

FULL IMPLEMENTATION OF THE CHEMICAL FACILITY
ANTI-TERRORISM STANDARDS ACT

SEPTEMBER 19, 2011.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. UPTON, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 908]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 908) to extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards program, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

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

SEC. 2. EXTENSION OF DEPARTMENT OF HOMELAND SECURITY CHEMICAL FACILITY ANTI-TERRORISM STANDARDS PROGRAM.

Subsection (b) of section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 6 U.S.C. 121 note) is amended by striking “2011” and inserting “2018”.

SEC. 3. BACKGROUND CHECKS.

Section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 6 U.S.C. 121 note) is amended by adding at the end the following new subsection:

“(i)(1) No security background check is required under this section for an individual holding a valid transportation security card issued under section 70105 of title 46, United States Code.

“(2) The Secretary shall determine, on an ongoing basis, whether alternate security background checks conducted by the Secretary are sufficient to meet the requirements of the risk-based performance standards issued under this section such that no additional security background check is required under this section for an individual who has passed such a qualifying alternate security background check.

“(3) The owner or operator of a chemical facility subject to the regulations issued under this section may permit an individual holding a valid transportation security card issued under section 70105 of title 46, United States Code, or an individual who has passed a qualifying alternate security background check under paragraph (2), to have access to restricted areas or critical assets of such facility without the satisfaction of any other additional requirements imposed by the Secretary.

“(4)(A) Nothing in this subsection shall be construed to abridge any right or responsibility of—

“(i) an individual subject to a security background check under this section;

or

“(ii) an owner or operator of a chemical facility subject to the regulations issued under this section.

“(B) Nothing in this subsection shall be construed to prohibit an owner or operator of a chemical facility from requiring, for reasons other than compliance with this section, that prospective or current employees or contractors undergo any additional background check in addition to that required under the risk-based performance standards issued under this section.”.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 6 U.S.C. 121 note) \$89,920,000 for each of fiscal years 2012 through 2018.

PURPOSE AND SUMMARY

In the fall of 2006, Congress, through Section 550 of Public Law 109–295, authorized the Secretary of Homeland Security to establish risk-based security performance standards for facilities with chemicals that the Secretary deems to present high levels of security risk. The Department, as required by Public Law 109–295, promulgated interim final regulations on April 9, 2007, resulting in the Chemical Facility Anti-Terrorism Standards (CFATS). Pursuant to Public Law 112–10, the statutory authority for CFATS is scheduled to sunset on October 4, 2011. H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act extends the CFATS program seven (7) years, or until October 4, 2018.

In addition to maintaining the existing CFATS program and extending its legal authority, the legislation also makes authoriza-

tions for appropriations for each year the program's authority is authorized as well as adds a new provision to streamline personnel surety and badging requirements at facilities regulated under CFATS.

BACKGROUND AND NEED FOR LEGISLATION

Chemical facilities are an integral part of the United States economy. According to the U.S. Bureau of Economic Analysis, the chemical and pharmaceutical industries, combined, accounted for \$329 billion of value added in 2009—or 2.3 percent in Gross Domestic Product to the United States economy. In addition, the U.S. Commerce Department estimated that exports of chemical products in 2009, including plastics, were about \$153 billion in 2009, generated a balance of trade surplus in excess of \$20 billion. These facilities, often located in densely populated areas, hold many chemicals that could make them attractive terrorist targets. As a result, the chemical sector is among the 17 critical infrastructure and key resources (CI/KR) sectors under the National Infrastructure Protection Plan, pursuant to Homeland Security Presidential Directive–7 (HSPD–7).

In 2006, Section 550 of the Homeland Security Appropriations Act of 2007 (P.L. 109–295) provided the Secretary of Homeland Security with interim authority to regulate the nation's chemical facilities. Pursuant to that authority, the Department of Homeland Security (DHS) issued the final Chemical Facility Anti-Terrorism Standards regulations on April 9, 2007. Those standards, which became effective on June 8, 2007, required each chemical facility to report the amounts and types of chemicals on site so that DHS could determine whether that facility would be further regulated by CFATS rules. Based on those analyses, known as “Top-Screen” reviews, DHS began placing regulated facilities into one of four tiers.

At the outset of the program, DHS expected that roughly 30,000 facilities would be required to comply with the reporting requirements of the regulations, with approximately 6,000 falling into one of the four (4) high risk categories requiring further regulation. As of March 2011, almost 40,000 chemical facilities had registered with DHS and completed the Top-Screen process. Of these facilities, DHS considered more than 8,064 as high-risk and required them to submit a site vulnerability assessment.

On March 31, 2011, Rand Beers, the DHS Under Secretary, National Protection and Programs Directorate, testified before the Subcommittee on Environment and that Economy that DHS has determined that CFATS covers 4,744 facilities (4,126 Final tiered facilities, 618 preliminarily tiered facilities). The Committee has been informed that as of the March 31, 2011 hearing date the remaining 618 preliminarily tiered facilities are either gasoline terminals (approximately 350 facilities), facilities that submitted Alternative Security Plans in lieu of CSAT Site Vulnerability Assessments, or recent Top Screen submittals.

In addition, DHS is still in the process of filling all its positions for chemical facility security officers and inspectors. DHS plans to continue to hire throughout the fiscal year. At the March 31 hearing, Under Secretary Beers testified that DHS has hired, or is in the process of on-boarding, more than 188 people and DHS plans to hire throughout this fiscal year to meet its staffing goal of 268 positions. In addition, Mr. Beers testified that DHS has filled 97

of 103 field inspector positions and all of the 14 field leadership positions.

DHS began inspections of Tier 1 facilities in February 2010, and has completed approximately 175 pre-authorization inspections to date. DHS has inspected some facilities' site security plans and issued 66 administrative orders to compel facility compliance. Mr. Beers testified that DHS only conducted four authorization inspections, or comprehensive and detailed inspections to verify that the descriptions of security measures listed in the facility's authorized SSP (or Alternative Security Plan) are accurate and complete, and that the equipment, processes, and procedures described are appropriate and function as intended. In responses to questions for the record from the March 31, 2011 hearing, Mr. Beers stated that DHS anticipates conducting authorization inspections at tiered sites within 180 days of issuance of a Letter of Authorization for a facility's Site Security Plan.

Final Tiering assignments for facilities in Tiers II, III, and IV are ongoing. To date, DHS had not yet approved one of the 4,100 site security plans it has received for facilities in any risk Tier.

The cost of extra security measures at CFATS-covered facilities is significant for both the private and public sector. In the last Congress, a trade association for large chemical production facilities testified before this Committee that its member companies spent \$8 billion for association security codes and projects and will spend another \$8 billion to fully comply with CFATS. Moreover, each of the three trade associations that appeared before the Subcommittee on Environment and the Economy on March 31, 2011, testified that, notwithstanding the significant investment of the private sector for compliance with industry and government mandated security programs, the heaviest costs to be borne by the private sector are the major capital investments that regulated facilities will need to make upon approval of their Site Security Plans. In addition, DHS, since the inception of CFATS, has spent around \$340 million to initiate the program.

Enactment of H.R. 908 is necessary to prevent the expiration of the program's legal authority in October 2011, and to provide long-term predictability for the private sector. Further, extending CFATS authorization will allow the DHS to fully implement the CFATS program and gather critical information on the strengths and weaknesses of a completely operational program, prevent the stranding of billions of dollars of investment and work-hours by the public and private sectors in security enhancements, and ensure our chemical sector remains secure.

HEARINGS

The Subcommittee on Environment and the Economy held a hearing on H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act on March 31, 2011. The Subcommittee received testimony from: Rand Beers, Under Secretary for the National Protection and Programs Directorate (NPPD), U.S. Department of Homeland Security; Mr. Andrew Skipp, President, Hubbard-Hall, on behalf of the National Association of Chemical Distributors; Mr. Bill Allmond, Vice-President, Government Relations, Society of Chemical Manufacturers and Affiliates; Mr. David Tabar, The Sherwin-Williams Company, on behalf of the American

Coatings Association; and Mr. James S. Frederick, Assistant Director, Health, Safety and Environment, United Steelworkers, on behalf of the Blue-Green Alliance.

COMMITTEE CONSIDERATION

On May 4, 2011, the Subcommittee on Environment and the Economy met in open markup session and approved H.R. 908 for Full Committee consideration, as amended, by a voice vote.

On May 25 and 26, 2011, the Committee on Energy and Commerce met in open markup session and reported favorably H.R. 908, as amended, for House consideration, with further amendment, by a recorded vote of 33–16.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Upton to order H.R. 908, as amended, reported to the House, with further amendments, was agreed to by a recorded vote of 33–16.

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 36**

BILL: H.R. 908, the "Full Implementation of the Chemical Facility Anti-Terrorism Standards Act"

AMENDMENT: An amendment in the nature of a substitute by Mr. Waxman, No. 1, to establish a program at the Department of Homeland Security to require regulated facilities to assess methods to reduce the consequences of a terrorist attack as well as dictate facility conversion if such facility is considered among the highest risk tiers, compel the issuance of regulations defining the scope, treatment, and protection of certain information about a regulated facility, to institute specific roles for facility workers in activities required pursuant to Section 550 of Public Law 209-295, and for other purposes.

DISPOSITION: NOT AGREED TO by a roll call vote of 18 yeas and 26 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell			
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts				Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel			
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray				Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow	X		
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson							
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 37**

BILL: H.R. 908, the "Full Implementation of the Chemical Facility Anti-Terrorism Standards Act"

AMENDMENT: An amendment by Mr. Markey, No. 3, to condition the ability of the Secretary of Homeland Security to disapprove a site security plan submitted to the Secretary by a facility regulated under Section 550 of P.L. 109-295.

DISPOSITION: NOT AGREED TO by a roll call vote of 16 yeas and 30 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts				Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green		X	
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez			
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray				Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross		X	
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson		X	
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow		X	
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson							
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

Current as of 03/14/2011

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 38**

BILL: H.R. 908, the "Full Implementation of the Chemical Facility Anti-Terrorism Standards Act"

AMENDMENT: An amendment by Mr. Green, No. 4a (to amend the Shimkus Amendment), to reduce the length of time under which the Secretary of Homeland Security would have legal authority pursuant to Section 550 of Public Law 109-295 from October 4, 2018 to October 4, 2016.

DISPOSITION: NOT AGREED TO by a roll call vote of 21 yeas and 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts				Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray				Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow	X		
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 39**

BILL: H.R. 908, the "Full Implementation of the Chemical Facility Anti-Terrorism Standards Act"

AMENDMENT: An amendment by Mr. Shimkus, No. 4, to extend the legal authority of Section 550 of Public Law 109-295 from October 4, 2017 to October 4, 2018.

DISPOSITION: AGREED TO by a roll call vote of 27 yeas and 21 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell		X	
Mr. Stearns	X			Mr. Markey		X	
Mr. Whitfield	X			Mr. Towns			
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts				Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green		X	
Mr. Rogers				Ms. DeGette		X	
Mrs. Myrick				Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez		X	
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray				Ms. Baldwin		X	
Mr. Bass	X			Mr. Ross		X	
Mr. Gingrey	X			Mr. Weiner		X	
Mr. Scalise	X			Mr. Matheson		X	
Mr. Latta	X			Mr. Butterfield		X	
Mrs. McMorris Rodgers	X			Mr. Barrow		X	
Mr. Harper	X			Ms. Matsui		X	
Mr. Lance	X			Ms. Christensen			
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 40**

BILL: H.R. 908, the "Full Implementation of the Chemical Facility Anti-Terrorism Standards Act"

AMENDMENT: An amendment by Mr. Green, No. 6, to require that the owner or operator of a facility regulated under Section 550 of Public Law 109-295 involve at least one supervisory and at least one non-supervisory employee of a facility, as well as at least one representative of each certified or recognized bargaining agent, on behalf of the employees at such regulated facility with roles or responsibilities relevant to its operation, in developing, revising, updating, or implementing a chemical facility vulnerability assessment or site security plan required under Section 550(a) of Public Law 109-295.

