

**CBRN INTELLIGENCE AND INFORMATION
SHARING ACT OF 2019**

R E P O R T

OF THE

**COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

TO ACCOMPANY

H.R. 1589

TO AMEND THE HOMELAND SECURITY ACT OF 2002 TO ESTABLISH CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR INTELLIGENCE AND INFORMATION SHARING FUNCTIONS OF THE OFFICE OF INTELLIGENCE AND ANALYSIS OF THE DEPARTMENT OF HOMELAND SECURITY AND TO REQUIRE DISSEMINATION OF INFORMATION ANALYZED BY THE DEPARTMENT TO ENTITIES WITH RESPONSIBILITIES RELATING TO HOMELAND SECURITY, AND FOR OTHER PURPOSES



MARCH 2, 2020.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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SENATE

{ REPORT
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CBRN INTELLIGENCE AND INFORMATION SHARING ACT
OF 2019

MARCH 2, 2020.—Ordered to be printed

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

R E P O R T

[To accompany H.R. 1589]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the Act (H.R. 1589), to amend the Homeland Security Act of 2002 to establish chemical, biological, radiological, and nuclear intelligence and information sharing functions of the Office of Intelligence and Analysis of the Department of Homeland Security and to require dissemination of information analyzed by the Department to entities with responsibilities relating to homeland security, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

H.R. 1589, the CBRN Intelligence and Information Sharing Act of 2019, requires the Department of Homeland Security (DHS) Office of Intelligence and Analysis (I&A) to coordinate analysis of chemical, biological, radiological, and nuclear (CBRN) threats

against the United States homeland and integrate the analysis with CBRN and global infectious disease threat vulnerability assessments. The Act directs I&A to leverage existing structures and offices within DHS to prevent, detect, and deter the unauthorized hostile use of CBRN devices and agents against the United States homeland.

The Act also requires I&A to properly coordinate with other DHS intelligence components, agencies, and offices involved in homeland security related CBRN defense activity in the analysis of the threat. In addition, I&A is required to disseminate this analysis and information to state and local governments and authorities. Finally, DHS is required to prepare a report on the activities carried out to accomplish the requirements of this Act, the activities taken to counter the threat from CBRN and global infectious disease, and the implementation status of the Act. The report is to be provided to Congress within one year of the enactment of this Act, and annually for five years.

II. BACKGROUND AND THE NEED FOR LEGISLATION

The threat posed by individuals, nation-states, and terrorists groups seeking to utilize illicit CBRN devices or agents against the United States homeland is increasing. Our nation's adversaries, including the Islamic State of Iraq and Syria (ISIS), are using CBRN weapons on the battlefield and aspire to use these weapons in more attacks.¹ According to Department of Defense (DOD) officials, Russia, China, North Korea, and Iran are at the forefront of the proliferation of CBRN attacks, especially as these nation-states move away from conventional warfare.² In July 2019, Andrew Kilianski, Chief Intelligence Officer with the Joint Program Executive Office for Chemical, Biological, Radiological and Nuclear Defense, DOD, highlighted the increased threat that nation-states posed, stating that, "What we've seen over the past few years is the norms around chemical and biological weapon use have been eroded almost completely."³ For instance, the 2018 chemical attack on former Russian double agent Sergei Skripal and his daughter using a nerve agent known as Novichok in the United Kingdom, provides an example of the increased proliferation of such attacks and the need to obtain the intelligence and information to mitigate these threats.⁴

In recognition of the increasing nature and severity of these threats, in 2018, the Administration released its National Strategy for Countering Weapons of Mass Destruction Terrorism and the National Biodefense Strategy, which highlight the risks and challenges posed by CBRN weapons and the Federal Government's efforts to mitigate these threats.⁵ Moreover, recent incidents per-

¹ Exec. Office of the President, National Strategy for Countering Weapons of Mass Destruction Terrorism, at 1 (Dec. 2018), https://www.whitehouse.gov/wp-content/uploads/2018/12/20181210_National-Strategy-for-Countering-WMD-Terrorism.pdf.

² Yasmin Tadjdeh, *CBRN Conference News: Defense Officials See Increased Threat from Chinese, Russian Chem-Bio Weapons*, National Defense (Jul. 23, 2019), <https://www.nationaldefensemagazine.org/articles/2019/7/23/defense-officials-see-increased-threat-from-chinese-russian-chembio-weapon>.

