

Union Calendar No. 427

116TH CONGRESS
2^D SESSION

H. R. 3256

[Report No. 116-341, Part I]

To amend the Homeland Security Act of 2002 to reauthorize and improve the Chemical Facility Anti-Terrorism Standards Program, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 2019

Mr. RICHMOND (for himself and Mr. THOMPSON of Mississippi) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 12, 2019

Reported from the Committee on Homeland Security with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

SEPTEMBER 21, 2020

Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on June 13, 2019]

A BILL

To amend the Homeland Security Act of 2002 to reauthorize and improve the Chemical Facility Anti-Terrorism Standards Program, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) *SHORT TITLE.*—*This Act may be cited as the “Pro-*
 5 *tecting and Securing Chemical Facilities from Terrorist At-*
 6 *tacks Act of 2019”.*

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

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Chemical Facility Anti-Terrorism Standards Program.

Sec. 4. Protection and sharing of information.

Sec. 5. Civil enforcement.

Sec. 6. Whistleblower protection.

Sec. 7. Chemical Security Advisory Committee.

Sec. 8. Implementation plan and report to Congress.

Sec. 9. Study on risks posed by excluded facilities.

Sec. 10. Study on feasibility of waiver program.

Sec. 11. Review of tiering methodology.

Sec. 12. Comptroller General reports.

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

Sec. 14. Regulations regarding specific products and mixtures containing chemi-
cals of interest.

Sec. 15. Voluntary program.

Sec. 16. Study on local emergency response capacity to respond to chemical secu-
rity incidents.

Sec. 17. Previously approved facilities.

Sec. 18. Termination.

9 **SEC. 2. DEFINITIONS.**

10 *Section 2101 of the Homeland Security Act of 2002*
 11 *(6 U.S.C. 621) is amended—*

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

14 (2) *in paragraph (5)—*

15 (A) *in subparagraph (A), by striking “that*
 16 *is in effect on the day before the date of enact-*

1 *ment of the Protecting and Securing Chemical*
2 *Facilities from Terrorist Attacks Act of 2014;”*
3 *and inserting “or this title”; and*

4 *(B) in subparagraph (B), by striking “that*
5 *is in effect on the day before the date of enact-*
6 *ment of the Protecting and Securing Chemical*
7 *Facilities from Terrorist Attacks Act of 2014;”*
8 *and inserting “or this title”;*

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

10 *(4) by redesignating paragraphs (9) through (14)*

11 *as paragraphs (6) through (11), respectively.*

12 **SEC. 3. CHEMICAL FACILITY ANTI-TERRORISM STANDARDS**

13 **PROGRAM.**

14 *(a) ADDITIONAL CFATS PROGRAM REQUIREMENT.—*

15 *Section 2102(a)(2) of such Act (6 U.S.C. 622) is amended—*

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

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

20 *(3) by adding at the end the following new sub-*
21 *paragraph:*

22 *“(E) verify information submitted by a cov-*
23 *ered chemical facility prior to assigning such fa-*
24 *cility a lower risk tier or determining that such*

1 *facility no longer presents a high level of security*
2 *risk.”.*

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

6 **“(2) EMPLOYEE CONSULTATION AND AWARE-**
7 **NESS.—**

8 **“(A) EMPLOYEE CONSULTATION REQUIRE-**
9 **MENT.—***A facility’s security vulnerability assess-*
10 *ment and site security plan shall be developed in*
11 *consultation with—*

12 *“(i) at least one facility employee, in*
13 *addition to the facility security officer or*
14 *other individual who serves as a point of*
15 *contact under section 27.230(a)(17) of title*
16 *6, Code of Federal Regulations, and the cor-*
17 *responding guidance issued under section*
18 *27.220(d) of such title, or any successor*
19 *thereto, who possesses relevant knowledge,*
20 *experience, training, or education per-*
21 *taining to matters of site security.*

22 *“(ii) in the case of a facility where fa-*
23 *cility employees are represented by a bar-*
24 *gaining agent, at least one employee rep-*
25 *resentative who—*

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

3 “(II) has relevant knowledge, ex-
4 perience, training, or education per-
5 taining to matters of site security.

6 “(B) RECORD OF EMPLOYEE CONSULTA-
7 TION.—A covered chemical facility shall main-
8 tain a written record of the employee consulta-
9 tion required by subparagraph (A), including a
10 record of—

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

14 “(ii) how often and when such con-
15 sultation took place;

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

18 “(iv) any recommendations that were
19 offered, accepted, or rejected as part of the
20 security vulnerability assessment or site se-
21 curity plan.

