

CHEMICAL FACILITY ANTI-TERRORISM SECURITY
AUTHORIZATION ACT OF 2011

SEPTEMBER 26, 2011.—Ordered to be printed

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

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 901]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 901) to amend the Homeland Security Act of 2002 to codify the requirement that the Secretary of Homeland Security maintain chemical facility anti-terrorism security regulations, 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 “Chemical Facility Anti-Terrorism Security Authorization Act of 2011”.

SEC. 2. CHEMICAL FACILITY ANTI-TERRORISM SECURITY REGULATIONS.

(a) IN GENERAL.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by adding at the end the following new title:

“TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM SECURITY REGULATIONS

“SEC. 2101. CHEMICAL FACILITY ANTI-TERRORISM SECURITY REGULATIONS.

“(a) IN GENERAL.—The Secretary shall maintain, and revise as necessary, regulations to protect chemical facilities against terrorism and potential terrorist attacks. Such regulations shall include—

- “(1) risk-based performance standards for chemical facility security;
- “(2) requirements for chemical facility security vulnerability assessments; and
- “(3) requirements for the development and implementation of chemical facility site security plans.

“(b) FACILITIES REGULATED.—The regulations required by subsection (a) shall apply to any chemical facility that the Secretary determines presents a high level of security risk with respect to acts of terrorism, except that the Secretary may not apply such regulations to any of the following:

- “(1) Any facility owned or operated by the Department of Defense.
- “(2) Any facility owned or operated by the Department of Energy.
- “(3) Any facility subject to regulation by the Nuclear Regulatory Commission.
- “(4) Any facility regulated under chapter 701 of title 46, United States Code.
- “(5) A public water system, as such term is defined by section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)).
- “(6) A treatment works, as such term is defined by section 212(2) of the Federal Water Pollution Control Act (33 U.S.C. 1292(2)).

“(c) SECURITY MEASURES.—The regulations required by subsection (a) shall provide that each such facility, in developing and implementing site security plans, be permitted to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility.

“(d) REVIEW.—

“(1) IN GENERAL.—The Secretary shall review and approve or disapprove each vulnerability assessment and site security plan required under this title or by the regulations required by subsection (a).

“(2) STANDARDS FOR DISAPPROVAL.—The Secretary may not disapprove such a site security plan based on the presence or absence of a particular security measure, but the Secretary may disapprove such a site security plan if the plan fails to satisfy the risk-based performance standards established by the Secretary.

“(3) DEADLINE FOR NOTIFICATION.—Beginning after the Secretary publishes final regulations to implement this section, not later than 180 days, to the greatest extent practicable, after the date on which the Secretary receives a security vulnerability assessment or site security plan under this title, the Secretary shall review and approve or disapprove such assessment or plan and notify the covered chemical facility of such approval or disapproval.

“(4) NOTIFICATION OF DISAPPROVAL.—If the Secretary disapproves the security vulnerability assessment or site security plan submitted by a covered chemical facility under this title or the implementation of a site security plan by such a chemical facility, the Secretary shall provide the owner or operator of the covered chemical facility a written notification of the disapproval not later than 14 days after the date on which the Secretary disapproves such assessment or plan, that—

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

“(B) requires the owner or operator of the covered chemical facility to revise the assessment or plan to address any deficiencies and, by such date

as the Secretary determines is appropriate, to submit to the Secretary the revised assessment or plan.

“(5) REPORTING.—The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Government Affairs of the Senate, on an annual basis, information on the number of instances during the year covered by the report where the Secretary determined that the 180 day notification requirement under paragraph (3) was impracticable.

“(e) ALTERNATIVE SECURITY PROGRAMS.—The Secretary may approve any alternative security program established by a private sector entity or Federal, State, or local authority, or under another applicable law, if the Secretary determines that the requirements of such program meets the requirements of this title and any regulations issued or maintained pursuant to this title.

“(f) SECURITY BACKGROUND CHECKS.—In any personnel surety regulation issued by the Secretary pursuant to subsection (a), the Secretary shall include provisions on how an owner or operator of a covered chemical facility can meet, in whole or in part, the requirements set forth in such regulations by submitting—

“(1) information on an employee or individual holding a valid transportation security card issued under section 70105 of title 46, United States Code;

“(2) an alternate security background check conducted by a private sector entity, including the owner and operator of a covered chemical facility and a non-profit personnel surety accrediting organization; and

“(3) an alternate security background check conducted under another applicable law.

“(g) TECHNICAL ASSISTANCE TO SMALL BUSINESSES.—The Secretary shall provide technical assistance to any owner or operator of a covered chemical facility who requests such assistance to prepare a security vulnerability assessment or site security plan required under this title or by the regulations required by subsection (a), if the covered chemical facility is a small business concern, under the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

“SEC. 2102. INFORMATION PROTECTION.

“(a) IN GENERAL.—Notwithstanding any other provision of law, information developed pursuant to this title, or pursuant to the regulations required by section 2101(a), including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46, United States Code.

“(b) SHARING OF INFORMATION.—

“(1) STATE AND LOCAL GOVERNMENTS.—This section does not prohibit the sharing of such information, as the Secretary determines appropriate, with State and local government officials possessing the appropriate security clearances, including emergency response providers, for the purpose of carrying out this title, as long as such information may not be disclosed pursuant to any State or local law.

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

“(c) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—In any proceeding to enforce this title, 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 material.

“SEC. 2103. ENFORCEMENT.

“(a) IN GENERAL.—The Secretary shall audit and inspect chemical facilities subject to regulation under this title for the purposes of determining compliance with this title and the regulations required by section 2101(a).

“(b) ORDERS FOR COMPLIANCE.—If the Secretary determines that a chemical facility is not in compliance with this title or the regulations required by section 2101(a), the Secretary shall provide the owner or operator of the facility with written notification (including a clear explanation of deficiencies in the vulnerability assessment and site security plan) and an opportunity for consultation, and issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances.

“(c) CIVIL PENALTIES.—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.

“(d) ORDER TO CEASE OPERATION.—If the owner or operator of a chemical facility subject to regulation under this title continues to be in noncompliance, the Secretary

may issue an order for the facility to cease operation until the owner or operator complies with the order.

“(e) EXCEPTION.—Nothing in this title confers upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this title.

“SEC. 2104. JOBS IMPACT.

“Not later than one year after the date of the enactment of this title, and annually thereafter, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report that, at a minimum, includes—

“(1) an estimate of the potential jobs created or lost within the private sector as a result of the regulations required under section 2101 of this title; and

“(2) information on feedback received from owners and operators of covered chemical facilities about how the regulations required under section 2101 of this title could be revised to spur potential job creation or stem job losses.

“SEC. 2105. SCOPE.

“Nothing in this title shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.

“SEC. 2106. PREEMPTION.

“This title shall not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to chemical facility security that is more stringent than a regulation, requirement, or standard of performance required under this title, 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 title and the law of that State.

“SEC. 2107. TERMINATION.

“The authority provided by this title shall terminate on September 30, 2018.

“SEC. 2108. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated to the Secretary to carry out this title \$89,928,000 for each of fiscal years 2012 through 2018.”

(b) TABLE OF CONTENTS.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by adding at the end the following new items:

“TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM SECURITY REGULATIONS

“Sec. 2101. Chemical facility anti-terrorism security regulations.

“Sec. 2102. Information protection.

“Sec. 2103. Enforcement.

“Sec. 2104. Jobs impact.

“Sec. 2105. Scope.

“Sec. 2106. Preemption.

“Sec. 2107. Termination.

“Sec. 2108. Authorization of appropriations.”

SEC. 3. CONFORMING REPEAL.

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

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 4. HARMONIZATION.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the extent to which the security requirements under title XXI of the Homeland Security Act of 2002, as added by this Act, have been harmonized with the security requirements for facilities regulated under chapter 701 of title 46, United States Code.

PURPOSE AND SUMMARY

In 2006, Congress recognized the vulnerability of our Nation’s chemical infrastructure to terrorist attacks and authorized the Department of Homeland Security (DHS) to regulate security at our Nation’s high-risk chemical facilities. The Department issued in-

terim final regulations that became effective on June 8, 2007, and resulted in the Chemical Facility Anti-Terrorism Standards (CFATS). The legislative authority for CFATS was scheduled to sunset originally on October 4, 2009, but has been extended by a series of short-term extensions through October 4, 2011. The Chemical Facility Anti-Terrorism Security Authorization Act of 2011, H.R. 901, provides the Secretary of Homeland Security with long-term authority to continue providing for performance-based regulation to protect chemical facilities against terrorist attacks and maintain the progress being made by both the Department and the chemical facilities.

H.R. 901 preserves the essential provisions of the original statute (section 550 of the Department of Homeland Security Appropriations Act of 2007, Pub.L. 109–295) and maintains the existing framework of the CFATS program, requiring chemical facilities to conduct Security Vulnerability Assessments, develop Site Security Plans, and implement layered protective measures necessary to meet risk-based performance standards established by the Department. H.R. 901 codifies the Secretary’s authority to regulate chemical facility security within the Homeland Security Act of 2002, and extends this authority for seven years—through September 30, 2018. H.R. 901 is intended to provide long-term certainty to the Department and chemical facilities regarding the requirement to improve security at our Nation’s chemical facilities while preserving the ability of American companies to compete, remain innovative, and create jobs.

BACKGROUND AND NEED FOR LEGISLATION

Some chemicals can be very toxic, flammable, or explosive—which is why terrorists may seek to use them in attacks that may cause mass casualties, weaken the U.S. economy, and damage public confidence. The vulnerability of our Nation’s chemical infrastructure is particularly worrisome considering that many chemical facility sites are located near dense population centers.