DISPOSITION: NOT AGREED TO by a roll call vote of 21 yeas and 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts				Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray				Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow	X		
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 41**

BILL: H.R. 908, the "Full Implementation of the Chemical Facility Anti-Terrorism Standards Act"

AMENDMENT: An amendment by Mr. Waxman, No. 7, to require the Secretary of Homeland Security to review and approve or disapprove each vulnerability assessment and site security plan, required pursuant to Section 550 of Public Law 109-295, not later than 18 months after the date of submission.

DISPOSITION: NOT AGREED TO by a roll call vote of 21 yeas and 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts				Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray				Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow	X		
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

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**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 42**

BILL: H.R. 908, the "Full Implementation of the Chemical Facility Anti-Terrorism Standards Act"

AMENDMENT: An amendment by Mrs. Capps, No. 8, to require the Secretary of Homeland Security to disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established pursuant to Section 550 of Public Law 109-295.

DISPOSITION: NOT AGREED TO by a roll call vote of 21 yeas and 27 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton		X		Mr. Waxman	X		
Mr. Barton		X		Mr. Dingell	X		
Mr. Stearns		X		Mr. Markey	X		
Mr. Whitfield		X		Mr. Towns			
Mr. Shimkus		X		Mr. Pallone	X		
Mr. Pitts				Mr. Rush	X		
Mrs. Bono Mack		X		Ms. Eshoo	X		
Mr. Walden		X		Mr. Engel	X		
Mr. Terry		X		Mr. Green	X		
Mr. Rogers				Ms. DeGette	X		
Mrs. Myrick				Mrs. Capps	X		
Mr. Sullivan		X		Mr. Doyle	X		
Mr. Murphy		X		Ms. Schakowsky	X		
Mr. Burgess		X		Mr. Gonzalez	X		
Mrs. Blackburn		X		Mr. Inslee	X		
Mr. Bilbray				Ms. Baldwin	X		
Mr. Bass		X		Mr. Ross	X		
Mr. Gingrey		X		Mr. Weiner	X		
Mr. Scalise		X		Mr. Matheson	X		
Mr. Latta		X		Mr. Butterfield	X		
Mrs. McMorris Rodgers		X		Mr. Barrow	X		
Mr. Harper		X		Ms. Matsui	X		
Mr. Lance		X		Ms. Christensen			
Mr. Cassidy		X					
Mr. Guthrie		X					
Mr. Olson		X					
Mr. McKinley		X					
Mr. Gardner		X					
Mr. Pompeo		X					
Mr. Kinzinger		X					
Mr. Griffith		X					

Current as of 03/14/2011

**COMMITTEE ON ENERGY AND COMMERCE -- 112TH CONGRESS
ROLL CALL VOTE # 43**

BILL: H.R. 908, the "Full Implementation of the Chemical Facility Anti-Terrorism Standards Act"

AMENDMENT: A motion by Mr. Upton to order H.R. 908 favorably reported to the House, amended. (Final Passage)