22 “(C) ACCESS TO EMPLOYEES.—Each owner
23 or operator of a covered chemical facility shall,
24 upon request, provide to an employee of the De-
25 partment engaged in carrying out audits and in-

1 *spections of such facility access to any employee*
2 *who participated in the development of the fa-*
3 *ility’s security vulnerability assessment and site*
4 *security plan.*

5 “(D) *EMPLOYEE AWARENESS.*—*The Sec-*
6 *retary shall produce a poster that a chemical fa-*
7 *ility of interest shall display in areas accessible*
8 *to facility employees to inform employees about*
9 *requirements under this title and the whistle-*
10 *blower protections provided under section 2105.”.*

11 *(c) SITE SECURITY PLANS.*—

12 *(1) DISAPPROVAL.*—*Subsection (c)(1)(B) of sec-*
13 *tion 2102 of such Act (6 U.S.C. 622) is amended—*

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

16 *(B) by amending clause (ii) to read as fol-*
17 *lows:*

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

20 *“(I) the plan fails to satisfy the*
21 *risk-based performance standards es-*
22 *tablished pursuant to subsection*
23 *(a)(2)(C); or*

24 *“(II) the plan fails to include the*
25 *name, organizational affiliation, and*

1 *phone number of a local emergency*
2 *manager or local emergency response*
3 *provider and a documented policy to*
4 *contact the local emergency manager or*
5 *local emergency response provider at*
6 *least annually regarding emergency re-*
7 *sponse plans at the facility.”.*

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

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

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

15 *“(B) confirm that the covered chemical fa-*
16 *ility has complied with the employee consulta-*
17 *tion requirements in paragraph (2) of subsection*
18 *(b), including by reviewing and recording com-*
19 *pliance with the record-keeping requirements*
20 *under subparagraph (B) of that paragraph.”.*

21 (d) *ELIMINATION OF EXPEDITED APPROVAL PRO-*
22 *GRAM.—Section 2102(c) of such Act (6 U.S.C. 622) is*
23 *amended by striking paragraph (4).*

24 (e) *AUDITS AND INSPECTIONS.—*

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

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

11 (A) in clause (i), by inserting “, or any suc-
12 cessor organization that implements the require-
13 ments of subsection (a)(2),” after “Department”;
14 and

15 (B) in clause (ii), by inserting “, or any
16 successor organization that implements the re-
17 quirements of subsection (a)(2),” after “Depart-
18 ment”.

19 (3) *STANDARDS FOR AUDITORS AND INSPEC-*
20 *TORS.*—Subparagraph (E) of such paragraph is
21 amended—

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

23 (i) by striking “The Secretary” and
24 inserting “For each individual responsible

1 *for carrying out audits or inspections on be-*
2 *half of the Secretary, the Secretary”;*

3 *(ii) by inserting “to ensure such indi-*
4 *viduals receive” before “the training”; and*

5 *(iii) by striking “and retraining of*
6 *each individual used by the Department as*
7 *an auditor or inspector, including each in-*
8 *dividual employed by the Department and*
9 *all nondepartmental or nongovernmental*
10 *personnel” and inserting “, continuing edu-*
11 *cation, and other professional development*
12 *tools necessary to carry out duties and re-*
13 *sponsibilities”; and*

14 *(B) in clause (i), by striking “require-*
15 *ments” and inserting “necessary to audit and*
16 *inspect compliance with all aspects of the risk-*
17 *based performance standards, including stand-*
18 *ards related to cybersecurity,”;*

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

21 *(D) by inserting after clause (v) the fol-*
22 *lowing new clause:*

23 *“(vi) the proper credential or certifi-*
24 *cation necessary to conduct inspections re-*
25 *lated to the cybersecurity standard.”.*

1 (4) *EMERGENCY RESPONSE PLANS.*—Such sub-
2 section is further amended by adding at the end the
3 following new paragraph:

4 “(4) *AUDIT OF EMERGENCY RESPONSE PLAN.*—
5 As part of the audit and inspection process under this
6 subsection, the Secretary shall annually confirm com-
7 pliance of a chemical facility with the requirements
8 under subsection (c)(1)(B)(ii)(II) including adherence
9 to the facility’s documented policy to contact the local
10 emergency manager or local emergency response pro-
11 vider at least annually regarding emergency response
12 plans at the facility under such subsection.”.

