

Calendar No. 194

112TH CONGRESS }
1st Session }

SENATE

{ REPORT
112-90

CONTINUING CHEMICAL FACILITIES
ANTITERRORISM SECURITY ACT OF 2011

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 473

TO EXTEND THE CHEMICAL FACILITY SECURITY PROGRAM OF
THE DEPARTMENT OF HOMELAND SECURITY, AND FOR OTHER
PURPOSES



OCTOBER 20, 2011.—Ordered to be printed

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OCTOBER 20, 2011.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 473]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 473) to extend the chemical facility security program of the Department of Homeland Security, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill do pass.

CONTENTS

	Page
I. Purpose and Summary	1
II. Background and Need for the Legislation	2
III. Legislative History	3
IV. Section-by-Section Analysis	4
V. Evaluation of Regulatory Impact	5
VI. Congressional Budget Office Cost Estimate	5
VII. Changes to Existing Law Made by the Bill, as Reported	8

I. PURPOSE AND SUMMARY

The purpose of S. 473 is to reauthorize the Department of Homeland Security's Chemical Facility Anti-Terrorism Standards (CFATS), which regulates security at high-risk facilities that make or use hazardous chemicals. Thousands of such facilities exist in the United States, and a successful terrorist attack on any of them could cause extensive harm. The CFATS program requires these high-risk facilities to design and implement site security plans to deter or prevent such attacks, and to respond more effectively if an attack does occur. As reported by the Committee, S. 473 would extend the program until October 4, 2014, and add several voluntary features to the program.

II. BACKGROUND AND NEED FOR LEGISLATION

In the aftermath of the September 11, 2001 terrorist attacks, security experts and policymakers focused on the potential threat posed by thousands of facilities that make or use hazardous chemicals. A myriad of civic and industrial operations—including water purification, pharmaceutical production, oil refining and more—incorporate hazardous chemicals into their activities. Many of these facilities already faced environmental and safety regulations, but prior to the CFATS program they did not face any federal security program aimed at preventing and deterring a deliberate attack seeking to exploit the toxicity of such chemicals. Various expert reports and planning scenarios estimate that tens of thousands of people could be killed or hurt by a successful attack on certain high-risk chemical facilities.

Early legislative proposals to regulate chemical site security did not advance in the years immediately following the 9/11 attacks.

In the 109th Congress, this Committee held numerous hearings on chemical site security that underscored the need for a federal program.¹ Witnesses from the Bush Administration, the U.S. Chemical Safety and Hazard Investigation Board, the Government Accountability Office and elsewhere testified that chemical facilities present unique and potentially devastating security risks, and that voluntary efforts to secure them were not sufficient.² In 2006, the Committee approved a bill, S. 2145 (S. Rept. 109-332) to create a chemical site security program at the Department of Homeland Security (DHS).³ While that particular bill was not considered by the full Senate, Congress later that year included an authorization for a DHS-led chemical security program in the Fiscal Year 2007 appropriations bill for the Department of Homeland Security.⁴ DHS issued rules for the program on April 9, 2007, which became effective on June 9, 2007, and the program has remained underway since.⁵

That program, known as the Chemical Facility Anti-terrorism Standards or CFATS, is underway. The original authorization included a 3-year sunset that would have terminated the program on October 4, 2009. The program has since been extended on a series of appropriations bills.⁶ President Obama has requested additional

¹Chemical Attack on America: How Vulnerable Are We? Hearing Before the Senate Comm. On Homeland Security and Governmental Affairs, S.Hrg. 109-62; Is the Federal Government Doing Enough to Secure Chemical Facilities and Is More Authority Needed? Hearing Before the Senate Comm. On Homeland Security and Governmental Affairs, S. Hrg. 109-175; Chemical Facility Security: What is the Appropriate Federal Role? Hearing before the Senate Comm. On Homeland Security and Governmental Affairs, Parts I and II (S.Hrg. 109-382).

²S. Rept. 109-332, Report of the Committee on Homeland Security and Governmental Affairs of the United States Senate to Accompany S. 2145, pp.7-17.