DISPOSITION: **AGREED TO** by a roll call vote of 33 yeas and 16 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Upton	X			Mr. Waxman		X	
Mr. Barton	X			Mr. Dingell	X		
Mr. Stearns	X			Mr. Markey		X	
Mr. Whitfield	X			Mr. Towns			
Mr. Shimkus	X			Mr. Pallone		X	
Mr. Pitts				Mr. Rush		X	
Mrs. Bono Mack	X			Ms. Eshoo		X	
Mr. Walden	X			Mr. Engel		X	
Mr. Terry	X			Mr. Green	X		
Mr. Rogers	X			Ms. DeGette		X	
Mrs. Myrick				Mrs. Capps		X	
Mr. Sullivan	X			Mr. Doyle		X	
Mr. Murphy	X			Ms. Schakowsky		X	
Mr. Burgess	X			Mr. Gonzalez		X	
Mrs. Blackburn	X			Mr. Inslee		X	
Mr. Bilbray				Ms. Baldwin		X	
Mr. Bass	X			Mr. Ross	X		
Mr. Gingrey	X			Mr. Weiner		X	
Mr. Scalise	X			Mr. Matheson	X		
Mr. Latta	X			Mr. Butterfield		X	
Mrs. McMorris Rodgers	X			Mr. Barrow	X		
Mr. Harper	X			Ms. Matsui		X	
Mr. Lance	X			Ms. Christensen			
Mr. Cassidy	X						
Mr. Guthrie	X						
Mr. Olson	X						
Mr. McKinley	X						
Mr. Gardner	X						
Mr. Pompeo	X						
Mr. Kinzinger	X						
Mr. Griffith	X						

Current as of 03/14/2011

COMMITTEE OVERSIGHT FINDINGS

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

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

To extend the authority of the Secretary of Homeland Security to maintain the Chemical Facility Anti-Terrorism Standards program.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

EARMARKS

In compliance with clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 908 contains no earmarks, limited tax benefits, or limited tariff benefits.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

H.R. 908—Full Implementation of the Chemical Facility Anti-Terrorism Standards Act

H.R. 908 would extend through fiscal year 2018 the Department of Homeland Security's (DHS's) authority to regulate security at certain chemical facilities in the United States. Under this authority, which under current law is set to expire in October, DHS runs the Chemical Facility Anti-Terrorism Standards (CFATS) program. Under CFATS, DHS collects and reviews information from chemical facilities in the United States to determine which facilities present a security risk. Facilities determined to present a high level of security risk are then required to develop a Site Security Plan (SSP). DHS in turn conducts inspections to validate the adequacy of a facility's SSP and their compliance with it.

H.R. 908 would authorize \$90 million annually for CFATS over the 2012–2018 period. That amount is equal to the \$90 million provided in 2011 for the program. CBO estimates that implementing this legislation would cost \$361 million over the 2012–2016 period

and about \$260 million in subsequent years, assuming the appropriation of the specified amounts.

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	90	90	90	90	90	450
Estimated Outlays	32	64	87	89	89	361

H.R. 908 could result in the collection of additional civil penalties, which are recorded as revenues and deposited in the Treasury; therefore, pay-as-you go procedures apply. However, CBO estimates that such collections would be minimal and the effect on revenues would be insignificant. Enacting the bill would not affect direct spending.

H.R. 908 would extend intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on owners and operators of public and private facilities where certain chemicals are present. Requirements on those owners and operators to assess the vulnerability of their facilities and to prepare and implement security plans would be mandates. The bill also would extend mandates that require owners and operators of such facilities to maintain records, periodically submit reviews of the adequacy of the vulnerability assessments or facility security plans, and allow DHS access to their property for inspections and verifications. In addition, owners and operators would have to continue to conduct background checks on employees who have access to restricted areas, and provide training to employees. Based on information from DHS and industry sources, CBO estimates that the aggregate costs of complying with the mandates would be small and would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$71 million and \$142 million, respectively, in 2011, adjusted annually for inflation).

The CBO staff contacts for this estimate are Jason Wheelock (for the federal costs), Melissa Merrell (for the intergovernmental impact), and Paige Piper/Bach (for the private-sector impact). The estimate was approved by Theresa Gullo, 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.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section names this Act as the “Full Implementation of the Chemical Facility Anti-Terrorism Standards Act”.

Section 2. Extension of Department of Homeland Security Chemical Facility Anti-Terrorism Standards Program.

This section amends section 550(b) of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 6 U.S.C. 121 note) by striking “2011” and inserting “2018”.

Section 3. Background checks

The Committee is aware of the substantial burden that is placed on CFATS regulated facilities and their employees by the myriad of personnel surety and identification card requirements and costs. The Committee believes that this program can and should be streamlined to allow for appropriate screening against the Terrorist Watch List for the financial benefit and convenience of workers and their employers.

This section adds a new subsection (i) to Section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 6 U.S.C. 121 note) to provide that no additional security background check is required under CFATS for an individual holding a valid transportation worker identification card (TWIC) issued under the Maritime Transportation Security Act, section 70105 of title 46, United States Code. In addition, the owner or operator of a CFATS-regulated facility may permit an individual holding a valid TWIC or an individual who has passed a qualifying alternate security background check—approved by the Secretary of Homeland Security because it satisfies CFATS’s risk-based performance criteria—to have access to restricted areas or critical assets of such facility without needing to meet any other additional requirements imposed by the Secretary.

This section also requires the Secretary of Homeland Security to determine, on an ongoing basis, whether alternate security background checks conducted by the Secretary are sufficient to meet DHS’s risk-based performance standards issued such that no additional security background check is required under CFATS for an individual who has passed such a qualifying alternate security background check.

Nothing in Section 550(i) abridges the collective bargaining rights of workers or employers or collective bargaining agreements already signed, except to the extent that they may require DHS-mandated backgrounds checks or identification cards made unnecessary by this section. Rather, by eliminating redundant requirements for background checks and identification cards subsection (i) is intended to benefit workers and employers by reducing compliance burdens such as extra application fees, time wasted filling out needless forms, and red-tape obstacles to career advancement.

Nor does Section 550(i) prevent an owner or operator of a CFATS regulated facility from requiring, for reasons other than compliance

with CFATS, that prospective or current employees or contractors undergo any additional background check in addition to that required under CFATS's risk-based performance standards.

Section 4. Authorization of appropriations

This section authorizes \$89.92 million for appropriation for Section 550 of Public Law 109–295 in each fiscal year that this section is authorized under this bill, from fiscal year 2012 through fiscal year 2018. The Committee is aware that in fiscal year 2011, DHS was appropriated \$89.928 million or \$8,000 more than what is authorized by this bill. The Committee anticipates that as DHS becomes more proficient in operating CFATS, the financial burden to operate the program could lessen, allowing scarce federal resources to be deployed in other areas.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**DEPARTMENT OF HOMELAND SECURITY
APPROPRIATIONS ACT, 2007**

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TITLE V—GENERAL PROVISIONS

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SEC. 550. (a) * * *

(b) Interim regulations issued under this section shall apply until the effective date of interim or final regulations promulgated under other laws that establish requirements and standards referred to in subsection (a) and expressly supersede this section: *Provided*, That the authority provided by this section shall terminate on October 4, [2011] 2018.

* * * * *

(i)(1) No security background check is required under this section for an individual holding a valid transportation security card issued under section 70105 of title 46, United States Code.

(2) The Secretary shall determine, on an ongoing basis, whether alternate security background checks conducted by the Secretary are sufficient to meet the requirements of the risk-based performance standards issued under this section such that no additional security background check is required under this section for an individual who has passed such a qualifying alternate security background check.

(3) The owner or operator of a chemical facility subject to the regulations issued under this section may permit an individual holding a valid transportation security card issued under section 70105 of title 46, United States Code, or an individual who has passed a qualifying alternate security background check under paragraph (2), to have access to restricted areas or critical assets of such facility

without the satisfaction of any other additional requirements imposed by the Secretary.

(4)(A) Nothing in this subsection shall be construed to abridge any right or responsibility of—

(i) an individual subject to a security background check under this section; or

(ii) an owner or operator of a chemical facility subject to the regulations issued under this section.

(B) Nothing in this subsection shall be construed to prohibit an owner or operator of a chemical facility from requiring, for reasons other than compliance with this section, that prospective or current employees or contractors undergo any additional background check in addition to that required under the risk-based performance standards issued under this section.

MINORITY VIEWS

In 1984, a chemical facility in Bhopal, India accidentally released 40 tons of methyl isocyanate, killing approximately 3,000 people and injuring thousands more. The tragic event in Bhopal was an accident; had it been a deliberate terrorist attack the consequences could have been much worse.