13 (f) *RISK ASSESSMENT.*—Section 2102(e) of such Act
14 (6 U.S.C. 622(e)) is amended—

15 (1) in paragraph (2)(B)—

16 (A) in the matter preceding clause (i), by
17 inserting “and other malicious acts” after “ter-
18 rorism”; and

19 (B) in clause (ii), by striking “severe eco-
20 nomic consequences and the potential loss of
21 human life in the event of the facility being sub-
22 ject to attack, compromise, infiltration, or ex-
23 ploitation by terrorists” and inserting “con-
24 sequences in event of the facility being subject to
25 attack, compromise, infiltration, or the exploi-

1 *tation of chemicals of interest by a terrorist or*
2 *other malicious actor”;*

3 *(2) in paragraph (3)—*

4 *(A) in subparagraph (A)—*

5 *(i) by redesignating clauses (i) and (ii)*
6 *as clauses (ii) and (iii), respectively;*

7 *(ii) by inserting before clause (ii), as*
8 *so redesignated, the following new clause (i):*

9 *“(i) the Secretary determines that a*
10 *chemical facility of interest does not present*
11 *a high level of security risk;”;* and

12 *(iii) in clause (iii), as so redesignated,*
13 *by inserting “or chemical facility of inter-*
14 *est” after “covered chemical facility”;*

15 *(B) in subparagraph (B)—*

16 *(i) by striking “information on” and*
17 *all that follows and inserting “information*
18 *on—”;* and

19 *(ii) by adding at the end the following*
20 *clauses:*

21 *“(i) how the Secretary confirmed the*
22 *information that was the basis for the*
23 *change or determination described in sub-*
24 *paragraph (A); and*

1 “(ii) actions taken or practices em-
2 ployed by the facility to reduce or remove
3 terrorism-related chemical security risks,
4 where applicable.”; and

5 (C) by adding at the end the following new
6 subparagraph:

7 “(C) *TREATMENT OF CERTAIN INFORMA-*
8 *TION.—For the purposes of subsection (a) of sec-*
9 *tion 2103—*

10 “(i) information described in subpara-
11 graph (B)(i) shall be given protections from
12 public disclosure under such subsection; and

13 “(ii) information described in subpara-
14 graph (B)(ii) shall not be given protections
15 from public disclosure under such sub-
16 section.”;

17 (3) by redesignating paragraph (4) as para-
18 graph (7);

19 (4) by inserting after paragraph (3) the fol-
20 lowing new paragraphs:

21 “(4) *SHARING INFORMATION WITH EMERGENCY*
22 *RESPONSE PROVIDERS.—*

23 “(A) *IN GENERAL.—The Secretary shall*
24 *make available to State, local, and regional fu-*
25 *sion centers (as that term is defined in section*

1 210A(j)(1) of this Act) and State and local gov-
2 ernment officials such information as the Sec-
3 retary determines necessary to ensure that emer-
4 gency response providers are prepared and pro-
5 vided with the situational awareness needed to
6 respond to security incidents at covered chemical
7 facilities.

8 “(B) *DISSEMINATION.*—The Secretary shall
9 disseminate information under subparagraph
10 (A) to individuals identified and entities de-
11 scribed in such subparagraph in a secure and ex-
12 peditious manner.

13 “(5) *PRACTICES THAT MAY REDUCE CHEMICAL*
14 *SECURITY RISKS.*—

15 “(A) *IN GENERAL.*—Based on the informa-
16 tion maintained under paragraph (3)(B)(ii) re-
17 garding actions taken or practices employed by
18 chemical facilities of interest to successfully re-
19 duce or remove terrorism-related chemical secu-
20 rity risks, the Secretary shall develop voluntary,
21 publicly available practices that could be used to
22 guide other facility owners and operators in pre-
23 venting, reducing, and mitigating chemical secu-
24 rity risks.

1 “(B) *TREATMENT OF SENSITIVE INFORMA-*
2 *TION.—In developing and disseminating prac-*
3 *tices under subparagraph (A), the Secretary*
4 *shall protect from public disclosure all informa-*
5 *tion described in section 2103(a).*

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

14 (5) *in paragraph (6), as redesignated by para-*
15 *graph (3) of this subsection—*

16 (A) *in subparagraph (B)(i)(I)—*

17 (i) *in item (aa), by striking “or” at*
18 *the end;*

19 (ii) *in item (bb), by striking “and”*
20 *and inserting “or”; and*

21 (iii) *by adding at the end the following*
22 *new item:*

23 “(cc) *determined that a*
24 *chemical facility of interest did*

1 *not present a high level of risk;*
2 *and”;*

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

5 *“(C) for the period beginning on the date*
6 *that is one year before the date of the enactment*
7 *of the Protecting and Securing Chemical Facili-*
8 *ties from Terrorist Attacks Act of 2019 and end-*
9 *ing on the date of the enactment of such Act, the*
10 *average length of time required to—*

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

14 *“(ii) ensure a facility has achieved full*
15 *implementation of planned security meas-*
16 *ures; and*

17 *“(iii) conduct a compliance inspection,*
18 *including the average length of time inspec-*
19 *tors spend on an individual compliance in-*
20 *spection;”;*

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

23 *(D) by redesignating subparagraph (F) as*
24 *subparagraph (I); and*

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

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

8 “(G) a detailed summary of practices iden-
9 tified and disseminated under such paragraph;

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

13 (g) *SPECIFIC PRODUCTS AND MIXTURES.*—Such sec-
14 tion (6 U.S.C. 622) is further amended by adding at the
15 end the following new subsection:

16 “(f) *SPECIFIC PRODUCTS AND MIXTURES CONTAINING*
17 *CHEMICALS OF INTEREST.*— The Secretary may exclude a
18 specific product or mixture that contains a chemical of in-
19 terest at or above the minimum concentration listed on Ap-
20 pendix A to part 27 of title 6, Code of Federal Regulations,
21 or any successor thereto, from any reporting requirements
22 under this section if the Secretary determines that the prod-
23 uct or mixture does not present a terrorism risk for which
24 the chemical of interest contained within the product or
25 mixture was included on Appendix A.”.

