for the purpose of carrying out or complying with this title—

(A) that describes any vulnerability of a chemical facility to an act of terrorism;

(B) that describes the assignment of any chemical facility to a risk-based tier under this title;

(C) that describes any security measure (including any procedure, equipment, training, or exercise) for the protection of a chemical facility from an act of terrorism; or

(D) the disclosure of which the Secretary determines would be detrimental to the security of any chemical facility.

SEC. 1809. CERTIFICATION OF THIRD-PARTY ENTITIES.

(a) CERTIFICATION OF THIRD-PARTY ENTITIES.—The Secretary may designate a third-party entity to carry out any function under subsection (e)(5) of section 1803, subsection (b) or (c) of section 1804, or subsection (b)(1) of section 1805.

(b) QUALIFICATIONS.—The Secretary shall establish standards for the qualifications of third-party entities, including knowledge of physical infrastructure protection, cybersecurity, facility security plans, hazard analysis, engineering, and other such factors that the Secretary determines to be necessary.

(c) PROCEDURES AND REQUIREMENTS FOR PRIVATE ENTITIES.—Before designating a third-party entity to carry out a function under subsection (a), the Secretary shall—

(1) develop, document, and update, as necessary, minimum standard operating procedures and requirements applicable to such entities designated under subsection (a), including—

(A) conducting a 90-day independent review of the procedures and requirements (or updates thereto) and the results of the analyses of such procedures (or updates thereto) pursuant to subtitle G of title VIII; and

(B) upon completion of the independent review under subparagraph (A), designating any procedure or requirement (or any update thereto) as a qualified anti-terrorism technology pursuant to section 862(b);

(2) conduct safety and hazard analyses of the standard operating procedures and requirements developed under paragraph (1);

(3) conduct a review of the third party entities' previous business engagements to ensure that no contractual relationship has or will exist that could compromise their independent business judgment in carrying out any functions under subsection (e)(5) of section 1803, subsection (b) or (c) of section 1804, of subsection (b)(1) of section 1805; and

(4) conduct a review of the third party entities' business practices and disqualify any of these organizations that offer related auditing or consulting services to chemical facilities as private sector vendors.

(d) TECHNICAL REVIEW AND APPROVAL.—Not later than 60 days after the date on which the results of the safety and hazard analysis of the standard operating procedures and requirements are completed under subsection (c)(2), the Secretary shall—

(1) complete a technical review of the procedures and requirements (or updates thereto) under sections 862(b) and 863(d)(2); and

(2) approve or disapprove such procedures and requirements (or updates thereto).

(e) EFFECT OF APPROVAL.—

(1) ISSUANCE OF CERTIFICATE OF CONFORMANCE.—In accordance with section 863(d)(3), the Secretary shall issue a certificate of conformance to a third-party entity to perform a function under subsection (a) if the entity—

(A) demonstrates to the satisfaction of the Secretary the ability to perform functions in accordance with standard operating procedures and requirements (or updates thereto) approved by the Secretary under this section;

(B) agrees to—

(i) perform such function in accordance with such standard operating procedures and requirements (or updates thereto); and

(ii) maintain liability insurance coverage at policy limits and in accordance with conditions to be established by the Secretary pursuant to section 864; and

(C) signs an agreement to protect the proprietary and confidential information of any chemical facility with respect to which the entity will perform such function.

(2) LITIGATION AND RISK MANAGEMENT PROTECTIONS.—A third-party entity that maintains liability insurance coverage at policy limits and in accordance with conditions to be established by the Secretary pursuant to section 864 and receives a certificate of conformance under paragraph (1) shall receive all applicable litigation and risk management protections under sections 863 and 864.

(3) RECIPROCAL WAIVER OF CLAIMS.—A reciprocal waiver of claims shall be deemed to have been entered into between a third-party entity that receives a certificate of conformance

under paragraph (1) and its contractors, subcontractors, suppliers, vendors, customers, and contractors and subcontractors of customers involved in the use or operation of any function performed by the third-party entity under subparagraph (a).

(4) INFORMATION FOR ESTABLISHING LIMITS OF LIABILITY INSURANCE.—A third-party entity seeking a certificate of conformance under paragraph (1) shall provide to the Secretary necessary information for establishing the limits of liability insurance required to be maintained by the entity under section 864(a).

(f) MONITORING.—The Secretary shall regularly monitor and inspect the operations of a third-party entity that performs a function under subsection (a) to ensure that the entity is meeting the minimum standard operating procedures and requirements established under subsection (c) and any other applicable requirement under this section.