³ *Id.*

⁴ *Id.*

⁵ Exec. Office of the President, National Strategy for Countering Weapons of Mass Destruction Terrorism (Dec. 2018), https://www.whitehouse.gov/wp-content/uploads/2018/12/20181210_National-Strategy-for-Countering-WMD-Terrorism.pdf; Exec. Office of the President,

petrated by ISIS and near-peer adversaries are the reason why, according to one expert, it is a matter of if, not when, a CBRN attack will be used against the United States.⁶ The barrier to entry to obtain CBRN materials is low as materials become increasingly easier to move and serve a legitimate role in a number of industries.⁷ Naturally occurring biological threats, such as global infectious diseases, as well as agricultural and veterinarian borne threats also pose a significant risk to the United States.⁸ Addressing these threats requires coordinated analysis and communication of the risk posed by CBRN to the United States and its global interests abroad.⁹

DHS recognized the risk posed by the evolving nature of these threats and created the Countering Weapons of Mass Destruction Office (CWMD) to coordinate DHS strategy and policy to plan, detect, and protect against the importation, possession, storage, transportation, development, or use of unauthorized CBRN materials, devices, or agents.¹⁰ Recognizing the importance of the office, Congress codified it in 2018.¹¹ H.R. 1589 builds on Congress' initial legislation and the Department's efforts to protect the United States against CBRN threats.¹² This legislation strengthens I&A's ability to carry out its mission to drive intelligence and information sharing at national, foreign, and local level provide critical avenues for CWMD information sharing.¹³

H.R. 1589 requires the I&A to place appropriate focus on and strengthen the information sharing architecture to better understand and communicate the CBRN threat within the Department of Homeland Security and with State, local, and Tribal partners. The Act also requires I&A to work with the Intelligence Community and DHS components when analyzing CBRN threats, as well as other agencies and offices within DHS and the federal government to coordinate analysis of CBRN threats while using existing resources to plan for, detect, and protect against the unauthorized hostile use and transport of CBRN material. Full cooperation and coordination between DHS components and other federal agencies is imperative, and as such, the Committee directs I&A to ensure meaningful involvement in the coordination of analysis of CBRN threats and vulnerabilities.

National Biodefense Strategy (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/09/National-Biodefense-Strategy.pdf>.

⁶Tadjeh, *supra* note 2.

⁷U.S. Office of the Dir. of Nat'l Intelligence, Worldwide Threat Assessment of the US Intelligence Community, at 7 (Feb. 13, 2018) (Statement for the record of Daniel R. Coats, Director of National Intelligence), <https://www.dni.gov/files/documents/Newsroom/Testimonies/2018-ATA---Unclassified-SSCI.pdf>.

⁸Exec. Office of the President, National Biodefense Strategy at i (2018), <https://www.whitehouse.gov/wp-content/uploads/2018/09/National-Biodefense-Strategy.pdf>; *Threats to the Homeland: Hearing Before the S. Comm. on Homeland Sec. and Gov'l Affairs*, 116th Cong. (2019) (statement of David J. Glawe, Under Secretary, U.S. Dep't of Homeland Sec.), <https://www.hsgac.senate.gov/imo/media/doc/Testimony-Glawe-2019-11-05-REVISED1.pdf>.

⁹*Id.*

¹⁰Notice of Countering Weapons of Mass Destruction Office Reorganization Pursuant to Section 872 of the Homeland Security Act of 2002 from Elaine Duke, Acting Secretary, U.S. Dep't of Homeland Sec., to Ron Johnson, Chairman, S. Comm. on Homeland Sec. and Gov'l Affairs (Oct. 6, 2017) (on file with S. Comm. on Homeland Sec. and Gov'l Affairs).

¹¹Pub. L. 115-387 (2018).

¹²U.S. Dep't of Homeland Sec., *Counter Terrorism and Homeland Security Threats* (Nov. 8, 2019), <https://www.dhs.gov/counter-terrorism-and-homeland-security-threats>.

¹³U.S. Dep't of Homeland Sec., *Office of Intelligence and Analysis* (Aug. 16, 2019), <https://www.dhs.gov/office-intelligence-and-analysis> (last visited Nov. 13, 2019).

III. LEGISLATIVE HISTORY

Representative Mark Walker (R–NC) introduced H.R. 1589 on March 7, 2019. The House of Representatives passed the Act under suspension of the rules by voice vote on April 1, 2019. The Act was referred to the Senate Committee on Homeland Security and Governmental Affairs.

The Committee considered H.R. 1589 at a business meeting on November 6, 2019. Chairman Ron Johnson offered a substitute amendment requiring I&A to cooperate and coordinate all CBRN related analysis with the proper intelligence components as well as other department entities related to countering weapons of mass destruction such as the Countering Weapons of Mass Destruction Office, the Science and Technology Directorate, and the Cyber and Infrastructure Security Agency. The amendment also requires I&A to consider and analyze the full spectrum of CBRN threats and threat actors to the U.S. homeland.

The Committee adopted the Johnson Amendment by voice vote and the Act, as amended, was reported favorably by voice en bloc. Senators present were Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Sinema, and Rosen.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section establishes the short title of the bill as “CBRN Intelligence and Information Sharing Act of 2019.”

Section 2. Chemical, Biological, Radiological, and Nuclear intelligence and information sharing

This section requires the Secretary, acting through the Undersecretary for Intelligence and Analysis, to coordinate analysis of CBRN threats to national security as well as threats from global infectious disease, and food, agriculture, and veterinarian derived threats to public health. I&A is also required to ensure that the analysis required under this Act is integrated with assessments of the vulnerability of and risks to the people, territory, key resources, and critical infrastructure posed by CBRN material, devices, or agents.