1 **SEC. 4. PROTECTION AND SHARING OF INFORMATION.**

2 *Section 2103 of the Homeland Security Act of 2002*
3 *(6 U.S.C. 623) is amended—*

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

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

7 *“(b) AUTHORIZED RECIPIENTS OF INFORMATION.—*

8 *The Secretary shall make available, upon request, informa-*
9 *tion protected pursuant to subsection (a) to the following*
10 *recipients:*

11 *“(1) State and local government officials, includ-*
12 *ing law enforcement and emergency response pro-*
13 *viders, with respect to information on any chemical*
14 *facility of interest within the jurisdiction of the offi-*
15 *cial, but only if such information may not be dis-*
16 *closed pursuant to any State or local law.*

17 *“(2) Members of Congress.*

18 *“(3) Members of the Chemical Security Advisory*
19 *Committee under section 2010, in the course of con-*
20 *ducting official duties and responsibilities as de-*
21 *scribed in such section.*

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

24 *“(c) INFORMATION DEVELOPED FOR OTHER PUR-*
25 *POSES.—Nothing in this section shall be construed to pro-*
26 *hibit a chemical facility of interest from disclosing informa-*

1 *tion that was not created solely for the purpose of meeting*
2 *the requirements of this title.”.*

3 **SEC. 5. CIVIL ENFORCEMENT.**

4 *Section 2104 of the Homeland Security Act of 2002*
5 *(6 U.S.C. 624) is amended—*

6 *(1) in subsection (a)(1)—*

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

10 *(B) in subparagraph (B), by striking “180*
11 *days” and inserting “30 days”;*

12 *(2) in subsection (b)(2), by inserting “section*
13 *2102(a)(2)(B) or any requirement issued by the Sec-*
14 *retary thereunder” after “comply with”;*

15 *(3) in subsection (c), by inserting “or other ma-*
16 *licious act” after “terrorist incident”; and*

17 *(4) in subsection (d), by inserting “, except as*
18 *provided in section 2105(a)(5) regarding whistle-*
19 *blower retaliation” before the period at the end.*

20 **SEC. 6. WHISTLEBLOWER PROTECTION.**

21 *Section 2105 of the Homeland Security Act of 2002*
22 *(6 U.S.C. 625) is amended—*

23 *(1) in subsection (a)—*

24 *(A) in paragraph (1), by striking “Not later*
25 *than 180 days after the date of enactment of the*

1 *Protecting and Securing Chemical Facilities*
2 *from Terrorist Attacks Act of 2014, the Sec-*
3 *retary” and inserting “The Secretary”;*

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

6 “(2) *CONFIDENTIALITY.*—

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

11 “(i) *the Secretary shall keep confiden-*
12 *tial the identity of and any identifying in-*
13 *formation relating to that individual; and*

14 “(ii) *any such report shall be subject to*
15 *the protections on information under section*
16 *2103 of this Act to the extent that the report*
17 *does not consist of publicly available infor-*
18 *mation.*

19 “(B) *NOTICE.*—*In a case in which it is nec-*
20 *essary to disclose the identity of or any identi-*
21 *fying information relating to an individual who*
22 *submits a report under paragraph (1) because it*
23 *is essential to investigate the information con-*
24 *tained in the report or because of compulsory*
25 *legal process, the Secretary shall provide timely*

1 *advance notice to the individual of such disclo-*
2 *sure.”;*

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

5 *“(3) RESPONSE TO REPORTS.—If a report sub-*
6 *mitted under paragraph (1) contains information*
7 *identifying the individual making the report, the Sec-*
8 *retary, or the designee of the Secretary shall, by not*
9 *later than 15 days after the date on which the report*
10 *is received, respond to the individual directly and ac-*
11 *knowledge receipt of the report.”;*

12 *(D) in paragraph (5)—*

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

15 *“(C) OPPORTUNITY FOR REVIEW.—In any*
16 *action under paragraph (4) that is based on in-*
17 *formation received under the procedure estab-*
18 *lished under paragraph (1), the Secretary shall*
19 *provide for review of the action if a petition for*
20 *review is filed within 20 calendar days of the*
21 *date of issuance of the order for the action.”;*

