

PROTECTING AND SECURING CHEMICAL FACILITIES
FROM TERRORIST ATTACKS ACT OF 2019

DECEMBER 12, 2019.—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

MINORITY VIEWS

[To accompany H.R. 3256]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 3256) to amend the Homeland Security Act of 2002 to reauthorize and improve the Chemical Facility Anti-Terrorism Standards Program, 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; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Chemical Facility Anti-Terrorism Standards Program.
- Sec. 4. Protection and sharing of information.
- Sec. 5. Civil enforcement.
- Sec. 6. Whistleblower protection.
- Sec. 7. Chemical Security Advisory Committee.
- Sec. 8. Implementation plan and report to Congress.
- Sec. 9. Study on risks posed by excluded facilities.
- Sec. 10. Study on feasibility of waiver program.
- Sec. 11. Review of tiering methodology.
- Sec. 12. Comptroller General reports.
- Sec. 13. Voluntary mechanism for reporting drones and other emerging threats.
- Sec. 14. Regulations regarding specific products and mixtures containing chemicals of interest.
- Sec. 15. Voluntary program.
- Sec. 16. Study on local emergency response capacity to respond to chemical security incidents.
- Sec. 17. Previously approved facilities.
- Sec. 18. Termination.

SEC. 2. DEFINITIONS.

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

(1) in paragraph (4)(E), by striking “subject to regulation” and inserting “regulated”;

(2) in paragraph (5)—

(A) in subparagraph (A), by striking “that is in effect on the day before the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014;” and inserting “or this title”; and

(B) in subparagraph (B), by striking “that is in effect on the day before the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014;” and inserting “or this title”;

(3) by striking paragraphs (6), (7), and (8); and

(4) by redesignating paragraphs (9) through (14) as paragraphs (6) through (11), respectively.

SEC. 3. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM.

(a) **ADDITIONAL CFATS PROGRAM REQUIREMENT.**—Section 2102(a)(2) of such Act (6 U.S.C. 622) is amended—

(1) in subparagraph (C), by striking “and” at the end;

(2) in subparagraph (D), by striking the period and inserting “; and” ; and

(3) by adding at the end the following new subparagraph:

“(E) verify information submitted by a covered chemical facility prior to assigning such facility a lower risk tier or determining that such facility no longer presents a high level of security risk.”.

(b) **EMPLOYEE INPUT REGARDING SECURITY MEASURES.**—Paragraph (2) of subsection (b) of section 2102 of such Act (6 U.S.C. 622) is amended to read as follows:

“(2) **EMPLOYEE CONSULTATION AND AWARENESS.**—

“(A) **EMPLOYEE CONSULTATION REQUIREMENT.**—A facility’s security vulnerability assessment and site security plan shall be developed in consultation with—

“(i) at least one facility employee, in addition to the facility security officer or other individual who serves as a point of contact under section 27.230(a)(17) of title 6, Code of Federal Regulations, and the corresponding guidance issued under section 27.220(d) of such title, or any successor thereto, who possesses relevant knowledge, experience, training, or education pertaining to matters of site security.

“(ii) in the case of a facility where facility employees are represented by a bargaining agent, at least one employee representative who—

“(I) is selected by the bargaining agent at that facility; and

“(II) has relevant knowledge, experience, training, or education pertaining to matters of site security.

“(B) **RECORD OF EMPLOYEE CONSULTATION.**—A covered chemical facility shall maintain a written record of the employee consultation required by subparagraph (A), including a record of—

“(i) the name of the employee with whom the facility security officer or other similar official consulted;

“(ii) how often and when such consultation took place;

“(iii) what mechanisms the facility used to capture feedback; and

“(iv) any recommendations that were offered, accepted, or rejected as part of the security vulnerability assessment or site security plan.

“(C) ACCESS TO EMPLOYEES.—Each owner or operator of a covered chemical facility shall, upon request, provide to an employee of the Department engaged in carrying out audits and inspections of such facility access to any employee who participated in the development of the facility’s security vulnerability assessment and site security plan.

“(D) EMPLOYEE AWARENESS.—The Secretary shall produce a poster that a chemical facility of interest shall display in areas accessible to facility employees to inform employees about requirements under this title and the whistleblower protections provided under section 2105.”.

(c) SITE SECURITY PLANS.—

(1) DISAPPROVAL.—Subsection (c)(1)(B) of section 2102 of such Act (6 U.S.C. 622) is amended—

(A) in clause (i), by striking “and” at the end; and

(B) by amending clause (ii) to read as follows:

“(ii) shall disapprove a site security plan if—

“(I) the plan fails to satisfy the risk-based performance standards established pursuant to subsection (a)(2)(C); or

“(II) the plan fails to include the name, organizational affiliation, and phone number of a local emergency manager or local emergency response provider and a documented policy to contact the local emergency manager or local emergency response provider at least annually regarding emergency response plans at the facility.”.

(2) ASSESSMENTS.—Paragraph (3) of subsection (c) of such section is amended to read as follows:

“(3) SITE SECURITY PLAN ASSESSMENTS.—In approving or disapproving a site security plan under this subsection, the Secretary shall—

“(A) employ the risk assessment policies and procedures developed under this title; and

“(B) confirm that the covered chemical facility has complied with the employee consultation requirements in paragraph (2) of subsection (b), including by reviewing and recording compliance with the record-keeping requirements under subparagraph (B) of that paragraph.”.

(d) ELIMINATION OF EXPEDITED APPROVAL PROGRAM.—Section 2102(c) of such Act (6 U.S.C. 622) is amended by striking paragraph (4).

(e) AUDITS AND INSPECTIONS.—

(1) AUTHORITY TO CONDUCT.—Subparagraph (B) of paragraph (1) of subsection (d) of section 2102 of such Act (6 U.S.C. 622) is amended by striking “under this title using” and inserting “at chemical facilities of interest and covered chemical facilities and shall obtain information and records to ensure compliance with this title. Such audits and inspections shall be conducted using”.

(2) REPORTING STRUCTURE.—Subparagraph (D) of such paragraph is amended—

(A) in clause (i), by inserting “, or any successor organization that implements the requirements of subsection (a)(2),” after “Department”; and

(B) in clause (ii), by inserting “, or any successor organization that implements the requirements of subsection (a)(2),” after “Department”.

(3) STANDARDS FOR AUDITORS AND INSPECTORS.—Subparagraph (E) of such paragraph is amended—

(A) in the matter preceding clause (i)—

(i) by striking “The Secretary” and inserting “For each individual responsible for carrying out audits or inspections on behalf of the Secretary, the Secretary”;

(ii) by inserting “to ensure such individuals receive” before “the training”; and

(iii) by striking “and retraining of each individual used by the Department as an auditor or inspector, including each individual employed by the Department and all nondepartmental or nongovernmental personnel” and inserting “, continuing education, and other professional development tools necessary to carry out duties and responsibilities”; and

(B) in clause (i), by striking “requirements” and inserting “necessary to audit and inspect compliance with all aspects of the risk-based performance standards, including standards related to cybersecurity”;

(C) by redesignating clauses (vi) and (vii) as clauses (vii) and (viii), respectively; and

(D) by inserting after clause (v) the following new clause:

- “(vi) the proper credential or certification necessary to conduct inspections related to the cybersecurity standard.”
- (4) EMERGENCY RESPONSE PLANS.—Such subsection is further amended by adding at the end the following new paragraph:
- “(4) AUDIT OF EMERGENCY RESPONSE PLAN.—As part of the audit and inspection process under this subsection, the Secretary shall annually confirm compliance of a chemical facility with the requirements under subsection (c)(1)(B)(ii)(II) including adherence to the facility’s documented policy to contact the local emergency manager or local emergency response provider at least annually regarding emergency response plans at the facility under such subsection.”
- (f) RISK ASSESSMENT.—Section 2102(e) of such Act (6 U.S.C. 622(e)) is amended—
- (1) in paragraph (2)(B)—
- (A) in the matter preceding clause (i), by inserting “and other malicious acts” after “terrorism”; and
- (B) in clause (ii), by striking “severe economic consequences and the potential loss of human life in the event of the facility being subject to attack, compromise, infiltration, or exploitation by terrorists” and inserting “consequences in event of the facility being subject to attack, compromise, infiltration, or the exploitation of chemicals of interest by a terrorist or other malicious actor”;
- (2) in paragraph (3)—
- (A) in subparagraph (A)—
- (i) by redesignating clauses (i) and (ii) as clauses (ii) and (iii), respectively;
- (ii) by inserting before clause (ii), as so redesignated, the following new clause (i):
- “(i) the Secretary determines that a chemical facility of interest does not present a high level of security risk;”;
- (iii) in clause (iii), as so redesignated, by inserting “or chemical facility of interest” after “covered chemical facility”;
- (B) in subparagraph (B)—
- (i) by striking “information on” and all that follows and inserting “information on—”, and
- (ii) by adding at the end the following clauses:
- “(i) how the Secretary confirmed the information that was the basis for the change or determination described in subparagraph (A); and
- “(ii) actions taken or practices employed by the facility to reduce or remove terrorism-related chemical security risks, where applicable.”;
- and
- (C) by adding at the end the following new subparagraph:
- “(C) TREATMENT OF CERTAIN INFORMATION.—For the purposes of subsection (a) of section 2103—
- “(i) information described in subparagraph (B)(i) shall be given protections from public disclosure under such subsection; and
- “(ii) information described in subparagraph (B)(ii) shall not be given protections from public disclosure under such subsection.”;
- (3) by redesignating paragraph (4) as paragraph (7);
- (4) by inserting after paragraph (3) the following new paragraphs:
- “(4) SHARING INFORMATION WITH EMERGENCY RESPONSE PROVIDERS.—
- “(A) IN GENERAL.—The Secretary shall make available to State, local, and regional fusion centers (as that term is defined in section 210A(j)(1) of this Act) and State and local government officials such information as the Secretary determines necessary to ensure that emergency response providers are prepared and provided with the situational awareness needed to respond to security incidents at covered chemical facilities.
- “(B) DISSEMINATION.—The Secretary shall disseminate information under subparagraph (A) to individuals identified and entities described in such subparagraph in a secure and expeditious manner.
- “(5) PRACTICES THAT MAY REDUCE CHEMICAL SECURITY RISKS.—
- “(A) IN GENERAL.—Based on the information maintained under paragraph (3)(B)(ii) regarding actions taken or practices employed by chemical facilities of interest to successfully reduce or remove terrorism-related chemical security risks, the Secretary shall develop voluntary, publicly available practices that could be used to guide other facility owners and operators in preventing, reducing, and mitigating chemical security risks.
- “(B) TREATMENT OF SENSITIVE INFORMATION.—In developing and disseminating practices under subparagraph (A), the Secretary shall protect from public disclosure all information described in section 2103(a).

“(6) CONGRESSIONAL NOTIFICATION.—Any time a determination is not made with respect to a chemical facility of interest within 9 months of the facility submitting a Top-Screen, the Secretary shall notify the Committees on Homeland Security and Energy and Commerce of the House and the Committee on Homeland Security and Governmental Affairs of the Senate and provide an explanation.”; and

(5) in paragraph (6), as redesignated by paragraph (3) of this subsection—

(A) in subparagraph (B)(i)(I)—

- (i) in item (aa), by striking “or” at the end;
- (ii) in item (bb), by striking “and” and inserting “or”; and
- (iii) by adding at the end the following new item:

“(cc) determined that a chemical facility of interest did not present a high level of risk; and”;

(B) by amending subparagraph (C) to read as follows:

“(C) for the period beginning on the date that is one year before the date of the enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019 and ending on the date of the enactment of such Act, the average length of time required to—

“(i) review and approve site security plans or alternative security programs for covered chemical facilities;

“(ii) ensure a facility has achieved full implementation of planned security measures; and

“(iii) conduct a compliance inspection, including the average length of time inspectors spend on an individual compliance inspection;”;

(C) in subparagraph (E), by striking “and” at the end;

(D) by redesignating subparagraph (F) as subparagraph (I); and

(E) by inserting after subparagraph (E) the following new subparagraphs:

“(F) a detailed summary of reports and other information generated under paragraph (3) regarding facilities that receive a change in tier or that are determined not to present a high level of security risk;

“(G) a detailed summary of practices identified and disseminated under such paragraph;

“(H) actions taken and results produced in implementing the practices, to the extent feasible; and”.

(g) SPECIFIC PRODUCTS AND MIXTURES.—Such section (6 U.S.C. 622) is further amended by adding at the end the following new subsection:

“(f) SPECIFIC PRODUCTS AND MIXTURES CONTAINING CHEMICALS OF INTEREST.—The Secretary may exclude a specific product or mixture that contains a chemical of interest at or above the minimum concentration listed on Appendix A to part 27 of title 6, Code of Federal Regulations, or any successor thereto, from any reporting requirements under this section if the Secretary determines that the product or mixture does not present a terrorism risk for which the chemical of interest contained within the product or mixture was included on Appendix A.”.

SEC. 4. PROTECTION AND SHARING OF INFORMATION.

Section 2103 of the Homeland Security Act of 2002 (6 U.S.C. 623) is amended—

(1) by striking subsections (b), (c), and (f); and

(2) by inserting after subsection (a) the following new subsections (b) and (c):

“(b) AUTHORIZED RECIPIENTS OF INFORMATION.—The Secretary shall make available, upon request, information protected pursuant to subsection (a) to the following recipients:

“(1) State and local government officials, including law enforcement and emergency response providers, with respect to information on any chemical facility of interest within the jurisdiction of the official, but only if such information may not be disclosed pursuant to any State or local law.

“(2) Members of Congress.

“(3) Members of the Chemical Security Advisory Committee under section 2010, in the course of conducting official duties and responsibilities as described in such section.

“(4) The Comptroller General of the United States.

“(c) INFORMATION DEVELOPED FOR OTHER PURPOSES.—Nothing in this section shall be construed to prohibit a chemical facility of interest from disclosing information that was not created solely for the purpose of meeting the requirements of this title.”.

SEC. 5. CIVIL ENFORCEMENT.

Section 2104 of the Homeland Security Act of 2002 (6 U.S.C. 624) is amended—

(1) in subsection (a)(1)—

(A) in subparagraph (A)(i), by striking “14 days after date on which” and inserting “three days after the date on which”; and

- (B) in subparagraph (B), by striking “180 days” and inserting “30 days”;
- (2) in subsection (b)(2), by inserting “section 2102(a)(2)(B) or any requirement issued by the Secretary thereunder” after “comply with”;
- (3) in subsection (c), by inserting “or other malicious act” after “terrorist incident”; and
- (4) in subsection (d), by inserting “, except as provided in section 2105(a)(5) regarding whistleblower retaliation” before the period at the end.

SEC. 6. WHISTLEBLOWER PROTECTION.

Section 2105 of the Homeland Security Act of 2002 (6 U.S.C. 625) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking “Not later than 180 days after the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, the Secretary” and inserting “The Secretary”;

(B) by amending paragraph (2) to read as follows:

“(2) CONFIDENTIALITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), in the absence of the written consent of an individual who submits a report under paragraph (1)—

“(i) the Secretary shall keep confidential the identity of and any identifying information relating to that individual; and

“(ii) any such report shall be subject to the protections on information under section 2103 of this Act to the extent that the report does not consist of publicly available information.