Congress recognized this vulnerability and, in 2006, through the Department of Homeland Security Appropriations Act of 2007 (Pub.L. 109-295), authorized the Department to regulate the security of high-risk chemical facilities. Given the diverse and wide-ranging categories of facilities subject to the regulations, Congress required that DHS establish “risk-based performance standards,” providing flexibility for the facility to identify security measures tailored to each site’s unique security challenges in order to meet the performance standards.

In response, DHS issued the Chemical Facility Anti-Terrorism Standards (CFATS) which became effective on June 8, 2007. Under these regulations, high-risk chemical facilities are required to conduct Security Vulnerability Assessments (SVAs), develop Site Security Plans (SSPs), and implement layered protective measures necessary to meet the risk-based performance standards established by the Department. The Department places facilities into four high-risk tiers, with those in the highest tier subject to the most stringent security requirements. As a result, DHS must review and approve the SSPs and monitor compliance of tiered facilities.

To date, DHS has reviewed information submitted by more than 39,000 chemical facilities and determined that 4,755 facilities are

high-risk and covered under CFATS. Some facilities have demonstrated they are taking steps to reduce their risk profile sufficiently so that they move to a lower tier or are no longer subject to regulation under this program. However, there is still much work to be done to secure the chemical sector. DHS is currently in the process of reviewing SSPs and performing inspections. No SSPs have been approved to-date.

Enactment of H.R. 901 is necessary to continue uninterrupted implementation of CFATS and protect U.S. citizens against potential terrorist attacks. The legislative authority for CFATS has been extended multiple times through a series of short-term extensions, but this piecemeal approach has created uncertainty for DHS and the chemical facilities when planning investment and security strategies to meet CFATS standards. Current statutory authority for CFATS is set to expire on October 4, 2011; language was passed by the House of Representatives in the FY 2012 Homeland Security Appropriations Act (H.R. 2017, 112th Congress) that would extend the program by one year. H.R. 901 provides DHS and chemical facilities with needed certainty, consistency, and continuity by maintaining the existing CFATS framework; codifying the Secretary's authority to regulate chemical facility security in the Homeland Security Act of 2002; and extending this authority for seven years—allowing the program to be fully implemented. H.R. 901 preserves all of the essential elements contained in the original statute. The Committee intends for this legislation to provide for performance-based regulation to protect facilities against attack, without increasing current spending or imposing additional, burdensome and costly requirements that could slow or hinder progress.

By maintaining the existing risk-based, CFATS framework, H.R. 901 will enable the partnership between DHS and the facilities to strike the right balance between strengthening security against terrorism while preserving this vital sector of our economy.

HEARINGS

No hearings were held on H.R. 901 in the 112th Congress; however, the Committee has held hearings on chemical facility regulations.

112th Congress

On February 11, 2011, the Subcommittee on Cybersecurity, Infrastructure Protection and Security Technologies held a hearing entitled "Preventing Chemical Terrorism: Building a Foundation of Security At Our Nation's Chemical Facilities." The Subcommittee received testimony from Hon. Rand Beers, Under Secretary, National Protection and Programs Directorate, Department of Homeland Security; Mr. Timothy J. Scott, Chief Security Officer, The Dow Chemical Company, *testifying on behalf of the American Chemistry Council*; Dr. M. Sam Mannan, PhD, PE, CSP, Regents Professor and Director, Mary Kay O'Connor Process Safety Center, Artie McFerrin Department of Chemical Engineering, Texas A&M University System; and Mr. George S. Hawkins, General Manager, District of Columbia Water and Sewer Authority.

111th Congress

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

110th Congress

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

109th Congress

On June 15, 2005, prior to introduction of H.R. 5695 in the 109th Congress, the Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity held a hearing entitled “Preventing Terrorist Attacks on America’s Chemical Plants.” The Subcommittee received testimony from Mr. Robert Stephan, Assistant Secretary for Infrastructure Protection, Department of Homeland Security; Mr. Frank J. Cilluffo, Director, Homeland Security Policy Institute, The George Washington University; Mr. Stephen Bandy, Manager, Corporate Safety and Security, Marathon Ashland Petroleum, LLC, *testifying on behalf of the National Petrochemical and Refiners Association and the American Petroleum Institute*; Mr. Marty Durbin, Managing Director of Security and Operations, American Chemistry Council; Mr. Allen Summers, President and Chief Executive Office, Asmark, Inc., *testifying on behalf of The Fertilizer Institute*; and Mr. Sal DePasquale, Independent Consultant.

COMMITTEE CONSIDERATION

The Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies met on April 14, 2011, to consider H.R. 901, and ordered the measure to be reported to the Full Committee with a favorable recommendation, without amendment, by a roll call vote of 6 yeas and 4 nays (Roll Call Vote No. 4). The Subcommittee took the following actions:

The following amendments were offered:

An Amendment offered by MS. CLARKE (#1); to insert a new subsection (b) in the proposed section 2010 of the Homeland Security Act of 2002 entitled "Facilities Regulated." and insert a new paragraph (3) in subsection 2102(b) entitled "Other Federal Agencies"; was NOT AGREED TO by a roll call vote of 4 yeas and 6 nays (Roll Call Vote No. 1).

An Amendment offered by MS. RICHARDSON (#1); Page 2, line 18 strike "and". Page 2, after line 18, insert the following: "(3) requirements for chemical facility process safety reviews; and". Page 2, line 19, strike "(3)" and insert "(4)"; was NOT AGREED TO by a roll call vote of 4 yeas and 6 nays (Roll Call Vote No. 2).

An amendment offered by MR. RICHMOND (#3); Page 4, after line 16, insert a new subsection "(f) Employee Participation."; was NOT AGREED TO by a roll call vote of 4 yeas and 6 nays (Roll Call Vote No. 3).

The Committee on Homeland Security met on June 22, 2011, to consider H.R. 901, and ordered the measure to be reported to the Full House with a favorable recommendation, amended, by voice vote. The Committee took the following actions:

The Committee adopted H.R. 901, as amended by a roll call vote of 26 yeas and 5 nays (Roll Call Vote No. 12).

The following amendments were offered:

An Amendment in the Nature of a Substitute offered by MR. LUNGREN, was AGREED TO by a roll call vote of 22 yeas and 9 nays (Roll Call Vote No. 11).

An Amendment offered by MR. THOMPSON (#1A) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 2, line 76, strike subsection (b) and insert a new subsection (b) entitled "Facilities Regulated." Page 5, after line 2, insert a new paragraph (3) entitled "Other Federal Agencies"; was NOT AGREED TO by a roll call vote of 9 yeas and 15 nays (Roll Call Vote No. 1).

An Amendment offered by MS. SANCHEZ (#1B) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 3, after line 22, insert three new paragraphs: "(3) Deadline for Notification."; "(4) Notification of Disapproval."; and "(5) reporting."; was AGREED TO by voice vote.

An Amendment offered by MS. RICHARDSON (#1C) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; In the matter proposed to be inserted as title XXI of the Homeland Security Act of 2002 by section 2 of the bill, redesignate sections 2104 through 2017 as sections 2105 through 2108, respectively, insert a new section 2104, and amend the proposed amendment to the table of contents of such Act accordingly: "Sec. 2104. Protections for Whistleblowers at Chemical Facilities Associated with the Risk of Chemical Facility Terrorist Incidents."; was NOT AGREED TO by a roll call vote of 11 yeas and 16 nays (Roll Call Vote No. 2).

An en bloc Amendment offered by MS. JACKSON LEE (#1D) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN;

Page 5, after line 9, insert a new subsection entitled “(d) Security Background Checks.”

Page 8, after line 3, insert a new section entitled “Sec. 4. Harmonization.” was AGREED TO by voice vote.

An Amendment offered by MS. CLARKE (#1E) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 7, line 6, strike “2018” and insert “2013”. Page 7, line 10, strike “2018” and insert “2013”.; was NOT AGREED TO by voice vote.

An Amendment offered by MS. CLARKE (#1F) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 7, line 6, strike “2018” and insert “2016”. Page 7, line 10, strike “2018” and insert “2016”.; was NOT AGREED TO by a roll call vote of 11 yeas and 18 nays (Roll Call Vote No. 3).

An Amendment offered by MS. CLARKE (#1G) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 4, after line 4, insert a new section entitled “Sec. 2101A. Office of Chemical Facility Inspections.”; was NOT AGREED TO by a roll call vote of 11 yeas and 18 nays (Roll Call Vote No. 4).

An Amendment offered by MR. DAVIS (#1H) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 7, after line 10, insert a new section entitled “Sec. 2108. Jobs Impact.”; was AGREED TO by a roll call vote of 28 yeas and 2 nays (Roll Call Vote No. 5).

An Amendment offered by MS. HOCHUL (#1I) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 4, after line 4, insert a new subsection entitled “(f) Technical Assistance to Small Businesses.”; was AGREED TO by a roll call vote of 29 yeas and 1 nay (Roll Call Vote No. 6).

An Amendment offered by MR. CLARKE (#1J) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 5, after line 9, insert a new section, and redesignate accordingly, entitled “Sec. 2103. Security Background Checks of Covered Individuals at Certain Chemical Facilities.”; was NOT AGREED TO by a roll call vote of 12 yeas and 18 nays (Roll Call Vote No. 7).

An Amendment offered by MR. CLARKE (#1K) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 2, strike line 21 and all that follows through page 3, line 3. Page 4 after line 4, insert a new subsection entitled “(f) Water Treatment Works and Public Water Systems.”; was NOT AGREED TO by a roll call vote of 11 yeas and 19 nays (Roll Call Vote No. 8).

An Amendment offered by MR. CLARKE (#1L) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 4, after line 4, insert a new subsection entitled “(f) Consultation.”; was NOT AGREED TO by a roll call vote of 12 yeas and 18 nays (Roll Call Vote No. 9).