22 *(ii) in subparagraph (D)—*

23 *(I) by striking “unless the Sec-*
24 *retary determines” and inserting “, ex-*
25 *cept that the Secretary may provide for*

1 a 30-day extension if the Secretary de-
2 termines”;

3 (II) by striking “that the viola-
4 tion providing a basis for the action
5 continues to exist.” and inserting
6 “that—”; and

7 (III) by adding at the end the fol-
8 lowing new clauses:

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

11 “(ii) such period is insufficient to com-
12 plete the review of the action.”; and

13 (E) in paragraph (6)—

14 (i) in subparagraph (A), by striking
15 “discharge an employee or otherwise dis-
16 criminate against an employee with respect
17 to the compensation provided to, or terms,
18 conditions, or privileges of the employment
19 of, the employee because the employee (or an
20 individual acting pursuant to a request of
21 the employee) submitted a report under
22 paragraph (1).” and inserting “discharge
23 an employee or otherwise discriminate
24 against an employee or former employee
25 with respect to the compensation provided

1 to, or terms, conditions, or privileges associ-
2 ated with current or past employment of,
3 the employee or former employee because the
4 employee or former employee (or an indi-
5 vidual acting pursuant to a request of the
6 employee or former employee) submitted a
7 report under paragraph (1).”; and

8 (ii) in subparagraph (B), in the mat-
9 ter preceding clause (i), by—

10 (I) inserting “or former em-
11 ployee” after “An employee”; and

12 (II) inserting “or former employee
13 (or an individual acting pursuant to a
14 request of the employee or former em-
15 ployee)” after “the employee”; and

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

18 “(C) *PROCEDURE AND REMEDY.*—

19 “(i) *IN GENERAL.*—The Secretary shall
20 establish a procedure for the review and in-
21 vestigation of complaints of reprisals pro-
22 hibited under subparagraph (A) and for
23 remedies for violations of such subpara-
24 graph.

1 “(i) *JUDICIAL REMEDIES.*—*Nothing*
2 *in this title shall be construed to deny an*
3 *individual who submits a complaint for*
4 *any reprisal prohibited under subparagraph*
5 *(A) from seeking a judicial remedy against*
6 *the owner or operator of the chemical facil-*
7 *ity of interest as long as the individual has*
8 *exhausted administrative remedies.”; and*
9 (2) *by striking subsection (d).*

10 **SEC. 7. CHEMICAL SECURITY ADVISORY COMMITTEE.**

11 (a) *IN GENERAL.*—*Title XXI of the Homeland Secu-*
12 *rity Act of 2002 (6 U.S.C. 621 et seq.) is amended by add-*
13 *ing at the end the following new section:*

14 **“SEC. 2110. CHEMICAL SECURITY ADVISORY COMMITTEE.**

15 “(a) *ESTABLISHMENT.*—*The Secretary shall establish*
16 *a standing Chemical Security Advisory Committee to ad-*
17 *vis the Secretary on the implementation of this title.*

18 “(b) *MEMBERSHIP.*—

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

24 “(A) *Industry.*

25 “(B) *Academia.*

1 “(C) *Labor.*

2 “(D) *Emergency response providers.*

3 “(E) *Local emergency planners.*

4 “(F) *Environmental, community, or public*
5 *health advocates, particularly for communities*
6 *with high concentrations of covered chemical fa-*
7 *cilities.*

8 “(G) *Cybersecurity and information policy.*

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

12 “(3) *CHAIR.—The Committee shall have a chair,*
13 *who shall be selected by the members of the Com-*
14 *mittee.*

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

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

19 “(c) *SUBCOMMITTEES.—The Advisory Committee may*
20 *establish subcommittees to assesses and recommend im-*
21 *provements to the risk tiering methodology for chemical fa-*
22 *cilities, the risk-based performance standards for chemical*
23 *facilities, risk reduction strategies, and other aspects of the*
24 *program under this title as the Secretary determines appro-*
25 *priate.*

1 “(d) *INFORMATION PROTECTION.*—*Members of Advi-*
2 *sory Committee shall maintain information protections*
3 *pursuant to section 2103 of this Act. Any member who needs*
4 *to access classified information to carry out assessments*
5 *and recommendations for improving the risk tiering meth-*
6 *odology for chemical facilities shall have an appropriate se-*
7 *curity clearance.*

8 “(e) *ANNUAL REPORT.*—

9 “(1) *SUBMISSION TO THE SECRETARY.*—*Not*
10 *later than January 30 each year, the chair shall sub-*
11 *mit to the Secretary a report on the activities of the*
12 *Committee during the year preceding the year during*
13 *which the report is submitted.*

14 “(2) *SUBMISSION TO CONGRESS.*—*Not later than*
15 *45 days after receiving a report from the Advisory*
16 *Committee under paragraph (1), the Secretary shall*
17 *provide to the Committees on Homeland Security and*
18 *Energy and Commerce of the House of Representa-*
19 *tives and the Committee on Homeland Security and*
20 *Governmental Affairs of the Senate a copy of the re-*
21 *port together with any Secretarial feedback on the re-*
22 *port.*

23 “(f) *APPLICABILITY OF FACCA.*—*The Federal Advisory*
24 *Committee Act (5 U.S.C. App.) shall not apply to the Com-*
25 *mittee established under this section.”.*

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

 “2110. *Chemical Security Advisory Committee.*”.