“(B) NOTICE.—In a case in which it is necessary to disclose the identity of or any identifying information relating to an individual who submits a report under paragraph (1) because it is essential to investigate the information contained in the report or because of compulsory legal process, the Secretary shall provide timely advance notice to the individual of such disclosure.”;

(C) by amending paragraph (3) to read as follows:

“(3) RESPONSE TO REPORTS.—If a report submitted under paragraph (1) contains information identifying the individual making the report, the Secretary, or the designee of the Secretary shall, by not later than 15 days after the date on which the report is received, respond to the individual directly and acknowledge receipt of the report.”;

(D) in paragraph (5)—

(i) by amending subparagraph (C) to read as follows:

“(C) OPPORTUNITY FOR REVIEW.—In any action under paragraph (4) that is based on information received under the procedure established under paragraph (1), the Secretary shall provide for review of the action if a petition for review is filed within 20 calendar days of the date of issuance of the order for the action.”;

(ii) in subparagraph (D)—

(I) by striking “unless the Secretary determines” and inserting “, except that the Secretary may provide for a 30-day extension if the Secretary determines”;

(II) by striking “that the violation providing a basis for the action continues to exist.” and inserting “that—”; and

(III) by adding at the end the following new clauses:

“(i) the violation providing a basis for the action continues to exist;

or

“(ii) such period is insufficient to complete the review of the action.”;

and

(E) in paragraph (6)—

(i) in subparagraph (A), by striking “discharge an employee or otherwise discriminate against an employee with respect to the compensation provided to, or terms, conditions, or privileges of the employment of, the employee because the employee (or an individual acting pursuant to a request of the employee) submitted a report under paragraph (1).” and inserting “discharge an employee or otherwise discriminate against an employee or former employee with respect to the compensation provided to, or terms, conditions, or privileges associated with current or past employment of, the employee or former employee because the employee or former employee (or an individual acting pursuant to a request of the employee or former employee) submitted a report under paragraph (1).”; and

(ii) in subparagraph (B), in the matter preceding clause (i), by—

(I) inserting “or former employee” after “An employee”; and

(II) inserting “or former employee (or an individual acting pursuant to a request of the employee or former employee)” after “the employee”; and

(iii) by adding at the end the following new subparagraph:

“(C) PROCEDURE AND REMEDY.—

“(i) IN GENERAL.—The Secretary shall establish a procedure for the review and investigation of complaints of reprisals prohibited under subparagraph (A) and for remedies for violations of such subparagraph.

“(ii) JUDICIAL REMEDIES.—Nothing in this title shall be construed to deny an individual who submits a complaint for any reprisal prohibited under subparagraph (A) from seeking a judicial remedy against the owner or operator of the chemical facility of interest as long as the individual has exhausted administrative remedies.”; and

(2) by striking subsection (d).

SEC. 7. CHEMICAL SECURITY ADVISORY COMMITTEE.

(a) IN GENERAL.—Title XXI of the Homeland Security Act of 2002 (6 U.S.C. 621 et seq.) is amended by adding at the end the following new section:

“SEC. 2110. CHEMICAL SECURITY ADVISORY COMMITTEE.

“(a) ESTABLISHMENT.—The Secretary shall establish a standing Chemical Security Advisory Committee to advise the Secretary on the implementation of this title.

“(b) MEMBERSHIP.—

“(1) IN GENERAL.—The Advisory Committee shall be comprised of 12 members selected by the Secretary, which shall include at least one individual who is a multi-disciplinary stakeholder with scientific or other expertise representing each of the following:

“(A) Industry.

“(B) Academia.

“(C) Labor.

“(D) Emergency response providers.

“(E) Local emergency planners.

“(F) Environmental, community, or public health advocates, particularly for communities with high concentrations of covered chemical facilities.

“(G) Cybersecurity and information policy.

“(2) TERMS.—Each member shall be appointed for an initial term of three years and may be reappointed for one additional three-year term.

“(3) CHAIR.—The Committee shall have a chair, who shall be selected by the members of the Committee.

“(4) PAY.—Members shall serve without pay.

“(5) QUORUM.—A majority of members of the Advisory Committee shall constitute a quorum but a lesser number may hold hearings.

“(c) SUBCOMMITTEES.—The Advisory Committee may establish subcommittees to assess and recommend improvements to the risk tiering methodology for chemical facilities, the risk-based performance standards for chemical facilities, risk reduction strategies, and other aspects of the program under this title as the Secretary determines appropriate.

“(d) INFORMATION PROTECTION.—Members of Advisory Committee shall maintain information protections pursuant to section 2103 of this Act. Any member who needs to access classified information to carry out assessments and recommendations for improving the risk tiering methodology for chemical facilities shall have an appropriate security clearance.

“(e) ANNUAL REPORT.—

“(1) SUBMISSION TO THE SECRETARY.—Not later than January 30 each year, the chair shall submit to the Secretary a report on the activities of the Committee during the year preceding the year during which the report is submitted.

“(2) SUBMISSION TO CONGRESS.—Not later than 45 days after receiving a report from the Advisory Committee under paragraph (1), the Secretary shall provide to the Committees on Homeland Security and Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a copy of the report together with any Secretarial feedback on the report.

“(f) APPLICABILITY OF FACAA.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee established under this section.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by inserting after the item relating to section 2109 the following new item:

“2110. Chemical Security Advisory Committee.”.

SEC. 8. IMPLEMENTATION PLAN AND REPORT TO CONGRESS.

(a) **IMPLEMENTATION PLAN.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall develop, and submit to Congress, an implementation plan outlining how the Secretary plans to—

(1) aggregate, anonymize, and analyze data collected from covered chemical facilities or chemical facilities of interest to identify practices that such facilities have employed to successfully reduce or remove terrorism-related chemical security risks;

(2) develop voluntary, publicly available, practices based on such data, which may be updated as necessary, to guide facility owners and operators in preventing, reducing, and managing security risks; and

(3) disseminate such practices to chemical facility owners and operators through an appropriate medium or system, including by making such practices available to the public to the greatest extent practicable.

(b) **REPORT.**—

(1) **INITIAL REPORT.**—Not later than two years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the status of implementation plan required under subsection (a), a description of the voluntary, publicly available, practices identified, and the system or medium used to disseminate such practices to chemical facility owners and operators.

(2) **ANNUAL UPDATES.**—Not later than one year after the submission of the report required under paragraph (1), and annually thereafter, the Secretary shall submit to Congress information on changes to the voluntary practices information disseminated and bases for such changes, information on feedback collected from facility owners and operators regarding the extent to which voluntary practices were adopted, and information on what impact the dissemination of voluntary practices have had on the effectiveness of the program.

SEC. 9. STUDY ON RISKS POSED BY EXCLUDED FACILITIES.

(a) **STUDY REQUIRED.**—The Secretary of Homeland Security shall enter into an agreement with a non-Department of Homeland Security entity for the conduct of an independent assessment of—

(1) the implications for national security and homeland security of exempting from regulation under title XXI of the Homeland Security Act of 2002 (6 U.S.C. 621 et seq.) excluded facilities, as such term is defined in section 2101(4) of such Act;

(2) the implications for such excluded facilities of exempting such facilities from regulation; and

(3) the implications of exempting such facilities from regulation for the communities located in the same geographic areas as such facilities.

(b) **REPORT TO CONGRESS.**—Not later than 16 months after entering into an agreement under subsection (a), the Secretary of Homeland Security shall submit to the appropriate congressional committees a report that includes the findings and recommendations of the independent assessment required by subsection (a).

(c) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(2) the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives.

SEC. 10. STUDY ON FEASIBILITY OF WAIVER PROGRAM.

(a) **STUDY REQUIRED.**—The Secretary of Homeland Security shall conduct a study to assess the feasibility and desirability of establishing a process under which certain chemical facilities, as determined by the Secretary, may apply to for a waiver of certain regulatory requirements under title XXI of the Homeland Security Act of 2002 (6 U.S.C. 621 et seq.) upon showing that—

(1) the requirements under such title are covered, to the same extent and in the same manner, under another Federal regulatory program;

(2) the facility is in full and complete compliance with such other Federal regulatory program, as shown through timely scheduled inspections, audits, and other supporting evidence; and

(3) the facility has not, during the five-year period preceding the date on which a waiver is requested, been subject to an enforcement action brought by the Federal regulator overseeing such regulatory program or been found to be noncompliant with any aspect of such regulatory program.

(b) **REPORT TO CONGRESS.**—Not later than two years after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a report that includes detailed findings regarding

the establishment of the process described in subsection (a) and, if appropriate, recommendations for implementation.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section, the term “appropriate congressional committees” means—

- (1) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (2) the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives.

SEC. 11. REVIEW OF TIERING METHODOLOGY.

(a) REVIEW REQUIRED.—The Director of the Cybersecurity and Infrastructure Security Agency shall—

- (1) conduct a review of the risk assessment approach and corresponding tiering methodology for covered chemical facilities required pursuant to section 2102(e)(2) of the Homeland Security Act of 2002, as amended by this Act, and assess the extent to which the approach and tiering methodology takes into account—

(A) the nature of the area surrounding the chemical facility, the presence of nearby facilities or other critical infrastructure, and other features of the community that could contribute to the consequences of a terrorist attack or exploitation of chemicals of interest;

(B) the potential effects on the health and economic conditions of communities disproportionately vulnerable to the consequences of a terrorist attack or exploitation of chemicals of interest; and

(C) the vulnerabilities of chemical facilities to cybersecurity threats, including the vulnerabilities of facilities’ information technology and operational technology and the implications on the potential for penetration of both the physical security and cybersecurity of facilities; and

- (2) based on the review under paragraph (1), develop a plan to ensure that when the tiering methodology is next updated, the nature of the surrounding area, the presence of nearby facilities or other critical infrastructure, and other features of the community that could contribute to the consequences of a terrorist attack or exploitation of chemicals of interest and impacts on communities disproportionately vulnerable to the consequences of a terrorist attack or exploitation of chemicals of interest are considered.

(b) REPORT TO CONGRESS.—

- (1) REPORT ON REVIEW.—Not later than two years after the date of the enactment of this Act, the Director shall submit to the appropriate congressional committees a report on the tiering methodology review required under subsection (a).

(2) SUBMITTAL OF PLAN.— Not later than one year after submitting the report under paragraph (1), the Director shall submit to the appropriate congressional committees the tiering methodology plan required under subsection (a)(2).

(3) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this section, the term “appropriate congressional committees” means—

- (A) the Committee on Homeland Security and Governmental Affairs of the Senate; and
- (B) the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives.

SEC. 12. COMPTROLLER GENERAL REPORTS.

(a) EVALUATION OF EFFECTIVENESS OF RISK-BASED PERFORMANCE STANDARDS.—

- (1) STUDY AND REPORT.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to the appropriate congressional committees a report on the effectiveness of the risk-based performance standards used by the Department of Homeland Security under title XXI of the Homeland Security Act of 2002 (6 U.S.C. 621 et seq.) in protecting businesses, employees, the economy, the public, and national security against existing and evolving threats of concern.

(2) CONTENTS OF REPORT.—The report required by paragraph (1) shall address—

(A) the sufficiency of security risk determinations and countermeasures under title XXI of the Homeland Security Act of 2002 (6 U.S.C. 621 et seq.); and

(B) the need for revised or additional methods to address evolving security risks.

(b) EVALUATION OF INFORMATION MANAGEMENT.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to the appropriate congressional committees a report on—

(1) how the Secretary of Homeland Security documents, maintains, and uses information on tiering changes pursuant to section 2102(e)(3) of the Homeland Security Act of 2002 (6 U.S.C. 622(e)(3)); and

(2) how management, maintenance, utility, and use of the information could be improved to better identify and disseminate practices to reduce chemical security risks.

(c) **EVALUATION OF PRACTICES TO REDUCE CHEMICAL SECURITY RISKS.**—Not later than three years after the date of the enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the effectiveness of the development and distribution by the Secretary of Homeland Security of practices to address chemical security risks and of any actions taken or results produced in response to such practices.

(d) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Homeland Security and Governmental Affairs of the Senate; and

(2) the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives.

SEC. 13. VOLUNTARY MECHANISM FOR REPORTING DRONES AND OTHER EMERGING THREATS.

(a) **IN GENERAL.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security, acting through the Director of the Cybersecurity and Infrastructure Security Agency, shall provide a secure communications and information technology infrastructure or platform that allows owners and operators of covered chemical facilities to report, on a voluntary basis, information on emerging threats, including terrorism threats posed by unmanned aircraft systems (as defined in section 331(9) of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 40101 note) to covered chemical facilities.

(b) **PLATFORM CAPABILITIES.**—The Secretary shall ensure that the secure communications and information technology infrastructure or platform established pursuant to subsection (a) is designed to support data mining and other advanced analytic tools to access, receive, and analyze data and information to facilitate the reporting of the information described in subsection (a).

SEC. 14. REGULATIONS REGARDING SPECIFIC PRODUCTS AND MIXTURES CONTAINING CHEMICALS OF INTEREST.

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall prescribe regulations to enact a process through which the Secretary can be petitioned to exclude a product or mixture under subsection (f) of section 2102 of the Homeland Security Act, as added by section 3. In collecting information from petitioners under such subsection, the Secretary shall not be subject to subchapter I of chapter 35 of title 44, United States Code, or section 553 of title 5, United States Code.

SEC. 15. VOLUNTARY PROGRAM.

(a) **IN GENERAL.**—The Director of Cybersecurity and Infrastructure Security of the Department of Homeland Security may develop a voluntary program for chemical facilities to address potential security risks at such facilities.

(b) **CONGRESSIONAL NOTIFICATION.**—Not less than 15 days prior to commencing a voluntary program pursuant to subsection (a), the Director shall provide notification 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.

SEC. 16. STUDY ON LOCAL EMERGENCY RESPONSE CAPACITY TO RESPOND TO CHEMICAL SECURITY INCIDENTS.

(a) **STUDY REQUIRED.**—The Secretary of Homeland Security, acting through the Under Secretary for Science and Technology, shall conduct a study on how to improve training and support for local emergency response providers in areas with high concentrations of covered chemical facilities in how to respond to a terrorist attack on a chemical facility.

(b) **FEATURES.**—In carrying out the study required under subsection (a), the Secretary shall consider, as appropriate—

(1) the degree to which jurisdictions with high concentrations of covered chemical facilities have fire, police, medical, and other response personnel trained and equipped to respond to a terrorist attack on a chemical facility and have—

(A) evacuation and shelter in place protocols tailored to the unique needs of the jurisdiction and the chemical properties of chemicals of interest that would be involved in the attack and that take into consideration vulnerable

populations, including schools, child care centers, nursing facilities, and hospitals;

(B) community notification and warning systems; and

(C) surge capacities of hospitals and other health care facilities in the area; and

(2) what, if any, distinctions are there in preparedness for a terrorist attack on a chemical facility in jurisdictions that rely on volunteers to carry out fire, police, medical and other response and jurisdictions that do not rely, in whole or in part, on volunteers; and

(3) all training, equipment, and support provided by the Department of Homeland Security to local emergency response providers in areas with a high concentration of covered chemical facilities and chemical facilities of interest.