³S. 2145 was introduced by Sens. Collins and Lieberman, with original cosponsors Sens. Coleman, Carper and Levin.

⁴The Homeland Security Appropriations Act, 2007, P.L. 109-295, Section 550 (6 U.S.C. 121 note)

⁵6 CFR Part 27 (April 9, 2007).

⁶The Department of Homeland Security Appropriations Act, 2010, P.L. 111-83, Section 550. A bill making continuing appropriations for portions of Fiscal Year 2011 further extended CFATS until December 3, 2010. Continuing Appropriations Act, 2011, P.L. 111-242, Section 124. A second bill making continuing appropriations for Fiscal Year 2011 extended the program until December 18, 2010. P.L. 111-290. A third bill making continuing appropriations for Fiscal Year 2011 extended the program until December 21, 2010. P.L. 111-317. A fourth bill making continuing appropriations for Fiscal Year 2011 extended the program until March 4, 2011. P.L. 111-322. A fifth bill making continuing appropriations for Fiscal Year 2011 extended the program until March 18, 2011. P.L. 112-4. A sixth bill making continuing appropriations for Fiscal Year 2011 extended the program until April 8, 2011. P.L. 112-6. A seventh bill making continuing appropriations for Fiscal Year 2011 extended the program until April 15, 2011. P.L.

one- and two-year extensions in his budget requests for Fiscal Year 2011 and Fiscal Year 2012, respectively.⁷

The CFATS program generally applies to any facility that possesses more than a threshold volume and concentration of certain dangerous chemicals. More than 40,000 facilities have completed “Top Screen” assessments to determine whether they fall under the program, and more than 7,000 have been preliminarily “screened into” the program by DHS.⁸ These facilities are reviewed for assignment to one of four risk tiers, with facilities in the riskiest tiers required to meet the most strenuous security requirements. As of October 2011, nearly 4,000 high-risk facilities had received final tiering decisions under the CFATS program.

While extensions of the sunset provision are sufficient to keep the CFATS program going, there is widespread interest, including within industry, in a permanent or more long-term authorization to add predictability and stability to the program. Some lawmakers and advocates would also like to expand or revise the existing program in certain respects.

During a business meeting on June 29, 2011, the Committee considered and voted to report S. 473. The bill effectively would preserve the existing CFATS program, subject to any future adjustments DHS might implement through regulations or other directives consistent with the existing statutory authorization in Section 550 of P.L. 109–295. The legislation also would add new provisions to enhance implementation of the existing program. S. 473 would create voluntary exercise and training programs to improve collaboration with the private sector and State and local officials. It would create a voluntary technical assistance program to allow DHS, at the request of an owner or operator of a covered facility, to provide non-binding assistance or recommendations on CFATS compliance or to otherwise reduce the risk or consequences of a potential attack on the facility. The Secretary also would be directed to establish a program to collect information on best practices and cost-effective technologies for implementing CFATS and the voluntary technical assistance program, and to voluntarily share such information with covered facilities, consistent with certain protections for sensitive or proprietary data. The bill would also create an advisory board to help DHS implement the voluntary technical assistance program and the CFATS program generally.

III. LEGISLATIVE HISTORY

S. 473 was introduced on March 3, 2011, by Senator Collins with Senators Pryor, Portman and Landrieu. The Committee considered S. 473 at its June 29, 2011, business meeting. Members adopted a technical amendment offered by Senator Collins, to correct certain dates in the bill, by voice vote. The bill as amended was then

112–8. An eighth bill making continuing appropriations for Fiscal Year 2011 extended the program until September 30, 2011. P.L. 112–10. A bill making continuing appropriations for Fiscal Year 2012 extended the program until October 4, 2011. P.L. 112–33. A second bill making continuing appropriations for Fiscal Year 2012 has extended the program until November 18, 2011. P.L. 112–36.

⁷The Budget of the United States Government, Fiscal Year 2011, Appendix, p.574. The Budget of the United States Government, Fiscal Year 2012, Appendix, p. 533 and p. 553.