An en bloc Amendment offered by MS. SPEIER (#1M) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; Page 4, beginning on line 6, strike subsection (a) and insert a new subsection entitled “(a) In General.”

Page 6, after line 13, insert a new subsection entitled “(f) Delegation of Authority.”; was WITHDRAWN by unanimous consent.

A unanimous consent request by MS. SPEIER to withdraw her amendment, was not objected to.

A Substitute Amendment in the Nature of a Substitute offered by MR. THOMPSON (#2) was NOT AGREED TO by a roll call vote of 13 yeas and 18 nays (Roll Call Vote No. 10).

COMMITTEE VOTES

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

The Subcommittee on Cybersecurity, Infrastructure Protection, and Security Technologies considered H.R. 901 on April 14, 2011, and ordered the measure reported to the House with a favorable recommendation, without amendment, by a roll call vote of 6 yeas and 4 nays (Roll Call Vote No. 4). The vote was as follows:

YEAS	NAYS
Mr. Daniel E. Lungren	Ms. Yvette D. Clarke
Mr. Tim Walberg	Ms. Laura Richardson
Mr. Michael T. McCaul	Mr. Cedric L. Richmond
Mr. Patrick Meehan	Mr. William R. Keating
Mr. Billy Long	
Mr. Tom Marino	

An Amendment offered by MS. CLARKE (#1); was NOT AGREED TO by a roll call vote of 4 yeas and 6 nays (Roll Call Vote No. 1). The vote was as follows:

YEAS	NAYS
Ms. Yvette D. Clarke	Mr. Daniel E. Lungren
Ms. Laura Richardson	Mr. Tim Walberg
Mr. Cedric L. Richmond	Mr. Michael T. McCaul
Mr. William R. Keating	Mr. Patrick Meehan
	Mr. Billy Long
	Mr. Tom Marino

An Amendment offered by MS. RICHARDSON (#2); was NOT AGREED TO by a roll call vote of 4 yeas and 6 nays (Roll Call Vote No. 2). The vote was as follows:

YEAS	NAYS
Ms. Yvette D. Clarke	Mr. Daniel E. Lungren
Ms. Laura Richardson	Mr. Tim Walberg
Mr. Cedric L. Richmond	Mr. Michael T. McCaul
Mr. William R. Keating	Mr. Patrick Meehan
	Mr. Billy Long
	Mr. Tom Marino

An Amendment offered by MR. RICHMOND (#3); was NOT AGREED TO by a roll call vote of 4 yeas and 6 nays (Roll Call Vote No. 3). The vote was as follows:

YEAS	NAYS
Ms. Yvette D. Clarke	Mr. Daniel E. Lungren
Ms. Laura Richardson	Mr. Tim Walberg
Mr. Cedric L. Richmond	Mr. Michael T. McCaul
Mr. William R. Keating	Mr. Patrick Meehan
	Mr. Billy Long
	Mr. Tom Marino

The Committee on Homeland Security met on June 22, 2011, to consider H.R. 901, and ordered the measure to be reported to the Full House with a favorable recommendation, as amended, by voice vote. The Committee took the following votes:

An Amendment offered by MR. THOMPSON (#1A) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; was NOT AGREED TO by a roll call vote of 9 yeas and 15 nays (Roll Call Vote No. 1). The vote was as follows:

YEAS	NAYS
Mr. Bennie G. Thompson	Mr. Peter T. King
Ms. Loretta Sanchez	Mr. Daniel E. Lungren
Ms. Sheila Jackson Lee	Mr. Mike Rogers
Mr. Henry Cuellar	Mr. Michael T. McCaul
Ms. Yvette D. Clarke	Mr. Gus M. Bilirakis
Ms. Laura Richardson	Mrs. Candice S. Miller
Mr. Brian Higgins	Mr. Tim Walberg
Mr. Hansen Clarke	Mr. Chip Cravaack
Ms. Kathleen C. Hochul	Mr. Patrick Meehan
	Mr. E. Scott Rigell
	Mr. Billy Long
	Mr. Jeff Duncan
	Mr. Tom Marino
	Mr. Blake Farenthold
	Mr. Mo Brooks

An Amendment offered by MRS. RICHARDSON (#1C) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; was NOT AGREED TO by a roll call vote of 11 yeas and 16 nays (Roll Call Vote No. 2). The vote was as follows:

YEAS	NAYS
Mr. Bennie G. Thompson	Mr. Peter T. King
Ms. Loretta Sanchez	Mr. Daniel E. Lungren
Ms. Sheila Jackson Lee	Mr. Mike Rogers
Mr. Henry Cuellar	Mr. Michael T. McCaul
Ms. Yvette D. Clarke	Mr. Gus M. Bilirakis
Ms. Laura Richardson	Mr. Paul C. Broun
Mr. Brian Higgins	Mrs. Candice S. Miller
Ms. Jackie Speier	Mr. Tim Walberg
Mr. Cedric L. Richmond	Mr. Chip Cravaack
Mr. Hansen Clarke	Mr. Patrick Meehan
Ms. Kathleen C. Hochul	Mr. E. Scott Rigell
	Mr. Billy Long
	Mr. Jeff Duncan
	Mr. Tom Marino
	Mr. Blake Farenthold
	Mr. Mo Brooks

An Amendment offered by MS. CLARKE (#1F) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; was NOT AGREED TO by a roll call vote of 11 yeas and 18 nays (Roll Call Vote No. 3). The vote was as follows:

YEAS	NAYS
Mr. Bennie G. Thompson	Mr. Peter T. King
Ms. Loretta Sanchez	Mr. Lamar Smith
Ms. Sheila Jackson Lee	Mr. Daniel E. Lungren
Mr. Henry Cuellar	Mr. Mike Rogers
Ms. Yvette D. Clarke	Mr. Michael T. McCaul
Ms. Laura Richardson	Mr. Gus M. Bilirakis
Mr. Brian Higgins	Mr. Paul C. Broun
Ms. Jackie Speier	Mrs. Candice S. Miller
Mr. Cedric L. Richmond	Mr. Tim Walberg
Mr. Hansen Clarke	Mr. Chip Cravaack
Ms. Kathleen C. Hochul	Mr. Patrick Meehan

Mr. Benjamin Quayle
 Mr. E. Scott Rigell
 Mr. Billy Long
 Mr. Jeff Duncan
 Mr. Tom Marino
 Mr. Blake Farenthold
 Mr. Mo Brooks

An Amendment offered by MS. CLARKE (#1G) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; was NOT AGREED TO by a roll call vote of 11 yeas and 18 nays (Roll Call Vote No. 4). The vote was as follows:

YEAS	NAYS
Mr. Bennie G. Thompson	Mr. Peter T. King
Ms. Loretta Sanchez	Mr. Lamar Smith
Ms. Sheila Jackson Lee	Mr. Daniel E. Lungren
Mr. Henry Cuellar	Mr. Mike Rogers
Ms. Yvette D. Clarke	Mr. Michael T. McCaul
Ms. Laura Richardson	Mr. Gus M. Bilirakis
Mr. Brian Higgins	Mr. Paul C. Broun
Ms. Jackie Speier	Mrs. Candice S. Miller
Mr. Cedric L. Richmond	Mr. Tim Walberg
Mr. Hansen Clarke	Mr. Chip Cravaack
Ms. Kathleen C. Hochul	Mr. Patrick Meehan
	Mr. Benjamin Quayle
	Mr. E. Scott Rigell
	Mr. Billy Long
	Mr. Jeff Duncan
	Mr. Tom Marino
	Mr. Blake Farenthold
	Mr. Mo Brooks

An Amendment offered by MR. DAVIS (#1H) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; was AGREED TO by a roll call vote of 28 yeas and 2 nays (Roll Call Vote No. 5). The vote was as follows:

YEAS	NAYS
Mr. Peter T. King	Mr. Jeff Duncan
Mr. Lamar Smith	Mr. Blake Farenthold
Mr. Daniel E. Lungren	
Mr. Mike Rogers	
Mr. Michael T. McCaul	
Mr. Gus M. Bilirakis	
Mr. Paul C. Broun	
Mrs. Candice S. Miller	
Mr. Tim Walberg	
Mr. Chip Cravaack	
Mr. Patrick Meehan	
Mr. Benjamin Quayle	
Mr. E. Scott Rigell	
Mr. Billy Long	
Mr. Tom Marino	
Mr. Mo Brooks	
Mr. Bennie G. Thompson	
Ms. Loretta Sanchez	
Ms. Sheila Jackson Lee	
Mr. Henry Cuellar	
Ms. Yvette D. Clarke	
Ms. Laura Richardson	
Mr. Danny K. Davis	
Mr. Brian Higgins	
Ms. Jackie Speier	
Mr. Cedric L. Richmond	
Mr. Hansen Clarke	
Ms. Kathleen C. Hochul	

An Amendment offered by MS. HOCHUL (#1I) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; was AGREED TO by a roll call vote of 29 yeas and 1 nay (Roll Call Vote No. 6). The vote was as follows:

YEAS	NAYS
Mr. Peter T. King	Mr. Mike Rogers
Mr. Lamar Smith	
Mr. Daniel E. Lungren	
Mr. Michael T. McCaul	
Mr. Gus M. Bilirakis	
Mr. Paul C. Broun	
Mrs. Candice S. Miller	
Mr. Tim Walberg	
Mr. Chip Cravaack	
Mr. Patrick Meehan	
Mr. Benjamin Quayle	
Mr. E. Scott Rigell	
Mr. Billy Long	
Mr. Jeff Duncan	
Mr. Tom Marino	
Mr. Blake Farenthold	
Mr. Mo Brooks	
Mr. Bennie G. Thompson	
Ms. Loretta Sanchez	
Ms. Sheila Jackson Lee	
Mr. Henry Cuellar	
Ms. Yvette D. Clarke	
Ms. Laura Richardson	
Mr. Danny K. Davis	
Mr. Brian Higgins	
Ms. Jackie Speier	
Mr. Cedric L. Richmond	
Mr. Hansen Clarke	
Ms. Kathleen C. Hochul	

An Amendment offered by MR. CLARKE (#1J) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; was NOT AGREED TO by a roll call vote of 12 yeas and 18 nays (Roll Call Vote No. 7). The vote was as follows:

YEAS	NAYS
Mr. Bennie G. Thompson	Mr. Peter T. King
Ms. Loretta Sanchez	Mr. Lamar Smith
Ms. Sheila Jackson Lee	Mr. Daniel E. Lungren
Mr. Henry Cuellar	Mr. Mike Rogers
Ms. Yvette D. Clarke	Mr. Michael T. McCaul
Ms. Laura Richardson	Mr. Gus M. Bilirakis
Mr. Danny K. Davis	Mr. Paul C. Broun
Mr. Brian Higgins	Mrs. Candice S. Miller
Ms. Jackie Speier	Mr. Tim Walberg
Mr. Cedric L. Richmond	Mr. Chip Cravaack
Mr. Hansen Clarke	Mr. Patrick Meehan
Ms. Kathleen C. Hochul	Mr. Benjamin Quayle
	Mr. E. Scott Rigell
	Mr. Billy Long
	Mr. Jeff Duncan
	Mr. Tom Marino
	Mr. Blake Farenthold
	Mr. Mo Brooks

An Amendment offered by MR. CLARKE (#1K) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; was NOT AGREED TO by a roll call vote of 11 yeas and 19 nays (Roll Call Vote No. 8). The vote was as follows:

YEAS

Mr. Bennie G. Thompson
 Ms. Loretta Sanchez
 Ms. Sheila Jackson Lee
 Ms. Yvette D. Clarke
 Ms. Laura Richardson
 Mr. Danny K. Davis
 Mr. Brian Higgins
 Ms. Jackie Speier
 Mr. Cedric L. Richmond
 Mr. Hansen Clarke
 Ms. Kathleen C. Hochul

NAYS

Mr. Peter T. King
 Mr. Lamar Smith
 Mr. Daniel E. Lungren
 Mr. Mike Rogers
 Mr. Michael T. McCaul
 Mr. Gus M. Bilirakis
 Mr. Paul C. Broun
 Mrs. Candice S. Miller
 Mr. Tim Walberg
 Mr. Chip Cravaack
 Mr. Patrick Meehan
 Mr. Benjamin Quayle
 Mr. E. Scott Rigell
 Mr. Billy Long
 Mr. Jeff Duncan
 Mr. Tom Marino
 Mr. Blake Farenthold
 Mr. Mo Brooks
 Mr. Henry Cuellar

An Amendment offered by MR. CLARKE (#1L) to the Amendment in the Nature of a Substitute offered by MR. LUNGREN; was NOT AGREED TO by a roll call vote of 12 yeas and 18 nays (Roll Call Vote No. 9). The vote was as follows:

YEAS

Mr. Bennie G. Thompson
 Ms. Loretta Sanchez
 Ms. Sheila Jackson Lee
 Mr. Henry Cuellar
 Ms. Yvette D. Clarke
 Ms. Laura Richardson
 Mr. Danny K. Davis
 Mr. Brian Higgins
 Ms. Jackie Speier
 Mr. Cedric L. Richmond
 Mr. Hansen Clarke
 Ms. Kathleen C. Hochul

NAYS

Mr. Peter T. King
 Mr. Lamar Smith
 Mr. Daniel E. Lungren
 Mr. Mike Rogers
 Mr. Michael T. McCaul
 Mr. Gus M. Bilirakis
 Mr. Paul C. Broun
 Mrs. Candice S. Miller
 Mr. Tim Walberg
 Mr. Chip Cravaack
 Mr. Patrick Meehan
 Mr. Benjamin Quayle
 Mr. E. Scott Rigell
 Mr. Billy Long
 Mr. Jeff Duncan
 Mr. Tom Marino
 Mr. Blake Farenthold
 Mr. Mo Brooks

On agreeing to the Substitute to the Amendment in the Nature of a Substitute offered by MR. THOMPSON (#2); was NOT AGREED TO by a roll call vote of 13 yeas and 18 nays (Roll Call Vote No. 10). The vote was as follows:

YEAS

Mr. Bennie G. Thompson
 Ms. Loretta Sanchez
 Ms. Sheila Jackson Lee
 Mr. Henry Cuellar
 Ms. Yvette D. Clarke
 Ms. Laura Richardson
 Mr. Danny K. Davis
 Mr. Brian Higgins
 Ms. Jackie Speier
 Mr. Cedric L. Richmond
 Mr. Hansen Clarke
 Mr. William R. Keating
 Ms. Kathleen C. Hochul

NAYS

Mr. Peter T. King
 Mr. Lamar Smith
 Mr. Daniel E. Lungren
 Mr. Mike Rogers
 Mr. Michael T. McCaul
 Mr. Gus M. Bilirakis
 Mr. Paul C. Broun
 Mrs. Candice S. Miller
 Mr. Tim Walberg
 Mr. Chip Cravaack
 Mr. Patrick Meehan
 Mr. Benjamin Quayle
 Mr. E. Scott Rigell
 Mr. Billy Long

Mr. Jeff Duncan
 Mr. Tom Marino
 Mr. Blake Farenthold
 Mr. Mo Brooks

On agreeing to the Amendment in the Nature of a Substitute offered by MR. LUNGREN, as amended(#1); was AGREED TO by a roll call vote of 22 yeas and 9 nays (Roll Call Vote No. 11). The vote was as follows:

YEAS

Mr. Peter T. King
 Mr. Lamar Smith
 Mr. Daniel E. Lungren
 Mr. Mike Rogers
 Mr. Michael T. McCaul
 Mr. Gus M. Bilirakis
 Mr. Paul C. Broun
 Mrs. Candice S. Miller
 Mr. Tim Walberg
 Mr. Chip Cravaack
 Mr. Patrick Meehan
 Mr. Benjamin Quayle
 Mr. E. Scott Rigell
 Mr. Billy Long
 Mr. Jeff Duncan
 Mr. Tom Marino
 Mr. Blake Farenthold
 Mr. Mo Brooks
 Ms. Sheila Jackson Lee
 Mr. Henry Cuellar
 Mr. Cedric L. Richmond
 Mr. Hansen Clarke

NAYS

Mr. Bennie G. Thompson
 Ms. Loretta Sanchez
 Ms. Yvette D. Clarke
 Ms. Laura Richardson
 Mr. Danny K. Davis
 Mr. Brian Higgins
 Ms. Jackie Speier
 Mr. William R. Keating
 Ms. Kathleen C. Hochul

On agreeing to H.R. 901, as amended; was AGREED TO by a roll call vote of 26 yeas and 5 nays (Roll Call Vote No. 12). The vote was as follows:

YEAS

Mr. Peter T. King
 Mr. Lamar Smith
 Mr. Daniel E. Lungren
 Mr. Mike Rogers
 Mr. Michael T. McCaul
 Mr. Gus M. Bilirakis
 Mr. Paul C. Broun
 Mrs. Candice S. Miller
 Mr. Tim Walberg
 Mr. Chip Cravaack
 Mr. Patrick Meehan
 Mr. Benjamin Quayle
 Mr. E. Scott Rigell
 Mr. Billy Long
 Mr. Jeff Duncan
 Mr. Tom Marino
 Mr. Blake Farenthold
 Mr. Mo Brooks
 Ms. Sheila Jackson Lee
 Mr. Henry Cuellar
 Ms. Laura Richardson
 Ms. Jackie Speier
 Mr. Cedric L. Richmond
 Mr. Hansen Clarke
 Mr. William R. Keating
 Ms. Kathleen C. Hochul

NAYS

Mr. Bennie G. Thompson
 Ms. Loretta Sanchez
 Ms. Yvette D. Clarke
 Mr. Danny K. Davis
 Mr. Brian Higgins

COMMITTEE OVERSIGHT FINDINGS

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

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND
TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 901, the Chemical Facility Anti-Terrorism Authorization Act of 2011, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 6, 2011.

Hon. PETER T. KING,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 901, the Chemical Facility Anti-Terrorism Standards Act of 2011.

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

Sincerely,

ROBERT A. SUNSHINE,
(For Douglas W. Elmendorf, Director).

Enclosure.

H.R. 901—Chemical Facility Anti-Terrorism Standards Act of 2011

H.R. 901 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. 901 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. 901 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. 901 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 to a terrorist incident and to prepare and implement facility security plans would be mandates. 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).

On June 15, 2011, CBO transmitted a cost estimate for H.R. 908, the Full Implementation of the Chemical Facility Anti-Terrorism Standards Act, as ordered reported by the House Committee on Energy and Commerce on May 26, 2011. Both H.R. 901 and H.R. 908 would authorize nearly \$90 million for CFATS, and CBO estimates that spending under the two bills would be the same. In addition, CBO determined that the bill would extend the same mandates as H.R. 901.

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.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 901 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

The performance goals and objectives of H.R. 901 are to extend the Chemical Facility Anti-Terrorism standards authority enacted under the FY 2007 Homeland Security Appropriations Act.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

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

FEDERAL MANDATES STATEMENT

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

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds the following. While the Committee believes H.R. 901, as reported, does not preempt any State, local, or Tribal law—Section 2106 does allow for preemption should such actual conflict exist.

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 provides that the bill may be cited as the “Chemical Facility Anti-Terrorism Security Authorization Act of 2011.”

Sec. 2. Chemical Facility Anti-Terrorism Security Regulations.

This section adds a new title, the “Title XXI—Chemical Facility Anti-Terrorism Security Regulations” to the Homeland Security Act of 2002 and includes the following provisions:

TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM
SECURITY REGULATIONS*Sec. 2101. Chemical Facility Anti-Terrorism Security Regulations.*

This section requires the Secretary of Homeland Security to maintain security regulations for high-risk chemical facilities. These regulations must establish “risk-based performance standards” and require facilities to prepare Security Vulnerability Assessments (SVAs) that identify facility security vulnerabilities, and develop and implement Site Security Plans (SSPs). This section codifies the key elements of the existing Chemical Facility Anti-Terrorism Standards (CFATS) framework that should be maintained. The Committee does not intend for the Department of Homeland Security (DHS) to reissue existing regulations; but provides the Department the flexibility to revise them within the existing framework if changes are necessary.

Importantly, H.R. 901 requires risk-based performance standards instead of a prescriptive approach, providing diverse facilities with the appropriate discretion and flexibility to design site-specific security measures. The Committee believes that the security measures taken to comply with the risk-based performance standards may differ from facility to facility. Under this section, facilities may select a combination of security measures tailored to their unique circumstances that together meet the security performance requirements. While the Department cannot dictate that a particular security measure be used, it sets the performance standards. Upon request, the Secretary is required to provide technical assistance to small businesses developing SVAs and SSPs.

The Committee is aware that the Department recently revised the tiering assignments for approximately ten percent of the facilities covered under CFATS due to an error in the risk assessment modeling. Recognizing modeling processes can often be complicated and fall victim to a variety of errors, especially in the context of terrorism where there is very little historical data, as compared to natural catastrophes, the Committee believes it is imperative for the CFATS risk assessment model to be validated—including inputs, processes, and outputs—in order to increase its credibility and minimize future errors. The Committee directs the Department to report on how it has validated, or plans to validate, the model and prevent future errors of a similar nature. Additionally, the Committee believes that there should be internal controls to detect anomalies based on human or other error in a timely manner.

After final regulations are published, the Secretary must approve or disapprove SVAs and SSPs within 180 days of receipt, to the extent practicable, and notify the facility of the outcome. If an SVA or SSP is disapproved, the Secretary has 14 days to provide the facility a written explanation for the disapproval and a date by which the facility is required to revise the SVA or SSP. The Committee expects DHS to make a good faith effort to provide a timely review of the assessments and plans, and notify facilities within the designated timeframe. However, the Committee recognizes that chemical facilities regulated under this Title are very diverse and the content and quality of the SVAs and SSPs may vary greatly. Additional time may be warranted for certain facilities in order to reach a successful outcome. The Committee expects DHS to continue working collaboratively with the facilities to provide appropriate guidance and ensure their SVAs and SSPs meet DHS security requirements. This section also requires the Secretary to submit an annual report to Congress indicating the number of instances the 180 day notification requirement was not met.

This section allows the Secretary to accept, in whole or in part, an alternate security program, prepared by the facility for another reason, such as complying with another law or an industry-wide security program, as long as it provides an equivalent level of security by meeting the regulatory requirements issued or maintained by this title.

Under this section, the Secretary is also required to describe, in any personnel surety regulations, the information that will be required from a facility for acceptance of alternate security background checks. The Committee intends to promote comparability and reciprocity across credentialing and screening programs and

believes DHS should enable chemical facilities to leverage other existing background check programs, such as the Transportation Worker Identification Credential (TWIC) or private sector programs, as part of the identity, legal authorization to work, and criminal history background checks they perform to meet personnel surety requirements of this title. The Committee does not intend for DHS to require TWICs for persons accessing chemical facilities not regulated under the Marine Transportation Security Act (MTSA), nor that such facilities be equipped with TWIC readers. Instead, facilities should have the option to recognize TWIC or other background check programs—so long as these programs are verified as described below.

The Committee recognizes that background checks to identify individuals with terrorist ties is an inherently governmental function and several existing Federal government programs achieve this by vetting individuals against the Terrorist Screening Database (TSDB). To limit duplicative efforts, the Committee intends for DHS to share and reuse results from other governmental programs that conduct equivalent vetting against the TSDB, such as the TWIC program. The Committee believes that, for security purposes, in order for DHS to reuse such vetting results to meet any personnel surety requirements issued pursuant to this title, DHS may need to verify the active enrollment in the accepted alternate security background check. The Committee intends to provide DHS the flexibility needed to leverage alternate security background checks, such as the TWIC program, as they fully mature. The Committee expects DHS to ensure the process is minimally burdensome on facilities and individuals while also identifying security gaps. The Committee supports the activities of the working group composed of representatives from the Transportation Security Administration, the DHS Screening Coordination Office, the National Protection and Programs Directorate, the U.S. Coast Guard, and the DHS Office of General Counsel with the aim of aligning relevant personnel surety programs and urges the working group to receive feedback from the regulated communities and report back to the Committee on its recommendations.

This section specifies that the regulations maintained by this title do not apply to any facility owned or operated by the Departments of Defense or Energy; any facility regulated by the Nuclear Regulatory Commission (NRC); any facility regulated under the MTSA; and facilities defined as a water system or wastewater treatment works.

While this section upholds the exemption from CFATS for facilities subject to regulation by the NRC, the Committee intends for this exemption to apply only to facilities where the NRC already imposes significant security requirements and regulates the safety and security of most of the facility. The Committee does not intend for the NRC exemption to apply to facilities that house just a few small radioactive sources or to portions of facilities not subject to NRC security requirements. The Committee supports the formal establishment of the memorandum of understanding between DHS and the NRC to help define the types of facilities that are wholly or partially exempt from CFATS because of NRC regulatory authority, and to establish processes for identifying those facilities. The Committee also urges completion of the NRC study comparing

CFATS security standards to security measures at NRC-regulated facilities and encourages the NRC to address any gaps in NRC requirements, if any are found.

This section also preserves the exemption from CFATS for MTSA-regulated facilities. The Committee is aware that some port facilities have chemicals of interest onsite above threshold quantities. The Committee intends to ensure that high-risk chemical facilities that are potentially subject to both CFATS and MTSA are not saddled with duplicative or conflicting requirements and that high-risk chemical facilities with commensurate risk are subject to equivalent and appropriate security requirements, regardless of the regulatory regime under which they are captured. While there are similarities between the programs, there are significant differences between the requirements of each regime. The Committee encourages the U.S. Coast Guard and the National Protection and Programs Directorate to maintain an active and thorough effort to examine both regulatory regimes, identify opportunities for harmonization, and take appropriate action to close any security gaps. The Committee recognizes the formal establishment of the DHS CFATS-MTSA Working Group that is conducting an ongoing, full regulatory review of the two security regimes and has taken initial positive steps to coordinate activities. The Committee urges this work to continue in order to inform recommendations for any statutory changes that might be needed to MTSA or CFATS legislative authorities.

This section maintains the exemption from CFATS for drinking water and wastewater treatment facilities. The Committee recognizes that the water sector is prioritized among the nation's critical infrastructures—so vital that damage to, or destruction of, drinking water or wastewater treatment utilities by terrorist attack could have a debilitating effect on homeland security and public health. The Committee notes that terrorist attacks on these facilities could come in many forms, including: physical attacks (such as the release of toxic gaseous chemicals); biological or chemical contamination; and cyber attacks. Assessing and addressing the vulnerabilities of these facilities to terrorist attack should form the basis of any strategy to secure this critical infrastructure and reduce the risks to these facilities, with chemical security as an essential element.

Many facilities have made security improvements since the terrorist attacks of September 11, 2001, but the Committee recognizes there are still no mandatory Federal standards that govern the security of water infrastructure. While DHS' engagement with the water sector has grown given its responsibilities to secure the Nation's critical infrastructure, the Environmental Protection Agency (EPA) remains the lead Federal agency for protecting drinking water and wastewater utility systems. However, EPA has not been given authority by Congress to establish a risk-informed, performance based security program like CFATS for the protection of the water sector and, with respect to wastewater treatment facilities, no federal agency has been conferred the authority to review security plans, set security standards, or require implementation of security measures.

While the Committee did not include language to govern chemical security at drinking water and wastewater treatment facilities

in H.R. 901 due to the imminent expiration of the CFATS authority and the foremost need to ensure the CFATS regulations remain in place to allow the program to mature and continue uninterrupted, the Committee acknowledges a Federal role in promoting security at drinking water and wastewater treatment facilities. Therefore, the Committee is committed to working with the Administration, appropriate authorizing committees, and other stakeholders to address this significant security concern. The Committee intends to continue its examination of chemical security gaps with a view to identifying solutions that improve security and minimize the risks to homeland security, public health, and the economy, while reducing duplication and regulatory burdens. Specifically, the Committee intends to investigate: how chemical security will fit into the broader context of legislative efforts to comprehensively improve security at drinking water and wastewater treatment facilities without creating the potential for duplication; the distributed and diverse nature of ownership (Federal, non-Federal government, and private) of these facilities; and the need for greater clarity with regard to the roles and responsibilities of DHS and EPA.

The Committee encourages the Department to work with EPA in addressing ongoing security gaps at drinking water and wastewater treatment facilities. Furthermore, the Committee encourages the Department to report back to the Committee on the scope and nature of these security gaps, including potential approaches to enhance chemical security, and any recommended changes in legislative authorities that are needed.

Sec. 2102. Information Protection.

This section requires information developed under CFATS to be protected, from unauthorized public disclosure, consistent with protections under the MTTSA. In administrative and judicial proceedings, CFATS-related information will be treated as if classified. In addition, this section allows for information sharing with appropriate State and local government officials, but only as long as the protected information cannot be disclosed under any State or local law, and also specifies that DHS cannot withhold such information from Congress. The Committee believes that the Department may continue to use the existing “Chemical-Terrorism Vulnerability Information” regime for safeguarding protected information as it was designed to have minimal burden on regulated facilities while achieving real protection of information that might be useful to terrorists. The Committee does not intend to preclude efforts by the Department to align this information protection regime with others, as long as the requirements of this title are still met and the security of protected information is not compromised in doing so.

Sec. 2103. Enforcement.

This section requires the Secretary to audit and inspect facilities to determine compliance. If a facility is found not to be in compliance with this Title, the Secretary must communicate in writing the deficiencies in the vulnerability assessment and site security plan, provide an opportunity for consultation, and issue an order requiring compliance by an appropriate date (*See notification requirements in section 2101*). If a facility violates a written order, it will be liable for a civil penalty. If a facility continues to be in non-

compliance, the Secretary may issue an order to cease operations until the owner or operator of the facility complies. This section also prohibits third-party rights of action against a facility to enforce this Title.

Sec. 2104. Jobs Impact.

This section requires the Secretary to submit an annual report to Congress that provides an estimate of the potential private sector jobs created or lost as a result of the chemical security regulations maintained by this Title and any feedback received from chemical facilities on changes to the regulations they believe might spur job creation or stem job loss. The Committee intends this report to provide additional context to inform discussions on chemical security regulations going forward. The Committee believes the CFATS regulations need to be viewed not only in the context of their role in ensuring the security of the Homeland against terrorist attacks, but also in the context of the economy in general and job creation specifically. The Committee intends for the Department to strike the appropriate balance between securing the Nation while preserving this vital sector of the economy, and ensure the overall benefits of the chemical security regulations outweigh their costs.

Sec. 2105. Scope.

This section specifies that this Title is not intended to affect or modify other Federal laws that govern chemical manufacturing, transportation, use, sale, disposal, *etc.*

Sec. 2106. Preemption.

This section allows for regulations, requirements, or standards maintained under this Title to preempt State or local government regulations, requirements or standards only when there is an “actual conflict” between them.

Sec. 2107. Termination.

This section establishes a seven-year sunset of the Department’s authority to maintain security regulations for high-risk chemical facilities. The Committee intends to provide DHS and chemical facilities with the long-term certainty and stability needed to complete a full cycle of compliance, assess the program’s effectiveness at reducing terrorism risks, and make informed improvements. The Committee believes the current piecemeal approach of short-term extensions of the CFATS authority creates regulatory uncertainty for DHS and chemical facilities that runs counter to the Committee’s intent—to ensure that investments made today are optimized to improve our Nation’s security for tomorrow and the long-term. The seven-year sunset does not preclude the Committee from conducting on-going CFATS oversight or developing additional legislation as necessary.

Sec. 2108. Authorization of Appropriations.

This section authorizes \$89.9 million for each fiscal year 2012 through 2018 to carry out the requirements of this Act.

Sec. 3. Conforming Repeal.

This section strikes Section 550 of the Department of Homeland Security Appropriations Act, 2007 (Pub. L. 109–295) on the date of enactment of this Act.

Sec. 4. Harmonization.

This section requires the Secretary to submit to Congress a report within six months after enactment on the extent to which CFATS security requirements have been harmonized with the security requirements imposed on ports pursuant to the MTSA. The Department shall include any future plans for harmonization and a timeline for implementation of these plans. The Committee supports the Department’s efforts to harmonize the two security requirements in order to limit duplicative requirements and address any security gaps. The Committee intends for the report to aid in identifying whether legislative changes to the MTSA or CFATS authorities are needed to achieve appropriate harmonization or whether sufficient changes can be made within the existing regulatory frameworks.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

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

HOMELAND SECURITY ACT OF 2002

* * * * *

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. Short title; table of contents.

* * * * *

TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM SECURITY REGULATIONS

- Sec. 2101. Chemical facility anti-terrorism security regulations.*
- Sec. 2102. Information protection.*
- Sec. 2103. Enforcement.*
- Sec. 2104. Jobs Impact.*
- Sec. 2105. Scope.*
- Sec. 2106. Preemption.*
- Sec. 2107. Termination.*
- Sec. 2108. Authorization of appropriations.*

* * * * *

TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM SECURITY REGULATIONS

SEC. 2101. CHEMICAL FACILITY ANTI-TERRORISM SECURITY REGULATIONS.

(a) *IN GENERAL.*—The Secretary shall maintain, and revise as necessary, regulations to protect chemical facilities against terrorism and potential terrorist attacks. Such regulations shall include—

- (1) risk-based performance standards for chemical facility security;
- (2) requirements for chemical facility security vulnerability assessments; and
- (3) requirements for the development and implementation of chemical facility site security plans.

(b) *FACILITIES REGULATED.*—The regulations required by subsection (a) shall apply to any chemical facility that the Secretary determines presents a high level of security risk with respect to acts of terrorism, except that the Secretary may not apply such regulations to any of the following:

- (1) Any facility owned or operated by the Department of Defense.
- (2) Any facility owned or operated by the Department of Energy.
- (3) Any facility subject to regulation by the Nuclear Regulatory Commission.
- (4) Any facility regulated under chapter 701 of title 46, United States Code.
- (5) A public water system, as such term is defined by section 1401(4) of the Safe Drinking Water Act (42 U.S.C. 300f(4)).
- (6) A treatment works, as such term is defined by section 212(2) of the Federal Water Pollution Control Act (33 U.S.C. 1292(2)).

(c) *SECURITY MEASURES.*—The regulations required by subsection (a) shall provide that each such facility, in developing and implementing site security plans, be permitted to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility.

(d) *REVIEW.*—

(1) *IN GENERAL.*—The Secretary shall review and approve or disapprove each vulnerability assessment and site security plan required under this title or by the regulations required by subsection (a).

(2) *STANDARDS FOR DISAPPROVAL.*—The Secretary may not disapprove such a site security plan based on the presence or absence of a particular security measure, but the Secretary may disapprove such a site security plan if the plan fails to satisfy the risk-based performance standards established by the Secretary.

(3) *DEADLINE FOR NOTIFICATION.*—Beginning after the Secretary publishes final regulations to implement this section, not later than 180 days, to the greatest extent practicable, after the date on which the Secretary receives a security vulnerability assessment or site security plan under this title, the Secretary

shall review and approve or disapprove such assessment or plan and notify the covered chemical facility of such approval or disapproval.

(4) *NOTIFICATION OF DISAPPROVAL.*—If the Secretary disapproves the security vulnerability assessment or site security plan submitted by a covered chemical facility under this title or the implementation of a site security plan by such a chemical facility, the Secretary shall provide the owner or operator of the covered chemical facility a written notification of the disapproval not later than 14 days after the date on which the Secretary disapproves such assessment or plan, that—

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

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

(5) *REPORTING.*—The Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Government Affairs of the Senate, on an annual basis, information on the number of instances during the year covered by the report where the Secretary determined that the 180 day notification requirement under paragraph (3) was impracticable.

(e) *ALTERNATIVE SECURITY PROGRAMS.*—The Secretary may approve any alternative security program established by a private sector entity or Federal, State, or local authority, or under another applicable law, if the Secretary determines that the requirements of such program meets the requirements of this title and any regulations issued or maintained pursuant to this title.

(f) *SECURITY BACKGROUND CHECKS.*—In any personnel surety regulation issued by the Secretary pursuant to subsection (a), the Secretary shall include provisions on how an owner or operator of a covered chemical facility can meet, in whole or in part, the requirements set forth in such regulations by submitting—

(1) information on an employee or individual holding a valid transportation security card issued under section 70105 of title 46, United States Code;

(2) an alternate security background check conducted by a private sector entity, including the owner and operator of a covered chemical facility and a non-profit personnel surety accrediting organization; and

(3) an alternate security background check conducted under another applicable law.

(g) *TECHNICAL ASSISTANCE TO SMALL BUSINESSES.*—The Secretary shall provide technical assistance to any owner or operator of a covered chemical facility who requests such assistance to prepare a security vulnerability assessment or site security plan required under this title or by the regulations required by subsection (a), if the covered chemical facility is a small business concern, under the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

SEC. 2102. INFORMATION PROTECTION.

(a) *IN GENERAL.*—Notwithstanding any other provision of law, information developed pursuant to this title, or pursuant to the regulations required by section 2101(a), including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46, United States Code.

(b) *SHARING OF INFORMATION.*—

(1) *STATE AND LOCAL GOVERNMENTS.*—This section does not prohibit the sharing of such information, as the Secretary determines appropriate, with State and local government officials possessing the appropriate security clearances, including emergency response providers, for the purpose of carrying out this title, as long as such information may not be disclosed pursuant to any State or local law.

(2) *CONGRESS.*—Nothing in this title shall permit or authorize the withholding of information from Congress or any committee or subcommittee thereof.

(c) *ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.*—In any proceeding to enforce this title, 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 material.

SEC. 2103. ENFORCEMENT.

(a) *IN GENERAL.*—The Secretary shall audit and inspect chemical facilities subject to regulation under this title for the purposes of determining compliance with this title and the regulations required by section 2101(a).

(b) *ORDERS FOR COMPLIANCE.*—If the Secretary determines that a chemical facility is not in compliance with this title or the regulations required by section 2101(a), the Secretary shall provide the owner or operator of the facility with written notification (including a clear explanation of deficiencies in the vulnerability assessment and site security plan) and an opportunity for consultation, and issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances.

(c) *CIVIL PENALTIES.*—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.

(d) *ORDER TO CEASE OPERATION.*—If the owner or operator of a chemical facility subject to regulation under this title continues to be in noncompliance, the Secretary may issue an order for the facility to cease operation until the owner or operator complies with the order.

(e) *EXCEPTION.*—Nothing in this title confers upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this title.

SEC. 2104. JOBS IMPACT.