(c) **SURVEY.**—In carrying out the study required under subsection (a), the Secretary may partner with a non-Departmental entity for the survey of a representative sample of emergency response providers in areas with a high concentration of covered chemical facilities, chemical facilities of interest, or other facilities with large quantities of chemicals.

(d) **REPORT.**—No later than two years from the date on which the Secretary commences the study required under subsection (a), the Secretary shall submit to Congress the study, accompanied by plans, as appropriate, to—

(1) improve the Department’s counter-terrorism preparedness and response planning, training, and equipment efforts to ensure that they are better tailored and resourced to address the unique needs of local emergency response providers in areas with a high concentration of covered chemical facilities and chemical facilities of interest; and

(2) improve coordination among Federal, State, local, tribal, and territorial government officials in emergency planning and response in areas with high concentrations of covered chemical facilities, chemical facilities of interest, or other facilities with large quantities of hazardous chemicals.

(e) **PUBLIC AVAILABILITY.**—The report required under this section shall be made publicly available, but may include a classified annex.

SEC. 17. PREVIOUSLY APPROVED FACILITIES.

In the case of a chemical facility that is a covered chemical facility under title XXI of the Homeland Security Act of 2002 for which the Secretary of Homeland Security approved a site security plan under such title before the date of enactment of this Act, the Secretary shall not require the facility to resubmit the site security plan solely by reason of the enactment of this Act or the amendments made by this Act.

SEC. 18. TERMINATION.

Section 5 of the Protecting and Securing Chemical Facilities From Terrorist Attacks Act of 2014 (Public Law 113–254; 6 U.S.C. 621 note) is amended by striking “the date that is 5 years and 3 months after the effective date of this Act” and inserting “May 1, 2025”.

PURPOSE AND SUMMARY

H.R. 3256, the “Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019,” reauthorizes the Department of Homeland Security (DHS)’s chemical security program, the Chemical Facility Anti-Terrorism Standards (CFATS) program for five years and, among other things, improves information sharing between high risk chemical facilities and emergency responders, fosters a culture of security within high-risk chemical facilities, and provides facility operators with information on practices that could be employed to reduce terrorism risk at their facilities.

BACKGROUND AND NEED FOR LEGISLATION

The CFATS program was established through the *FY 2007 Department of Homeland Security (DHS) Appropriations Act* in response to credible terrorist threats to U.S. chemical plants in

2006.¹ For eight years, the continuation of this anti-terrorism security program was dependent on the enactment of annual extensions attached to annual appropriations measures. Then, in December 2014, Congress enacted the *Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014* (CFATS Act of 2014), which provided the CFATS program with a four-year authorization.²

The *CFATS Act of 2014* requires facilities with threshold quantities of “chemicals of interest”³ to submit information regarding the facility’s chemical holdings to DHS, in the form of a “Top Screen”.⁴ Facilities are assigned to 1 of 4 risk tiers, with 1 being the highest. If DHS determines that a facility “presents a high level of security risk,” that facility must perform a vulnerability assessment and develop a site security plan (SSP) to address vulnerabilities in alignment with 18 risk-based performance standards. Of the 41,000 facilities that have submitted Top Screens, DHS currently considers 3,329 to present a high level of security risk.⁵ The majority of facilities are in the lower-risk tiers (Tiers 3 and 4), with just 5% of facilities in Tier 1 and 2% in Tier 2.⁶

Earlier this Congress, the Department’s authority to carry out the CFATS program almost lapsed, and termination was narrowly avoided with the enactment of the *Chemical Facility Anti-Terrorism Standards Program Extension Act*.⁷ The CFATS program would have terminated on January 18, 2019 but is now authorized through April 2020. Upon enactment of the *Chemical Facility Anti-Terrorism Standards Program Extension Act*, the Committee immediately began developing legislation to not only provide a long-term authorization but also make improvements to the program in response to the Committee’s oversight findings.

Over the past six months, the Committee has worked diligently to develop this long-term reauthorization measure. To inform the legislation, the Committee held two hearings on the CFATS program, one with government witnesses on February 27 at the Full Committee and one with non-government stakeholders within the Subcommittee on Cybersecurity, Infrastructure Protection, and Innovation on March 12. Additionally, throughout the process, the Committee consulted with DHS, a coalition of industry stakeholders—comprised of over a dozen associations and companies representing hundreds of regulated facilities—as well as labor unions, environmental groups, and community advocacy associations.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress, the following hearings were used to develop H.R. 3256:

- On February 27, 2019, the Committee held a hearing entitled “Securing Our Nation’s Chemical Facilities: Building on

¹ § 550, P.L. 109–295.

² P.L. 113–254.

³ 6 C.F.R. Part 27 Appendix A.

⁴ § 2102, Homeland Security Act of 2002 (P.L. 107–296), as amended by P.L. 113–524 (6 U.S.C. 621 et seq.).

⁵ DHS CISA, *CFATS Monthly Statistics* (accessed Feb. 18, 2019), <https://www.dhs.gov/cfats-monthly-statistics>.

⁶ DHS CISA Slide Deck, *CFATS Program Overview February 2019* (on file with Committee staff).

⁷ P.L. 116–2.

the Progress of the CFATS Program.” The Committee received testimony from David Wulf, Director, Infrastructure Security Compliance Division, Cybersecurity and Infrastructure Security Agency, U.S. Department of Homeland Security; and Nathan Anderson, Acting Director, Homeland Security & Justice, U.S. Government Accountability Office.

- On March 12, 2019, the Committee held a hearing entitled “Securing Our Nation’s Chemical Facilities: Stakeholders Perspectives on Improving the CFATS Program.” The Committee received testimony from John Morawetz, Health and Safety Representative, International Chemical Workers Union Council; Dr. Mike Wilson, National Director, Occupational and Environmental Health Program, Blue Green Alliance; Ms. Pamela Nixon, President, People Concerned About Chemical Safety; and Kirsten Meskill, Director, Corporate Security, BAS.

COMMITTEE CONSIDERATION

The Committee met on June 19, 2019, with a quorum being present, to consider H.R. 3256 and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by a recorded vote of 14 yeas and 12 nays.

An amendment in the nature of a substitute offered by Mr. Richmond 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 on Homeland Security considered H.R. 3256 on June 19, 2019 and took the following vote:

Ordering to be reported to the House with a favorable recommendation; was Agreed TO, by a recorded vote of 14 yeas and 12 nays (Roll Call Vote No. 3).

Roll No. 3

Yeas	Nays
Mr. Thompson of Mississippi	Mr. Rogers of Alabama
Mr. Richmond	Mr. King of New York
Mr. Payne	Mr. McCaul
Miss Rice	Mr. Katko
Mr. Correa	Mr. Ratcliffe
Ms. Torres Small of New Mexico	Mr. Walker
Mr. Rose of New York	Mr. Higgins of Louisiana
Ms. Underwood	Mrs. Lesko
Ms. Slotkin	Mr. Green of Tennessee
Ms. Clarke of New York	Mr. Taylor
Ms. Titus	Mr. Crenshaw
Mrs. Watson Coleman	Mr. Guest
Ms. Barragán	
Mrs. Demings	
Total 14	12

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings

and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

CONGRESSIONAL BUDGET OFFICE ESTIMATE, NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee adopts as its own the estimate of the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 9, 2019.

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. 3256, the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 3256, Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019			
As ordered reported by the House Committee on Homeland Security on June 19, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	372	449
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

H.R. 3256 would extend the Chemical Facility Anti-Terrorism Standards (CFATS) program through May 1, 2025, and make sev-

eral other changes to the program; the authority to carry out the current program will expire in April 2020. In total, CBO estimates that enacting H.R. 3256 would cost \$372 million over the 2020–2024 period; such spending would be subject to the appropriation of the estimated amounts (see Table 1). Another \$77 million would be spent after 2024 to pay for the costs of the program until its expiration. In addition, the bill would increase revenues by less than \$500,000 over the 2020–2029 period, CBO estimates.

Under CFATS, the Department of Homeland Security (DHS) regulates security at facilities that manufacture, store, or distribute any of more than 300 chemicals that could be used by terrorists to cause mass injury or death. The regulations set minimum standards for perimeter security, access control, personnel security, and cybersecurity to reduce the risk that those chemicals could be stolen, released, or sabotaged. DHS provides technical assistance and inspects regulated facilities to ensure that they meet those standards. For 2019, the Congress appropriated \$74 million for the CFATS program.

On the basis of amounts appropriated for the CFATS program, CBO estimates that extending the program through May 1, 2025, under current law would cost \$344 million over the 2020–2024 period. Because the extension in the bill would only cover five months of fiscal year 2020, the costs of implementing the extension are lower in that year.

In addition, H.R. 3256 would change the CFATS program in several ways. Specifically, the bill would require DHS to do the following:

- Allow owners and operators of regulated facilities to petition DHS to exempt from the standards some products and mixtures containing chemicals that are regulated under CFATS;
- Expedite the process through which DHS notifies owners and operators of security deficiencies;
- Establish procedures to investigate complaints from employees of regulated facilities who claim to have been punished for reporting information to DHS; and,
- Establish an advisory committee on chemical security.

On the basis of information from DHS, CBO estimates that implementing those changes would require DHS to hire about a dozen new full-time employees. Salaries for those employees and operating expenses to carry out the new requirements would cost \$23 million over the 2020–2024 period.

In total, reauthorizing the CFATS program would cost \$367 million over the 2020–2024 period, CBO estimates.

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 3256

	By fiscal year, millions of dollars—						
	2019	2020	2021	2022	2023	2024	2019–2024
Increases in Spending Subject to Appropriation							
CFATS Program Reauthorization:							
Estimated Authorization Level	0	40	84	86	89	92	391
Estimated Outlays	0	31	74	84	88	90	367
Studies and Reports:							
Estimated Authorization Level	0	5	*	*	*	*	5
Estimated Outlays	0	4	1	*	*	*	5

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 3256—Continued

	By fiscal year, millions of dollars—						2019–2024
	2019	2020	2021	2022	2023	2024	
Total:							
Estimated Authorization Level	0	45	84	86	89	92	396
Estimated Outlays	0	35	75	84	88	90	372

In addition to the amounts shown here, implementing H.R. 3256 would require an additional appropriation of \$55 million in 2025 to fund the operation of the program until May of that year, CBO estimates. Outlays from those amounts, in addition to outlays from amounts authorized from earlier years would total \$77 million over the 2025–2029 period; that spending would be subject to appropriation of the estimated amounts.

Enacting H.R. 3256 also would increase revenues by an insignificant amount over the 2020–2029 period.

CFATS = Chemical Facility Anti-Terrorism Standards; * = between zero and \$500,000.

H.R. 3256, also would require the Government Accountability Office and DHS to conduct several studies on the CFATS program and to report their findings to the Congress. CBO estimates that in addition to the costs described above, conducting the studies and preparing the reports would cost \$5 million over the 2020–2024 period.

Reauthorizing the CFATS program also would extend DHS’s authority to levy civil penalties against owners or operators of facilities that fail to comply with orders to correct deficiencies in their security plans. Amounts collected under that authority would be deposited in the Treasury and recorded as revenues. CBO estimates that DHS would collect less than \$500,000 over the 2020–2029 period.

H.R. 3256 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) on operators of chemical facilities. CBO estimates that the total cost of the mandates would fall below the annual intergovernmental and private-sector thresholds established in UMRA (\$82 million and \$164 million, respectively in 2019, adjusted annually for inflation).

The bill would reauthorize existing security requirements, including vulnerability assessments and site security plans, under the Chemical Facility Anti-Terrorism Standards Program.

The bill also would require chemical facilities to:

- Retain a record of employee feedback, which is to be collected as part of the facilities’ vulnerability assessment and site security plan process;
- Display a DHS-issued poster; and
- Make employees that participated in developing the site’s vulnerability assessment and security plan available to DHS, upon request.

Finally, the bill would extend whistleblower protections to include former employees of a chemical facility. Current law prohibits employers from taking adverse actions against current, but not former, employees.

The incremental costs to comply with the mandates would be small because the facilities are either already complying with similar requirements under current law or because the additional requirements do not impose a significant administrative burden.

The CBO staff contacts for this estimate are William Ma (for federal costs) and Brandon Lever (for mandates). The estimate was reviewed by Leo Lex, Deputy Assistant Director for Budget Analysis.

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.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 3256 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the objectives of H.R. 3256 include extending the authorization for the CFATS program for a period of 5 years until May 1, 2025. Additionally, it would make a number of improvements to the program including by requiring DHS to ensure the sharing of emergency response plans with emergency responders, enhance worker participation in the development of facilities' site security plans, clarify whistleblower protections against retaliation against workers who report security vulnerabilities or non-compliance with site security plans, and direct DHS to identify and disseminate information on practices that a facility could adopt to reduce or remove chemical security risks.

ADVISORY ON EARMARKS

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.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title; table of contents

This section provides that this bill may be cited as the "Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019" and sets forth the table of contents for this Act.

Sec. 2. Definitions

This section modifies definitions in section 2101 of the Homeland Security Act of 2002 (6 U.S.C. 621).

Sec. 3. Chemical Facility Anti-Terrorism Standards program

Employee input

This section requires the Secretary of Homeland Security (Secretary), in carrying out the CFATS program, to verify information submitted by a facility before assigning it to a lower risk tier or determining that a facility no longer presents a high level of security risk. The Committee included this provision to ensure that before DHS determines that a facility should no longer be regulated for security or should be regulated at a less rigorous level, it verifies the change of chemical holdings or circumstances presented by the facility owner or operator. This section is based on a 2015 report

by the Government Accountability Office (GAO) which found that DHS was not uniformly verifying facility-reported data in assigning risk tiers.⁸

Additionally, this section clarifies a provision from the *CFATS Act of 2014* to ensure that employees are consulted in the development of a facility's vulnerability assessment and site security plans. It amends existing statutory language that directs facilities to consult with employees in addition to a facility security officer or other official primarily responsible for site security who have relevant knowledge, experience, training, or education pertaining to matters of site security. Further, where employees are represented by a union, facilities are to consult with a representative, selected by the bargaining agent, with the same qualifications. Importantly, it requires facilities to maintain a record of such employee consultation, including how often it took place and what became of any employee recommendations, and to provide such information to DHS, in addition to granting CFATS inspectors access to such employees for purposes of carrying out audits and inspections. This section is based on stakeholder testimony provided to the Committee on March 12, 2019, asserting that the current law, which merely encourages consultation with knowledgeable employees and labor representatives, is "too generic to be effective" and often results in facilities "checking the box" by asking employees to sign off on plans that have already been completed, if engagement occurs at all.⁹

Finally, to improve security awareness within facilities, the section requires the Secretary to produce an employee awareness poster that informs employees about CFATS requirements and whistleblower protections that is to be displayed in areas accessible to the workforce. This section is intended to address concerns that employees are not empowered to participate in site security or report CFATS violations because they may not even be aware of the program or whether their facility is covered. Moreover, the Committee intends for this poster to be available to all facilities with chemicals of interest, not only those that have been designated as high risk, to preserve anonymity regarding which facilities are determined to be high-risk. The Committee believes that DHS, by doing more to oversee employee consultation and raise employee awareness about CFATS requirements, can help foster a culture of security within high risk chemical facilities.