4 **SEC. 8. IMPLEMENTATION PLAN AND REPORT TO CON-**
5 **GRESS.**

6 (a) *IMPLEMENTATION PLAN.*—*Not later than 120 days*
7 *after the date of the enactment of this Act, the Secretary*
8 *of Homeland Security shall develop, and submit to Con-*
9 *gress, an implementation plan outlining how the Secretary*
10 *plans to—*

11 (1) *aggregate, anonymize, and analyze data col-*
12 *lected from covered chemical facilities or chemical fa-*
13 *cilities of interest to identify practices that such fa-*
14 *cilities have employed to successfully reduce or remove*
15 *terrorism-related chemical security risks;*

16 (2) *develop voluntary, publicly available, prac-*
17 *tices based on such data, which may be updated as*
18 *necessary, to guide facility owners and operators in*
19 *preventing, reducing, and managing security risks;*
20 *and*

21 (3) *disseminate such practices to chemical facil-*
22 *ity owners and operators through an appropriate me-*
23 *dium or system, including by making such practices*
24 *available to the public to the greatest extent prac-*
25 *ticable.*

1 (b) *REPORT.*—

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

10 (2) *ANNUAL UPDATES.*—Not later than one year
11 after the submission of the report required under
12 paragraph (1), and annually thereafter, the Secretary
13 shall submit to Congress information on changes to
14 the voluntary practices information disseminated and
15 bases for such changes, information on feedback col-
16 lected from facility owners and operators regarding
17 the extent to which voluntary practices were adopted,
18 and information on what impact the dissemination of
19 voluntary practices have had on the effectiveness of
20 the program.

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

22 (a) *STUDY REQUIRED.*—The Secretary of Homeland
23 Security shall enter into an agreement with a non-Depart-
24 ment of Homeland Security entity for the conduct of an
25 independent assessment of—

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

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

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

11 (b) *REPORT TO CONGRESS.*—*Not later than 16 months*
12 *after entering into an agreement under subsection (a), the*
13 *Secretary of Homeland Security shall submit to the appro-*
14 *priate congressional committees a report that includes the*
15 *findings and recommendations of the independent assess-*
16 *ment required by subsection (a).*

17 (c) *APPROPRIATE CONGRESSIONAL COMMITTEES.*—*In*
18 *this section, the term “appropriate congressional commit-*
19 *tees” means—*

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

22 (2) *the Committee on Homeland Security and*
23 *the Committee on Energy and Commerce of the House*
24 *of Representatives.*

1 **SEC. 10. STUDY ON FEASIBILITY OF WAIVER PROGRAM.**

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

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

12 (2) *the facility is in full and complete compli-*
13 *ance with such other Federal regulatory program, as*
14 *shown through timely scheduled inspections, audits,*
15 *and other supporting evidence; and*

16 (3) *the facility has not, during the five-year pe-*
17 *riod preceding the date on which a waiver is re-*
18 *quested, been subject to an enforcement action brought*
19 *by the Federal regulator overseeing such regulatory*
20 *program or been found to be noncompliant with any*
21 *aspect of such regulatory program.*

22 (b) *REPORT TO CONGRESS.*—*Not later than two years*
23 *after the date of the enactment of this Act, the Secretary*
24 *of Homeland Security shall submit to the appropriate con-*
25 *gressional committees a report that includes detailed find-*
26 *ings regarding the establishment of the process described in*

1 subsection (a) and, if appropriate, recommendations for im-
2 plementation.

3 (c) *APPROPRIATE CONGRESSIONAL COMMITTEES.*—In
4 this section, the term “appropriate congressional commit-
5 tees” means—

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

8 (2) *the Committee on Homeland Security and*
9 *the Committee on Energy and Commerce of the House*
10 *of Representatives.*

11 **SEC. 11. REVIEW OF TIERING METHODOLOGY.**

12 (a) *REVIEW REQUIRED.*—The Director of the Cyberse-
13 *curity and Infrastructure Security Agency shall—*

14 (1) *conduct a review of the risk assessment ap-*
15 *proach and corresponding tiering methodology for*
16 *covered chemical facilities required pursuant to sec-*
17 *tion 2102(e)(2) of the Homeland Security Act of*
18 *2002, as amended by this Act, and assess the extent*
19 *to which the approach and tiering methodology takes*
20 *into account—*