(g) RESTRICTION ON DESIGNATION.—No individual may be designated to carry out any function under this title with respect to any facility with which that individual was affiliated as an officer, director, or employee during the three-year period preceding the date of such designation.

SEC. 1810. METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.

(a) METHOD TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.—For purposes of this section, the term "method to reduce the consequences of a terrorist attack" includes—

(1) input substitution;

(2) catalyst or carrier substitution;

(3) process redesign (including reuse or recycling of a substance of concern);

(4) product reformulation;

(5) procedure simplification;

(6) technology modification;

(7) use of less hazardous substances or benign substances;

(8) use of smaller quantities of substances of concern;

(9) reduction of hazardous pressures or temperatures;

(10) reduction of the possibility and potential consequences of equipment failure and human error;

(11) improvement of inventory control and chemical use efficiency; and

(12) reduction or elimination of the storage, transportation, handling, disposal, and discharge of substances of concern.

(b) ASSESSMENT REQUIRED.—

(1) IN GENERAL.—The owner or operator of a facility assigned to the high-risk tier under section 1802(c)(4), shall conduct an assessment of methods to reduce the consequences of a terrorist attack on that chemical facility.

(2) INCLUDED INFORMATION.—An assessment under this subsection shall include information on—

(A) each method of reducing the consequences of a terrorist attack considered for implementation at the chemical facility, including—

(i) the quantity of any substance of concern considered for reduction or elimination and the form of any

considered replacement for such substance of concern; and

(ii) any technology or process considered for modification and a description of the considered modification;

(B) the degree to which each such method could, if implemented, reduce the potential extent of death, injury, or serious adverse effects to human health, and the environment; and

(C) a description of any specific considerations that led to the implementation or rejection of each such method, including—

(i) requirements under this title;

(ii) cost;

(iii) liability for a chemical facility terrorist incident;

(iv) cost savings, including whether the method would eliminate or reduce other security costs or requirements;

(v) the availability of a replacement for a substance of concern, technology, or process that would be eliminated or altered as a result of the implementation of the method;

(vi) the applicability of any considered replacement for the substance of concern, technology, or process to the chemical facility; and

(vii) any other factor that the owner or operator of the chemical facility considered in judging the practicability of each method to reduce the consequences of a terrorist attack.

(3) DEADLINE.—The deadlines for submission and review of an assessment for a facility described in this subsection shall be the same as the deadline for submission and review of the facility security plan or relevant documents submitted to the Secretary by the facility for the purposes of complying with section 1803.

(c) REVIEW AND IMPLEMENTATION.—

(1) REVIEW.—Not later than 180 days after receiving an assessment described in subsection (b), the Secretary shall review the assessment and provide written notice to the owner or operator of a chemical facility required to conduct an assessment under subsection (b) if the Secretary determines that the assessment described in subsection (b) is inadequate.

(2) CONSULTATION.—The Secretary shall consult with the heads of other Federal, State, and local agencies, including the Chemical Safety and Hazard Investigation Board and the Environmental Protection Agency, in determining whether the assessment described in subsection (b) is adequate.

(3) IMPLEMENTATION.—The owner or operator of a chemical facility required to conduct an assessment under subsection (b) shall implement methods to reduce the consequences of a terrorist attack on the chemical facility if the Secretary determines, based on an assessment in subsection (b), that the implementation of methods to reduce the consequences of a terrorist attack at the high-risk chemical facility

(A) would significantly reduce the risk of death, injury, or serious adverse effects to human health or the environment resulting from a terrorist release;

(B) can feasibly be incorporated into the operation of the facility; and

(C) would not significantly and demonstrably impair the ability of the owner or operator of the facility to continue the business of the facility.

(4) RECONSIDERATION.—

(A) IN GENERAL.—An owner or operator of a chemical facility that determines that it is unable to comply with the Secretary's determination under subsection (c)(3) shall, within 60 days of receipt of the Secretary's determination, provide to the Panel on Methods to Reduce the Consequences of a Terrorist Attack a written explanation that includes the reasons thereto.

(B) REVIEW.—Not later than 60 days of receipt of an explanation submitted under subsection (c)(4)(A), the Panel on Methods to Reduce the Consequences of a Terrorist Attack, after an opportunity for the owner or operator of a chemical facility to meet with the Panel on Methods to Reduce the Consequences of a Terrorist Attack, shall provide a written determination regarding the adequacy of the explanation, and shall, if appropriate, include recommendations to the chemical facility that would assist the facility in its assessment and implementation.

(C) NOTIFICATION.—Not later than 60 days after the date of the receipt of the written determination described under subsection (c)(4)(B), the owner or operator of the chemical facility shall provide to the Secretary written notification of the owner or operator's plans to implement methods to reduce the consequences of a terrorist attack recommended by the Panel on Methods to Reduce the Consequences of a Terrorist Attack.

(D) COMPLIANCE.—If the facility does not implement the recommendations made by the Panel on Methods to Reduce the Consequences of a Terrorist Attack, the Secretary may, within 60 days of receipt of the plans described in (4)(C), issue an order requiring the owner or operator to implement such methods by a specified date.

(E) PANEL ON METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.—The Panel on Methods to Reduce the Consequences of a Terrorist Attack shall be chaired by the Secretary (or the Secretary's designee) and shall include representatives, chosen by the Secretary, of other appropriate Federal and State agencies, independent security experts and the chemical industry.

(d) ALTERNATIVE APPROACHES CLEARINGHOUSE.—

(1) ESTABLISHMENT.—The Secretary shall establish a publicly available clearinghouse for the compilation and dissemination of information on the use and availability of methods to reduce the consequences of a terrorist attack at a chemical facility.

(2) INCLUSIONS.—The clearinghouse required under paragraph (1) shall include information on—

(A) general and specific types of such methods;

(B) combinations of chemical sources, substances of concern, and hazardous processes or conditions for which such methods could be appropriate;

(C) the availability of specific methods to reduce the consequences of a terrorist attack;

(D) the costs and cost savings resulting from the use of such methods;

(E) technological transfer;

(F) the availability of technical assistance; and

(G) such other information as the Secretary determines is appropriate.

(3) COLLECTION OF INFORMATION.—The Secretary shall collect information for the clearinghouse—

(A) from documents submitted by owners or operators pursuant to this title;

(B) by surveying owners or operators who have registered their facilities pursuant to part 68 of title 40 Code of Federal Regulations (or successor regulations); and

(C) through such other methods as the Secretary deems appropriate.

(4) PUBLIC AVAILABILITY.—Information available publicly through the clearinghouse shall not identify any specific facility or violate the protection of information provisions under section 1808.

(e) PROTECTED INFORMATION.—An assessment prepared under subsection (b) is protected information for the purposes of section 1808(f).

SEC. 1811. ANNUAL REPORT TO CONGRESS.

(a) ANNUAL REPORT.—Not later than one year after the date of enactment of the Chemical Facility Anti-Terrorism Act of 2006 and annually thereafter, the Secretary shall publish a report on progress in achieving compliance with this title, including—

(1) an assessment of the effectiveness of the facility security plans developed under this title;

(2) any lessons learned in implementing this title (including as a result of a red-team exercise); and

(3) any recommendations of the Secretary to improve the programs, plans, and procedures under this title, including the feasibility of programs to increase the number of economically disadvantaged businesses eligible to perform third party entity responsibilities pursuant to sections 1803(e)(5), 1804(b) and (c), and 1805(b)(1).

(b) PROTECTED INFORMATION.—A report under this section may not include information protected under section 1808.

SEC. 1812. APPLICABILITY.

This title shall not apply to—

(1) any facility that is owned and operated by the Department of Defense, the Department of Justice, or the Department of Energy;

(2) the transportation in commerce, including incidental storage, of any substance of concern regulated as a hazardous material under chapter 51 of title 49, United States Code; or

(3) any facility that is owned or operated by a licensee or certificate holder of the Nuclear Regulatory Commission.

SEC. 1813. SAVINGS CLAUSE.

Nothing in this title is intended to affect section 112 of the Clean Air Act (42 U.S.C. 7412), the Clean Water Act, the Resource Conservation and Recovery Act, the National Environmental Policy Act of 1969, and the Occupational Safety and Health Act.

SEC. 1814. OFFICE OF CHEMICAL FACILITY SECURITY.

There is in the Department an Office of Chemical Facility Security. The head of the Office of Chemical Facility Security is responsible for carrying out the responsibilities of the Secretary under this title.

ADDITIONAL AND DISSENTING VIEWS OF HON. STEVAN PEARCE

I agree with the majority of the Committee on Homeland Security's report on H.R. 5695, the "Chemical Facility Anti-Terrorism Act of 2006". The bill gives the Department of Homeland Security much needed regulatory authority over the security of our nation's chemical facilities. It provides a scaled regulatory framework based on the risk a facility poses; focuses on the performance of a facility rather than the specific security measures; and provides strong protection of information provisions. All of which are vital to securing one of our nation's most important industries.