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

In 2006, Congress gave the Department of Homeland Security the authority to create the Chemical Facility Anti-Terrorism Standards program, or CFATS. Congress did so not through a series of hearings, not through extensive negotiation with interested and concerned parties, but instead through a provision attached to an appropriations bill. It was intended as a temporary fix until Congress could establish a comprehensive program. The provision was slated to expire in 2009.

H.R. 908 does not establish such a comprehensive program.

Instead, it extends the current statutory language and the interim program without significant amendment. While the CFATS program is a good start, it is limited by significant flaws in the underlying law.

Section 550 does not cover a range of facilities that could endanger thousands in the event of a worst-case chemical release as a result of a terrorist attack, including drinking water utilities, chemical plants located on ports, and federal facilities. The exemption for facilities subject to regulation by the Nuclear Regulatory Commission removes several thousand high-risk facilities from CFATS, without an evaluation of whether the NRC regulations address the risks from chemicals stored there.

These are security gaps that we need to close. Toxic chemicals stored onsite at a federal facility, for example, are as lethal as the same chemicals stored at a chemical facility covered by the program. An NRC regulation requiring a locked door for a room containing brachytherapy materials will not prevent an attack on a chemical tank down the hall. Democratic amendments offered to close these gaps were rejected by the majority during the Committee process. H.R. 908 would continue these baseless exemptions, perpetuating these security gaps.

Although section 550 provides for the establishment of risk-based performance standards, it does not ensure that those standards will be met. Section 550 says that the Secretary “may disapprove” plans that fail to meet these tailored standards—providing discretion to approve plans that fail to do so. Section 550 also includes a prohibition on disapproving a site security plan on the presence or absence of a particular security measure, even if that security measure is necessary to meet the risk-based performance standards. The section could therefore require the approval of plans that fail to meet the standards. Democratic amendments offered to address these issues were rejected by the majority, so H.R. 908 does nothing to ensure that the risk-based performance standards are met or that these high-risk facilities are secured.

Section 550 fails to protect workers, who might be subjected to discrimination and other background check abuses under the guise of homeland security. Because of bipartisan efforts and negotiations, H.R. 908 will protect some workers, those already holding security credentials, from these abuses. H.R. 908 will do nothing to protect other workers.

Section 550 fails to include workers, who are on the front lines of preventing and responding to a potential terrorist attack, in the development of site security plans. Workers have unparalleled experience and knowledge, which should inform the development of these plans. H.R. 908 would not address this shortcoming.

Section 550 does not protect whistleblowers. Effective security for high-risk facilities depends on the timely furnishing of information about failures and violations. That, in turn depends on assurances to workers and other whistleblowers that they will not suffer retaliation for providing such information. Whistleblower protections are thus an essential component of an effective CFATS program, and should be included. H.R. 908 does not offer this essential protection.

Section 550 does not create timelines for agency action or include mechanisms for ensuring timely agency action. Instead, it specifically exempts actions by the Secretary taken under this section from citizen enforcement and deadline suits. Despite efforts by democratic members to include deadlines in H.R. 908, the bill does not include timelines and will not ensure timely agency action.

Under section 550, a new category of protected information was created. It is similar to other security related information categories, and provides significant protection. But it goes beyond other security related information designations, in a very troubling way. Section 550 provides that, in judicial proceedings, security information under this program should be treated “as if” it were classified, even though it does not meet the criteria to be considered classified. This distinction is unwarranted, and is a significant obstacle to administration efforts to harmonize information protection regimes. It is also an unnecessary obstacle to transparency and oversight of this important program. H.R. 908 does not address this issue.

Over the past several months, efforts to address these shortcomings in H.R. 908 through bipartisan negotiations have been rebuffed. Rather than reflecting the expertise of the Energy and Commerce Committee, H.R. 908 preserves much of the flawed lan-

guage codified by the Appropriations Committee in 2006. Extending the authorization for this program is important, but this bill fails to address significant shortcomings, leaving facilities and the communities around them unacceptably vulnerable to terrorist attacks.

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