Department of Homeland Security oversight

The section requires the Secretary to disapprove a site security plan that does not satisfy the risk-based performance standards and fails to include the name, organizational affiliation, and phone number of a local emergency manager or local emergency response provider and a documented policy to contact the local emergency manager or local emergency response provider at least annually regarding emergency response plans at the facility. In 2018, GAO issued a report finding that DHS shares some information, but first responders and emergency planners do not have all the information

⁸U.S. Government Accountability Office, *Critical Infrastructure Protection: DHS Action Needed to Verify Some Chemical Facility Information and Manage Compliance Process*, GAO-15-614 (July 22, 2015).

⁹*Id.*

they need to minimize the risk of injury or death when responding to incidents at high risk facilities.¹⁰ The Committee included this provision to ensure that facility owners and operators build communication with local emergency officials into the foundation of how a facility operates under the program.

The section also requires the Secretary to confirm that employee consultation has been carried out and recordkeeping of such consultation is maintained, in accordance with this section, prior to approving or disapproving a site security plan.

Additionally, the section requires the Secretary, before issuing a re-determination that would lower a facility's risk tier or determine that the facility no longer presents a high level of security risk, to confirm the information provided by the facility owner or operator that was the basis for the determination and collect information on the actions taken or practices employed by the facility to reduce or remove terrorism-related chemical security risks, where applicable.

Elimination of the Expedited Approval Plan

This section terminates the Expedited Approval Plan authorized under the CFATS Act of 2014. This program allows facilities in Tiers 3 and 4 to use an expedited process that allows them to self-certify compliance with a more prescriptive set of risk-based security guidelines issued by the Secretary. As of June 2018, of the 3,152 facilities eligible to use EAP, only 18 facilities opted to use it while all other facilities chose to access a process where they engage with DHS CFATS inspectors as they are developing and implementing site security plans.¹¹

Audits and inspections

This section clarifies that DHS has the authority to carry out audits and inspections of covered chemical facilities and chemical facilities of interest and that inspectors should receive continuing education and other professional development tools necessary to carry out their duties. Additionally, it requires DHS to establish which credential or certification is necessary to conduct inspections related to cybersecurity, in alignment with Risk Based Performance Standard 8.¹²

Importantly, to ensure that information is shared with local emergency officials, it requires DHS to annually confirm compliance with the documented policy submitted with a facility's SSP, to contact the local emergency manager or local emergency response provider at least annually regarding emergency response plans at the facility. The Committee believes that oversight of whether facilities are communicating with emergency response officials is necessary, based on the findings of the 2018 GAO report describing inadequate sharing of information between DHS, facilities, and emergency response providers.¹³ The CFATS Act of 2014

¹⁰ U.S. Government Accountability Office, *Critical Infrastructure Protection: DHS Should Take Actions to Measure Reduction in Chemical Facility Vulnerability and Share Information with First Responders*, GAO-18-538 (August 8, 2018), <https://www.gao.gov/assets/700/693817.pdf>.

¹¹ U.S. Government Accountability Office, *Critical Infrastructure Protection: Progress and Challenges in DHS's Management of Its Chemical Facility Security Program*, GAO-18-613T (June 14, 2018), <https://www.gao.gov/assets/700/692483.pdf>.

¹² U.S. Department of Homeland Security, *Risk-Based Performance Standards Guidance* (May 2009).

¹³ GAO-18-538.

contained provisions requiring DHS to share information through a secure and expeditious system so that first responders had sufficient situational awareness to respond to an incident at a high risk chemical facility. These provisions were based in part on the April 2013 explosion at the West Fertilizer Company in West, Texas, which killed more than a dozen first responders and leveled neighboring buildings. The U.S. Chemical Safety Board found that DHS had no knowledge of the West Fertilizer facility, even though it had reported threshold quantities of CFATS chemicals to other federal and state regulators, and that fewer first responders might have died had information regarding the facility's chemical holdings been shared.¹⁴ Through its oversight, the Committee has been troubled to learn that information sharing regarding the types of chemicals stored on site and its implications for response has not improved significantly since the West, Texas explosion. The Committee expects DHS to prioritize improving information sharing between local emergency officials and owners and operators of covered chemical facilities.

Risk assessments

This section clarifies that the risk tiering methodology should consider risks posed by terrorist and other malicious actors and the consequences, in the event of a facility being subject to attack, compromise, infiltration, or the exploitation of chemicals of interest in its methodology.

Sharing information with emergency response providers

In addition to the new requirements placed on facility owners and operators to have documented policies for communicating with emergency response officials and the new oversight requirements placed on DHS to ensure that such communication occurs, the section modifies the law to require the Secretary to make available information determined by the Secretary as necessary for response and situational awareness to State and local officials, including fusion centers, as defined in section 210A(j)(1) of the Homeland Security Act of 2002.

Practices that may reduce chemical security risks

This section directs the Secretary to analyze data collected from facilities that have successfully modified their chemical holdings, processes, or operations to reduce or eliminate risk, and use it to develop voluntary, publicly available practices that could be used to guide other facility owners and operators in preventing, reducing, and mitigating chemical security risks. The Committee believes that over the past twelve years, the CFATS program has matured and has the potential of not only helping facilities manage terrorism risk but also reduce their risk. Since 2007, the number of high-risk facilities has dropped by half—suggesting that CFATS has been a driver in encouraging facilities to reduce or eliminate terrorist targets. Further, CFATS facilities have “achieved on average a 55% increase in their security posture as a direct result” of

¹⁴U.S. Chemical Safety and Hazard Investigation Board, *West Fertilizer Company Fire and Explosion: 15 Fatalities, More Than 260 Injured*, Investigation Report (Final), (Jan. 2016).

regulation.¹⁵ Both the Department and expert stakeholders agree that “there is more that [DHS] can do to mine those practices,”¹⁶ and that “facilities have much to learn from each other.”¹⁷ This provision is intended to allow DHS to harness lessons learned through its engagement with facilities that tier down or out of the program to help make other facilities more secure.

Specific products and mixtures

This section authorizes the Secretary to exclude a specific product or mixture that contains a chemical of interest at or above the minimum thresholds established by the Secretary under Appendix A to part 27 of title 6, Code of Federal Regulations, if the Secretary determines that the product or mixture does not present a terrorism risk for which the chemical of interest is listed in Appendix A. The Committee understands that this authority is important for the Secretary’s ability to run the CFATS program efficiently and in a manner that does not result in the needless regulation of facilities for mixtures or products whose chemical composition include chemicals of interest but are not exploitable or desirable for terrorist misuse. The Committee has heard concerns from some stakeholders that the Secretary could, under pressure from industry, exempt chemicals or products without fully documenting a rationale or giving stakeholders an opportunity to appeal the decision. The Committee expects the Secretary to exercise this limited authority in a responsible, risk-based manner. Further, the Committee expects that the Secretary rely on rigorous scientific analysis in making any such determination.

Congressional notification

The section requires the Secretary to report on the average length of time required to (1) review and approve site security plans or alternate security programs; (2) ensure a facility has achieved full implementation of planned security measures; and (3) conduct compliance inspections.

Additionally, this section requires the Secretary to notify Congress any time a facility is not tiered within nine months of submitting a Top-Screen. This section is informed by concerns from some stakeholders that the Department has, in some instances, delayed tiering determinations for months or years while trying to discern whether the chemicals or mixtures present a security threat. While the Committee encourages DHS to carry out tiering determinations in a rigorous manner, leaving facility owners and operators in a state of uncertainty for years is unacceptable. The Committee believes that the Department must prioritize issuing tiering determinations in a timely manner so that a facility can know if they are deemed to be a high-risk chemical facility and, if they are, they can begin to comply with the requirements of the CFATS program.

¹⁵Testimony of David Wulf, Director, Infrastructure Security Compliance Div., DHS Cybersecurity and Infrastructure Security Agency, before the U.S. House of Representatives Committee on Homeland Security hearing entitled *Securing Our Nation’s Chemical Facilities: Building on the Progress of the CFATS Program* (Feb. 27, 2019).

¹⁶Testimony of David Wulf, *Securing Our Nation’s Chemical Facilities* (Feb. 27, 2019).

¹⁷Testimony of John Morawetz, *Securing Our Nation’s Chemical Facilities: Stakeholder Perspectives* (Mar. 12, 2019).

Sec. 4. Protection and sharing of information

This section clarifies that “chemical-terrorism vulnerability information” (CVI), which is protected from disclosure, shall be made available, upon request, to (1) State and local government officials including law enforcement and emergency response providers (regarding facilities within their jurisdictions), (2) Members of Congress, (3) Members of the Chemical Security Advisory Committee created by this Act (in the course of conducting official duties and responsibilities as a committee member), and (4) the Comptroller General of the United States. It also clarifies that CVI protections shall not be construed to prohibit a chemical facility of interest from disclosing information that was not created solely for the purpose of meeting CFATS requirements. The Committee’s oversight has identified challenges with the implementation of CVI protections that warrant this clarification, including a reluctance among some facilities to share information with first responders, emergency planners, or facility employees, out of concern that doing so will constitute an impermissible disclosure of CVI. While there is value in protecting some discrete records and documents—such as Site Security Plans or Compliance Inspection Reports—from public release, an overly-broad interpretation risks chilling information sharing in ways that undermine security, rather than promote it. It is the Committee’s intent that the aforementioned categories of individuals shall be presumed to have a ‘need to know’ for purposes of accessing CVI. Moreover, information that is already publicly available, readily discoverable, or otherwise lawfully disclosed should not be viewed as CVI information.

Sec. 5. Civil enforcement

This section requires the Secretary to issue notices of noncompliance within three days, rather than 14 days, and order facilities to comply within 30 days, rather than 180 days. It authorizes the use of emergency orders for imminent threat of death, serious illness, or severe personal injury due to the risk of a terrorist or other malicious act. The section also makes an exception to the general rule, prohibiting private right of action for CFATS violations, for whistleblower retaliation.

Sec. 6. Whistleblower protection

This section clarifies existing whistleblower protections established pursuant to the *CFATS Act of 2014* by requiring the Secretary to keep the identity of a reporting individual confidential, absent his or her consent, unless disclosure is essential to investigate or because of compulsory legal process, in which case the individual must be notified. Further, the section clarifies that the Secretary is required to respond to an individual asserting a whistleblower claim not later than 15 days after receiving the report and provides a 20-day period for review of actions based on reports under this section.

Importantly, it requires the Secretary to establish a procedure for the review and investigation of complaints of retaliation against an employee of the facility, or former employee. This provision is based on findings from a 2016 GAO report which found that DHS did not have a documented process or procedures for addressing

whistleblower retaliation claims.¹⁸ While the Department has a system in place for whistleblowers to report CFATS violations, there is no documented policy in place for investigating and resolving a claim of prohibited reprisal against a whistleblower, should one arise.

Last, it creates an exception to the general rule—that the Secretary must complete review of a petition within 30 days or the action shall cease to be effective—if the violation continues to exist or if such period is insufficient to complete the review of the action.

Sec. 7. Chemical Security Advisory Committee

This section establishes a new Chemical Security Advisory Committee to advise the Secretary on CFATS implementation. The Committee will be comprised of 12 members selected by the Secretary, who represent: industry; academia; labor; emergency response providers; local emergency planners; environmental, community, or public health advocates, particularly for communities with high concentrations of covered chemical facilities; and cybersecurity and information policy. Members are to select a Chair and each unpaid Member is to serve for an initial three-year term and can be re-appointed for an additional three years. The Committee may establish subcommittees to assess risk tiering, the risk-based performance standards, and risk reduction strategies, among other things. Committee Members shall maintain information protections and Members may access classified information with appropriate security clearances. The establishment of an Advisory Committee is informed by stakeholder complaints that DHS does not have mechanisms to allow for broader, academic, or scientific input from subject matter experts in industry and other fields.

For purposes of engaging with DHS on classified and CVI program aspects and terrorism threat information, the Committee is exempt from the Federal Advisory Committee Act but is required to submit an annual report to the Secretary not less than January 30 each year. In turn, the Secretary shall provide the report, together with any Secretarial feedback on the report, to Congress within 45 days of receipt of the report.

Sec. 8. Implementation plan and report to Congress

This section requires DHS, within 90 days, to develop and submit to Congress an implementation plan outlining how the Secretary will aggregate, anonymize, and analyze data collected from chemical facilities that have successfully reduced or removed chemical security risks, and use such data to develop voluntary, publicly available, practices based on such data to guide facility owners and operators in preventing, reducing, and managing security risks. The Committee intends for DHS to update these risk reduction practices as necessary, on an ongoing basis, as new practices are identified, and disseminate such practices to chemical facility owners and operators through an appropriate medium or system, including by making such practices available to the public to the greatest extent practicable.

¹⁸U.S. Government Accountability Office, Critical Infrastructure Protection: Improvements Needed for DHS' Chemical Facility Whistleblower Report Process, GAO-16-572 (July 12, 2016), <https://www.gao.gov/products/GAO-16-572>.

This section also requires the Secretary, within one year and annually thereafter, to submit to Congress a report on implementation, a description of the voluntary, publicly available, practices identified, and the system or medium used to disseminate such practices.

Through years of oversight, the Committee has identified an opportunity for DHS to use CFATS data more effectively—specifically the data on how facilities are reducing and removing chemical security risks—to inform anonymized, generalized practices that could guide other facility owners and operators in how they might approach similar risk reduction efforts. Since 2007, the number of high-risk facilities has dropped by half—suggesting that CFATS has been a driver in encouraging facilities to reduce or eliminate terrorist targets. Further, CFATS facilities have “achieved on average a 55% increase in their security posture as a direct result” of regulation.¹⁹ Both the Department and expert stakeholders agree that “there is more that [DHS] can do to mine those practices,”²⁰ and that “facilities have much to learn from each other.”²¹ This provision is intended to allow DHS to harness lessons learned through its engagement with facilities that tier down or out of the program to help make other facilities more secure. The Committee has come to understand that the CFATS Program has matured to a point where it can do more to improve overall security in the chemical sector through the sharing of this information with facility owners and operators. The Committee also encourages DHS to find opportunities to use these risk reduction practices to inform or carry out the voluntary program described in section 15 of this Act.

Sec. 9. Study on risks posed by excluded facilities

This section requires DHS, within 90 days, to enter into an agreement with a non-DHS entity to conduct an independent assessment of the national security implications of exempting excluded facilities, as defined in Sec. 2101, from CFATS, as well as the implications for the facilities, communities, and geographic areas where such facilities are located. Within 16 months after entering into the agreement, DHS is required to submit a report with findings and recommendations to the Senate Homeland Security and Government Affairs Committee, and the House Committees on Homeland Security and Energy and Commerce.