I&A is required to coordinate these efforts with DHS intelligence components and with the CWMD Office, the Cybersecurity and Infrastructure Security Agency, the Science and Technology Directorate as well as state and local governments and authorities, including public health authorities. These components and entities are to provide information on optimal information and intelligence sharing practices.

The Act requires that DHS provide a report one year after enactment and of this Act and annually for five years outlining CBRN intelligence and information sharing under this Act. The report should include, among other things, information on activities carried out to counter CBRN threats, as well as threats from global infectious disease.

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 Act and determined that the Act will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the Act contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 11, 2019.

Hon. RON JOHNSON,
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 Department of Homeland Security Legislation.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

Department of Homeland Security Legislation			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on November 6, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = less than \$500,000; the table above applies to each act described below.			

On November 6, 2019, the Senate Committee on Homeland Security and Governmental Affairs ordered reported the following pieces of legislation:

- H.R. 495, the Federal Information Resource to Strengthen Ties with State and Local Law Enforcement Act of 2019, which would require the Department of Homeland Security (DHS) to

submit an annual report to the Congress on the department's efforts to coordinate activities and share information with state, local, and tribal law enforcement agencies;

- H.R. 1589, the CBRN Intelligence and Information Sharing Act of 2019, which would direct DHS to gather and analyze intelligence on terrorist threats involving chemical, biological, radiological, and nuclear (CBRN) materials and to share that information with federal, state, and local authorities; and

- H.R. 2066, the DHS Intelligence Rotational Assignment Program Act of 2019, which would authorize DHS to permit its intelligence analysts to participate in the department's in-house employee rotation program.

DHS is currently carrying out activities similar to those required by the acts listed above, and any new activities required under the legislation would not require substantial action by the department. Thus, CBO estimates that implementing each act would not have a significant cost; any spending would be subject to the availability of appropriated funds.

On April 23, 2019, CBO transmitted a cost estimate for H.R. 1589, the CBRN Intelligence and Information Sharing Act of 2019, as passed by the House of Representatives on April 1, 2019. The two versions of the legislation are similar and CBO's estimate of the budgetary effects for each version are the same.

The CBO staff contact for this estimate is Kim Cawley. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN 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 the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

* * * * *

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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

Sec. 1. * * *

* * * * *

Title II—Information Analysis

* * * * *

Sec. 210F. Chemical, biological, radiological, and nuclear intelligence and information sharing.

* * * * *

TITLE II—INFORMATION ANALYSIS

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SUBTITLE A—INFORMATION AND ANALYSIS; ACCESS TO INFORMATION

* * * * *

SEC. 210F. CHEMICAL, BIOLOGICAL, RADIOLOGICAL, AND NUCLEAR INTELLIGENCE AND INFORMATION SHARING.

(a) *IN GENERAL.*—The Secretary, acting through the Undersecretary for Intelligence and Analysis, and working with the intelligence components of the Department, shall—

(1) coordinate the analysis of the intentions, capabilities, and plans of individuals or organizations threatening or preparing to conduct attacks against the homeland (including key resources and critical infrastructure of the United States) involving the use of chemical, biological, radiological, or nuclear materials, devices, or agents;

(2) coordinate the analysis of threats to homeland security from global infectious disease and other food, agricultural, or veterinary threats to public health;

(3) ensure the integration of the analysis described in paragraphs (1) and (2) with assessments of the vulnerability of and risks to the people, territory, key resources, and critical infrastructure of the United States from chemical, biological, nuclear, and radiological materials, devices, or agents;

(4) leverage existing and emerging homeland security intelligence capabilities and structures to—

(A) plan for, detect, and protect against the importation, possession, storage, transportation, development, or use of unauthorized chemical, biological, radiological, or nuclear materials, devices, or agents in the United States; and

(B) protect against an attack using such materials, devices, or agents against the people, territory, or interests of the United States;

(5) share information and provide tailored analytical support on these threats to State, local, Tribal authorities and other Federal agencies, as appropriate; and

(6) perform other responsibilities, as assigned by the Secretary.

(b) *COORDINATION.*—Where appropriate, the Undersecretary for Intelligence and Analysis shall—

(1) coordinate with—

(A) other Departmental components, including the Countering Weapons of Mass Destruction Office, the Cybersecurity and Infrastructure Security Agency, the Science and Technology Directorate; and

(B) other Federal, State, local, and Tribal entities, including officials from high-threat urban areas, State and major urban area fusion centers, and local public health departments; and

(2) enable such components and entities to provide recommendations on—

(A) optimal information sharing mechanisms, including expeditious sharing of classified information; and

(B) how such components and entities can provide information to the Undersecretary and other components of the Department.

(c) DEFINITION.—In this section, the term ‘fusion center’ has the meaning given the term in section 210A.

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