⁸According to data supplied by DHS, hundreds of those facilities were subsequently able to “tier out” of the program due to clarifications in their submissions or voluntary modifications in their operations.

adopted 8–2, with Senators Lieberman, Carper, Pryor, Begich, Collins, Brown, Portman and Moran voting Yea and Senators Akaka and Coburn voting Nay. For the record only, Senators Levin, Landrieu, McCaskill, Tester and McCain voted Yea by proxy and Senators Johnson and Paul voted Nay by proxy.

IV. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section names the Act the “Continuing Chemical Facilities Antiterrorism Security Act of 2010.”

Section 2. Extension of Chemical Facilities Security Program

(a) This subsection extends the authorization for the Chemical Facilities Anti-Terrorism Standards, Section 550(b) of Homeland Security Appropriations Act, 2007 (6 U.S.C. 121 note), for three years until October 4, 2014.

(b) This subsection includes several enhancements to the existing CFATS program, which would expire when the underlying Section 550(b) authorities lapse: a voluntary chemical security training program; a voluntary chemical security exercise program; a voluntary technical assistance program; and creation of an advisory board to help implement the technical assistance program.

Voluntary Chemical Security Training Program—The legislation would direct the Administrator of the Federal Emergency Management Agency (FEMA), in coordination with the DHS Under Secretary for National Protection and Programs (NPPD), to establish a voluntary training program to enhance the capabilities of high-risk chemical facilities to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual acts of terrorism, and natural and man-made disasters. The program should encompass governmental and private sector entities across multiple disciplines, and should be coordinated with training offered by other institutions.

Voluntary Chemical Security Exercise Program—The legislation also directs FEMA, in coordination with NPPD, to establish a voluntary exercise program to test and evaluate the capabilities of governmental and private sector entities to prevent, prepare for, mitigate against, respond to, and recover from an attack or disaster at facilities using hazardous chemicals. The program should include live exercises for high risk facilities, and should be assessed to establish best practices that can be shared with affected stakeholders.

Voluntary Technical Assistance Program—The legislation would direct the DHS Assistant Secretary for Infrastructure Protection, in coordination with the Under Secretary for Science and Technology, to create a voluntary technical assistance program to provide non-binding assistance or recommendations to facilities on measures to reduce the risk of or consequences from a potential attack on the facility, such as employing safer chemicals or processes. The program would receive at least \$5 million annually, to be drawn from the overall CFATS appropriation.

Advisory Board—The legislation would direct the Secretary of Homeland Security to establish a nine-member Chemical Facility Security Advisory Board to advise the Department on implementa-

tion of the CFATS program, including the voluntary technical assistance program created by this section. The board must include at least five owners or operators of a covered facility, at least two employees of such facilities, and two additional experts in the fields of chemistry, security, process design and engineering, and other related fields. This board would be established under section 871 of the Homeland Security Act, and would be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill. As indicated in the Congressional Budget Office cost estimate for this bill (included below), the bill as amended would extend an existing regulatory program with few changes and should not result in significant additional costs beyond the current costs of complying with the CFATS program.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 2011.

Hon. JOSEPH I. LIEBERMAN,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 473, the Continuing Chemical Facilities Antiterrorism Security Act of 2011.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Jason Wheelock and Daniel Hoople.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 473—Continuing Chemical Facilities Antiterrorism Security Act of 2011

Summary: S. 473 would extend through fiscal year 2014 the Department of Homeland Security's (DHS's) authority to regulate security at certain chemical facilities in the United States. Under this authority, which is set to expire in October of 2011, DHS operates the Chemical Facility Anti-Terrorism Standards (CFATS) program. The bill also would establish a technical assistance program to assist chemical facilities in complying with CFATS. Lastly, the bill would direct the Federal Emergency Management Agency (FEMA) to establish a training program and conduct exercises aimed at testing the ability of first responders and other entities to prevent and respond to acts of terrorism and natural disaster at chemical facilities.

CBO estimates that implementing S. 473 would cost about \$330 million over the 2012–2016 period, assuming appropriation of the specified and estimated amounts.

S. 473 could result in the collection of additional civil penalties, which are recorded as revenues and deposited in the U.S. 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.

