

## CHEMICAL FACILITY ANTI-TERRORISM ACT OF 2009

JULY 13, 2009.—Ordered to be printed

Mr. THOMPSON of Mississippi, from the Committee on Homeland  
Security, submitted the following

### R E P O R T

together with

### ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 2868]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 2868) to amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Chemical Facility Anti-Terrorism Act of 2009”.

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

(a) **FINDINGS.**—Congress makes the following findings:

(1) The Nation’s chemical sector represents a target that terrorists could exploit to cause consequences, including death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy.

(2) Chemical facilities that pose such potential consequences and that are vulnerable to terrorist attacks must be protected.

(3) The Secretary of Homeland Security has statutory authority pursuant to section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295) to regulate the security practices at chemical facilities that are at significant risk of being terrorist targets.

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

(b) **PURPOSE.**—The purpose of this Act is to modify and make permanent the authority of the Secretary of Homeland Security to regulate security practices at chemical facilities.

**SEC. 3. EXTENSION, MODIFICATION, AND RECODIFICATION OF AUTHORITY OF SECRETARY OF HOMELAND SECURITY TO REGULATE SECURITY PRACTICES AT 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 XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES**

**“SEC. 2101. DEFINITIONS.**

“In this title, the following definitions apply:

“(1) The term ‘chemical facility’ means any facility—

“(A) at which the owner or operator of the facility possesses or plans to possess at any relevant point in time a substance of concern; or

“(B) that meets other risk-related criteria identified by the Secretary.

“(2) The term ‘chemical facility security performance standards’ means risk-based standards established by the Secretary to ensure or enhance the security of a chemical facility against a chemical facility terrorist incident that are designed to address the following:

“(A) Restricting the area perimeter.

“(B) Securing site assets.

“(C) Screening and controlling access to the facility and to restricted areas within the facility by screening or inspecting individuals and vehicles as they enter, including—

“(i) measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate a chemical facility terrorist incident or actions having serious negative consequences for the population surrounding the chemical facility; and

“(ii) measures implementing a regularly updated identification system that checks the identification of chemical facility personnel and other persons seeking access to the chemical facility and that discourages abuse through established disciplinary measures.

“(D) Methods to deter, detect, and delay a chemical facility terrorist incident, creating sufficient time between detection of a chemical facility terrorist incident and the point at which the chemical facility terrorist incident becomes successful, including measures to—

“(i) deter vehicles from penetrating the chemical facility perimeter, gaining unauthorized access to restricted areas, or otherwise presenting a hazard to potentially critical targets;

“(ii) deter chemical facility terrorist incidents through visible, professional, well-maintained security measures and systems, including security personnel, detection systems, barriers and barricades, and hardened or reduced value targets;

“(iii) detect chemical facility terrorist incidents at early stages through counter surveillance, frustration of opportunity to observe po-

tential targets, surveillance and sensing systems, and barriers and barricades; and

“(iv) delay a chemical facility terrorist incident for a sufficient period of time so as to allow appropriate response through on-site security response, barriers and barricades, hardened targets, and well-coordinated response planning.

“(E) Securing and monitoring the shipping, receipt, and storage of a substance of concern for the chemical facility.

“(F) Deterring theft or diversion of a substance of concern.

“(G) Deterring insider sabotage.

“(H) Deterring cyber sabotage, including by preventing unauthorized on-site or remote access to critical process controls, including supervisory control and data acquisition systems, distributed control systems, process control systems, industrial control systems, critical business systems, and other sensitive computerized systems.

“(I) Developing and exercising an internal emergency plan for owners, operators, and covered individuals of a covered chemical facility for responding to chemical facility terrorist incidents at the facility. Any such plan shall include the provision of appropriate information to any local emergency planning committee, local law enforcement officials, and emergency response providers to ensure an effective, collective response to terrorist incidents.

“(J) Maintaining effective monitoring, communications, and warning systems, including—

“(i) measures designed to ensure that security systems and equipment are in good working order and inspected, tested, calibrated, and otherwise maintained;

“(ii) measures designed to regularly test security systems, note deficiencies, correct for detected deficiencies, and record results so that they are available for inspection by the Department; and

“(iii) measures to allow the chemical facility to promptly identify and respond to security system and equipment failures or malfunctions.

“(K) Ensuring mandatory annual security training, exercises, and drills of chemical facility personnel appropriate to their roles, responsibilities, and access to chemicals, including participation by local law enforcement, local emergency response providers, appropriate supervisory and non-supervisory facility employees and their employee representatives, if any.

“(L) Performing personnel surety for individuals with access to restricted areas or critical assets by conducting appropriate background checks and ensuring appropriate credentials for unescorted visitors and chemical facility personnel, including permanent and part-time personnel, temporary personnel, and contract personnel, including—

“(i) measures designed to verify and validate identity;

“(ii) measures designed to check criminal history;

“(iii) measures designed to verify and validate legal authorization to work; and

“(iv) measures designed to identify people with terrorist ties.

“(M) Escalating the level of protective measures for periods of elevated threat.

“(N) Specific threats, vulnerabilities, or risks identified by the Secretary for that chemical facility.

“(O) Reporting of significant security incidents to the Department and to appropriate local law enforcement officials.

“(P) Identifying, investigating, reporting, and maintaining records of significant security incidents and suspicious activities in or near the site.

“(Q) Establishing one or more officials and an organization responsible for—

“(i) security;

“(ii) compliance with the standards under this paragraph;

“(iii) serving as the point of contact for incident management purposes with Federal, State, local, and tribal agencies, law enforcement, and emergency response providers; and

“(iv) coordination with Federal, State, local, and tribal agencies, law enforcement, and emergency response providers regarding plans and security measures for the collective response to a chemical facility terrorist incident.

“(R) Maintaining appropriate records relating to the security of the facility, including a copy of the most recent security vulnerability assessment and site security plan at the chemical facility.

“(S) Assessing and, as appropriate, utilizing methods to reduce the consequences of a terrorist attack.

“(T) Methods to recover or mitigate the release of a substance of concern in the event of a chemical facility terrorist incident.

“(U) Any additional security performance standards the Secretary may specify.

“(3) The term ‘chemical facility terrorist incident’ means any act or attempted act of terrorism or terrorist activity committed at, near, or against a chemical facility, including—

“(A) the release of a substance of concern from a chemical facility;

“(B) the theft, misappropriation, or misuse of a substance of concern from a chemical facility; or

“(C) the sabotage of a chemical facility or a substance of concern at a chemical facility.

“(4) The term ‘employee representative’ means the representative of the certified or recognized bargaining agent engaged in a collective bargaining relationship with a private or public owner or operator of a chemical facility.

“(5) The term ‘covered individual’ means a permanent, temporary, full-time, or part-time employee of a covered chemical facility or an employee of an entity with which the covered chemical facility has entered into a contract who is performing responsibilities at the facility pursuant to the contract.

“(6) The term ‘covered chemical facility’ means a chemical facility that meets the criteria of section 2102(b)(1).

“(7) The term ‘environment’ means—

“(A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

“(B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

“(8) The term ‘owner or operator’ with respect to a facility means any of the following:

“(A) The person who owns the facility.

“(B) The person who has responsibility for daily operation of the facility.

“(C) The person who leases the facility.

“(9) The term ‘person’ means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

“(10) The term ‘release’ means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act (42 U.S.C. 2210), or, for the purposes of section 104 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9604) or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7912(a)(1); and (D) the normal application of fertilizer.

“(11) The term ‘substance of concern’ means a chemical substance in quantity and form that is so designated by the Secretary under section 2102(a).

“(12) The term ‘method to reduce the consequences of a terrorist attack’ means a measure used at a chemical facility that reduces or eliminates the potential consequences of a chemical facility terrorist incident, including—

“(A) the elimination or reduction in the amount of a substance of concern possessed or planned to be possessed by an owner or operator of a covered chemical facility through the use of alternate substances, formulations, or processes;

“(B) the modification of pressures, temperatures, or concentrations of a substance of concern; and

“(C) the reduction or elimination of onsite handling of a substance of concern through improvement of inventory control or chemical use efficiency.

“(13) The term ‘academic laboratory’ means an area owned by an eligible institution of higher education defined pursuant to section 101 of the Higher Education Act of 1965 (20 U.S.C. 2001) or a non-profit research institute or teaching hospital that has a formal affiliation with a college or university where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching, research, or diagnostic purposes, and are stored and used in containers that are easily manipulated by one person, including photo laboratories, art studios, field laboratories research farms, chemical stockrooms, and preparatory laboratories.

“(14) The term ‘surface transportation modes’ means mass transit, commuter and long-distance passenger rail, freight rail, commercial vehicles (including intercity buses), and pipelines, and related infrastructure (including roads and highways), that are within the territory of the United States.

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

“(a) SUBSTANCES OF CONCERN.—

“(1) DESIGNATION BY THE SECRETARY.—The Secretary may designate any chemical substance as a substance of concern and establish the threshold quantity for each such substance of concern.

“(2) MATTERS FOR CONSIDERATION.—In designating 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, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy that could result from a chemical facility terrorist incident.

“(b) LIST OF COVERED CHEMICAL FACILITIES.—

“(1) CRITERIA FOR LIST OF FACILITIES.—The Secretary shall maintain a list of covered chemical facilities that the Secretary determines are of sufficient security risk for inclusion on the list based on the following criteria:

“(A) The potential threat or likelihood that the chemical facility will be the target of a chemical facility terrorist incident.

“(B) The potential extent and likelihood of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy that could result from a chemical facility terrorist incident.

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

“(2) SUBMISSION OF INFORMATION.—The Secretary may require the submission of information with respect to the quantities of substances of concern that an owner or operator of a chemical facility possesses or plans to possess in order to determine whether to designate a chemical facility as a covered chemical facility for purposes of this title.

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

“(1) ASSIGNMENT.—The Secretary shall assign each covered chemical facility to one of four risk-based tiers established by the Secretary, with tier one representing the highest degree of risk and tier four the lowest degree of risk.

“(2) PROVISION OF INFORMATION.—The Secretary may request, and the owner or operator of a covered chemical facility shall provide, any additional information beyond any information required to be submitted under subsection (b)(2) that may be necessary for the Secretary to assign the chemical facility to the appropriate tier under paragraph (1).

“(3) NOTIFICATION.—Not later than 60 days after the date on which the Secretary determines that a chemical facility is a covered chemical facility or is no longer a covered chemical facility or changes the tier assignment under paragraph (1) of a covered chemical facility, the Secretary shall notify the owner or operator of that chemical facility of that determination or change together with the reason for the determination or change and, upon the request of the owner or operator of a covered chemical facility, provide to the owner or operator of the covered chemical facility the following information:

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

“(B) Information related to the criticality of the covered chemical facility.

“(C) The proximity or interrelationship of the covered chemical facility to other critical infrastructure.

“(d) REQUIREMENT FOR REVIEW.—The Secretary—

“(1) shall periodically review—

“(A) the designation of a substance of concern and the threshold quantity under subsection (a)(1); and

“(B) the criteria under subsection (b)(1); and

“(2) may at any time determine whether a chemical facility is a covered chemical facility or change the tier to which such a facility is assigned under subsection (c)(1).

“(e) **PROVISION OF THREAT-RELATED INFORMATION.**—In order to effectively assess the vulnerabilities to a covered chemical facility, the Secretary shall provide to the owner, operator, or security officer of a covered chemical facility threat information regarding probable threats to the facility and methods that could be used in a chemical facility terrorist incident.

**“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND SITE SECURITY PLANS.**

“(a) **IN GENERAL.**—

“(1) **REQUIREMENT.**—The Secretary shall—

“(A) establish standards, protocols, and procedures for security vulnerability assessments and site security plans to be required for covered chemical facilities;

“(B) require the owner or operator of each covered chemical facility to—

“(i) conduct an assessment of the vulnerability of the covered chemical facility to a range of chemical facility terrorist incidents, including an incident that results in a worst-case release of a substance of concern;

“(ii) prepare and implement a site security plan for that covered chemical facility that addresses the security vulnerability assessment and meets the risk-based chemical security performance standards under subsection (b);

“(iii) include at least one supervisory and at least one non-supervisory employee of the covered chemical facility, and at least one employee representative, from each bargaining agent at the covered chemical facility, if any, in developing the security vulnerability assessment and site security plan required under this clause;

“(iv) include, with the submission of a security vulnerability assessment of the facility and the site security plan, a signed statement by the owner or operator of the covered chemical facility that certifies that the submission is provided to the Secretary with knowledge of the penalty provisions under section 2107.

“(C) set deadlines, by tier, for the completion of security vulnerability assessments and site security plans;

“(D) upon request, as necessary, and to the extent that resources permit, provide technical assistance to a covered chemical facility conducting a vulnerability assessment or site security plan required under this section;

“(E) establish specific deadlines and requirements for the submission by a covered chemical facility of information describing—

“(i) any change in the use by the covered chemical facility of more than a threshold amount of any substance of concern that may affect the requirements of the chemical facility under this title; or

“(ii) any material modification to a covered chemical facility’s operations or site that may affect the security vulnerability assessment or site security plan submitted by the covered chemical facility;

“(F) require the owner or operator of a covered chemical facility to review and resubmit a security vulnerability assessment or site security plan not less frequently than once every 5 years;

“(G) not later than 180 days after the date on which the Secretary receives a security vulnerability assessment or site security plan under this title, review and approve or disapprove such assessment or plan; and

“(H) establish, as appropriate, modified or separate standards, protocols, and procedures for security vulnerability assessments and site security plans for covered chemical facilities that are also academic laboratories.

“(2) **INHERENTLY GOVERNMENTAL FUNCTION.**—The approval or disapproval of a security vulnerability assessment or site security plan under this section is an inherently governmental function.

“(b) **RISK-BASED CHEMICAL SECURITY PERFORMANCE STANDARDS.**—The Secretary shall establish risk-based chemical security performance standards for the site security plans required to be prepared by covered chemical facilities. In establishing such standards, the Secretary shall—

“(1) require separate and, as appropriate, increasingly stringent risk-based chemical security performance standards for site security plans as the level of risk associated with the tier increases;

“(2) permit each covered chemical facility submitting a site security plan to select a combination of security measures that satisfy the risk-based chemical security performance standards established by the Secretary under this subsection; and

“(3) provide, as appropriate, academic laboratories with modified or separate security measures that recognize the smaller quantities, highly distributed environments, and short periods of time that characterize the substances of concern at academic laboratories.

“(c) CO-LOCATED CHEMICAL FACILITIES.—The Secretary may allow an owner or operator of a covered chemical facility that is located geographically close to another covered chemical facility to develop and implement coordinated security vulnerability assessments and site security plans.

“(d) ALTERNATE SECURITY PROGRAMS SATISFYING REQUIREMENTS FOR SECURITY VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN.—

“(1) ACCEPTANCE OF PROGRAM.—In response to a request by an owner or operator of a covered chemical facility, the Secretary may accept an alternate security program submitted by the owner or operator of the facility as a component of the security vulnerability assessment or site security plan required under this section, if the Secretary determines that such alternate security program, in combination with other components of the security vulnerability assessment and site security plan submitted by the owner or operator of the facility—

“(A) meets the requirements of this title and the regulations promulgated pursuant to this title;

“(B) provides an equivalent level of security to the level of security established pursuant to the regulations promulgated under this title; and

“(C) includes employee participation as required under subsection (a)(1)(B)(iii).

“(2) SECRETARIAL REVIEW REQUIRED.—Nothing in this subsection shall relieve the Secretary of the obligation—

“(A) to review a security vulnerability assessment and site security plan submitted by a covered chemical facility under this section; and

“(B) to approve or disapprove each such assessment or plan on an individual basis according to the deadlines established under subsection (a).

“(3) COVERED FACILITY’S OBLIGATIONS UNAFFECTED.—Nothing in this subsection shall relieve any covered chemical facility of the obligation and responsibility to comply with all of the requirements of this title.

“(4) PERSONNEL SURETY ALTERNATE SECURITY PROGRAM.—In response to an application from a non-profit, personnel surety accrediting organization acting on behalf of, and with written authorization from, the owner or operator of a covered chemical facility, the Secretary may accept a personnel surety alternate security program that meets the requirements of section 2115 and provides for a background check process that is—

“(A) expedited, affordable, reliable, and accurate;

“(B) fully protective of the rights of covered individuals through procedures that are consistent with the privacy protections available under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); and

“(C) is a single background check consistent with a risk-based tiered program.

“(e) OTHER AUTHORITIES.—

“(1) REGULATION OF MARITIME FACILITIES.—

“(A) RISK-BASED TIERING.—Notwithstanding any other provision of law, the owner or operator of a chemical facility required to submit a facility security plan under section 70103(c) of title 46, United States Code, shall be required to submit information to the Secretary necessary to determine whether to designate such a facility as a covered chemical facility and to assign the facility to a risk-based tier under section 2102 of this title.

“(B) ADDITIONAL MEASURES.—In the case of a facility designated as a covered chemical facility under this title that is also regulated under section 70103(c) of title 46, United States Code, the Secretary shall require the owner or operator of such facility to update the vulnerability assessments and facility security plans required under that section, if necessary, to ensure an equivalent level of security for substances of concern, including the requirements under section 2111, in the same manner as other covered chemical facilities in this title.

“(C) INFORMATION SHARING AND PROTECTION.—Notwithstanding section 70103(d) of title 46, United States Code, the Secretary shall apply the infor-

mation sharing and protection requirements in section 2110 of this title to a facility described in subparagraph (B).

“(D) ENFORCEMENT.—The Secretary shall establish, by rulemaking, procedures to ensure that an owner or operator of a covered chemical facility required to update the vulnerability assessment and facility security plan for the facility under subparagraph (B) is in compliance with the requirements of this title.

“(E) FORMAL AGREEMENT.—The Secretary shall—

“(i) require the Office of Infrastructure Protection and the Coast Guard to enter into a formal agreement detailing their respective roles and responsibilities in carrying out the requirements of this title. Such agreement shall ensure that the enforcement and compliance requirements under this title and section 70103 of title 46, United States Code, are not conflicting or duplicative; and

“(ii) designate the agency responsible for enforcement of the requirements of this title for covered chemical facilities referred to in subparagraph (A).

“(2) COORDINATION OF STORAGE LICENSING OR PERMITTING REQUIREMENT.—In the case of any storage required to be licensed or permitted 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.

“(f) ROLE OF EMPLOYEES.—

“(1) DESCRIPTION OF ROLE REQUIRED.—As appropriate, security vulnerability assessments or site security plans required under this section shall describe the roles or responsibilities that covered individuals are expected to perform to deter or respond to a chemical facility terrorist incident.

“(2) TRAINING FOR EMPLOYEES.—The owner or operator of a covered chemical facility required to submit a site security plan under this section shall annually provide each covered individual with a role or responsibility referred to in paragraph (1) at the facility with a minimum of 8 hours of training. Such training shall—

“(A) include an identification and discussion of substances of concern;

“(B) include a discussion of possible consequences of a chemical facility terrorist incident;

“(C) review and exercise the covered chemical facility’s site security plan, including any requirements for differing threat levels;

“(D) include a review of information protection requirements;

“(E) include a discussion of physical and cyber security equipment, systems, and methods used to achieve chemical security performance standards;

“(F) allow training with other relevant participants, including Federal, State, local, and tribal authorities, and first responders, where appropriate;

“(G) use existing national voluntary consensus standards, chosen jointly with employee representatives, if any;

“(H) allow instruction through government training programs, chemical facilities, academic institutions, nonprofit organizations, industry and private organizations, employee organizations, and other relevant entities that provide such training;

“(I) use multiple training media and methods;

“(J) include identification and assessment of methods to reduce the consequences of a terrorist attack; and

“(K) include a discussion of appropriate emergency response procedures.

“(g) WORKER TRAINING GRANTS PROGRAM.—

“(1) AUTHORITY.—The Secretary shall establish a grant program to award grants to eligible entities to provide for training and education of covered individuals, first responders, and emergency response providers.

“(2) ADMINISTRATION.—The Secretary shall enter into an agreement with another Federal or State agency to make and administer grants or cooperative agreements under this section.

“(3) USE OF FUNDS.—The recipient of a grant under this subsection shall use the grant to provide for training and education of covered individuals, first responders, and emergency response providers, including—

“(A) the annual mandatory training specified in subsection (f)(2); and

“(B) other appropriate training for first responders and emergency response providers in protecting nearby persons, property, critical infrastructure, or the environment from the effects of a chemical facility terrorist incident.

“(4) ELIGIBLE ENTITIES.— For purposes of this subsection, an eligible entity is a nonprofit organization with demonstrated experience in implementing and operating successful worker or first responder health and safety training programs.

**“SEC. 2104. SITE INSPECTIONS.**

“(a) RIGHT OF ENTRY.—For purposes of carrying out this title, the Secretary shall have, at a reasonable time and on presentation of credentials, a right of entry to, on, or through any property of a covered chemical facility or any property on which any record required to be maintained under this section is located.

“(b) INSPECTIONS AND VERIFICATIONS.—

“(1) IN GENERAL.—The Secretary shall, at such time and place as the Secretary determines to be reasonable and appropriate, conduct chemical facility security inspections and verifications.

“(2) REQUIREMENTS.—To ensure and evaluate compliance with this title, including any regulations or requirements adopted by the Secretary in furtherance of the purposes of this title, in conducting an inspection or verification under paragraph (1), the Secretary shall have access to the owners, operators, employees, and employee representatives, if any, of a covered chemical facility.

“(c) UNANNOUNCED INSPECTIONS.—In addition to any inspection conducted pursuant to subsection (b), the Secretary shall require covered chemical facilities assigned to tier 1 and tier 2 under section 2102(c)(1) to undergo unannounced facility inspections. The inspections required under this subsection shall be—

“(1) conducted without prior notice to the facility;

“(2) designed to evaluate at the chemical facility undergoing inspection—

“(A) the ability of the chemical facility to prevent a chemical facility terrorist incident that applicable chemical security performance standards are intended to prevent;

“(B) the ability of the chemical facility to protect against security threats that are required to be addressed by applicable chemical security performance standards; and

“(C) any weaknesses in the security plan of the chemical facility;

“(3) conducted so as not to affect the actual security, physical integrity, or safety of the chemical facility or its employees while the inspection is conducted; and

“(4) conducted—

“(A) every two years in the case of a covered chemical facility assigned to tier 1; and

“(B) every four years in the case of a covered chemical facility assigned to tier 2.

“(d) CHEMICAL SECURITY INSPECTORS AUTHORIZED.—Subject to availability of appropriations for such purpose, the Secretary shall hire not fewer than 100 additional chemical facility inspectors in fiscal years 2010 and 2011 to ensure compliance with this title.

**“SEC. 2105. RECORDS.**

“(a) REQUESTS FOR RECORDS.—

“(1) IN GENERAL.—In carrying out this title, the Secretary may require the submission of or, on presentation of credentials, may at reasonable times obtain access to and copy any records, including any records maintained in electronic format, necessary for—

“(A) reviewing or analyzing a security vulnerability assessment or site security plan submitted under section 2103; or

“(B) assessing the implementation of such a site security plan.

“(2) PROPER HANDLING OF RECORDS.—In accessing or copying any records under paragraph (1), the Secretary shall ensure that such records are handled and secured appropriately in accordance with section 2110.

“(b) PROVISION OF RECORDS TO EMPLOYEE REPRESENTATIVES.—If a covered chemical facility has one or more certified or recognized bargaining agents, the owner or operator of the covered chemical facility shall provide an employee representative designated by each such bargaining agent at such facility with a copy of any security vulnerability assessment or site security plan submitted. Each employee representative shall ensure that any such assessment or plan provided to the representative is handled and secured appropriately in accordance with section 2110.

**“SEC. 2106. TIMELY SHARING OF THREAT INFORMATION.**

“(a) RESPONSIBILITIES OF SECRETARY.—Upon the receipt of information concerning a threat that is relevant to a certain covered chemical facility, the Secretary shall provide such information in a timely manner, to the maximum extent practicable under applicable authority and in the interests of national security, to the owner,

operator, or security officer of that covered chemical facility, to a representative of each recognized or certified bargaining agent at the facility, if any, and to relevant State, local, and tribal authorities, including the State Homeland Security Advisor, if applicable.

“(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—The Secretary shall require the owner or operator of a covered chemical facility to provide information concerning a threat in a timely manner about any significant security incident or threat to the covered chemical facility or any intentional or unauthorized penetration of the physical security or cyber security of the covered chemical facility whether successful or unsuccessful.

**“SEC. 2107. ENFORCEMENT.**

“(a) REVIEW OF SITE SECURITY PLAN.—

“(1) DISAPPROVAL.—The Secretary shall disapprove a security vulnerability assessment or site security plan submitted under this title if the Secretary determines that—

“(A) the security vulnerability assessment or site security plan does not comply with the standards, protocols, or procedures under section 2103(a)(1)(A); or

“(B) in the case of a site security plan—

“(i) the plan or the implementation of the plan is insufficient to address vulnerabilities identified in a security vulnerability assessment, site inspection, or unannounced inspection of the covered chemical facility; or

“(ii) the plan fails to meet all applicable chemical facility security performance standards.