Since the program was established in 2006, thousands of facilities across the country have been exempt from this homeland security program targeted at helping facilities identify and manage their terrorism risk. The exempted facilities are those that are: regulated under the *Maritime Transportation Security Act of 2002*; public water systems, as defined under the *Safe Drinking Water Act*; Treatment Works, as defined under the *Federal Water Pollution Control Act*; owned or operated by the Department of Defense or the Department of Energy; or subject to regulation by the Nuclear Regulatory Commission, or by a State that has entered into

¹⁹Testimony of David Wulf, Director, Infrastructure Security Compliance Div., DHS Cybersecurity and Infrastructure Security Agency, before the U.S. House of Representatives Committee on Homeland Security hearing entitled *Securing Our Nation’s Chemical Facilities: Building on the Progress of the CFATS Program* (Feb. 27, 2019).

²⁰Testimony of David Wulf, *Securing Our Nation’s Chemical Facilities* (Feb. 27, 2019).

²¹Testimony of John Morawetz, *Securing Our Nation’s Chemical Facilities: Stakeholder Perspectives* (Mar. 12, 2019).

an agreement with the Nuclear Regulatory Commission under the *Atomic Energy Act of 1954*. The Committee notes that it has been thirteen years since the exemptions were established. In that time, the CFATS program has matured and the terrorism threat picture has grown more diverse and complex. As such, the Committee believes that an independent security study of the security implications posed by maintaining categories of excluded facilities is timely.

Sec. 10. Study on feasibility of waiver program

This section requires the Secretary to study the feasibility and desirability of establishing a process under which certain chemical facilities, as determined by the Secretary, may apply for a waiver of certain CFATS requirements upon showing that: (1) the requirements of CFATS are covered, to the same extent and in the same manner, under another Federal regulatory program; (2) the facility is in full compliance with such other program; and (3) the facility has not, in the past five years, been subject to an enforcement action or otherwise found to be noncompliant with any aspect of the program. The Secretary is required to submit the report to the Senate Homeland Security and Government Affairs Committee, and the House Committees on Homeland Security and Energy and Commerce within two years. Through engagement with private sector stakeholders, the Committee has repeatedly been told of overlapping or duplicative Federal regulatory programs that should be harmonized with CFATS, or alternatively, warrant certain facilities being exempted from the program entirely. The Committee is concerned that the latter could create new security gaps, since while some regulatory programs may relate to CFATS or govern similar regulated communities, it is not clear that the regulatory requirements are exactly parallel or similarly concerned with facility security. Moreover, there is a great deal of variation among regulators—in terms of enforcement authority, staffing, capacity and expertise. Therefore, this section directs the Department to study whether it would be feasible or desirable to create a program whereby facilities could receive a waiver, on a case-by-case basis, subject to their regulatory compliance record with another regulator.

Sec. 11. Review of potential effects of attacks on covered chemical facilities on other critical infrastructure

This section requires the Director of the Cybersecurity and Infrastructure Security Agency (CISA), the agency in which the CFATS program operates, to review the risk assessment and tiering methodology and assess the extent to which it takes into account: (1) the nature of the area surrounding the facility, the presence of nearby facilities or other critical infrastructure, and other features of the community that could contribute to the consequences of a terrorist attack or exploitation of chemicals of interest; (2) the potential effects on the health and economic conditions of communities disproportionately vulnerable to the consequences of a terrorist attack or exploitation of chemicals of interest; and (3) the vulnerabilities of chemical facilities to cybersecurity threats, including the vulnerabilities of facilities' information technology and operational

technology and the implications on the potential for penetration of both the physical security and cybersecurity of facilities.

Based on this review, the CISA Director is required to develop a plan to ensure such factors are better integrated into the risk tiering methodology when it is next updated. It also requires the CISA Director to submit a report on the tiering methodology review to the Senate Homeland Security and Government Affairs Committee, and the House Committees on Homeland Security and Energy and Commerce within two years of enactment of this Act.

In the past, Congress has questioned whether DHS is using appropriate factors and methodologies to determine which facilities are high risk. Currently, DHS does not consider factors about the community in which a facility is located—like whether it is located beside an elementary school or a nursing home—or whether neighboring structures (including other critical infrastructure) might make the facility a more desirable terrorist target. Unlike EPA and other regulators, DHS' tiering methodology does not consider potential health implications of chemical terrorism, only the number of fatalities that could result from an attack.

There is a substantial body of research showing that many chemical facilities are located close to population centers and tend to be heavily concentrated in minority and low-income communities.²² A 2014 report by the Center for Effective Government found that one-third of U.S. children attend school within impact radius of a chemical facility explosion or release.²³ Low income communities may also have fewer resources to devote to emergency response planning and personnel. Emergency response procedures at the 'fence-line' of a chemical facility are often inadequate, and generally involve directing people nearby to shelter in place.²⁴ Many communities also have multiple high-risk chemical facilities clustered or concentrated in a single area, which could have catastrophic results in the event of a terrorist attack. As such, vulnerable populations would likely suffer the worst consequences of a chemical explosion or release at a CFATS facility. Accordingly, the Committee intends for DHS to take a more comprehensive look at the factors that make a facility 'high risk,' and identify opportunities to align the methodology accordingly.

Sec. 12. Comptroller general reports

This section requires GAO to study and report on the effectiveness of risk-based performance standards in protecting businesses, employees, the economy, and the public against existing and evolving threats. It also requires a GAO study on information management around practices, including the maintenance and utilization of information on tiering changes and areas to improve the identification and dissemination of practices to reduce chemical security risks. Finally, it requires GAO to study practices to reduce chem-

²² See, e.g., Paul Orum, Environmental Justice and Health Alliance for Chemical Policy Reform, *Who's in Danger: Race, Poverty, and Chemical Disasters* (May 2014), <http://comingcleaninc.org/assets/media/images/Reports/Who%27s%20in%20Danger%20Report%20FINAL.pdf>.

²³ Amanda Frank and Seth Moulton, Center for Effective Government, *Kids in Danger Zones: One in Three U.S. Schoolchildren at Risk from Chemical Catastrophes* (September 2014), <http://www.foreffectivegov.org/sites/default/files/kids-in-danger-zones-report.pdf>.

²⁴ Orum, *Who's in Danger?* at 11.

ical security risks, specifically how effectively they are developed and distributed, and actions taken in response to practices.

Sec. 13. Voluntary mechanism for reporting drones and other emerging threats

This section requires the CISA Director, within 120 days, to establish a secure platform for facilities to report, on a voluntary basis, information on emerging threats, including terrorism threats posed by unmanned aircraft systems. The Committee expects the platform to support data-mining and other advanced analytic tools to access, receive, and analyze data. This provision is informed by testimony received in the 115th Congress before the Committee on Homeland Security Subcommittee on Cybersecurity, Infrastructure Protection, and Innovation, which revealed that critical infrastructure owners and operators—and the chemical sector in particular—do not have a clear, consistent mechanism for reporting unauthorized unmanned aerial systems (UAS) activities operating over their facilities to DHS.²⁵ The Committee believes that this reporting mechanism should exist, as it would provide recourse for facilities and help inform the Department’s understanding of the threat landscape.

Sec. 14. Regulations regarding specific products and mixtures containing chemicals of interest

This section requires the Secretary to issue regulations within one year on a process to petition DHS to exclude a product or mixture, and clarifies that DHS is not subject to 44 U.S.C. subchapter I, chapter 35 or 5 U.S.C. 553 for purposes of prescribing such regulations. This provision is intended to help effectuate the authority provided under section 3 of this Act.

Sec. 15. Voluntary program

This section authorizes the CISA Director to develop a voluntary program for chemical facilities to address potential security risks at such facilities. The Committee intends for this program to be targeted to facilities in the chemical sector that are not subject to the CFATS program. The Committee believes that the CISA Director should not target this program at facilities that have tiered out of the program but rather facilities that do not have chemicals of interest to warrant submission of Top-Screens and, as such, may have little awareness of how they could address potential security risks at their facilities.

Sec. 16. Study on local emergency response capacity to respond to chemical security incidents

This section requires the Secretary, acting through the Under Secretary for Science and Technology, to conduct a study on how to improve training and support for local emergency response providers in areas with high concentrations of covered chemical facilities on how to respond to a terrorist attack on a chemical facility.

²⁵U.S. House of Representatives Committee on Homeland Security Subcommittee on Cybersecurity and Infrastructure Protection hearing entitled Industry Views of the Chemical Facility Anti-Terrorism Standards Program (Feb. 15, 2018).

Sec. 17. Previously approved facilities

This section prohibits the Secretary from requiring a facility to resubmit a site security plan solely by reason of the enactment of this Act or the amendments made by this Act.

Sec. 18. Termination

This section amends the date on which authority to carry out CFATS terminates to May 1, 2025.

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, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Homeland Security Act of 2002”.

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

Sec. 1. Short title; table of contents.

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TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

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Sec. 2110. Chemical Security Advisory Committee.

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TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

SEC. 2101. DEFINITIONS.

In this title—

- (1) the term “CFATS regulation” means—
 - (A) an existing CFATS regulation; and
 - (B) any regulation or amendment to an existing CFATS regulation issued pursuant to the authority under section 2107;

- (2) the term “chemical facility of interest” means a facility that—

- (A) holds, or that the Secretary has a reasonable basis to believe holds, a chemical of interest, as designated under Appendix A to part 27 of title 6, Code of Federal Regulations, or any successor thereto, at a threshold quantity set pursuant to relevant risk-related security principles; and
- (B) is not an excluded facility;

- (3) the term “covered chemical facility” means a facility that—

- (A) the Secretary—
 - (i) identifies as a chemical facility of interest; and
 - (ii) based upon review of the facility’s Top-Screen, determines meets the risk criteria developed under section 2102(e)(2)(B); and
- (B) is not an excluded facility;
- (4) the term “excluded facility” means—
 - (A) a facility regulated under the Maritime Transportation Security Act of 2002 (Public Law 107–295; 116 Stat. 2064);
 - (B) a public water system, as that term is defined in section 1401 of the Safe Drinking Water Act (42 U.S.C. 300f);
 - (C) a Treatment Works, as that term is defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292);
 - (D) a facility owned or operated by the Department of Defense or the Department of Energy; or
 - (E) a facility **【subject to regulation】** *regulated* by the Nuclear Regulatory Commission, or by a State that has entered into an agreement with the Nuclear Regulatory Commission under section 274 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021(b)) to protect against unauthorized access of any material, activity, or structure licensed by the Nuclear Regulatory Commission;
- (5) the term “existing CFATS regulation” means—
 - (A) a regulation promulgated under section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 6 U.S.C. 121 note) **【that is in effect on the day before the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014】** *or this title*; and
 - (B) a Federal Register notice or other published guidance relating to section 550 of the Department of Homeland Security Appropriations Act, 2007 **【that is in effect on the day before the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014】** *or this title*;
- 【(6) the term “expedited approval facility” means a covered chemical facility for which the owner or operator elects to submit a site security plan in accordance with section 2102(c)(4);**
- 【(7) the term “facially deficient”, relating to a site security plan, means a site security plan that does not support a certification that the security measures in the plan address the security vulnerability assessment and the risk-based performance standards for security for the facility, based on a review of—**
 - 【(A) the facility’s site security plan;**
 - 【(B) the facility’s Top-Screen;**
 - 【(C) the facility’s security vulnerability assessment; or**
 - 【(D) any other information that—**
 - 【(i) the facility submits to the Department; or**
 - 【(ii) the Department obtains from a public source or other source;**
- 【(8) the term “guidance for expedited approval facilities” means the guidance issued under section 2102(c)(4)(B)(i);】**

[(9)] (6) the term “risk assessment” means the Secretary’s application of relevant risk criteria identified in section 2102(e)(2)(B);

[(10)] (7) the term “terrorist screening database” means the terrorist screening database maintained by the Federal Government Terrorist Screening Center or its successor;

[(11)] (8) the term “tier” has the meaning given the term in section 27.105 of title 6, Code of Federal Regulations, or any successor thereto;

[(12)] (9) the terms “tiering” and “tiering methodology” mean the procedure by which the Secretary assigns a tier to each covered chemical facility based on the risk assessment for that covered chemical facility;

[(13)] (10) the term “Top-Screen” has the meaning given the term in section 27.105 of title 6, Code of Federal Regulations, or any successor thereto; and

[(14)] (11) the term “vulnerability assessment” means the identification of weaknesses in the security of a chemical facility of interest.

SEC. 2102. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM.

(a) PROGRAM ESTABLISHED.—

(1) IN GENERAL.—There is in the Department a Chemical Facility Anti-Terrorism Standards Program, which shall be located in the Cybersecurity and Infrastructure Security Agency.

(2) REQUIREMENTS.—In carrying out the Chemical Facility Anti-Terrorism Standards Program, the Secretary shall—

(A) identify—

(i) chemical facilities of interest; and

(ii) covered chemical facilities;

(B) require each chemical facility of interest to submit a Top-Screen and any other information the Secretary determines necessary to enable the Department to assess the security risks associated with the facility;

(C) establish risk-based performance standards designed to address high levels of security risk at covered chemical facilities; **[and]**

(D) require each covered chemical facility to—

(i) submit a security vulnerability assessment; and

(ii) develop, submit, and implement a site security plan**[.]; and**

(E) verify information submitted by a covered chemical facility prior to assigning such facility a lower risk tier or determining that such facility no longer presents a high level of security risk.

(b) SECURITY MEASURES.—

(1) IN GENERAL.—A facility, in developing a site security plan as required under subsection (a), shall include security measures that, in combination, appropriately address the security vulnerability assessment and the risk-based performance standards for security for the facility.

[(2) EMPLOYEE INPUT.—To the greatest extent practicable, a facility’s security vulnerability assessment and site security plan shall include input from at least 1 facility employee and, where applicable, 1 employee representative from the bar-

gaining agent at that facility, each of whom possesses, in the determination of the facility's security officer, relevant knowledge, experience, training, or education as pertains to matters of site security.】

(2) *EMPLOYEE CONSULTATION AND AWARENESS.*—

(A) *EMPLOYEE CONSULTATION REQUIREMENT.*—A facility's security vulnerability assessment and site security plan shall be developed in consultation with—

(i) at least one facility employee, in addition to the facility security officer or other individual who serves as a point of contact under section 27.230(a)(17) of title 6, Code of Federal Regulations, and the corresponding guidance issued under section 27.220(d) of such title, or any successor thereto, who possesses relevant knowledge, experience, training, or education pertaining to matters of site security.

(ii) in the case of a facility where facility employees are represented by a bargaining agent, at least one employee representative who—

(I) is selected by the bargaining agent at that facility; and

(II) has relevant knowledge, experience, training, or education pertaining to matters of site security.

(B) *RECORD OF EMPLOYEE CONSULTATION.*—A covered chemical facility shall maintain a written record of the employee consultation required by subparagraph (A), including a record of—

(i) the name of the employee with whom the facility security officer or other similar official consulted;

(ii) how often and when such consultation took place;

(iii) what mechanisms the facility used to capture feedback; and

(iv) any recommendations that were offered, accepted, or rejected as part of the security vulnerability assessment or site security plan.

(C) *ACCESS TO EMPLOYEES.*—Each owner or operator of a covered chemical facility shall, upon request, provide to an employee of the Department engaged in carrying out audits and inspections of such facility access to any employee who participated in the development of the facility's security vulnerability assessment and site security plan.

(D) *EMPLOYEE AWARENESS.*—The Secretary shall produce a poster that a chemical facility of interest shall display in areas accessible to facility employees to inform employees about requirements under this title and the whistleblower protections provided under section 2105.

(c) *APPROVAL OR DISAPPROVAL OF SITE SECURITY PLANS.*—

(1) *IN GENERAL.*—

(A) *REVIEW.*—Except as provided in paragraph (4), the Secretary shall review and approve or disapprove each site security plan submitted pursuant to subsection (a).

(B) *BASES FOR DISAPPROVAL.*—The Secretary—

(i) may not disapprove a site security plan based on the presence or absence of a particular security measure; [and]

[(ii) shall disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established pursuant to subsection (a)(2)(C).]

(ii) shall disapprove a site security plan if—

(I) the plan fails to satisfy the risk-based performance standards established pursuant to subsection (a)(2)(C); or

(II) the plan fails to include the name, organizational affiliation, and phone number of a local emergency manager or local emergency response provider and a documented policy to contact the local emergency manager or local emergency response provider at least annually regarding emergency response plans at the facility.

(2) ALTERNATIVE SECURITY PROGRAMS.—

(A) AUTHORITY TO APPROVE.—

(i) IN GENERAL.—The Secretary may approve an alternative security program established by a private sector entity or a Federal, State, or local authority or under other applicable laws, if the Secretary determines that the requirements of the program meet the requirements under this section.

(ii) ADDITIONAL SECURITY MEASURES.—If the requirements of an alternative security program do not meet the requirements under this section, the Secretary may recommend additional security measures to the program that will enable the Secretary to approve the program.

(B) SATISFACTION OF SITE SECURITY PLAN REQUIREMENT.—A covered chemical facility may satisfy the site security plan requirement under subsection (a) by adopting an alternative security program that the Secretary has—

(i) reviewed and approved under subparagraph (A); and

(ii) determined to be appropriate for the operations and security concerns of the covered chemical facility.

[(3) SITE SECURITY PLAN ASSESSMENTS.—

[(A) RISK ASSESSMENT POLICIES AND PROCEDURES.—In approving or disapproving a site security plan under this subsection, the Secretary shall employ the risk assessment policies and procedures developed under this title.

[(B) PREVIOUSLY APPROVED PLANS.—In the case of a covered chemical facility for which the Secretary approved a site security plan before the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, the Secretary may not require the facility to resubmit the site security plan solely by reason of the enactment of this title.

[(4) EXPEDITED APPROVAL PROGRAM.—

[(A) IN GENERAL.—A covered chemical facility assigned to tier 3 or 4 may meet the requirement to develop and submit a site security plan under subsection (a)(2)(D) by developing and submitting to the Secretary—

[(i) a site security plan and the certification described in subparagraph (C); or

[(ii) a site security plan in conformance with a template authorized under subparagraph (H).

[(B) GUIDANCE FOR EXPEDITED APPROVAL FACILITIES.—

[(i) IN GENERAL.—Not later than 180 days after the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, the Secretary shall issue guidance for expedited approval facilities that identifies specific security measures that are sufficient to meet the risk-based performance standards.

[(ii) MATERIAL DEVIATION FROM GUIDANCE.—If a security measure in the site security plan of an expedited approval facility materially deviates from a security measure in the guidance for expedited approval facilities, the site security plan shall include an explanation of how such security measure meets the risk-based performance standards.

[(iii) APPLICABILITY OF OTHER LAWS TO DEVELOPMENT AND ISSUANCE OF INITIAL GUIDANCE.—During the period before the Secretary has met the deadline under clause (i), in developing and issuing, or amending, the guidance for expedited approval facilities under this subparagraph and in collecting information from expedited approval facilities, the Secretary shall not be subject to—

[(I) section 553 of title 5, United States Code;

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

[(III) section 2107(b) of this title.

[(C) CERTIFICATION.—The owner or operator of an expedited approval facility shall submit to the Secretary a certification, signed under penalty of perjury, that—

[(i) the owner or operator is familiar with the requirements of this title and part 27 of title 6, Code of Federal Regulations, or any successor thereto, and the site security plan being submitted;

[(ii) the site security plan includes the security measures required by subsection (b);

[(iii)(I) the security measures in the site security plan do not materially deviate from the guidance for expedited approval facilities except where indicated in the site security plan;

[(II) any deviations from the guidance for expedited approval facilities in the site security plan meet the risk-based performance standards for the tier to which the facility is assigned; and

[(III) the owner or operator has provided an explanation of how the site security plan meets the risk-based performance standards for any material deviation;

[(iv) the owner or operator has visited, examined, documented, and verified that the expedited approval facility meets the criteria set forth in the site security plan;

[(v) the expedited approval facility has implemented all of the required performance measures outlined in the site security plan or set out planned measures that will be implemented within a reasonable time period stated in the site security plan;

[(vi) each individual responsible for implementing the site security plan has been made aware of the requirements relevant to the individual's responsibility contained in the site security plan and has demonstrated competency to carry out those requirements;

[(vii) the owner or operator has committed, or, in the case of planned measures will commit, the necessary resources to fully implement the site security plan; and

[(viii) the planned measures include an adequate procedure for addressing events beyond the control of the owner or operator in implementing any planned measures.

[(D) DEADLINE.—

[(i) IN GENERAL.—Not later than 120 days after the date described in clause (ii), the owner or operator of an expedited approval facility shall submit to the Secretary the site security plan and the certification described in subparagraph (C).

[(ii) DATE.—The date described in this clause is—

[(I) for an expedited approval facility that was assigned to tier 3 or 4 under existing CFATS regulations before the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, the date that is 210 days after the date of enactment of that Act; and

[(II) for any expedited approval facility not described in subclause (I), the later of—

[(aa) the date on which the expedited approval facility is assigned to tier 3 or 4 under subsection (e)(2)(A); or

[(bb) the date that is 210 days after the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014.

[(iii) NOTICE.—An owner or operator of an expedited approval facility shall notify the Secretary of the intent of the owner or operator to certify the site security plan for the expedited approval facility not later than 30 days before the date on which the owner or operator submits the site security plan and certification described in subparagraph (C).

[(E) COMPLIANCE.—

[(i) IN GENERAL.—For an expedited approval facility submitting a site security plan and certification in accordance with subparagraphs (A), (B), (C), and (D)—

[(I) the expedited approval facility shall comply with all of the requirements of its site security plan; and

[(II) the Secretary—

[(aa) except as provided in subparagraph (G), may not disapprove the site security plan; and

[(bb) may audit and inspect the expedited approval facility under subsection (d) to verify compliance with its site security plan.

[(ii) NONCOMPLIANCE.—If the Secretary determines an expedited approval facility is not in compliance with the requirements of the site security plan or is otherwise in violation of this title, the Secretary may enforce compliance in accordance with section 2104.

[(F) AMENDMENTS TO SITE SECURITY PLAN.—

[(i) REQUIREMENT.—

[(I) IN GENERAL.—If the owner or operator of an expedited approval facility amends a site security plan submitted under subparagraph (A), the owner or operator shall submit the amended site security plan and a certification relating to the amended site security plan that contains the information described in subparagraph (C).

[(II) TECHNICAL AMENDMENTS.—For purposes of this clause, an amendment to a site security plan includes any technical amendment to the site security plan.

[(ii) AMENDMENT REQUIRED.—The owner or operator of an expedited approval facility shall amend the site security plan if—

[(I) there is a change in the design, construction, operation, or maintenance of the expedited approval facility that affects the site security plan;

[(II) the Secretary requires additional security measures or suspends a certification and recommends additional security measures under subparagraph (G); or

[(III) the owner or operator receives notice from the Secretary of a change in tiering under subsection (e)(3).

[(iii) DEADLINE.—An amended site security plan and certification shall be submitted under clause (i)—

[(I) in the case of a change in design, construction, operation, or maintenance of the expedited approval facility that affects the security plan, not later than 120 days after the date on which the change in design, construction, operation, or maintenance occurred;

[(II) in the case of the Secretary requiring additional security measures or suspending a certification and recommending additional security measures under subparagraph (G), not later than 120 days after the date on which the owner or operator receives notice of the requirement for additional security measures or suspension of the certification and recommendation of additional security measures; and

[(III) in the case of a change in tiering, not later than 120 days after the date on which the owner or operator receives notice under subsection (e)(3).

[(G) FACIALLY DEFICIENT SITE SECURITY PLANS.—

[(i) PROHIBITION.—Notwithstanding subparagraph (A) or (E), the Secretary may suspend the authority of a covered chemical facility to certify a site security plan if the Secretary—

[(I) determines the certified site security plan or an amended site security plan is facially deficient; and

[(II) not later than 100 days after the date on which the Secretary receives the site security plan and certification, provides the covered chemical facility with written notification that the site security plan is facially deficient, including a clear explanation of each deficiency in the site security plan.

[(ii) ADDITIONAL SECURITY MEASURES.—

[(I) IN GENERAL.—If, during or after a compliance inspection of an expedited approval facility, the Secretary determines that planned or implemented security measures in the site security plan of the facility are insufficient to meet the risk-based performance standards based on misrepresentation, omission, or an inadequate description of the site, the Secretary may—

[(aa) require additional security measures;

or

[(bb) suspend the certification of the facility.

[(II) RECOMMENDATION OF ADDITIONAL SECURITY MEASURES.—If the Secretary suspends the certification of an expedited approval facility under subclause (I), the Secretary shall—

[(aa) recommend specific additional security measures that, if made part of the site security plan by the facility, would enable the Secretary to approve the site security plan; and

[(bb) provide the facility an opportunity to submit a new or modified site security plan and certification under subparagraph (A).

[(III) SUBMISSION; REVIEW.—If an expedited approval facility determines to submit a new or modified site security plan and certification as authorized under subclause (II)(bb)—

[(aa) not later than 90 days after the date on which the facility receives recommendations under subclause (II)(aa), the facility shall submit the new or modified plan and certification; and

[(bb) not later than 45 days after the date on which the Secretary receives the new or modified plan under item (aa), the Secretary

shall review the plan and determine whether the plan is facially deficient.

[(IV) DETERMINATION NOT TO INCLUDE ADDITIONAL SECURITY MEASURES.—

[(aa) REVOCATION OF CERTIFICATION.—If an expedited approval facility does not agree to include in its site security plan specific additional security measures recommended by the Secretary under subclause (II)(aa), or does not submit a new or modified site security plan in accordance with subclause (III), the Secretary may revoke the certification of the facility by issuing an order under section 2104(a)(1)(B).

[(bb) EFFECT OF REVOCATION.—If the Secretary revokes the certification of an expedited approval facility under item (aa) by issuing an order under section 2104(a)(1)(B)—

[(AA) the order shall require the owner or operator of the facility to submit a site security plan or alternative security program for review by the Secretary review under subsection (c)(1); and

[(BB) the facility shall no longer be eligible to certify a site security plan under this paragraph.

[(V) FACIAL DEFICIENCY.—If the Secretary determines that a new or modified site security plan submitted by an expedited approval facility under subclause (III) is facially deficient—

[(aa) not later than 120 days after the date of the determination, the owner or operator of the facility shall submit a site security plan or alternative security program for review by the Secretary under subsection (c)(1); and

[(bb) the facility shall no longer be eligible to certify a site security plan under this paragraph.

[(H) TEMPLATES.—

[(i) IN GENERAL.—The Secretary may develop prescriptive site security plan templates with specific security measures to meet the risk-based performance standards under subsection (a)(2)(C) for adoption and certification by a covered chemical facility assigned to tier 3 or 4 in lieu of developing and certifying its own plan.

[(ii) APPLICABILITY OF OTHER LAWS TO DEVELOPMENT AND ISSUANCE OF INITIAL SITE SECURITY PLAN TEMPLATES AND RELATED GUIDANCE.—During the period before the Secretary has met the deadline under subparagraph (B)(i), in developing and issuing, or amending, the site security plan templates under this subparagraph, in issuing guidance for implementation of the templates, and in collecting information from expedited approval facilities, the Secretary shall not be subject to—

[(I) section 553 of title 5, United States Code;
 [(II) subchapter I of chapter 35 of title 44,
 United States Code; or
 [(III) section 2107(b) of this title.

[(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to prevent a covered chemical facility from developing and certifying its own security plan in accordance with subparagraph (A).

[(I) EVALUATION.—

[(i) IN GENERAL.—Not later than 18 months after the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, the Secretary shall take any appropriate action necessary for a full evaluation of the expedited approval program authorized under this paragraph, including conducting an appropriate number of inspections, as authorized under subsection (d), of expedited approval facilities.

[(ii) REPORT.—Not later than 18 months after the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives a report that contains—

[(I)(aa) the number of eligible facilities using the expedited approval program authorized under this paragraph; and

[(bb) the number of facilities that are eligible for the expedited approval program but are using the standard process for developing and submitting a site security plan under subsection (a)(2)(D);

[(II) any costs and efficiencies associated with the expedited approval program;

[(III) the impact of the expedited approval program on the backlog for site security plan approval and authorization inspections;

[(IV) an assessment of the ability of expedited approval facilities to submit facially sufficient site security plans;

[(V) an assessment of any impact of the expedited approval program on the security of chemical facilities; and

[(VI) a recommendation by the Secretary on the frequency of compliance inspections that may be required for expedited approval facilities.]

(3) *SITE SECURITY PLAN ASSESSMENTS.*—*In approving or disapproving a site security plan under this subsection, the Secretary shall—*

(A) employ the risk assessment policies and procedures developed under this title; and

(B) confirm that the covered chemical facility has complied with the employee consultation requirements in paragraph (2) of subsection (b), including by reviewing and recording compliance with the record-keeping requirements under subparagraph (B) of that paragraph.

(d) COMPLIANCE.—

(1) AUDITS AND INSPECTIONS.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “nondepartmental”—

(I) with respect to personnel, means personnel that is not employed by the Department; and

(II) with respect to an entity, means an entity that is not a component or other authority of the Department; and

(ii) the term “nongovernmental”—

(I) with respect to personnel, means personnel that is not employed by the Federal Government; and

(II) with respect to an entity, means an entity that is not an agency, department, or other authority of the Federal Government.

(B) AUTHORITY TO CONDUCT AUDITS AND INSPECTIONS.—The Secretary shall conduct audits or inspections [under this title using] *at chemical facilities of interest and covered chemical facilities and shall obtain information and records to ensure compliance with this title. Such audits and inspections shall be conducted using—*

(i) employees of the Department;

(ii) nondepartmental or nongovernmental personnel approved by the Secretary; or

(iii) a combination of individuals described in clauses (i) and (ii).

(C) SUPPORT PERSONNEL.—The Secretary may use nongovernmental personnel to provide administrative and logistical services in support of audits and inspections under this title.

(D) REPORTING STRUCTURE.—

(i) NONDEPARTMENTAL AND NONGOVERNMENTAL AUDITS AND INSPECTIONS.—Any audit or inspection conducted by an individual employed by a nondepartmental or nongovernmental entity shall be assigned in coordination with a regional supervisor with responsibility for supervising inspectors within the Infrastructure Security Compliance Division of the Department, *or any successor organization that implements the requirements of subsection (a)(2)*, for the region in which the audit or inspection is to be conducted.

(ii) REQUIREMENT TO REPORT.—While an individual employed by a nondepartmental or nongovernmental entity is in the field conducting an audit or inspection under this subsection, the individual shall report to the regional supervisor with responsibility for supervising inspectors within the Infrastructure Security Compliance Division of the Department, *or any successor organization that implements the requirements*

of subsection (a)(2), for the region in which the individual is operating.

(iii) APPROVAL.—The authority to approve a site security plan under subsection (c) or determine if a covered chemical facility is in compliance with an approved site security plan shall be exercised solely by the Secretary or a designee of the Secretary within the Department.

(E) STANDARDS FOR AUDITORS AND INSPECTORS.—~~【The Secretary】~~ *For each individual responsible for carrying out audits or inspections on behalf of the Secretary, the Secretary shall prescribe standards for to ensure such individuals receive the training [and retraining of each individual used by the Department as an auditor or inspector, including each individual employed by the Department and all nondepartmental or nongovernmental personnel], continuing education, and other professional development tools necessary to carry out duties and responsibilities, including—*

(i) minimum training ~~【requirements】~~ *necessary to audit and inspect compliance with all aspects of the risk-based performance standards, including standards related to cybersecurity, for new auditors and inspectors;*

(ii) retraining requirements;

(iii) minimum education and experience levels;

(iv) the submission of information as required by the Secretary to enable determination of whether the auditor or inspector has a conflict of interest;

(v) the proper certification or certifications necessary to handle chemical-terrorism vulnerability information (as defined in section 27.105 of title 6, Code of Federal Regulations, or any successor thereto);

(vi) the proper credential or certification necessary to conduct inspections related to the cybersecurity standard.

~~【(vi)】~~ *(vii) the reporting of any issue of non-compliance with this section to the Secretary within 24 hours; and*

~~【(vii)】~~ *(viii) any additional qualifications for fitness of duty as the Secretary may require.*

(F) CONDITIONS FOR NONGOVERNMENTAL AUDITORS AND INSPECTORS.—If the Secretary arranges for an audit or inspection under subparagraph (B) to be carried out by a nongovernmental entity, the Secretary shall—

(i) prescribe standards for the qualification of the individuals who carry out such audits and inspections that are commensurate with the standards for similar Government auditors or inspectors; and

(ii) ensure that any duties carried out by a nongovernmental entity are not inherently governmental functions.

(2) PERSONNEL SURETY.—

(A) PERSONNEL SURETY PROGRAM.—For purposes of this title, the Secretary shall establish and carry out a Personnel Surety Program that—

(i) does not require an owner or operator of a covered chemical facility that voluntarily participates in the program to submit information about an individual more than 1 time;

(ii) provides a participating owner or operator of a covered chemical facility with relevant information about an individual based on vetting the individual against the terrorist screening database, to the extent that such feedback is necessary for the facility to be in compliance with regulations promulgated under this title; and

(iii) provides redress to an individual—

(I) whose information was vetted against the terrorist screening database under the program; and

(II) who believes that the personally identifiable information submitted to the Department for such vetting by a covered chemical facility, or its designated representative, was inaccurate.

(B) PERSONNEL SURETY PROGRAM IMPLEMENTATION.—To the extent that a risk-based performance standard established under subsection (a) requires identifying individuals with ties to terrorism—

(i) a covered chemical facility—

(I) may satisfy its obligation under the standard by using any Federal screening program that periodically vets individuals against the terrorist screening database, or any successor program, including the Personnel Surety Program established under subparagraph (A); and

(II) shall—

(aa) accept a credential from a Federal screening program described in subclause (I) if an individual who is required to be screened presents such a credential; and

(bb) address in its site security plan or alternative security program the measures it will take to verify that a credential or documentation from a Federal screening program described in subclause (I) is current;

(ii) visual inspection shall be sufficient to meet the requirement under clause (i)(II)(bb), but the facility should consider other means of verification, consistent with the facility's assessment of the threat posed by acceptance of such credentials; and

(iii) the Secretary may not require a covered chemical facility to submit any information about an individual unless the individual—

(I) is to be vetted under the Personnel Surety Program; or

(II) has been identified as presenting a terrorism security risk.

(C) RIGHTS UNAFFECTED.—Nothing in this section shall supersede the ability—

(i) of a facility to maintain its own policies regarding the access of individuals to restricted areas or critical assets; or

(ii) of an employing facility and a bargaining agent, where applicable, to negotiate as to how the results of a background check may be used by the facility with respect to employment status.

(3) AVAILABILITY OF INFORMATION.—The Secretary shall share with the owner or operator of a covered chemical facility any information that the owner or operator needs to comply with this section.

(4) AUDIT OF EMERGENCY RESPONSE PLAN.—*As part of the audit and inspection process under this subsection, the Secretary shall annually confirm compliance of a chemical facility with the requirements under subsection (c)(1)(B)(ii)(II) including adherence to the facility's documented policy to contact the local emergency manager or local emergency response provider at least annually regarding emergency response plans at the facility under such subsection.*

(e) RESPONSIBILITIES OF THE SECRETARY.—

(1) IDENTIFICATION OF CHEMICAL FACILITIES OF INTEREST.—In carrying out this title, the Secretary shall consult with the heads of other Federal agencies, States and political subdivisions thereof, relevant business associations, and public and private labor organizations to identify all chemical facilities of interest.

(2) RISK ASSESSMENT.—

(A) IN GENERAL.—For purposes of this title, the Secretary shall develop a security risk assessment approach and corresponding tiering methodology for covered chemical facilities that incorporates the relevant elements of risk, including threat, vulnerability, and consequence.

(B) CRITERIA FOR DETERMINING SECURITY RISK.—The criteria for determining the security risk of terrorism *and other malicious acts* associated with a covered chemical facility shall take into account—

(i) relevant threat information;

(ii) potential **】**severe economic consequences and the potential loss of human life in the event of the facility being subject to attack, compromise, infiltration, or exploitation by terrorists**】** *consequences in event of the facility being subject to attack, compromise, infiltration, or the exploitation of chemicals of interest by a terrorist or other malicious actor*; and

(iii) vulnerability of the facility to attack, compromise, infiltration, or exploitation by terrorists.

(3) CHANGES IN TIERING.—

(A) MAINTENANCE OF RECORDS.—The Secretary shall document the basis for each instance in which—

(i) *the Secretary determines that a chemical facility of interest does not present a high level of security risk;*

【(i)】 (ii) tiering for a covered chemical facility is changed; or

[(ii)] (iii) a covered chemical facility or *chemical facility of interest* is determined to no longer be subject to the requirements under this title.

(B) REQUIRED INFORMATION.—The records maintained under subparagraph (A) shall include [information on whether and how the Secretary confirmed the information that was the basis for the change or determination described in subparagraph (A).] *information on—*

(i) *how the Secretary confirmed the information that was the basis for the change or determination described in subparagraph (A); and*

(ii) *actions taken or practices employed by the facility to reduce or remove terrorism-related chemical security risks, where applicable.*

(C) TREATMENT OF CERTAIN INFORMATION.—For the purposes of subsection (a) of section 2103—

(i) *information described in subparagraph (B)(i) shall be given protections from public disclosure under such subsection; and*

(ii) *information described in subparagraph (B)(ii) shall not be given protections from public disclosure under such subsection.*

(4) SHARING INFORMATION WITH EMERGENCY RESPONSE PROVIDERS.—

(A) IN GENERAL.—*The Secretary shall make available to State, local, and regional fusion centers (as that term is defined in section 210A(j)(1) of this Act) and State and local government officials such information as the Secretary determines necessary to ensure that emergency response providers are prepared and provided with the situational awareness needed to respond to security incidents at covered chemical facilities.*

(B) DISSEMINATION.—*The Secretary shall disseminate information under subparagraph (A) to individuals identified and entities described in such subparagraph in a secure and expeditious manner.*

(5) PRACTICES THAT MAY REDUCE CHEMICAL SECURITY RISKS.—

(A) IN GENERAL.—*Based on the information maintained under paragraph (3)(B)(ii) regarding actions taken or practices employed by chemical facilities of interest to successfully reduce or remove terrorism-related chemical security risks, the Secretary shall develop voluntary, publicly available practices that could be used to guide other facility owners and operators in preventing, reducing, and mitigating chemical security risks.*

(B) TREATMENT OF SENSITIVE INFORMATION.—*In developing and disseminating practices under subparagraph (A), the Secretary shall protect from public disclosure all information described in section 2103(a).*

(6) CONGRESSIONAL NOTIFICATION.—*Any time a determination is not made with respect to a chemical facility of interest within 9 months of the facility submitting a Top-Screen, the Secretary shall notify the Committees on Homeland Security and Energy and Commerce of the House and the Committee on*

Homeland Security and Governmental Affairs of the Senate and provide an explanation.

[(4)] (7) SEMIANNUAL PERFORMANCE REPORTING.—Not later than 6 months after the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, and not less frequently than once every 6 months thereafter, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives a report that includes, for the period covered by the report—

(A) the number of covered chemical facilities in the United States;

(B) information—

(i) describing—

(I) the number of instances in which the Secretary—

(aa) placed a covered chemical facility in a lower risk tier; **[or]**

(bb) determined that a facility that had previously met the criteria for a covered chemical facility under section 2101(3) no longer met the criteria; **[and]** *or*

(cc) *determined that a chemical facility of interest did not present a high level of risk; and*

(II) the basis, in summary form, for each action or determination under subclause (I); and

(ii) that is provided in a sufficiently anonymized form to ensure that the information does not identify any specific facility or company as the source of the information when viewed alone or in combination with other public information;

[(C)] the average number of days spent reviewing site security or an alternative security program for a covered chemical facility prior to approval;

(C) for the period beginning on the date that is one year before the date of the enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2019 and ending on the date of the enactment of such Act, the average length of time required to—

(i) review and approve site security plans or alternative security programs for covered chemical facilities;

(ii) ensure a facility has achieved full implementation of planned security measures; and

(iii) conduct a compliance inspection, including the average length of time inspectors spend on an individual compliance inspection;

(D) the number of covered chemical facilities inspected;

(E) the average number of covered chemical facilities inspected per inspector; **[and]**

(F) a detailed summary of reports and other information generated under paragraph (3) regarding facilities that receive a change in tier or that are determined not to present a high level of security risk;

(G) a detailed summary of practices identified and disseminated under such paragraph;

(H) actions taken and results produced in implementing the practices, to the extent feasible; and

[(F)] (I) any other information that the Secretary determines will be helpful to Congress in evaluating the performance of the Chemical Facility Anti-Terrorism Standards Program.

(f) *SPECIFIC PRODUCTS AND MIXTURES CONTAINING CHEMICALS OF INTEREST* The Secretary may exclude a specific product or mixture that contains a chemical of interest at or above the minimum concentration listed on Appendix A to part 27 of title 6, Code of Federal Regulations, or any successor thereto, from any reporting requirements under this section if the Secretary determines that the product or mixture does not present a terrorism risk for which the chemical of interest contained within the product or mixture was included on Appendix A.

SEC. 2103. PROTECTION AND SHARING OF INFORMATION.

(a) **IN GENERAL.**—Notwithstanding any other provision of law, information developed under this title, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with the protection of similar information under section 70103(d) of title 46, United States Code.

[(b) **SHARING OF INFORMATION WITH STATES AND LOCAL GOVERNMENTS.**—Nothing in this section shall be construed to prohibit the sharing of information developed under this title, as the Secretary determines appropriate, with State and local government officials possessing a need to know and the necessary security clearances, including law enforcement officials and first responders, for the purpose of carrying out this title, provided that such information may not be disclosed pursuant to any State or local law.

[(c) **SHARING OF INFORMATION WITH FIRST RESPONDERS.**—

[(1) **REQUIREMENT.**—The Secretary shall provide to State, local, and regional fusion centers (as that term is defined in section 210A(j)(1)) and State and local government officials, as the Secretary determines appropriate, such information as is necessary to help ensure that first responders are properly prepared and provided with the situational awareness needed to respond to security incidents at covered chemical facilities.

[(2) **DISSEMINATION.**—The Secretary shall disseminate information under paragraph (1) through a medium or system determined by the Secretary to be appropriate to ensure the secure and expeditious dissemination of such information to necessary selected individuals.]

(b) *AUTHORIZED RECIPIENTS OF INFORMATION.*—The Secretary shall make available, upon request, information protected pursuant to subsection (a) to the following recipients:

(1) *State and local government officials, including law enforcement and emergency response providers, with respect to information on any chemical facility of interest within the jurisdiction of the official, but only if such information may not be disclosed pursuant to any State or local law.*

(2) *Members of Congress.*

(3) *Members of the Chemical Security Advisory Committee under section 2010, in the course of conducting official duties and responsibilities as described in such section.*

(4) *The Comptroller General of the United States.*

(c) **INFORMATION DEVELOPED FOR OTHER PURPOSES.**—*Nothing in this section shall be construed to prohibit a chemical facility of interest from disclosing information that was not created solely for the purpose of meeting the requirements of this title.*

(d) **ENFORCEMENT PROCEEDINGS.**—In any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this title, and related vulnerability or security information, shall be treated as if the information were classified information.

(e) **AVAILABILITY OF INFORMATION.**—Notwithstanding any other provision of law (including section 552(b)(3) of title 5, United States Code), section 552 of title 5, United States Code (commonly known as the “Freedom of Information Act”) shall not apply to information protected from public disclosure pursuant to subsection (a) of this section.

[(f) SHARING OF INFORMATION WITH MEMBERS OF CONGRESS.—Nothing in this section shall prohibit the Secretary from disclosing information developed under this title to a Member of Congress in response to a request by a Member of Congress.]

SEC. 2104. CIVIL ENFORCEMENT.

(a) **NOTICE OF NONCOMPLIANCE.**—

(1) **NOTICE.**—If the Secretary determines that a covered chemical facility is not in compliance with this title, the Secretary shall—

(A) provide the owner or operator of the facility with—

(i) not later than **[14 days after date on which]** *three days after the date on which* the Secretary makes the determination, a written notification of noncompliance that includes a clear explanation of any deficiency in the security vulnerability assessment or site security plan; and

(ii) an opportunity for consultation with the Secretary or the Secretary’s designee; and

(B) issue to the owner or operator of the facility an order to comply with this title by a date specified by the Secretary in the order, which date shall be not later than **[180 days]** *30 days* after the date on which the Secretary issues the order.

(2) **CONTINUED NONCOMPLIANCE.**—If an owner or operator remains noncompliant after the procedures outlined in paragraph (1) have been executed, or demonstrates repeated violations of this title, the Secretary may enter an order in accordance with this section assessing a civil penalty, an order to cease operations, or both.