Not later than one year after the date of the enactment of this title, and annually thereafter, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives

and the Committee on Homeland Security and Governmental Affairs of the Senate a report that, at a minimum, includes—

(1) an estimate of the potential jobs created or lost within the private sector as a result of the regulations required under section 2101 of this title; and

(2) information on feedback received from owners and operators of covered chemical facilities about how the regulations required under section 2101 of this title could be revised to spur potential job creation or stem job losses.

SEC. 2105. SCOPE.

Nothing in this title shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.

SEC. 2106. PREEMPTION.

This title shall not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to chemical facility security that is more stringent than a regulation, requirement, or standard of performance required under this title, 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 title and the law of that State.

SEC. 2107. TERMINATION.

The authority provided by this title shall terminate on September 30, 2018.

SEC. 2108. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary to carry out this title \$89,928,000 for each of fiscal years 2012 through 2018.

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

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TITLE V—GENERAL PROVISIONS

[SEC. 550. (a) No later than six months after the date of enactment of this Act, the Secretary of Homeland Security shall issue interim final regulations establishing risk-based performance standards for security of chemical facilities and requiring vulnerability assessments and the development and implementation of site security plans for chemical facilities: *Provided*, That such regulations shall apply to chemical facilities that, in the discretion of the Secretary, present high levels of security risk: *Provided further*, That such regulations shall permit each such facility, in developing and implementing site security plans, to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility: *Provided further*, That the Secretary may not disapprove a site security plan submitted under this section based on the presence or absence of a particular security measure, but the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by

this section: *Provided further*, That the Secretary may approve alternative security programs established by private sector entities, Federal, State, or local authorities, or other applicable laws if the Secretary determines that the requirements of such programs meet the requirements of this section and the interim regulations: *Provided further*, That the Secretary shall review and approve each vulnerability assessment and site security plan required under this section: *Provided further*, That the Secretary shall not apply regulations issued pursuant to this section to facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Public Law 107-295, as amended; Public Water Systems, as defined by section 1401 of the Safe Drinking Water Act, Public Law 93-523, as amended; Treatment Works as defined in section 212 of the Federal Water Pollution Control Act, Public Law 92-500, as amended; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.

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

[(c) Notwithstanding any other provision of law and subsection (b), information developed under this section, including vulnerability assessments, site security plans, and other security related information, records, and documents shall be given protections from public disclosure consistent with similar information developed by chemical facilities subject to regulation under section 70103 of title 46, United States Code: *Provided*, That this subsection does not prohibit the sharing of such information, as the Secretary deems appropriate, with State and local government officials possessing the necessary security clearances, including law enforcement officials and first responders, for the purpose of carrying out this section, provided that such information may not be disclosed pursuant to any State or local law: *Provided further*, That in any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this section, and related vulnerability or security information, shall be treated as if the information were classified material.

[(d) Any person who violates an order issued under this section shall be liable for a civil penalty under section 70119(a) of title 46, United States Code: *Provided*, That nothing in this section confers upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this section.

[(e) The Secretary of Homeland Security shall audit and inspect chemical facilities for the purposes of determining compliance with the regulations issued pursuant to this section.

[(f) Nothing in this section shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.

[(g) If the Secretary determines that a chemical facility is not in compliance with this section, the Secretary shall provide the owner or operator with written notification (including a clear explanation of deficiencies in the vulnerability assessment and site security plan) and opportunity for consultation, and issue an order to comply by such date as the Secretary determines to be appropriate under the circumstances: *Provided*, That if the owner or operator continues to be in noncompliance, the Secretary may issue an order for the facility to cease operation, until the owner or operator complies with the order.

[(h) This section shall not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to chemical facility security that is more stringent than a regulation, requirement, or standard of performance issued under this section, or otherwise impair any right or jurisdiction of any State with respect to chemical facilities within that State, unless there is an actual conflict between this section and the law of that State.]

* * * * *

ADDITIONAL VIEWS

We, the undersigned Democratic Members of the Committee on Homeland Security, support the reauthorization of the Chemical Facility Anti-Terrorism Standards Act program, as administered by the Department of Homeland Security, and submit the following additional views.

BACKGROUND

As discussed in the report, with the enactment of section 550 of the Department of Homeland Security (DHS) Appropriations Act, 2007 (P.L. 109–295), Congress granted DHS, for the first time, authority to issue regulations relating to the security of the Nation’s chemical sector. Section 550, however, expressly exempted certain facilities from the authorized Chemical Facility Anti-Terrorism Standards (CFATS) regulations, which were issued as interim final regulations on April 4, 2007. We would note that since enactment of the 2007 DHS Appropriations Act, the following categories of facilities have been explicitly exempted from the CFATS regulation: facilities that are regulated by the U.S. Coast Guard pursuant to the Maritime Transportation Security Act (MTSA); drinking water and wastewater treatment facilities (as defined by section 1401 of the Safe Drinking Water Act and section 212 of the Federal Water Pollution Control Act (commonly referred to as the “Clean Water Act”, respectively)); facilities owned or operated by the Departments of Defense and Energy; and certain facilities subject to regulation by the Nuclear Regulatory Commission (NRC).

Section 550 of the 2007 DHS Appropriations Act was enacted as a short-term grant of authority to allow DHS to begin moving forward with the design and publication of regulations for the chemical sector while congressional authorizers worked out policy and jurisdictional differences to pass comprehensive CFATS authorization legislation. For five years, enactment of comprehensive CFATS authorization legislation has been elusive. In the absence of a comprehensive CFATS bill, Congress has repeatedly extended the section 550 authority in appropriations bills. DHS’ authority to regulate security in the chemical sector is scheduled to expire at the end of Fiscal Year (FY) 2011 unless legislation to extend authority is enacted.

Committee Democrats have a longstanding record of supporting this novel regulation which, in recognition of the diversity of the chemical sector, sets forth a series of risk-based, performance-based standards that are to be met by facilities that hold threshold quantities of chemicals that would be of interest to terrorists. We would note that in the 110th Congress, then-Chairman Thompson was able to work effectively with the Committees on Energy and Commerce (then-Chairman Henry Waxman (D–CA)) and Transportation and Infrastructure (then-Chairman James Oberstar (D–MN))

to introduce comprehensive chemical security legislation. H.R. 2868, the “Chemical and Water Security Act of 2009,” was approved by the House on November 6, 2009 by a vote of 230 to 193. One of the key areas of distinctions between H.R. 2868 and prior attempts at enacting comprehensive CFATS legislation was with regards to the regulation of drinking water and wastewater facilities for security. Whereas the 109th and 110th Congress bills (H.R. 5695 and H.R. 5577 respectively) granted DHS regulatory authority over these facilities, H.R. 2868 granted regulatory authority for security to the Environmental Protection Agency (EPA), the existing regulator for the safety of drinking water and wastewater facilities. Subsequently, witnesses representing DHS and EPA testified in support of the regulatory approach in H.R. 2868.

This Congress, Cybersecurity, Infrastructure Protection, and Security Technologies (CIPST) Subcommittee Chairman Rep. Dan Lungren (R-CA) introduced H.R. 901, a bill largely modeled after the language carried in the 2007 DHS Appropriations Act. We would note that with the exception of H.R. 901, each comprehensive CFATS bill advanced by the Committee since 2006 has included provisions to close the water and wastewater security gap.

FULL COMMITTEE CONSIDERATION OF H.R. 901

On Wednesday, June 22, 2011, at the Full Committee mark up of H.R. 901, Democratic Members of the Committee on Homeland Security submitted twelve amendments to improve the underlying bill.

Committee Ranking Member Bennie G. Thompson (D-MS) offered an amendment in the nature of a substitute (Thompson substitute) that would have replaced the measure under consideration with a comprehensive authorization of the CFATS program. The Thompson Substitute was based on H.R. 2868, the only free-standing CFATS authorization bill to have been approved by the House. H.R. 2868, approved by the 111th Congress by a vote of 230 to 193, was the result of Committee oversight, years of bipartisan discussions, and extensive engagement of facility operators and other effected stakeholders. Like H.R. 2868, the Thompson Substitute sought to codify and enhance large sections of CFATS risk-based, performance-based regulation that has gained acceptance in Congress and the regulated community since 2007. Further, the Thompson Substitute also sought to leverage a recognized “best practice” in the chemical sector to “reduce the consequences of a terrorist attack” for facilities and their surrounding communities by conducting assessments as part of their Security Vulnerability Assessments. The Committee has received testimony that facilities which voluntarily perform these assessments, sometimes called “inherently safer technology” or “IST” assessments, often discover that reducing risk is not only good for homeland security but the business’ operations. Additionally, the amendment included provisions to protect whistleblowers, enhance worker security training, and allow citizens to bring actions against DHS in the event that DHS fails to enforce this security law. During consideration of this amendment, Committee Ranking Member Thompson argued that this substitute offered more predictability and protections to the regulated community than the underlying measure insofar as it

sets forth, with specificity, timelines, notification, and redress for the facilities. This amendment was defeated by a vote of 12 to 18.

We are pleased that, for the first time in the 112th Congress, amendments offered by Committee Democrats were accepted. Specifically, the following five amendments were accepted:

- An amendment, authored by Rep. Loretta Sanchez (D-CA), sought to provide greater transparency and predictability to owners and operators of regulated chemical facilities. Specifically, it required DHS, to the greatest extent practicable, to review and issue an approval or disapproval for any Security Vulnerability Assessment or Site Security Plan submitted by a facility operator within 180 days of receiving it. In the event that DHS disapproves a Security Vulnerability Assessment or Site Security Plan, the Department would be required to provide a written notification that, among other things, sets forth the deficiencies in the submission, not later than 14 days after the decision is made. To foster close adherence to these requirements, the amendment required the Department to report to Congress, on an annual basis, on the specific circumstances where it found that to meet the 180-day requirement would be impracticable. We would note that, at the time of the mark up, the Department had not approved a single Site Security Plan submitted by a regulated facility. This amendment was approved by voice vote.