“(2) PROVISION OF NOTIFICATION OF DISAPPROVAL.—If the Secretary disapproves the security vulnerability assessment or site security plan submitted by a covered chemical facility under this title or the implementation of a site security plan by such a chemical facility, the Secretary shall provide the owner or operator of the covered chemical facility a written notification of the disapproval within 14 days of the date on which the Secretary disapproves such assessment or plan, that—

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

“(B) requires the owner or operator of the covered chemical facility to revise the assessment or plan to address any deficiencies and, by such date as the Secretary determines is appropriate, to submit to the Secretary the revised assessment or plan.

“(3) ORDER FOR COMPLIANCE.—Whenever the Secretary determines that the owner or operator of a covered chemical facility has violated or is in violation of any requirement of this title or has failed or is failing to address any deficiencies in the assessment, plan, or implementation of the plan by such date as the Secretary determines to be appropriate, the Secretary, after providing an opportunity for the owner or operator of the covered chemical facility to consult with the Secretary, may—

“(A) issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both; or

“(B) commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including temporary or permanent injunction.

“(4) ORDER TO CEASE OPERATIONS.—If the Secretary determines that the owner or operator of a covered chemical facility continues to be in noncompliance after an order for compliance is issued under paragraph (3), the Secretary may issue an order to the owner or operator of a covered chemical facility to cease operations at the facility until the owner or operator complies with such order issued under paragraph (3). Notwithstanding the preceding sentence, the Secretary may not issue an order to cease operations under this paragraph to the owner or operator of a wastewater facility.

“(b) PENALTIES.—

“(1) CIVIL PENALTIES.—A court may award a civil penalty, pursuant to an order issued by the Secretary under this title, of not more than \$50,000 for each day on which a violation occurs or a failure to comply continues.

“(2) ADMINISTRATIVE PENALTIES.—The Secretary may award an administrative penalty, pursuant to an order issued under this title, of not more than \$25,000 for each day on which a violation occurs or a failure to comply continues.

“(3) APPLICABILITY OF PENALTIES.—Penalties under paragraphs (1) and (2) may be awarded for any violation of this title, including a violation of the whistleblower protections under section 2108.

**“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

“(a) 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 covered chemical facility associated with the risk of a chemical facility terrorist incident.

“(b) CONFIDENTIALITY.—The Secretary shall keep confidential the identity of a person that submits a report under subsection (a) and any such report shall be treated as protected information under section 2110 to the extent that it does not consist of publicly available information.

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

“(d) STEPS TO ADDRESS PROBLEMS.—The Secretary shall review and consider the information provided in any report submitted under subsection (a) and shall, as necessary, take appropriate steps under this title to address any problem, deficiency, or vulnerability identified in the report.

**“(e) RETALIATION PROHIBITED.—**

“(1) PROHIBITION.—No owner or operator of a covered chemical facility, for-profit or not-for-profit corporation, association, or any contractor, subcontractor or agent thereof, may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or other privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

“(A) notified the Secretary, the owner or operator of a covered chemical facility, or the employee’s employer of an alleged violation of this title, including communications related to carrying out the employee’s job duties;

“(B) refused to engage in any practice made unlawful by this title, if the employee has identified the alleged illegality to the employer;

“(C) testified before or otherwise provided information relevant for Congress or for any Federal or State proceeding regarding any provision (or proposed provision) of this title;

“(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title;

“(E) testified or is about to testify in any such proceeding; or

“(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this title.

“(2) ENFORCEMENT ACTION.—Any employee covered by this section who alleges discrimination by an employer in violation of paragraph (1) may bring an action governed by the rules and procedures, legal burdens of proof, and remedies applicable under subsections (d) through (h) of section 20109 of title 49, United States Code. A party may seek district court review as set forth in subsection (d)(4) of such section not later than 90 days after receiving a written final determination by the Secretary of Labor.

**“(f) PROHIBITED PERSONNEL PRACTICES AFFECTING THE DEPARTMENT.—**

“(1) IN GENERAL.—Notwithstanding any other provision of law, any individual holding or applying for a position of employment within the Department shall be covered by—

“(A) paragraphs (1), (8), and (9) of section 2302(b) of title 5, United States Code;

“(B) any provision of law implementing any of such paragraphs by providing any right or remedy available to an employee or applicant for employment in the civil service; and

“(C) any rule or regulation prescribed under any such paragraph.

“(2) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect any rights, apart from those referred to in paragraph (1), to which an individual described in that subparagraph might otherwise be entitled to under law.

**“SEC. 2109. FEDERAL PREEMPTION.**

“This title does not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to a covered chemical facility that is more stringent than a regulation, requirement, or standard of performance issued under this title, or otherwise impair any right or jurisdiction of any State or political subdivision thereof with respect to covered chemical facilities within that State or political subdivision thereof.

**“SEC. 2110. PROTECTION OF INFORMATION.**

“(a) PROHIBITION OF PUBLIC DISCLOSURE OF PROTECTED INFORMATION.—Protected information, as described in subsection (g), that is provided to the Department by the owner or operator of a covered chemical facility or created by the Department under the requirements of this title—

“(1) is exempt from disclosure under section 552 of title 5, United States Code; and

“(2) may not be made available pursuant to any State or local law requiring disclosure of information or records.

“(b) INFORMATION SHARING.—The Secretary shall facilitate and provide standards for the appropriate sharing of protected information with and between Federal, State, local, and tribal governments, emergency response providers, law enforcement officials, designated supervisory and non-supervisory covered chemical facility personnel with security, operational, or fiduciary responsibility for the facility, and designated facility employee representatives, if any.

“(c) TREATMENT OF INFORMATION IN ADJUDICATIVE PROCEEDINGS.—In a proceeding under this title, protected information described in subsection (g), or related vulnerability or security information, shall be treated in any judicial or administrative action in a manner consistent with the treatment of sensitive security information under section 525 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109-295; 120 Stat. 1321).

“(d) OTHER OBLIGATIONS UNAFFECTED.—Nothing in this section affects any obligation of the owner or operator of a chemical facility under any other law to submit or make available information required by such other law to facility employees, employee organizations, or a Federal, State, tribal, or local government.

“(e) SUBMISSION OF INFORMATION TO CONGRESS.—Nothing in this title shall permit or authorize the withholding of information from Congress or any committee or subcommittee thereof.

“(f) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—Nothing in this title shall affect any authority or obligation of a Federal, State, or local agency to protect or disclose any record or information that the Federal, State, or local government agency obtains from a chemical facility under any other law.

“(g) PROTECTED INFORMATION.—

“(1) IN GENERAL.—For purposes of this title, protected information is the following:

“(A) Security vulnerability assessments and site security plans submitted to the Secretary under this title.

“(B) Portions of the following documents, records, orders, notices, or letters that the Secretary determines would be detrimental to chemical facility security if disclosed and that are developed by the Secretary or the owner or operator of a covered chemical facility exclusively for the purposes of this title:

“(i) Documents directly related to the Secretary’s review and approval or disapproval of vulnerability assessments and site security plans under this title.

“(ii) Documents directly related to inspections and audits under this title.

“(iii) Orders, notices, or letters regarding the compliance of a covered chemical facility with the requirements of this title.

“(iv) Information provided to or created by the Secretary under section subsection (b) or (c) of section 2102.

“(C) Other information developed exclusively for the purposes of this title that the Secretary determines, if disclosed, would be detrimental to chemical facility security.

“(2) EXCLUSIONS.—For purposes of this section, protected information does not include—

“(A) information that is otherwise publicly available, including information that is required to be made publicly available under any law;

“(B) information that a chemical facility has lawfully disclosed other than in accordance with this title; or

“(C) information that, if disclosed, would not be detrimental to the security of a chemical facility, including aggregate regulatory data that the Secretary determines is appropriate to describe facility compliance with the requirements of this title and the Secretary’s implementation of such requirements.

**“SEC. 2111. METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.**

“(a) ASSESSMENT REQUIRED.—The owner or operator of a covered chemical facility shall include in the site security plan conducted pursuant to section 2103, an assess-

ment of methods to reduce the consequences of a terrorist attack on that chemical facility, including—

“(1) a description of the methods to reduce the consequences of a terrorist attack assessed by the covered chemical facility;

“(2) the degree to which each method to reduce the consequences of a terrorist attack could, if applied, reduce the potential extent of death, injury, or serious adverse effects to human health resulting from a terrorist release;

“(3) the technical viability, costs, avoided costs (including liabilities), savings, and applicability of implementing each method to reduce the consequences of a terrorist attack; and

“(4) any other information that the owner or operator of the covered chemical facility considered in conducting the assessment.

“(b) IMPLEMENTATION.—

“(1) IMPLEMENTATION.—The owner or operator of a covered chemical facility assigned to tier 1 or tier 2 that is required to conduct an assessment under subsection (a) 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 (a), that the implementation of such methods at the facility—

“(A) would significantly reduce the risk of death, injury, or serious adverse effects to human health resulting from a chemical facility terrorist incident but would not increase the interim storage of a substance of concern outside the facility or directly result in the creation of a new covered chemical facility assigned to tier 1 or tier 2 or the elevation of an existing covered chemical facility to tier 1 or tier 2;

“(B) can feasibly be incorporated into the operation of the covered chemical facility;

“(C) would not significantly and demonstrably impair the ability of the owner or operator of the covered chemical facility to continue the business of the facility at its location;

“(D) would not significantly or demonstrably reduce the operations of the covered chemical facility or result in a reduction of the workforce of the covered chemical facility; and

“(E) would not significantly transfer security risk to the transportation infrastructure of the United States.

“(2) ANALYSIS REQUIRED.—

“(A) IN GENERAL.—The Secretary may not require facilities to implement methods to reduce the consequences of a terrorist attack until the Secretary conducts a detailed analysis of the effects of such mandatory implementation. Such analysis shall consider—

“(i) the costs companies and facilities will incur as a result of mandatory implementation;

“(ii) any resultant loss of employment sustained; and

“(iii) any loss of production due to implementation.

“(B) CONSULTATION.— In completing the analysis required by subparagraph (A), the Secretary shall consult with relevant stakeholder groups, including—

“(i) experts from the chemical industry;

“(ii) representatives of covered chemical facilities;

“(iii) members of the academic community; and

“(iv) appropriate representatives from organized labor.

“(C) REPORT.—The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report detailing the Secretary’s analysis required by this subsection.

“(3) REVIEW OF INABILITY TO COMPLY.—

“(A) IN GENERAL.—An owner or operator of a covered chemical facility who is unable to comply with the Secretary’s determination under paragraph (1) shall, within 60 days of receipt of the Secretary’s determination, provide to the Secretary a written explanation that includes the reasons therefor.

“(B) REVIEW.—Not later than 60 days after the receipt of an explanation submitted under subparagraph (A), the Secretary, after consulting with the owner or operator of the covered chemical facility who submitted such explanation, shall provide to the owner or operator a written determination of whether implementation shall be required pursuant to paragraph (1). If the Secretary determines that implementation is required, the facility shall be required to begin implementation within 180 days of that determination.

“(4) APPEALS.—

“(A) IN GENERAL.—An owner or operator of a covered chemical facility who is unable to comply with the Secretary’s determination under paragraph (3)(B) may request a de novo hearing before an administrative law judge of the Department of Homeland Security within 30 days of receipt of the Secretary’s determination. An owner or operator of a covered facility requesting such a hearing shall not be required to begin implementation otherwise required by paragraph (3)(B).

“(B) HEARING.—To the extent necessary for the decision in a proceeding commenced under this paragraph, the administrative law judge shall decide all relevant questions of law and regulation. The administrative law judge shall set aside the Secretary’s determination if it is determined to be—

“(i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;

“(ii) not made consistent with required procedures; or

“(iii) not supported by substantial evidence.

“(C) TIME FRAME FOR DECISIONS.—The decision of the administrative law judge shall be rendered within 30 days of the de novo hearing and shall constitute final action by the Secretary.

“(D) ACTION UPON DECISION.—If the administrative law judge—

“(i) concurs with the Secretary’s determination under paragraph (1), the owner or operator of a covered chemical facility shall begin to implement the methods to reduce the consequences of a terrorist attack required by the Secretary not later than 180 days following the decision of the administrative law judge; or

“(ii) sets aside the Secretary’s determination under such paragraph, the owner or operator of a covered chemical facility shall not be required to comply with such methods.

“(c) PROVISION OF INFORMATION ON ALTERNATIVE APPROACHES.—

“(1) IN GENERAL.—The Secretary shall make available information to chemical facilities on the use and availability of methods to reduce the consequences of a chemical facility terrorist incident.

“(2) INFORMATION TO BE INCLUDED.—The information under paragraph (1) may include information about—

“(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) emerging technologies that could be transferred from research models or prototypes to practical applications;

“(F) the availability of technical assistance and best practices; and

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

“(3) PUBLIC AVAILABILITY.—Information made available under this subsection shall not identify any specific chemical facility, violate the protection of information provisions under section 2110, or disclose any proprietary information.

“(d) FUNDING FOR METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.—The Secretary may make funds available to help defray the cost of implementing methods to reduce the consequences of a terrorist attack to covered chemical facilities that are required by the Secretary to implement such methods.

“(e) APPLICABILITY TO SMALL BUSINESS CONCERNS.—

“(1) REPORT.—

“(A) IN GENERAL.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Homeland Security of the House of Representatives that reviews and assesses the security issues associated with exempting from this section businesses that are small business concerns, as determined by the Administrator of the Small Business Administration pursuant to the regulations set forth in 13 C.F.R. 121.201, as in effect on January 1, 2009.

“(B) CONTENTS.—The report shall include—

“(i) an analysis of the potential issues relevant to exempting small business concerns, as defined in subparagraph (A), from the requirements of this section, including the potential effect of such an exemption on the security of chemical facilities in the United States and the economic effect of applying this section to such small business concerns; and

“(ii) any other elements the Secretary determines to be relevant or appropriate.

“(2) DETERMINATION OF APPLICABILITY.—Upon submission of the report required in paragraph (1), the Secretary shall determine whether a small business concern, as defined in paragraph (1)(A), shall be subject to or exempt from this section.

**“SEC. 2112. APPLICABILITY.**

“This title shall not apply to—

“(1) any chemical facility that is owned and operated by the Secretary of Defense;

“(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) all or a specified portion of any chemical facility that—

“(A) is subject to regulation by the Nuclear Regulatory Commission (hereinafter in this paragraph referred to as the ‘Commission’) or a State that has entered into an agreement with the Commission under section 274 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021 b.);

“(B) has had security controls imposed by the Commission or State, whichever has the regulatory authority, on the entire facility or the specified portion of the facility; and

“(C) has been designated by the Commission, after consultation with the State, if any, that regulates the facility, and the Secretary, as excluded from the application of this title.

**“SEC. 2113. SAVINGS CLAUSE.**

“(a) IN GENERAL.—Nothing in this title shall affect or modify in any way any obligation or liability of any person under any other Federal law, including section 112 of the Clean Air Act (42 U.S.C. 7412), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety and Health Act (29 U.S.C. 651 et seq.), the National Labor Relations Act (29 U.S.C. 151 et seq.), the Emergency Planning and Community Right to Know Act of 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Maritime Transportation Security Act of 2002 (Public Law 107–295), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

“(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.

**“SEC. 2114. OFFICE OF CHEMICAL FACILITY SECURITY.**

“(a) IN GENERAL.—There is established in the Department an Office of Chemical Facility Security, headed by a Director, who shall be a member of the Senior Executive Service in accordance with subchapter VI of chapter 33 of title 5, United States Code, under section 5382 of that title, and who shall be responsible for carrying out the responsibilities of the Secretary under this title.

“(b) PROFESSIONAL QUALIFICATIONS.—The individual selected by the Secretary as the Director of the Office of Chemical Facility Security shall have professional qualifications and experience necessary for effectively directing the Office of Chemical Facility Security and carrying out the requirements of this title, including a demonstrated knowledge of physical infrastructure protection, cybersecurity, chemical facility security, hazard analysis, chemical process engineering, chemical process safety reviews, or other such qualifications that the Secretary determines to be necessary.

“(c) SELECTION PROCESS.—The Secretary shall make a reasonable effort to select an individual to serve as the Director from among a group of candidates that is diverse with respect to race, ethnicity, age, gender, and disability characteristics and submit to the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate information on the selection process, including details on efforts to assure diversity among the candidates considered for this position.

**“SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED INDIVIDUALS AT CERTAIN CHEMICAL FACILITIES.**

“(a) REGULATIONS ISSUED BY THE SECRETARY.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—The Secretary shall issue regulations to require covered chemical facilities to establish personnel surety for individuals de-

scribed in subparagraph (B) by conducting appropriate security background checks and ensuring appropriate credentials for unescorted visitors and chemical facility personnel, including permanent and part-time personnel, temporary personnel, and contract personnel, including—

- “(i) measures designed to verify and validate identity;
- “(ii) measures designed to check criminal history;
- “(iii) measures designed to verify and validate legal authorization to work; and
- “(iv) measures designed to identify people with terrorist ties.

“(B) INDIVIDUALS DESCRIBED.—For purposes of subparagraph (A), an individual described in this subparagraph is an individual with access to restricted areas or critical assets of a covered chemical facility, including—

- “(i) a covered individual who has unescorted access to restricted areas or critical assets or who is provided with a copy of a security vulnerability assessment or site security plan;
- “(ii) a person associated with a covered chemical facility who is provided with a copy of a security vulnerability assessment or site security plan; or
- “(iii) a person who is determined by the Secretary to require a security background check based on chemical facility security performance standards.

“(2) REGULATIONS.—The regulations required by paragraph (1) shall set forth—

“(A) the scope of the security background checks, including the types of disqualifying offenses and the time period covered for each person subject to a security background check under paragraph (1);

“(B) the processes to conduct the security background checks;

“(C) the necessary biographical information and other data required in order to conduct the security background checks;

“(D) a redress process for an adversely-affected person consistent with subsections (b) and (d); and

“(E) a prohibition on an owner or operator of a covered chemical facility unreasonably misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

“(b) REQUIREMENTS.—Upon issuance of regulations under subsection (a), the Secretary shall prohibit the owner or operator of a covered chemical facility from making an adverse employment decision, including removal or suspension of the employee, due to such regulations with respect to such person unless such person—

“(1) has been convicted of, has been found not guilty of by reason of insanity of, or is under want, warrant, or indictment for a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;

“(2) was convicted of or found not guilty by reason of insanity of an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date on which the covered chemical facility performs the security background check;

“(3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the chemical facility performs the security background check;

“(4) is determined by the Secretary to be on the consolidated terrorist watchlist; or

“(5) is determined, as a result of the security background check, not to be legally authorized to work in the United States.

“(c) TERMINATION OF EMPLOYMENT.—If an owner or operator of a chemical facility finds that pursuant to a security background check a covered individual is not legally authorized to work in the United States, the owner or operator shall cease to employ the covered individual subject to the redress process under subsection (d).

“(d) REDRESS PROCESS.—Upon the issuance of regulations under subsection (a), the Secretary shall—

“(1) require an adequate and prompt redress process for a person subject to a security background check under subsection (a)(1) who is subjected to an adverse employment decision, including removal or suspension of the employee, due to such regulations that is consistent with the appeals and waiver processes established for applicants for transportation workers at ports, as required by section 70105(c) of title 46, United States Code, including all rights to hearings before an administration law judge, scope of review, a review of an unclassified

summary of classified evidence equivalent to the summary provided in part 1515 of title 49, Code of Federal Regulations, and procedures for new evidence for both appeals and waiver decisions;

“(2) have the authority to order an appropriate remedy, including reinstatement of the person subject to a security background check under subsection (a)(1), should the Secretary determine that the owner or operator of a covered chemical facility wrongfully made an adverse employment decision regarding such person pursuant to such rule, regulation, directive, or guidance;

“(3) ensure that the redress process required under this subsection affords to the covered individual a full disclosure of any public-record event covered by subsection (b) that provides the basis for an adverse employment decision; and

“(4) ensure that the person subject to a security background check under subsection (a)(1) receives the person’s full wages and benefits until all appeals and waiver procedures are exhausted.

“(e) **RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.**—Information obtained under this section by the Secretary or the owner or operator of a covered chemical facility shall be handled as follows:

“(1) Such information may not be made available to the public.

“(2) Such information may not be accessed by employees of the facility except for such employees who are directly involved with collecting the information or conducting or evaluating security background checks.

“(3) Such information shall be maintained confidentially by the facility and the Secretary and may be used only for making determinations under this section.

“(4) The Secretary may share such information with other Federal, State, local, and tribal law enforcement agencies.

“(f) **RIGHTS AND RESPONSIBILITIES.**—Nothing in this section shall be construed to abridge any right or responsibility of a person subject to a security background check under subsection (a)(1) or an owner or operator of a covered chemical facility under any other Federal, State, local, or tribal law or collective bargaining agreement.

“(g) **PREEMPTION.**—Nothing in this section shall be construed to preempt, alter, or affect a Federal, State, local, or tribal law that requires criminal history background checks, checks on the authorization of an individual to work in the United States, or other background checks of persons subject to security background checks under subsection (a)(1).

“(h) **DEFINITION OF SECURITY BACKGROUND CHECK.**—The term ‘security background check’ means a review at no cost to any person subject to a security background check under subsection (a)(1) of the following for the purpose of identifying individuals who may pose a threat to chemical facility security, to national security, or of terrorism:

“(1) Relevant databases to verify and validate identity.

“(2) Relevant criminal history databases.

“(3) In the case of an alien (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the relevant databases to determine the status of the alien under the immigration laws of the United States.

“(4) The consolidated terrorist watchlist.

“(5) Other relevant information or databases, as determined by the Secretary.

“(i) **SAVINGS CLAUSE.**—Nothing in this section shall be construed as creating any new right or modifying any existing right of an individual to appeal a determination by the Secretary as a result of a check against a terrorist watch list.

**“SEC. 2116. CITIZEN SUITS.**

“(a) **IN GENERAL.**—Except as provided in subsection (c), any person may commence a civil action on the person’s own behalf—

“(1) against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this title; or

“(2) against the Secretary, if there is an alleged failure of the Secretary to perform any act or duty under this title that is not discretionary for the Secretary.

“(b) **COURT OF JURISDICTION.**—

“(1) **IN GENERAL.**—Any action under subsection (a)(1) shall be brought in the district court for the district in which the alleged violation occurred. Any action brought under subsection (a)(2) may be brought in the district court for the district in which the alleged violation occurred or in the United States District Court of the District of Columbia.

“(2) RELIEF.—The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the standard, regulation, condition, requirement, prohibition, or order, referred to in subsection (a)(1), to order such person to take such other action as may be necessary, or both, or to order the Secretary to perform the act or duty referred to in subsection (a)(2), as the case may be, and to apply any appropriate civil penalties under section 2107.

“(c) ACTIONS PROHIBITED.—No action may be commenced under subsection (a)—  
 “(1) prior to 120 days after the date on which the person commencing the action has given notice of the alleged violation to—

“(A) the Secretary; and

“(B) in the case of an action under subsection (a), any alleged violator of such standard, regulation, condition, requirement, prohibition, or order; or

“(2) if the Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State, or has issued an administrative order, to require compliance with such standard, regulation, condition, requirement, prohibition, or order.

“(d) NOTICE.—Notice under this section shall be given in such manner as the Secretary shall prescribe by regulation.

“(e) INTERVENTION.—In any action under this section the Secretary, if not a party, may intervene as a matter of right.

“(f) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

“(g) OTHER RIGHTS PRESERVED.—Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law.

“SEC. 2117. ANNUAL REPORT TO CONGRESS.

“(a) ANNUAL REPORT.—Not later than one year after the date of the enactment of this title, annually thereafter for the next four years, and biennially thereafter, the Secretary shall submit to the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Environment and Public Works of the Senate a report on progress in achieving compliance with this title. Each such report shall include the following:

“(1) A qualitative discussion of how covered chemical facilities, differentiated by tier, have reduced the risks of chemical facility terrorist incidents at such facilities, including—

“(A) a generalized summary of measures implemented by covered chemical facilities in order to meet each risk-based chemical facility performance standard established by this title, and those that the facilities already had in place—

“(i) in the case of the first report under this section, before the issuance of the final rule implementing the regulations known as the ‘Chemical Facility Anti-Terrorism Standards’, issued on April 9, 2007; and

“(ii) in the case of each subsequent report, since the submittal of the most recent report submitted under this section; and

“(B) any other generalized summary the Secretary deems appropriate to describe the measures covered chemical facilities are implementing to comply with the requirements of this title.