However while I agree with the majority of the bill and the report to it, I feel that one section of the bill does not reflect the bill's risk- and performance-based methodology and requires an alternative viewpoint. Section 1810 of the bill: "Methods to Reduce the Consequences of a Terrorist Attack" calls for the analysis and in some cases, implementation, of a variety of undefined methods including process substitution or redesign, technology modification and changes in types or quantities of substances of concern used. The twelve methods outlined in section 1810 are nowhere explained or defined and the section remains ambiguous as to their intent other than to "reduce the consequences of a terrorist attack".

One must assume that these methods will have to be determined by the Secretary of Homeland Security, either through regulation or on a case-by-case basis. Reviewing these twelve methods, it is my concern that the Secretary may mandate a technology or process that does not exist, is unproven or which would require significant changes to the facility to implement. Further, these methods may have the result of causing unforeseen economic burdens on the facility—resulting in higher costs passed on to the consumer, the closing of the facility or the outsourcing of such services to other countries.

During the Committee's hearings on the issue of chemical facility security, the Committee heard expert testimony from both industry and the scientific community regarding these types of methods. The Committee was cautioned against mandating such technologies, for the reasons outlined above. It is my sense that neither the Committee, nor the Secretary, should be arbitrarily mandating technology that fundamentally may impact the industry, without relying on the experts themselves who work with these substances every day. Unlike the rest of the bill, section 1810 represents the only instance where the Secretary may mandate specific technologies or measures to be taken in the name of security at a chemical facility. It is my sense that this section undermines the risk-based, performance-based nature of the overall bill, to its detriment.

One of the goals of the bill is to provide flexibility to chemical facilities in complying with security requirements. This does not diminish the level of security, as each facility within a given tier would be required to meet a certain level of security (the security performance requirement). However, the chemical facility would be allowed to choose which specific security measures they employ to meet that requirement. This flexibility balances the need for security with the national economic and social benefits at these chemical facilities and recognizes that part of the statutory mission of the Department is to "ensure that the overall economic security of the United States is not diminished by the efforts, activities, and programs aimed at securing the homeland."

It is my belief that section 1810, by mandating unproven, undefined and possibly non-existent technologies, processes and other changes frustrates this purpose of the bill and the mission of the Department of Homeland Security. This section does not provide for the same flexibility provided elsewhere—where it is explicitly stated that the Secretary cannot disapprove a facility security plan based solely on the specific security measures chosen. Instead, this section gives the Secretary the authority to mandate specific measures. While the language provides that certain conditions must be met, it is silent on factors that should be taken into consideration leaving interpretation to the Secretary or the courts. Furthermore, by requiring that certain facilities substitute one chemical for another, the Secretary would merely be shifting the risk from one facility to another, from one region to the next, frustrating the purpose of the bill to reduce the vulnerabilities of chemical facilities nationwide.

For example, in doing an assessment of a facility that uses chlorine, the Secretary may find that the facility must now use bleach instead. However, in order to achieve the same level of sanitation of a certain amount of chlorine, the facility must now use three times that amount in bleach. This means that the facility would have to increase its storage capacity on site. It may also have to change its processing equipment. The increase in demand by this site would mean that more bleach (three times the amount) would need to be transported increasing the risk that an incident could occur during transit by rail or truck. Finally, since chlorine is a requirement for the production of bleach, the facility that produces the bleach would now need to increase its storage of chlorine, to meet the increased demand for bleach. In this example, the mandating of substitution of one chemical for another frustrates the federal purpose of providing a risk-based, performance-based national chemical facility security program and disregards the economic consequences.

This leads us to my final concern with the Committee's report. In the report language regarding federal preemption of State laws, the Committee maintains that a State requiring these types of methods would not be found to frustrate the Federal purpose. As we have outlined above, it is our belief that any mandating of such methods, at the Federal level, the State level or at the local level, would in fact frustrate the purposes of this bill and the overall mission of the Department of Homeland Security. It is my belief that

such requirements should be preempted by the Federal law, to ensure that the risk-based, national scope of the bill be maintained.

It is absolutely my intent to make chemical facilities safer and more secure. At the end of the day, the type of chemicals targeted in this section will need to be stored, manufactured and processed somewhere in this country. We cannot expect to merely transfer the risk without recognizing that in the end, a chemical facility will still need to be secured. We need to balance our needs of security with the needs of our economy and our everyday well being. We cannot be in the business of allowing the Department to make arbitrary decisions when it comes to our Nation's security. Unfortunately, it is likely that the greatest outcome of this section will be litigation, as the decisions that may be handed down by the Secretary based on these ambiguous terms are argued before the courts. This will only result in a longer delay of much needed security measures that the remainder of the bill provides for.

Sincerely,

STEVAN PEARCE,
Member of Congress.

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