S. 473 would extend intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on owners of public and private facilities where certain chemicals are present. Based on information from DHS and industry sources, CBO estimates that the aggregate cost of complying with the mandates would be small and 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).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 473 is shown in the following table. The costs of this legislation fall within budget functions 050 (national defense) and 450 (community and regional development).

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Chemical Facility Antiterrorism Standards Program:						
Estimated Authorization Level	91	92	94	0	0	277
Estimated Outlays	32	64	88	58	25	267
FEMA Chemical Security Programs:						
Estimated Authorization Level	15	15	15	0	0	45
Estimated Outlays	9	15	15	6	0	45
Voluntary Technical Assistance Program:						
Authorization Level	5	5	5	0	0	15
Estimated Outlays	2	4	5	3	1	15
Total Changes:						
Estimated Authorization Level	111	112	114	0	0	337
Estimated Outlays	43	83	108	67	26	327

Note: FEMA = Federal Emergency Management Agency.

Basis of estimate: For the purposes of this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2012, that the necessary amounts will be appropriated each year, and that outlays will follow historical patterns for existing and similar programs.

Chemical Facility Antiterrorism Standards Program

Section 2 would extend for three years DHS's authority under CFATS to regulate security at certain chemical facilities in the United States. Through 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 facilities' SSPs and their compliance with them.

In 2011, DHS received approximately \$90 million in appropriations for activities related to CFATS, with approximately \$30 million for salaries and benefits of federal employees and about \$60 million for program expenses. Based on this information, and after accounting for inflation, CBO anticipates that the program would require appropriations of \$91 million in 2012 and a total of \$277

million over the 2012–2014 period. Assuming appropriation of those amounts, CBO estimates that implementing this provision would cost \$267 million over the 2012–2016 period.

FEMA Chemical Security Programs

S. 473 would establish training and exercise programs within FEMA to improve and evaluate the capabilities of public and private entities to prevent, prepare for, respond to, and recover from a natural or man-made disaster or other emergency at a chemical facility. Under the bill, participation in both programs would be voluntary and periodic exercises would be directed at the highest-risk facilities. Assuming about 10 exercises per year and based on historical expenditures for similar preparedness programs, CBO estimates that those provisions would cost \$45 million over the 2012–2016 period.

Voluntary Technical Assistance Program

S. 473 would establish a technical assistance program through which DHS would provide assistance and recommendations to chemical facilities to enable such facilities to reduce the risk of and consequences from acts of terrorism. As part of the program, DHS would be required to develop a repository of information on effective practices for complying with CFATS. The bill would authorize the appropriation of \$5 million annually from 2012 to 2014. As a result, CBO estimates that implementing the program would cost \$15 million over the 2012–2016 period.

Chemical Facility Advisory Board

The bill would require that the Secretary of DHS establish a Chemical Facility Advisory Board. The board would consist of nine members, five of whom would be owners or operators of covered chemical facilities, two of whom would be employees of such facilities, and two of whom would be experts on topics related to the security of chemical facilities. The board, which would be authorized through fiscal year 2014, would advise the Secretary of DHS on the implementation of CFATS as well as the voluntary technical assistance program that would be established under S. 473. Based on the cost of other DHS advisory bodies, CBO estimates that implementing this provision would cost less than \$500,000 over the 2012–2016 period.

Pay-As-You-Go considerations: The Statutory-Pay-As-You-Go-Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Enacting S. 473 could result in the collection of additional civil penalties, which are recorded as revenues and deposited in the U.S. Treasury. 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.

Intergovernmental and private-sector impact: S. 473 would extend intergovernmental and private-sector mandates, as defined in UMRA, on owners and operators of public and private facilities where certain chemicals are present. Requirements on those owners and operators to assess the vulnerability of their facilities and to prepare and implement security plans would be mandates. The bill also would extend mandates that require owners and operators

of such facilities to maintain records, periodically submit reviews of the adequacy of the vulnerability assessments or facility security plans, and allow DHS access to their property for inspections and verifications. In addition, owners and operators would have to continue to conduct background checks on employees who have access to restricted areas, and provide training to employees. Based on information from DHS and industry sources, CBO estimates that the aggregate costs of complying with the mandates would be small and would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates. (\$71 million and \$142 million, respectively, in 2011, adjusted annually for inflation).