(b) **CIVIL PENALTIES.**—

(1) **VIOLATIONS OF ORDERS.**—Any person who violates an order issued under this title shall be liable for a civil penalty under section 70119(a) of title 46, United States Code.

(2) **NON-REPORTING CHEMICAL FACILITIES OF INTEREST.**—Any owner of a chemical facility of interest who fails to comply with *section 2102(a)(2)(B) or any requirement issued by the Secretary*

thereunder, or knowingly submits false information under, this title or the CFATS regulations shall be liable for a civil penalty under section 70119(a) of title 46, United States Code.

(c) EMERGENCY ORDERS.—

(1) IN GENERAL.—Notwithstanding subsection (a) or any site security plan or alternative security program approved under this title, if the Secretary determines that there is an imminent threat of death, serious illness, or severe personal injury, due to a violation of this title or the risk of a terrorist incident or *other malicious act* that may affect a chemical facility of interest, the Secretary—

(A) shall consult with the facility, if practicable, on steps to mitigate the risk; and

(B) may order the facility, without notice or opportunity for a hearing, effective immediately or as soon as practicable, to—

(i) implement appropriate emergency security measures; or

(ii) cease or reduce some or all operations, in accordance with safe shutdown procedures, if the Secretary determines that such a cessation or reduction of operations is the most appropriate means to address the risk.

(2) LIMITATION ON DELEGATION.—The Secretary may not delegate the authority under paragraph (1) to any official other than the Director of Cybersecurity and Infrastructure Security.

(3) LIMITATION ON AUTHORITY.—The Secretary may exercise the authority under this subsection only to the extent necessary to abate the imminent threat determination under paragraph (1).

(4) DUE PROCESS FOR FACILITY OWNER OR OPERATOR.—

(A) WRITTEN ORDERS.—An order issued by the Secretary under paragraph (1) shall be in the form of a written emergency order that—

(i) describes the violation or risk that creates the imminent threat;

(ii) states the security measures or order issued or imposed; and

(iii) describes the standards and procedures for obtaining relief from the order.

(B) OPPORTUNITY FOR REVIEW.—After issuing an order under paragraph (1) with respect to a chemical facility of interest, the Secretary shall provide for review of the order under section 554 of title 5 if a petition for review is filed not later than 20 days after the date on which the Secretary issues the order.

(C) EXPIRATION OF EFFECTIVENESS OF ORDER.—If a petition for review of an order is filed under subparagraph (B) and the review under that paragraph is not completed by the last day of the 30-day period beginning on the date on which the petition is filed, the order shall vacate automatically at the end of that period unless the Secretary determines, in writing, that the imminent threat providing a basis for the order continues to exist.

(d) RIGHT OF ACTION.—Nothing in this title confers upon any person except the Secretary or his or her designee a right of action against an owner or operator of a covered chemical facility to enforce any provision of this title, *except as provided in section 2105(a)(5) regarding whistleblower retaliation.*

SEC. 2105. WHISTLEBLOWER PROTECTIONS.

(a) PROCEDURE FOR REPORTING PROBLEMS.—

(1) ESTABLISHMENT OF A REPORTING PROCEDURE.—**【**Not later than 180 days after the date of enactment of the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014, the Secretary**】** *The Secretary* shall establish, and provide information to the public regarding, a procedure under which any employee or contractor of a chemical facility of interest may submit a report to the Secretary regarding a violation of a requirement under this title.

【(2) CONFIDENTIALITY.—The Secretary shall keep confidential the identity of an individual who submits a report under paragraph (1) and any such report shall be treated as a record containing protected information to the extent that the report does not consist of publicly available information.**】**

【(3) ACKNOWLEDGMENT OF RECEIPT.—If a report submitted under paragraph (1) identifies the individual making the report, the Secretary shall promptly respond to the individual directly and shall promptly acknowledge receipt of the report.**】**

(2) CONFIDENTIALITY.—

(A) *IN GENERAL.*—*Except as provided in subparagraph (B), in the absence of the written consent of an individual who submits a report under paragraph (1)—*

(i) the Secretary shall keep confidential the identity of and any identifying information relating to that individual; and

(ii) any such report shall be subject to the protections on information under section 2103 of this Act to the extent that the report does not consist of publicly available information.

(B) *NOTICE.*—*In a case in which it is necessary to disclose the identity of or any identifying information relating to an individual who submits a report under paragraph (1) because it is essential to investigate the information contained in the report or because of compulsory legal process, the Secretary shall provide timely advance notice to the individual of such disclosure.*

(3) *RESPONSE TO REPORTS.*—*If a report submitted under paragraph (1) contains information identifying the individual making the report, the Secretary, or the designee of the Secretary shall, by not later than 15 days after the date on which the report is received, respond to the individual directly and acknowledge receipt of the report.*

(4) STEPS TO ADDRESS PROBLEMS.—The Secretary—

(A) shall review and consider the information provided in any report submitted under paragraph (1); and

(B) may take action under section 2104 of this title if necessary to address any substantiated violation of a requirement under this title identified in the report.

(5) DUE PROCESS FOR FACILITY OWNER OR OPERATOR.—

- (A) IN GENERAL.—If, upon the review described in paragraph (4), the Secretary determines that a violation of a provision of this title, or a regulation prescribed under this title, has occurred, the Secretary may—
- (i) institute a civil enforcement under section 2104(a) of this title; or
 - (ii) if the Secretary makes the determination under section 2104(c), issue an emergency order.
- (B) WRITTEN ORDERS.—The action of the Secretary under paragraph (4) shall be in a written form that—
- (i) describes the violation;
 - (ii) states the authority under which the Secretary is proceeding; and
 - (iii) describes the standards and procedures for obtaining relief from the order.
- [(C) OPPORTUNITY FOR REVIEW.—After taking action under paragraph (4), the Secretary shall provide for review of the action if a petition for review is filed within 20 calendar days of the date of issuance of the order for the action.]
- (C) OPPORTUNITY FOR REVIEW.—In any action under paragraph (4) that is based on information received under the procedure established under paragraph (1), the Secretary shall provide for review of the action if a petition for review is filed within 20 calendar days of the date of issuance of the order for the action.*
- (D) EXPIRATION OF EFFECTIVENESS OF ORDER.—If a petition for review of an action is filed under subparagraph (C) and the review under that subparagraph is not completed by the end of the 30-day period beginning on the date the petition is filed, the action shall cease to be effective at the end of such period [unless the Secretary determines], *except that the Secretary may provide for a 30-day extension if the Secretary determines, in writing, [that the violation providing a basis for the action continues to exist.] that—*
- (i) the violation providing a basis for the action continues to exist; or*
 - (ii) such period is insufficient to complete the review of the action.*
- (6) RETALIATION PROHIBITED.—
- (A) IN GENERAL.—An owner or operator of a chemical facility of interest or agent thereof may not [discharge an employee or otherwise discriminate against an employee with respect to the compensation provided to, or terms, conditions, or privileges of the employment of, the employee because the employee (or an individual acting pursuant to a request of the employee) submitted a report under paragraph (1).] *discharge an employee or otherwise discriminate against an employee or former employee with respect to the compensation provided to, or terms, conditions, or privileges associated with current or past employment of, the employee or former employee because the employee or former employee (or an individual acting pursuant to a request of the employee or former employee) submitted a report under paragraph (1).*

(B) EXCEPTION.—An employee or former employee shall not be entitled to the protections under this section if the employee or former employee (or an individual acting pursuant to a request of the employee or former employee)—

- (i) knowingly and willfully makes any false, fictitious, or fraudulent statement or representation; or
- (ii) uses any false writing or document knowing the writing or document contains any false, fictitious, or fraudulent statement or entry.

(C) PROCEDURE AND REMEDY.—

(i) IN GENERAL.—The Secretary shall establish a procedure for the review and investigation of complaints of reprisals prohibited under subparagraph (A) and for remedies for violations of such subparagraph.

(ii) JUDICIAL REMEDIES.—Nothing in this title shall be construed to deny an individual who submits a complaint for any reprisal prohibited under subparagraph (A) from seeking a judicial remedy against the owner or operator of the chemical facility of interest as long as the individual has exhausted administrative remedies.

(b) PROTECTED DISCLOSURES.—Nothing in this title shall be construed to limit the right of an individual to make any disclosure—

- (1) protected or authorized under section 2302(b)(8) or 7211 of title 5, United States Code;
- (2) protected under any other Federal or State law that shields the disclosing individual against retaliation or discrimination for having made the disclosure in the public interest; or
- (3) to the Special Counsel of an agency, the inspector general of an agency, or any other employee designated by the head of an agency to receive disclosures similar to the disclosures described in paragraphs (1) and (2).

(c) PUBLICATION OF RIGHTS.—The Secretary, in partnership with industry associations and labor organizations, shall make publicly available both physically and online the rights that an individual who discloses information, including security-sensitive information, regarding problems, deficiencies, or vulnerabilities at a covered chemical facility would have under Federal whistleblower protection laws or this title.

[(d) PROTECTED INFORMATION.—All information contained in a report made under this subsection (a) shall be protected in accordance with section 2103.]

SEC. 2106. RELATIONSHIP TO OTHER LAWS.

(a) OTHER FEDERAL LAWS.—Nothing in this title shall be construed to supersede, amend, alter, or affect any Federal law that—

- (1) regulates (including by requiring information to be submitted or made available) the manufacture, distribution in commerce, use, handling, sale, other treatment, or disposal of chemical substances or mixtures; or
- (2) authorizes or requires the disclosure of any record or information obtained from a chemical facility under any law other than this title.

(b) STATES AND POLITICAL SUBDIVISIONS.—This title shall not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or stand-

ard 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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SEC. 2110. CHEMICAL SECURITY ADVISORY COMMITTEE.

(a) *ESTABLISHMENT.*—The Secretary shall establish a standing Chemical Security Advisory Committee to advise the Secretary on the implementation of this title.

(b) *MEMBERSHIP.*—

(1) *IN GENERAL.*—The Advisory Committee shall be comprised of 12 members selected by the Secretary, which shall include at least one individual who is a multi-disciplinary stakeholder with scientific or other expertise representing each of the following:

(A) Industry.

(B) Academia.

(C) Labor.

(D) Emergency response providers.

(E) Local emergency planners.

(F) Environmental, community, or public health advocates, particularly for communities with high concentrations of covered chemical facilities.

(G) Cybersecurity and information policy.

(2) *TERMS.*—Each member shall be appointed for an initial term of three years and may be reappointed for one additional three-year term.

(3) *CHAIR.*—The Committee shall have a chair, who shall be selected by the members of the Committee.

(4) *PAY.*—Members shall serve without pay.

(5) *QUORUM.*—A majority of members of the Advisory Committee shall constitute a quorum but a lesser number may hold hearings.

(c) *SUBCOMMITTEES.*—The Advisory Committee may establish subcommittees to assess and recommend improvements to the risk tiering methodology for chemical facilities, the risk-based performance standards for chemical facilities, risk reduction strategies, and other aspects of the program under this title as the Secretary determines appropriate.

(d) *INFORMATION PROTECTION.*—Members of Advisory Committee shall maintain information protections pursuant to section 2103 of this Act. Any member who needs to access classified information to carry out assessments and recommendations for improving the risk tiering methodology for chemical facilities shall have an appropriate security clearance.

(e) *ANNUAL REPORT.*—

(1) *SUBMISSION TO THE SECRETARY.*—Not later than January 30 each year, the chair shall submit to the Secretary a report on the activities of the Committee during the year preceding the year during which the report is submitted.

(2) *SUBMISSION TO CONGRESS.*—Not later than 45 days after receiving a report from the Advisory Committee under para-

graph (1), the Secretary shall provide to the Committees on Homeland Security and Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a copy of the report together with any Secretarial feedback on the report.

(f) APPLICABILITY OF FACAs.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Committee established under this section.

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**PROTECTING AND SECURING CHEMICAL FACILITIES
FROM TERRORIST ATTACKS ACT OF 2014**

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SEC. 5. TERMINATION.

The authority provided under title XXI of the Homeland Security Act of 2002, as added by section 2(a), shall terminate on [the date that is 5 years and 3 months after the effective date of this Act] *May 1, 2025*.

MINORITY VIEWS

H.R. 3256 reauthorizes the Chemical Facilities Anti-Terrorism Standards (CFATS) program for five years and makes numerous changes to the program. Unfortunately, these changes are not representative of the program's terrorism focus. Instead, they create unnecessary administrative and regulatory burdens on the Department of Homeland Security (DHS) and industry with no demonstrable improvement in chemical security.

H.R. 3256 lowers the threshold for the risk assessment process DHS uses to help determine which facilities need to be regulated. Instead of considering severe economic consequences and the potential for loss of human life, the bill would require DHS to consider any consequence of an attack on a chemical facility. This change moves the CFATS program away from its nexus to terrorism. It will cause DHS to waste time and considerable resources trying to determine which of the numerous and potentially frivolous consequences of an attack should be considered. In every other security program, the consequences of a terrorist attack are measured in severe economic impacts and human lives lost. Under this bill, such consequences could be measured in dead shrubbery and lost casino revenues.

The bill expands an existing whistleblower protection program by requiring DHS to issue new regulations to investigate acts of employee retaliation and penalize employers it determines guilty of such acts. DHS has informed the Committee that it lacks the resources and expertise to implement such a program. Since it first started documenting whistleblower complaints in 2014, DHS has received less than ten complaints. In each of those cases, there have been no reports of retaliation taken against the employee. Finally, other homeland security programs established under the Maritime Transportation Security Act and Aviation and Transportation Security Act, have no whistleblower programs. This begs the question as to why CFATS needs a whistleblower program in the first place.

This bill ignores fundamental security planning principles. Rather than allowing chemical facilities to consult with employees "to the greatest extent practicable," it mandates employee and union consultation in the development of a facility's site security plan (SSP) regardless of a given employee's need to know sensitive security details. Consider this mandate in the context of a small facility with only a few employees, which is not uncommon for chemical facilities regulated under CFATS. One employee works offsite and only handles the finances and has nothing to do with security of the facility, yet, this employee must be consulted. Or consider that the only union on site is a janitorial union, which is not associated with the site security. Under this bill, the facility is required to consult with a member of the janitorial union to create the SSP.

The effect of this provision is to increase the number of people that have potentially vulnerable or damaging information about the facility. That increases a facility's risk and undermines the entire purpose of the CFATS program.

The bill includes another provision which would result in sensitive security information being divulged to individuals without a valid security "need-to-know". It creates a chemical security advisory committee populated with environmentalists and community activists that have little, if any, understanding of the complexities of chemical security. It provides these unqualified" individuals with access to sensitive security information and charges them with providing advice to the Secretary on how to assess the security risks of chemical facilities under the program.

Finally, in a break from past reauthorizations, this bill is moving forward without an agreement with the other committee of jurisdiction over the CFATS program, the Energy and Commerce Committee. Majority and minority staff of the Energy and Commerce Committee raised numerous issues with the bill that have yet to be resolved.

Outstanding policy and procedural issues threaten this legislation's ability to pass the House and receive favorable consideration in the Senate. For these reasons, Committee Republicans cannot support the bill at this time.

MIKE ROGERS.