- Two amendments, offered en bloc by Rep. Sheila Jackson Lee (D-TX), sought to foster a streamlining of chemical security regulatory activity at DHS and the leveraging of security enhancements by regulated facilities. The first amendment required the Secretary of Homeland Security to report on the progress of efforts to harmonize the CFATS program with the Maritime Security Transportation Act (MTSA) program, as administered by Coast Guard. The second amendment directed DHS, in any CFATS rule governing personnel surety, to set forth how a facility can meet the requirements, in whole or in part, by submitting: (1) information on employees with valid Transportation Worker Identification Credentials; (2) information on compliance with an alternate security background check, including those undertaken by a non-profit personnel surety accrediting organization; and (3) information on compliance with a personnel surety requirement under another law. Both amendments are predicated on the view that, wherever possible, facilities should not be subjected to redundant or even conflicting requirements. We believe that the second amendment, in particular, has the potential of resulting in a savings of time and money for facility operators and their workers. These amendments were approved by voice vote.

- By a recorded vote of 28 to 2, the Committee approved an amendment, authored by Rep. Danny K. Davis (D-IL), that required DHS to report to Congress within one year of enactment of this measure and annually thereafter on: (1) the estimated impact on employment of the CFATS regulations; and (2) any information from regulated facilities on how the CFATS regulation could be revised to foster job growth or prevent job losses. As the national unemployment rate remains stubbornly high, we believe that it is important that DHS be aware of what impact the implementation of

this regulation could have on the workers and the operations of the regulated facilities.

- An amendment, offered by Rep. Kathleen Hochul (D–NY), required DHS to provide technical assistance to any facility that qualifies as a small business concern under the Small Business Act and requests such assistance to meet the requirements of this novel regulatory program. This amendment acknowledges the fact that not all chemical facilities have the in-house resources or expertise to complete a Security Vulnerability Assessment or Site Security Plan. It also recognizes that producing a Security Vulnerability Assessment and Site Security Plan is often a complex and costly endeavor. We believe that small businesses, as the engine of our national economy, should not be forced to choose between hiring expensive consultants or adding to their workforce. This amendment was approved by a vote of 29 to 1.

Committee Democrats offered six other amendments at the Full Committee mark up. We are disappointed that none of those amendments, as discussed herein, were accepted:

- CIPST Subcommittee Ranking Member Clarke (D–NY) offered two amendments to shorten the length of authorization for the CFATS program from seven years. The first amendment would have shortened the authorization period from 2018 to 2013; it was defeated by voice vote. The second amendment would have shortened the authorization period from 2018 to 2016; it was rejected by a vote of 11 to 18. At the mark up, we expressed the view that it would be imprudent to authorize the CFATS program for seven years when the program has not been fully implemented, the inspector workforce is not fully in place, and not even one facility has received final approval from DHS on its Site Security Plan. While we commend the Department for taking swift action to establish the program, we recognize that the CFATS program is not yet mature and, as such, DHS has experienced some missteps.¹ We believe that the establishment of a regular rhythm of reauthorization is critical to the program's success. Through such a process, Congress can effectuate its oversight findings and adjust programmatic resources, as needed. We would also note that both amendments would have significantly lowered the total cost of the legislation.

- Committee Ranking Member Thompson offered an amendment that would have eliminated most of the exemptions established under section 550 of the 2007 DHS Appropriations Act. In the case of drinking water and wastewater facilities, the EPA would be responsible for establishing a parallel security program to DHS's CFATS program, and, in the case of facilities regulated by the Nuclear Regulatory Commission and Coast Guard, the responsibility for issuing parallel security regulations would be delegated to the Nuclear Regulatory Commission and the Coast Guard, respectively. This amendment, which would have addressed the water and

¹For instance, just prior to the June 22nd mark up, the Committee was informed by DHS that anomalies surrounding the assessment tool used for designating facilities on risk-based tiers had been detected. Subsequently, DHS reevaluated about 10% of the regulated population and determined, ultimately, that all the effected facilities were in proper tiers, would be placed in a lower tier, or, in the case of roughly 100 facilities, were found to have insufficient risk to be regulated under the program. Previously, DHS determined that it had provided wages to a number of CFATS inspectors, deployed around the Nation, at an incorrect rate.

wastewater security gap and brought other at-risk facilities under parallel security systems, was rejected by a vote of 9 to 15.

- Emergency Preparedness, Response, and Communications (EPRC) Subcommittee Ranking Member Laura Richardson (D-CA) offered an amendment that would have directed DHS to establish a process for whistleblowers at chemical facilities to keep their identities confidential. It would have prohibited chemical facility owners and operators from retaliating against an employee who discloses violations of the CFATS regulations, testifies before the government, or refuses to participate in activities they reasonably believe violate the law, after notifying their employer. It also outlined a procedure for whistleblowers to file a complaint if they allege they have experienced discrimination based upon their whistleblower activities. We believe that the men and women who work in the chemical sector have special knowledge which is critical to the identification of security vulnerabilities within their facilities. We believe that it is imperative employees are protected, should they report violations or vulnerabilities through appropriate channels. This amendment was rejected by a vote of 11 to 16.

- CIPST Subcommittee Ranking Member Clarke (D-NY) offered an amendment that would have authorized the Office of Chemical Facility Inspections. It also included specifications on the qualifications and the selection process for this program office's director. Every CFATS authorization bill advanced by the Committee since 2006 has specifically authorized this office to ensure that the program could be managed effectively and efficiently. We believe this amendment would have enhanced this Committee's oversight capabilities and accountability for this program office; we would note that this program office has been in operation since the 2007 DHS Appropriation Act and is referred to as "Infrastructure Security Compliance Division." We recognize that the CFATS program cannot run itself and is in need of a standing program office to provide day-to-day administrative leadership and resources to implement this novel program. This amendment was rejected by a vote of 11 to 18.

- Rep. Hansen Clarke (D-MI) authored three amendments to improve the underlying bill. The first amendment directed DHS to establish personnel surety regulations for facilities that provide worker protections. Specifically, the amendment set forth the scope of the background check and directed DHS to require facilities to establish redress and reconsideration processes for employees who are subject to adverse employment actions, as a result of a CFATS-required background check. The amendment also sought to restrict the use and maintenance of information gathered in these background investigations. This amendment was rejected by a vote of 12 to 18.

- The second amendment offered by Rep. Clarke (D-MI) would have directed the President to delegate to the EPA the authority to issue CFATS regulations for drinking water and wastewater facilities and directed the EPA to provide technical assistance to any affected facilities. We recognize that many water and wastewater facilities are owned and operated by public authorities and, therefore, they may have limited resources to comply with the CFATS regulation. The water and wastewater security gap has been of

major concern to DHS under both the Bush and Obama Administrations. In fact, after enactment of section 550, then-DHS Secretary Michael Chertoff was among the first to acknowledge the water and wastewater security gap when, speaking at the 2007 Chemical Sector Security Summit, he stated “[A]s comprehensive as we’re trying to be, there remains one gap in our system of regulation, and that has to do with certain kinds of chemicals that are held at water treatment plants and wastewater plants.”² This amendment was rejected by a vote of 11 to 19.

- The third amendment offered by Rep. Clarke (D–MI) would have directed DHS to consult with the EPA in establishing chemical facilities anti-terrorism standards regulations on various subjects, including which substances should be designated as substances of concern, methods to reduce the consequences of terrorist attacks and how to minimize paperwork for overlapping issues. We believe that this amendment would have helped foster greater collaboration between DHS and EPA, in furtherance of a more secure Nation. This amendment was rejected by a vote of 12 to 18.

SUBCOMMITTEE CONSIDERATION OF H.R. 901

On April 14, 2011, during consideration of H.R. 901 by the CIPST Subcommittee, Committee Democrats offered three targeted amendments to improve the underlying measure. All three were rejected. They are as follows:

- An amendment, offered by CIPST Subcommittee Ranking Member Clarke (D–NY), to close the drinking water and wastewater security gap created by the 2007 DHS Appropriations Act and require that the regulatory authority over these facilities be delegated to the EPA. We would note that at that mark up, CIPST Subcommittee Chairman Lungren, after stating his opposition to this amendment, explained that he remains concerned that there may be security gaps with respect to the water and wastewater sectors and pledged to hold specific hearings on this security risk and, if necessary, work with CIPST Subcommittee Ranking Member Clarke on future legislation to address this matter.

- An amendment, offered by EPRC Subcommittee Ranking Member Richardson (D–CA), to require facilities deemed to be highest risk to undertake product safety reviews, an industry best practice according to testimony received by the Committee.

²Michael Chertoff, DHS Secretary, speaking before the 2007 Chemical Sector Security Summit, June 12, 2007 @ http://www.dhs.gov/xnews/speeches/sp_1181830119723.shtm.

- An amendment, offered by Rep. Cedric Richmond (D-LA), to ensure that each facility that is required to undertake a Security Vulnerability Assessment and Site Security Plan includes employees in the development of these critical documents. We believe that the participation of on-the-ground employees will help make facility submissions more comprehensive and responsive to the security risks at that facility.

BENNIE G. THOMPSON.
LORETTA SANCHEZ.
SHEILA JACKSON LEE.
HENRY CUELLAR.
YVETTE D. CLARKE.
LAURA RICHARDSON.
DANNY K. DAVIS.
BRIAN HIGGINS.
JACKIE SPEIER.
CEDRIC L. RICHMOND.
HANSEN CLARKE.
WILLIAM R. KEATING.
KATHLEEN C. HOCHUL.