“(2) A quantitative summary of how the covered chemical facilities, differentiated by tier, are complying with the requirements of this title during the period covered by the report and how the Secretary is implementing and enforcing such requirements during such period, including—

“(A) the number of chemical facilities that provided the Secretary with information about possessing substances of concern, as described in section 2102(b)(2);

“(B) the number of covered chemical facilities assigned to each tier;

“(C) the number of security vulnerability assessments and site security plans submitted by covered chemical facilities;

“(D) the number of security vulnerability assessments and site security plans approved and disapproved by the Secretary;

“(E) the number of covered chemical facilities without approved security vulnerability assessments or site security plans;

“(F) the number of chemical facilities that have been assigned to a different tier or are no longer regulated by the Secretary due to implementation of a method to reduce the consequences of a terrorist attack;

“(G) the number of orders for compliance issued by the Secretary;

“(H) the administrative penalties assessed by the Secretary for non-compliance with the requirements of this title;

“(I) the civil penalties assessed by the court for non-compliance with the requirements of this title; and

“(J) any other regulatory data the Secretary deems appropriate to describe facility compliance with the requirements of this title and the Secretary’s implementation of such requirements.

“(b) PUBLIC AVAILABILITY.—A report submitted under this section shall be made publicly available.

**“SEC. 2118. AUTHORIZATION OF APPROPRIATIONS.**

“There is authorized to be appropriated to the Secretary of Homeland Security to carry out this title—

“(1) \$325,000,000 for fiscal year 2011, of which \$100,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack;

“(2) \$300,000,000 for fiscal year 2012, of which \$75,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack; and

“(3) \$275,000,000 for fiscal year 2013, of which \$50,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack.

**“SEC. 2119. NOTIFICATION SYSTEM TO ADDRESS PUBLIC CONCERNS.**

“(a) ESTABLISHMENT.—The Secretary shall establish a notification system, which provides any individual the ability to report a suspected security deficiency or suspected non-compliance with this title. Such notification system shall include the ability to report the suspected security deficiency or non-compliance via telephonic and internet-based means.

“(b) ACKNOWLEDGMENT.—The Secretary shall respond in a timely manner, but in no case exceed 30 days, to any report received through the notification system established under subsection (a).

“(c) STEPS TO ADDRESS PROBLEMS.—The Secretary shall review the report of suspected security deficiency and shall, as necessary, take appropriate enforcement action authorized under section 2107 of this title.

“(d) FEEDBACK REQUIRED.—Upon request, the Secretary shall provide the individual who reported the suspected security deficiency or non-compliance a written response as to the Secretary’s findings and what, if any, compliance action was taken.

“(e) INSPECTOR GENERAL REPORT REQUIRED.—The Inspector General for the Department of Homeland Security shall provide a report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Government Affairs of the Senate on the number of reports received by the notification system established under subsection (a) and the Secretary’s disposition of such reports.”.

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

**“TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES**

“Sec. 2101. Definitions.

“Sec. 2102. Risk-based designation and ranking of chemical facilities.

“Sec. 2103. Security vulnerability assessments and site security plans.

“Sec. 2104. Site inspections.

“Sec. 2105. Records.

“Sec. 2106. Timely sharing of threat information.

“Sec. 2107. Enforcement.

“Sec. 2108. Whistleblower protections.

“Sec. 2109. Federal preemption.

“Sec. 2110. Protection of information.

“Sec. 2111. Methods to reduce the consequences of a terrorist attack.

“Sec. 2112. Applicability.

“Sec. 2113. Savings clause.

“Sec. 2114. Office of Chemical Facility Security.

“Sec. 2115. Security background checks of covered individuals at certain chemical facilities.

“Sec. 2116. Citizen suits.

“Sec. 2117. Annual report to Congress.

“Sec. 2118. Authorization of appropriations.

“Sec. 2119. Notification system to address public concerns.”.

**(c) CONFORMING REPEAL.—**

(1) REPEAL.—The Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295) is amended by striking section 550.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on October 1, 2009.

(d) TREATMENT OF CFATS REGULATIONS.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of Homeland Security was granted statutory authority under section 550 of the Department of Homeland Security Appropriations Act (Public Law 109-295) to regulate security practices at chemical facilities until October 1, 2009. Pursuant to that section the Secretary prescribed regulations known as the Chemical Facility Anti-Terrorism Standards, or “CFATS”.

(2) USE OF CURRENT REGULATIONS.—In carrying out the requirements of title XXI of the Homeland Security Act of 2002, as added by subsection (a), the Secretary may, to the extent that the Secretary determines is appropriate, use any of the regulations known as CFATS regulations, as in effect immediately before the date of the enactment of this Act, that the Secretary determines carry out such requirements.

(3) AMENDMENT OF CFATS.—The Secretary shall amend the regulations known as the Chemical Facility Anti-Terrorism Standards to ensure that such regulations fulfill the requirements of this Act and the amendments made by this Act, to the extent that the requirements of this Act and the amendments made by this Act differ from the requirements of such regulations, as in effect on the date of the enactment of this Act.

(4) USE OF TOOLS DEVELOPED FOR CFATS.—In carrying out this Act and the amendments made by this Act, to the extent determined appropriate by the Secretary, the Secretary may use such rules or tools developed for purposes of the regulations known as the Chemical Facility Anti-Terrorism Standards, including the list of substances of concern, usually referred to as “Appendix A” and the chemical security assessment tool (which includes facility registration, a top-screen questionnaire, a security vulnerability assessment tool, a site security plan template, and a chemical vulnerability information repository).

(e) FACILITIES COVERED BY CFATS.—The owner or operator of a covered chemical facility, who, before the effective date of the final regulations issued under title XXI of the Homeland Security Act of 2002, as added by subsection (a), submits a security vulnerability assessment or site security plan under the regulations known as CFATS regulations, as in effect immediately before the enactment of this Act, shall be required to update or amend the facility’s security vulnerability assessment and site security plan to reflect any additional requirements of this Act or the amendments made by this Act, according to a timeline established by the Secretary.

(f) CONSULTATION WITH OTHER PERSONS.—In developing and carrying out the regulations under title XXI of the Homeland Security Act of 2002, as added by subsection (a), the Secretary shall consult with the Administrator of the Environmental Protection Agency, and other persons, as appropriate, regarding—

- (1) the designation of substances of concern;
- (2) methods to reduce the consequences of a terrorist attack;
- (3) security at co-owned or co-operated drinking water and wastewater facilities;
- (4) the treatment of protected information; and
- (5) such other matters as the Secretary determines necessary.

(g) DEADLINE FOR REGULATIONS.—

(1) PROPOSED RULE.—The Secretary of Homeland Security shall promulgate a proposed rule to fulfill the requirements of title XXI of the Homeland Security Act of 2002, as added by subsection (a), not later than 6 months after the date of the enactment of this Act.

(2) FINAL RULE.—The Secretary shall, after proper notice and opportunity for public comment, promulgate a final rule to fulfill the requirements of such title not later than 18 months after the date of the enactment of this Act.

(h) REVIEW OF DESIGNATION OF SODIUM FLUOROACETATE AS A SUBSTANCE OF CONCERN.—The Secretary of Homeland Security shall review the designation of sodium fluoroacetate as a substance of concern pursuant to subparagraph (A) of paragraph (1) of subsection (d) of section 2102 of the Homeland Security Act of 2002, as added by subsection (a), by the earlier of the following dates:

- (1) The date of the first periodic review conducted pursuant to such subsection after the date of the enactment of this Act.
- (2) The date that is one year after the date of the enactment of this Act.

## PURPOSE AND SUMMARY

The purpose of H.R. 2868 is to amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Sec-

retary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.

#### BACKGROUND AND NEED FOR LEGISLATION

In 1984, a chemical facility in Bhopal, India accidentally released 40 tons of methyl isocyanate. The initial exposure killed approximately 3,000 people, and at least 15,000 more died from illnesses related to the accident. The tragic event in Bhopal was an accident; had it been a deliberate terrorist attack, the consequences could have been much worse.

Chemical facilities are an integral part of the United States economy, generating \$550 billion in annual revenues. These facilities, often located in densely populated areas, hold many chemicals that can cause serious harm to humans and the environment if used maliciously or without sufficient care. The presence of potentially dangerous or hazardous chemicals near large population centers, as well as their economic importance, could make U.S. chemical facilities attractive terrorist targets. As a result, the Chemical Sector is among the 17 critical infrastructure and key resources (CI/KR) sectors under the National Infrastructure Protection Plan, pursuant to Homeland Security Presidential Directive-7 (HSPD-7).

In 2007, pursuant to Section 550 of the Homeland Security Appropriations Act of 2007 (P.L. 109-295), the Department of Homeland Security (Department) was authorized to regulate the Nation's chemical facilities. Pursuant to that mandate, the Department issued the Chemical Facility Anti-Terrorism Standards (CFATS) in June 2007. These standards require each chemical facility to report the amounts and types of chemicals on site so that the Department can determine whether that facility will be further regulated by CFATS rules. The Department issued the final CFATS regulations on April 9, 2007. Based on these regulations, the Department has begun placing regulated facilities into one of four tiers, based on risk and performance. The facilities placed in the highest-risk tier will be subject to the most stringent security required. The CFATS regulations, which have yet to be fully implemented, will sunset on October 4, 2009.

Enactment of H.R. 2868 is necessary to continue the implementation of CFATS regulations of our Nation's chemical facilities, which is essential for the protection of our citizens against terrorist attacks. Specifically, H.R. 2868 establishes the current CFATS regulations in law by requiring each CFATS-regulated chemical facility to conduct a security vulnerability assessment and subsequently implement a site security plan and provides the Department with the authority and resources to inspect these facilities and ensure compliance. In addition to making the CFATS regime permanent, H.R. 2868 includes some new security modifications such as the regulation of port facilities and wastewater facilities under CFATS; required analysis of methods to reduce consequences of a terrorist attack; whistleblower and State's rights protections; and removal of the current restrictions on citizen suits. The current CFATS regulations will be improved, not disrupted, by this legislation.

## HEARINGS

*109th Congress*

On June 15, 2005, prior to introduction of H.R. 5695 in the 109th Congress, 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, Department of Homeland Security; Mr. Frank J. Cilluffo, Director, Homeland Security Policy Institute, The George Washington University; Mr. Stephen Bandy, Manager, Corporate Safety and Security, Marathon Ashland Petroleum, LLC, testifying on behalf of the National Petrochemical and Refiners Association and the American Petroleum Institute; Mr. Marty Durbin, Managing Director of Security and Operations, American Chemistry Council; Mr. Allen Summers, President and Chief Executive Office, Asmark, Inc., testifying on behalf of The Fertilizer Institute; and Mr. Sal DePasquale, Security Specialist, CH2M Hill and the University of Georgia.

*110th Congress*

On December 12, 2007, prior to introduction of H.R. 5577 in the 110th Congress, the Subcommittee on Transportation Security and Infrastructure Protection held a hearing on H.R. \_\_, the “Chemical Facility Anti-Terrorism Act of 2008.” The Subcommittee received testimony from Col. Bob Stephan, Assistant Secretary, Infrastructure Protection, Department of Homeland Security; Mr. Clyde Miller, Director, Corporate Security, BASF Corporation; Mr. Gerald C. Setley, Vice President, Region 3 Director, International Chemical Workers Union Council, United Food and Commercial Workers Union; Mr. Gary Sondermeyer, Director of Operations, New Jersey Department of Environmental Protection; and Dr. M. Sam Mannan, PE, CSP, Professor and Director, Mary Kay O’Connor Process Safety Center, Artie McFerrin Department of Chemical Engineering, Texas A&M University System.

*111th Congress*

On June 16, 2009, the Committee on Homeland Security held a hearing on H.R. 2868, the “Chemical Facilities Anti-Terrorism Act of 2009.” The Committee received testimony from Mr. Philip Reiting, Deputy Under Secretary, National Protection and Programs Directorate, Department of Homeland Security; Ms. Sue Armstrong, Director, Infrastructure Security Compliance Division, Office of Infrastructure Protection, Department of Homeland Security; Mr. Paul Baldauf, Assistant Director, Radiation Protection and Release Prevention, New Jersey Department of Environmental Protection; Mr. Marty Durbin, Vice President, Federal Affairs, American Chemistry Council, Dr. Neal Langerman, Principle Scientist and CEO, Advanced Chemical Safety, Inc.; and Mr. Martin Jeppeson, Director of Regulatory Affairs, California Ammonia Company.

## COMMITTEE CONSIDERATION

The Committee on Homeland Security considered H.R. 2868 on June 18, 19, and 23, 2009, and ordered the measure reported to the House with a favorable recommendation, amended, by voice vote.

The Committee adopted H.R. 2868, as amended, by a recorded vote of 18 yeas and 11 nays. (Roll Call Vote No. 15.)

The following amendments were offered:

An Amendment in the Nature of a Substitute to H.R. 2868 offered by Mr. Thompson (#1); was AGREED TO, as amended, by a recorded vote of 18 yeas and 11 nays. (Roll Call Vote No. 14).

An Amendment offered by Mr. Lungren to the Amendment in the Nature of a Substitute (#1A); Page 48, after line 10, insert a new subsection (3) entitled "Appeals"; was AGREED TO by voice vote.

An Amendment offered by Mr. Dent and Mr. Souder to the Amendment in the Nature of a Substitute (#1B); Page 47, line 11, strike "and". Page 47, line 15, strike the period at the end and insert "; and". Page 47, after line 15, insert the following: (D) would not significantly or demonstrably reduce the operations of the covered chemical facility or result in a reduction of the workforce of the covered chemical facility; was AGREED TO by voice vote.

An Amendment offered by Mr. Dent to the Amendment in the Nature of a Substitute (#1C); Page 47, after line 15, insert a new paragraph (2) entitled "Analysis Required."; was AGREED TO, without amendment, by voice vote.

An amendment offered by Ms. Miller to the amendment offered by Mr. Dent to the Amendment in the Nature of a Substitute (#1C1); Page 1, line 12, strike "and". Page 1, line 14, strike the period and insert "; and". Page 1, after line 14, insert the following "(iv) the costs to agricultural facilities as a result of mandatory implementation." Page 2, line 6, strike "and". Page 2, line 8, strike the period and insert "; and". Page 2, after line 8, insert the following: "(v) representatives of agricultural facilities."; was NOT AGREED TO by voice vote.

An Amendment offered by Mr. Broun to the Amendment in the Nature of a Substitute (#1D); Page 45, line 21, after "facility" insert "assigned to tier 1 or tier 2". Page 46, line 20, strike "shall" and insert "may". Page 49, line 21, strike "that are required" and all that follows through "such methods". Page 49, after line 22, insert the following: "(e) Assessments Assistance Required.—If a covered chemical facility is required by subsection (a) to conduct an assessment of methods to reduce the consequences of a terrorist attack, the facility may request, and the Secretary shall provide, such assistance as may be necessary for the completion of the required assessment."; was NOT AGREED TO by a recorded vote of 11 yeas and 15 nays (Roll Call Vote No. 5).

An Amendment offered by Mr. Souder to the Amendment in the Nature of a Substitute (#1E); Page 13, line 19, strike "and". Page 13, line 23, strike the period and insert "; and". Page 13, after line 23, insert the following: "(D) the reduction of risk to the covered chemical facility demonstrated by submission of an updated security vulnerability assessment and site security plan as required under section 2103."; was NOT AGREED TO by a recorded vote of 11 yeas and 16 nays (Roll Call Vote No. 6).

An Amendment offered by Mr. Austria to the Amendment in the Nature of a Substitute (#1F); Page 49, after line 22, insert the following: “(e) Non-Applicability to Small Business Concerns.—This section does not apply to any business that is a small business concern, as determined by the Administrator of the Small Business Administration pursuant to the regulations set forth in 13 C.F.R. § 121.201, as in effect on January 1, 2009.”; was AGREED TO, as amended (by Roll Call Vote No. 7), by a recorded vote of 29 yeas and 0 nays (Roll Call Vote No. 8).

An amendment offered by Mr. Pascrell to the amendment offered by Mr. Austria to the Amendment in the Nature of a Substitute (#1F1); strike “page 49” following and insert the following: “(e) Applicability to Small Business Concerns.— “(1) Report.— “(A) In General.—Not later than one year after the date of enactment of this Act, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives that reviews and assesses the security issues associated with exempting from section 2111 of this Act businesses that are small business concerns as determined by the Administrator of the Small Business Administration pursuant to the regulations set forth in 13 C.F.R. § 121.201, as in effect on January 1, 2009. “(B) Contents.—The Report shall include—“(i) an analysis of the potential issues relevant to exempting small business concerns, as defined in paragraph (1), from the requirements of such section 2111 of this Act, including the potential effect of such an exemption on the security of chemical facilities in the United States and the economic effect of applying section 2111 to such small business concerns; and “(ii) any other elements the Secretary determined to be relevant or appropriate. “(2) Determination of Applicability.—Upon submission of the report, the Secretary shall determine whether small business concerns as defined in paragraph (1) shall be subject to or exempt from section 2111 of this Act.”; was AGREED TO by a recorded vote of 18 yeas and 11 nays (Roll Call Vote No. 7).

An En Bloc Amendment offered by Ms. Jackson-Lee to the Amendment in the Nature of a Substitute (#1G); Page 62, line 1, strike “60” and insert “120”; and Page 21, lines 2, after the semicolon insert “and”. Page 21, strike lines 3 through 8. Page 21, line 9, strike “(I)” and insert “(H)”. was AGREED TO by voice vote.

An Amendment offered by Mr. Dent to the Amendment in the Nature of a Substitute (#1H); Page 9, beginning on line 14, strike the proposed subparagraph (S). Page 9, line 17, strike “(T)” and insert “(S)”. Page 9, line 20, strike “(U)” and insert “(T)”. Page 25, lines 22 through 23, strike “, including the requirements under section 2111,” Page 45, beginning on line 18, strike section 2111, relating to methods to reduce the consequences of a terrorist attack, and conform the amendment to the table of contents made by section 3(b) accord-

ingly.; was NOT AGREED TO by a recorded vote of 11 yeas and 14 nays (Roll Call Vote No. 9).

An Amendment offered by Mr. Cao to the Amendment in the Nature of a Substitute (#1I); Page 32, after line 15, insert the following: “(d) Chemical Security Inspectors Authorized.—Subject to availability of appropriations for such purpose, the Secretary shall hire not fewer than 100 additional chemical facility inspectors in fiscal years 210 and 2011 to ensure compliance with this title.”.; was AGREED TO by voice vote.

An Amendment offered by Mr. Cao to the Amendment in the Nature of a Substitute (#1J); Page 10, line 8, after “means” insert the following “a chemical facility employee who is also”. Page 10, line 12, strike “the” and insert “a”; was NOT AGREED TO by voice vote.

An Amendment offered by Mr. Broun to the Amendment in the Nature of a Substitute (#1K); In the proposed section 2115, redesignate subsections (c) through (h) as subsections (d) through (i), respectively. Page 56, after line 21, insert the following: “(c) Termination of Employment.—If an owner or operator of a chemical facility finds that a covered individual meet any of the criteria under subsection (b), the owner or operator shall cease to employ the covered individual subject to the redress process under subsection (d).”; was NOT AGREED TO by voice vote.

An Amendment offered by Mr. Bilirakis to the Amendment in the Nature of a Substitute (#1L); Page 66, after line 25, insert the following (and adjust the amendment to the table of contents made by section 3(b) accordingly): “Sec. 2119. Personal Flexibilities. “(a) In General.—The Secretary may, after providing public notice, appoint and employ qualified applicants as chemical security inspectors without regard to sections 3309 through 3318 of title 5, United States Code, and the regulation thereto, including 5 CFR part 211, or 5 CFR part 337, subpart A. “(b) Sunset.—The authority in subsection (a) shall terminate on September 30, 2011.”.; was NOT AGREED TO by a recorded vote of 11 yeas and 17 nays (Roll Call Vote No. 10).

An Amendment offered by Mr. Cao to the Amendment in the Nature of a Substitute (#1M); Page 25, starting on line 1, strike the proposed subsection (e). Page 50, after line 8, insert the following: “(A) has an approved facility security plan under section 70103 of title 46, United States Code,”. Page 50, line 9 strike “(A)” and insert “(B)”. Page 50, line 9 strike “(B)” and insert “(C)”. Page 50, line 9 strike “(C)” and insert “(D)”; was NOT AGREED TO by voice vote.

An Amendment offered by Mr. Souder to the Amendment in the Nature of a Substitute (#1N); Page 62, line 8, strike “or”. Page 62, after line 14, strike the period and insert “; or”. Page 62, after line 14, insert the following: “(3) if the Secretary or any alleged violator of such standard, regulation, condition, requirement, prohibition, or order must divulge security risk information or proprietary information in the course of such action.”; was NOT AGREED TO by a recorded vote of 10 yeas and 16 nays. (Roll Call Vote No. 11).

An Amendment offered by Mr. McCaul to the Amendment in the Nature of a Substitute (#1O); Strike the proposed section 2116, relating to civil suits, insert a new section 2116, entitled "Civil Complaints", and conform matter proposed to be added to the table of contents by section 3(b) accordingly.; was NOT AGREED TO by a recorded vote of 11 yeas and 17 nays. (Roll Call Vote No. 12).

An Amendment offered by Mr. Broun to the Amendment in the Nature of a Substitute (#1P); Page 60, beginning on line 12, strike the proposed section 2116, relating to civil suits, and conform the table of contents accordingly.; was NOT AGREED TO by a recorded vote of 11 yeas and 17 nays. (Roll Call Vote No. 13).

An Amendment offered by Mr. Austria to the Amendment in the Nature of a Substitute (#1Q); Page 66, after line 25, insert the following (and adjust the amendment to the table of contents made by section 3(b) accordingly): Insert a new section entitled "Sec. 2119. Notification System to Address Public Concerns."; was AGREED TO by voice vote.

An Amendment offered by Mr. Souder to the Amendment in the Nature of a Substitute (#1R); Page 14, after line 11, insert a new subsection "(14) The term 'surface transportation modes' means mass transit, commuter and long-distance passenger rail, freight rail, commercial vehicles (including intercity buses), and pipelines, and related infrastructure (including roads and highways), that are within the territory of the United States.". Page 47, line 11, strike "and". Page 47, line 15, strike the period and insert "; and". Page 47, after line 15, insert the following: "(D) would not significantly transfer security risk to the surface transportation modes of the United States."; was AGREED TO by voice vote.

An Amendment offered by Mr. King to the Amendment in the Nature of a Substitute (#1S); In the proposed section 2115, redesignate subsections (c) through (h) as subsections (d) through (i), respectively. Page 56, after line 21, insert the following: "(c) Termination of Employment.—If an owner or operator of a chemical facility finds that pursuant to a security background check a covered individual is not legally authorized to work in the United States, the owner or operator shall cease to employ the covered individual subject to the redress process under subsection (d)."; was AGREED TO by voice vote.