Previous CBO estimates: On July 6, 2011, CBO transmitted a cost estimate for H.R. 901, the Chemical Facility Anti-Terrorism Standards Act of 2011, as ordered reported by the House Committee on Homeland Security on June 22, 2011. CBO determined that H.R. 901 would extend the same mandates as S. 473.

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. CBO determined that H.R. 908 would extend the same mandates as S. 473.

CBO also determined that section 2(a) of S. 473 is similar to provisions of H.R. 901 and H.R. 908. The difference in estimated costs between the House and Senate provisions is primarily because of the difference in length of the authorizations.

Estimate prepared by: Federal costs: Jason Wheelock (CFATS) and Daniel Hoople (FEMA); Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Paige Piper/Bach.

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

VII. CHANGES TO EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 2868 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italics*, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 6—DOMESTIC SECURITY

CHAPTER 1—HOMELAND SECURITY ORGANIZATION

* * * * *

Subchapter II—Information Analysis and Infrastructure Protection

PART A—INFORMATION AND ANALYSIS AND INFRASTRUCTURE PROTECTION; ACCESS TO INFORMATION

SEC. 121. INFORMATION AND ANALYSIS AND INFRASTRUCTURE PROTECTION

* * * * *

REGULATIONS

Pub. L. 109–295, title V, Sec. 550, Oct. 4, 2006, 120 Stat. 1388, as amended by Pub. L. 110–161, div. E, title V, Sec. 534, Dec. 26, 2007, 121 Stat. 2075; Pub. L. 111–83, title V, Sec. 550, Oct. 28, 2009, 123 Stat. 2177, provided that:

“(a) * * *

“(b) Interim regulations issued under this section shall apply until the effective date of interim or final regulations promulgated under other laws that establish requirements and standards referred to in subsection (a) and expressly supersede this section: Provided, That the authority provided by this section shall terminate on **[October 4, 2011]** *October 4, 2014*.

* * * * *

TITLE XXI—CHEMICAL FACILITY SECURITY

“SEC. 2101. DEFINITIONS.

“In this title—

“(1) the term ‘Board’ means the Chemical Facility Security Advisory Board established under section 2105(a);

“(2) the term ‘Chemical Facility Anti-Terrorism Standards’ means the interim final regulations issued by the Secretary under section 550 of the Department of Homeland Security Appropriations Act, 2007 (6 U.S.C. 121 note); and

“(3) the term ‘covered chemical facility’ means a chemical facility subject to the Chemical Facility Anti-Terrorism Standards.

“SEC. 2102. CHEMICAL SECURITY TRAINING PROGRAM.

“(a) ESTABLISHMENT.—Acting through the Administrator of the Federal Emergency Management Agency and in coordination with the Under Secretary for National Protection and Programs, the Secretary shall establish a voluntary chemical security training program (referred to in this section as the ‘training program’) for the purpose of enhancing the capabilities of high-risk chemical facilities to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual acts of terrorism, natural disasters, and other man-made disasters.

“(b) REQUIREMENTS.—The training program shall provide validated voluntary training that—

“(1) reaches multiple disciplines, including Federal, State, and local government officials, commercial personnel and management, and governmental and nongovernmental emergency response providers;

“(2) provides training at the awareness, performance, and management and planning levels;

“(3) uses multiple training mediums and methods;

“(4) is coordinated with training provided by government training facilities, academic institutions, private organizations, and other entities that provide specialized, state-of-the-art training for governmental and nongovernmental emergency responder providers or commercial personnel and management;

“(5) uses, as appropriate, government training facilities, courses provided by community colleges, public safety academies, State and private universities, and other facilities;

“(6) is consistent with, and supports implementation of, the National Incident Management System, the National Response Framework, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, the National Maritime Transportation Security Plan, and other such national initiatives, and any successors thereto;

“(7) is evaluated against clear and consistent performance measures;

“(8) addresses security requirements under chemical facility security plans; and

“(9) educates, trains, and involves individuals in neighborhoods around chemical facilities on how to observe and report security risks.