21 (A) *the nature of the area surrounding the*
22 *chemical facility, the presence of nearby facilities*
23 *or other critical infrastructure, and other fea-*
24 *tures of the community that could contribute to*

1 *the consequences of a terrorist attack or exploi-*
2 *tation of chemicals of interest;*

3 *(B) the potential effects on the health and*
4 *economic conditions of communities dispropor-*
5 *tionately vulnerable to the consequences of a ter-*
6 *rorist attack or exploitation of chemicals of in-*
7 *terest; and*

8 *(C) the vulnerabilities of chemical facilities*
9 *to cybersecurity threats, including the*
10 *vulnerabilities of facilities' information tech-*
11 *nology and operational technology and the im-*
12 *plications on the potential for penetration of*
13 *both the physical security and cybersecurity of*
14 *facilities; and*

15 *(2) based on the review under paragraph (1), de-*
16 *velop a plan to ensure that when the tiering method-*
17 *ology is next updated, the nature of the surrounding*
18 *area, the presence of nearby facilities or other critical*
19 *infrastructure, and other features of the community*
20 *that could contribute to the consequences of a terrorist*
21 *attack or exploitation of chemicals of interest and im-*
22 *pacts on communities disproportionately vulnerable*
23 *to the consequences of a terrorist attack or exploi-*
24 *tation of chemicals of interest are considered.*

25 *(b) REPORT TO CONGRESS.—*

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

6 (2) *SUBMITTAL OF PLAN.*— Not later than one
7 year after submitting the report under paragraph (1),
8 the Director shall submit to the appropriate congres-
9 sional committees the tiering methodology plan re-
10 quired under subsection (a)(2).

11 (3) *APPROPRIATE CONGRESSIONAL COMMIT-*
12 *TEES.*—In this section, the term “appropriate con-
13 gressional committees” means—

14 (A) *the Committee on Homeland Security*
15 *and Governmental Affairs of the Senate; and*

16 (B) *the Committee on Homeland Security*
17 *and the Committee on Energy and Commerce of*
18 *the House of Representatives.*

19 **SEC. 12. COMPTROLLER GENERAL REPORTS.**

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

22 (1) *STUDY AND REPORT.*—Not later than 18
23 months after the date of the enactment of this Act, the
24 Comptroller General of the United States shall con-
25 duct a study and submit to the appropriate congres-

1 sional committees a report on the effectiveness of the
2 risk-based performance standards used by the Depart-
3 ment of Homeland Security under title XXI of the
4 Homeland Security Act of 2002 (6 U.S.C. 621 et seq.)
5 in protecting businesses, employees, the economy, the
6 public, and national security against existing and
7 evolving threats of concern.

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

10 (A) the sufficiency of security risk deter-
11 minations and countermeasures under title XXI
12 of the Homeland Security Act of 2002 (6 U.S.C.
13 621 et seq.); and

14 (B) the need for revised or additional meth-
15 ods to address evolving security risks.

16 (b) *EVALUATION OF INFORMATION MANAGEMENT.*—
17 Not later than one year after the date of the enactment of
18 this Act, the Comptroller General of the United States shall
19 conduct a study and submit to the appropriate congres-
20 sional committees a report on—

21 (1) how the Secretary of Homeland Security doc-
22 uments, maintains, and uses information on tiering
23 changes pursuant to section 2102(e)(3) of the Home-
24 land Security Act of 2002 (6 U.S.C. 622(e)(3)); and

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

5 (c) *EVALUATION OF PRACTICES TO REDUCE CHEM-*
6 *ICAL SECURITY RISKS.*—*Not later than three years after*
7 *the date of the enactment of this Act, the Comptroller Gen-*
8 *eral of the United States shall submit to the appropriate*
9 *congressional committees a report on the effectiveness of the*
10 *development and distribution by the Secretary of Homeland*
11 *Security of practices to address chemical security risks and*
12 *of any actions taken or results produced in response to such*
13 *practices.*

14 (d) *APPROPRIATE CONGRESSIONAL COMMITTEES.*—*In*
15 *this section, the term “appropriate congressional commit-*
16 *tees” means—*

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

19 (2) *the Committee on Homeland Security and*
20 *the Committee on Energy and Commerce of the House*
21 *of Representatives.*

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

24 (a) *IN GENERAL.*—*Not later than 120 days after the*
25 *date of the enactment of this Act, the Secretary of Homeland*