#### COMMITTEE VOTES

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

The Committee adopted H.R. 2868, as amended, by a recorded vote of 18 yeas and 11 nays. (Roll Call Vote No. 15.) The vote was as follows:

YEAS	NAYS
MR. THOMPSON	MR. KING
MS. SANCHEZ	MR. SMITH

MS. HARMAN	MR. SOUDER
MR. DEFazio	MR. LUNGREN
MS. LOFGREN	MR. MCCAUL
MS. JACKSON-LEE	MR. DENT
MR. CUELLAR	MR. BILIRAKIS
MR. CARNEY	MR. BROWN
MS. CLARKE	MR. OLSON
MRS. KIRKPATRICK	MR. CAO
MR. LUJÁN	MR. AUSTRIA
MR. PASCRELL	
MR. CLEAVER	
MR. GREEN	
MR. HIMES	
MS. KILROY	
MR. MASSA	
MS. TITUS	

The following amendments were offered:

An Amendment in the Nature of a Substitute to H.R. 2868 offered by Mr. Thompson (#1); was AGREED TO, as amended, by a recorded vote of 18 yeas and 11 nays. (Roll Call Vote No. 14). The vote was as follows:

YEAS	NAYS
MR. THOMPSON	MR. KING
MS. SANCHEZ	MR. SMITH
MS. HARMAN	MR. SOUDER
MR. DEFazio	MR. LUNGREN
MS. LOFGREN	MR. MCCAUL
MS. JACKSON-LEE	MR. DENT
MR. CUELLAR	MR. BILIRAKIS
MR. CARNEY	MR. BROWN
MS. CLARKE	MR. OLSON
MRS. KIRKPATRICK	MR. CAO
MR. LUJÁN	MR. AUSTRIA
MR. PASCRELL	
MR. CLEAVER	
MR. GREEN	
MR. HIMES	
MS. KILROY	
MR. MASSA	
MS. TITUS	

An Amendment offered by Mr. Brown to the Amendment in the Nature of a Substitute (#1D); Page 45, line 21, after "facility" insert "assigned to tier 1 or tier 2". Page 46, line 20, strike "shall" and insert "may". Page 49, line 21, strike "that are required" and all that follows through "such methods". Page 49, after line 22, insert the following: "(e) Assessments Assistance Required.—If a covered chemical facility is required by subsection (a) to conduct an assessment of methods to reduce the consequences of a terrorist attack, the facility may request, and the Secretary shall provide, such assistance as may be necessary for the completion of the required assessment."; was NOT AGREED TO by a recorded vote of 11 yeas and 15 nays (Roll Call Vote No. 5). The vote was as follows:

YEAS	NAYS
MR. THOMPSON	MR. KING
MS. SANCHEZ	MR. SMITH
MS. HARMAN	MR. SOUDER
MR. DEFazio	MR. LUNGREN
MS. LOFGREN	MR. McCAUL
MS. JACKSON-LEE	MR. DENT
MR. CUELLAR	MR. BILIRAKIS
MR. CARNEY	MR. BROUN
MS. CLARKE	MR. OLSON
MRS. KIRKPATRICK	MR. CAO
MR. LUJÁN	MR. AUSTRIA
MR. PASCRELL	
MR. CLEAVER	
MR. GREEN	
MR. HIMES	
MS. KILROY	
MR. MASSA	
MS. TITUS	

An Amendment offered by Mr. Souder to the Amendment in the Nature of a Substitute (#1E); Page 13, line 19, strike “and”. Page 13, line 23, strike the period and insert “; and”. Page 13, after line 23, insert the following: “(D) the reduction of risk to the covered chemical facility demonstrated by submission of an updated security vulnerability assessment and site security plan as required under section 2103.”; was NOT AGREED TO by a recorded vote of 11 yeas and 16 nays (Roll Call Vote No. 6). The vote was as follows:

YEAS	NAYS
MR. KING	MR. THOMPSON
MR. SOUDER	MS. SANCHEZ
MR. ROGERS	MS. JACKSON-LEE
MR. McCAUL	MR. CUELLAR
MR. DENT	MR. CARNEY
MR. BILIRAKIS	MS. CLARKE
MR. BROUN	MS. RICHARDSON
MRS. MILLER	MRS. KIRKPATRICK
MR. OLSON	MR. LUJÁN
MR. CAO	MR. PASCRELL
MR. AUSTRIA	MR. CLEAVER
	MR. GREEN
	MR. HIMES
	MS. KILROY
	MR. MASSA
	MS. TITUS

An Amendment offered by Mr. Austria to the Amendment in the Nature of a Substitute (#1F); Page 49, after line 22, insert the following: “(e) Non-Applicability to Small Business Concerns.—This section does not apply to any business that is a small business concern, as determined by the Administrator of the Small Business Administration pursuant to the regulations set forth in 13 C.F.R. § 121.201, as in effect on January 1, 2009.”; was AGREED TO, as amended (by Roll Call Vote No. 7), by a

recorded vote of 29 yeas and 0 nays (Roll Call Vote No. 8). The vote was as follows:

YEAS	NAYS
MR. THOMPSON	MR. KING
MS. SANCHEZ	MR. SOUDER
MS. NORTON	MR. LUNGREN
MS. LOFGREN	MR. ROGERS
MS. JACKSON-LEE	MR. McCAUL
MR. CUELLAR	MR. DENT
MR. CARNEY	MR. BILIRAKIS
MS. CLARKE	MR. BROWN
MS. RICHARDSON	MRS. MILLER
MRS. KIRKPATRICK	MR. OLSON
MR. LUJÁN	MR. CAO
MR. PASCRELL	MR. AUSTRIA
MR. CLEAVER	
MR. GREEN	
MR. HIMES	
MS. KILROY	
MS. TITUS	

An amendment offered by Mr. Pascrell to the amendment offered by Mr. Austria to the Amendment in the Nature of a Substitute (#1F1); strike “page 49” following and insert the following: “(e) Applicability to Small Business Concerns.—“(1) Report.—“(A) In General.—Not later than one year after the date of enactment of this Act, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives that reviews and assesses the security issues associated with exempting from section 2111 of this Act businesses that are small business concerns as determined by the Administrator of the Small Business Administration pursuant to the regulations set forth in 13 C.F.R. § 121.201, as in effect on January 1, 2009. “(B) Contents.—The Report shall include—“(i) an analysis of the potential issues relevant to exempting small business concerns, as defined in paragraph (1), from the requirements of such section 2111 of this Act, including the potential effect of such an exemption on the security of chemical facilities in the United States and the economic effect of applying section 2111 to such small business concerns; and “(ii) any other elements the Secretary determined to be relevant or appropriate. “(2) Determination of Applicability.—Upon submission of the report, the Secretary shall determine whether small business concerns as defined in paragraph (1) shall be subject to or exempt from section 2111 of this Act.”.; was AGREED TO by a recorded vote of 18 yeas and 11 nays (Roll Call Vote No. 7). The vote was as follows:

YEAS	NAYS
MR. THOMPSON	MR. KING
MS. SANCHEZ	MR. SOUDER
MS. NORTON	MR. LUNGREN
MS. JACKSON-LEE	MR. ROGERS
MR. CUELLAR	MR. McCAUL
MR. CARNEY	MR. DENT
MS. CLARKE	MR. BILIRAKIS

MS. RICHARDSON  
 MRS. KIRKPATRICK  
 MR. LUJÁN  
 MR. PASCRELL  
 MR. CLEAVER  
 MR. GREEN  
 MR. HIMES  
 MS. KILROY  
 MR. MASSA  
 MS. TITUS  
 MR. CAO

MR. BROUN  
 MRS. MILLER  
 MR. OLSON  
 MR. AUSTRIA

An Amendment offered by Mr. Dent to the Amendment in the Nature of a Substitute (#1H); Page 9, beginning on line 14, strike the proposed subparagraph (S). Page 9, line 17, strike "(T)" and insert "(S)". Page 9, line 20, strike "(U)" and insert "(T)". Page 25, lines 22 through 23, strike ", including the requirements under section 2111," Page 45, beginning on line 18, strike section 2111, relating to methods to reduce the consequences of a terrorist attack, and conform the amendment to the table of contents made by section 3(b) accordingly.; was NOT AGREED TO by a recorded vote of 11 yeas and 14 nays (Roll Call Vote No. 9). The vote was as follows:

YEAS  
 MR. KING  
 MR. SOUDER  
 MR. LUNGREN  
 MR. ROGERS  
 MR. MCCAUL  
 MR. DENT  
 MR. BILIRAKIS  
 MR. BROUN  
 MR. OLSON  
 MR. CAO  
 MR. AUSTRIA

NAYS  
 MR. THOMPSON  
 MR. CUELLAR  
 MR. CARNEY  
 MS. CLARKE  
 MS. RICHARDSON  
 MRS. KIRKPATRICK  
 MR. LUJÁN  
 MR. PASCRELL  
 MR. CLEAVER  
 MR. GREEN  
 MR. HIMES  
 MS. KILROY  
 MR. MASSA  
 MS. TITUS

An Amendment offered by Mr. Bilirakis to the Amendment in the Nature of a Substitute (#1L); Page 66, after line 25, insert the following (and adjust the amendment to the table of contents made by section 3(b) accordingly): "Sec. 2119. Personal Flexibilities. "(a) In General.—The Secretary may, after providing public notice, appoint and employ qualified applicants as chemical security inspectors without regard to sections 3309 through 3318 of title 5, United States Code, and the regulation thereto, including 5 CFR part 211, or 5 CFR part 337, subpart A. "(b) Sunset.—The authority in subsection (a) shall terminate on September 30, 2011.".; was NOT AGREED TO by a recorded vote of 11 yeas and 17 nays (Roll Call Vote No. 10). The vote was as follows:

YEAS  
 MR. KING  
 MR. SOUDER  
 MR. LUNGREN

NAYS  
 MR. THOMPSON  
 MS. NORTON  
 MS. JACKSON-LEE

MR. ROGERS	MR. CUELLAR
MR. MCCAUL	MR. CARNEY
MR. DENT	MS. CLARKE
MR. BILIRAKIS	MS. RICHARDSON
MR. BROUN	MRS. KIRKPATRICK
MRS. MILLER	MR. LUJÁN
MR. OLSON	MR. PASCRELL
MR. AUSTRIA	MR. CLEAVER
	MR. GREEN
	MR. HIMES
	MS. KILROY
	MR. MASSA
	MS. TITUS
	MR. CAO

An Amendment offered by Mr. Souder to the Amendment in the Nature of a Substitute (#1N); Page 62, line 8, strike “or”. Page 62, after line 14, strike the period and insert “; or”. Page 62, after line 14, insert the following: “(3) if the Secretary or any alleged violator of such standard, regulation, condition, requirement, prohibition, or order must divulge security risk information or proprietary information in the course of such action.”; was NOT AGREED TO by a recorded vote of 10 yeas and 16 nays. (Roll Call Vote No. 11). The vote was as follows:

YEAS	NAYS
MR. KING	MR. THOMPSON
MR. SOUDER	MS. SANCHEZ
MR. LUNGREN	MS. HARMAN
MR. MCCAUL	MR. DEFazio
MR. DENT	MS. LOFGREN
MR. BILIRAKIS	MS. JACKSON-LEE
MR. BROUN	MR. CUELLAR
MR. OLSON	MR. CARNEY
MR. CAO	MS. CLARKE
MR. AUSTRIA	MR. LUJÁN
	MR. PASCRELL
	MR. CLEAVER
	MR. GREEN
	MR. HIMES
	MR. MASSA
	MS. TITUS

An Amendment offered by Mr. McCaul to the Amendment in the Nature of a Substitute (#1O); Strike the proposed section 2116, relating to civil suits, insert a new section 2116, entitled “Civil Complaints”, and conform matter proposed to be added to the table of contents by section 3(b) accordingly.; was NOT AGREED TO by a recorded vote of 11 yeas and 17 nays. (Roll Call Vote No. 12). The vote was as follows:

YEAS	NAYS
MR. KING	MR. THOMPSON
MR. SMITH	MS. SANCHEZ
MR. SOUDER	MS. HARMAN
MR. LUNGREN	MR. DEFazio
MR. MCCAUL	MS. LOFGREN

MR. DENT	MS. JACKSON-LEE
MR. BILIRAKIS	MR. CUELLAR
MR. BROUN	MS. CLARKE
MR. OLSON	MR. CARNEY
MR. CAO	MR. LUJÁN
MR. AUSTRIA	MR. PASCRELL
	MR. CLEAVER
	MR. GREEN
	MR. HIMES
	MS. KILROY
	MR. MASSA
	MS. TITUS

An Amendment offered by Mr. Broun to the Amendment in the Nature of a Substitute (#1P); Page 60, beginning on line 12, strike the proposed section 2116, relating to civil suits, and conform the table of contents accordingly.; was NOT AGREED TO by a recorded vote of 11 yeas and 17 nays. (Roll Call Vote No. 13). The vote was as follows:

YEAS	NAYS
MR. KING	MR. THOMPSON
MR. SMITH	MS. SANCHEZ
MR. SOUDER	MS. HARMAN
MR. LUNGREN	MR. DeFAZIO
MR. McCAUL	MS. LOFGREN
MR. DENT	MS. JACKSON-LEE
MR. BILIRAKIS	MR. CUELLAR
MR. BROUN	MR. CARNEY
MR. OLSON	MS. CLARKE
MR. CAO	MR. LUJÁN
MR. AUSTRIA	MR. PASCRELL
	MR. CLEAVER
	MR. GREEN
	MR. HIMES
	MS. KILROY
	MR. MASSA
	MS. TITUS

#### COMMITTEE OVERSIGHT FINDINGS

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

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 2868, the Chemical Facility Anti-Terrorism Act of 2009, 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.

JULY 9, 2009.

Hon. BENNIE G. THOMPSON,  
*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. 2868, the Chemical Facility Anti-Terrorism Act of 2009.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 2868—Chemical Facility Anti-Terrorism Act of 2009*

Summary: H.R. 2868 would authorize the appropriation of \$900 million over the 2011–2013 period for the Department of Homeland Security (DHS) to regulate the security of facilities across the United States where certain types of chemicals are present. The bill would authorize a chemical security office within DHS to carry out the provisions of this legislation, including conducting audits and inspections of the nation's chemical facilities. In addition, because the bill's requirements would be permanent, CBO estimates that DHS would need funding of \$283 million for fiscal year 2014 to continue to carry out those activities.

Assuming appropriation of the necessary amounts, we estimate that implementing H.R. 2868 would cost about \$1.1 billion over the 2011–2014 period. In addition, enacting the bill could affect revenues, but we estimate that any such effects would not be significant.

H.R. 2868 would extend intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), and impose new mandates on employers and on owners and operators of public and private facilities where certain chemicals are present. The bill also would preempt state and local laws. Because the cost of some of the mandates would depend on future regulatory actions, CBO cannot determine whether the aggregate costs of complying with the mandates would exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$69 million and \$139 million, respectively, in 2009, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2868 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>a</sup>						
Estimated Authorization Level <sup>b</sup> .....	0	325	300	275	283	1,183

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
Estimated Outlays .....	0	260	305	280	282	1,127

a. Enacting H.R. 2868 could affect revenues, but CBO estimates that any such effect would not be significant in any year.  
b. The authorization levels for 2011 through 2013 are specified by H.R. 2868; CBO estimated the 2014 level.

Basis of estimate: CBO estimates that implementing H.R. 2868 would cost about \$1.1 billion over the 2011–2014 period, assuming appropriation of the necessary funds. Enacting the bill could affect revenues, but we estimate that any effects would be insignificant.

### Spending Subject to Appropriation

For this estimate, CBO assumes that the necessary amounts will be appropriated for each fiscal year and that spending will follow the historical spending patterns for those or similar activities.

The Department of Homeland Security Appropriation Act, 2007 (Public Law 109–295) authorized DHS to regulate chemical facilities, but that authority expires later this year.

H.R. 2869 would authorize the appropriation of \$900 million over the 2011–2013 period for DHS to continue regulating the security of chemical facilities in the United States. In addition, because the bill's provisions would be permanent, CBO estimates that implementing the bill would require funding of \$283 million in 2014 for DHS to continue to carry out the bill's activities. We estimated the 2014 level by adjusting the 2013 level for anticipated inflation.

### Revenues

Enacting H.R. 2868 could affect revenues because the bill would establish civil and administrative penalties against owners and operators of chemical facilities that fail to comply with the bill's requirements. Civil and administrative fines are recorded as revenues and deposited in the Treasury. CBO expects that any additional revenues would not be significant because of the small number of cases likely to be affected.

Intergovernmental and private-sector impact: H.R. 2868 would extend intergovernmental and private-sector mandates, as defined in UMRA, and impose new mandates on employers and on owners and operators of public and private facilities where certain chemicals are present. The bill also would preempt state and local laws. Because the cost of some of the mandates would depend on future regulatory actions, CBO cannot determine whether the aggregate costs of complying with the mandates would exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$69 million and \$139 million, respectively, in 2009, adjusted annually for inflation).

### Extension of Mandates on Chemical Facilities

The bill would extend and make permanent mandates contained in section 550 of Public Law 109–295, the Chemical Facility Anti-Terrorism Standards (CFATS), that are set to expire in October 2009. Those mandates require owners and operators of public and private facilities where certain chemicals are present to assess the vulnerability of their facilities to a terrorist incident and to prepare and implement security plans. The bill also would extend mandates that require owners and operators of such facilities to maintain

records, periodically submit reviews of the adequacy of the vulnerability assessments or security plans, and allow DHS access to their property for security inspections and verifications. In addition, owners and operators would have to continue to conduct background checks on employees with access to restricted areas and provide training to employees. Information from DHS and industry sources indicates that those facilities are currently in compliance with CFATS regulations, and CBO estimates that the cost of continuing to comply with those regulations would be small relative to the annual thresholds established in UMRA.

### **Expansion of Mandates to Drinking Water and Wastewater Facilities**

The bill would require drinking water and wastewater facilities, entities that are currently exempt from the CFATS regulations, to comply with those requirements. 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. 2868. Such facilities are acting either in response to the terrorist attacks of September 11, 2001, as a condition of membership in chemical industry associations, or in accordance with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the Maritime Transportation Security Act, or other federal regulations.

The bill also would require public and private drinking water and wastewater facilities to complete an initial assessment of their chemical holdings. CBO has no basis for estimating how many public water facilities currently use the chemicals affected by those requirements or the number of those facilities that would be required to complete vulnerability assessments and security plans. Therefore, CBO cannot determine whether the costs to public entities of complying with the mandates would exceed the intergovernmental threshold established in UMRA. Because there are few private water facilities and they tend to be small, CBO expects that the compliance cost for those entities would be small relative to UMRA's annual threshold for private-sector mandates.

### **New Mandates on Chemical Facilities**

H.R. 2868 also would impose new mandates, as defined in UMRA, on owners and operators of chemical facilities.

**Mandates on High-Risk Facilities.** The bill would require owners and operators of public and private high-risk facilities, as determined by the Secretary of DHS, to conduct a specific assessment of plans and procedures to reduce the consequences of a terrorist attack. If the Secretary determines that specific methods are necessary for a facility to reduce the consequences of a terrorist attack, owners or operators would be required to implement such methods. The bill also would require DHS to make funds available to help defray some of the cost of implementing those methods. Because the facilities that would be affected and the types of methods to be required depend on future regulatory actions, CBO cannot estimate the cost of this mandate.

The bill also would impose a new mandate on the owners and operators of those facilities by requiring them to allow the Secretary to conduct unannounced inspections. Based on information from in-

dustry sources, CBO expects that the cost to comply with this mandate would be minimal.

**Whistleblower Protections.** H.R. 2868 would prohibit an owner or operator of a chemical facility or other employer from discharging or otherwise discriminating against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee reported an alleged violation of security practices. The prohibition also would apply if the employee engages in other activities, including testifying or providing relevant information in a governmental proceeding. Based on information from industry sources, CBO estimates that public and private entities would incur minimal costs, if any, to comply with such protections for their employees.

### **Other Intergovernmental Mandates**

The bill would exempt some security plans and documents from state and local laws that provide public access to information and preempt any state or local regulation that would conflict with the security activities authorized by the bill. CBO estimates that the costs, if any, of those preemptions would be small.

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

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

### **STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES**

Pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R. 2868 contains the following general performance goals, and objectives, including outcome related goals and objectives authorized.

The purpose of this legislation is to amend the Homeland Security Act of 2002 to modify and make permanent the authority of the Secretary of Homeland Security (Secretary) to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes, including:

- Designation of certain chemical substances as substances of concern and establishing a threshold quantity for each substance of concern, thereby requiring reporting and other requirements;

- Assignment by the Secretary of each covered chemical facility to one of four or more risk-based tiers established by the Secretary and periodic review by the Secretary of the criteria under which covered chemical facilities are assigned to risk-based tiers or by which chemical facilities are designated as covered chemical facilities;

- Establishing security requirements for covered chemical facilities including security vulnerability assessments and site security plans;

- Conducting chemical facility site inspections to verify that site security plans are properly implemented;

- Timely sharing of threat-related information to covered chemical facilities and appropriate State, local, and tribal officials and appropriate covered chemical facility official;

Enforcement of the regulations, if necessary, through orders, or administrative or civil penalties;

Providing whistleblower protections for covered individuals and Departmental personnel;

Allowing State, local, or tribal governments to establish more stringent chemical facility security requirements;

Ensuring that specific security-related information developed pursuant to this title is protected from public disclosure, while ensuring that such information can be shared with appropriate persons and that it may be used in adjudicative proceedings;

Requiring all covered chemical facilities to conduct an assessment of the feasibility of methods to reduce the consequences of a terrorist attack, and allowing the Secretary to require implementation of such methods, on a case-by-case basis, for tier 1 and tier 2 covered chemical facilities, which are in the highest risk tiers;

Making funds available to help defray the cost of implementing methods to reduce the consequences of a terrorist attack to covered chemical facilities that are required by the Secretary or that voluntarily choose to implement such methods;

Exempting chemical facilities owned and operated by the Department of Defense, transportation modes currently regulated by Department of Transportation Hazardous Materials regulations, and those portions of nuclear facilities that are regulated by the Nuclear Regulatory Commission for security;

Ensuring that nothing in this title would affect or modify any obligation of a person or facility under any other Federal law;

Establishing an Office of Chemical Facility Security, to be headed by a qualified Director, to administer the regulations required by this title;

Requiring security background checks for covered individuals with unescorted access to critical assets, an adequate processes for redress for a covered individual subjected to an adverse employment decision, including removal or suspension, due to compliance with this legislation, and prohibiting a covered chemical facility from unreasonably misrepresenting to an employee or labor arbiter the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements;

Providing private citizens with the right to commence civil actions against a covered chemical facility or the Secretary in order to help bring about compliance with the requirements of this title;

Submission of an annual report to Congress by the Secretary on progress in achieving compliance with title XXI of the Homeland Security Act of 2002, as added by section 3 of this legislation, not later than one year after the date of enactment thereof;

Authorization of \$325 million for fiscal year 2011, of which \$100 million is available for funding of methods to reduce consequences of a terrorist attack, \$300 million for fiscal year 2012, of which \$75 million is available for funding of methods to reduce consequences of a terrorist attack, and \$275 million for fiscal year 2013, of which \$100 million is available for fund-

ing of methods to reduce consequences of a terrorist attack, to carry out the requirements of this title; and

Establishment of a notification system that will allow any person to report a suspected security deficiency or suspected instance of non-compliance with this title.

#### CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

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

#### FEDERAL MANDATES STATEMENT

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

#### 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 Act may be cited as the “Chemical Facility Anti-Terrorism Act of 2009”.

##### *Section 2. Findings and Purpose.*

Congress finds that the Nation’s chemical facilities represent a terrorist target that must be protected. The Secretary currently has authority to regulate chemical facilities under the Chemical Facility Anti-Terrorism Standards (CFATS) issued pursuant to section 550 of the Department of Homeland Security Appropriations Act, 2007 (P.L. 109–295). The purpose of this Act is to modify and give permanent status to CFATS.

##### *Section 3. Extension, Modification, and Recodification of the Authority of the Secretary of Homeland Security to Regulate Security Practices at Chemical Facilities.*

Section 3 paragraph (a) adds “Title XXI—Regulation of Security Practices at Chemical Facilities” to the Homeland Security Act of 2002. Title XXI includes the following provisions:

*Section 2101. Definitions.*

This section defines terms such as “chemical facility,” “chemical facility performance standard,” “chemical facility terrorist incident,” “employee representative,” “covered individual,” “covered chemical facility,” “environment,” “substance of concern,” and “method to reduce the consequences of a terrorist attack,” among others.

The Committee is aware that local and international unions may have more than one representative. Therefore, the definition of ‘employee representative’ is intended to encompass all of the representatives, despite the use of definitive and often singular articles. Moreover, when there is more than one bargaining agent in the workplace, the definition is intended to cover all of the bargaining units in the workplace.

The Committee intends for the term “substance of concern” to be equivalent to the term “chemical of interest” as defined and used under the CFATS regulations issued on April 9, 2007 pursuant to section 550 of Public Law 109–295.

The Committee does not intend the term “method to reduce the consequences of a terrorist attack” to include the mitigation, control, containment, or recovery of a substance of concern in the event of a chemical facility terrorist incident.

*Section 2102. Risk-Based Designation and Ranking of Chemical Facilities.*

This section grants authority the Secretary to designate a chemical substance as a substance of concern and determine the regulated threshold quantities of these identified chemicals that are used, stored, manufactured, processed or distributed by a chemical facility. Factors for consideration are the potential for death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, or the national economy from a terrorist-related release. The Secretary may use the Appendix A list that was published in the Federal Register on November 20, 2007 (Federal Register Vol. 72, No. 223; 6 CFR Part 27) under CFATS to fulfill this requirement.

The Secretary is required to maintain a list of chemical facilities that have more than a threshold quantity of a “substance of concern” and pose a sufficient security risk based on certain criteria, including the potential threat or likelihood of a terrorist attack at the facility; the potential harm to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy, from a terrorist incident; and the proximity of the facility to large population centers. The Secretary may require a facility to submit information regarding the facility’s possession of substances of concern to determine whether it is “covered” under this title. The Secretary may use the review process used in the 2008 assessment of chemical facilities, commonly referred to as the “Top Screen” process under CFATS to fulfill this requirement.

The Secretary is required to assign each such covered chemical facility to one of at least four risk-based tiers with tier 1 being the highest risk tier. Facilities are to be notified within 60 days of their designation or any change in their designation. The Secretary must periodically review the list of substances of concern and the threshold quantities. Additionally, at any time, the Secretary may add, remove, or change the tier assignment for each facility. The Secretary shall provide relevant information regarding probable threats to facilities.

*Section 2103. Security Vulnerability Assessments and Site Security Plans.*

This section requires the Secretary to develop regulations to establish risk-based, performance-based standards, protocols, and procedures for mandatory security vulnerability assessments (SVAs) and site security plans (SSPs) and set deadlines, by tier, for completing the SVAs and SSPs. Facilities are required to include employees and their representatives when developing SVAs and SSPs. Upon request, the Secretary shall provide assistance and guidance to facilities conducting SVAs and SSPs to the extent that resources permit. The Secretary must approve or disapprove SVAs and SSPs within 180 days of receipt. The Secretary may put forth modified requirements for academic laboratories on college campuses.

The Committee intends that a covered chemical facility use, as the basis for an assessment under this section, information on a worst-case chemical facility terrorist incident provided by the Secretary to that facility or such information derived by the chemical facility. The Committee also intends that guidance provided by the Secretary under this section shall be in convenient and user-friendly format, including methodologies and computer software that assist covered chemical facilities in evaluating options to meet security performance standards. The Committee further intends that chemical facilities that are complying with this section must meet with the required employee representatives.

Facilities must review and resubmit SVAs and SSP at least every 5 years. In addition, facilities are required to notify the Secretary if they change their use or storage of a substance of concern or modify operations in a way that could affect the security vulnerability assessment or site security plan that were already approved. As part of an SVA and SSP, the owner or operator must acknowledge in writing that he understands any penalties for non-compliance.

The approval or disapproval of a security vulnerability assessment or site security plan is an inherently governmental function.

The Secretary is required to establish risk-based security performance standards for SSPs. The security performance standards are to be increasingly stringent according to the tier and allow a facility to choose a combination of security measures that together meet the security performance requirements. In addition, facilities closely located may develop and implement coordinated SVAs and SSPs.

The Secretary may accept, in whole or in part, the submission of an alternate security program (ASP) that was prepared by the facility for some other reason, such as complying with another law, for purposes of fulfilling the regulatory requirements to complete

an SVA or SSP as long as it provides an equivalent level of security to the level of security established under the regulations. The Secretary must review and approve or disapprove each ASP.

Under this section, the Secretary may accept a personnel surety alternate security program to meet the requirements in section 2115 regarding background checks that is submitted by a non-profit personnel surety accrediting organization that is working with the owner or operator of a covered chemical facility. Under this approach, the Secretary would decide whether the program meets the requirements and can be accepted.

This section requires facilities subject to the Maritime Transportation Safety Act (MTSA) to submit to the Secretary information necessary to determine whether such a facility would be designated as a covered chemical facility under CFATS. For those so designated, the Coast Guard may require a MTSA facility to update security materials that had been submitted under MTSA to achieve an equivalent level of security as provided under CFATS. The Coast Guard and the Office of Infrastructure Protection are required to enter into a formal agreement detailing the roles and responsibilities of each in carrying out their responsibilities under CFATS.

The Secretary is required to coordinate with the Attorney General (the Bureau of Alcohol, Tobacco, and Firearms) on facilities that import, manufacture, distribute, or store explosive materials and are required to be licensed under § 18 U.S.C. 40.

The Secretary shall require that a security vulnerability assessment or site security plan describes the roles and responsibilities that covered individuals are expected to perform to deter or respond to a chemical facility terrorist incident. Owners or operators are required to provide covered individuals 8 hours of annual training for security purposes.

The Secretary shall establish a worker training grants program and shall enter into an agreement with another Federal or State agency to make and administer the grants.

With respect to worker training grant program, the Committee believes that the Department should consider entering into such an agreement with the National Institute for Environmental Health Sciences.

The Committee recognizes concerns raised by underground facilities that store natural gas in geologic rock formations several thousand feet below the ground surface. In natural gas storage, methane, the chemical of interest, is only accessible by pipelines through the wellheads. The Committee acknowledges that the Transportation Security Administration (TSA) and the Pipeline and Hazardous Materials Safety Administration (PHMSA) have regulatory authority over pipeline security and pipeline safety. TSA has established natural gas pipeline security guidelines, which require operators to have a security program for all pipeline facilities, including these facilities that add and withdraw natural gas to these geologic rock formations. The Committee recognizes that this legislation may add to existing TSA and PHMSA security requirements. The Committee intends for this legislation to work with TSA and PHMSA requirements without adding additional, conflicting, and unnecessary requirements.

With respect to the alternate security plan provision, the types of ASPs that the Committee envisions include vulnerability assessments, security plans or other documents developed to comply with other Federal laws such as the Safe Drinking Water Act (42 U.S.C. 300i-2), the Maritime Transportation Safety Act (chapter 701 of title 46, United States Code), State and local laws, and voluntary industry practices such as the American Chemistry Council's Responsible Care Code. The Committee encourages the Department of Homeland Security to allow process safety reviews to be submitted for review for the assessment required under section 2111 of this legislation. The Committee intends for the Secretary to review and approve or disapprove all submissions of alternate security program information on an individual, facility-by-facility basis. The Committee does not intend for any provision of this section to relieve any covered chemical facility of the responsibility to comply with each requirement of this title or any other law.

The Committee believes that Coast Guard should continue to be responsible for enforcing security requirements at MTSA facilities. Further, the Committee believes that the formal agreement that is to be developed between the Office of Infrastructure Protection and the Coast Guard should ensure that chemical facilities at ports see "one face" of DHS for chemical security compliance issues.

The Committee observes that, in implementing the current Chemical Facility Anti-Terrorism Standards (CFATS) Interim Final Rule, the Department has been appropriately sensitive to the concerns of 'agricultural end users'—farms and farmers—regarding chemical security. The Committee supports the Department's continued attention to the agricultural sector and to take into account both the proximity of such facilities to major population centers and their vital role in our Nation's economy as they administer chemical security regulations.

#### *Section 2104. Site Inspections.*

The Secretary is granted the right of entry at reasonable times to conduct security verifications and inspections. For tier 1 and 2 facilities, the Secretary is required to conduct unannounced inspections to ensure and evaluate compliance with regulations, security standards, and requirements under this title in a manner so as not to affect the actual security, physical integrity, or safety of the facility.

In this section, it is the intent of the Committee to leave the Secretary free to conduct parts of an inspection unaccompanied. However, the Committee expects that in covered chemical facilities with employee representations, if an owner or operator accompanies the Secretary or the Secretary's designee for the site inspection, there should also be an employee or employee representative accompanying the Secretary. In the event that the Secretary or her designee determines it necessary to confer privately with the owner or operator, an equal opportunity should be conferred to an employee or employee representative to speak privately. Further, the Committee expects that if the Secretary or the Secretary's designee interviews an employee during an inspection, the employee shall have the right to be accompanied by an employee representative during the interview. In addition, it is the intent of the Committee that no inspection is complete unless the Secretary has given both owners or operators and employees and employee representatives

the opportunity to communicate security issues that they perceive to be important at the facility and identify any possible violations.

*Section 2105. Records.*

The Secretary may require the submission of, or access to, a facility's records in order to review such facility's SVA or SSP or their implementation. Facilities also must provide the SVAs and SSPs to employee representatives, if any. Such records must be handled properly. The section requires that the handling of any records made available under this section be done so in accordance with the applicable information protections provided in this legislation and other applicable laws. The owner or operator of a facility with one or more certified or recognized bargaining agent is required to furnish a copy of any SVA or SSP submitted to the representative who, in turn, is required to ensure that the materials are secured appropriately.

*Section 2106. Timely Sharing of Threat Information.*

The Secretary is required to provide information concerning a threat that is relevant to a specific covered chemical facility, in as timely a manner, to the owner or operator of the facility, to the maximum extent practicable. The covered chemical facility is required to report to the Secretary any threat, significant security incident, or penetration of the facility's cyber or physical security, whether successful or not. The Secretary shall also share the information with relevant State, local, and tribal authorities, including the State Homeland Security Advisor, if applicable.

*Section 2107. Enforcement.*

This section requires the Secretary to disapprove a facility's SVA or SSP if it does not comply with the CFATS standards or if the facility's implementation of the SSP is insufficient to address identified vulnerabilities or meet relevant security performance standards. If the Secretary disapproves of a SVA or SSP, a written notice of disapproval shall be issued within 14 days of such a determination that clearly explains the deficiencies and requires the owner or operator to revise the SVA or SSP.

If the Secretary determines that an owner or operator of a covered chemical facility has violated or is violating the title, the Secretary, after providing the owner or operator the opportunity to consult with the Department, may issue an order of compliance that assesses a civil penalty or commence a civil action in Federal court to force compliance from a covered chemical facility.

If a facility continues to be in non-compliance after an order of compliance is issued, the Secretary may issue an order to cease operations until the owner or operator comes into compliance. The Secretary may not, however, issue a cease operations order to a wastewater treatment facility. A court may award civil penalties of up to \$50,000 per day or administrative penalties of up to \$25,000 per day for non-compliance. Penalties set forth in this section apply to any violation of this title, including violations of whistleblower provisions provided under section 2108.

*Section 2108. Whistleblower Protections.*

The Secretary shall establish a process for any person to report to the Secretary any deficiencies or vulnerabilities at a covered chemical facility. The identity of such a person shall be kept con-

fidential. The Secretary shall acknowledge receipt of the information and address, where appropriate, any reported deficiencies or vulnerabilities. Retaliation against whistleblowers is prohibited.

The Committee strongly believes that employees that come forward as whistleblowers and bring security concerns to the attention of the Secretary or the facility owner or operator are a critical component of a system of layered security. Facility owners and operators should value security conscious workers for their service and foster an environment where they can come forward without fear of retaliation.

*Section 2109. Federal Preemption.*

Any State or local government may issue a regulation, requirement, or standard of performance for chemical facility security that is more stringent than the Federal statute. The Committee notes that since the current CFATS regulations were issued on April 9, 2007, no current State law or regulation regarding chemical facility security has been preempted. The Committee expects that this provision should further protect the efforts of States and underscore that CFATS is intended to be a National baseline for chemical security that States can exceed.

*Section 2110. Protection of Information.*

This section identifies the types of information that must be protected and the procedures for safeguarding it. Protected information is exempt from disclosure under the Freedom of Information Act and State and local information disclosure laws.

This section requires the Secretary to provide standards for the appropriate sharing of protected information with Federal, State, and local governments, law enforcement and first responders, and designated chemical facility personnel. This section also protects sensitive information in administrative or judicial proceedings under the title.

This section does not relieve an owner or operator of any obligation to comply with other Federal, State, or local laws requiring submission of information. This section does not prohibit the sharing of information with Congress. Any authority or obligation of a Federal agency to protect or disclose a record or information under any other law is not affected. Protected information does not include information that is otherwise publicly available, has already been lawfully disclosed, or information that, if disclosed, would not be detrimental to the security of the facility.

*Section 2111. Methods to Reduce the Consequences of a Terrorist Attack.*

This section requires that each site security plan include an assessment of methods to reduce the consequences of a terrorist attack on that facility. The assessment must include a description of methods assessed, the degree to which each method would reduce consequences, the technical viability of the method, costs, avoided costs (including liabilities), savings, and applicability of implementing each method to reduce consequences.

Under the title, methods to reduce the consequences of a terrorist attack include substitution of chemicals (or forms of chemicals), changes in processes, storage or use of less of a substance of concern on site, and improvements in inventory control and handling of substances of concern.

A tier 1 or tier 2 facility is required to implement such method(s) to reduce the consequences of a terrorist attack if the Secretary determines that such method(s): (1) would significantly reduce the risk of death, injury, or serious adverse effects to human health from an attack on that facility and would not result in another facility being placed into tier 1 or tier 2; (2) is technically and economically feasible to be incorporated into the facility's operations; and (3) would not significantly and demonstrably impair the ability of the facility to sustain operations at its current location; (4) would not significantly and demonstrably reduce the operations or reduction of the workforce at the facility; and (5) would not significantly transfer risk to the transportation infrastructure of the United States.

When the Secretary makes a determination that implementation is required at a tier 1 or tier 2 covered chemical facility and that facility determines that it cannot comply, the facility must submit a written explanation to the Secretary within 60 days. The Secretary shall then have 60 days, after receipt to review the written explanation. If the Secretary still determines that implementation is necessary, the owner or operator shall have 30 days to request a *de novo* hearing before an administrative law judge of the Department of Homeland Security, who shall render a decision within 30 days. If the judge finds the Secretary acted improperly, the decision is set aside. If the administrative law judge agrees with the Secretary, or if the owner or operator does not seek such a review, the owner or operator shall be required to begin implementation within 180 days.

This section requires the Secretary to provide information on method(s) to reduce the consequences of a terrorist attack. Information that is made available to the public shall not identify any specific facility and must comply with the protection of information requirements of section 2110. Information on the use and availability of methods to reduce the consequences of a terrorist attack is to be made publicly available by the Secretary under this section, provided that the disclosure does not reveal protected or proprietary information.

This section allows the Secretary to make funds available to facilities that are required by the Secretary to implement methods to reduce the consequences of a terrorist attack under subsection (b) to help defray the cost of implementation.

Within one year of enactment, the Secretary is required to submit a report to Congress analyzing the effects of implementing methods to reduce the consequences of a terrorist attack on small businesses. The report shall include costs sustained and avoided, effects on employment levels, impacts on production efficiency, regulatory burdens, and other factors the Secretary considers appropriate. This section requires the Secretary to convene, in preparing the report to Congress, a stakeholder consultation that shall include experts from the chemical industry, including vendors of alternate technologies and facilities that have adopted methods to reduce the consequences of a terrorist attack, representatives of covered chemical facilities, members of the academic community, representatives from organized labor to include employee representatives as defined in this title, and additional stakeholders the Secretary considers to be appropriate.

The Committee recognizes that the surest way to protect a facility is for the facility to not become a target in the first place. As such, implementing methods to reduce the consequences of a terrorist attack is a critical element in comprehensive security legislation to secure our Nation's chemical sector. The Committee believes that before the Secretary requires implementation of a method to reduce the consequences of a terrorist attack, the Secretary should first carefully consider the full impact on the operations of the covered chemical facility and endeavor to interact in a manner that is respectful of the owner or operator of the covered chemical facility.

It is the intent of the Committee that in a hearing under paragraph (b)(4)(B), "all relevant questions of law and regulation" shall refer only to the Secretary's determinations under paragraph (b)(1), and the standards of analysis under (b)(2)(A) shall apply only to those same determinations. It is the intent of the Committee that the de novo hearing shall be constrained to only the Secretary's determinations under (b)(1) and will not be a forum to adduce evidence, information, or materials not relevant to assessing the determination by the administrative law judge under the Department of Homeland Security. The assessment information and materials presented by the facility owner or operator under paragraph (a) and the record of decision-making used by the Secretary in determining, with consideration of factors (b)(1)(A–E), what methods to be able to be implemented under (b)(1), shall be the sole source of evidence, information, and material presentable to the hearing. It is the intent of the Committee that "inability to comply" means that the facility operator or owner would otherwise suffer a demonstrable legal harm if forced to comply. Additionally, it is the intent of the Committee that nothing in this appeals process shall serve to replace, alter, or affect any other law, statute, rule, regulation, or right, particularly the provisions on judicial review under the Administrative Procedures Act, 5 U.S.C. 701–706. It is further the intent of the Committee that this appeals process shall not prevent motions to certify, in the instant, the Secretary's determinations, under this or other subsections, through a record of decision, to immediately implement compliance measures. At the hearing, all appropriate deference should be provided to the Secretary's security expertise and decision-making ability.

In carrying out Section 2111, the Committee recommends that, and in order to ensure overall public health and safety, wastewater facilities should also consider impacts to the supply chain servicing their facilities as part of preparing and assessing their site security plans to reduce the consequences of a terrorist attack. An important part of such review should be to identify economically feasible and commercially available products and procurement practices that could significantly reduce the threat of terrorist action that could result in a significant chemical releases at the facility or in nearby populated areas.

Section 2111(a) requires the owner or operator of a covered chemical facility to assess the methods to reduce the consequences of a terrorist attack on that chemical facility as part of its site security plan. The Committee believes that, in implementing this requirement with respect to the agricultural sector, the Department should work closely with agricultural stakeholders, most especially agricultural retail operators, to ensure that implementation of the

Section 2111(a) assessment does not detrimentally affect the availability of specific fertilizers containing one or more plant nutrients or a pesticide in the marketplace. The Committee notes that the legislation identifies approaches that would be eligible methods to reduce the consequences of a terrorist attack in a broad manner. The Committee notes that the extensive economic and business considerations in Section 2111 were further enhanced by amendments accepted during the Full Committee mark-up. The Committee believes that the Department should take this language into account when developing any regulations or guidance on Section 2111 and communicate the full range of options that any chemical facility can exercise to comply with the Section 2111(a) assessment requirement. With respect to chemical facilities in the agricultural sector, the Committee believes that the Department should endeavor to communicate to full range of options rather than the replacement of a specific fertilizer or pesticide that is relied upon in agriculture.

*Section 2112. Applicability.*

This section clarifies that this title shall not apply to any facility owned and operated by the Department of Defense, or all or part of chemical facility that is subject to regulation of security by the Nuclear Regulatory Commission (NRC) or a State designated by the NRC. This title does not apply to the transportation in commerce (including incidental storage) of a substance of concern that is regulated as a hazardous material under Chapter 51 of title 49 of the U.S. Code.

*Section 2113. Savings Clause.*

This section specifies that nothing in this title affects section 112 of the Clean Air Act (42 U.S.C. 7412), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety and Health Act (29 U.S.C. 651 et seq.), the National Labor Relations Act (29 U.S.C. 151 et seq.), the Emergency Planning and Community Right to Know Act of 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Maritime Transportation Security Act of 2002 (Public Law 107-295), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.). In addition, 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.

The Committee intends for this measure to increase the security of our Nation's chemical facilities, while recognizing that other laws regarding public and environmental health and safety must not be compromised. It has come to the attention of the Committee that, since September 11, 2001, employers have, on some occasions cited security laws as a reason to abridge the rights of employee representatives to enter facilities. In enacting this savings clause, it is the intent of the Committee to indicate that such rights are in no way abridged.

*Section 2114. Office of Chemical Facility Security.*

This section establishes an Office of Chemical Facility Security, administered by a Director, within the Department of Homeland Security. It sets forth qualifications for the Director of the Office of Facility, requirements for the selection process, and the responsibilities of Director.

*Section 2115. Security Background Checks of Covered Individuals at Certain Chemical Facilities.*

This section requires the Secretary to issue regulations requiring covered chemical facilities to establish personnel surety for individuals with access to restricted areas or the facility's critical assets. The Secretary is required to give guidance to facilities on appropriate scope and applications of security background checks. A facility shall not make an adverse employment decision unless the individual in question has been convicted of, found not guilty by reason of insanity, or is under want, warrant, or indictment, or incarcerated within the past 5 years for a permanent or interim disqualifying crime under part 1572 of title 49, Code of Federal Regulations.

The Secretary must provide an adequate redress process for an individual subjected to an adverse employment decision because of a background check and has the authority under this section to order a remedy, if warranted. A chemical facility may not misrepresent to an employee or labor arbiter the background check rules and regulations issued by the Secretary.

Nothing in this section affects the right and responsibility of a person subject to a background check or an employer under another Federal, State, local, or tribal law, or affect the rights and responsibilities of facilities or employees covered such a law. This section does not preempt any other Federal, State, tribal, or local law that requires background checks.

The Committee intends that fully equivalent federal background checks will fulfill the requirements of this section, including a Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Driver's License (Department of Homeland Security, Transportation Security Administration 49 CFR Part 1572), and a Transportation Worker Identification Credential (Department of Homeland Security, Coast Guard 33 CFR Parts 1, 20 et al. and 46 CFR Parts 1, 4 et al., and Transportation Security Administration 49 CFR Parts 10, 12, and 15).

The Committee believes that the section should be implemented in a manner that preserves rights relating to protection against adverse employment decisions that an employee may have under a collective bargaining agreement or other provisions of Federal, State, local, or tribal law.

*Section 2116. Citizen Suits.*

Any person may commence a civil action against a covered chemical facility or the Secretary alleging that there has been a violation of this law, or against the Secretary for failure to enforce this law. The Federal court with jurisdiction over the matter shall be the U.S. District Court of the district wherein the violation is alleged to have occurred or the U.S. District Court of the District of Columbia. That court shall have authority to enforce the requirements of this Act. Relief to a person who prevails in a citizen suit is limited to the issuance of a court order requiring performance by

a Secretary or facility and civil penalties set forth in Section 2107. The court may award court costs to the prevailing side, when appropriate, and may require the filing of a bond (or its equivalent) in accordance with the Federal Rules of Civil Procedure.

No person may commence a civil action without a 60-day notice to the Secretary or the facility alleged to be in violation, or if the Secretary is addressing the matter by seeking a civil or criminal remedy or an administrative order. When not a named party to the action, the Secretary has the right to intervene in any civil action under this section. Nothing in this section shall restrict any right that any person (or class of persons) may have under any statute or common law.

The Committee believes that this section is consistent with the information sharing and layered security approach of the title. The Committee notes that this section is similar to citizen suit provisions in other statutes including: Clean Air Act, Pub. L. No. 91-604, 84 Stat. 1706 (1970) (codified as amended at 42 U.S.C. § 7604 (2006)); Clean Water Act, Pub. L. No. 92-500, 86 Stat. 888 (1972) (codified as amended at 33 U.S.C. § 1365 (2006)); Safe Drinking Water Act, Pub. L. No. 93-523, 88 Stat. 1690 (1974) (codified as amended at 42 U.S.C. § 300j-8 (2006)); An Act to Prevent Pollution from Ships, 33 U.S.C. § 1910; Superfund Act, 42 U.S.C. § 9659; Deep Water Port Act, 33 U.S.C. § 1515; Deep Seabed Hard Mineral Resources Act, 30 U.S.C. § 1427; Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11046; Endangered Species Act, 16 U.S.C. § 1540(g); Energy Conservation Program for Consumer Products, 42 U.S.C. § 6305; Marine Protection, Research and Sanctuary Act, 33 U.S.C. § 1415(g); National Forests, Columbia River Gorge National Scenic Area, 16 U.S.C. § 544m(b); Natural Gas Pipeline Safety Act, 49 U.S.C. § 1686; Noise Control Act, 42 U.S.C. § 4911; Ocean Thermal Energy Conservation Act, 42 U.S.C. § 9124; Outer Continental Shelf Lands Act, 43 U.S.C. § 1349(a); Powerplant and Industrial Fuel Use Act, 42 U.S.C. § 8435; Resource Conservation and Recovery Act, 42 U.S.C. § 6972; Surface Mining Control and Reclamation Act, 30 U.S.C. § 1270; Toxic Substances Control Act, 15 U.S.C. § 2619.

Additionally, the Committee notes that the Nuclear Regulatory Commission which, like the Department, is a security agency, is subject to suits brought by citizens.

The Committee expects that information provided during such proceedings should be maintained in accordance with existing protections for classified and sensitive materials including but not limited to the protections set forth in Section 2110 of this title.

*Section 2117. Annual Report to Congress.*

This section requires a report to Congress on the progress of implementation of this title not later than one year from the date of enactment and annually for the next four years and biennially thereafter. This report must include a qualitative discussion of how covered chemical facilities have reduced their risk of chemical facility terrorist incidents and a quantitative summary of the number of facilities that submitted information to DHS, the number of facilities in each tier, the number of SVAs and SSP submitted and approved or disapproved, changes in tier due to implementation of methods to reduce consequences, number of compliance orders or penalties issued by the Secretary, and any other information

deemed necessary by the Secretary. The report will be made publicly available.

The Committee intends that the assessment of programs, plans, and procedures should describe and enumerate the scope of the program using aggregate information, including but not limited to the number of facilities that are covered; number that are in compliance; number that have implemented methods to reduce consequences of a terrorist attack; number that are in each risk tier; number that have moved to a lower risk tier; and, for each risk tier, the number of facilities sorted by population at risk in and around each facility.

It is the intent of the Committee that the annual report to Congress shall include qualitative and quantitative information on the types of methods to reduce the consequences of a terrorist attack used by chemical facilities, including facilities that since any prior report to Congress under this section are no longer assigned to a risk-based tier by the Secretary as a result of the implementation of such methods.

*Section 2118. Authorization of Appropriations.*

This section authorizes \$325 million for fiscal year (FY) 2011 to carry out the requirements of this Act, which includes \$225 million for Departmental expenditures in carrying out this Act and \$100 million for facilities to fund capital costs incurred from implementing methods to reduce the consequences of a terrorist attack. The section authorizes \$300 million for FY 2012, with \$225 million for Departmental expenditures and \$75 million for consequence reduction, and \$275 million for FY 2013, with \$225 million for Departmental expenditures and \$50 million for consequence reduction.

The following sections are part of the legislation but do not amend the Homeland Security Act of 2002:

*(b) Clerical Amendment.*

Updates the table of contents for of the Homeland Security Act of 2002 to reflect the amendments made by this bill.

*(c) Conforming Repeal.*

Section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295) is struck on October 1, 2009.

*(d) Treatment of CFATS Regulations.*

It is the sense of Congress that the DHS Secretary was granted the authority to regulate security at chemical facilities pursuant to section 550 of P.L. 109–295, and that such authority will sunset on October 1, 2009. Under that authority, the Secretary promulgated the CFATS regulations. In carrying out the requirements of this Act, the Secretary may use whatever parts of CFATS and tools developed under the April 9, 2007 CFATS regulation that are relevant in carrying out this Act, and shall amend CFATS in order to carry out new requirements that the current CFATS regulations do not cover.

*(e) Facilities Covered by CFATS.*

Owners or operators of facilities currently that are covered by CFATS (in place pursuant to section 550 of P.L. 109–295) shall update their previously-approved SVAs and SSPs in order to comply with the requirements of this Act on a timeline determined by the Secretary.

*(f) Consultation With Other Persons.*

The Secretary shall consult with the Administrator of the Environmental Protection Agency, and other appropriate persons regarding the designation of substances of concern, methods to reduce the consequences of a terrorist attack, security at co-owned or co-operated drinking water and wastewater facilities, treatment of protected information, and other such matters that the Secretary deems appropriate.

*(g) Deadline for Regulations.*

The Secretary shall promulgate a proposed rule within 6 months of passage of this Act, and, after a notice and comment period, shall promulgate a final rule within 18 months of passage of this Act. The Committee intends for all Federal Agencies to take into account all necessary regulatory processes and timelines to guarantee full implementation by this date.

*(h) Review of Designation Sodium Fluoroacetate as a Substance of Concern.*

The Secretary shall review the designation of sodium fluoroacetate as a substance of concern as part of her next periodic review, or within one year after passage of this Act, whichever is sooner.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, 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:

\* \* \* \* \*

**TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES**

*Sec. 2101. Definitions.*

*Sec. 2102. Risk-based designation and ranking of chemical facilities.*

*Sec. 2103. Security vulnerability assessments and site security plans.*

*Sec. 2104. Site inspections.*

*Sec. 2105. Records.*

*Sec. 2106. Timely sharing of threat information.*

*Sec. 2107. Enforcement.*

*Sec. 2108. Whistleblower protections.*

*Sec. 2109. Federal preemption.*

*Sec. 2110. Protection of information.*

*Sec. 2111. Methods to reduce the consequences of a terrorist attack.*

*Sec. 2112. Applicability.*

*Sec. 2113. Savings clause.*

*Sec. 2114. Office of Chemical Facility Security.*

*Sec. 2115. Security background checks of covered individuals at certain chemical facilities.*

*Sec. 2116. Citizen suits.*

*Sec. 2117. Annual report to Congress.*

Sec. 2118. Authorization of appropriations.  
 Sec. 2119. Notification system to address public concerns.

\* \* \* \* \*

## **TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES**

### **SEC. 2101. DEFINITIONS.**

*In this title, the following definitions apply:*

- (1) *The term “chemical facility” means any facility—*  
     (A) *at which the owner or operator of the facility possesses or plans to possess at any relevant point in time a substance of concern; or*  
     (B) *that meets other risk-related criteria identified by the Secretary.*

- (2) *The term “chemical facility security performance standards” means risk-based standards established by the Secretary to ensure or enhance the security of a chemical facility against a chemical facility terrorist incident that are designed to address the following:*

- (A) *Restricting the area perimeter.*  
     (B) *Securing site assets.*

- (C) *Screening and controlling access to the facility and to restricted areas within the facility by screening or inspecting individuals and vehicles as they enter, including—*

        (i) *measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate a chemical facility terrorist incident or actions having serious negative consequences for the population surrounding the chemical facility; and*

        (ii) *measures implementing a regularly updated identification system that checks the identification of chemical facility personnel and other persons seeking access to the chemical facility and that discourages abuse through established disciplinary measures.*

- (D) *Methods to deter, detect, and delay a chemical facility terrorist incident, creating sufficient time between detection of a chemical facility terrorist incident and the point at which the chemical facility terrorist incident becomes successful, including measures to—*

        (i) *deter vehicles from penetrating the chemical facility perimeter, gaining unauthorized access to restricted areas, or otherwise presenting a hazard to potentially critical targets;*

        (ii) *deter chemical facility terrorist incidents through visible, professional, well-maintained security measures and systems, including security personnel, detection systems, barriers and barricades, and hardened or reduced value targets;*

        (iii) *detect chemical facility terrorist incidents at early stages through counter surveillance, frustration of opportunity to observe potential targets, surveillance and sensing systems, and barriers and barricades; and*

        (iv) *delay a chemical facility terrorist incident for a sufficient period of time so as to allow appropriate response through on-site security response, barriers and*

*barricades, hardened targets, and well-coordinated response planning.*

*(E) Securing and monitoring the shipping, receipt, and storage of a substance of concern for the chemical facility.*

*(F) Deterring theft or diversion of a substance of concern.*

*(G) Deterring insider sabotage.*

*(H) Deterring cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, including supervisory control and data acquisition systems, distributed control systems, process control systems, industrial control systems, critical business systems, and other sensitive computerized systems.*

*(I) Developing and exercising an internal emergency plan for owners, operators, and covered individuals of a covered chemical facility for responding to chemical facility terrorist incidents at the facility. Any such plan shall include the provision of appropriate information to any local emergency planning committee, local law enforcement officials, and emergency response providers to ensure an effective, collective response to terrorist incidents.*

*(J) Maintaining effective monitoring, communications, and warning systems, including—*

*(i) measures designed to ensure that security systems and equipment are in good working order and inspected, tested, calibrated, and otherwise maintained;*

*(ii) measures designed to regularly test security systems, note deficiencies, correct for detected deficiencies, and record results so that they are available for inspection by the Department; and*

*(iii) measures to allow the chemical facility to promptly identify and respond to security system and equipment failures or malfunctions.*

*(K) Ensuring mandatory annual security training, exercises, and drills of chemical facility personnel appropriate to their roles, responsibilities, and access to chemicals, including participation by local law enforcement, local emergency response providers, appropriate supervisory and non-supervisory facility employees and their employee representatives, if any.*

*(L) Performing personnel surety for individuals with access to restricted areas or critical assets by conducting appropriate background checks and ensuring appropriate credentials for unescorted visitors and chemical facility personnel, including permanent and part-time personnel, temporary personnel, and contract personnel, including—*

*(i) measures designed to verify and validate identity;*

*(ii) measures designed to check criminal history;*

*(iii) measures designed to verify and validate legal authorization to work; and*

*(iv) measures designed to identify people with terrorist ties.*

*(M) Escalating the level of protective measures for periods of elevated threat.*

*(N) Specific threats, vulnerabilities, or risks identified by the Secretary for that chemical facility.*

(O) Reporting of significant security incidents to the Department and to appropriate local law enforcement officials.

(P) Identifying, investigating, reporting, and maintaining records of significant security incidents and suspicious activities in or near the site.

(Q) Establishing one or more officials and an organization responsible for—

(i) security;

(ii) compliance with the standards under this paragraph;

(iii) serving as the point of contact for incident management purposes with Federal, State, local, and tribal agencies, law enforcement, and emergency response providers; and

(iv) coordination with Federal, State, local, and tribal agencies, law enforcement, and emergency response providers regarding plans and security measures for the collective response to a chemical facility terrorist incident.

(R) Maintaining appropriate records relating to the security of the facility, including a copy of the most recent security vulnerability assessment and site security plan at the chemical facility.

(S) Assessing and, as appropriate, utilizing methods to reduce the consequences of a terrorist attack.

(T) Methods to recover or mitigate the release of a substance of concern in the event of a chemical facility terrorist incident.

(U) Any additional security performance standards the Secretary may specify.

(3) The term “chemical facility terrorist incident” means any act or attempted act of terrorism or terrorist activity committed at, near, or against a chemical facility, including—

(A) the release of a substance of concern from a chemical facility;

(B) the theft, misappropriation, or misuse of a substance of concern from a chemical facility; or

(C) the sabotage of a chemical facility or a substance of concern at a chemical facility.

(4) The term “employee representative” means the representative of the certified or recognized bargaining agent engaged in a collective bargaining relationship with a private or public owner or operator of a chemical facility.

(5) The term “covered individual” means a permanent, temporary, full-time, or part-time employee of a covered chemical facility or an employee of an entity with which the covered chemical facility has entered into a contract who is performing responsibilities at the facility pursuant to the contract.

(6) The term “covered chemical facility” means a chemical facility that meets the criteria of section 2102(b)(1).

(7) The term “environment” means—

(A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the

*United States under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and*

*(B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.*

*(8) The term “owner or operator” with respect to a facility means any of the following:*

*(A) The person who owns the facility.*

*(B) The person who has responsibility for daily operation of the facility.*

*(C) The person who leases the facility.*

*(9) The term “person” means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.*

*(10) The term “release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B) emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act (42 U.S.C. 2210), or, for the purposes of section 104 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9604) or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7912(a)(1); and (D) the normal application of fertilizer.*

*(11) The term “substance of concern” means a chemical substance in quantity and form that is so designated by the Secretary under section 2102(a).*

*(12) The term “method to reduce the consequences of a terrorist attack” means a measure used at a chemical facility that reduces or eliminates the potential consequences of a chemical facility terrorist incident, including—*

*(A) the elimination or reduction in the amount of a substance of concern possessed or planned to be possessed by an owner or operator of a covered chemical facility through the use of alternate substances, formulations, or processes;*

*(B) the modification of pressures, temperatures, or concentrations of a substance of concern; and*

(C) the reduction or elimination of onsite handling of a substance of concern through improvement of inventory control or chemical use efficiency.

(13) The term “academic laboratory” means an area owned by an eligible institution of higher education defined pursuant to section 101 of the Higher Education Act of 1965 (20 U.S.C. 2001) or a non-profit research institute or teaching hospital that has a formal affiliation with a college or university where relatively small quantities of chemicals and other substances are used on a non-production basis for teaching, research, or diagnostic purposes, and are stored and used in containers that are easily manipulated by one person, including photo laboratories, art studios, field laboratories research farms, chemical stockrooms, and preparatory laboratories.

(14) The term “surface transportation modes” means mass transit, commuter and long-distance passenger rail, freight rail, commercial vehicles (including intercity buses), and pipelines, and related infrastructure (including roads and highways), that are within the territory of the United States.

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

**(a) SUBSTANCES OF CONCERN.—**

(1) **DESIGNATION BY THE SECRETARY.**—The Secretary may designate any chemical substance as a substance of concern and establish the threshold quantity for each such substance of concern.

(2) **MATTERS FOR CONSIDERATION.**—In designating 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, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy that could result from a chemical facility terrorist incident.

**(b) LIST OF COVERED CHEMICAL FACILITIES.—**

(1) **CRITERIA FOR LIST OF FACILITIES.**—The Secretary shall maintain a list of covered chemical facilities that the Secretary determines are of sufficient security risk for inclusion on the list based on the following criteria:

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

(B) The potential extent and likelihood of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy that could result from a chemical facility terrorist incident.

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

(2) **SUBMISSION OF INFORMATION.**—The Secretary may require the submission of information with respect to the quantities of substances of concern that an owner or operator of a chemical facility possesses or plans to possess in order to determine whether to designate a chemical facility as a covered chemical facility for purposes of this title.

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

(1) **ASSIGNMENT.**—*The Secretary shall assign each covered chemical facility to one of four risk-based tiers established by the Secretary, with tier one representing the highest degree of risk and tier four the lowest degree of risk.*

(2) **PROVISION OF INFORMATION.**—*The Secretary may request, and the owner or operator of a covered chemical facility shall provide, any additional information beyond any information required to be submitted under subsection (b)(2) that may be necessary for the Secretary to assign the chemical facility to the appropriate tier under paragraph (1).*

(3) **NOTIFICATION.**—*Not later than 60 days after the date on which the Secretary determines that a chemical facility is a covered chemical facility or is no longer a covered chemical facility or changes the tier assignment under paragraph (1) of a covered chemical facility, the Secretary shall notify the owner or operator of that chemical facility of that determination or change together with the reason for the determination or change and, upon the request of the owner or operator of a covered chemical facility, provide to the owner or operator of the covered chemical facility the following information:*

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

(B) *Information related to the criticality of the covered chemical facility.*

(C) *The proximity or interrelationship of the covered chemical facility to other critical infrastructure.*

**(d) REQUIREMENT FOR REVIEW.—The Secretary—**

(1) *shall periodically review—*

(A) *the designation of a substance of concern and the threshold quantity under subsection (a)(1); and*

(B) *the criteria under subsection (b)(1); and*

(2) *may at any time determine whether a chemical facility is a covered chemical facility or change the tier to which such a facility is assigned under subsection (c)(1).*

(e) **PROVISION OF THREAT-RELATED INFORMATION.**—*In order to effectively assess the vulnerabilities to a covered chemical facility, the Secretary shall provide to the owner, operator, or security officer of a covered chemical facility threat information regarding probable threats to the facility and methods that could be used in a chemical facility terrorist incident.*

**SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND SITE SECURITY PLANS.**

**(a) IN GENERAL.—**

(1) **REQUIREMENT.**—*The Secretary shall—*

(A) *establish standards, protocols, and procedures for security vulnerability assessments and site security plans to be required for covered chemical facilities;*

(B) *require the owner or operator of each covered chemical facility to—*

(i) *conduct an assessment of the vulnerability of the covered chemical facility to a range of chemical facility*

terrorist incidents, including an incident that results in a worst-case release of a substance of concern;

(ii) prepare and implement a site security plan for that covered chemical facility that addresses the security vulnerability assessment and meets the risk-based chemical security performance standards under subsection (b);

(iii) include at least one supervisory and at least one non-supervisory employee of the covered chemical facility, and at least one employee representative, from each bargaining agent at the covered chemical facility, if any, in developing the security vulnerability assessment and site security plan required under this clause;

(iv) include, with the submission of a security vulnerability assessment of the facility and the site security plan, a signed statement by the owner or operator of the covered chemical facility that certifies that the submission is provided to the Secretary with knowledge of the penalty provisions under section 2107.

(C) set deadlines, by tier, for the completion of security vulnerability assessments and site security plans;

(D) upon request, as necessary, and to the extent that resources permit, provide technical assistance to a covered chemical facility conducting a vulnerability assessment or site security plan required under this section;

(E) establish specific deadlines and requirements for the submission by a covered chemical facility of information describing—

(i) any change in the use by the covered chemical facility of more than a threshold amount of any substance of concern that may affect the requirements of the chemical facility under this title; or

(ii) any material modification to a covered chemical facility's operations or site that may affect the security vulnerability assessment or site security plan submitted by the covered chemical facility;

(F) require the owner or operator of a covered chemical facility to review and resubmit a security vulnerability assessment or site security plan not less frequently than once every 5 years;

(G) not later than 180 days after the date on which the Secretary receives a security vulnerability assessment or site security plan under this title, review and approve or disapprove such assessment or plan; and

(H) establish, as appropriate, modified or separate standards, protocols, and procedures for security vulnerability assessments and site security plans for covered chemical facilities that are also academic laboratories.

(2) **INHERENTLY GOVERNMENTAL FUNCTION.**—The approval or disapproval of a security vulnerability assessment or site security plan under this section is an inherently governmental function.

(b) **RISK-BASED CHEMICAL SECURITY PERFORMANCE STANDARDS.**—The Secretary shall establish risk-based chemical security performance standards for the site security plans required to be pre-

pared by covered chemical facilities. In establishing such standards, the Secretary shall—

(1) require separate and, as appropriate, increasingly stringent risk-based chemical security performance standards for site security plans as the level of risk associated with the tier increases;

(2) permit each covered chemical facility submitting a site security plan to select a combination of security measures that satisfy the risk-based chemical security performance standards established by the Secretary under this subsection; and

(3) provide, as appropriate, academic laboratories with modified or separate security measures that recognize the smaller quantities, highly distributed environments, and short periods of time that characterize the substances of concern at academic laboratories.

(c) **CO-LOCATED CHEMICAL FACILITIES.**—The Secretary may allow an owner or operator of a covered chemical facility that is located geographically close to another covered chemical facility to develop and implement coordinated security vulnerability assessments and site security plans.

(d) **ALTERNATE SECURITY PROGRAMS SATISFYING REQUIREMENTS FOR SECURITY VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN.**—

(1) **ACCEPTANCE OF PROGRAM.**—In response to a request by an owner or operator of a covered chemical facility, the Secretary may accept an alternate security program submitted by the owner or operator of the facility as a component of the security vulnerability assessment or site security plan required under this section, if the Secretary determines that such alternate security program, in combination with other components of the security vulnerability assessment and site security plan submitted by the owner or operator of the facility—

(A) meets the requirements of this title and the regulations promulgated pursuant to this title;

(B) provides an equivalent level of security to the level of security established pursuant to the regulations promulgated under this title; and

(C) includes employee participation as required under subsection (a)(1)(B)(iii).

(2) **SECRETARIAL REVIEW REQUIRED.**—Nothing in this subsection shall relieve the Secretary of the obligation—

(A) to review a security vulnerability assessment and site security plan submitted by a covered chemical facility under this section; and

(B) to approve or disapprove each such assessment or plan on an individual basis according to the deadlines established under subsection (a).

(3) **COVERED FACILITY'S OBLIGATIONS UNAFFECTED.**—Nothing in this subsection shall relieve any covered chemical facility of the obligation and responsibility to comply with all of the requirements of this title.

(4) **PERSONNEL SURETY ALTERNATE SECURITY PROGRAM.**—In response to an application from a non-profit, personnel surety accrediting organization acting on behalf of, and with written authorization from, the owner or operator of a covered chemical

facility, the Secretary may accept a personnel surety alternate security program that meets the requirements of section 2115 and provides for a background check process that is—

(A) expedited, affordable, reliable, and accurate;

(B) fully protective of the rights of covered individuals through procedures that are consistent with the privacy protections available under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); and

(C) is a single background check consistent with a risk-based tiered program.

(e) OTHER AUTHORITIES.—

(1) REGULATION OF MARITIME FACILITIES.—

(A) RISK-BASED TIERING.—Notwithstanding any other provision of law, the owner or operator of a chemical facility required to submit a facility security plan under section 70103(c) of title 46, United States Code, shall be required to submit information to the Secretary necessary to determine whether to designate such a facility as a covered chemical facility and to assign the facility to a risk-based tier under section 2102 of this title.

(B) ADDITIONAL MEASURES.—In the case of a facility designated as a covered chemical facility under this title that is also regulated under section 70103(c) of title 46, United States Code, the Secretary shall require the owner or operator of such facility to update the vulnerability assessments and facility security plans required under that section, if necessary, to ensure an equivalent level of security for substances of concern, including the requirements under section 2111, in the same manner as other covered chemical facilities in this title.

(C) INFORMATION SHARING AND PROTECTION.—Notwithstanding section 70103(d) of title 46, United States Code, the Secretary shall apply the information sharing and protection requirements in section 2110 of this title to a facility described in subparagraph (B).

(D) ENFORCEMENT.—The Secretary shall establish, by rulemaking, procedures to ensure that an owner or operator of a covered chemical facility required to update the vulnerability assessment and facility security plan for the facility under subparagraph (B) is in compliance with the requirements of this title.

(E) FORMAL AGREEMENT.—The Secretary shall—

(i) require the Office of Infrastructure Protection and the Coast Guard to enter into a formal agreement detailing their respective roles and responsibilities in carrying out the requirements of this title. Such agreement shall ensure that the enforcement and compliance requirements under this title and section 70103 of title 46, United States Code, are not conflicting or duplicative; and

(ii) designate the agency responsible for enforcement of the requirements of this title for covered chemical facilities referred to in subparagraph (A).

(2) COORDINATION OF STORAGE LICENSING OR PERMITTING REQUIREMENT.—In the case of any storage required to be licensed

or permitted 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.

(f) *ROLE OF EMPLOYEES.—*

(1) *DESCRIPTION OF ROLE REQUIRED.—*As appropriate, security vulnerability assessments or site security plans required under this section shall describe the roles or responsibilities that covered individuals are expected to perform to deter or respond to a chemical facility terrorist incident.

(2) *TRAINING FOR EMPLOYEES.—*The owner or operator of a covered chemical facility required to submit a site security plan under this section shall annually provide each covered individual with a role or responsibility referred to in paragraph (1) at the facility with a minimum of 8 hours of training. Such training shall—

(A) include an identification and discussion of substances of concern;

(B) include a discussion of possible consequences of a chemical facility terrorist incident;

(C) review and exercise the covered chemical facility's site security plan, including any requirements for differing threat levels;

(D) include a review of information protection requirements;

(E) include a discussion of physical and cyber security equipment, systems, and methods used to achieve chemical security performance standards;

(F) allow training with other relevant participants, including Federal, State, local, and tribal authorities, and first responders, where appropriate;

(G) use existing national voluntary consensus standards, chosen jointly with employee representatives, if any;

(H) allow instruction through government training programs, chemical facilities, academic institutions, nonprofit organizations, industry and private organizations, employee organizations, and other relevant entities that provide such training;

(I) use multiple training media and methods;

(J) include identification and assessment of methods to reduce the consequences of a terrorist attack; and

(K) include a discussion of appropriate emergency response procedures.

(g) *WORKER TRAINING GRANTS PROGRAM.—*

(1) *AUTHORITY.—*The Secretary shall establish a grant program to award grants to eligible entities to provide for training and education of covered individuals, first responders, and emergency response providers.

(2) *ADMINISTRATION.—*The Secretary shall enter into an agreement with another Federal or State agency to make and administer grants or cooperative agreements under this section.

(3) *USE OF FUNDS.—*The recipient of a grant under this subsection shall use the grant to provide for training and education

of covered individuals, first responders, and emergency response providers, including—

(A) the annual mandatory training specified in subsection (f)(2); and

(B) other appropriate training for first responders and emergency response providers in protecting nearby persons, property, critical infrastructure, or the environment from the effects of a chemical facility terrorist incident.

(4) *ELIGIBLE ENTITIES.*—For purposes of this subsection, an eligible entity is a nonprofit organization with demonstrated experience in implementing and operating successful worker or first responder health and safety training programs.

**SEC. 2104. SITE INSPECTIONS.**

(a) *RIGHT OF ENTRY.*—For purposes of carrying out this title, the Secretary shall have, at a reasonable time and on presentation of credentials, a right of entry to, on, or through any property of a covered chemical facility or any property on which any record required to be maintained under this section is located.

(b) *INSPECTIONS AND VERIFICATIONS.*—

(1) *IN GENERAL.*—The Secretary shall, at such time and place as the Secretary determines to be reasonable and appropriate, conduct chemical facility security inspections and verifications.

(2) *REQUIREMENTS.*—To ensure and evaluate compliance with this title, including any regulations or requirements adopted by the Secretary in furtherance of the purposes of this title, in conducting an inspection or verification under paragraph (1), the Secretary shall have access to the owners, operators, employees, and employee representatives, if any, of a covered chemical facility.

(c) *UNANNOUNCED INSPECTIONS.*—In addition to any inspection conducted pursuant to subsection (b), the Secretary shall require covered chemical facilities assigned to tier 1 and tier 2 under section 2102(c)(1) to undergo unannounced facility inspections. The inspections required under this subsection shall be—

(1) conducted without prior notice to the facility;

(2) designed to evaluate at the chemical facility undergoing inspection—

(A) the ability of the chemical facility to prevent a chemical facility terrorist incident that applicable chemical security performance standards are intended to prevent;

(B) the ability of the chemical facility to protect against security threats that are required to be addressed by applicable chemical security performance standards; and

(C) any weaknesses in the security plan of the chemical facility;

(3) conducted so as not to affect the actual security, physical integrity, or safety of the chemical facility or its employees while the inspection is conducted; and

(4) conducted—

(A) every two years in the case of a covered chemical facility assigned to tier 1; and

(B) every four years in the case of a covered chemical facility assigned to tier 2.

(d) *CHEMICAL SECURITY INSPECTORS AUTHORIZED.*—Subject to availability of appropriations for such purpose, the Secretary shall

hire not fewer than 100 additional chemical facility inspectors in fiscal years 2010 and 2011 to ensure compliance with this title.

**SEC. 2105. RECORDS.**

(a) **REQUESTS FOR RECORDS.**—

(1) **IN GENERAL.**—In carrying out this title, the Secretary may require the submission of or, on presentation of credentials, may at reasonable times obtain access to and copy any records, including any records maintained in electronic format, necessary for—

(A) reviewing or analyzing a security vulnerability assessment or site security plan submitted under section 2103; or

(B) assessing the implementation of such a site security plan.

(2) **PROPER HANDLING OF RECORDS.**—In accessing or copying any records under paragraph (1), the Secretary shall ensure that such records are handled and secured appropriately in accordance with section 2110.

(b) **PROVISION OF RECORDS TO EMPLOYEE REPRESENTATIVES.**—If a covered chemical facility has one or more certified or recognized bargaining agents, the owner or operator of the covered chemical facility shall provide an employee representative designated by each such bargaining agent at such facility with a copy of any security vulnerability assessment or site security plan submitted. Each employee representative shall ensure that any such assessment or plan provided to the representative is handled and secured appropriately in accordance with section 2110.

**SEC. 2106. TIMELY SHARING OF THREAT INFORMATION.**

(a) **RESPONSIBILITIES OF SECRETARY.**—Upon the receipt of information concerning a threat that is relevant to a certain covered chemical facility, the Secretary shall provide such information in a timely manner, to the maximum extent practicable under applicable authority and in the interests of national security, to the owner, operator, or security officer of that covered chemical facility, to a representative of each recognized or certified bargaining agent at the facility, if any, and to relevant State, local, and tribal authorities, including the State Homeland Security Advisor, if applicable.

(b) **RESPONSIBILITIES OF OWNER OR OPERATOR.**—The Secretary shall require the owner or operator of a covered chemical facility to provide information concerning a threat in a timely manner about any significant security incident or threat to the covered chemical facility or any intentional or unauthorized penetration of the physical security or cyber security of the covered chemical facility whether successful or unsuccessful.

**SEC. 2107. ENFORCEMENT.**

(a) **REVIEW OF SITE SECURITY PLAN.**—

(1) **DISAPPROVAL.**—The Secretary shall disapprove a security vulnerability assessment or site security plan submitted under this title if the Secretary determines that—

(A) the security vulnerability assessment or site security plan does not comply with the standards, protocols, or procedures under section 2103(a)(1)(A); or

(B) in the case of a site security plan—

(i) the plan or the implementation of the plan is insufficient to address vulnerabilities identified in a security vulnerability assessment, site inspection, or unannounced inspection of the covered chemical facility; or

(ii) the plan fails to meet all applicable chemical facility security performance standards.

(2) *PROVISION OF NOTIFICATION OF DISAPPROVAL.*—If the Secretary disapproves the security vulnerability assessment or site security plan submitted by a covered chemical facility under this title or the implementation of a site security plan by such a chemical facility, the Secretary shall provide the owner or operator of the covered chemical facility a written notification of the disapproval within 14 days of the date on which the Secretary disapproves such assessment or plan, that—

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

(B) requires the owner or operator of the covered chemical facility to revise the assessment or plan to address any deficiencies and, by such date as the Secretary determines is appropriate, to submit to the Secretary the revised assessment or plan.

(3) *ORDER FOR COMPLIANCE.*—Whenever the Secretary determines that the owner or operator of a covered chemical facility has violated or is in violation of any requirement of this title or has failed or is failing to address any deficiencies in the assessment, plan, or implementation of the plan by such date as the Secretary determines to be appropriate, the Secretary, after providing an opportunity for the owner or operator of the covered chemical facility to consult with the Secretary, may—

(A) issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both; or

(B) commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including temporary or permanent injunction.

(4) *ORDER TO CEASE OPERATIONS.*—If the Secretary determines that the owner or operator of a covered chemical facility continues to be in noncompliance after an order for compliance is issued under paragraph (3), the Secretary may issue an order to the owner or operator of a covered chemical facility to cease operations at the facility until the owner or operator complies with such order issued under paragraph (3). Notwithstanding the preceding sentence, the Secretary may not issue an order to cease operations under this paragraph to the owner or operator of a wastewater facility.

(b) *PENALTIES.*—

(1) *CIVIL PENALTIES.*—A court may award a civil penalty, pursuant to an order issued by the Secretary under this title, of not more than \$50,000 for each day on which a violation occurs or a failure to comply continues.

(2) *ADMINISTRATIVE PENALTIES.*—The Secretary may award an administrative penalty, pursuant to an order issued under

*this title, of not more than \$25,000 for each day on which a violation occurs or a failure to comply continues.*

(3) *APPLICABILITY OF PENALTIES.*—Penalties under paragraphs (1) and (2) may be awarded for any violation of this title, including a violation of the whistleblower protections under section 2108.

**SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

(a) *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 covered chemical facility associated with the risk of a chemical facility terrorist incident.

(b) *CONFIDENTIALITY.*—The Secretary shall keep confidential the identity of a person that submits a report under subsection (a) and any such report shall be treated as protected information under section 2110 to the extent that it does not consist of publicly available information.

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

(d) *STEPS TO ADDRESS PROBLEMS.*—The Secretary shall review and consider the information provided in any report submitted under subsection (a) and shall, as necessary, take appropriate steps under this title to address any problem, deficiency, or vulnerability identified in the report.

(e) *RETALIATION PROHIBITED.*—

(1) *PROHIBITION.*—No owner or operator of a covered chemical facility, for-profit or not-for-profit corporation, association, or any contractor, subcontractor or agent thereof, may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or other privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(A) notified the Secretary, the owner or operator of a covered chemical facility, or the employee's employer of an alleged violation of this title, including communications related to carrying out the employee's job duties;

(B) refused to engage in any practice made unlawful by this title, if the employee has identified the alleged illegality to the employer;

(C) testified before or otherwise provided information relevant for Congress or for any Federal or State proceeding regarding any provision (or proposed provision) of this title;

(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title;

(E) testified or is about to testify in any such proceeding;

or

(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this title.

(2) *ENFORCEMENT ACTION.*—Any employee covered by this section who alleges discrimination by an employer in violation of

paragraph (1) may bring an action governed by the rules and procedures, legal burdens of proof, and remedies applicable under subsections (d) through (h) of section 20109 of title 49, United States Code. A party may seek district court review as set forth in subsection (d)(4) of such section not later than 90 days after receiving a written final determination by the Secretary of Labor.

(f) **PROHIBITED PERSONNEL PRACTICES AFFECTING THE DEPARTMENT.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, any individual holding or applying for a position of employment within the Department shall be covered by—

(A) paragraphs (1), (8), and (9) of section 2302(b) of title 5, United States Code;

(B) any provision of law implementing any of such paragraphs by providing any right or remedy available to an employee or applicant for employment in the civil service; and

(C) any rule or regulation prescribed under any such paragraph.

(2) **RULE OF CONSTRUCTION.**—Nothing in this paragraph shall be construed to affect any rights, apart from those referred to in paragraph (1), to which an individual described in that subparagraph might otherwise be entitled to under law.

**SEC. 2109. FEDERAL PREEMPTION.**

This title does not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to a covered chemical facility that is more stringent than a regulation, requirement, or standard of performance issued under this title, or otherwise impair any right or jurisdiction of any State or political subdivision thereof with respect to covered chemical facilities within that State or political subdivision thereof.

**SEC. 2110. PROTECTION OF INFORMATION.**

(a) **PROHIBITION OF PUBLIC DISCLOSURE OF PROTECTED INFORMATION.**—Protected information, as described in subsection (g), that is provided to the Department by the owner or operator of a covered chemical facility or created by the Department under the requirements of this title—

(1) is exempt from disclosure under section 552 of title 5, United States Code; and

(2) may not be made available pursuant to any State or local law requiring disclosure of information or records.

(b) **INFORMATION SHARING.**—The Secretary shall facilitate and provide standards for the appropriate sharing of protected information with and between Federal, State, local, and tribal governments, emergency response providers, law enforcement officials, designated supervisory and non-supervisory covered chemical facility personnel with security, operational, or fiduciary responsibility for the facility, and designated facility employee representatives, if any.

(c) **TREATMENT OF INFORMATION IN ADJUDICATIVE PROCEEDINGS.**—In a proceeding under this title, protected information described in subsection (g), or related vulnerability or security information, shall be treated in any judicial or administrative action in

a manner consistent with the treatment of sensitive security information under section 525 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109-295; 120 Stat. 1321).

(d) *OTHER OBLIGATIONS UNAFFECTED.*—Nothing in this section affects any obligation of the owner or operator of a chemical facility under any other law to submit or make available information required by such other law to facility employees, employee organizations, or a Federal, State, tribal, or local government.

(e) *SUBMISSION OF INFORMATION TO CONGRESS.*—Nothing in this title shall permit or authorize the withholding of information from Congress or any committee or subcommittee thereof.

(f) *DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.*—Nothing in this title shall affect any authority or obligation of a Federal, State, or local agency to protect or disclose any record or information that the Federal, State, or local government agency obtains from a chemical facility under any other law.

(g) *PROTECTED INFORMATION.*—

(1) *IN GENERAL.*—For purposes of this title, protected information is the following:

(A) Security vulnerability assessments and site security plans submitted to the Secretary under this title.

(B) Portions of the following documents, records, orders, notices, or letters that the Secretary determines would be detrimental to chemical facility security if disclosed and that are developed by the Secretary or the owner or operator of a covered chemical facility exclusively for the purposes of this title:

(i) Documents directly related to the Secretary's review and approval or disapproval of vulnerability assessments and site security plans under this title.

(ii) Documents directly related to inspections and audits under this title.

(iii) Orders, notices, or letters regarding the compliance of a covered chemical facility with the requirements of this title.

(iv) Information provided to or created by the Secretary under section subsection (b) or (c) of section 2102.

(C) Other information developed exclusively for the purposes of this title that the Secretary determines, if disclosed, would be detrimental to chemical facility security.

(2) *EXCLUSIONS.*—For purposes of this section, protected information does not include—

(A) information that is otherwise publicly available, including information that is required to be made publicly available under any law;

(B) information that a chemical facility has lawfully disclosed other than in accordance with this title; or

(C) information that, if disclosed, would not be detrimental to the security of a chemical facility, including aggregate regulatory data that the Secretary determines is appropriate to describe facility compliance with the requirements of this title and the Secretary's implementation of such requirements.

**SEC. 2111. METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.**

(a) **ASSESSMENT REQUIRED.**—*The owner or operator of a covered chemical facility shall include in the site security plan conducted pursuant to section 2103, an assessment of methods to reduce the consequences of a terrorist attack on that chemical facility, including—*

- (1) *a description of the methods to reduce the consequences of a terrorist attack assessed by the covered chemical facility;*
- (2) *the degree to which each method to reduce the consequences of a terrorist attack could, if applied, reduce the potential extent of death, injury, or serious adverse effects to human health resulting from a terrorist release;*
- (3) *the technical viability, costs, avoided costs (including liabilities), savings, and applicability of implementing each method to reduce the consequences of a terrorist attack; and*
- (4) *any other information that the owner or operator of the covered chemical facility considered in conducting the assessment.*

(b) **IMPLEMENTATION.**—

(1) **IMPLEMENTATION.**—*The owner or operator of a covered chemical facility assigned to tier 1 or tier 2 that is required to conduct an assessment under subsection (a) 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 (a), that the implementation of such methods at the facility—*

*(A) would significantly reduce the risk of death, injury, or serious adverse effects to human health resulting from a chemical facility terrorist incident but would not increase the interim storage of a substance of concern outside the facility or directly result in the creation of a new covered chemical facility assigned to tier 1 or tier 2 or the elevation of an existing covered chemical facility to tier 1 or tier 2;*

*(B) can feasibly be incorporated into the operation of the covered chemical facility;*

*(C) would not significantly and demonstrably impair the ability of the owner or operator of the covered chemical facility to continue the business of the facility at its location;*

*(D) would not significantly or demonstrably reduce the operations of the covered chemical facility or result in a reduction of the workforce of the covered chemical facility; and*

*(E) would not significantly transfer security risk to the transportation infrastructure of the United States.*

(2) **ANALYSIS REQUIRED.**—

(A) **IN GENERAL.**—*The Secretary may not require facilities to implement methods to reduce the consequences of a terrorist attack until the Secretary conducts a detailed analysis of the effects of such mandatory implementation. Such analysis shall consider—*

- (i) the costs companies and facilities will incur as a result of mandatory implementation;*
- (ii) any resultant loss of employment sustained; and*
- (iii) any loss of production due to implementation.*

(B) *CONSULTATION.*—*In completing the analysis required by subparagraph (A), the Secretary shall consult with relevant stakeholder groups, including—*

- (i) experts from the chemical industry;*
- (ii) representatives of covered chemical facilities;*
- (iii) members of the academic community; and*
- (iv) appropriate representatives from organized labor.*

(C) *REPORT.*—*The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report detailing the Secretary's analysis required by this subsection.*

(3) *REVIEW OF INABILITY TO COMPLY.*—

(A) *IN GENERAL.*—*An owner or operator of a covered chemical facility who is unable to comply with the Secretary's determination under paragraph (1) shall, within 60 days of receipt of the Secretary's determination, provide to the Secretary a written explanation that includes the reasons therefor.*

(B) *REVIEW.*—*Not later than 60 days after the receipt of an explanation submitted under subparagraph (A), the Secretary, after consulting with the owner or operator of the covered chemical facility who submitted such explanation, shall provide to the owner or operator a written determination of whether implementation shall be required pursuant to paragraph (1). If the Secretary determines that implementation is required, the facility shall be required to begin implementation within 180 days of that determination.*

(4) *APPEALS.*—

(A) *IN GENERAL.*—*An owner or operator of a covered chemical facility who is unable to comply with the Secretary's determination under paragraph (3)(B) may request a de novo hearing before an administrative law judge of the Department of Homeland Security within 30 days of receipt of the Secretary's determination. An owner or operator of a covered facility requesting such a hearing shall not be required to begin implementation otherwise required by paragraph (3)(B).*

(B) *HEARING.*—*To the extent necessary for the decision in a proceeding commenced under this paragraph, the administrative law judge shall decide all relevant questions of law and regulation. The administrative law judge shall set aside the Secretary's determination if it is determined to be—*

- (i) arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;*
- (ii) not made consistent with required procedures; or*
- (iii) not supported by substantial evidence.*

(C) *TIME FRAME FOR DECISIONS.*—*The decision of the administrative law judge shall be rendered within 30 days of the de novo hearing and shall constitute final action by the Secretary.*

(D) *ACTION UPON DECISION.*—*If the administrative law judge—*

(i) concurs with the Secretary's determination under paragraph (1), the owner or operator of a covered chemical facility shall begin to implement the methods to reduce the consequences of a terrorist attack required by the Secretary not later than 180 days following the decision of the administrative law judge; or

(ii) sets aside the Secretary's determination under such paragraph, the owner or operator of a covered chemical facility shall not be required to comply with such methods.

(c) **PROVISION OF INFORMATION ON ALTERNATIVE APPROACHES.**—

(1) **IN GENERAL.**—The Secretary shall make available information to chemical facilities on the use and availability of methods to reduce the consequences of a chemical facility terrorist incident.

(2) **INFORMATION TO BE INCLUDED.**—The information under paragraph (1) may include information about—

(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) emerging technologies that could be transferred from research models or prototypes to practical applications;

(F) the availability of technical assistance and best practices; and

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

(3) **PUBLIC AVAILABILITY.**—Information made available under this subsection shall not identify any specific chemical facility, violate the protection of information provisions under section 2110, or disclose any proprietary information.

(d) **FUNDING FOR METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.**—The Secretary may make funds available to help defray the cost of implementing methods to reduce the consequences of a terrorist attack to covered chemical facilities that are required by the Secretary to implement such methods.

(e) **APPLICABILITY TO SMALL BUSINESS CONCERNS.**—

(1) **REPORT.**—

(A) **IN GENERAL.**—Not later than one year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on Homeland Security of the House of Representatives that reviews and assesses the security issues associated with exempting from this section businesses that are small business concerns, as determined by the Administrator of the Small Business Administration pursuant to the regulations set forth in 13 C.F.R. 121.201, as in effect on January 1, 2009.

(B) **CONTENTS.**—The report shall include—

(i) an analysis of the potential issues relevant to exempting small business concerns, as defined in subparagraph (A), from the requirements of this section,

*including the potential effect of such an exemption on the security of chemical facilities in the United States and the economic effect of applying this section to such small business concerns; and*

*(ii) any other elements the Secretary determines to be relevant or appropriate.*

(2) **DETERMINATION OF APPLICABILITY.**—*Upon submission of the report required in paragraph (1), the Secretary shall determine whether a small business concern, as defined in paragraph (1)(A), shall be subject to or exempt from this section.*

**SEC. 2112. APPLICABILITY.**

*This title shall not apply to—*

*(1) any chemical facility that is owned and operated by the Secretary of Defense;*

*(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) all or a specified portion of any chemical facility that—*

*(A) is subject to regulation by the Nuclear Regulatory Commission (hereinafter in this paragraph referred to as the “Commission”) or a State that has entered into an agreement with the Commission under section 274 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021 b.);*

*(B) has had security controls imposed by the Commission or State, whichever has the regulatory authority, on the entire facility or the specified portion of the facility; and*

*(C) has been designated by the Commission, after consultation with the State, if any, that regulates the facility, and the Secretary, as excluded from the application of this title.*

**SEC. 2113. SAVINGS CLAUSE.**

*(a) IN GENERAL.—Nothing in this title shall affect or modify in any way any obligation or liability of any person under any other Federal law, including section 112 of the Clean Air Act (42 U.S.C. 7412), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety and Health Act (29 U.S.C. 651 et seq.), the National Labor Relations Act (29 U.S.C. 151 et seq.), the Emergency Planning and Community Right to Know Act of 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Maritime Transportation Security Act of 2002 (Public Law 107–295), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).*

*(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.*

**SEC. 2114. OFFICE OF CHEMICAL FACILITY SECURITY.**

*(a) IN GENERAL.—There is established in the Department an Office of Chemical Facility Security, headed by a Director, who shall be a member of the Senior Executive Service in accordance with*

subchapter VI of chapter 33 of title 5, United States Code, under section 5382 of that title, and who shall be responsible for carrying out the responsibilities of the Secretary under this title.

(b) *PROFESSIONAL QUALIFICATIONS.*—The individual selected by the Secretary as the Director of the Office of Chemical Facility Security shall have professional qualifications and experience necessary for effectively directing the Office of Chemical Facility Security and carrying out the requirements of this title, including a demonstrated knowledge of physical infrastructure protection, cybersecurity, chemical facility security, hazard analysis, chemical process engineering, chemical process safety reviews, or other such qualifications that the Secretary determines to be necessary.

(c) *SELECTION PROCESS.*—The Secretary shall make a reasonable effort to select an individual to serve as the Director from among a group of candidates that is diverse with respect to race, ethnicity, age, gender, and disability characteristics and submit to the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate information on the selection process, including details on efforts to assure diversity among the candidates considered for this position.

**SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED INDIVIDUALS AT CERTAIN CHEMICAL FACILITIES.**

(a) *REGULATIONS ISSUED BY THE SECRETARY.*—

(1) *IN GENERAL.*—

(A) *REQUIREMENT.*—The Secretary shall issue regulations to require covered chemical facilities to establish personnel surety for individuals described in subparagraph (B) by conducting appropriate security background checks and ensuring appropriate credentials for unescorted visitors and chemical facility personnel, including permanent and part-time personnel, temporary personnel, and contract personnel, including—

- (i) measures designed to verify and validate identity;
- (ii) measures designed to check criminal history;
- (iii) measures designed to verify and validate legal authorization to work; and
- (iv) measures designed to identify people with terrorist ties.

(B) *INDIVIDUALS DESCRIBED.*—For purposes of subparagraph (A), an individual described in this subparagraph is an individual with access to restricted areas or critical assets of a covered chemical facility, including—

- (i) a covered individual who has unescorted access to restricted areas or critical assets or who is provided with a copy of a security vulnerability assessment or site security plan;
- (ii) a person associated with a covered chemical facility who is provided with a copy of a security vulnerability assessment or site security plan; or
- (iii) a person who is determined by the Secretary to require a security background check based on chemical facility security performance standards.

(2) *REGULATIONS.*—The regulations required by paragraph (1) shall set forth—

(A) the scope of the security background checks, including the types of disqualifying offenses and the time period covered for each person subject to a security background check under paragraph (1);

(B) the processes to conduct the security background checks;

(C) the necessary biographical information and other data required in order to conduct the security background checks;

(D) a redress process for an adversely-affected person consistent with subsections (b) and (d); and

(E) a prohibition on an owner or operator of a covered chemical facility unreasonably misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

(b) **REQUIREMENTS.**—Upon issuance of regulations under subsection (a), the Secretary shall prohibit the owner or operator of a covered chemical facility from making an adverse employment decision, including removal or suspension of the employee, due to such regulations with respect to such person unless such person—

(1) has been convicted of, has been found not guilty of by reason of insanity of, or is under want, warrant, or indictment for a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;

(2) was convicted of or found not guilty by reason of insanity of an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date on which the covered chemical facility performs the security background check;

(3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the chemical facility performs the security background check;

(4) is determined by the Secretary to be on the consolidated terrorist watchlist; or

(5) is determined, as a result of the security background check, not to be legally authorized to work in the United States.

(c) **TERMINATION OF EMPLOYMENT.**—If an owner or operator of a chemical facility finds that pursuant to a security background check a covered individual is not legally authorized to work in the United States, the owner or operator shall cease to employ the covered individual subject to the redress process under subsection (d).

(d) **REDRESS PROCESS.**—Upon the issuance of regulations under subsection (a), the Secretary shall—

(1) require an adequate and prompt redress process for a person subject to a security background check under subsection (a)(1) who is subjected to an adverse employment decision, including removal or suspension of the employee, due to such regulations that is consistent with the appeals and waiver processes established for applicants for transportation workers at

ports, as required by section 70105(c) of title 46, United States Code, including all rights to hearings before an administration law judge, scope of review, a review of an unclassified summary of classified evidence equivalent to the summary provided in part 1515 of title 49, Code of Federal Regulations, and procedures for new evidence for both appeals and waiver decisions;

(2) have the authority to order an appropriate remedy, including reinstatement of the person subject to a security background check under subsection (a)(1), should the Secretary determine that the owner or operator of a covered chemical facility wrongfully made an adverse employment decision regarding such person pursuant to such rule, regulation, directive, or guidance;

(3) ensure that the redress process required under this subsection affords to the covered individual a full disclosure of any public-record event covered by subsection (b) that provides the basis for an adverse employment decision; and

(4) ensure that the person subject to a security background check under subsection (a)(1) receives the person's full wages and benefits until all appeals and waiver procedures are exhausted.

(e) **RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.**—Information obtained under this section by the Secretary or the owner or operator of a covered chemical facility shall be handled as follows:

(1) Such information may not be made available to the public.

(2) Such information may not be accessed by employees of the facility except for such employees who are directly involved with collecting the information or conducting or evaluating security background checks.

(3) Such information shall be maintained confidentially by the facility and the Secretary and may be used only for making determinations under this section.

(4) The Secretary may share such information with other Federal, State, local, and tribal law enforcement agencies.

(f) **RIGHTS AND RESPONSIBILITIES.**—Nothing in this section shall be construed to abridge any right or responsibility of a person subject to a security background check under subsection (a)(1) or an owner or operator of a covered chemical facility under any other Federal, State, local, or tribal law or collective bargaining agreement.

(g) **PREEMPTION.**—Nothing in this section shall be construed to preempt, alter, or affect a Federal, State, local, or tribal law that requires criminal history background checks, checks on the authorization of an individual to work in the United States, or other background checks of persons subject to security background checks under subsection (a)(1).

(h) **DEFINITION OF SECURITY BACKGROUND CHECK.**—The term “security background check” means a review at no cost to any person subject to a security background check under subsection (a)(1) of the following for the purpose of identifying individuals who may pose a threat to chemical facility security, to national security, or of terrorism:

- (1) Relevant databases to verify and validate identity.
- (2) Relevant criminal history databases.

(3) *In the case of an alien (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the relevant databases to determine the status of the alien under the immigration laws of the United States.*

(4) *The consolidated terrorist watchlist.*

(5) *Other relevant information or databases, as determined by the Secretary.*

(i) **SAVINGS CLAUSE.**—*Nothing in this section shall be construed as creating any new right or modifying any existing right of an individual to appeal a determination by the Secretary as a result of a check against a terrorist watch list.*

**SEC. 2116. CITIZEN SUITS.**

(a) **IN GENERAL.**—*Except as provided in subsection (c), any person may commence a civil action on the person's own behalf—*

(1) *against any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this title; or*

(2) *against the Secretary, if there is an alleged failure of the Secretary to perform any act or duty under this title that is not discretionary for the Secretary.*

(b) **COURT OF JURISDICTION.**—

(1) **IN GENERAL.**—*Any action under subsection (a)(1) shall be brought in the district court for the district in which the alleged violation occurred. Any action brought under subsection (a)(2) may be brought in the district court for the district in which the alleged violation occurred or in the United States District Court of the District of Columbia.*

(2) **RELIEF.**—*The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the standard, regulation, condition, requirement, prohibition, or order, referred to in subsection (a)(1), to order such person to take such other action as may be necessary, or both, or to order the Secretary to perform the act or duty referred to in subsection (a)(2), as the case may be, and to apply any appropriate civil penalties under section 2107.*

(c) **ACTIONS PROHIBITED.**—*No action may be commenced under subsection (a)—*

(1) *prior to 120 days after the date on which the person commencing the action has given notice of the alleged violation to—*

(A) *the Secretary; and*

(B) *in the case of an action under subsection (a), any alleged violator of such standard, regulation, condition, requirement, prohibition, or order; or*

(2) *if the Secretary has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State, or has issued an administrative order, to require compliance with such standard, regulation, condition, requirement, prohibition, or order.*

(d) **NOTICE.**—*Notice under this section shall be given in such manner as the Secretary shall prescribe by regulation.*

(e) **INTERVENTION.**—*In any action under this section the Secretary, if not a party, may intervene as a matter of right.*

(f) *COSTS.*—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(g) *OTHER RIGHTS PRESERVED.*—Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law.

**SEC. 2117. ANNUAL REPORT TO CONGRESS.**

(a) *ANNUAL REPORT.*—Not later than one year after the date of the enactment of this title, annually thereafter for the next four years, and biennially thereafter, the Secretary shall submit to the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Environment and Public Works of the Senate a report on progress in achieving compliance with this title. Each such report shall include the following:

(1) A qualitative discussion of how covered chemical facilities, differentiated by tier, have reduced the risks of chemical facility terrorist incidents at such facilities, including—

(A) a generalized summary of measures implemented by covered chemical facilities in order to meet each risk-based chemical facility performance standard established by this title, and those that the facilities already had in place—

(i) in the case of the first report under this section, before the issuance of the final rule implementing the regulations known as the “Chemical Facility Anti-Terrorism Standards”, issued on April 9, 2007; and

(ii) in the case of each subsequent report, since the submittal of the most recent report submitted under this section; and

(B) any other generalized summary the Secretary deems appropriate to describe the measures covered chemical facilities are implementing to comply with the requirements of this title.

(2) A quantitative summary of how the covered chemical facilities, differentiated by tier, are complying with the requirements of this title during the period covered by the report and how the Secretary is implementing and enforcing such requirements during such period, including—

(A) the number of chemical facilities that provided the Secretary with information about possessing substances of concern, as described in section 2102(b)(2);

(B) the number of covered chemical facilities assigned to each tier;

(C) the number of security vulnerability assessments and site security plans submitted by covered chemical facilities;

(D) the number of security vulnerability assessments and site security plans approved and disapproved by the Secretary;

(E) the number of covered chemical facilities without approved security vulnerability assessments or site security plans;

(F) the number of chemical facilities that have been assigned to a different tier or are no longer regulated by the Secretary due to implementation of a method to reduce the consequences of a terrorist attack;

(G) the number of orders for compliance issued by the Secretary;

(H) the administrative penalties assessed by the Secretary for non-compliance with the requirements of this title;

(I) the civil penalties assessed by the court for non-compliance with the requirements of this title; and

(J) any other regulatory data the Secretary deems appropriate to describe facility compliance with the requirements of this title and the Secretary's implementation of such requirements.

(b) **PUBLIC AVAILABILITY.**—A report submitted under this section shall be made publicly available.

**SEC. 2118. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Secretary of Homeland Security to carry out this title—

(1) \$325,000,000 for fiscal year 2011, of which \$100,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack;

(2) \$300,000,000 for fiscal year 2012, of which \$75,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack; and

(3) \$275,000,000 for fiscal year 2013, of which \$50,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack.

**SEC. 2119. NOTIFICATION SYSTEM TO ADDRESS PUBLIC CONCERNS.**

(a) **ESTABLISHMENT.**—The Secretary shall establish a notification system, which provides any individual the ability to report a suspected security deficiency or suspected non-compliance with this title. Such notification system shall include the ability to report the suspected security deficiency or non-compliance via telephonic and internet-based means.

(b) **ACKNOWLEDGMENT.**—The Secretary shall respond in a timely manner, but in no case exceed 30 days, to any report received through the notification system established under subsection (a).

(c) **STEPS TO ADDRESS PROBLEMS.**—The Secretary shall review the report of suspected security deficiency and shall, as necessary, take appropriate enforcement action authorized under section 2107 of this title.

(d) **FEEDBACK REQUIRED.**—Upon request, the Secretary shall provide the individual who reported the suspected security deficiency or non-compliance a written response as to the Secretary's findings and what, if any, compliance action was taken.

(e) **INSPECTOR GENERAL REPORT REQUIRED.**—The Inspector General for the Department of Homeland Security shall provide a report to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Government Affairs of the Senate on the number of reports received by the notifica-

*tion system established under subsection (a) and the Secretary's disposition of such reports.*

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**DEPARTMENT OF HOMELAND SECURITY  
APPROPRIATIONS ACT, 2007**

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**TITLE V—GENERAL PROVISIONS**

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【SEC. 550. (a) No later than six months after the date of enactment of this Act, the Secretary of Homeland Security shall issue interim final regulations establishing risk-based performance standards for security of chemical facilities and requiring vulnerability assessments and the development and implementation of site security plans for chemical facilities: *Provided*, That such regulations shall apply to chemical facilities that, in the discretion of the Secretary, present high levels of security risk: *Provided further*, That such regulations shall permit each such facility, in developing and implementing site security plans, to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility: *Provided further*, That the Secretary may not disapprove a site security plan submitted under this section based on the presence or absence of a particular security measure, but the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section: *Provided further*, That the Secretary may approve alternative security programs established by private sector entities, Federal, State, or local authorities, or other applicable laws if the Secretary determines that the requirements of such programs meet the requirements of this section and the interim regulations: *Provided further*, That the Secretary shall review and approve each vulnerability assessment and site security plan required under this section: *Provided further*, That the Secretary shall not apply regulations issued pursuant to this section to facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Public Law 107-295, as amended; Public Water Systems, as defined by section 1401 of the Safe Drinking Water Act, Public Law 93-523, as amended; Treatment Works as defined in section 212 of the Federal Water Pollution Control Act, Public Law 92-500, as amended; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.

【(b) Interim regulations issued under this section shall apply until the effective date of interim or final regulations promulgated under other laws that establish requirements and standards referred to in subsection (a) and expressly supersede this section: *Provided*, That the authority provided by this section shall terminate three years after the date of enactment of this Act.

【(c) Notwithstanding any other provision of law and subsection (b), information developed under this section, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections

from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46, United States Code: *Provided*, That this subsection does not prohibit the sharing of such information, as the Secretary deems appropriate, with State and local government officials possessing the necessary security clearances, including law enforcement officials and first responders, for the purpose of carrying out this section, provided that such information may not be disclosed pursuant to any State or local law: *Provided further*, That in any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this section, and related vulnerability or security information, shall be treated as if the information were classified material.

[(d) Any person who violates an order issued under this section shall be liable for a civil penalty under section 70119(a) of title 46, United States Code: *Provided*, That nothing in this section confers upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this section.

[(e) The Secretary of Homeland Security shall audit and inspect chemical facilities for the purposes of determining compliance with the regulations issued pursuant to this section.

[(f) Nothing in this section shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.

[(g) If the Secretary determines that a chemical facility is not in compliance with this section, the Secretary shall provide the owner or operator with written notification (including a clear explanation of deficiencies in the vulnerability assessment and site security plan) and opportunity for consultation, and issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances: *Provided*, That if the owner or operator continues to be in noncompliance, the Secretary may issue an order for the facility to cease operation, until the owner or operator complies with the order.

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

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## ADDITIONAL AND MINORITY VIEWS

### MINORITY VIEWS

#### INTRODUCTION

The Republican Members of the Committee on Homeland Security (Committee) recognize and appreciate the level of bipartisan collaboration in the initial drafting of the Chemical Facility Anti-Terrorism Act of 2009, H.R. 2868. The Majority included Republican participation and incorporated Republican input and provisions throughout the process. Additionally, Republican representation was invited to many of the discussions with the Committee on Energy and Commerce as both Majorities sought to develop and introduce a mutually agreeable bill. Therefore, it is regrettable that such significant policy divisions remained, making it impossible for the Republican Members of the Committee to support the final product.

Republican Members also were concerned with the timing of the Majority's scheduling of H.R. 2868 for action by the full Committee. The Majority moved forward on the legislation, despite requests from the Department of Homeland Security, President Obama, and major stakeholders (including the agriculture industry) to provide more time for constructive input and for the Department to complete implementation of its new regulations. The Republican Members' principal concerns surround two major issues: (1) a mandate to assess and implement methods to reduce the consequences of a terrorist attack, referred to as "inherently safer technology" (IST); and (2) a provision that would allow *any* person to file a civil lawsuit against a chemical facility or the Secretary of Homeland Security. These provisions are more applicable to environmental policy than to security policy. Republican Members remain convinced that mandatory assessments and implementation of IST will ultimately cost American jobs. Further, we share the Department's concerns that allowing the Secretary to become the subject of extensive civil litigation is unnecessary and burdensome, and we are disappointed that an amendment offered by Mr. McCaul, which would have addressed the Majority's concerns was voted down on a party-line vote.

#### REPUBLICAN PROVISIONS

Republican Members strongly object to the Majority's control of the roster for amendments, their rejection of a reasonable Unanimous Request from Republican Members, and their insistence on controlling the order in which amendments were offered. For example, the Majority insisted on a roster to ensure that Republican amendments to strike sections 2111 (addressing IST) and 2116 (ad-

dressings civil suits) were considered only after those sections were modified by other Republican amendments.

*Amendments relating to inherently safer technologies*

H.R. 2868 allows the owner or operator of a tier 1 or tier 2 covered chemical facility who is unable to implement IST to “appeal” to the Secretary and justify why implementation is not practical. The Secretary would then make a final decision about whether the owner/operator must comply and implement IST. In the view of Republican Members, appealing the Secretary’s decision to the Secretary is no appeal at all. Republican Members were pleased, therefore, when the Committee adopted an amendment by Mr. Lungren that allows the owner or operator of a facility to appeal the Secretary’s decision to an administrative law judge who would hold a *de novo* hearing and require the Secretary to prove his/her decision was lawful, proper, and supported by substantial evidence. We appreciate the Majority’s overwhelming support for this amendment, as evidenced by Democratic Members’ requests to cosponsor the amendment.

The bill also requires the Secretary to implement IST at tier 1 and tier 2 facilities if: (1) it reduces risk, (2) would not create a new high-risk facility elsewhere, (3) is feasible, and (4) would allow the facility to continue its business at its present location. In this process, the Secretary is not required to consider the impact on the local economy and on the local workforce. Therefore, the Committee adopted an amendment by Mr. Dent and Mr. Souder that only allows the Secretary to implement IST if he/she determines that the implementation “would not significantly or demonstrably reduce the operations of the covered chemical facility or result in a reduction of the workforce of the covered chemical facility.” As a result of this thoughtful amendment, the Secretary must first consider the impact of IST on hard-working Americans and their livelihood.

Republican Members were concerned that the bill language enables the Secretary to mandate IST based on his/her individual interpretation of a facility’s site security plan and how IST might reduce some risk. The Secretary was not required to consult any other party prior to making a decision on IST implementation. During the Committee’s budget hearings with Secretary Napolitano and Deputy Under Secretary Phillip Reiting, it became obvious that the Department has only cursory experience with the process of IST, how it might be implemented, and what would be its major impacts. Therefore, the Committee adopted an amendment offered by Mr. Dent requiring the Secretary to conduct a comprehensive analysis on the impacts of mandatory implementation of IST, in consultation with various stakeholder groups. An analysis that includes input from subject matter experts, labor representatives, and academics would provide vital information to the Secretary on the challenges and likely impacts associated with IST implementation.

Ms. Miller offered a perfecting amendment that would have required the Secretary to consider agricultural interests in conducting this study, including representatives from the agriculture industry. Unfortunately, the Majority voted overwhelmingly against this perfecting amendment, which would have done nothing

more than ensure the unique concerns associated with the agriculture industry were considered in the Secretary's analysis. Republican Members remain deeply concerned that IST assessments and mandatory implementation are expensive propositions for small family farms that feed Americans and much of the world.

Recognizing the special challenges associated with imposing new expensive governmental mandates on small businesses, Mr. Austria offered an amendment to exempt small businesses from mandatory IST assessment and implementation. It is unfortunate that the Majority gutted this amendment by instead requiring the Secretary to simply report on the impact of IST assessments and implementation on small businesses. Even if the Secretary were to determine that small businesses were disproportionately impacted by mandatory IST assessments and implementation, the Majority's modifications to the amendment would not allow the Secretary to exempt these businesses.

One of the Republican Members' deepest concerns surrounding IST is the possibility of shifting or spreading risk elsewhere, specifically to other, less protected sectors. It is possible to reduce the consequences of a terrorist attack at any given facility by storing fewer chemicals on site. However, moving from a "store on site" model to a "just in time delivery" model requires more frequent shipments of smaller quantities of chemicals. In turn, this puts more trucks on our Nation's highways carrying hazardous materials. The Committee adopted an amendment by Mr. Souder aimed at alleviating this concern. It prohibits mandatory IST implementation for tier 1 and tier 2 facilities if such implementation would shift or transfer risk to various transportation modes, including highways, bus, and rail.

#### *Amendments relating to civil suits*

While the base bill does include a negotiated provision providing protection for chemical facility whistleblowers, there is concern that these individuals may be deterred from coming forward because of a lack of guaranteed anonymity. Further, the Majority repeatedly argued their justification for section 2116 providing for civil lawsuits by *uninjured third parties* was to enable concerned citizens and neighbors of chemical facilities to register their concerns with the Department and ensure timely and appropriate action. An amendment offered by Mr. Austria and adopted by the Committee requires the Secretary to establish a telephone and online "tip line" to provide an anonymous, swift, and effective method for concerned citizens to inform the Department about security deficiencies. Most importantly, it requires the Department to respond to concerned citizens in a timely manner, providing much-needed feedback and ensuring the Department's accountability to the public. Although Mr. Austria's amendment was accepted, it was disappointing that the Majority could not accept this language in lieu of section 2116.

#### *Other Republican provisions*

H.R. 2868 requires regular inspections of all approximately 7,000 covered chemical facilities and includes a requirement for unannounced inspections for tier 1 and 2 facilities. This is an overwhelming task for the Department's limited number of 140 inspec-

tors. The Committee adopted an amendment by Mr. Cao requiring the Secretary to hire at least 100 additional inspectors for both fiscal years 2010 and 2011. While the Department will need more inspectors, the additional personnel provided by this amendment will help the Department build an experienced, capable core group of inspectors with the necessary skills to ensure these chemical facilities comply with the requirements of this Act. It was disappointing, however, to see the Majority reject an amendment offered by Mr. Bilirakis that would have provided the department with limited direct hiring authority for two years to facilitate the hiring of these new inspectors. A targeted two-year direct hiring authority seemed prudent in this limited circumstance given the current lengthy hiring process at the Department.

Finally, an amendment offered on behalf of Dr. Broun would require the owner or operator of a covered chemical facility to terminate an employee who is not legally authorized to work in the United States pursuant to a security background check. Those who fail such a background check have absolutely no business working in such close proximity to potentially dangerous chemicals or having access to sensitive information.

#### REMAINING REPUBLICAN CONCERNS SURROUNDING INHERENTLY SAFER TECHNOLOGIES

Despite the support for the amendments discussed above, Republican Members of the Committee remain deeply concerned that H.R. 2868 does not adequately consider the expert testimony from the hearing the Committee held on June 16, 2009. The bill also does not adequately address the concerns expressed in several dozen letters sent to the Committee from various business organizations, including state chemical and agricultural interests. Further, despite repeated requests from the Department and the Administration, the Majority was unwilling to entertain a one-year extension of the Department's current chemical facility regulatory authority. In fact, President Obama's Fiscal Year 2010 budget request submitted to Congress included this request, which was included by the Appropriations Committee in H.R. 2892, the Homeland Security Appropriations Act, 2010.

Deputy Under Secretary Reiting from the Department's National Protection Programs Directorate testified that "[they] would need to go farther and certainly bring in some additional experts" in order to effectively determine whether a tier 1 or tier 2 facility should implement IST. Deputy Under Secretary Reiting informed the Committee that the Department has no IST specialists, and the President's FY 2010 budget request did not include funding for specialized IST staff. This testimony overwhelmingly suggests that the Department is void of personnel qualified to make educated decisions regarding IST issues.

The second panel of witnesses communicated clear skepticism in regards to mandating IST. The Committee heard expert testimony from Mr. Paul Baldauf of the New Jersey Department of Environmental Protection. Mr. Baldauf conveyed his support for New Jersey's approach to IST: "strict evaluation." New Jersey does not mandate IST implementation, and only requires IST assessments from its 45 of 157 chemical facilities—those deemed of greatest

risk. Mr. Marty Durbin of the American Chemistry Council echoed this sentiment, stating, “it is not appropriate to mandate [IST].” Dr. Langerman of Advanced Chemical Safety, Inc., provided an example of a situation in which substituting a “safer” chemical would have resulted in almost 15 times more pollutants. Finally, Mr. Jeppeson of the California Ammonia Company stated that requiring IST could have a “devastating impact on American agriculture.” This panel of witnesses provided examples of when IST would result in decreased security. It should be noted that the Republican Members invited only one of these witnesses.

These two panels of expert witnesses unequivocally conveyed disapproval towards mandatory IST implementation. However, the Majority rejected Mr. Dent’s amendment to strike the offending IST provision from the bill. The Majority disregarded evidence indicating the lack of expertise in the Department and the subjectivity inherent in IST.

Surprisingly, the Majority also rejected Dr. Broun’s amendment to modify the IST provisions to reflect the State of New Jersey’s practice of focusing limited resources on the highest risk facilities. During debate among Members, New Jersey was referred to as “a standard-bearer nationally for chemical security protections.” The Majority then voted against Dr. Broun’s amendment, which mirrors New Jersey’s policy of mandating IST assessments for higher risk tier 1 and tier 2 facilities, but not requiring implementation.

While Republican Members of the Committee are pleased with the successful modifications of the IST provisions to protect American jobs, they agree with the expert witnesses and remain concerned about any mandatory IST implementation.

#### REPUBLICAN CONCERNS REMAIN SURROUNDING CIVIL SUITS

Further, Republican Members are disappointed with the bill’s inclusion of an egregious provision that allows any uninjured third party to sue “any person” in violation of this Act—including the Secretary. Republican Members and Obama Administration officials are especially concerned with two side effects of this provision—disclosure of confidential information and diversion of resources.

Despite the Majority’s insistence that the bill provides ample protection for certain classified information, Deputy Under Secretary Reitingger firmly expressed his concern that “civil litigation leads to, no matter what the protections are, a higher likelihood of disclosure of information.” An amendment by Mr. Souder to prohibit any civil action in which the Secretary or other party must divulge sensitive information would have addressed concerns held by Mr. Reitingger and the Republican Members regarding this consequence of the bill. Unfortunately, this amendment was not adopted, and the threatening possibility of publicizing sensitive information remains.

The possibility of divulging official information could also have been reduced by an amendment by Mr. Cao to modify the definition of “employee representative” to include only those who are also employees at the facility. This amendment ensures that only those who work at the facility with a genuine “need to know” will have direct knowledge about the facility’s vulnerability and security. The

Republican Members are disappointed that the amendment was rejected, thereby jeopardizing sensitive information and security in favor of including employee representatives from outside the facility in the requirements under H.R. 2868.

In addition, Republican Members remain concerned that the Department will be forced to divert substantial resources toward this litigation. Deputy Under Secretary Reiting testified that “certainly, it is true that any civil suit provision at least raises the specter of some diversion of resources.” This is a major problem. It is the first time that the Department will be exposed to citizen lawsuits since the Department was established in 2003. In response, the amendment by Dr. Broun to strike the civil suits provision would have eliminated not only the possibility of divulging sensitive information, but also the certain draining of the Department’s finite resources. Republican Members believe it is inappropriate and damaging to incorporate environmental enforcement provisions in security and counterterrorism programs.

The Republican Members of the Committee are especially disappointed that the amendment by Mr. McCaul to replace the civil suits provision with a civil complaints procedure was not adopted. Ultimately, the goal of any enforcement provision should be compliance with the underlying law or regulation. Mr. McCaul’s alternative approach did exactly that, while addressing each of the concerns described by Deputy Under Secretary Reiting in his testimony before the Committee. The amendment would have held the Secretary and covered chemical facilities accountable, provided vigilant citizens a chance to have their complaints addressed, and limited the burden on the Department’s Office of the General Counsel and its senior officials. Most importantly, the amendment would have eliminated the threat of divulging sensitive information to the public. Republican Members regret that this fair compromise was not agreed to by the Majority.

#### REPUBLICAN CONCERNS REGARDING TIMING OF COMMITTEE ACTION ON H.R. 2868

Republican Members are surprised that the Majority refused to accommodate President Obama’s request for a one-year extension. Ranking Member King expressed his support for the President’s request, and Mr. McCaul stated, “I don’t know why we’re not listening to the President in this instance and the administration, instead of forcing this legislation upon the Congress.”

In his testimony before the Committee, Deputy Under Secretary Reiting repeatedly stated his desire to work with the Committee to draft “an appropriate reauthorization bill.” He also testified that two key and directly relevant senior positions in the Department—the Assistant Secretary for Infrastructure Protection and the Under Secretary for National Protection and Programs Directorate—had not yet been filled. In addition, the Department’s Director of the Infrastructure Security Compliance Division, Ms. Sue Armstrong, testified that the Department’s Science and Technology Directorate is conducting a literature review on IST this summer. The Majority’s desire to push H.R. 2868 and mandate IST for the highest risk facilities before it is scientifically reviewed by the Department is disconcerting.

The process of establishing a mature regulatory regime under the Chemical Facility Anti-Terrorism Standards (CFATS) involves about eight “steps.” The last step is inspection of facilities. Ms. Armstrong of the Department testified that she anticipates inspection of tier 1 facilities “in the first quarter of fiscal year ’10.” The Administration, Republican Members, and Department officials feel as though pushing this bill forward at this time is premature. An extension of one year or more would provide ample time to perfect the bill instead of forcing it on the Congress and the Administration before the Department has fully implemented CFATS. The House Committee on Appropriations supported the President’s request and included a one-year extension of the Department’s CFATS regulatory authority in section 548 of H.R. 2892, the Department of Homeland Security Appropriations Act, 2010. On June 24, 2009, the House of Representatives passed H.R. 2892 by a vote of 389–37.

#### CONCLUSION

In conclusion, while the Committee’s Republican Members appreciate the Majority’s inclusion of Republican representation during the drafting of the base bill, these significant policy differences made Republican Committee Member support of the legislation in its current form impossible. While the base bill includes the necessary and appropriate reauthorization of the Department’s regulatory authority over chemical facilities, it unfortunately includes extraneous policy provisions that will cost American jobs at farms and factories and will impose unnecessary burdens on the Secretary of Homeland Security.

PETER T. KING,  
CHARLES W. DENT,  
MARK E. SOUDER,  
MIKE ROGERS,  
PAUL C. BROUN,  
PETE OLSON,  
STEVE AUSTRIA,  
LAMAR S. SMITH,  
MICHAEL T. MCCAUL,  
CANDICE S. MILLER,  
ANH “JOSEPH” CAO,  
DANIEL E. LUNGREN,  
GUS M. BILIRAKIS.

## ADDITIONAL VIEWS

H.R. 2868 is a terribly flawed piece of legislation and I oppose it. It places burdensome product replacement requirements on the agriculture and chemical industries and, for the first time, subjects them and the Department of Homeland Security to so-called “citizen lawsuits,” all under the false pretense of “safety” and the empty promise of “security.”

During the past weeks and months, I have met with and heard from the chemical industry in my district and my State. Without exception, they oppose H.R. 2868. It will harm the local economy and cost good hard working Texas jobs—all during a nationwide economic recession. No Texan can legitimately claim that this bill is good for the State they have been elected to represent.

The most problematic provision of this bill concerns so-called “inherently safer technologies,” or “IST.” This bill, as currently written, will require chemical companies to make an IST assessment AND implementation. Unfortunately, the Majority has neither identified what would be involved in any assessment nor clarified what would be the impacts of implementation. Never before has such a mandate been placed upon our chemical and agriculture industry with such limited information. It will prove to be onerous and costly and will most certainly cost jobs. From large corporations to small businesses, no one will be safe.

To be clear, I support IST. I support the ongoing efforts of the employers of our country as they develop and implement newer and more secure technology to benefit them and their employees. However, as my colleague from Pennsylvania, Mr. Dent, so aptly noted during mark-up: “IST is not a technology, it is a concept, it is a framework.” Indeed, under the current legislation, the government will be mandating conceptual requirements that are not necessarily “inherently safer” and will rarely involve “technology.” I cannot support and will not support the government dictating the terms and conditions of when, where, and how this framework must be used. By the Department’s own admission, they have neither the personnel nor expertise to make these decisions.

Unfortunately, the Majority rejected two particular common sense amendments in regards to IST. These amendments would have made the IST provisions much less extreme, thereby making the overall legislation much more acceptable to the Minority.

The first amendment was offered by Mr. Broun of Georgia. His amendment would have replaced the IST provisions of H.R. 2868 with the common sense “New Jersey model.” The State of New Jersey mandates that only the highest risk chemical facilities in their state conduct an IST assessment. The implementation of that assessment, however, is voluntary. Once they have completed their assessment, the chemical facilities can then use market-based principles to determine how much of the assessment should be imple-

mented. This decision is made on economic, technological, and safety considerations. As a result, a majority of chemical facilities in New Jersey have implemented their IST assessments *voluntarily*, without any burdensome mandate from the government.

The second was offered by Mr. Austria of Ohio. His amendment would have exempted small businesses from mandatory IST assessment and implementation. Small businesses are the back bone of our economy and the major engine of job creation in our country. The burden of IST mandates will undoubtedly hit them the hardest. Rather than adopting this sound amendment, the Majority rewrote it to authorize no more than the completion of a study to examine the effect of IST on small businesses. Such a move is a missed opportunity to assist the already struggling small businesses in the United States. As my colleague from Georgia, Mr. Broun, noted, by the time the study is conducted, it will most likely report on the thousands of jobs that have been lost due to mandatory IST implementation.

There were several other Republican amendments offered in a sincere attempt to improve the bill. For instance, Mr. Dent of Pennsylvania introduced an amendment to completely remove the IST provisions from H.R. 2868. I supported this amendment and, in my view, it would have made this legislation even better. However, the above two amendments represent what I believe to be the best chance for compromise and a clear opportunity to make this a true bi-partisan bill. Sadly, they were rejected.

Because this legislation does not improve the Chemical Facility Anti-Terrorism Standards (CFATS) already employed by the Department of Homeland Security, I do not support H.R. 2868 and continue urge the committee to honor the Administration's request to extend the deadline for the CFATS program.

PETE OLSON.