“SEC. 2103. CHEMICAL SECURITY EXERCISE PROGRAM.

“(a) IN GENERAL.—Acting through the Administrator of the Federal Emergency Management Agency and in coordination with Under Secretary for National Protection and Programs, the Secretary shall develop a voluntary chemical security exercise program (referred to in this section as the ‘exercise program’) for the purpose of offering voluntary testing and evaluation of the capabilities of the Federal Government, State governments, commercial personnel and management, governmental and nongovernmental emergency response providers, the private sector, or any other organization or entity, as the Secretary determines to be appropriate, to prevent, prepare for, mitigate against, respond to, and recover from acts of terrorism, natural disasters, and other emergencies at chemical facilities.

“(b) REQUIREMENTS.—Under the exercise program, the Secretary shall conduct, on a periodic basis, voluntary joint security exercises at chemical facilities that are—

“(1) scaled and tailored to the needs of each chemical facility;

“(2) for the highest risk chemical facilities, as determined by the Secretary, live training exercises;

“(3) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences;

“(4) consistent with the National Incident Management System, the National Response Framework, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, the National Maritime Transportation Security Plan, and other such national initiatives, and any successors thereto;

“(5) evaluated against clear and consistent performance measures;

“(6) assessed to learn best practices, which shall be shared with appropriate Federal, State, and local officials, commercial personnel and management, governmental and nongovernmental emergency response providers, and the private sector;

“(7) followed by remedial action in response to lessons learned; and

“(8) designed to assist State and local governments and chemical facilities in designing, implementing, and evaluating exercises that—

“(A) conform to the requirements of this paragraph; and

“(B) are consistent with any applicable Buffer Zone Protection Plan, State homeland security plan, or urban area homeland security plan.

“SEC. 2104. VOLUNTARY TECHNICAL ASSISTANCE PROGRAM.

“(a) **ESTABLISHMENT.**—The Secretary, acting through the Assistant Secretary for Infrastructure Protection, in coordination with the Under Secretary for Science and Technology, and in consultation with the Board, shall establish a voluntary technical assistance program under which, upon request by the owner or operator of a covered chemical facility, and subject to the availability of resources at the Department, the Secretary may provide nonbinding assistance or recommendations to the owner or operator to—

“(1) reduce the risk or consequences associated with a successful act of terrorism against a covered chemical facility, including the reduction of risk or consequences—

“(A) sufficient to decrease the risk-based tier assigned to the covered chemical facility under the Chemical Facility Anti-Terrorism Standards; or

“(B) such that the covered chemical facility no longer presents a high level of security risk; or

“(2) aid in compliance with the risk based performance standards applicable to the covered chemical facility under the Chemical Facility Anti-Terrorism Standards.

“(b) **VOLUNTARY NATURE OF ASSISTANCE.**—

“(1) **IN GENERAL.**—The decision to—

“(A) participate in the voluntary technical assistance program under this section; or

“(B) implement any assistance or recommendations provided by the Secretary under this section, shall be at the sole discretion of the owner or operator of a covered chemical facility.

“(2) **NO REQUIRED ASSESSMENT.**—The Secretary may not require the owner or operator of a covered chemical facility to—

“(A) consider any assistance or recommendation provided under this section as part of a security vulnerability assessment under the Chemical Facility Anti-Terrorism Standards; or

“(B) assess, directly or indirectly, the costs, benefits, economic or technical feasibility, or practicality of implementing any assistance or recommendation provided under this section.

“(3) **SITE SECURITY PLAN REVIEW.**—If the site security plan for a covered chemical facility satisfies the risk-based performance standards applicable to the covered chemical facility under the

Chemical Facility Anti-Terrorism Standards, the Secretary may not disapprove the site security plan based on—

“(A) a decision by the owner or operator of a covered chemical facility not to—

“(i) participate in the voluntary technical assistance program under this section; or

“(ii) implement assistance or a recommendation provided by the Secretary under this section; or

“(B) the presence or absence of a particular security measure.

“(4) EFFECT ON TIERING.—At the request of the owner or operator of a covered chemical facility, the Secretary shall advise the owner or operator of the overall effect that implementing all categories of assistance or recommendations provided by the Secretary under this section would have on the determination by the Secretary—

“(A) of the placement of the covered chemical facility in a risk-based tier under the Chemical Facility Anti-Terrorism Standards; or

“(B) regarding whether the covered chemical facility would no longer present a high level of security risk.

“(5) CIVIL LIABILITY.—

“(A) IN GENERAL.—Subject to subparagraph (B), no action, or failure to act, by the owner or operator of a covered chemical facility relating to assistance or a recommendation provided by the Secretary under this section shall be interpreted, construed, implied, or applied to create any liability or cause of action for compensation for bodily injury, any other injury, or property damage to any person that may result from an act of terrorism or incident at the covered chemical facility.

“(B) ADDITIONAL OR INTERVENING ACTS OR OMISSIONS.—Subparagraph (A) shall not apply to any injury or damage caused by any additional or intervening act or omission of the owner or operator of a covered chemical facility.

“(C) RULE OF CONSTRUCTION.—Except as provided in this section, nothing in subparagraph (A) shall be construed to abrogate or limit any right, remedy, or authority that the Federal Government, any State or local government, or any entity or agency of the Federal Government or a State or local government may possess under any other provision of law.

“(c) BEST PRACTICES.—Subject to subsection (d), the Secretary shall develop a repository for information and data on best practices and cost-effective technologies for implementing the Chemical Facility Anti-Terrorism Standards and the voluntary technical assistance program under this section.

“(d) INFORMATION PROTECTION.—Any information obtained by the Secretary under the voluntary technical assistance program under this section or for purposes of subsection (c) shall—

“(1) to the extent that the information may reveal vulnerabilities or other details of the security capabilities of a covered chemical facility that may be exploited by terrorists, be protected as chemical-terrorism vulnerability information under the Chemical Facility Anti-Terrorism Standards; and

“(2) to the extent that the information may reveal trade secrets or commercial or financial information that is not customarily in the public domain, be protected as though the information was voluntarily shared critical infrastructure information under section 214, except that the requirement under section 214 that the information be voluntarily submitted, including the requirement for an express statement specified in section 214(a)(2), shall not apply to information obtained under this section.

“(e) **REPORT ON LESSONS LEARNED.**—Not later than October 4, 2013, the Secretary, in coordination with the Board, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report regarding lessons learned from the voluntary technical assistance program under this section.

“(f) **AVAILABILITY OF APPROPRIATIONS.**—Of the amounts made available for the Chemical Facility Anti-Terrorism Standards for each of fiscal years 2012 through 2014, not less than \$5,000,000 shall be made available for the provision of voluntary technical assistance under this section.

“**SEC. 2105. CHEMICAL FACILITY SECURITY ADVISORY BOARD.**

“(a) **ESTABLISHMENT.**—Not later than 90 days after the date of enactment of this section, the Secretary shall establish under section 871 a Chemical Facility Security Advisory Board.

“(b) **RESPONSIBILITIES.**—The Board shall advise the Secretary on the implementation of the Chemical Facility Anti-Terrorism Standards, including regarding the implementation of the voluntary technical assistance program under section 2104.

“(c) **MEMBERSHIP.**—There shall be 9 members of the Board, who shall be appointed by the Secretary and shall represent a geographic and substantive cross-section of the United States, including—

“(1) not less than 5 owners or operators of covered chemical facilities;

“(2) not less than 2 employees of covered chemical facilities with direct responsibility for process design and engineering, production and operations, or chemical process security, and

“(3) not less than 2 other experts in the fields of chemistry, security, process design and engineering, process controls and instrumentation, environmental health and safety, maintenance, production and operations, or chemical process security.

“(d) **TERM.**—The members of the Board shall be appointed for such terms as the Secretary may determine.

“(e) **APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Board.

“**SEC. 2106. AUTHORIZATION OF APPROPRIATIONS.**

“There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this title.”