1 *Security, acting through the Director of the Cybersecurity*
2 *and Infrastructure Security Agency, shall provide a secure*
3 *communications and information technology infrastructure*
4 *or platform that allows owners and operators of covered*
5 *chemical facilities to report, on a voluntary basis, informa-*
6 *tion on emerging threats, including terrorism threats posed*
7 *by unmanned aircraft systems (as defined in section 331(9)*
8 *of the FAA Modernization and Reform Act of 2012 (Public*
9 *Law 112–95; 49 U.S.C. 40101 note) to covered chemical fa-*
10 *cilities.*

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

18 **SEC. 14. REGULATIONS REGARDING SPECIFIC PRODUCTS**
19 **AND MIXTURES CONTAINING CHEMICALS OF**
20 **INTEREST.**

21 *Not later than one year after the date of the enactment*
22 *of this Act, the Secretary of Homeland Security shall pre-*
23 *scribe regulations to enact a process through which the Sec-*
24 *retary can be petitioned to exclude a product or mixture*
25 *under subsection (f) of section 2102 of the Homeland Secu-*

1 rity Act, as added by section 3. In collecting information
2 from petitioners under such subsection, the Secretary shall
3 not be subject to subchapter I of chapter 35 of title 44,
4 United States Code, or section 553 of title 5, United States
5 Code.

6 **SEC. 15. VOLUNTARY PROGRAM.**

7 (a) *IN GENERAL.*—The Director of Cybersecurity and
8 Infrastructure Security of the Department of Homeland Se-
9 curity may develop a voluntary program for chemical fa-
10 cilities to address potential security risks at such facilities.

11 (b) *CONGRESSIONAL NOTIFICATION.*—Not less than 15
12 days prior to commencing a voluntary program pursuant
13 to subsection (a), the Director shall provide notification to
14 the Committee on Homeland Security and the Committee
15 on Energy and Commerce of the House of Representatives
16 and the Committee on Homeland Security and Govern-
17 mental Affairs of the Senate.

18 **SEC. 16. STUDY ON LOCAL EMERGENCY RESPONSE CAPAC-**
19 **ITY TO RESPOND TO CHEMICAL SECURITY IN-**
20 **CIDENTS.**

21 (a) *STUDY REQUIRED.*—The Secretary of Homeland
22 Security, acting through the Under Secretary for Science
23 and Technology, shall conduct a study on how to improve
24 training and support for local emergency response providers
25 in areas with high concentrations of covered chemical facili-

1 *ties in how to respond to a terrorist attack on a chemical*
2 *facility.*

3 (b) *FEATURES.*—*In carrying out the study required*
4 *under subsection (a), the Secretary shall consider, as appro-*
5 *priate—*

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

11 (A) *evacuation and shelter in place proto-*
12 *cols tailored to the unique needs of the jurisdic-*
13 *tion and the chemical properties of chemicals of*
14 *interest that would be involved in the attack and*
15 *that take into consideration vulnerable popu-*
16 *lations, including schools, child care centers,*
17 *nursing facilities, and hospitals;*

18 (B) *community notification and warning*
19 *systems; and*

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

22 (2) *what, if any, distinctions are there in pre-*
23 *paredness for a terrorist attack on a chemical facility*
24 *in jurisdictions that rely on volunteers to carry out*
25 *fire, police, medical and other response and jurisdic-*

1 *tions that do not rely, in whole or in part, on volun-*
2 *teers; and*

3 *(3) all training, equipment, and support pro-*
4 *vided by the Department of Homeland Security to*
5 *local emergency response providers in areas with a*
6 *high concentration of covered chemical facilities and*
7 *chemical facilities of interest.*

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

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

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

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

7 (e) *PUBLIC AVAILABILITY.*—*The report required under*
8 *this section shall be made publicly available, but may in-*
9 *clude a classified annex.*

10 **SEC. 17. PREVIOUSLY APPROVED FACILITIES.**

11 *In the case of a chemical facility that is a covered*
12 *chemical facility under title XXI of the Homeland Security*
13 *Act of 2002 for which the Secretary of Homeland Security*
14 *approved a site security plan under such title before the*
15 *date of enactment of this Act, the Secretary shall not require*
16 *the facility to resubmit the site security plan solely by rea-*
17 *son of the enactment of this Act or the amendments made*
18 *by this Act.*

19 **SEC. 18. TERMINATION.**

20 *Section 5 of the Protecting and Securing Chemical Fa-*
21 *cilities From Terrorist Attacks Act of 2014 (Public Law*
22 *113–254; 6 U.S.C. 621 note) is amended by striking “the*
23 *date that is 5 years and 3 months after the effective date*
24 *of this Act” and inserting “May 1, 2025”.*

Union Calendar No. 427

116TH CONGRESS
2^D SESSION

H. R. 3256

[Report No. 116-341, Part I]

A BILL

To amend the Homeland Security Act of 2002 to reauthorize and improve the Chemical Facility Anti-Terrorism Standards Program, and for other purposes.

SEPTEMBER 21, 2020

Committee on Energy and Commerce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed