Rangel	Sanchez, Loretta	Woolsey
Rogers (MI)	Schock	
Sánchez, Linda T.	Slaughter	
	Westmoreland	

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). One minute remains in this vote.

□ 1335

So (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

CHEMICAL FACILITY ANTI-TERRORISM ACT OF 2009

The SPEAKER pro tempore. Pursuant to House Resolution 885 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 2868.

□ 1335

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 2868) to amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes, with Mr. SALAZAR (Acting Chair) in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose on Thursday, November 5, 2009, all time for general debate had expired.

In lieu of the amendments in the nature of a substitute recommended by the Committees on Homeland Security and Energy and Commerce printed in the bill, the amendment in the nature of a substitute printed in part A of House Report 111–327 shall be considered as an original bill for purpose of amendment under the 5-minute rule and shall be considered read.

The text of the amendment in the nature of a substitute is as follows:

H.R. 2868

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Chemical and Water Security Act of 2009''.

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

Sec. 1. Short title; table of contents.
TITLE I—CHEMICAL FACILITY SECURITY
Sec. 101. Short title.
Sec. 102. Findings and purpose.
Sec. 103. Extension, modification, and recodification of authority of Secretary of Homeland Security to regulate security practices at chemical facilities.
TITLE II—DRINKING WATER SECURITY
Sec. 201. Short title.
Sec. 202. Intentional acts affecting the security of covered water systems.
Sec. 203. Study to assess the threat of contamination of drinking water distribution systems.
TITLE III—WASTEWATER TREATMENT WORKS SECURITY
Sec. 301. Short title.
Sec. 302. Wastewater treatment works security.

TITLE I—CHEMICAL FACILITY SECURITY

SEC. 101. SHORT TITLE.

This title may be cited as the ''Chemical Facility Anti-Terrorism Act of 2009''.

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) The Nation's chemical sector represents a target that terrorists could exploit to cause consequences, including death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy.

(2) Chemical facilities that pose such potential consequences and that are vulnerable to terrorist attacks must be protected.

(3) The Secretary of Homeland Security has statutory authority pursuant to section 550 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295) to regulate the security practices at chemical facilities that are at significant risk of being terrorist targets.

(4) The Secretary of Homeland Security issued interim final regulations called the Chemical Facility Anti-Terrorism Standards, which became effective on June 8, 2007.

(b) PURPOSE.—The purpose of this title is to modify and make permanent the authority of the Secretary of Homeland Security to regulate security practices at chemical facilities.

SEC. 103. EXTENSION, MODIFICATION, AND RECODIFICATION OF AUTHORITY OF SECRETARY OF HOMELAND SECURITY TO REGULATE SECURITY PRACTICES AT CHEMICAL FACILITIES.

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

''TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES

''SEC. 2101. DEFINITIONS.

''In this title, the following definitions apply:

''(1) The term 'chemical facility' means any facility—

''(A) at which the owner or operator of the facility possesses or plans to possess at any relevant point in time a substance of concern; or

''(B) that meets other risk-related criteria identified by the Secretary.

''(2) The term 'chemical facility security performance standards' means risk-based standards established by the Secretary to ensure or enhance the security of a chemical facility against a chemical facility terrorist incident that are designed to address the following:

''(A) Restricting the area perimeter.

''(B) Securing site assets.

''(C) Screening and controlling access to the facility and to restricted areas within the facility by screening or inspecting individuals and vehicles as they enter, including—

''(i) measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate a chemical facility terrorist incident or actions having serious negative consequences for the population surrounding the chemical facility; and

''(ii) measures implementing a regularly updated identification system that checks the identification of chemical facility personnel and other persons seeking access to the chemical facility and that discourages abuse through established disciplinary measures.

''(D) Methods to deter, detect, and delay a chemical facility terrorist incident, creating sufficient time between detection of a chemical facility terrorist incident and the point at which the chemical facility terrorist incident becomes successful, including measures to—

''(i) deter vehicles from penetrating the chemical facility perimeter, gaining unauthorized access to restricted areas, or otherwise presenting a hazard to potentially critical targets;

''(ii) deter chemical facility terrorist incidents through visible, professional, well-maintained security measures and systems, including security personnel, detection systems, barriers and barricades, and hardened or reduced value targets;

''(iii) detect chemical facility terrorist incidents at early stages through counter surveillance, frustration of opportunity to observe potential targets, surveillance and sensing systems, and barriers and barricades; and

''(iv) delay a chemical facility terrorist incident for a sufficient period of time so as to allow appropriate response through on-site security response, barriers and barricades, hardened targets, and well-coordinated response planning.

''(E) Securing and monitoring the shipping, receipt, and storage of a substance of concern for the chemical facility.

''(F) Deterring theft or diversion of a substance of concern.

''(G) Deterring insider sabotage.

''(H) Deterring cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, including supervisory control and data acquisition systems, distributed control systems, process control systems, industrial control systems, critical business systems, and other sensitive computerized systems.

''(I) Developing and exercising an internal emergency plan for owners, operators, and covered individuals of a covered chemical facility for responding to chemical facility terrorist incidents at the facility. Any such plan shall include the provision of appropriate information to any local emergency planning committee, local law enforcement officials, and emergency response providers to ensure an effective, collective response to terrorist incidents.

''(J) Maintaining effective monitoring, communications, and warning systems, including—

''(i) measures designed to ensure that security systems and equipment are in good working order and inspected, tested, calibrated, and otherwise maintained;

''(ii) measures designed to regularly test security systems, note deficiencies, correct for detected deficiencies, and record results so that they are available for inspection by the Department; and

''(iii) measures to allow the chemical facility to promptly identify and respond to security system and equipment failures or malfunctions.

''(K) Ensuring mandatory annual security training, exercises, and drills of chemical facility personnel appropriate to their roles, responsibilities, and access to chemicals, including participation by local law enforcement, local emergency response providers, appropriate supervisory and non-supervisory facility employees and their employee representatives, if any.

''(L) Performing personnel surety for individuals with access to restricted areas or critical assets by conducting appropriate

background checks and ensuring appropriate credentials for unescorted visitors and chemical facility personnel, including permanent and part-time personnel, temporary personnel, and contract personnel, including—

''(i) measures designed to verify and validate identity;

''(ii) measures designed to check criminal history;

''(iii) measures designed to verify and validate legal authorization to work; and

''(iv) measures designed to identify people with terrorist ties.

''(M) Escalating the level of protective measures for periods of elevated threat.

''(N) Specific threats, vulnerabilities, or risks identified by the Secretary for that chemical facility.

''(O) Reporting of significant security incidents to the Department and to appropriate local law enforcement officials.

''(P) Identifying, investigating, reporting, and maintaining records of significant security incidents and suspicious activities in or near the site.

''(Q) Establishing one or more officials and an organization responsible for—

''(i) security;

''(ii) compliance with the standards under this paragraph;

''(iii) serving as the point of contact for incident management purposes with Federal, State, local, and tribal agencies, law enforcement, and emergency response providers; and

''(iv) coordination with Federal, State, local, and tribal agencies, law enforcement, and emergency response providers regarding plans and security measures for the collective response to a chemical facility terrorist incident.

''(R) Maintaining appropriate records relating to the security of the facility, including a copy of the most recent security vulnerability assessment and site security plan at the chemical facility.

''(S) Assessing and, as appropriate, utilizing methods to reduce the consequences of a terrorist attack.

''(T) Methods to recover or mitigate the release of a substance of concern in the event of a chemical facility terrorist incident.

''(U) Any additional security performance standards the Secretary may specify.

''(3) The term 'chemical facility terrorist incident' means any act or attempted act of terrorism or terrorist activity committed at, near, or against a chemical facility, including—

''(A) the release of a substance of concern from a chemical facility;

''(B) the theft, misappropriation, or misuse of a substance of concern from a chemical facility; or

''(C) the sabotage of a chemical facility or a substance of concern at a chemical facility.

''(4) The term 'employee representative' means the representative of the certified or recognized bargaining agent engaged in a collective bargaining relationship with a private or public owner or operator of a chemical facility.

''(5) The term 'covered individual' means a permanent, temporary, full-time, or part-time employee of a covered chemical facility or an employee of an entity with which the covered chemical facility has entered into a contract who is performing responsibilities at the facility pursuant to the contract.

''(6) The term 'covered chemical facility' means a chemical facility that meets the criteria of section 2102(b)(1).

''(7) The term 'environment' means—

''(A) the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.); and

''(B) any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

''(8) The term 'owner or operator' with respect to a facility means any of the following:

''(A) The person who owns the facility.

''(B) The person who has responsibility for daily operation of the facility.

''(C) The person who leases the facility.

''(9) The term 'person' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

''(10) The term 'release' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant).

''(11) The term 'substance of concern' means a chemical substance in quantity and form that is so designated by the Secretary under section 2102(a).

''(12) The term 'method to reduce the consequences of a terrorist attack' means a measure used at a chemical facility that reduces or eliminates the potential consequences of a chemical facility terrorist incident, including—

''(A) the elimination or reduction in the amount of a substance of concern possessed or planned to be possessed by an owner or operator of a covered chemical facility through the use of alternate substances, formulations, or processes;

''(B) the modification of pressures, temperatures, or concentrations of a substance of concern; and

''(C) the reduction or elimination of onsite handling of a substance of concern through improvement of inventory control or chemical use efficiency.

''SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF CHEMICAL FACILITIES.

''(a) SUBSTANCES OF CONCERN.—

''(1) DESIGNATION BY THE SECRETARY.—The Secretary may designate any chemical substance as a substance of concern and establish the threshold quantity for each such substance of concern.

''(2) MATTERS FOR CONSIDERATION.—In designating a chemical substance or establishing or adjusting the threshold quantity for a chemical substance under paragraph (1), the Secretary shall consider the potential extent of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy that could result from a chemical facility terrorist incident.

''(b) LIST OF COVERED CHEMICAL FACILITIES.—

''(1) CRITERIA FOR LIST OF FACILITIES.—The Secretary shall maintain a list of covered chemical facilities that the Secretary determines are of sufficient security risk for inclusion on the list based on the following criteria:

''(A) The potential threat or likelihood that the chemical facility will be the target of a chemical facility terrorist incident.

''(B) The potential extent and likelihood of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy that could result from a chemical facility terrorist incident.

''(C) The proximity of the chemical facility to large population centers.

''(2) SUBMISSION OF INFORMATION.—The Secretary may require the submission of information with respect to the quantities of substances of concern that an owner or operator of a chemical facility possesses or plans to possess in order to determine whether to designate a chemical facility as a covered chemical facility for purposes of this title.

''(c) ASSIGNMENT OF CHEMICAL FACILITIES TO RISK-BASED TIERS.—

''(1) ASSIGNMENT.—The Secretary shall assign each covered chemical facility to one of four risk-based tiers established by the Secretary, with tier one representing the highest degree of risk and tier four the lowest degree of risk.

''(2) PROVISION OF INFORMATION.—The Secretary may request, and the owner or operator of a covered chemical facility shall provide, any additional information beyond any information required to be submitted under subsection (b)(2) that may be necessary for the Secretary to assign the chemical facility to the appropriate tier under paragraph (1).

''(3) NOTIFICATION.—Not later than 60 days after the date on which the Secretary determines that a chemical facility is a covered chemical facility or is no longer a covered chemical facility or changes the tier assignment under paragraph (1) of a covered chemical facility, the Secretary shall notify the owner or operator of that chemical facility of that determination or change together with the reason for the determination or change and, upon the request of the owner or operator of a covered chemical facility, provide to the owner or operator of the covered chemical facility the following information:

''(A) The number of individuals at risk of death, injury, or severe adverse effects to human health as a result of a worst case chemical facility terrorist incident at the covered chemical facility.

''(B) Information related to the criticality of the covered chemical facility.

''(C) The proximity or interrelationship of the covered chemical facility to other critical infrastructure.

''(d) REQUIREMENT FOR REVIEW.—The Secretary—

''(1) shall periodically review—

''(A) the designation of a substance of concern and the threshold quantity under subsection (a)(1); and

''(B) the criteria under subsection (b)(1); and

''(2) may at any time determine whether a chemical facility is a covered chemical facility or change the tier to which such a facility is assigned under subsection (c)(1).

''(e) PROVISION OF THREAT-RELATED INFORMATION.—In order to effectively assess the vulnerabilities to a covered chemical facility, the Secretary shall provide to the owner, operator, or security officer of a covered chemical facility threat information regarding probable threats to the facility and methods that could be used in a chemical facility terrorist incident.

''SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND SITE SECURITY PLANS.

''(a) IN GENERAL.—

''(1) REQUIREMENT.—The Secretary shall—

''(A) establish standards, protocols, and procedures for security vulnerability assessments and site security plans to be required for covered chemical facilities;

''(B) require the owner or operator of each covered chemical facility to—

''(i) conduct an assessment of the vulnerability of the covered chemical facility to a range of chemical facility terrorist incidents, including an incident that results in a worst-case release of a substance of concern

and submit such assessment to the Secretary;

''(ii) prepare and implement a site security plan for that covered chemical facility that addresses the security vulnerability assessment and meets the risk-based chemical security performance standards under subsection (c) and submit such plan to the Secretary;

''(iii) include at least one supervisory and at least one non-supervisory employee of the covered chemical facility, and at least one employee representative, from each bargaining agent at the covered chemical facility, if any, in developing the security vulnerability assessment and site security plan required under this section; and

''(iv) include, with the submission of a security vulnerability assessment and the site security plan of the covered chemical facility under this title, a signed statement by the owner or operator of the covered chemical facility that certifies that the submission is provided to the Secretary with knowledge of the penalty provisions under section 2107;

''(C) set deadlines, by tier, for the completion of security vulnerability assessments and site security plans;

''(D) upon request, as necessary, and to the extent that resources permit, provide technical assistance to a covered chemical facility conducting a vulnerability assessment or site security plan required under this section;

''(E) establish specific deadlines and requirements for the submission by a covered chemical facility of information describing—

''(i) any change in the use by the covered chemical facility of more than a threshold amount of any substance of concern that may affect the requirements of the chemical facility under this title; or

''(ii) any material modification to a covered chemical facility's operations or site that may affect the security vulnerability assessment or site security plan submitted by the covered chemical facility;

''(F) require the owner or operator of a covered chemical facility to review and resubmit a security vulnerability assessment or site security plan not less frequently than once every 5 years; and

''(G) not later than 180 days after the date on which the Secretary receives a security vulnerability assessment or site security plan under this title, review and approve or disapprove such assessment or plan and notify the covered chemical facility of such approval or disapproval.

''(2) INHERENTLY GOVERNMENTAL FUNCTION.—The approval or disapproval of a security vulnerability assessment or site security plan under this section is an inherently governmental function.

''(b) PARTICIPATION IN PREPARATION OF SECURITY VULNERABILITY ASSESSMENTS OR SITE SECURITY PLANS.—Any person selected by the owner or operator of a covered chemical facility or by a certified or recognized bargaining agent of a covered chemical facility to participate in the development of the security vulnerability assessment or site security plan required under this section for such covered chemical facility shall be permitted to participate if the person possesses knowledge, experience, training, or education relevant to the portion of the security vulnerability assessment or site security plan on which the person is participating.

''(c) RISK-BASED CHEMICAL SECURITY PERFORMANCE STANDARDS.—The Secretary shall establish risk-based chemical security performance standards for the site security plans required to be prepared by covered chemical facilities. In establishing such standards, the Secretary shall—

''(1) require separate and, as appropriate, increasingly stringent risk-based chemical security performance standards for site security plans as the level of risk associated with the tier increases; and

''(2) permit each covered chemical facility submitting a site security plan to select a combination of security measures that satisfy the risk-based chemical security performance standards established by the Secretary under this subsection.

''(d) CO-LOCATED CHEMICAL FACILITIES.—The Secretary may allow an owner or operator of a covered chemical facility that is located geographically close to another covered chemical facility to develop and implement coordinated security vulnerability assessments and site security plans.

''(e) ALTERNATE SECURITY PROGRAMS SATISFYING REQUIREMENTS FOR SECURITY VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN.—

''(1) ACCEPTANCE OF PROGRAM.—In response to a request by an owner or operator of a covered chemical facility, the Secretary may accept an alternate security program submitted by the owner or operator of the facility as a component of the security vulnerability assessment or site security plan required under this section, if the Secretary determines that such alternate security program, in combination with other components of the security vulnerability assessment and site security plan submitted by the owner or operator of the facility—

''(A) meets the requirements of this title and the regulations promulgated pursuant to this title;

''(B) provides an equivalent level of security to the level of security established pursuant to the regulations promulgated under this title; and

''(C) includes employee participation as required under subsection (a)(1)(B)(iii).

''(2) SECRETARIAL REVIEW REQUIRED.—Nothing in this subsection shall relieve the Secretary of the obligation—

''(A) to review a security vulnerability assessment and site security plan submitted by a covered chemical facility under this section; and

''(B) to approve or disapprove each such assessment or plan on an individual basis according to the deadlines established under subsection (a).

''(3) COVERED FACILITY'S OBLIGATIONS UNAFFECTED.—Nothing in this subsection shall relieve any covered chemical facility of the obligation and responsibility to comply with all of the requirements of this title.

''(4) PERSONNEL SURETY ALTERNATE SECURITY PROGRAM.—In response to an application from a non-profit, personnel surety accrediting organization acting on behalf of, and with written authorization from, the owner or operator of a covered chemical facility, the Secretary may accept a personnel surety alternate security program that meets the requirements of section 2115 and provides for a background check process that is—

''(A) expedited, affordable, reliable, and accurate;

''(B) fully protective of the rights of covered individuals through procedures that are consistent with the privacy protections available under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); and

''(C) is a single background check consistent with a risk-based tiered program.

''(f) OTHER AUTHORITIES.—

''(1) REGULATION OF MARITIME FACILITIES.—

''(A) RISK-BASED TIERING.—Notwithstanding any other provision of law, the owner or operator of a chemical facility required to submit a facility security plan under section 70103(c) of title 46, United States Code, shall be required to submit information to the Secretary necessary to determine whether to designate such a facility as a covered chemical facility and to assign the facility to a risk-based tier under section 2102 of this title.

''(B) ADDITIONAL MEASURES.—In the case of a facility designated as a covered chemical facility under this title for which a facility security plan is required to be submitted under section 70103(c) of title 46, United States Code, the Commandant of the Coast Guard, after consultation with the Secretary, shall require the owner or operator of such facility to update the vulnerability assessments and facility security plans required under that section, if necessary, to ensure an equivalent level of security for substances of concern, including the requirements under section 2111, in the same manner as other covered chemical facilities in this title.

''(C) PERSONNEL SURETY.—

''(i) EXCEPTION.—A facility designated as a covered chemical facility under this title that has had its facility security plan approved under section 70103(c) of title 46, United States Code, shall not be required to update or amend such plan in order to meet the requirements of section 2115 of this title.

''(ii) EQUIVALENT ACCESS.—An individual described in section 2115(a)(1)(B) who has been granted access to restricted areas or critical assets by the owner or operator of a facility for which a security plan is required to be submitted under section 70103(c) of title 46, United States Code, may be considered by that owner or operator to have satisfied the requirement for passing a security background check otherwise required under section 2115 for purposes of granting the individual access to restricted areas or critical assets of a covered chemical facility that is owned or operated by the same owner or operator.

''(D) INFORMATION SHARING AND PROTECTION.—Notwithstanding section 70103(d) of title 46, United States Code, the Commandant of the Coast Guard, after consultation with the Secretary, shall apply the information sharing and protection requirements in section 2110 of this title to a facility described in subparagraph (B).

''(E) ENFORCEMENT.—The Secretary shall establish, by rulemaking, procedures to ensure that an owner or operator of a covered chemical facility required to update the vulnerability assessment and facility security plan for the facility under subparagraph (B) is in compliance with the requirements of this title.

''(F) FORMAL AGREEMENT.—The Secretary shall—

''(i) require the Office of Infrastructure Protection and the Coast Guard to enter into a formal agreement detailing their respective roles and responsibilities in carrying out the requirements of this title, which shall ensure that the enforcement and compliance requirements under this title and section 70103 of title 46, United States Code, are not conflicting or duplicative; and

''(ii) designate the agency responsible for enforcing the requirements of this title with respect to covered chemical facilities for which facility security plans are required to be submitted under section 70103(c) of title 46, United States Code, consistent with the requirements of subparagraphs (B) and (D).

''(2) COORDINATION OF STORAGE LICENSING OR PERMITTING REQUIREMENT.—In the case of any storage required to be licensed or permitted under chapter 40 of title 18, United States Code, the Secretary shall prescribe the rules and regulations for the implementation of this section with the concurrence of the Attorney General and avoid unnecessary duplication of regulatory requirements.

''(g) ROLE OF EMPLOYEES.—

''(1) DESCRIPTION OF ROLE REQUIRED.—Site security plans required under this section shall describe the roles or responsibilities that covered individuals are expected to perform to deter or respond to a chemical facility terrorist incident.

''(2) ANNUAL TRAINING FOR EMPLOYEES.—The owner or operator of a covered chemical facility required to submit a site security plan under this section shall annually provide each covered individual with a role or responsibility referred to in paragraph (1) at the facility with a minimum of 8 hours of training. Such training shall, as relevant to the role or responsibility of such covered individual—

''(A) include an identification and discussion of substances of concern;

''(B) include a discussion of possible consequences of a chemical facility terrorist incident;

''(C) review and exercise the covered chemical facility's site security plan, including any requirements for differing threat levels;

''(D) include a review of information protection requirements;

''(E) include a discussion of physical and cyber security equipment, systems, and methods used to achieve chemical security performance standards;

''(F) allow training with other relevant participants, including Federal, State, local, and tribal authorities, and first responders, where appropriate;

''(G) use existing national voluntary consensus standards, chosen jointly with employee representatives, if any;

''(H) allow instruction through government training programs, chemical facilities, academic institutions, nonprofit organizations, industry and private organizations, employee organizations, and other relevant entities that provide such training;

''(I) use multiple training media and methods; and

''(J) include a discussion of appropriate emergency response procedures, including procedures to mitigate the effects of a chemical facility terrorist incident.

''(3) EQUIVALENT TRAINING.—During any year, with respect to any covered individual with roles or responsibilities under paragraph (1), an owner or operator of a covered chemical facility may satisfy any of the training requirements for such covered individual under subparagraphs (A), (B), (C), (D), (E), or (J) of paragraph (2) through training that such owner or operator certifies, in a manner prescribed by the Secretary, is equivalent.

''(4) WORKER TRAINING GRANT PROGRAM.—

''(A) AUTHORITY.—The Secretary shall establish a grant program to award grants to or enter into cooperative agreements with eligible entities to provide for the training and education of covered individuals with roles or responsibilities described in paragraph (1) and first responders and emergency response providers that would respond to a chemical facility terrorist incident.

''(B) ADMINISTRATION.—The Secretary shall seek to enter into an agreement with the Director of the National Institute for Environmental Health Sciences, or with the head of another Federal or State agency, to make and administer grants or cooperative agreements under this paragraph.

''(C) USE OF FUNDS.—The recipient of funds under this paragraph shall use such funds to provide for the training and education of covered individuals with roles or responsibilities described in paragraph (1), first responders, and emergency response providers, including—

''(i) the annual mandatory training specified in paragraph (2); and

''(ii) other appropriate training to protect nearby persons, property, critical infrastructure, or the environment from the effects of a chemical facility terrorist incident.

''(D) ELIGIBLE ENTITIES.—For purposes of this paragraph, an eligible entity is a nonprofit organization with demonstrated experience in implementing and operating successful worker or first responder health and safety or security training programs.

''(h) STATE, REGIONAL, OR LOCAL GOVERNMENTAL ENTITIES.—No covered chemical facility shall be required under State, local, or tribal law to provide a vulnerability assessment or site security plan described under this title to any State, regional, local, or tribal government entity solely by reason of the requirement under subsection (a) that the covered chemical facility submit such an assessment and plan to the Secretary.

''SEC. 2104. SITE INSPECTIONS.

''(a) RIGHT OF ENTRY.—For purposes of carrying out this title, the Secretary shall have, at a reasonable time and on presentation of credentials, a right of entry to, on, or through any property of a covered chemical facility or any property on which any record required to be maintained under this section is located.

''(b) INSPECTIONS AND VERIFICATIONS.—

''(1) IN GENERAL.—The Secretary shall, at such time and place as the Secretary determines to be reasonable and appropriate, conduct chemical facility security inspections and verifications.

''(2) REQUIREMENTS.—To ensure and evaluate compliance with this title, including any regulations or requirements adopted by the Secretary in furtherance of the purposes of this title, in conducting an inspection or verification under paragraph (1), the Secretary shall have access to the owners, operators, employees, and employee representatives, if any, of a covered chemical facility.

''(c) UNANNOUNCED INSPECTIONS.—In addition to any inspection conducted pursuant to subsection (b), the Secretary shall require covered chemical facilities assigned to tier 1 and tier 2 under section 2102(c)(1) to undergo unannounced facility inspections. The inspections required under this subsection shall be—

''(1) conducted without prior notice to the facility;

''(2) designed to evaluate at the chemical facility undergoing inspection—

''(A) the ability of the chemical facility to prevent a chemical facility terrorist incident that the site security plan of the facility is intended to prevent;

''(B) the ability of the chemical facility to protect against security threats that are required to be addressed by the site security plan of the facility; and

''(C) any weaknesses in the site security plan of the chemical facility;

''(3) conducted so as not to affect the actual security, physical integrity, safety, or regular operations of the chemical facility or its employees while the inspection is conducted; and

''(4) conducted—

''(A) every two years in the case of a covered chemical facility assigned to tier 1; and

''(B) every four years in the case of a covered chemical facility assigned to tier 2.

''(d) CHEMICAL FACILITY INSPECTORS AUTHORIZED.—During the period of fiscal years 2011 and 2012, subject to the availability of appropriations for such purpose, the Secretary shall increase by not fewer than 100 the total number of chemical facility inspectors within the Department to ensure compliance with this title.

''(e) CONFIDENTIAL COMMUNICATIONS.—The Secretary shall offer non-supervisory employees the opportunity to confidentially communicate information relevant to the employer's compliance or non-compliance with this title, including compliance or noncompliance with any regulation or requirement adopted by the Secretary in furtherance of the purposes of this title. An employee representative of each certified or recognized bargaining agent at the covered chemical facility, if any, or, if none, a nonsupervisory employee, shall be given the opportunity to accompany the Secretary during a physical inspection of such covered chemical facility for the purpose of aiding in such inspection, if representatives of the owner or operator of the covered chemical facility will also be accompanying the Secretary on such inspection.

''SEC. 2105. RECORDS.

''(a) REQUEST FOR RECORDS.—In carrying out this title, the Secretary may require submission of, or on presentation of credentials may at reasonable times obtain access to and copy, any records, including any records maintained in electronic format, necessary for—

''(1) reviewing or analyzing a security vulnerability assessment or site security plan submitted under section 2103; or

''(2) assessing the implementation of such a site security plan.

''(b) PROPER HANDLING OF RECORDS.—In accessing or copying any records under subsection (a), the Secretary shall ensure that such records are handled and secured appropriately in accordance with section 2110.

''SEC. 2106. TIMELY SHARING OF THREAT INFORMATION.

''(a) RESPONSIBILITIES OF SECRETARY.—Upon the receipt of information concerning a threat that is relevant to a certain covered chemical facility, the Secretary shall provide such information in a timely manner, to the maximum extent practicable under applicable authority and in the interests of national security, to the owner, operator, or security officer of that covered chemical facility, to a representative of each recognized or certified bargaining agent at the facility, if any, and to relevant State, local, and tribal authorities, including the State Homeland Security Advisor, if any.

''(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—The Secretary shall require the owner or operator of a covered chemical facility to provide information concerning a threat in a timely manner about any significant security incident or threat to the covered chemical facility or any intentional or unauthorized penetration of the physical security or cyber security of the covered chemical facility whether successful or unsuccessful.

''SEC. 2107. ENFORCEMENT.

''(a) REVIEW OF SECURITY VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN.—

''(1) DISAPPROVAL.—The Secretary shall disapprove a security vulnerability assessment or site security plan submitted under this title if the Secretary determines, in his or her discretion, that—

''(A) the security vulnerability assessment or site security plan does not comply with the standards, protocols, or procedures under section 2103(a)(1)(A); or

''(B) in the case of a site security plan—

''(i) the plan or the implementation of the plan is insufficient to address vulnerabilities identified in a security vulnerability assessment, site inspection, or unannounced inspection of the covered chemical facility; or

''(ii) the plan fails to meet all applicable chemical facility security performance standards.

''(2) NOTIFICATION OF DISAPPROVAL.—If the Secretary disapproves the security vulnerability assessment or site security plan submitted by a covered chemical facility under this title or the implementation of a site security plan by such a chemical facility, the

Secretary shall provide the owner or operator of the covered chemical facility a written notification of the disapproval not later than 14 days after the date on which the Secretary disapproves such assessment or plan, that—

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

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

''(b) REMEDIES.—

''(1) ORDER FOR COMPLIANCE.—Whenever the Secretary determines that the owner or operator of a covered chemical facility has violated or is in violation of any requirement of this title or has failed or is failing to address any deficiencies in the assessment, plan, or implementation of the plan by such date as the Secretary determines to be appropriate, the Secretary may—

''(A) after providing notice to the owner or operator of the covered chemical facility and an opportunity, pursuant to the regulations issued under this title, for such owner or operator to seek review within the Department of the Secretary's determination, issue an order assessing an administrative penalty of not more than $25,000 for each day on which a past or current violation occurs or a failure to comply continues, requiring compliance immediately or within a specified time period, or both; or

''(B) in a civil action, obtain appropriate equitable relief, a civil penalty of not more than $25,000 for each day on which a past or current violation occurs or a failure to comply continues, or both.

''(2) ORDER TO CEASE OPERATIONS.—Whenever the Secretary determines that the owner or operator of a covered chemical facility continues to be in noncompliance after an order for compliance is issued under paragraph (1), the Secretary may issue an order to the owner or operator to cease operations at the facility until compliance is achieved to the satisfaction of the Secretary.

''(c) APPLICABILITY OF PENALTIES.—A penalty under subsection (b)(1) may be awarded for any violation of this title, including a violation of the whistleblower protections under section 2108.

''SEC. 2108. WHISTLEBLOWER PROTECTIONS.

''(a) ESTABLISHMENT.—The Secretary shall establish and provide information to the public regarding a process by which any person may submit a report to the Secretary regarding problems, deficiencies, or vulnerabilities at a covered chemical facility associated with the risk of a chemical facility terrorist incident.

''(b) CONFIDENTIALITY.—The Secretary shall keep confidential the identity of a person that submits a report under subsection (a) and any such report shall be treated as protected information under section 2110 to the extent that it does not consist of publicly available information.

''(c) ACKNOWLEDGMENT OF RECEIPT.—If a report submitted under subsection (a) identifies the person submitting the report, the Secretary shall respond promptly to such person to acknowledge receipt of the report.

''(d) STEPS TO ADDRESS PROBLEMS.—The Secretary shall review and consider the information provided in any report submitted under subsection (a) and shall, as necessary, take appropriate steps under this title to address any problem, deficiency, or vulnerability identified in the report.

''(e) RETALIATION PROHIBITED.—

''(1) PROHIBITION.—No owner or operator of a covered chemical facility, profit or not-for-profit corporation, association, or any contractor, subcontractor or agent thereof, may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or other privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

''(A) notified the Secretary, the owner or operator of a covered chemical facility, or the employee's employer of an alleged violation of this title, including notification of such an alleged violation through communications related to carrying out the employee's job duties;

''(B) refused to participate in any conduct that the employee reasonably believes is in noncompliance with a requirement of this title, if the employee has identified the alleged noncompliance to the employer;

''(C) testified before or otherwise provided information relevant for Congress or for any Federal or State proceeding regarding any provision (or proposed provision) of this title;

''(D) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this title;

''(E) testified or is about to testify in any such proceeding; or

''(F) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this title.

''(2) ENFORCEMENT ACTION.—Any employee covered by this section who alleges discrimination by an employer in violation of paragraph (1) may bring an action governed by the rules and procedures, legal burdens of proof, and remedies applicable under subsections (d) through (h) of section 20109 of title 49, United States Code. A party may seek district court review as set forth in subsection (d)(3) of such section not later than 90 days after receiving a written final determination by the Secretary of Labor.

''(3) PROHIBITED PERSONNEL PRACTICES AFFECTING THE DEPARTMENT.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, any individual holding or applying for a position within the Department shall be covered by—

''(i) paragraphs (1), (8), and (9) of section 2302(b) of title 5, United States Code;

''(ii) any provision of law implementing any of such paragraphs by providing any right or remedy available to an employee or applicant for employment in the civil service; and

''(iii) any rule or regulation prescribed under any such paragraph.

''(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to affect any rights, apart from those referred to in subparagraph (A), to which an individual described in that subparagraph might otherwise be entitled to under law.

''SEC. 2109. FEDERAL PREEMPTION.

''This title does not preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to a covered chemical facility that is more stringent than a regulation, requirement, or standard of performance issued under this title, or otherwise impair any right or jurisdiction of any State or political subdivision thereof with respect to covered chemical facilities within that State or political subdivision thereof.

''SEC. 2110. PROTECTION OF INFORMATION.

''(a) PROHIBITION OF PUBLIC DISCLOSURE OF PROTECTED INFORMATION.—Protected information, as described in subsection (g)—

''(1) shall be exempt from disclosure under section 552 of title 5, United States Code; and

''(2) shall not be made available pursuant to any State, local, or tribal law requiring disclosure of information or records.

''(b) INFORMATION SHARING.—

''(1) IN GENERAL.—The Secretary shall prescribe such regulations, and may issue such orders, as necessary to prohibit the unauthorized disclosure of protected information, as described in subsection (g).

''(2) SHARING OF PROTECTED INFORMATION.—The regulations under paragraph (1) shall provide standards for and facilitate the appropriate sharing of protected information with and between Federal, State, local, and tribal authorities, emergency response providers, law enforcement officials, designated supervisory and nonsupervisory covered chemical facility personnel with security, operational, or fiduciary responsibility for the facility, and designated facility employee representatives, if any. Such standards shall include procedures for the sharing of all portions of a covered chemical facility's vulnerability assessment and site security plan relating to the roles and responsibilities of covered individuals under section 2103(g)(1) with a representative of each certified or recognized bargaining agent representing such covered individuals, if any, or, if none, with at least one supervisory and at least one non-supervisory employee with roles or responsibilities under section 2103(g)(1).

''(3) PENALTIES.—Protected information, as described in subsection (g), shall not be shared except in accordance with the regulations under paragraph (1). Whoever discloses protected information in knowing violation of the regulations and orders issued under paragraph (1) shall be fined under title 18, United States Code, imprisoned for not more than one year, or both, and, in the case of a Federal officeholder or employee, shall be removed from Federal office or employment.

''(c) TREATMENT OF INFORMATION IN ADJUDICATIVE PROCEEDINGS.—In any judicial or administrative proceeding, protected information described in subsection (g) shall be treated in a manner consistent with the treatment of sensitive security information under section 525 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 120 Stat. 1381).

''(d) OTHER OBLIGATIONS UNAFFECTED.—Except as provided in section 2103(h), nothing in this section affects any obligation of the owner or operator of a chemical facility under any other law to submit or make available information required by such other law to facility employees, employee organizations, or a Federal, State, tribal, or local government.

''(e) SUBMISSION OF INFORMATION TO CONGRESS.—Nothing in this title shall permit or authorize the withholding of information from Congress or any committee or subcommittee thereof.

''(f) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—Nothing in this title shall affect any authority or obligation of a Federal, State, local, or tribal government agency to protect or disclose any record or information that the Federal, State, local, or tribal government agency obtains from a chemical facility under any other law.

''(g) PROTECTED INFORMATION.—

''(1) IN GENERAL.—For purposes of this title, protected information is any of the following:

''(A) Security vulnerability assessments and site security plans, including any assessment required under section 2111.

''(B) Portions of the following documents, records, orders, notices, or letters that the Secretary determines would be detrimental to chemical facility security if disclosed and that are developed by the Secretary or the owner or operator of a covered chemical facility for the purposes of this title:

''(i) Documents directly related to the Secretary's review and approval or disapproval of vulnerability assessments and site security plans under this title.

''(ii) Documents directly related to inspections and audits under this title.

''(iii) Orders, notices, or letters regarding the compliance of a covered chemical facility with the requirements of this title.

''(iv) Information, documents, or records required to be provided to or created by the Secretary under subsection (b) or (c) of section 2102.

''(v) Documents directly related to security drills and training exercises, security threats and breaches of security, and maintenance, calibration, and testing of security equipment.

''(C) Other information, documents, or records developed exclusively for the purposes of this title that the Secretary has determined by regulation would, if disclosed, be detrimental to chemical facility security.

''(2) EXCLUSIONS.—For purposes of this section, protected information does not include—

''(A) information that is otherwise publicly available, including information that is required to be made publicly available under any law;

''(B) information that a chemical facility has lawfully disclosed other than in accordance with this title; or

''(C) information that, if disclosed, would not be detrimental to the security of a chemical facility, including aggregate regulatory data that the Secretary has determined by regulation to be appropriate to describe facility compliance with the requirements of this title and the Secretary's implementation of such requirements.

''SEC. 2111. METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.

''(a) ASSESSMENT REQUIRED.—

''(1) ASSESSMENT.—The owner or operator of a covered chemical facility shall include in the site security plan conducted pursuant to section 2103, an assessment of methods to reduce the consequences of a terrorist attack on that chemical facility, including—

''(A) a description of the methods to reduce the consequences of a terrorist attack implemented and considered for implementation by the covered chemical facility;

''(B) the degree to which each method to reduce the consequences of a terrorist attack, if already implemented, has reduced, or, if implemented, could reduce, the potential extent of death, injury, or serious adverse effects to human health resulting from a release of a substance of concern;

''(C) the technical feasibility, costs, avoided costs (including liabilities), personnel implications, savings, and applicability of implementing each method to reduce the consequences of a terrorist attack; and

''(D) any other information that the owner or operator of the covered chemical facility considered in conducting the assessment.

''(2) FEASIBLE.—For the purposes of this section, the term 'feasible' means feasible with the use of best technology, techniques, and other means that the Secretary finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available for use at the covered chemical facility.

''(b) IMPLEMENTATION.—

''(1) IMPLEMENTATION.—

''(A) IN GENERAL.—The owner or operator of a covered chemical facility that is assigned to tier 1 or tier 2 because of the potential extent and likelihood of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy from a release of a substance of concern at the covered chemical facility, shall implement methods to reduce the consequences of a terrorist attack on the chemical facility if the Director of the Office of Chemical Facility Security determines, in his or her discretion, using the assessment conducted pursuant to subsection (a), that the implementation of such methods at the facility—

''(i) would significantly reduce the risk of death, injury, or serious adverse effects to human health resulting from a chemical facility terrorist incident but—

''(I) would not increase the interim storage of a substance of concern outside the facility;

''(II) would not directly result in the creation of a new covered chemical facility assigned to tier 1 or tier 2 because of the potential extent and likelihood of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy from a release of a substance of concern at the covered chemical facility;

''(III) would not result in the reassignment of an existing covered chemical facility from tier 3 or tier 4 to tier 1 or tier 2 because of the potential extent and likelihood of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy from a release of a substance of concern at the covered chemical facility; and

''(IV) would not significantly increase the potential extent and likelihood of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy from a release of a substance of concern due to a terrorist attack on the transportation infrastructure of the United States;

''(ii) can feasibly be incorporated into the operation of the covered chemical facility; and

''(iii) would not significantly and demonstrably impair the ability of the owner or operator of the covered chemical facility to continue the business of the facility at its location.

''(B) WRITTEN DETERMINATION.—A determination by the Director of the Office of Chemical Facility Security pursuant to subparagraph (A) shall be made in writing and include the basis and reasons for such determination, including the Director's analysis of the covered chemical facility's assessment of the technical feasibility, costs, avoided costs (including liabilities), personnel implications, savings, and applicability of implementing each method to reduce the consequences of a terrorist attack.

''(C) MARITIME FACILITIES.—With respect to a covered chemical facility for which a security plan is required under section 70103(c) of title 46, United States Code, a written determination pursuant to subparagraph (A) shall be made only after consultation with the Captain of the Port for the area in which the covered chemical facility is located.

''(2) REVIEW OF INABILITY TO COMPLY.—

''(A) IN GENERAL.—An owner or operator of a covered chemical facility who is unable to comply with the Director's determination under paragraph (1) shall, within 120 days of receipt of the Director's determination, provide to the Secretary a written explanation that includes the reasons therefor. Such written explanation shall specify whether the owner or operator's inability to comply arises under clause (ii) or (iii) of paragraph (1)(A), or both.

''(B) REVIEW.—Not later than 120 days of receipt of an explanation submitted under subparagraph (A), the Secretary, after consulting with the owner or operator of the covered chemical facility who submitted such explanation, as well as experts in the subjects of environmental health and safety, security, chemistry, design and engineering, process controls and implementation, maintenance, production and operations, chemical process safety, and occupational health, as appropriate, shall provide to the owner or operator a written determination, in his or her discretion, of whether implementation shall be required pursuant to paragraph (1). If the Secretary determines that implementation is required, the Secretary shall issue an order that establishes the basis for such determination, including the findings of the relevant experts, the specific methods selected for implementation, and a schedule for implementation of the methods at the facility.

''(c) SECTORAL IMPACTS.—

''(1) GUIDANCE FOR FARM SUPPLIES MERCHANT WHOLESALERS.—The Secretary shall provide guidance and, as appropriate, tools, methodologies or computer software, to assist farm supplies merchant wholesalers in complying with the requirements of this section. The Secretary may award grants to farm supplies merchant wholesalers to assist with compliance with subsection (a), and in awarding such grants, shall give priority to farm supplies merchant wholesalers that have the greatest need for such grants.

''(2) ASSESSMENT OF IMPACTS OF COMPLIANCE.—Not later than 6 months after the date of the enactment of this title, the Secretary shall transmit an assessment of the potential impacts of compliance with provisions of this section regarding the assessment and, as appropriate, implementation, of methods to reduce the consequences of a terrorist attack by manufacturers, retailers, aerial commercial applicators, and distributors of pesticide and fertilizer to the Committee on Energy and Commerce of the House of Representatives, the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate. Such assessment shall be conducted by the Secretary in consultation with other appropriate Federal agencies and shall include the following:

''(A) Data on the scope of facilities covered by this title, including the number and type of manufacturers, retailers, aerial commercial applicators and distributors of pesticide and fertilizer required to assess methods to reduce the consequences of a terrorist attack under subsection (a) and the number and type of manufacturers, retailers, aerial commercial applicators and distributors of pesticide and fertilizer assigned to tier 1 or tier 2 by the Secretary because of the potential extent and likelihood of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy from the release of a substance of concern at the facility.

''(B) A survey of known methods, processes or practices, other than elimination of or cessation of manufacture of the pesticide or fertilizer, that manufacturers, retailers, aerial commercial applicators, and distributors of pesticide and fertilizer could use to reduce the consequences of a terrorist attack, including an assessment of the costs and technical feasibility of each such method, process, or practice.

''(C) An analysis of how the assessment of methods to reduce the consequences of a terrorist attack under subsection (a) by manufacturers, retailers, aerial commercial applicators, and distributors of pesticide and

fertilizer, and, as appropriate, the implementation of methods to reduce the consequences of a terrorist attack by such manufacturers, retailers, aerial commercial applicators, and distributors of pesticide and fertilizer subject to subsection (b), are likely to impact other sectors engaged in commerce.

''(D) Recommendations for how to mitigate any adverse impacts identified pursuant to subparagraph (C).

''(3) FARM SUPPLIES MERCHANT WHOLESALER.—In this subsection, the term 'farm supplies merchant wholesaler' means a covered chemical facility that is primarily engaged in the merchant wholesale distribution of farm supplies, such as animal feeds, fertilizers, agricultural chemicals, pesticides, plant seeds, and plant bulbs.

''(d) ASSESSMENT OF IMPACTS ON SMALL COVERED CHEMICAL FACILITIES.—

''(1) IN GENERAL.—Not later than 6 months after the date of the enactment of this title, the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives, the Committee on Homeland Security of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate an assessment of the potential effects on small covered chemical facilities of compliance with provisions of this section regarding the assessment and, as appropriate, implementation, of methods to reduce the consequences of a terrorist attack. Such assessment shall include—

''(A) data on the scope of facilities covered by this title, including the number and type of small covered chemical facilities that are required to assess methods to reduce the consequences of a terrorist attack under subsection (a) and the number and type of small covered chemical facilities assigned to tier 1 or tier 2 under section 2102(c)(1) by the Secretary because of the potential extent and likelihood of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy from the release of a substance of concern at the facility; and

''(B) a discussion of how the Secretary plans to apply the requirement that before requiring a small covered chemical facility that is required to implement methods to reduce the consequences of a terrorist attack under subsection (b) the Secretary shall first determine that the implementation of such methods at the small covered chemical facility not significantly and demonstrably impair the ability of the owner or operator of the covered chemical facility to continue the business of the facility at its location.

''(2) DEFINITION.—For purposes of this subsection, the term 'small covered chemical facility' means a covered chemical facility that has fewer than 350 employees employed at the covered chemical facility, and is not a branch or subsidiary of another entity.

''(e) PROVISION OF INFORMATION ON ALTERNATIVE APPROACHES.—

''(1) IN GENERAL.—The Secretary shall make available information on the use and availability of methods to reduce the consequences of a chemical facility terrorist incident.

''(2) INFORMATION TO BE INCLUDED.—The information under paragraph (1) may include information about—

''(A) general and specific types of such methods;

''(B) combinations of chemical sources, substances of concern, and hazardous processes or conditions for which such methods could be appropriate;

''(C) the availability of specific methods to reduce the consequences of a terrorist attack;

''(D) the costs and cost savings resulting from the use of such methods;

''(E) emerging technologies that could be transferred from research models or prototypes to practical applications;

''(F) the availability of technical assistance and best practices; and

''(G) such other matters that the Secretary determines are appropriate.

''(3) PUBLIC AVAILABILITY.—Information made available under this subsection shall not identify any specific chemical facility, violate the protection of information provisions under section 2110, or disclose any proprietary information.

''(f) FUNDING FOR METHODS TO REDUCE THE CONSEQUENCES OF A TERRORIST ATTACK.—The Secretary may make funds available to help defray the cost of implementing methods to reduce the consequences of a terrorist attack to covered chemical facilities that are required by the Secretary to implement such methods.

''SEC. 2112. APPLICABILITY.

''This title shall not apply to—

''(1) any chemical facility that is owned and operated by the Secretary of Defense;

''(2) the transportation in commerce, including incidental storage, of any substance of concern regulated as a hazardous material under chapter 51 of title 49, United States Code;

''(3) all or a specified portion of any chemical facility that—

''(A) is subject to regulation by the Nuclear Regulatory Commission (hereinafter in this paragraph referred to as the 'Commission') or a State that has entered into an agreement with the Commission under section 274 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2021 b.);

''(B) has had security controls imposed by the Commission or State, whichever has the regulatory authority, on the entire facility or the specified portion of the facility; and

''(C) has been designated by the Commission, after consultation with the State, if any, that regulates the facility, and the Secretary, as excluded from the application of this title;

''(4) any public water system subject to the Safe Drinking Water Act (42 U.S.C. 300f et seq.); or

''(5) any treatment works, as defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292).

''SEC. 2113. SAVINGS CLAUSE.

''(a) IN GENERAL.—Nothing in this title shall affect or modify in any way any obligation or liability of any person under any other Federal law, including section 112 of the Clean Air Act (42 U.S.C. 7412), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.), the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety and Health Act (29 U.S.C. 651 et seq.), the National Labor Relations Act (29 U.S.C. 151 et seq.), the Emergency Planning and Community Right to Know Act of 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Maritime Transportation Security Act of 2002 (Public Law 107–295), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), and the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

''(b) OTHER REQUIREMENTS.—Nothing in this title shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance relating to environmental protection, health, or safety.

''(c) ACCESS.—Nothing in this title shall abridge or deny access to a chemical facility site to any person where required or permitted under any other law or regulation.

''SEC. 2114. OFFICE OF CHEMICAL FACILITY SECURITY.

''(a) IN GENERAL.—There is established in the Department an Office of Chemical Facility Security, headed by a Director, who shall be a member of the Senior Executive Service in accordance with subchapter VI of chapter 53 of title 5, United States Code, under section 5382 of that title, and who shall be responsible for carrying out the responsibilities of the Secretary under this title.

''(b) PROFESSIONAL QUALIFICATIONS.—The individual selected by the Secretary as the Director of the Office of Chemical Facility Security shall have professional qualifications and experience necessary for effectively directing the Office of Chemical Facility Security and carrying out the requirements of this title, including a demonstrated knowledge of physical infrastructure protection, cybersecurity, chemical facility security, hazard analysis, chemical process engineering, chemical process safety reviews, or other such qualifications that the Secretary determines to be necessary.

''(c) SELECTION PROCESS.—The Secretary shall make a reasonable effort to select an individual to serve as the Director from among a group of candidates that is diverse with respect to race, ethnicity, age, gender, and disability characteristics and submit to the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate information on the selection process, including details on efforts to assure diversity among the candidates considered for this position.

''SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED INDIVIDUALS AT CERTAIN CHEMICAL FACILITIES.

''(a) REGULATIONS ISSUED BY THE SECRETARY.—

''(1) IN GENERAL.—

''(A) REQUIREMENT.—The Secretary shall issue regulations to require covered chemical facilities to establish personnel surety for individuals described in subparagraph (B) by conducting appropriate security background checks and ensuring appropriate credentials for unescorted visitors and chemical facility personnel, including permanent and part-time personnel, temporary personnel, and contract personnel, including—

''(i) measures designed to verify and validate identity;

''(ii) measures designed to check criminal history;

''(iii) measures designed to verify and validate legal authorization to work; and

''(iv) measures designed to identify people with terrorist ties.

''(B) INDIVIDUALS DESCRIBED.—For purposes of subparagraph (A), an individual described in this subparagraph is—

''(i) a covered individual who has unescorted access to restricted areas or critical assets or who is provided with a copy of a security vulnerability assessment or site security plan;

''(ii) a person associated with a covered chemical facility, including any designated employee representative, who is provided with a copy of a security vulnerability assessment or site security plan; or

''(iii) a person who is determined by the Secretary to require a security background check based on chemical facility security performance standards.

''(2) REGULATIONS.—The regulations required by paragraph (1) shall set forth—

''(A) the scope of the security background checks, including the types of disqualifying offenses and the time period covered for each person subject to a security background check under paragraph (1);

''(B) the processes to conduct the security background checks;

''(C) the necessary biographical information and other data required in order to conduct the security background checks;

''(D) a redress process for an adversely-affected person consistent with subsections (b) and (c); and

''(E) a prohibition on an owner or operator of a covered chemical facility misrepresenting to an employee or other relevant person, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check.

''(b) MISREPRESENTATION OF ADVERSE EMPLOYMENT DECISIONS.—The regulations required by subsection (a)(1) shall set forth that it shall be a misrepresentation under subsection (a)(2)(E) to attribute an adverse employment decision, including removal or suspension of the employee, to such regulations unless the owner or operator finds, after opportunity for appropriate redress under the processes provided under subsection (c)(1) and (c)(2), that the person subject to such adverse employment decision—

''(1) has been convicted of, has been found not guilty of by reason of insanity, or is under want, warrant, or indictment for, a permanent disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations;

''(2) was convicted of, or found not guilty of by reason of insanity, an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, within 7 years of the date on which the covered chemical facility performs the security background check;

''(3) was incarcerated for an interim disqualifying criminal offense listed in part 1572 of title 49, Code of Federal Regulations, and released from incarceration within 5 years of the date that the chemical facility performs the security background check;

''(4) is determined by the Secretary to be on the consolidated terrorist watchlist; or

''(5) is determined, as a result of the security background check, not to be legally authorized to work in the United States.

''(c) REDRESS PROCESSES.—Upon the issuance of regulations under subsection (a), the Secretary shall—

''(1) require the owner or operator to provide an adequate and prompt redress process for a person subject to a security background check under subsection (a)(1) who is subjected to an adverse employment decision, including removal or suspension of the employee, due to such regulations that is consistent with the appeals process established for employees subject to consumer reports under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), as in force on the date of the enactment of this title;

''(2) provide an adequate and prompt redress process for a person subject to a security background check under subsection (a)(1) who is subjected to an adverse employment decision, including removal or suspension of the employee, due to a determination by the Secretary under subsection (b)(4), that is consistent with the appeals process established under section 70105(c) of title 46, United States Code, including all rights to hearings before an administrative law judge, scope of review, and a review of an unclassified summary of classified evidence equivalent to the summary provided in part 1515 of title 49, Code of Federal Regulations;

''(3) provide an adequate and prompt redress process for a person subject to a security background check under subsection (a)(1) who is subjected to an adverse employment decision, including removal or suspension of the employee, due to a violation of subsection (a)(2)(E), which shall not preclude the exercise of any other rights available under collective bargaining agreements or applicable laws;

''(4) establish a reconsideration process described in subsection (d) for a person subject to an adverse employment decision that was attributed by an owner or operator to the regulations required by subsection (a)(1);

''(5) have the authority to order an appropriate remedy, including reinstatement of the person subject to a security background check under subsection (a)(1), if the Secretary determines that the adverse employment decision was made in violation of the regulations required under subsection (a)(1) or as a result of an erroneous determination by the Secretary under subsection (b)(4);

''(6) ensure that the redress processes required under paragraphs (1), (2), or (3) afford to the person a full disclosure of any public-record event covered by subsection (b) that provides the basis for an adverse employment decision; and

''(7) ensure that the person subject to a security background check under subsection (a)(1) receives the person's full wages and benefits until all redress processes under this subsection are exhausted.

''(d) RECONSIDERATION PROCESS.—

''(1) IN GENERAL.—The reconsideration process required under subsection (c)(4) shall—

''(A) require the Secretary to determine, within 30 days after receiving a petition submitted by a person subject to an adverse employment decision that was attributed by an owner or operator to the regulations required by subsection (a)(1), whether such person poses a security risk to the covered chemical facility; and

''(B) include procedures consistent with section 70105(c) of title 46, United States Code, including all rights to hearings before an administrative law judge, scope of review, and a review of an unclassified summary of classified evidence equivalent to the summary provided in part 1515 of title 49, Code of Federal Regulations.

''(2) DETERMINATION BY THE SECRETARY.—In making a determination described under paragraph (1)(A), the Secretary shall—

''(A) give consideration to the circumstance of any disqualifying act or offense, restitution made by the person, Federal and State mitigation remedies, and other factors from which it may be concluded that the person does not pose a security risk to the covered chemical facility; and

''(B) provide his or her determination as to whether such person poses a security risk to the covered chemical facility to the petitioner and to the owner or operator of the covered chemical facility.

''(3) OWNER OR OPERATOR RECONSIDERATION.—If the Secretary determines pursuant to paragraph (1)(A) that the person does not pose a security risk to the covered chemical facility, it shall thereafter constitute a prohibited misrepresentation for the owner or operator of the covered chemical facility to continue to attribute the adverse employment decision to the regulations under subsection (a)(1).

''(e) RESTRICTIONS ON USE AND MAINTENANCE OF INFORMATION.—Information obtained under this section by the Secretary or the owner or operator of a covered chemical facility shall be handled as follows:

''(1) Such information may not be made available to the public.

''(2) Such information may not be accessed by employees of the facility except for such employees who are directly involved with collecting the information or conducting or evaluating security background checks.

''(3) Such information shall be maintained confidentially by the facility and the Secretary and may be used only for making determinations under this section.

''(4) The Secretary may share such information with other Federal, State, local, and tribal law enforcement agencies.

''(f) SAVINGS CLAUSE.—

''(1) RIGHTS AND RESPONSIBILITIES.—Nothing in this section shall be construed to abridge any right or responsibility of a person subject to a security background check under subsection (a)(1) or an owner or operator of a covered chemical facility under any other Federal, State, local, or tribal law or collective bargaining agreement.

''(2) EXISTING RIGHTS.—Nothing in this section shall be construed as creating any new right or modifying any existing right of an individual to appeal a determination by the Secretary as a result of a check against a terrorist watch list.

''(g) PREEMPTION.—Nothing in this section shall be construed to preempt, alter, or affect a Federal, State, local, or tribal law that requires criminal history background checks, checks on the authorization of an individual to work in the United States, or other background checks of persons subject to security background checks under subsection (a)(1).

''(h) DEFINITION OF SECURITY BACKGROUND CHECK.—The term 'security background check' means a review at no cost to any person subject to a security background check under subsection (a)(1) of the following for the purpose of identifying individuals who may pose a threat to chemical facility security, to national security, or of terrorism:

''(1) Relevant databases to verify and validate identity.

''(2) Relevant criminal history databases.

''(3) In the case of an alien (as defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the relevant databases to determine the status of the alien under the immigration laws of the United States.

''(4) The consolidated terrorist watchlist.

''(5) Other relevant information or databases, as determined by the Secretary.

''(i) DEPARTMENT-CONDUCTED SECURITY BACKGROUND CHECK.—The regulations under subsection (a)(1) shall set forth a process by which the Secretary, on an ongoing basis, shall determine whether alternate security background checks conducted by the Department are sufficient to meet the requirements of this section such that no additional security background check under this section is required for an individual for whom such a qualifying alternate security background check was conducted. The Secretary may require the owner or operator of a covered chemical facility to which the individual will have unescorted access to sensitive or restricted areas to submit identifying information about the individual and the alternate security background check conducted for that individual to the Secretary in order to enable the Secretary to verify the validity of the alternate security background check. Such regulations shall provide that no security background check under this section is required for an individual holding a transportation security card issued under section 70105 of title 46, United States Code.

''(j) TERMINATION OF EMPLOYMENT.—If, as the result of a security background check, an owner or operator of a covered chemical facility finds that a covered individual is not legally authorized to work in the United States, the owner or operator shall cease to employ the covered individual, subject to the appropriate redress processes available to such individual under this section.

"SEC. 2116. CITIZEN ENFORCEMENT.

''(a) IN GENERAL.—Except as provided in subsection (c), any person may commence a civil action on such person's own behalf—

''(1) against any governmental entity (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and any federally owned-contractor operated facility) alleged to be in violation of any order that has become effective pursuant to this title; or

''(2) against the Secretary, for an alleged failure to perform any act or duty under this title that is not discretionary for the Secretary.

''(b) COURT OF JURISDICTION.—

''(1) IN GENERAL.—Any action under subsection (a)(1) shall be brought in the district court for the district in which the alleged violation occurred. Any action brought under subsection (a)(2) may be brought in the district court for the district in which the alleged violation occurred or in the United States District Court for the District of Columbia.

''(2) RELIEF.—The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties to enforce the order referred to in subsection (a)(1), to order such governmental entity to take such action as may be necessary, or both, or, in an action commenced under subsection (a)(2), to order the Secretary to perform the non-discretionary act or duty, and to order any civil penalties, as appropriate, under section 2107.

''(c) ACTIONS PROHIBITED.—No action may be commenced under subsection (a) prior to 60 days after the date on which the person commencing the action has given notice of the alleged violation to—

''(1) the Secretary; and

''(2) in the case of an action under subsection (a)(1), any governmental entity alleged to be in violation of an order.

''(d) NOTICE.—Notice under this section shall be given in such manner as the Secretary shall prescribe by regulation.

''(e) INTERVENTION.—In any action under this section, the Secretary, if not a party, may intervene as a matter of right.

''(f) COSTS; BOND.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

''(g) OTHER RIGHTS PRESERVED.—Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law.

"SEC. 2117. CITIZEN PETITIONS.

''(a) REGULATIONS.—The Secretary shall issue regulations to establish a citizen petition process for petitions described in subsection (b). Such regulations shall include—

''(1) the format for such petitions;

''(2) the procedure for investigation of petitions;

''(3) the procedure for response to such petitions, including timelines; and

''(4) the procedure for referral to and review by the Office of the Inspector General of the Department without deference to the Secretary's determination with respect to the petition; and

''(5) the procedure for rejection or acceptance by the Secretary of the recommendation of the Office of the Inspector General.

''(b) PETITIONS.—The regulations issued pursuant to subsection (a) shall allow any person to file a petition with the Secretary—

''(1) identifying any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) alleged to be in violation of any standard, regulation, condition, requirement, prohibition, plan, or order that has become effective under this title; and

''(2) describing the alleged violation of any standard, regulation, condition, requirement, prohibition, plan, or order that has become effective under this title by that person.

''(c) REQUIREMENTS.—Upon issuance of regulations under subsection (a), the Secretary shall—

''(1) accept all petitions described under subsection (b) that meet the requirements of the regulations promulgated under subsection (a);

''(2) investigate all allegations contained in accepted petitions;

''(3) determine whether enforcement action will be taken concerning the alleged violation or violations;

''(4) respond to all accepted petitions promptly and in writing;

''(5) include in all responses to petitions a brief and concise statement, to the extent permitted under section 2110, of the allegations, the steps taken to investigate, the determination made, and the reasons for such determination;

''(6) maintain an internal record including all protected information related to the determination; and

''(7) with respect to any petition for which the Secretary has not made a timely response or the Secretary's response is unsatisfactory to the petitioner, provide the petitioner with the opportunity to request—

''(A) a review of the full record by the Inspector General of the Department, including a review of protected information; and

''(B) the formulation of recommendations by the Inspector General and submittal of such recommendations to the Secretary and, to the extent permitted under section 2110, to the petitioner; and

''(8) respond to a recommendation submitted by the Inspector General under paragraph (7) by adopting or rejecting the recommendation.

"SEC. 2118. NOTIFICATION SYSTEM TO ADDRESS PUBLIC CONCERNS.

''(a) ESTABLISHMENT.—The Secretary shall establish a notification system, which shall provide any individual the ability to report a suspected security deficiency or suspected non-compliance with this title. Such notification system shall provide for the ability to report the suspected security deficiency or non-compliance via telephonic and Internet-based means.

''(b) ACKNOWLEDGMENT.—When the Secretary receives a report through the notification system established under subsection (a), the Secretary shall respond to such report in a timely manner, but in no case shall the Secretary respond to such a report later than 30 days after receipt of the report.

''(c) STEPS TO ADDRESS PROBLEMS.—The Secretary shall review each report received through the notification system established under subsection (a) and shall, as necessary, take appropriate enforcement action under section 2107.

''(d) FEEDBACK REQUIRED.—Upon request, the Secretary shall provide the individual who reported the suspected security deficiency or non-compliance through the notification system established under subsection (a) a written response that includes the Secretary's findings with respect to the report submitted by the individual and what, if any, compliance action was taken in response to such report.

''(e) INSPECTOR GENERAL REPORT REQUIRED.—The Inspector General of the Department shall submit to the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate an annual report on the reports received under the notification system established under subsection (a) and the Secretary's disposition of such reports.

"SEC. 2119. ANNUAL REPORT TO CONGRESS.

''(a) ANNUAL REPORT.—Not later than one year after the date of the enactment of this title, annually thereafter for the next four years, and biennially thereafter, the Secretary shall submit to the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on progress in achieving compliance with this title. Each such report shall include the following:

''(1) A qualitative discussion of how covered chemical facilities, differentiated by tier, have reduced the risks of chemical facility terrorist incidents at such facilities, including—

''(A) a generalized summary of measures implemented by covered chemical facilities in order to meet each risk-based chemical facility performance standard established by this title, and those that the facilities already had in place—

''(i) in the case of the first report under this section, before the issuance of the final rule implementing the regulations known as the 'Chemical Facility Anti-Terrorism Standards', issued on April 9, 2007; and

''(ii) in the case of each subsequent report, since the submittal of the most recent report submitted under this section; and

''(B) any other generalized summary the Secretary deems appropriate to describe the measures covered chemical facilities are implementing to comply with the requirements of this title.

''(2) A quantitative summary of how the covered chemical facilities, differentiated by tier, are complying with the requirements of this title during the period covered by the report and how the Secretary is implementing and enforcing such requirements during such period, including—

''(A) the number of chemical facilities that provided the Secretary with information about possessing substances of concern, as described in section 2102(b)(2);

''(B) the number of covered chemical facilities assigned to each tier;

''(C) the number of security vulnerability assessments and site security plans submitted by covered chemical facilities;

''(D) the number of security vulnerability assessments and site security plans approved and disapproved by the Secretary;

''(E) the number of covered chemical facilities without approved security vulnerability assessments or site security plans;

''(F) the number of chemical facilities that have been assigned to a different tier or are no longer regulated by the Secretary due to implementation of a method to reduce the consequences of a terrorist attack and a description of such implemented methods;

''(G) the number of orders for compliance issued by the Secretary;

''(H) the administrative penalties assessed by the Secretary for non-compliance with the requirements of this title;

''(I) the civil penalties assessed by the court for non-compliance with the requirements of this title;

''(J) the number of terrorist watchlist checks conducted by the Secretary in order to comply with the requirements of this title, the number of appeals conducted by the Secretary pursuant to the processes described under paragraphs (2), (3) and (4) of

section 2115(c), aggregate information regarding the time taken for such appeals, aggregate information regarding the manner in which such appeals were resolved, and, based on information provided to the Secretary annually by each owner or operator of a covered chemical facility, the number of persons subjected to adverse employment decisions that were attributed by the owner or operator to the regulations required by section 2115; and

''(K) any other regulatory data the Secretary deems appropriate to describe facility compliance with the requirements of this title and the Secretary's implementation of such requirements.

''(b) PUBLIC AVAILABILITY.—A report submitted under this section shall be made publicly available.

''SEC. 2120. AUTHORIZATION OF APPROPRIATIONS.

''There is authorized to be appropriated to the Secretary of Homeland Security to carry out this title—

''(1) $325,000,000 for fiscal year 2011, of which $100,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack, of which up to $3,000,000 shall be made available for grants authorized under section 2111(c)(1);

''(2) $300,000,000 for fiscal year 2012, of which $75,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack, of which up to $3,000,000 shall be made available for grants authorized under section 2111(c)(1); and

''(3) $275,000,000 for fiscal year 2013, of which $50,000,000 shall be made available to provide funding for methods to reduce the consequences of a terrorist attack, of which up to $3,000,000 shall be made available for grants authorized under section 2111(c)(1).''.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of such Act is amended by adding at the end the following:

''TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES

''Sec. 2101. Definitions.
''Sec. 2102. Risk-based designation and ranking of chemical facilities.
''Sec. 2103. Security vulnerability assessments and site security plans.
''Sec. 2104. Site inspections.
''Sec. 2105. Records.
''Sec. 2106. Timely sharing of threat information.
''Sec. 2107. Enforcement.
''Sec. 2108. Whistleblower protections.
''Sec. 2109. Federal preemption.
''Sec. 2110. Protection of information.
''Sec. 2111. Methods to reduce the consequences of a terrorist attack.
''Sec. 2112. Applicability.
''Sec. 2113. Savings clause.
''Sec. 2114. Office of Chemical Facility Security.
''Sec. 2115. Security background checks of covered individuals at certain chemical facilities.
''Sec. 2116. Citizen enforcement.
''Sec. 2117. Citizen petitions.
''Sec. 2118. Notification system to address public concerns.
''Sec. 2119. Annual report to Congress.
''Sec. 2120. Authorization of appropriations.''.

(c) CONFORMING REPEAL.—

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

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this title.

(d) REGULATIONS.—

(1) DEADLINE.—The Secretary shall issue proposed rules to carry out title XXI of the Homeland Security Act of 2002, as added by subsection (a), by not later than 6 months after the date of the enactment of this Act, and shall issue final rules to carry out such title by not later than 18 months after the date of the enactment of this Act.

(2) CONSULTATION.—In developing and implementing the rules required under paragraph (1), the Secretary shall consult with the Administrator of the Environmental Protection Agency, and other persons, as appropriate, regarding—

(A) the designation of substances of concern;

(B) methods to reduce the consequences of a terrorist attack;

(C) security at drinking water facilities and wastewater treatment works;

(D) the treatment of protected information; and

(E) such other matters as the Secretary determines necessary.

(3) SENSE OF CONGRESS REGARDING CFATS.—It is the sense of Congress that the Secretary of Homeland Security was granted statutory authority under section 550 of the Department of Homeland Security Appropriations Act (Public Law 109–295) to regulate security practices at chemical facilities until October 1, 2009. Pursuant to that section the Secretary prescribed regulations known as the Chemical Facility Anti-Terrorism Standards, or ''CFATS'' (referred to in this section as ''CFATS regulations'').

(4) INTERIM USE AND AMENDMENT OF CFATS.—Until the final rules prescribed pursuant to paragraph (1) take effect, in carrying out title XXI of the Homeland Security Act of 2002, as added by subsection (a), the Secretary may, to the extent the Secretary determines appropriate—

(A) continue to carry out the CFATS regulations, as in effect immediately before the date of the enactment of this title;

(B) amend any of such regulations as may be necessary to ensure that such regulations are consistent with the requirements of this title and the amendments made by this title; and

(C) continue using any tools developed for purposes of such regulations, including the list of substances of concern, usually referred to as ''Appendix A'', and the chemical security assessment tool (which includes facility registration, a top-screen questionnaire, a security vulnerability assessment tool, a site security plan template, and a chemical vulnerability information repository).

(5) UPDATE OF FACILITY PLANS ASSESSMENTS AND PLANS PREPARED UNDER CFATS.—The owner or operator of a covered chemical facility, who, before the effective date of the final regulations issued under title XXI of the Homeland Security Act of 2002, as added by subsection (a), submits a security vulnerability assessment or site security plan under the CFATS regulations, shall be required to update or amend the facility's security vulnerability assessment and site security plan to reflect any additional requirements of this title or the amendments made by this title, according to a timeline established by the Secretary.

(e) REVIEW OF DESIGNATION OF SODIUM FLUOROACETATE AS A SUBSTANCE OF CONCERN.—The Secretary of Homeland Security shall review the designation of sodium fluoroacetate as a substance of concern pursuant to subsection (d) of section 2102 of the Homeland Security Act of 2002, as added by subsection (a), by the earlier of the following dates:

(1) The date of the first periodic review conducted pursuant to such subsection after the date of the enactment of this title.

(2) The date that is one year after the date of the enactment of this title.

TITLE II—DRINKING WATER SECURITY

SEC. 201. SHORT TITLE.

This title may be cited as the ''Drinking Water System Security Act of 2009''.

SEC. 202. INTENTIONAL ACTS AFFECTING THE SECURITY OF COVERED WATER SYSTEMS.

(a) AMENDMENT OF SAFE DRINKING WATER ACT.—Section 1433 of the Safe Drinking Water Act (42 U.S.C. 300i–2) is amended to read as follows:

''SEC. 1433. INTENTIONAL ACTS.

''(a) RISK-BASED PERFORMANCE STANDARDS; VULNERABILITY ASSESSMENTS; SITE SECURITY PLANS; EMERGENCY RESPONSE PLANS.—

''(1) IN GENERAL.—The Administrator shall issue regulations—

''(A) establishing risk-based performance standards for the security of covered water systems; and

''(B) establishing requirements and deadlines for each covered water system—

''(i) to conduct a vulnerability assessment or, if the system already has a vulnerability assessment, to revise the assessment to be in accordance with this section, and submit such assessment to the Administrator;

''(ii) to update the vulnerability assessment not less than every 5 years and promptly after any change at the system that could cause the reassignment of the system to a different risk-based tier under subsection (d);

''(iii) to develop, implement, and, as appropriate, revise a site security plan not less than every 5 years and promptly after a revision to the vulnerability assessment and submit such plan to the Administrator;

''(iv) to develop an emergency response plan (or, if the system has already developed an emergency response plan, to revise the plan to be in accordance with this section) and revise the plan not less than every 5 years thereafter; and

''(v) to provide annual training to employees and contractor employees of covered water systems on implementing site security plans and emergency response plans.

''(2) COVERED WATER SYSTEMS.—For purposes of this section, the term 'covered water system' means a public water system that—

''(A) is a community water system serving a population greater than 3,300; or

''(B) in the discretion of the Administrator, presents a security risk making regulation under this section appropriate.

''(3) CONSULTATION WITH STATE AUTHORITIES.—In developing and carrying out the regulations under paragraph (1), the Administrator shall consult with States exercising primary enforcement responsibility for public water systems.

''(4) CONSULTATION WITH OTHER PERSONS.—In developing and carrying out the regulations under paragraph (1), the Administrator shall consult with the Secretary of Homeland Security, and, as appropriate, other persons regarding—

''(A) provision of threat-related and other baseline information to covered water systems;

''(B) designation of substances of concern;

''(C) development of risk-based performance standards;

''(D) establishment of risk-based tiers and process for the assignment of covered water systems to risk-based tiers;

''(E) process for the development and evaluation of vulnerability assessments, site security plans, and emergency response plans;

''(F) treatment of protected information; and

''(G) such other matters as the Administrator determines necessary.

''(5) SUBSTANCES OF CONCERN.—For purposes of this section, the Administrator, in consultation with the Secretary of Homeland Security—

''(A) may designate any chemical substance as a substance of concern;

''(B) at the time any substance is designated pursuant to subparagraph (A), shall establish by rule a threshold quantity for the release or theft of the substance, taking into account the toxicity, reactivity, volatility, dispersability, combustibility, and flammability of the substance and the amount of the substance that, as a result of a release, is known to cause or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment; and

''(C) in making such a designation, shall take into account appendix A to part 27 of title 6, Code of Federal Regulations (or any successor regulations).

''(6) BASELINE INFORMATION.—The Administrator, after consultation with appropriate departments and agencies of the Federal Government and with State, local, and tribal governments, shall, for purposes of facilitating compliance with the requirements of this section, promptly after the effective date of the regulations under subsection (a)(1) and as appropriate thereafter, provide baseline information to covered water systems regarding which kinds of intentional acts are the probable threats to—

''(A) substantially disrupt the ability of the system to provide a safe and reliable supply of drinking water;

''(B) cause the release of a substance of concern at the covered water system; or

''(C) cause the theft, misuse, or misappropriation of a substance of concern.

''(b) RISK-BASED PERFORMANCE STANDARDS.—The regulations under subsection (a)(1) shall set forth risk-based performance standards for site security plans required by this section. The standards shall be separate and, as appropriate, increasingly stringent based on the level of risk associated with the covered water system's risk-based tier assignment under subsection (d). In developing such standards, the Administrator shall take into account section 27.230 of title 6, Code of Federal Regulations (or any successor regulations).

''(c) VULNERABILITY ASSESSMENT.—The regulations under subsection (a)(1) shall require each covered water system to assess the system's vulnerability to a range of intentional acts, including an intentional act that results in a release of a substance of concern that is known to cause or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment. At a minimum, the vulnerability assessment shall include a review of—

''(1) pipes and constructed conveyances;

''(2) physical barriers;

''(3) water collection, pretreatment, treatment, storage, and distribution facilities, including fire hydrants;

''(4) electronic, computer, and other automated systems that are used by the covered water system;

''(5) the use, storage, or handling of various chemicals, including substances of concern;

''(6) the operation and maintenance of the covered water system; and

''(7) the covered water system's resiliency and ability to ensure continuity of operations in the event of a disruption caused by an intentional act.

''(d) RISK-BASED TIERS.—The regulations under subsection (a)(1) shall provide for 4 risk-based tiers applicable to covered water systems, with tier one representing the highest degree of security risk.

''(1) ASSIGNMENT OF RISK-BASED TIERS.—

''(A) SUBMISSION OF INFORMATION.—The Administrator may require a covered water system to submit information in order to determine the appropriate risk-based tier for the covered water system.

''(B) FACTORS TO CONSIDER.—The Administrator shall assign (and reassign when appropriate) each covered water system to one of the risk-based tiers established pursuant to this subsection. In assigning a covered water system to a risk-based tier, the Administrator shall consider the potential consequences (such as death, injury, or serious adverse effects to human health, the environment, critical infrastructure, national security, and the national economy) from—

''(i) an intentional act to cause a release, including a worst-case release, of a substance of concern at the covered water system;

''(ii) an intentional act to introduce a contaminant into the drinking water supply or disrupt the safe and reliable supply of drinking water; and

''(iii) an intentional act to steal, misappropriate, or misuse substances of concern.

''(2) EXPLANATION FOR RISK-BASED TIER ASSIGNMENT.—The Administrator shall provide each covered water system assigned to a risk-based tier with the reasons for the tier assignment and whether such system is required to submit an assessment under subsection (g)(2).

''(e) DEVELOPMENT AND IMPLEMENTATION OF SITE SECURITY PLANS.—The regulations under subsection (a)(1) shall permit each covered water system, in developing and implementing its site security plan required by this section, to select layered security and preparedness measures that, in combination, appropriately—

''(1) address the security risks identified in its vulnerability assessment; and

''(2) comply with the applicable risk-based performance standards required under this section.

''(f) ROLE OF EMPLOYEES.—

''(1) DESCRIPTION OF ROLE.—Site security plans and emergency response plans required under this section shall describe the appropriate roles or responsibilities that employees and contractor employees are expected to perform to deter or respond to the intentional acts described in subsection (d)(1)(B).

''(2) TRAINING FOR EMPLOYEES.—Each covered water system shall annually provide employees and contractor employees with roles or responsibilities described in paragraph (1) with a minimum of 8 hours of training on carrying out those roles or responsibilities.

''(3) EMPLOYEE PARTICIPATION.—In developing, revising, or updating a vulnerability assessment, site security plan, and emergency response plan required under this section, a covered water system shall include—

''(A) at least one supervisory and at least one non-supervisory employee of the covered water system; and

''(B) at least one representative of each certified or recognized bargaining agent representing facility employees or contractor employees with roles or responsibilities described in paragraph (1), if any, in a collective bargaining relationship with the private or public owner or operator of the system or with a contractor to that system.

''(g) METHODS TO REDUCE THE CONSEQUENCES OF A CHEMICAL RELEASE FROM AN INTENTIONAL ACT.—

''(1) DEFINITION.—In this section, the term 'method to reduce the consequences of a chemical release from an intentional act' means a measure at a covered water system that reduces or eliminates the potential consequences of a release of a substance of concern from an intentional act such as—

''(A) the elimination or reduction in the amount of a substance of concern possessed or planned to be possessed by a covered water system through the use of alternate substances, formulations, or processes;

''(B) the modification of pressures, temperatures, or concentrations of a substance of concern; and

''(C) the reduction or elimination of onsite handling of a substance of concern through improvement of inventory control or chemical use efficiency.

''(2) ASSESSMENT.—For each covered water system that possesses or plans to possess a substance of concern in excess of the release threshold quantity set by the Administrator under subsection (a)(5), the regulations under subsection (a)(1) shall require the covered water system to include in its site security plan an assessment of methods to reduce the consequences of a chemical release from an intentional act at the covered water system. The covered water system shall provide such assessment to the Administrator and the State exercising primary enforcement responsibility for the covered water system, if any. The regulations under subsection (a)(1) shall require the system, in preparing the assessment, to consider factors appropriate to the system's security, public health, or environmental mission, and include—

''(A) a description of the methods to reduce the consequences of a chemical release from an intentional act;

''(B) how each described method to reduce the consequences of a chemical release from an intentional act could, if applied, reduce the potential extent of death, injury, or serious adverse effects to human health resulting from a chemical release;

''(C) how each described method to reduce the consequences of a chemical release from an intentional act could, if applied, affect the presence of contaminants in treated water, human health, or the environment;

''(D) whether each described method to reduce the consequences of a chemical release from an intentional act at the covered water system is feasible, as defined in section 1412(b)(4)(D), but not including cost calculations under subparagraph (E);

''(E) the costs (including capital and operational costs) and avoided costs (including savings and liabilities) associated with applying each described method to reduce the consequences of a chemical release from an intentional act at the covered water system;

''(F) any other relevant information that the covered water system relied on in conducting the assessment; and

''(G) a statement of whether the covered water system has implemented or plans to implement one or more methods to reduce the consequences of a chemical release from an intentional act, a description of any such methods, and, in the case of a covered water system described in paragraph (3)(A), an explanation of the reasons for any decision not to implement any such methods.

''(3) REQUIRED METHODS.—

''(A) APPLICATION.—This paragraph applies to a covered water system—

''(i) that is assigned to one of the two highest risk-based tiers under subsection (d); and

''(ii) that possesses or plans to possess a substance of concern in excess of the release threshold quantity set by the Administrator under subsection (a)(5).

''(B) HIGHEST-RISK SYSTEMS.—If, on the basis of its assessment under paragraph (2), a covered water system described in subparagraph (A) decides not to implement methods to reduce the consequences of a chemical release from an intentional act, the State exercising primary enforcement responsibility for the covered water system, if the system is located in such a State, or the Administrator, if the covered water system is not located in such a State, shall, in accordance with a timeline set by the Administrator—

''(i) determine whether to require the covered water system to implement the methods; and

''(ii) for States exercising primary enforcement responsibility, report such determination to the Administrator.

''(C) STATE OR ADMINISTRATOR'S CONSIDERATIONS.—Before requiring, pursuant to subparagraph (B), the implementation of a method to reduce the consequences of a chemical release from an intentional act, the State exercising primary enforcement responsibility for the covered water system, if the system is located in such a State, or the Administrator, if the covered water system is not located in such a State, shall consider factors appropriate to the security, public health, and environmental missions of covered water systems, including an examination of whether the method—

''(i) would significantly reduce the risk of death, injury, or serious adverse effects to human health resulting directly from a chemical release from an intentional act at the covered water system;

''(ii) would not increase the interim storage of a substance of concern by the covered water system;

''(iii) would not render the covered water system unable to comply with other requirements of this Act or drinking water standards established by the State or political subdivision in which the system is located; and

''(iv) is feasible, as defined in section 1412(b)(4)(D), to be incorporated into the operation of the covered water system.

''(D) APPEAL.—Before requiring, pursuant to subparagraph (B), the implementation of a method to reduce the consequences of a chemical release from an intentional act, the State exercising primary enforcement responsibility for the covered water system, if the system is located in such a State, or the Administrator, if the covered water system is not located in such a State, shall provide such covered water system an opportunity to appeal the determination to require such implementation made pursuant to subparagraph (B) by such State or the Administrator.

''(4) INCOMPLETE OR LATE ASSESSMENTS.—

''(A) INCOMPLETE ASSESSMENTS.—If the Administrator finds that the covered water system, in conducting its assessment under paragraph (2), did not meet the requirements of paragraph (2) and the applicable regulations, the Administrator shall, after notifying the covered water system and the State exercising primary enforcement responsibility for that system, if any, require the covered water system to submit a revised assessment not later than 60 days after the Administrator notifies such system. The Administrator may require such additional revisions as are necessary to ensure that the system meets the requirements of paragraph (2) and the applicable regulations.

''(B) LATE ASSESSMENTS.—If the Administrator finds that a covered water system, in conducting its assessment pursuant to paragraph (2), did not complete such assessment in accordance with the deadline set by the Administrator, the Administrator may, after notifying the covered water system and the State exercising primary enforcement responsibility for that system, if any, take appropriate enforcement action under subsection (o).

''(C) REVIEW.—The State exercising primary enforcement responsibility for the covered water system, if the system is located in such a State, or the Administrator, if the system is not located in such a State, shall review a revised assessment that meets the requirements of paragraph (2) and applicable regulations to determine whether the covered water system will be required to implement methods to reduce the consequences of an intentional act pursuant to paragraph (3).

''(5) ENFORCEMENT.—

''(A) FAILURE BY STATE TO MAKE DETERMINATION.—Whenever the Administrator finds that a State exercising primary enforcement responsibility for a covered water system has failed to determine whether to require the covered water system to implement methods to reduce the consequences of a chemical release from an intentional act, as required by paragraph (3)(B), the Administrator shall so notify the State and covered water system. If, beyond the thirtieth day after the Administrator's notification under the preceding sentence, the State has failed to make the determination described in such sentence, the Administrator shall so notify the State and covered water system and shall determine whether to require the covered water system to implement methods to reduce the consequences of a chemical release from an intentional act based on the factors described in paragraph (3)(C).

''(B) FAILURE BY STATE TO BRING ENFORCEMENT ACTION.—If the Administrator finds, with respect to a period in which a State has primary enforcement responsibility for a covered water system, that the system has failed to implement methods to reduce the consequences of a chemical release from an intentional act (as required by the State or the Administrator under paragraph (3)(B) or the Administrator under subparagraph (A)), the Administrator shall so notify the State and the covered water system. If, beyond the thirtieth day after the Administrator's notification under the preceding sentence, the State has not commenced appropriate enforcement action, the Administrator shall so notify the State and may commence an enforcement action against the system, including by seeking or imposing civil penalties under subsection (o), to require implementation of such methods.

''(C) CONSIDERATION OF CONTINUED PRIMARY ENFORCEMENT RESPONSIBILITY.—For a State with primary enforcement responsibility for a covered water system, the Administrator may consider the failure of such State to make a determination as described under subparagraph (A) or to bring enforcement action as described under subparagraph (B) when determining whether a State may retain primary enforcement responsibility under this Act.

''(6) GUIDANCE FOR COVERED WATER SYSTEMS ASSIGNED TO TIER 3 AND TIER 4.—For covered water systems required to conduct an assessment under paragraph (2) and assigned by the Administrator to tier 3 or tier 4 under subsection (d), the Administrator shall issue guidance and, as appropriate, provide or recommend tools, methodologies, or computer software, to assist such covered water systems in complying with the requirements of this section.

''(h) REVIEW BY ADMINISTRATOR.—

''(1) IN GENERAL.—The regulations under subsection (a)(1) shall require each covered water system to submit its vulnerability assessment and site security plan to the Administrator for review according to deadlines set by the Administrator. The Administrator shall review each vulnerability assessment and site security plan submitted under this section and—

''(A) if the assessment or plan has any significant deficiency described in paragraph (2), require the covered water system to correct the deficiency; or

''(B) approve such assessment or plan.

''(2) SIGNIFICANT DEFICIENCIES.—A vulnerability assessment or site security plan of a covered water system has a significant deficiency under this subsection if the Administrator, in consultation, as appropriate, with the State exercising primary enforcement responsibility for such system, if any, determines that—

''(A) such assessment does not comply with the regulations established under section (a)(1); or

''(B) such plan—

''(i) fails to address vulnerabilities identified in a vulnerability assessment; or

''(ii) fails to meet applicable risk-based performance standards.

''(3) STATE, REGIONAL, OR LOCAL GOVERNMENTAL ENTITIES.—No covered water system shall be required under State, local, or tribal law to provide a vulnerability assessment or site security plan described in this section to any State, regional, local, or tribal governmental entity solely by reason of the requirement set forth in paragraph (1) that the system submit such an assessment and plan to the Administrator.

''(i) EMERGENCY RESPONSE PLAN.—

''(1) IN GENERAL.—Each covered water system shall prepare or revise, as appropriate, an emergency response plan that incorporates the results of the system's most current vulnerability assessment and site security plan.

''(2) CERTIFICATION.—Each covered water system shall certify to the Administrator that the system has completed an emergency response plan. The system shall submit such certification to the Administrator not later than 6 months after the system's first completion or revision of a vulnerability assessment under this section and shall submit an additional certification following any update of the emergency response plan.

''(3) CONTENTS.—A covered water system's emergency response plan shall include—

''(A) plans, procedures, and identification of equipment that can be implemented or used in the event of an intentional act at the covered water system; and

''(B) actions, procedures, and identification of equipment that can obviate or significantly lessen the impact of intentional acts on public health and the safety and supply of drinking water provided to communities and individuals.

''(4) COORDINATION.—As part of its emergency response plan, each covered water system shall provide appropriate information to any local emergency planning committee, local law enforcement officials, and local emergency response providers to ensure an effective, collective response.

''(j) MAINTENANCE OF RECORDS.—Each covered water system shall maintain an updated copy of its vulnerability assessment, site security plan, and emergency response plan.

''(k) AUDIT; INSPECTION.—

''(1) IN GENERAL.—Notwithstanding section 1445(b)(2), the Administrator, or duly designated representatives of the Administrator, shall audit and inspect covered water systems, as necessary, for purposes of determining compliance with this section.

''(2) ACCESS.—In conducting an audit or inspection of a covered water system, the Administrator or duly designated representatives of the Administrator, as appropriate, shall have access to the owners, operators, employees and contractor employees, and employee representatives, if any, of such covered water system.

''(3) CONFIDENTIAL COMMUNICATION OF INFORMATION; AIDING INSPECTIONS.—The Administrator, or a duly designated representative of the Administrator, shall offer non-supervisory employees of a covered water system the opportunity confidentially to communicate information relevant to the employer's compliance or noncompliance with this section, including compliance or noncompliance with any regulation or requirement adopted by the Administrator in furtherance

of the purposes of this section. A representative of each certified or recognized bargaining agent described in subsection (f)(3)(B), if any, or, if none, a non-supervisory employee, shall be given an opportunity to accompany the Administrator, or the duly designated representative of the Administrator, during the physical inspection of any covered water system for the purpose of aiding such inspection, if representatives of the covered water system will also be accompanying the Administrator or the duly designated representative of the Administrator on such inspection.

''(l) PROTECTION OF INFORMATION.—

''(1) PROHIBITION OF PUBLIC DISCLOSURE OF PROTECTED INFORMATION.—Protected information shall—

''(A) be exempt from disclosure under section 552 of title 5, United States Code; and

''(B) not be made available pursuant to any State, local, or tribal law requiring disclosure of information or records.

''(2) INFORMATION SHARING.—

''(A) IN GENERAL.—The Administrator shall prescribe such regulations, and may issue such orders, as necessary to prohibit the unauthorized disclosure of protected information, as described in paragraph (7).

''(B) SHARING OF PROTECTED INFORMATION.—The regulations under subparagraph (A) shall provide standards for and facilitate the appropriate sharing of protected information with and between Federal, State, local, and tribal authorities, first responders, law enforcement officials, designated supervisory and non-supervisory covered water system personnel with security, operational, or fiduciary responsibility for the system, and designated facility employee representatives, if any. Such standards shall include procedures for the sharing of all portions of a covered water system's vulnerability assessment and site security plan relating to the roles and responsibilities of system employees or contractor employees under subsection (f)(1) with a representative of each certified or recognized bargaining agent representing such employees, if any, or, if none, with at least one supervisory and at least one non-supervisory employee with roles and responsibilities under subsection (f)(1).

''(C) PENALTIES.—Protected information, as described in paragraph (7), shall not be shared except in accordance with the standards provided by the regulations under subparagraph (A). Whoever discloses protected information in knowing violation of the regulations and orders issued under subparagraph (A) shall be fined under title 18, United States Code, imprisoned for not more than one year, or both, and, in the case of a Federal officeholder or employee, shall be removed from Federal office or employment.

''(3) TREATMENT OF INFORMATION IN ADJUDICATIVE PROCEEDINGS.—In any judicial or administrative proceeding, protected information, as described in paragraph (7), shall be treated in a manner consistent with the treatment of Sensitive Security Information under section 525 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 120 Stat. 1381).

''(4) OTHER OBLIGATIONS UNAFFECTED.—Except as provided in subsection (h)(3), nothing in this section amends or affects an obligation of a covered water system—

''(A) to submit or make available information to system employees, employee organizations, or a Federal, State, tribal, or local government agency under any other law; or

''(B) to comply with any other law.

''(5) CONGRESSIONAL OVERSIGHT.—Nothing in this section permits or authorizes the withholding of information from Congress or any committee or subcommittee thereof.

''(6) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—Nothing in this section amends or affects any authority or obligation of a Federal, State, local, or tribal agency to protect or disclose any record or information that the Federal, State, local, or tribal agency obtains from a covered water system or the Administrator under any other law.

''(7) PROTECTED INFORMATION.—

''(A) IN GENERAL.—For purposes of this section, protected information is any of the following:

''(i) Vulnerability assessments and site security plans under this section, including any assessment developed pursuant to subsection (g)(2).

''(ii) Documents directly related to the Administrator's review of assessments and plans described in clause (i) and, as applicable, the State's review of an assessment prepared under subsection (g)(2).

''(iii) Documents directly related to inspections and audits under this section.

''(iv) Orders, notices, or letters regarding the compliance of a covered water system with the requirements of this section.

''(v) Information, documents, or records required to be provided to or created by, the Administrator under subsection (d).

''(vi) Documents directly related to security drills and training exercises, security threats and breaches of security, and maintenance, calibration, and testing of security equipment.

''(vii) Other information, documents, and records developed exclusively for the purposes of this section that the Administrator determines would be detrimental to the security of one or more covered water systems if disclosed.

''(B) DETRIMENT REQUIREMENT.—For purposes of clauses (ii), (iii), (iv), (v), and (vi) of subparagraph (A), the only portions of documents, records, orders, notices, and letters that shall be considered protected information are those portions that—

''(i) would be detrimental to the security of one or more covered water systems if disclosed; and

''(ii) are developed by the Administrator, the State, or the covered water system for the purposes of this section.

''(C) EXCLUSIONS.—For purposes of this section, protected information does not include—

''(i) information that is otherwise publicly available, including information that is required to be made publicly available under any law;

''(ii) information that a covered water system has lawfully disclosed other than in accordance with this section; and

''(iii) information that, if disclosed, would not be detrimental to the security of one or more covered water systems, including aggregate regulatory data that the Administrator determines appropriate to describe system compliance with the requirements of this section and the Administrator's implementation of such requirements.

''(m) RELATION TO CHEMICAL FACILITY SECURITY REQUIREMENTS.—Title XXI of the Homeland Security Act of 2002 and the amendments made by title I of the Chemical and Water Security Act of 2009 shall not apply to any public water system subject to this Act.

''(n) PREEMPTION.—This section does not preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to a covered water system that is more stringent than a regulation, requirement, or standard of performance under this section.

''(o) VIOLATIONS.—

''(1) IN GENERAL.—A covered water system that violates any requirement of this section, including by not implementing all or part of its site security plan by such date as the Administrator requires, shall be liable for a civil penalty of not more than $25,000 for each day on which the violation occurs.

''(2) PROCEDURE.—When the Administrator determines that a covered water system is subject to a civil penalty under paragraph (1), the Administrator, after consultation with the State, for covered water systems located in a State exercising primary responsibility for the covered water system, and, after considering the severity of the violation or deficiency and the record of the covered water system in carrying out the requirements of this section, may—

''(A) after notice and an opportunity for the covered water system to be heard, issue an order assessing a penalty under such paragraph for any past or current violation, requiring compliance immediately or within a specified time period; or

''(B) commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including temporary or permanent injunction.

''(3) METHODS TO REDUCE THE CONSEQUENCES OF A CHEMICAL RELEASE FROM AN INTENTIONAL ACT.—Except as provided in subsections (g)(4) and (g)(5), if a covered water system is located in a State exercising primary enforcement responsibility for the system, the Administrator may not issue an order or commence a civil action under this section for any deficiency in the content or implementation of the portion of the system's site security plan relating to methods to reduce the consequences of a chemical release from an intentional act (as defined in subsection (g)(1)).

''(p) REPORT TO CONGRESS.—

''(1) PERIODIC REPORT.—Not later than 3 years after the effective date of the regulations under subsection (a)(1), and every 3 years thereafter, the Administrator shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on progress in achieving compliance with this section. Each such report shall include, at a minimum, the following:

''(A) A generalized summary of measures implemented by covered water systems in order to meet each risk-based performance standard established by this section.

''(B) A summary of how the covered water systems, differentiated by risk-based tier assignment, are complying with the requirements of this section during the period covered by the report and how the Administrator is implementing and enforcing such requirements during such period including—

''(i) the number of public water systems that provided the Administrator with information pursuant to subsection (d)(1);

''(ii) the number of covered water systems assigned to each risk-based tier;

''(iii) the number of vulnerability assessments and site security plans submitted by covered water systems;

''(iv) the number of vulnerability assessments and site security plans approved and disapproved by the Administrator;

''(v) the number of covered water systems without approved vulnerability assessments or site security plans;

''(vi) the number of covered water systems that have been assigned to a different risk-based tier due to implementation of a method to reduce the consequences of a chemical release from an intentional act and a description of the types of such implemented methods;

''(vii) the number of audits and inspections conducted by the Administrator or duly designated representatives of the Administrator;

''(viii) the number of orders for compliance issued by the Administrator;

''(ix) the administrative penalties assessed by the Administrator for non-compliance with the requirements of this section;

''(x) the civil penalties assessed by courts for non-compliance with the requirements of this section; and

''(xi) any other regulatory data the Administrator determines appropriate to describe covered water system compliance with the requirements of this section and the Administrator's implementation of such requirements.

''(2) PUBLIC AVAILABILITY.—A report submitted under this section shall be made publicly available.

''(q) GRANT PROGRAMS.—

''(1) IMPLEMENTATION GRANTS TO STATES.—The Administrator may award grants to, or enter into cooperative agreements with, States, based on an allocation formula established by the Administrator, to assist the States in implementing this section.

''(2) RESEARCH, TRAINING, AND TECHNICAL ASSISTANCE GRANTS.—The Administrator may award grants to, or enter into cooperative agreements with, non-profit organizations to provide research, training, and technical assistance to covered water systems to assist them in carrying out their responsibilities under this section.

''(3) PREPARATION GRANTS.—

''(A) GRANTS.—The Administrator may award grants to, or enter into cooperative agreements with, covered water systems to assist such systems in—

''(i) preparing and updating vulnerability assessments, site security plans, and emergency response plans;

''(ii) assessing and implementing methods to reduce the consequences of a release of a substance of concern from an intentional act; and

''(iii) implementing any other security reviews and enhancements necessary to comply with this section.

''(B) PRIORITY.—

''(i) NEED.—The Administrator, in awarding grants or entering into cooperative agreements for purposes described in subparagraph (A)(i), shall give priority to covered water systems that have the greatest need.

''(ii) SECURITY RISK.—The Administrator, in awarding grants or entering into cooperative agreements for purposes described in subparagraph (A)(ii), shall give priority to covered water systems that pose the greatest security risk.

''(4) WORKER TRAINING GRANTS PROGRAM AUTHORITY.—

''(A) IN GENERAL.—The Administrator shall establish a grant program to award grants to eligible entities to provide for training and education of employees and contractor employees with roles or responsibilities described in subsection (f)(1) and first responders and emergency response providers who would respond to an intentional act at a covered water system.

''(B) ADMINISTRATION.—The Administrator shall enter into an agreement with the National Institute of Environmental Health Sciences to make and administer grants under this paragraph.

''(C) USE OF FUNDS.—The recipient of a grant under this paragraph shall use the grant to provide for—

''(i) training and education of employees and contractor employees with roles or responsibilities described in subsection (f)(1), including the annual mandatory training specified in subsection (f)(2) or training for first responders in protecting nearby persons, property, or the environment from the effects of a release of a substance of concern at the covered water system, with priority given to covered water systems assigned to tier one or tier two under subsection (d); and

''(ii) appropriate training for first responders and emergency response providers who would respond to an intentional act at a covered water system.

''(D) ELIGIBLE ENTITIES.—For purposes of this paragraph, an eligible entity is a nonprofit organization with demonstrated experience in implementing and operating successful worker or first responder health and safety or security training programs.

''(r) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—To carry out this section, there are authorized to be appropriated—

''(A) $315,000,000 for fiscal year 2011, of which up to—

''(i) $30,000,000 may be used for administrative costs incurred by the Administrator or the States, as appropriate; and

''(ii) $125,000,000 may be used to implement methods to reduce the consequences of a chemical release from an intentional act at covered water systems with priority given to covered water systems assigned to tier one or tier two under subsection (d); and

''(B) such sums as may be necessary for fiscal years 2012 through 2015.

''(2) SECURITY ENHANCEMENTS.—Funding under this subsection for basic security enhancements shall not include expenditures for personnel costs or monitoring, operation, or maintenance of facilities, equipment, or systems.''.

(b) REGULATIONS; TRANSITION.—

(1) REGULATIONS.—Not later than 2 years after the date of the enactment of this title, the Administrator of the Environmental Protection Agency shall promulgate final regulations to carry out section 1433 of the Safe Drinking Water Act, as amended by subsection (a).

(2) EFFECTIVE DATE.—Until the effective date of the regulations promulgated under paragraph (1), section 1433 of the Safe Drinking Water Act, as in effect on the day before the date of the enactment of this title, shall continue to apply.

(3) SAVINGS PROVISION.—Nothing in this section or the amendment made by this section shall affect the application of section 1433 of the Safe Drinking Water Act, as in effect before the effective date of the regulations promulgated under paragraph (1), to any violation of such section 1433 occurring before such effective date, and the requirements of such section 1433 shall remain in force and effect with respect to such violation until the violation has been corrected or enforcement proceedings completed, whichever is later.

SEC. 203. STUDY TO ASSESS THE THREAT OF CONTAMINATION OF DRINKING WATER DISTRIBUTION SYSTEMS.

Not later than 180 days after the date of the enactment of this title, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Homeland Security, shall—

(1) conduct a study to assess the threat of contamination of drinking water being distributed through public water systems, including fire main systems; and

(2) submit a report to the Congress on the results of such study.

TITLE III—WASTEWATER TREATMENT WORKS SECURITY

SECTION 301. SHORT TITLE.

This title may be cited as the ''Wastewater Treatment Works Security Act of 2009''.

SEC. 302. WASTEWATER TREATMENT WORKS SECURITY.

(a) IN GENERAL.—Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) is amended by adding at the end the following:

''SEC. 222. WASTEWATER TREATMENT WORKS SECURITY.

''(a) ASSESSMENT OF TREATMENT WORKS VULNERABILITY AND IMPLEMENTATION OF SITE SECURITY AND EMERGENCY RESPONSE PLANS.—

''(1) IN GENERAL.—Each owner or operator of a treatment works with either a treatment capacity of at least 2,500,000 gallons per day or, in the discretion of the Administrator, that presents a security risk making coverage under this section appropriate shall, consistent with regulations developed under subsection (b)—

''(A) conduct and, as required, update a vulnerability assessment of its treatment works;

''(B) develop, periodically update, and implement a site security plan for the treatment works; and

''(C) develop and, as required, revise an emergency response plan for the treatment works.

''(2) VULNERABILITY ASSESSMENT.—

''(A) DEFINITION.—In this section, the term 'vulnerability assessment' means an assessment of the vulnerability of a treatment works to intentional acts that may—

''(i) substantially disrupt the ability of the treatment works to safely and reliably operate; or

''(ii) have a substantial adverse effect on critical infrastructure, public health or safety, or the environment.

''(B) REVIEW.—A vulnerability assessment shall include an identification of the vulnerability of the treatment works'—

''(i) facilities, systems, and devices used in the storage, treatment, recycling, or reclamation of municipal sewage or industrial wastes;

''(ii) intercepting sewers, outfall sewers, sewage collection systems, and other constructed conveyances under the control of the owner or operator of the treatment works;

''(iii) electronic, computer, and other automated systems;

''(iv) pumping, power, and other equipment;

''(v) use, storage, and handling of various chemicals, including substances of concern, as identified by the Administrator;

''(vi) operation and maintenance procedures; and

''(vii) ability to ensure continuity of operations.

''(3) SITE SECURITY PLAN.—

''(A) DEFINITION.—In this section, the term 'site security plan' means a process developed by the owner or operator of a treatment works to address security risks identified in a vulnerability assessment developed for the treatment works.

''(B) IDENTIFICATION OF SECURITY ENHANCEMENTS.—A site security plan carried out under paragraph (1)(B) shall identify specific security enhancements, including procedures, countermeasures, or equipment, that, when implemented or utilized, will reduce the vulnerabilities identified in a vulnerability assessment (including the identification of the extent to which implementation or utilization of such security enhancements may impact the operations of the treatment works in meeting the goals and requirements of this Act).

''(b) RULEMAKING AND GUIDANCE DOCUMENTS.—

''(1) IN GENERAL.—Not later than December 31, 2010, the Administrator, after providing notice and an opportunity for public comment, shall issue regulations—

''(A) establishing risk-based performance standards for the security of a treatment works identified under subsection (a)(1); and

''(B) establishing requirements and deadlines for each owner or operator of a treatment works identified under subsection (a)(1)—

''(i) to conduct and submit to the Administrator a vulnerability assessment or, if the owner or operator of a treatment works already has conducted a vulnerability assessment, to revise and submit to the Administrator such assessment in accordance with this section;

''(ii) to update and submit to the Administrator the vulnerability assessment not less than every 5 years and promptly after any change at the treatment works that could cause the reassignment of the treatment works to a different risk-based tier under paragraph (2)(B);

''(iii) to develop and implement a site security plan and to update such plan not less than every 5 years and promptly after an update to the vulnerability assessment;

''(iv) to develop an emergency response plan (or, if the owner or operator of a treatment works has already developed an emergency response plan, to revise the plan to be in accordance with this section) and to revise the plan not less than every 5 years and promptly after an update to the vulnerability assessment; and

''(v) to provide annual training to employees of the treatment works on implementing site security plans and emergency response plans.

''(2) RISK-BASED TIERS AND PERFORMANCE STANDARDS.—

''(A) IN GENERAL.—In developing regulations under this subsection, the Administrator shall—

''(i) provide for 4 risk-based tiers applicable to treatment works identified under subsection (a)(1), with tier one representing the highest degree of security risk; and

''(ii) establish risk-based performance standards for site security plans and emergency response plans required under this section.

''(B) RISK-BASED TIERS.—

''(i) ASSIGNMENT OF RISK-BASED TIERS.—The Administrator shall assign (and reassign when appropriate) each treatment works identified under subsection (a)(1) to one of the risk-based tiers established pursuant to this paragraph.

''(ii) FACTORS TO CONSIDER.—In assigning a treatment works to a risk-based tier, the Administrator shall consider—

''(I) the size of the treatment works;

''(II) the proximity of the treatment works to large population centers;

''(III) the adverse impacts of an intentional act, including a worst-case release of a substance of concern designated under subsection (c), on the operation of the treatment works or on critical infrastructure, public health or safety, or the environment; and

''(IV) any other factor that the Administrator determines to be appropriate.

''(iii) INFORMATION REQUEST FOR TREATMENT WORKS.—The Administrator may require the owner or operator of a treatment works identified under subsection (a)(1) to submit information in order to determine the appropriate risk-based tier for the treatment works.

''(iv) EXPLANATION FOR RISK-BASED TIER ASSIGNMENT.—The Administrator shall provide the owner or operator of each treatment works assigned to a risk-based tier with the reasons for the tier assignment and whether such owner or operator of a treatment works is required to submit an assessment under paragraph (3)(B).

''(C) RISK-BASED PERFORMANCE STANDARDS.—

''(i) CLASSIFICATION.—In establishing risk-based performance standards under subparagraph (A)(ii), the Administrator shall ensure that the standards are separate and, as appropriate, increasingly more stringent based on the level of risk associated with the risk-based tier assignment under subparagraph (B) for the treatment works.

''(ii) CONSIDERATION.—In carrying out this subparagraph, the Administrator shall take into account section 27.230 of title 6, Code of Federal Regulations (or any successor regulation).

''(D) SITE SECURITY PLANS.—

''(i) IN GENERAL.—In developing regulations under this subsection, the Administrator shall permit the owner or operator of a treatment works identified under subsection (a)(1), in developing and implementing a site security plan, to select layered security and preparedness measures that, in combination—

''(I) address the security risks identified in its vulnerability assessment; and

''(II) comply with the applicable risk-based performance standards required by this subsection.

''(3) METHODS TO REDUCE THE CONSEQUENCES OF A CHEMICAL RELEASE FROM AN INTENTIONAL ACT.—

''(A) DEFINITION.—In this section, the term 'method to reduce the consequences of a chemical release from an intentional act' means a measure at a treatment works identified under subsection (a)(1) that reduces or eliminates the potential consequences of a release of a substance of concern designated under subsection (c) from an intentional act, such as—

''(i) the elimination of or a reduction in the amount of a substance of concern possessed or planned to be possessed by a treatment works through the use of alternate substances, formulations, or processes;

''(ii) the modification of pressures, temperatures, or concentrations of a substance of concern; and

''(iii) the reduction or elimination of on-site handling of a substance of concern through the improvement of inventory control or chemical use efficiency.

''(B) ASSESSMENT.—

''(i) IN GENERAL.—In developing the regulations under this subsection, for each treatment works identified under subsection (a)(1) that possesses or plans to possess a substance of concern in excess of the release threshold quantity set by the Administrator under subsection (c)(2), the Administrator shall require the treatment works to include in its site security plan an assessment of methods to reduce the consequences of a chemical release from an intentional act at the treatment works.

''(ii) CONSIDERATIONS FOR ASSESSMENT.—In developing the regulations under this subsection, the Administrator shall require the owner or operator of each treatment works, in preparing the assessment, to consider factors appropriate to address the responsibilities of the treatment works to meet the goals and requirements of this Act and to include—

''(I) a description of the methods to reduce the consequences of a chemical release from an intentional act;

''(II) a description of how each described method to reduce the consequences of a chemical release from an intentional act could, if applied—

''(aa) reduce the extent of death, injury, or serious adverse effects to human health or the environment as a result of a release, theft, or misappropriation of a substance of concern designated under subsection (c); and

''(bb) impact the operations of the treatment works in meeting the goals and requirements of this Act;

''(III) whether each described method to reduce the consequences of a chemical release from an intentional act at the treatment works is feasible, as determined by the Administrator;

''(IV) the costs (including capital and operational costs) and avoided costs (including potential savings) associated with applying each described method to reduce the consequences of a chemical release from an intentional act at the treatment works;

''(V) any other relevant information that the owner or operator of a treatment works relied on in conducting the assessment; and

''(VI) a statement of whether the owner or operator of a treatment works has implemented or plans to implement a method to reduce the consequences of a chemical release from an intentional act, a description of any such method, and, in the case of a treatment works described in subparagraph (C)(i), an explanation of the reasons for any decision not to implement any such method.

''(C) REQUIRED METHODS.—

''(i) APPLICATION.—This subparagraph applies to a treatment works identified under subsection (a)(1) that—

''(I) is assigned to one of the two highest risk-based tiers established under paragraph (2)(A); and

''(II) possesses or plans to possess a substance of concern in excess of the threshold quantity set by the Administrator under subsection (c)(2).

''(ii) HIGHEST-RISK SYSTEMS.—If, on the basis of its assessment developed pursuant to subparagraph (B), the owner or operator of a treatment works described in clause (i) decides not to implement a method to reduce the consequences of a chemical release from an intentional act, in accordance with a timeline set by the Administrator—

''(I) the Administrator or, where applicable, a State with an approved program under section 402, shall determine whether to require the owner or operator of a treatment works to implement such method; and

''(II) in the case of a State with such approved program, the State shall report such determination to the Administrator.

''(iii) CONSIDERATIONS.—Before requiring the implementation of a method to reduce the consequences of a chemical release from an intentional act under clause (ii), the Administrator or a State, as the case may be, shall consider factors appropriate to address the responsibilities of the treatment works to meet the goals and requirements of this Act, including an examination of whether the method—

''(I) would significantly reduce the risk of death, injury, or serious adverse effects to human health resulting from a chemical release from an intentional act at the treatment works;

''(II) would not increase the interim storage by the treatment works of a substance of concern designated under subsection (c);

''(III) could impact the operations of the treatment works in meeting the goals and requirements of this Act or any more stringent standards established by the State or municipality in which the treatment works is located; and

''(IV) is feasible, as determined by the Administrator, to be incorporated into the operations of the treatment works.

''(D) APPEAL.—Before requiring the implementation of a method to reduce the consequences of a chemical release from an intentional act under clause (ii), the Administrator or a State, as the case may be, shall provide the owner or operator of the treatment works an opportunity to appeal the determination to require such implementation.

''(E) INCOMPLETE OR LATE ASSESSMENTS.—

''(i) INCOMPLETE ASSESSMENTS.—If the Administrator determines that a treatment works fails to meet the requirements of subparagraph (B) and the applicable regulations, the Administrator shall, after notifying the

owner or operator of a treatment works and the State in which the treatment works is located, require the owner or operator of the treatment works to submit a revised assessment not later than 60 days after the Administrator notifies the owner or operator. The Administrator may require such additional revisions as are necessary to ensure that the treatment works meets the requirements of subparagraph (B) and the applicable regulations.

''(ii) LATE ASSESSMENTS.—If the Administrator finds that the owner or operator of a treatment works, in conducting an assessment pursuant to subparagraph (B), did not complete such assessment in accordance with the deadline set by the Administrator, the Administrator may, after notifying the owner or operator of the treatment works and the State in which the treatment works is located, take appropriate enforcement action under subsection (j).

''(iii) REVIEW.—A State with an approved program under section 402 or the Administrator, as the case may be, shall review a revised assessment that meets the requirements of subparagraph (B) and applicable regulations to determine whether the treatment works will be required to implement methods to reduce the consequences of a chemical release from an intentional act pursuant to subparagraph (C).

''(F) ENFORCEMENT.—

''(i) FAILURE BY STATE TO MAKE DETERMINATION.—

''(I) IN GENERAL.—If the Administrator determines that a State with an approved program under section 402 failed to determine whether to require a treatment works to implement a method to reduce the consequences of a chemical release from an intentional act, as required by subparagraph (C)(ii), the Administrator shall notify the State and the owner or operator of the treatment works.

''(II) ADMINISTRATIVE ACTION.—If, after 30 days after the notification described in subclause (I), a State fails to make the determination described in that subclause, the Administrator shall notify the State and the owner or operator of the treatment works and shall determine whether to require the owner or operator to implement a method to reduce the consequences of a chemical release from an intentional act based on the factors described in subparagraph (C)(iii).

''(ii) FAILURE BY STATE TO BRING ENFORCEMENT ACTION.—

''(I) IN GENERAL.—If, in a State with an approved program under section 402, the Administrator determines that the owner or operator of a treatment works fails to implement a method to reduce the consequences of a chemical release from an intentional act (as required by the State or the Administrator under subparagraph (C)(ii) or the Administrator under clause (i)(II)), the Administrator shall notify the State and the owner or operator of the treatment works.

''(II) ADMINISTRATIVE ENFORCEMENT ACTION.—If, after 30 days after the notification described in subclause (I), the State has not commenced appropriate enforcement action, the Administrator shall notify the State and may commence an enforcement action against the owner or operator of the treatment works, including by seeking or imposing civil penalties under subsection (j), to require implementation of such method.

''(4) CONSULTATION WITH STATE AUTHORITIES.—In developing the regulations under this subsection, the Administrator shall consult with States with approved programs under section 402.

''(5) CONSULTATION WITH OTHER PERSONS.—In developing the regulations under this subsection, the Administrator shall consult with the Secretary of Homeland Security, and, as appropriate, other persons regarding—

''(A) the provision of threat-related and other baseline information to treatment works identified under subsection (a)(1);

''(B) the designation of substances of concern under subsection (c);

''(C) the development of risk-based performance standards;

''(D) the establishment of risk-based tiers and the process for the assignment of treatment works identified under subsection (a)(1) to such tiers;

''(E) the process for the development and evaluation of vulnerability assessments, site security plans, and emergency response plans;

''(F) the treatment of protected information; and

''(G) any other factor that the Administrator determines to be appropriate.

''(6) CONSIDERATION.—In developing the regulations under this subsection, the Administrator shall ensure that such regulations are consistent with the goals and requirements of this Act.

''(c) SUBSTANCES OF CONCERN.—For purposes of this section, the Administrator, in consultation with the Secretary of Homeland Security—

''(1) may designate any chemical substance as a substance of concern;

''(2) at the time any chemical substance is designated pursuant to paragraph (1), shall establish by rulemaking a threshold quantity for the release or theft of a substance, taking into account the toxicity, reactivity, volatility, dispersability, combustability, and flammability of the substance and the amount of the substance, that, as a result of the release or theft, is known to cause death, injury, or serious adverse impacts to human health or the environment; and

''(3) in making such a designation, shall take into account appendix A to part 27 of title 6, Code of Federal Regulations (or any successor regulation).

''(d) REVIEW OF VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN.—

''(1) IN GENERAL.—Each owner or operator of a treatment works identified under subsection (a)(1) shall submit its vulnerability assessment and site security plan to the Administrator for review in accordance with deadlines established by the Administrator.

''(2) STANDARD OF REVIEW.—The Administrator shall review each vulnerability assessment and site security plan submitted under this subsection and—

''(A) if the assessment or plan has a significant deficiency described in paragraph (3), require the owner or operator of the treatment works to correct the deficiency; or

''(B) approve such assessment or plan.

''(3) SIGNIFICANT DEFICIENCY.—A vulnerability assessment or site security plan of a treatment works has a significant deficiency under this subsection if the Administrator, in consultation, as appropriate, with a State with an approved program under section 402, determines that—

''(A) such assessment does not comply with the regulations promulgated under subsection (b); or

''(B) such plan—

''(i) fails to address vulnerabilities identified in a vulnerability assessment; or

''(ii) fails to meet applicable risk-based performance standards.

''(4) IDENTIFICATION OF DEFICIENCIES.—If the Administrator identifies a significant deficiency in the vulnerability assessment or site security plan of an owner or operator of a treatment works under paragraph (3), the Administrator shall provide the owner or operator with a written notification of the deficiency that—

''(A) includes a clear explanation of the deficiency in the vulnerability assessment or site security plan;

''(B) provides guidance to assist the owner or operator in addressing the deficiency; and

''(C) requires the owner or operator to correct the deficiency and, by such date as the Administrator determines appropriate, to submit to the Administrator a revised vulnerability assessment or site security plan.

''(5) STATE, LOCAL, OR TRIBAL GOVERNMENTAL ENTITIES.—No owner or operator of a treatment works identified under subsection (a)(1) shall be required under State, local, or tribal law to provide a vulnerability assessment or site security plan described in this section to any State, local, or tribal governmental entity solely by reason of the requirement set forth in paragraph (1) that the owner or operator of a treatment works submit such an assessment and plan to the Administrator.

''(e) EMERGENCY RESPONSE PLAN.—

''(1) IN GENERAL.—The owner or operator of a treatment works identified under subsection (a)(1) shall develop or revise, as appropriate, an emergency response plan that incorporates the results of the current vulnerability assessment and site security plan for the treatment works.

''(2) CERTIFICATION.—The owner or operator of a treatment works identified under subsection (a)(1) shall certify to the Administrator that the owner or operator has completed an emergency response plan, shall submit such certification to the Administrator not later than 6 months after the first completion or revision of a vulnerability assessment under this section, and shall submit an additional certification following any update of the emergency response plan.

''(3) CONTENTS.—An emergency response plan shall include a description of—

''(A) plans, procedures, and identification of equipment that can be implemented or used in the event of an intentional act at the treatment works; and

''(B) actions, procedures, and identification of equipment that can obviate or significantly reduce the impact of intentional acts to—

''(i) substantially disrupt the ability of the treatment works to safely and reliably operate; or

''(ii) have a substantial adverse effect on critical infrastructure, public health or safety, or the environment.

''(4) COORDINATION.—As part of its emergency response plan, the owner or operator of a treatment works shall provide appropriate information to any local emergency planning committee, local law enforcement officials, and local emergency response providers to ensure an effective, collective response.

''(f) ROLE OF EMPLOYEES.—

''(1) DESCRIPTION OF ROLE.—Site security plans and emergency response plans required under this section shall describe the appropriate roles or responsibilities that employees and contractor employees of treatment works are expected to perform to deter or respond to the intentional acts identified in a current vulnerability assessment.

''(2) TRAINING FOR EMPLOYEES.—The owner or operator of a treatment works identified under subsection (a)(1) shall annually provide employees and contractor employees with the roles or responsibilities described in paragraph (1) with sufficient training, as determined by the Administrator, on carrying out those roles or responsibilities.

''(3) EMPLOYEE PARTICIPATION.—In developing, revising, or updating a vulnerability assessment, site security plan, and emergency response plan required under this section, the owner or operator of a treatment works shall include—

''(A) at least one supervisory and at least one nonsupervisory employee of the treatment works; and

''(B) at least one representative of each certified or recognized bargaining agent representing facility employees or contractor employees with roles or responsibilities described in paragraph (1), if any, in a collective bargaining relationship with the owner or operator of the treatment works or with a contractor to the treatment works.

''(g) MAINTENANCE OF RECORDS.—The owner or operator of a treatment works identified under subsection (a)(1) shall maintain an updated copy of its vulnerability assessment, site security plan, and emergency response plan on the premises of the treatment works.

''(h) AUDIT; INSPECTION.—

''(1) IN GENERAL.—The Administrator shall audit and inspect a treatment works identified under subsection (a)(1), as necessary, for purposes of determining compliance with this section.

''(2) ACCESS.—In conducting an audit or inspection of a treatment works under paragraph (1), the Administrator shall have access to the owners, operators, employees and contractor employees, and employee representatives, if any, of such treatment works.

''(3) CONFIDENTIAL COMMUNICATION OF INFORMATION; AIDING INSPECTIONS.—The Administrator shall offer nonsupervisory employees of a treatment works the opportunity confidentially to communicate information relevant to the compliance or noncompliance of the owner or operator of the treatment works with this section, including compliance or noncompliance with any regulation or requirement adopted by the Administrator in furtherance of the purposes of this section. A representative of each certified or recognized bargaining agent described in subsection (f)(3)(B), if any, or, if none, a nonsupervisory employee, shall be given an opportunity to accompany the Administrator during the physical inspection of any treatment works for the purpose of aiding such inspection, if representatives of the treatment works will also be accompanying the Administrator on such inspection.

''(i) PROTECTION OF INFORMATION.—

''(1) PROHIBITION OF PUBLIC DISCLOSURE OF PROTECTED INFORMATION.—Protected information shall—

''(A) be exempt from disclosure under section 552 of title 5, United States Code; and

''(B) not be made available pursuant to any State, local, or tribal law requiring disclosure of information or records.

''(2) INFORMATION SHARING.—

''(A) IN GENERAL.—The Administrator shall prescribe such regulations, and may issue such orders, as necessary to prohibit the unauthorized disclosure of protected information, as described in paragraph (7).

''(B) SHARING OF PROTECTED INFORMATION.—The regulations under subparagraph (A) shall provide standards for and facilitate the appropriate sharing of protected information with and among Federal, State, local, and tribal authorities, first responders, law enforcement officials, supervisory and nonsupervisory treatment works personnel with security, operational, or fiduciary responsibility for the system designated by the owner or operator of the treatment works, and facility employee representatives designated by the owner or operator of the treatment works, if any.

''(C) INFORMATION SHARING PROCEDURES.—Such standards shall include procedures for the sharing of all portions of the vulnerability assessment and site security plan of a treatment works relating to the roles and responsibilities of the employees or contractor employees of a treatment works under subsection (f)(1) with a representative of each certified or recognized bargaining agent representing such employees, if any, or, if none, with at least one supervisory and at least one non-supervisory employee with roles and responsibilities under subsection (f)(1).

''(D) PENALTIES.—Protected information, as described in paragraph (7), shall not be shared except in accordance with the standards provided by the regulations under subparagraph (A). Whoever discloses protected information in knowing violation of the regulations and orders issued under subparagraph (A) shall be fined under title 18, United States Code, imprisoned for not more than one year, or both, and, in the case of a Federal officeholder or employee, shall be removed from Federal office or employment.

''(3) TREATMENT OF INFORMATION IN ADJUDICATIVE PROCEEDINGS.—In any judicial or administrative proceeding, protected information, as described in paragraph (7), shall be treated in a manner consistent with the treatment of sensitive security information under section 525 of the Department of Homeland Security Appropriations Act, 2007 (120 Stat. 1381).

''(4) OTHER OBLIGATIONS UNAFFECTED.—Nothing in this section amends or affects an obligation of the owner or operator of a treatment works to—

''(A) submit or make available information to employees of the treatment works, employee organizations, or a Federal, State, local, or tribal government agency under any other law; or

''(B) comply with any other law.

''(5) CONGRESSIONAL OVERSIGHT.—Nothing in this section permits or authorizes the withholding of information from Congress or any committee or subcommittee thereof.

''(6) DISCLOSURE OF INDEPENDENTLY FURNISHED INFORMATION.—Nothing in this section amends or affects any authority or obligation of a Federal, State, local, or tribal agency to protect or disclose any record or information that the Federal, State, local, or tribal agency obtains from a treatment works or the Administrator under any other law except as provided in subsection (d)(5).

''(7) PROTECTED INFORMATION.—

''(A) IN GENERAL.—For purposes of this section, protected information is any of the following:

''(i) Vulnerability assessments and site security plans under this section, including any assessment developed under subsection (b)(3)(B).

''(ii) Documents directly related to the Administrator's review of assessments and plans described in clause (i) and, as applicable, the State's review of an assessment developed under subsection (b)(3)(B).

''(iii) Documents directly related to inspections and audits under this section.

''(iv) Orders, notices, or letters regarding the compliance of a treatment works described in subsection (a)(1) with the requirements of this section.

''(v) Information required to be provided to, or documents and records created by, the Administrator under subsection (b)(2).

''(vi) Documents directly related to security drills and training exercises, security threats and breaches of security, and maintenance, calibration, and testing of security equipment.

''(vii) Other information, documents, and records developed for the purposes of this section that the Administrator determines would be detrimental to the security of a treatment works if disclosed.

''(B) DETRIMENT REQUIREMENT.—For purposes of clauses (ii), (iii), (iv), (v), and (vi) of subparagraph (A), the only portions of documents, records, orders, notices, and letters that shall be considered protected information are those portions that—

''(i) would be detrimental to the security of a treatment works if disclosed; and

''(ii) are developed by the Administrator, the State, or the treatment works for the purposes of this section.

''(C) EXCLUSIONS.—For purposes of this paragraph, protected information does not include—

''(i) information that is otherwise publicly available, including information that is required to be made publicly available under any law;

''(ii) information that a treatment works has lawfully disclosed other than in accordance with this section; and

''(iii) information that, if disclosed, would not be detrimental to the security of a treatment works, including aggregate regulatory data that the Administrator determines appropriate to describe compliance with the requirements of this section and the Administrator's implementation of such requirements.

''(j) VIOLATIONS.—For the purposes of section 309 of this Act, any violation of any requirement of this section, including any regulations promulgated pursuant to this section, by an owner or operator of a treatment works described in subsection (a)(1) shall be treated in the same manner as a violation of a permit condition under section 402 of this Act.

''(k) REPORT TO CONGRESS.—

''(1) PERIODIC REPORT.—Not later than 3 years after the effective date of the regulations issued under subsection (b) and every 3 years thereafter, the Administrator shall transmit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on progress in achieving compliance with this section.

''(2) CONTENTS OF THE REPORT.—Each such report shall include, at a minimum, the following:

''(A) A generalized summary of measures implemented by the owner or operator of a treatment works identified under subsection (a)(1) in order to meet each risk-based performance standard established by this section.

''(B) A summary of how the treatment works, differentiated by risk-based tier assignment, are complying with the requirements of this section during the period covered by the report and how the Administrator is implementing and enforcing such requirements during such period, including—

''(i) the number of treatment works that provided the Administrator with information pursuant to subsection (b)(2)(B)(iii);

''(ii) the number of treatment works assigned to each risk-based tier;

''(iii) the number of vulnerability assessments and site security plans submitted by treatment works;

''(iv) the number of vulnerability assessments and site security plans approved or found to have a significant deficiency under subsection (d)(2) by the Administrator;

''(v) the number of treatment works without approved vulnerability assessments or site security plans;

''(vi) the number of treatment works that have been assigned to a different risk-based tier due to implementation of a method to reduce the consequences of a chemical release from an intentional act and a description of the types of such implemented methods;

''(vii) the number of audits and inspections conducted by the Administrator; and

''(viii) any other regulatory data the Administrator determines appropriate to describe the compliance of owners or operators of treatment works with the requirements of

this section and the Administrator's implementation of such requirements.

''(3) PUBLIC AVAILABILITY.—A report submitted under this section shall be made publicly available.

''(l) GRANTS FOR VULNERABILITY ASSESSMENTS, SECURITY ENHANCEMENTS, AND WORKER TRAINING PROGRAMS.—

''(1) IN GENERAL.—The Administrator may make a grant to a State, municipality, or intermunicipal or interstate agency—

''(A) to conduct or update a vulnerability assessment, site security plan, or emergency response plan for a publicly owned treatment works identified under subsection (a)(1);

''(B) to implement a security enhancement at a publicly owned treatment works identified under subsection (a)(1), including a method to reduce the consequences of a chemical release from an intentional act, identified in an approved site security plan and listed in paragraph (2);

''(C) to implement an additional security enhancement at a publicly owned treatment works identified under subsection (a)(1), including a method to reduce the consequences of a chemical release from an intentional act, identified in an approved site security plan; and

''(D) to provide for security-related training of employees or contractor employees of the treatment works and training for first responders and emergency response providers.

''(2) GRANTS FOR SECURITY ENHANCEMENTS.—

''(A) PREAPPROVED SECURITY ENHANCEMENTS.—The Administrator may make a grant under paragraph (1)(B) to implement a security enhancement of a treatment works for one or more of the following:

''(i) Purchase and installation of equipment for access control, intrusion prevention and delay, and detection of intruders and hazardous or dangerous substances, including—

''(I) barriers, fencing, and gates;

''(II) security lighting and cameras;

''(III) metal grates, wire mesh, and outfall entry barriers;

''(IV) securing of manhole covers and fill and vent pipes;

''(V) installation and re-keying of doors and locks; and

''(VI) smoke, chemical, and explosive mixture detection systems.

''(ii) Security improvements to electronic, computer, or other automated systems and remote security systems, including controlling access to such systems, intrusion detection and prevention, and system backup.

''(iii) Participation in training programs and the purchase of training manuals and guidance materials relating to security.

''(iv) Security screening of employees or contractor support services.

''(B) ADDITIONAL SECURITY ENHANCEMENTS.—The Administrator may make a grant under paragraph (1)(C) for additional security enhancements not listed in subparagraph (A) that are identified in an approved site security plan. The additional security enhancements may include the implementation of a method to reduce the consequences of a chemical release from an intentional act.

''(C) LIMITATION ON USE OF FUNDS.—Grants under this subsection may not be used for personnel costs or operation or maintenance of facilities, equipment, or systems.

''(D) FEDERAL SHARE.—The Federal share of the cost of activities funded by a grant under paragraph (1) may not exceed 75 percent.

''(3) ELIGIBILITY.—To be eligible for a grant under this subsection, a State, municipality, or intermunicipal or interstate agency shall submit information to the Administrator at such time, in such form, and with such assurances as the Administrator may require.

''(m) PREEMPTION.—This section does not preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance with respect to a treatment works that is more stringent than a regulation, requirement, or standard of performance under this section.

''(n) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator $200,000,000 for each of fiscal years 2010 through 2014 for making grants under subsection (l). Such sums shall remain available until expended.

''(o) RELATION TO CHEMICAL FACILITY SECURITY REQUIREMENTS.—Title XXI of the Homeland Security Act of 2002 and the amendments made by title I of the Chemical and Water Security Act of 2009 shall not apply to any treatment works.''.

The Acting CHAIR. No amendment to that amendment shall be in order except those printed in part B of the report. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. THOMPSON OF MISSISSIPPI

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in part B of House Report 111–327.

Mr. THOMPSON of Mississippi. Mr. Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. THOMPSON of Mississippi:

Page 5, beginning on line 22, strike ''counter surveillance'' and insert ''counter-surveillance''.

Page 7, beginning on line 2, strike ''. Any such plan shall include'' and insert '', including''.

Page 7, line 19, strike ''Department'' and insert ''Secretary''.

Page 8, line 2, strike ''chemicals'' and insert ''a substance of concern''.

Page 8, line 4, insert ''and'' after the comma.

Page 9, line 5, strike ''Department'' and insert ''Secretary''.

Page 9, line 9, strike ''in'' and insert ''at''.

Page 9, line 10, strike ''site'' and insert ''covered chemical facility''.

Page 10, line 6, insert a comma after ''plan''.

Page 17, line 3, insert ''chemical'' after ''designation of a''.

Page 17, line 3, insert ''as a substance'' after ''substance''.

Page 17, line 4, insert ''for the substance'' after ''quantity''.

Page 17, line 8, strike ''may at any time'' and insert ''may, at any time,''.

Page 18, line 10, insert a comma after ''concern''.

Page 18, line 22, strike the comma after ''representative''.

Page 19, line 6, strike ''this title'' and insert ''this section''.

Page 22, line 3, insert '', as determined by the Secretary,'' after ''geographically close''.

Page 23, line 1, strike ''under'' and insert ''pursuant to''.

Page 24, line 11, strike ''is''.

Page 30, line 22, strike ''that'' and insert ''who''.

Page 34, line 9, strike ''the period of''.

Page 36, line 8, strike ''information'' and insert ''to the Secretary in a timely manner, information''.

Page 36, line 9, strike ''in a timely manner''.

Page 38, line 17, insert ''departmental'' after ''seek''.

Page 38, line 17, strike ''within the Department''.

Page 39, line 24, strike ''that'' and insert ''who''.

Page 39, line 25, insert a comma after ''subsection (a)''.

Page 40, line 15, strike '', profit'' and insert '', for-profit''.

Page 46, line 16, strike ''protected information is any of the following'''' and insert ''the term 'protected information' means any of the following''.

Page 46, line 22, strike ''determines'' and insert ''has determined by regulation''.

Page 48, strike lines 3 through 17 and insert the following:

''(2) EXCLUSIONS.—Notwithstanding paragraph (1), the term 'protected information' does not include—

''(A) information, other than a security vulnerability assessment or site security plan, that the Secretary has determined by regulation to be—

''(i) appropriate to describe facility compliance with the requirements of this title and the Secretary's implementation of such requirements; and

''(ii) not detrimental to chemical facility security if disclosed; or

''(B) information, whether or not also contained in a security vulnerability assessment, site security plan, or in a document, record, order, notice, or letter, or portion thereof, described in subparagraph (B) or (C) of paragraph (1), that is obtained from another source with respect to which the Secretary has not made a determination under either such subparagraph, including—

''(i) information that is required to be made publicly available under any other provision of law; and

''(ii) information that a chemical facility has lawfully disclosed other than in a submission to the Secretary pursuant to a requirement of this title.

Page 54, line 3, strike ''of'' and insert ''after''.

Page 63, line 7, strike ''1996'' and insert ''1986''.

Page 75, line 13, strike ''Department'' and insert ''Secretary''.

Page 92, line 23, insert ''and resubmit'' after ''update''.

Page 93, beginning on line 10, strike ''(or, if the system has already developed an emergency response plan, to revise the plan to be in accordance with this section)'' and insert ''or, if the system has already developed an emergency response plan, to revise the plan to be in accordance with this section,''.

Page 110, beginning on line 2, strike ''commence an enforcement action against the system, including by seeking or imposing civil penalties'' and insert ''take appropriate enforcement action''.

Page 115, beginning on line 22, strike '', as described in paragraph (7)''.

Page 116, beginning on line 21, strike '', as described in paragraph (7),''.

Page 117, beginning on line 9, strike '', as described in paragraph (7),''.

Page 117, line 22, insert ''provision of'' before ''law''.

Page 117, line 23, insert ''provision of'' before ''law''.

Page 118, line 10, insert ''provision of'' before ''law''.

Page 118, beginning on line 13, strike ''protected information is any of the following'' and insert ''the term 'protected information' means any of the following''.

Page 119, line 17, strike ''determines'' and insert ''has determined by regulation''.

Page 120, line 1, insert before ''would'' the following: ''the Secretary has determined by regulation''

Page 120, strike lines 7 through 24 and insert the following:

''(C) EXCLUSIONS.—Notwithstanding subparagraphs (A) and (B), the term 'protected information' does not include—

''(i) information, other than a security vulnerability assessment or site security plan, that the Administrator has determined by regulation to be—

''(I) appropriate to describe system compliance with the requirements of this title and the Administrator's implementation of such requirements; and

''(II) not detrimental to the security of one or more covered water systems if disclosed; or

''(ii) information, whether or not also contained in a security vulnerability assessment, site security plan, or in a document, record, order, notice, or letter, or portion thereof, described in any of clauses (ii) through (vii) of subparagraph (A) that is obtained from another source with respect to which the Administrator has not made a determination under either subparagraph (A)(vii) or (B), including—

''(I) information that is required to be made publicly available under any other provision of law; and

''(II) information that a covered water system has lawfully disclosed other than in a submission to the Administrator pursuant to a requirement of this title.

Page 121, line 3, strike ''the amendments made by''.

Page 131, beginning on line 3, strike ''threat of contamination of drinking water being distributed through public water systems, including fire main systems'' and insert ''threat to drinking water posed by an intentional act of contamination, and the vulnerability of public water systems, including fire hydrants, to such a threat''.

Page 151, line 24, after ''cause'' and insert '', or may be reasonably anticipated to cause,''.

Page 161, line 12, insert ''provision of'' before ''law''.

Page 161, line 13, insert ''provision of'' before ''law''.

Page 161, line 25, insert ''provision of'' before ''law''.

Page 162, beginning on line 3, strike ''protected information is any of the following'' and insert ''the term 'protected information' means any of the following''.

Page 163, beginning on line 6, strike ''determines'' and insert ''has determined by regulation''.

Page 163, line 15, before ''would'' insert the following: ''the Secretary has determined by regulation''.

Strike line 20 on page 163 and all that follows through page 164, line 13, and insert the following:

''(C) EXCLUSIONS.—Notwithstanding subparagraphs (A) and (B), the term 'protected information' does not include—

''(i) information, other than a security vulnerability assessment or site security plan, that the Administrator has determined by regulation to be—

''(I) appropriate to describe treatment works compliance with the requirements of this title and the Administrator's implementation of such requirements; and

''(II) not detrimental to the security of one or more treatment works if disclosed; or

''(ii) information, whether or not also contained in a security vulnerability assessment, site security plan, or in a document, record, order, notice, or letter, or portion thereof, described in any of clauses (ii) through (vii) of subparagraph (A) that is obtained from another source with respect to which the Administrator has not made a determination under either subparagraph (A)(vii) or (B), including—

''(I) information that is required to be made publicly available under any other provision of law; and

''(II) information that a treatment works has lawfully disclosed other than in a submission to the Administrator pursuant to a requirement of this title.

Page 171, line 5, strike ''the amendments made by''.

The Acting CHAIR. Pursuant to the House Resolution 885, the gentleman from Mississippi (Mr. THOMPSON) and a Member opposed each will control 5 minutes.

The chair recognizes the gentleman from Mississippi.

Mr. THOMPSON of Mississippi. Mr. Chair, before discussing the specifics of my amendment, I would like to address an argument that I expect we will hear throughout the day.

The other side of the aisle seems to be arguing that the economy is so delicate that we simply cannot afford to protect the American people from terrorism. Democrats fundamentally reject that argument. In fact, we have testimony from labor that this bill is no threat to jobs. They have testified ''that the bill will have zero impact on employment.''

We also reject the Republicans' argument because if there is one thing the American people expect us to do, it is to ensure that the country is protected from terrorism. Some facility operators may find it inconvenient to make their facilities more secure, but, frankly, the security of the American people is more important.

My manager's amendment makes a number of technical and clerical corrections to the amendment in the nature of a substitute. My amendment clarifies the types of information we were excluding from the definition of protected information.

Specifically, it clarifies that DHS cannot include in the definition of protected information any information that, number one, is required to be made publicly available under any other law, or information that a chemical facility has lawfully disclosed under another law. DHS can determine by regulation that certain information provided for compliance purposes is not protected. This information may include summary data on the number of facilities that have submitted site security plans or the number of enforcement actions taken, so long as information detrimental to chemical security is not disclosed. This clarification is made in all three titles.

I urge support of this clarifying amendment.

I would also like to address an issue that seems to have come up yesterday. There was a question about the bill's intention regarding DHS' indefinite extension for farmers. Both committee reports filed on this bill speak to this issue.

The Homeland Security report states that the Department has been appropriately sensitive to the concerns of agricultural end users, farms and farmers, regarding chemical security. The Energy and Commerce report states that the committee does not intend for this legislation to require the Department to deviate from its current plan to address the security of agricultural end users on a separate timeline.

Our position is clear. This legislation in no way disturbs the current extension. That said, I am willing to explore how we could make this bill clearer on this point as the legislation moves forward.

Before I reserve the balance of my time, I would like to take a moment to acknowledge the staff that has worked so diligently and collaboratively to get us to this day. On my staff, Chris Beck, Michael Beland, Michael Stroud, Brian Turbyfill, Rosaline Cohen, and Lanier Avant; the Energy and Commerce Committee team, led by Alison Cassidy and Michael Freedhoff; and Ryan Seigert on the Transportation and Infrastructure Committee.

With that, Mr. Chair, I reserve the balance of my time.

Mr. BARTON of Texas. Mr. Chairman, I rise in opposition to the manager's amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. BARTON of Texas. I yield myself such time as I may consume.

(Mr. BARTON of Texas asked and was given permission to revise and extend his remarks.)

Mr. BARTON of Texas. Mr. Chairman, normally, you do not object, even in the minority, to a manager's amendment that supposedly is a technical manager's amendment, technical in nature, so it is unusual for myself as the ranking minority member of the Energy and Commerce Committee to rise in opposition to this particular amendment. But I am doing so for one reason: It is not a technical amendment.

Now, here is the manager's amendment; and, if you could read it, for the first two to three pages, it is very technical. It is just changing one word here or there, or putting a sentence here, or a semicolon, or something like that.

But then you get down to the bottom the third page, and I am going to read this so that the distinguished chairman of the Homeland Security Committee, the gentleman from Mississippi, understands exactly what the opposition is.

''Page 48, strike lines 3 through 17 and insert the following:''

So we are getting away from a technical amendment and you are actually putting substantive policy into the manager's amendment.

''Exclusions. Notwithstanding paragraph 1, the term 'protected information' does not include (A) information, other than a security vulnerability assessment or site security plan, that the

Secretary has determined by regulation to be (i) appropriate to describe the facility compliance with the requirements of this title and the Secretary's implementation of such requirements; and (ii) not detrimental to the chemical facility security if disclosed; or,'' and this is where it gets really interesting, ''(B) information, whether or not contained in the security vulnerability assessment, site security plan, or in a document, record, order, notice, or letter, or portion thereof, described in subparagraph (B) or (C) of paragraph (1), that is obtained from another source.''

So what we are doing here, Mr. Chairman, is saying, as the distinguished chairman said, we don't want to try to give the Department of Homeland Security the ability to prevent information that has already been publicly disclosed by somebody we regulate as part of the site security plan. But then they are creating this new loophole, that if a group that is not controlled by Homeland Security somehow gets information, they can publish it. They can put it on their Web site, and they're not liable.

□ 1345

They are not subject to the penalties.

That's wrong, Mr. Chair. That's just wrong. It does it in not only one place. These are three different bills that were merged. It goes on in other parts of the manager's amendment and makes those same changes in two to three other places. That's not a technical manager's amendment. That's a substantive policy change that's detrimental to the security, in my opinion, of the United States of America.

So while it is somewhat unusual to object to the manager's amendment that's portrayed as a technical amendment, this is not a technical amendment—or at least those portions of it. So I am very strongly in opposition to this.

I think on a day on which we have another reported shooting in Orlando, Florida, which may or may not be of a terrorist nature, and a shooting at Fort Hood, Texas, yesterday which was, we think, possibly of a terrorist nature, that if we're going to have a terrorist security bill on the floor for chemical plants and water facilities, it ought to be a real terrorist security bill.

But the underlying bill is not about more guards and more physical security and more computer protections, as we said in the general debate yesterday. The underlying bill is about enforcing this new standard of IST, or inherently safer technology. In my opinion, it is a radical environmental bill masquerading as a security bill. So I am strongly opposed to Mr. THOMPSON's manager's amendment because it is a substantive policy amendment, in my opinion, that fundamentally weakens the ostensible purpose of the bill.

With that, Mr. Chair, I reserve the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Chair, I yield 1 minute to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY of Massachusetts. I thank the gentleman for his excellent work on this legislation. We are not talking here about an environmental bill. We are talking about a security bill. We are talking about the targets which we know al Qaeda has on their target list. That's what this whole debate is about. It's to protect the American people from the attempts by al Qaeda to come back to our country and to strike us once again, and we must protect against that attack. That's all this debate is about.

It's not any attempt to have an environmental agenda here at all. It is solely to ensure that al Qaeda cannot attack us in our country and to put in place the same protections at chemical facilities that we now have at airports, that we now have at nuclear power plants. That is all that this debate is about, and I urge support for the manager's amendment propounded by Mr. THOMPSON of Mississippi.

Mr. BARTON of Texas. Can I inquire how much time I have remaining.

The Acting CHAIR. Both sides have 30 seconds remaining.

Mr. BARTON of Texas. I assume Chairman THOMPSON has the right to close?

The Acting CHAIR. The gentleman from Texas actually has the right to close.

Mr. BARTON of Texas. Well, I will let Mr. THOMPSON close.

In the remaining 30 seconds, let me simply say that I agree with what Mr. MARKEY said, but I will also say to the gentleman from Massachusetts that this bill doesn't do any of that. I wish we were debating a true safety bill, a true antiterrorism bill, but inherently safer technology deals with processes and chemical manufacturing. It doesn't deal with real security.

In Chairman THOMPSON's manager's amendment, some of which is technical, the part that I oppose is a glaring creation of a loophole to give environmental groups and other outside groups the ability to put information on their Web sites that's not subject to the penalties of this bill. So I would oppose the manager's amendment.

I yield back the balance of my time.

Mr. THOMPSON of Mississippi. To the ranking member, you are exactly wrong on your definition. It does the exact opposite. It protects information, and that's why we put it in there. It was recommended by the Judiciary Committee, and this is a security piece of legislation, not safety. I think if the Chair would recognize that, we would all be better.

Mr. Chair, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Mississippi (Mr. THOMPSON).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. BARTON of Texas. Mr. Chairman, I demand a recorded vote, and pending that, I make the point of order that a quorum is not present.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Mississippi will be postponed.

The point of no quorum is considered withdrawn.

PARLIAMENTARY INQUIRIES

Mr. BARTON of Texas. Parliamentary inquiry, Mr. Chair.

The Acting CHAIR. The gentleman from Texas will state his inquiry.

Mr. BARTON of Texas. Mr. Chair, would it not be parliamentarily correct to now call for the yeas and nays on that vote since we requested it?

The Acting CHAIR. The yeas and nays are not available in the Committee of the Whole.

Mr. BARTON of Texas. Further parliamentary inquiry, so I will have to ask for that when we come back into the Whole House?

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, the request for a recorded vote on the amendment offered by the gentleman from Mississippi was postponed.

AMENDMENT NO. 2 OFFERED BY MR. BARTON OF TEXAS

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in part B of House Report 111–327.

Mr. BARTON of Texas. Mr. Chair, I have an amendment at the podium.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. BARTON of Texas:

Page 43, strike lines 7 through 16, and insert the following:

''SEC. 2109. FEDERAL PREEMPTION.

''No State or political subdivision thereof may adopt or attempt to enforce any regulation, requirement, or standard of performance with respect to a covered chemical facility if such regulation, requirement, or standard of performance poses obstacles to, hinders, or frustrates the purpose of any requirement or standard of performance under this title.

Page 121, strike lines 6 through 11, and insert the following:

''(n) PREEMPTION.—No State or political subdivision thereof may adopt or attempt to enforce any regulation, requirement, or standard of performance with respect to a covered water system if such regulation, requirement, or standard of performance poses obstacles to, hinders, or frustrates the purpose of any requirement or standard of performance under this section.

Page 170, strike lines 17 through 22, and insert the following:

''(m) PREEMPTION.—No State or political subdivision thereof may adopt or attempt to enforce any regulation, requirement, or standard of performance with respect to a treatment works if such regulation, requirement, or standard of performance poses obstacles to, hinders, or frustrates the purpose of any requirement or standard of performance under this section.

The Acting CHAIR. Pursuant to House Resolution 885, the gentleman

from Texas (Mr. BARTON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. BARTON of Texas. Thank you, Mr. Chair.

The merged bill that's before us gives States the right, if they want to do things that are more strict or different than in the pending bill, they have the right to do that. The Federal Government, which normally in a bill of this sort there would be a Federal preemption standard that would preempt States from doing things differently than the Federal standard, this bill sets a floor but does not set a ceiling on what the States can do.

So the amendment that we have before us, Mr. Chair, does create the traditional Federal preemption in these areas. There are three sections in today's bill that allow State, local, or tribal governments to enact more stringent laws and regulations from chemical, drinking water and wastewater treatment facilities. This is not only a new standard for chemical security legislation. It is a new standard, and I think a troubling standard, for comprehensive security legislation.

Where did this come from? Like many other provisions in this legislation, the standard is borrowed directly from Federal environmental law, the Clean Air Act, the Solid Waste Disposal Act and the Superfund law, to name a few.

This so-called new stringency standard appears only once in the Homeland Security Act of 2002. In there, it relates to information protection, not to security operations. Allowing State, local, or tribal governments to be more stringent in the context of national security, in my opinion, is problematic because it means that there will be no certainty associated with the Federal standard.

Why have a Federal standard, Mr. Chair, if any State, local, or tribal government can supersede it? Proving my point, other national security laws, including nuclear, hazmat, aviation and port security make the Federal Government the dominant regulator with clear Federal preemption standards.

In the 111th Congress, the Democrat majority specifically included Federal preemption provisions in both the TSA Authorization Act and the Coast Guard Authorization Act of 2010. These were both security-related legislative vehicles. Mr. Chair, we should not import environmental provisions into security law. Local pollution control is obviously much different than terrorism protection and prevention.

Unlike local pollution problems, security at chemical and water facilities does require national coordination. The principle is simple: national problems should have national solutions. This is why Federal preemption has always been the norm in aviation security, nuclear security, hazardous materials transportation security, and port security.

My amendment is very simple. It would replace the State's stringency standard with provisions allowing the Federal Government to preempt State and local law that ''hinder, pose obstacles to, or frustrate the purpose of the Federal program.'' This would allow the Federal Government to operate a truly national network to fight terror in the same way the Armed Forces are coordinated through a central command.

Mr. Chair, I have several other written comments that I will submit for the RECORD, but my amendment is straightforward. It sets a Federal preemption standard as opposed to the State-by-State or local stringency standard under the current bill.

With that, I reserve the balance of my time.

Mr. MARKEY of Massachusetts. I rise to claim the 5 minutes in opposition to the Barton amendment.

The Acting CHAIR. The gentleman is recognized for 5 minutes.

Mr. MARKEY of Massachusetts. Mr. Chair, at this time I yield 2 minutes to the gentleman from New Jersey.

Mr. PASCRELL. Thank you. The section which Mr. BARTON is referring to is on page 42 of the bill and extends over to page 43.

Mr. Chair, I rise strongly against Ranking Member BARTON's amendment to the Chemical Facility Anti-Terrorism Act of 2009. It would strip State preemption language out of this bill. Simply put, that's what it would do. As a member of the Homeland Security Committee, I worked hard to secure language in this bill that protects the rights of States to mandate higher chemical security standards than the Federal Government.

It is bizarre that you want to take that right away from the States. It is bizarre. Most of the time, you are always fighting that we ignore States' rights. Here is a perfect example. In fact, it is very clear in the Constitution of the United States of America, article VI, paragraph 2:

''This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.''

This is a very clear violation of that. I have to say that I am surprised that the Ranking Member, who hails from the proud State of Texas, would now want to infringe on the right of the States to take extra steps. You know what's happened in New Jersey. We have been the pioneers of being first on this issue. We have stringent rules. No part of the chemical industry has opposed those rules. There is not one chemical facility that is opposed to what has gone on in the State of New Jersey. What right does the Federal Government have to come in and say that you should lower your standards and increase the risks of the citizens?

The Acting CHAIR. The time of the gentleman has expired.

Mr. MARKEY of Massachusetts. I yield 30 additional seconds to the gentleman from New Jersey.

Mr. PASCRELL. The New Jersey Turnpike, the FBI has ruled very specifically that it is the most dangerous section in the whole country. We can't protect ourselves? The volatile chemicals that are on that site would put a million people in jeopardy, God forbid, if something happens. We need to raise Federal standards, not force States to lower theirs. We can all agree. And I just got a letter from the National Governors Association in total support of this legislation, opposed to this amendment; and they write in the letter that the bill rifely clarifies that chemical facility antiterrorism standards represent a floor, not a ceiling.

Mr. BARTON of Texas. Could I inquire as to the time I have remaining.

The Acting CHAIR. The gentleman from Texas has 2 minutes.

Mr. BARTON of Texas. I yield 1 minute to the gentleman from Pennsylvania (Mr. DENT), a distinguished minority member of the Homeland Security Committee.

Mr. DENT. Mr. Chair, I just wanted to clarify one point. I understand the sensitivities in the State of New Jersey. It is a great State. But I do want to say that New Jersey IST assessments are required. Implementation of IST is not required. The huge cost with this legislation is in the implementation of IST. The legislation we're considering here today goes far beyond New Jersey standards and would actually require an IST implementation as well as the assessment, which will add an enormous cost and put a number of jobs at risk. I just wanted to point that out for the record.

Mr. MARKEY of Massachusetts. I yield myself 2 minutes.

This is a very simple principle that the gentleman from New Jersey has been making reference to. Al Qaeda was in Newark, New Jersey, on September 11. Al Qaeda was in Boston on September 11. Al Qaeda attacked New York City on September 11. If the Governor of New York, if the Governor of Massachusetts, if the Governor of New Jersey wishes to promulgate stronger regulations to protect the chemical facilities in their States, that should be their right.

□ 1400

They should be making the public safety determination.

These people who rushed into the World Trade Center, these first responders, they're firemen, they're policemen from the local community. They're health care workers from the local community. They're heroes. But while waiting for the Federal Government to come, it is the local public safety people who have to respond. If they want to put stronger protections

around these facilities, knowing that al Qaeda was there on September 11th already, that that is where the attack emanated from, they should have their right. That is why the National Governors Association opposes this amendment. They should have, as the highest public safety official in their States, the right to determine how much protection they give to their citizens, how much extra measure of safety they give for their policemen, for their firemen, for their public health officials who will have to rush in in the aftermath of a successful attack.

I urge a ''no'' vote on the Barton amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. BARTON of Texas. Mr. Chairman, I yield myself the balance of my time.

My friends, let's be clear. I oppose the underlying bill. I'm going to vote ''no'' on the underlying bill. But if we're going to have a Federal bill, we ought to have a Federal bill. It should preempt the States.

My friends on the other side are trying to have it both ways. You want a Federal bill that does lots of things that I don't support, but then you want to let the States that want to to go beyond the Federal bill. If that's the case, you don't need a Federal bill. I'd be happy to let each State decide what they wanted to do.

I would point out to my good friend from New Jersey, who was such an excellent baseball player in our congressional baseball game, that what has to be implemented in this bill is stronger than what currently exists in New Jersey. But if we don't accept the Barton amendment, New Jersey could go beyond what's in this bill. And, again, if you're going to have a Federal system for security, it should be a Federal system.

So I very respectfully ask my friends on the majority to accept the Barton amendment, and if we are going to have a Federal standard within a Federal bill, let's have a Federal standard in a Federal bill.

I ask for a ''yes'' vote on the Barton amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. MARKEY of Massachusetts. Mr. Chairman, I yield the balance of my time to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. Mr. Chairman, this amendment is written so imprecisely that it could preempt the rights of States and localities to pass or enforce any State regulation or standard that applies to a chemical facility, such as worker safety laws or even zoning laws. Try that on for size. One could even read the language as prohibiting States from passing stronger drinking water standards.

This is an unacceptable infringement on the right of States. I urge my colleagues to vote ''no'' on this amendment. Please vote ''no'' on this amendment.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Texas (Mr. BARTON).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. BARTON of Texas. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Texas will be postponed.

AMENDMENT NO. 3 OFFERED BY MR. HASTINGS OF FLORIDA

The Acting CHAIR. It is now in order to consider amendment No. 3 printed in part B of House Report 111–327.

Mr. HASTINGS of Florida. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. HASTINGS of Florida:

Page 65, after line 2, insert the following:

''(d) OUTREACH SUPPORT.—

''(1) POINT OF CONTACT.—The Secretary shall designate a point of contact for the Administrator of the Environmental Protection Agency, and the head of any other agency designated by the Secretary, with respect to the requirements of this title.

''(2) OUTREACH.—The Secretary shall, as appropriate, and in accordance with this title, inform State emergency response commissions appointed pursuant to section 301(a) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001) and local emergency planning committees appointed pursuant to section 301(c) of such Act, and any other entity designated by the Secretary, of the findings of the Office of Chemical Facility Security so that such commissions and committees may update emergency planning and training procedures.

The Acting CHAIR. Pursuant to House Resolution 885, the gentleman from Florida (Mr. HASTINGS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Florida.

Mr. HASTINGS of Florida. Mr. Chairman, I will be brief. I once again thank Chairman BENNIE THOMPSON for offering this vital legislation, and I thank him for supporting this amendment.

As Vice Chair of the House Permanent Select Committee on Intelligence, I commend the recognition of the potential risks associated with our chemical manufacturing and water treatment infrastructure. Securing these industries is vital not only to America's economic viability, it is essential to the human security of surrounding communities.

My amendment will strengthen the Office of Chemical Facility Security created by designating a specific point of contact for interagency coordination with the Environmental Protection Agency and other agencies. This amendment also requires the Secretary to proactively inform State Emergency Response Commissions and Local Emergency Planning Committees about activities related to the implementation of the act so that they may update their emergency planning and training procedures.

I know that Chairman THOMPSON would agree with the fact that many facilities that will be designated with significant risk through the implementation of this legislation lie in communities of significant economic need and vulnerability to chemical and contaminant exposure. For this reason, many of such areas are characterized as environmental justice communities. It is necessary that these communities be better empowered to strategically plan for potential chemical releases and security risks.

The fact is incidents like the 1984 methyl isocyanate released from a chemical facility in Bhopal, India continue to happen throughout the United States on a smaller scale. Until we enforce chemical release regulations and take aggressive steps to protect vulnerable environmental justice communities, they will be at even greater risk for acts of terror.

Also, the amendment designates a specific point of contact for interagency coordination to ensure greater transparency when it comes to our oversight responsibilities as Members of Congress. This adjustment will ensure that all agencies invoked by this legislation will cooperate as closely as possible.

I appreciate the opportunity to offer this amendment, and I urge my colleagues to support the amendment and the underlying legislation.

Mr. Chairman, I reserve the balance of my time.

Mr. DENT. Mr. Chairman, I seek to claim time in opposition to the amendment, though I am not necessarily opposed to the amendment.

The Acting CHAIR. Without objection, the gentleman from Pennsylvania is recognized for 5 minutes.

There was no objection.

Mr. DENT. This amendment requires the Secretary of Homeland Security to establish a point of contact with the Administrator of the EPA. The amendment also requires the Secretary to notify State and local emergency planning committees of findings that may be necessary to update their emergency plans. This amendment certainly encourages the sharing of information with the appropriate people at the State and local level, those responsible for developing emergency planning and training procedures. And while the bill envisions this type of information sharing, the amendment certainly makes it explicit. Additionally, this bill requires a single point of contact for the EPA Administrator.

Knowing how bad bureaucracy can be, we certainly understand the need of legislating communication between two agencies and ensuring that State and local first responders are included in these information-sharing regimes.

And I should point out that my good friend Mr. PASCRELL from New Jersey has a smile on his face still from the

New York Yankees' victory over my Philadelphia Phillies. I had to get that off my chest after the ribbing you gave me yesterday, along with our good friend Mr. KING. And, again, congratulations. It still hurts. I'm a Phillies fan.

Mr. Chairman, I yield back the balance of my time.

Mr. HASTINGS of Florida. Mr. Chairman, I yield the balance of my time to the distinguished subcommittee Chair, Mr. PASCRELL.

Mr. PASCRELL. Mr. Chair, this amendment I support gives effective coordination, which we certainly had been lacking, between the Department of Homeland Security and Environmental Protection Agency in carrying out the requirements of the bill. In committee, we worked to require the Department of Homeland Security, Mr. Chairman, to alert State Homeland advisers on any chemical security emergencies. This is a big relief, as my friend from Pennsylvania said. And I want to reiterate and support his words that this will be a great big help to first responders all across this United States of America.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Florida (Mr. HASTINGS).

The amendment was agreed to.

AMENDMENT NO. 4 OFFERED BY MR. DENT

The Acting CHAIR. It is now in order to consider amendment No. 4 printed in part B of House Report 111–327.

Mr. DENT. Mr. Chairman, I offer an amendment.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. DENT:

Page 2, beginning on line 1, strike title I and insert the following (and conform the table of contents accordingly):

TITLE I—CHEMICAL FACILITY SECURITY

SEC. 101. SHORT TITLE.

This Act may be cited as the ''Chemical Facility Security Authorization Act of 2009''.

SEC. 102. EXTENSION OF AUTHORITY OF SECRETARY OF HOMELAND SECURITY TO REGULATE THE SECURITY OF CHEMICAL FACILITIES.

Section 550(b) of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 6 U.S.C. 121 note) is amended by striking ''three years after the date of enactment of this Act'' and inserting ''on October 1, 2012''.

The Acting CHAIR. Pursuant to House Resolution 885, the gentleman from Pennsylvania (Mr. DENT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, I am offering this amendment on behalf of myself and Mr. OLSON.

This amendment would simply strike title I and extend the Department's current regulatory authority until October 2012. Simply, it extends the current CFATS regulations until 2012.

This amendment addresses the largest problem of the underlying bill, that the bill is a so-called solution in search of a problem.

The majority will argue that chemical facilities need to be secure. We agree. That's why we acted swiftly 3 years ago to give the Department of Homeland Security the regulatory authority it needed to secure them. In the 3 years since, the Department has taken steps to implement that authority, but it is far from complete.

As of last week, the Department of Homeland Security had not reviewed two-thirds of the over 6,000 security vulnerability assessments it required regulated facilities to submit based on regulations it issued in June of 2007. The addition of drinking water and wastewater facilities by titles II and III of this bill will double the 6,000 security vulnerability assessments already required by the Department. We are asking too much of the Department too soon.

The bill proposes to nearly double the Department's workload. The Department should be allowed to fully implement its existing regulatory authority. By all accounts, including those of the Democratic majority, the Department is doing an excellent job implementing its current regulatory framework.

In the committee hearing on the subject this past June, Chairman THOMPSON stated, ''As a close observer, I give credit to the Department for the good job it has done so far in promulgating and enforcing the CFATS regulations.'' We agree with him.

Why are we here today looking to make significant and costly changes to the manner in which the Department is regulating chemical facilities if, as the chairman himself has said, the Department is doing a ''good job''?

Despite the fact that the Department has yet to conduct a single onsite inspection, not a single one, the majority seeks to halt the progress the Department has made and start over with new costly and burdensome requirements.

This amendment maintains the current authorizing language, requiring security vulnerability assessments, site security plans, and enforcement. But it does not include costly IST assessments or mandatory implementation that will cost Americans their jobs. It does not include civil suit provisions that would allow any person, whether in Peoria or Pakistan, the authority to sue the Secretary and the Department of Homeland Security. It does not include weakened information protection language that makes prosecution for unauthorized disclosures nearly impossible.

This amendment would maintain the drinking and wastewater security titles of the bill. When will the Democratic leadership recognize that moving precipitously in unchartered territory through legislation is ill-advised and a rush to judgment? A Democrat-imposed 100 percent maritime cargo-scanning mandate legislated before the results of a pilot program were published has led the Secretary of Homeland Security to state on the record that it was an unachievable goal. A Democrat-imposed 100 percent aviation cargo-scanning mandate legislated before any feasibility studies were completed has led the Acting Administrator of the TSA to state on the record that it cannot be done. Requiring costly IST assessments and mandatory implementation and then studying its effect on the agricultural sector and small business is equally ill-advised.

If it isn't broken, don't fix it. And as Chairman THOMPSON said, the Department of Homeland Security is doing a ''good job.'' Let them finish their work, learn from the process, and consider this legislation.

Mr. Chairman, I reserve the balance of my time.

□ 1415

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise to claim the time in opposition.

The Acting CHAIR. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON-LEE of Texas. Mr. Chairman, first of all, let me thank Chairman THOMPSON for years of commitment to this process, listening to our friends from the other side of the aisle. Frankly, I remember sitting in Cannon room 311 when we were in the minority and the cooperation we worked through when we were dealing with our farmers. Each step of the way, we made efforts to be responsive to the security of the Nation and the elements to which my good friends speak of.

Let me also mention our other collaborators, Energy and Commerce, Chairman MARKEY, and my subcommittee of Transportation and Infrastructure which had any number of hearings to answer the question: Why? So I stand here today in the backdrop of recognizing the importance of securing the Nation. And I am proud to have co-authored H.R. 2868 and to pass it through the subcommittee I chair, before full committee.

Might I just indicate for a moment that I come from Texas, and I would be remiss not to acknowledge the devastation of yesterday. Of course, we have heard of another tragedy today in Florida. But my sympathy to the families of the 13 dead and 31 wounded. Never again. That is why we stand here today as Homeland Security members.

The gentleman's amendment would extend the current chemical security program for another 3 years without any of the security enhancements we included in H.R. 2868.

Section 550 of the fiscal year 2007 appropriations, a provision that the gentleman from Pennsylvania is seeking to extend, was just a page-and-a-half long and had many deficiencies. He is eliminating the inherently secure technology for chemical facilities, the very facilities that are in the eye of the storm. He apparently does not believe

it is important to protect workers, to improve the program so that the deficiencies in the current chemical facilities security program by including provisions that strengthen enforcement to provide workers subject to background checks with access to adequate redress and strengthen whistleblower protections.

Our challenge is to be fair. This legislation is fair. We must pass H.R. 2868.

Mr. Chair, I rise to claim time in opposition to the amendment offered by the gentleman from Pennsylvania.

Mr. Chair, I oppose this amendment.

The gentleman's amendment would extend the current chemical security program for another 3 years without any of the security enhancements we included in H.R. 2868. I urge my colleagues to oppose it.

The Department of Homeland Security set up the Chemical Facility Anti-Terrorism Standards in 2007 when DHS was granted narrow authority in an appropriations bill to regulate security at most chemical plants.

Section 550 of the Fiscal Year 2007 Appropriations Act—the provision that the gentleman from Pennsylvania is seeking to extend—was just 14 lines long and had many deficiencies.

It is no substitute for the comprehensive authorization legislation that moved through regular order in the relevant committees this year. H.R. 2868 is the product of years of work by multiple committees and extensive input from the chemical industry, water sector, Department of Homeland Security, and Environmental Protection Agency, as well as environmental and labor organizations.

We have the responsibility to the public, the private sector, and the Department to provide comprehensive, clear congressional guidance about how this program should be executed.

The gentleman's amendment ignores our responsibility to respond to what we have learned and to make improvements to the program that the Bush and Obama administrations requested. It just kicks the can down the road another three years.

H.R. 2868 addresses acknowledged deficiencies in the current chemical facility security program by including provisions that strengthen enforcement, provide workers subject to background checks with access to adequate redress, and strengthen whistleblower protections.

It also requires the assessment, and, in some cases, implementation of safer technologies.

If we merely extend the current program, we will sacrifice all of these improvements and ignore the countless hours of discussion and testimony that highlighted the need to strengthen this program in several key areas.

The American Chemistry Council, which represents the largest chemical companies, said in a letter to the Energy and Commerce Committee that, and I quote, ''H.R. 2868 is the appropriate vehicle for ensuring a permanent CFATS program.'' CropLife America and the National Council of Farmer Cooperatives share this view.

It is time for us to pass comprehensive legislation to address chemical facility security in this country.

I reserve my time at this time, as this debate proceeds.

Mr. DENT. Mr. Chairman, I would like to yield 1½ minutes to the distinguished cosponsor of this amendment, the gentleman from Texas (Mr. OLSON).

Mr. OLSON. I thank the gentleman for yielding, and I thank him for sponsoring this amendment with me and for his leadership on this issue.

Two years ago, the Department of Homeland Security began developing the chemical facility anti-terrorism standards, and since that time DHS has implemented an objective, risk-based approach to regulating chemical facilities. This includes a risk-based tiering system for chemical plants and requires them to implement specific security measures in accordance with their level of risk.

While much progress has been made, much remains to be done. Instead of allowing the work to be completed properly, the majority wishes to rush to solutions and mandate that DHS scrap the current program and start over. Such a move would take 2 years of hard work and throw it out the window.

Our amendment is simple: Extend the current risk-based regulations through 2012 and let the professionals do their job. Nothing more, nothing less.

I urge Members to support the Dent-Olson amendment.

Ms. JACKSON-LEE of Texas. I reserve the balance of my time.

Mr. DENT. Mr. Chairman, I yield the balance of my time to the gentleman from Michigan (Mr. UPTON).

Mr. UPTON. I want to say, as a member of the Energy and Commerce Committee, when we had hearings on this issue, we learned from the Homeland Security folks that there were no inspections. They had not conducted one single inspection during the time they had this authority before them.

We know that chemical companies across the country have invested more than $18 billion to try to make sure that their places are secure. We heard the terrible news this morning about unemployment going up to 10.2 percent. We have lost one in five manufacturing jobs in the last year and a half. There is almost 12 percent unemployment in manufacturing. How is this going to help us keep more job? They are going to leave. Those companies are going to look at the added expenses that they are going to have, and they are going to move like you know to other countries and other places and those jobs are going to be lost.

So I would like to think that we will learn our lesson. We can have the inspections and go through what is right and what is wrong. I would urge my colleagues to accept this amendment offered by Mr. DENT so we can bring some reasonableness to the issue.

Mr. DENT. Mr. Chairman, in closing, I just want to say once again, I think extending these CFATS regulations until 2012 is a reasonable approach. The Department of Homeland Security is doing a good job with these regulations. We need to give them more time to implement the existing regulations that will require security assessments.

As we said, 2,000 of the 6,000 required have been completed. So let's give them some time. The Department of Homeland Security has not spoken in support of this legislation in its entirety. Again, this bill is a solution in search of a problem. Please accept the Dent-Olson amendment that is a reasonable approach, accepting the regulations that we just approved as part of the Homeland Security appropriations bill. So let's do that. It is the right way to go.

I yield back the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise again to oppose this amendment.

Mr. Chairman, we have worked for 4 years on this legislation. Can you imagine 2009 to 2012, 7 years to put the American people in jeopardy. The Department of Homeland Security is for this legislation, and the approach that our friends are using is no substitute for the comprehensive authorization legislation that moved through regular order in the relevant committees this year.

H.R. 2868 is a product of years of work by multiple committees and extensive input from the chemical industry. Let me cite for you the letter from the American Chemistry Council which represents the largest chemical companies. They said, in a letter to Energy and Commerce, ''H.R. 2868 is the appropriate vehicle for ensuring a permanent CFATS program.'' CropLife America and the National Council of Farmer Cooperatives share the same view.

So what are my colleagues suggesting? They want us to shortchange the American people. I stood here with all of the solemnness that I could, when the House recognized those lost at Fort Hood. Others at Fort Hood were wounded in my home State. We mourn them, we honor them, but we have the responsibility to stand on their side.

Just as we have to get to the bottom of the tragedy at Fort Hood, Texas, we have to get to the bottom of realizing that it is on our table to ensure that whistleblowers are protected, as provided for in H.R. 2868 to make sure that inherently safer technologies are used in chemical facilities, and, yes, that jobs are not lost. But jobs will not be lost when you improve technology. You will become more efficient, and you will protect not only the water and wastewater systems in our communities but you will have workers working in safe, productive chemical facilities that will be part of the economic engine.

Jobs are important. But so is the security of this Nation. That is what this particular committee has done over a 4-year period. We have worked in consultation with those in business as well as those in law enforcement. I don't know how we can stand here and oppose the Department of Homeland Security's Department that supports us moving forward on this legislation, the Chemical Facility Anti-Terrorism Act 2009.

I ask my colleagues, consider the fact of what their responsibility is. Their

responsibility again is to stand with those who we have to secure. I think that the Dent-Olson amendment, my good friends on the committee have good intentions, but those intentions are quashed by the responsibility that we have and the long work that we have done to ensure inherently safer technologies for chemical facilities.

I ask my colleagues to oppose the amendment, again, in response to securing America.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. DENT).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. DENT. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Pennsylvania will be postponed.

AMENDMENT NO. 5 OFFERED BY MR. DENT

The Acting CHAIR. It is now in order to consider amendment No. 5 printed in part B of House Report 111–327.

Mr. DENT. Mr. Chairman, I rise for the purpose of offering an amendment.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. DENT:

Page 25, line 12, strike '', including the requirements under section 2111''.

Page 46, line 18, strike '', including any assessment required under section 2111''.

Page 48, beginning on line 18, strike the proposed section 2111 and redesignate the proposed sections 2112 through 2120 as sections 2111 through 2119, respectively.

Pg 87, line 4, strike '', of which up to $3,000,000 shall be made available for grants authorized under section 2111(c)(1)''.

Pg 87, line 10, strike '', of which up to $3,000,000 shall be made available for grants authorized under section 2111(c)(1)''.

Pg 87, line 16, strike '', of which up to $3,000,000 shall be made available for grants authorized under section 2111(c)(1)''.

Page 88, in the proposed amendment to the table of contents of the Homeland Security Act of 2002, strike the item relating to section 2111 and redesignate the items relating to sections 2112 through 2120 as items relating to sections 2111 through 2119, respectively.

The Acting CHAIR. Pursuant to House Resolution 885, the gentleman from Pennsylvania (Mr. DENT) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. DENT. Mr. Chairman, I want to point out, too, for the record, the American Chemistry Council, just referenced a moment ago by the gentlewoman from Texas (Ms. JACKSON-LEE), in a letter dated October 20, the ACC basically said that the IST provisions which authorize DHS to order the mandatory implementation of IST have proven the most difficult issue on which to find common ground and the primary reason ACC is unable to endorse this bill. They do not support the bill. To be very clear about that, they do not support this legislation.

Now, with respect to the Dent-Austria amendment that we are talking about now, this amendment would strike the IST provisions in the bill. IST is inherently subjective and without a widely accepted definition. When the Department of Homeland Security's subject matter expert on IST was specifically asked what IST was, she responded, ''There's enough debate in industry and academia that I can't take a position on that very topic.'' The Deputy Under Secretary responsible for overseeing the program stated unequivocally that the Department had no staff—no staff—capable of conducting an IST assessment.

Under direct questioning, Deputy Under Secretary Reitinger made it very clear that neither the fiscal year 2009 nor the fiscal year 2010 budget included any funding to hire the necessary expertise to review IST assessments and recommend alternative methods for complex engineering processes.

Again, under direct questioning, most of the witnesses considered IST unnecessary, with the Department's witness adding that the facilities can and are already doing IST.

Clearly, no one at DHS is in a position to dictate to a wide range of facilities what engineering process or chemicals should be used to make plastics, prescription drugs, or computer chips. Despite its fancy labeling, and its inclusion in a security bill, IST is not about security and may simply shift the security risk.

A decision to keep fewer chemicals on site will likely require more frequent shipments of chemicals. This increases the risk of an attack on the transportation of the chemicals or an accident releasing the substances of concern into neighborhoods outside the security perimeters.

It would be foolish to mandate IST in this bill when there is so much uncertainty and lack of expertise in the Department.

Finally, and most importantly, IST will cost American jobs. Let me say that again: IST will cost American jobs. With the national unemployment rate at 10.2 percent, and rising, can we really afford unnecessary congressional mandates that provide little security?

Conducting an IST assessment will be costly, too costly for many small businesses to afford. Experts estimate that a simple one-ingredient substitution would take two persons 2 weeks to complete and cost between $10,000 and $40,000, and that is on the low end. A pharmaceutical pilot plant with about 12 products would take three to six persons up to 10 weeks to complete an assessment at a cost of $100,000 to a half million dollars.

Larger facilities with particularly hazardous chemicals already regulated by OSHA would require 8 to 10 people 6 months or more to complete, and cost over $1 million for the assessment. Fifty-nine percent of the facilities regulated under current CFATS regulations that would be required to conduct these costs assessments employ 50 or fewer employees.

Mandating IST will be devastating for small businesses. According to a California fertilizer manufacturer, eliminating the use of anhydrous ammonia and substituting it with urea can cost a 1,000 acre farm up to $15,000 per application. This would be a recurring cost passed to the consumer.

□ 1430

As we heard earlier, in the current state of our economy, small businesses relying on chemicals simply may not survive. Today, the Department of Labor announced that unemployment has reached 10.2 percent. Does anybody in this Chamber expect that unemployment figure to go down any time soon? We hope it does, but this is not going to help.

''If I were to build a 20-foot high, 20-foot thick concrete barricade that surrounded my facility on all sides, utilized the most state-of-the-art intrusion detection systems and was better protected than the White House, this legislation would still require me to conduct an IST assessment and potentially implement the findings of that assessment.''

Let me close by quoting subcommittee chairman and chief sponsor, Mr. MARKEY, who stated at the Energy and Commerce Committee on the markup on October 21 of the proposed legislation, ''The safer technology requirement is not about bolstering security.'' If it's not about security, why is IST in the bill? Why are we asking the smallest of small businesses to pay for it?

Mr. Chairman, I reserve the balance of my time.

Mr. MARKEY of Massachusetts. Mr. Chairman, I rise to claim the time in opposition.

The Acting CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. MARKEY of Massachusetts. I yield 30 seconds to the gentlelady from Texas.

Ms. JACKSON-LEE of Texas. I thank the distinguished gentleman for his ongoing leadership.

Let me just cite the language out of the letter that my dear friend just read: ''The Chemical Facility Anti-Terrorism Act of 2009, H.R. 2868, is the appropriate vehicle for ensuring a permanent CFATS program.'' We've answered that question.

And, secondarily, it's not a notion because Clorox announced its plans to begin transitioning U.S. operations to high-strength bleach and to be able to use inherently safer technologies.

What we are speaking about today, this is a way of creating jobs, in a secure environment but also it is a way of securing America.

Mr. Chair, I rise to claim time in opposition to the amendment offered by the gentleman from Pennsylvania.

Mr. Chair, I oppose this amendment.

The gentleman's amendment would extend the current chemical security program for another 3 years without any of the security enhancements we included in H.R. 2868. I urge my colleagues to oppose it.

The Department of Homeland Security set up the Chemical Facility AntiTerrorism Standards in 2007 when DHS was granted narrow authority in an appropriations bill to regulate security at most chemical plants.

Section 550 of the Fiscal Year 2007 Appropriations Act—the provision that the gentleman from Pennsylvania is seeking to extend—was just a page and a half long and had many deficiencies.

It is no substitute for the comprehensive authorization legislation that moved through regular order in the relevant committees this year. H.R. 2868 is the product of years of work by multiple committees and extensive input from the chemical industry, water sector, Department of Homeland Security, and Environmental Protection Agency, as well as environmental and labor organizations.

We have the responsibility to the public, the private sector, and the Department to provide comprehensive, clear congressional guidance about how this program should be executed.

The gentleman's amendment ignores our responsibility to respond to what we have learned and to make improvements to the program that the Bush and Obama administrations requested. It just kicks the can down the road another three years.

H.R. 2868 addresses acknowledged deficiencies in the current chemical facility security program by including provisions that strengthen enforcement, provide workers subject to background checks with access to adequate redress, and strengthen whistleblower protections.

It also requires the assessment, and, in some cases, implementation of safer technologies.

If we merely extend the current program, we will sacrifice all of these improvements and ignore the countless hours of discussion and testimony that highlighted the need to strengthen this program in several key areas.

The American Chemistry Council, which represents the largest chemical companies, said in a letter to the Energy and Commerce Committee that, and I quote, ''H.R. 2868 is the appropriate vehicle for ensuring a permanent CFATS program.'' CropLife America and the National Council of Farmer Cooperatives share this view.

It is time for us to pass comprehensive legislation to address chemical facility security in this country.

CLOROX ANNOUNCES PLANS TO BEGIN TRANSITIONING U.S. OPERATIONS TO HIGH-STRENGTH BLEACH

OAKLAND, Calif., Nov. 2, 2009.—The Clorox Company (NYSE: CLX) today announced that it plans to begin modifying manufacturing processes in its U.S. bleach operations. The initiative calls for Clorox to begin transitioning from chlorine to high-strength bleach as a raw material for making its namesake bleach.

''This decision was driven by our commitment to strengthen our operations and add another layer of security,'' said Chairman and CEO Don Knauss.

Clorox will start with its Fairfield, Calif., plant. The company expects to complete the transition there within six months, followed by a phased, multiyear transition for six additional plants.

''This process requires significant expertise, training, and changes in infrastructure and equipment,'' Knauss said. ''Our plant-by-plant approach will also enable us to apply what we learn along the way, ensure supply availability, minimize business disruptions and help make sure the transition is undertaken in the most effective manner possible.''

''Clorox leads our industry in safety and security,'' Knauss said. ''Our bleach plant employees are experts at handling chlorine, and we're proud of the fact that we've used it responsibly for our entire 96-year history. Even so, we're pleased to begin implementing this process change to make our products using high-strength bleach.''

THE CLOROX COMPANY

The Clorox Company is a leading manufacturer and marketer of consumer products with fiscal year 2009 revenues of $5.5 billion. Clorox markets some of consumers' most trusted and recognized brand names, including its namesake bleach and cleaning products, Green Works® natural cleaners, Armor All® and SIP® auto-care products, Fresh Step® and Scoop Away® cat litter, Kingsford® charcoal, Hidden Valley®, and K C Masterpiece® dressings and sauces, Brita®, water-filtration systems, Glad® bags, wraps and containers, and Burt's Bees'® natural personal care products. With approximately 8,300 employees worldwide, the company manufactures products in more than two dozen countries and markets them in more than 100 countries. Clorox is committed to making a positive difference in the communities where its employees work and live. Founded in 1980, The Clorox Company Foundation has awarded cash grants totaling more than $77 million to nonprofit organizations, schools and colleges. In fiscal 2009 alone, the foundation awarded $3.6 million in cash grants, and Clorox made product donations valued at $7.8 million. For more information about Clorox, visit www.TheCloroxCompany.com.

AMERICAN CHEMISTRY COUNCIL,
Arlington, VA, October 20, 2009.

Hon. HENRY WAXMAN,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR CHAIRMAN WAXMAN: The American Chemistry Council (ACC) strongly supports DHS' existing Chemical Facility Anti-Terrorism Standards (CFATS). The program should be made permanent and DHS should be given adequate resources to fully implement and enforce the regulations. The Chemical Facility Anti-Terrorism Act of 2009, H.R. 2868, is the appropriate vehicle for a permanent CFATS program. As the full Energy and Commerce Committee prepares to mark up H.R. 2868, I want to provide you with ACC's views on the bill.

First, I want to commend you, Subcommittee Chairman MARKEY and your staffs for the willingness to invite and consider our views. While ACC is unable to endorse H.R. 2868 due primarily to concerns over the potential impact of the authority granted to DHS to mandate the implementation of inherently safer technology (IST), the manager's amendment reflects several months of serious, constructive dialog that has, I believe, resulted in important improvements to H.R. 2868. For example:

Employee participation and training provisions were modified to make them more consistent with existing company programs, to ensure that employee representatives possess the necessary knowledge or experience to work on Security Vulnerability Assessments or Site Security Plans, and to help provide proper protections for security sensitive information.

Unannounced inspections would be performed using a more meaningful measure, and in a manner that would not significantly interfere with regular operations.

Significant provisions concerning MTSA facilities were added, ensuring that the United States Coast Guard maintains, in its role as guardian of our ports, the lead regulator role, and limiting any possible duplication of the efforts that would result from the harmonization of MTSA and CFATS requirements.

The civil lawsuit provision was appropriately modified so that chemical companies would not be subject to civil actions brought by private citizens. The modification helps prevent the disclosure of sensitive security information and leaves enforcement authority in the hands of DHS and its security professionals. ACC can, therefore, support this modified provision.

The IST provisions, which authorize DHS to order the mandatory implementation of IST, have proven the most difficult issue on which to find common ground, and are the primary reason ACC is unable to endorse the bill. ACC members are concerned that providing government with authority to direct process changes or product substitutions could result in making critical products unavailable throughout our economy, with potentially significant impact on our companies and our customers. We acknowledge, however, that certain modifications made in the manager's amendment reflect input from ACC and its members and direct DHS to focus on risk. Further, the creation of an IST technical appeal process which factors unique facility characteristics into the DHS decision making process recognizes that IST implementation is a complicated and complex issue faced by our companies.

After 9/11, ACC and many others in the chemical industry stepped up and implemented serious, stringent security programs at their facilities before there was any government direction. To date, ACC members have invested nearly $8 billion in security enhancements under our own Responsible Care Security Code®. We remain committed to working with this committee, the Congress, and the Administration to move forward with a strong, smart regulatory program to protect our facilities, our employees, the communities in which we operate, and the products we supply throughout our economy.

Sincerely,

CAL DOOLEY,
President and CEO.

Mr. MARKEY of Massachusetts. I thank the gentlelady.

Can we get a review of where we are in time, Mr. Chairman.

The Acting CHAIR. The gentleman from Pennsylvania has 30 seconds remaining and the gentleman from Massachusetts has 4½ minutes remaining.

Mr. MARKEY of Massachusetts. Mr. Chairman, I yield 2 minutes to the gentleman from New Jersey (Mr. PASCRELL).

Mr. PASCRELL. I must remind my friend from Pennsylvania, my good

friend, that you voted for this bill last session.

Mr. DENT. Would the gentleman yield?

Mr. PASCRELL. Yes, sure.

Mr. DENT. This is a very different bill than the one from last session. This bill has citizen suits in it and all kinds of—it's a very different bill.

Mr. PASCRELL. Reclaiming my time, that's your story. We come here with different stories, many rise quickly to the specter of terror and cause fear in people. But you're the last to act to protect the American people. You get some flak from an industry, and all of a sudden you back off. Clorox did this voluntarily; November 2 they made the announcement.

Because these simple assessments that you have tried to minimize not only help protect and save lives, but they have also proven to actually save the chemical companies money, which is just the opposite of what you tried to communicate to the American people and to this body for the last 25 minutes, just the opposite: greater efficiencies and safety measures that prevent catastrophic accidents.

And it only stands to reason if you're using highly volatile chemicals, it would seem that you would want to reduce your risk, and providing it is because most of the companies aren't going to be forced to do anything, if you read the legislation. Please read the legislation. I say that to all bills, not just health bills. I say that to security bills. Read it, you may like it. Please, get off the kick of using the industry's program. I think highly of you. Don't follow the script.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. The Chair must remind all Members to direct their remarks to the Chair.

Mr. DENT. At this time, I yield the balance of my time to the gentleman from Ohio (Mr. AUSTRIA).

Mr. AUSTRIA. I thank the gentleman from Pennsylvania for offering this amendment, and I support this amendment.

Conducting an inherently safer technology, IST, assessment will be costly, too costly for many of our small businesses to afford. I submitted a commonsense amendment to the Rules Committee that would have exempted small businesses from this new costly and burdensome requirement. I might add that it would not exempt them from the current law, but from these new costly and burdensome requirements. Unfortunately for our Nation's small businesses, the majority decided not to allow a vote on that commonsense amendment on the floor.

Just to reiterate what the chairman said, over half of our facilities currently regulated under CFATS regulations that would now be regulated by these new costly assessments employing 50 or fewer employees. Mandating IST will be devastating for our small businesses.

The Acting CHAIR. The gentleman from Massachusetts has 2½ minutes remaining.

Mr. MARKEY of Massachusetts. I will complete debate on this amendment. I yield myself the balance of the time.

Mr. Chairman, what we're doing here is not providing more security in the classic sense of the word. What we're really doing is saying, what happens if al Qaeda is successful in penetrating into the heart of a chemical facility? What will the consequences be for the workers on site? What will the consequences be for the population area in the vicinity of that chemical facility? That's what this debate is all about.

What we are trying to do is to minimize the impact after al Qaeda has in fact been successful in launching an attack on a chemical facility. But what we say in the language is that, while there has to be an evaluation of the level of security at each one of the facilities, the language in our bill makes it quite clear that if the inherently safer technology or process costs too much, it doesn't have to be implemented. If there is no feasible, safer technology or process, the facility doesn't have to implement one. If implementing the inherently safer technology or process would not reduce the risk at the facility or would shift it elsewhere, it doesn't have to be implemented.

And so what we say here is that, yes, we need to make it clear that we don't want al Qaeda to have a successful attack, and if it is successful, have catastrophic consequences, but at the same time, there has to be an evaluation as to whether or not it is economically feasible at each facility. That is the balance which we strike. But I don't think anyone here for a second would want to have unnecessarily dangerous chemicals in highly populated areas that, if al Qaeda could be successful, would cause an event which would once again cripple our economy as did the attack on September 11. That is the heart of terrorism, having a population which is frightened.

At Logan Airport, we lost 27 percent of our air traffic for 2 years after 9/11. The same thing happened in Newark. It happened at LaGuardia; it happened at JFK. It happened all around the country. It plummeted, and that was key to their success.

So this amendment is something that was language developed in close consultation with and considerable input from the American Chemistry Council. It is something which should be adopted, and the amendment which is under consideration should be rejected.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. DENT).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. DENT. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Pennsylvania will be postponed.

AMENDMENT NO. 6 OFFERED BY MR. FLAKE

The Acting CHAIR. It is now in order to consider amendment No. 6 printed in part B of House Report 111–327.

Mr. FLAKE. Mr. Chairman, I have an amendment at the desk designated as No. 6.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. FLAKE:

Page 31, after line 25, insert the following:

''(E) PRESUMPTION OF CONGRESS RELATING TO COMPETITIVE PROCEDURES.—

''(i) PRESUMPTION.—It is the presumption of Congress that grants awarded under this paragraph will be awarded using competitive procedures based on merit.

''(ii) REPORT TO CONGRESS.—If grants are awarded under this paragraph using procedures other than competitive procedures, the Secretary shall submit to Congress a report explaining why competitive procedures were not used.

''(F) PROHIBITION ON EARMARKS.—None of the funds appropriated to carry out this paragraph may be used for a congressional earmark as defined in clause 9d, of Rule XXI of the rules of the House of Representatives of the 111th Congress.''.

The Acting CHAIR. Pursuant to House Resolution 885, the gentleman from Arizona (Mr. FLAKE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Arizona.

Mr. FLAKE. Mr. Chairman, I have offered different iterations of this noncontroversial amendment many times during this Congress and the last. This particular amendment was offered last June to the TSA Authorization Act when it was adopted by voice vote.

H.R. 2868 establishes a new Worker Training Grants program that seeks to provide grants to nonprofit organizations with demonstrated experience in implementing and operating successful worker or first responder health and safety training programs. This amendment would simply prohibit the Worker Training Grants program from being earmarked by Members for pet projects or favored entities back home. This amendment also establishes that it is the presumption of Congress that these grants would be awarded competitively based on merit.

I am often asked why I offer this. These are set up to be programs that are competitively awarded, but sometimes it's explicitly stated, sometimes it's not. In either case, sometimes when it is explicitly stated—and when it's not—these grant programs are sometimes just earmarked, all of them. All of the money in some of these accounts, if you take, for example, some of the programs in the Homeland Security bill, nearly 100 percent of the funds in one particular grant program were earmarked in the most recent Homeland Security spending bill.

So what we are seeking to do is make sure that people who want to apply for

these grants are able to, and that Members aren't able to simply earmark that money for people in their district or favored entities.

Mr. Chairman, I reserve the balance of my time.

Mr. PASCRELL. Mr. Chairman, while not opposed to the amendment, I ask unanimous consent to claim the time in opposition.

The Acting CHAIR. Without objection, the gentleman from New Jersey is recognized for 5 minutes.

There was no objection.

Mr. PASCRELL. Mr. Chairman, I am pleased to support this amendment that seeks to ensure that worker training grants are distributed based on merit. This was a longstanding fight in Homeland Security to deal with risk rather than spreading out money across the landscape.

I have worked to make sure Homeland Security grants are given on the basis of merit, as I have with the successful Fire Act and the SAFER Act.

Under the chemical security regulations, facility operators are responsible for adhering to the risk-based, performance-based site security plans that they develop internally. A key feature of any site security plan under H.R. 2868 is the provision of annual security training to each worker in the facility.

The worker training grants are intended to help create an environment where there is a cadre of qualified organizations that are available to help facility operators fulfill this important requirement.

The underlying bill does a good job of setting forth what qualifies as an ''eligible entity,'' but with the helpful addition of the language authored by the gentleman from Arizona (Mr. FLAKE), there can be no ambiguity about what is expected, none whatsoever.

Grants are to be distributed based on merit and cannot be earmarked. That may have a spillover to other things, who knows. That makes sense security-wise and is a solid approach. I urge my fellow Members to support this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. FLAKE. I thank the chairman. And would that all chairmen shared your view on earmarks and programs of this type. I am glad the chairman has agreed to accept this amendment, and I urge its adoption.

Mr. Chairman, I yield back the balance of my time.

Mr. PASCRELL. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Arizona (Mr. FLAKE).

The amendment was agreed to.

AMENDMENT NO. 7 OFFERED BY MR. SCHRADER

The Acting CHAIR. It is now in order to consider amendment No. 7 printed in part B of House Report 111–327.

Mr. SCHRADER. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 Offered by Mr. SCHRADER:

Page 54, line 24, strike ''SECTORAL IMPACTS'' and insert ''AGRICULTURAL SECTOR''.

Page 55, beginning on line 12, strike ''IMPACTS OF COMPLIANCE'' and insert ''AGRICULTURAL IMPACTS''.

Page 55, beginning on line 19, strike ''by manufacturers, retailers, aerial commercial applicators, and distributors of pesticide and fertilizer'' and insert ''on the agricultural sector''.

Page 55, line 23, insert a comma after ''Representatives''.

Page 55, line 24, strike ''and'' before ''the Committee''.

Page 55 line 25, insert '', the Committee on Agriculture of the House of Representatives, and the Committee on Agriculture, Nutrition and Forestry of the Senate'' after ''Senate''.

Page 56, line 4, insert ''agricultural'' after ''scope of''.

Page 57, beginning on line 15, strike ''other sectors engaged in commerce'' and insert ''agricultural end-users''.

Strike line 20 on page 57 and all that follows through page 58, line 2, and insert the following:

''(3) DEFINITIONS.—In this subsection:

''(A) FARM SUPPLIES MERCHANT WHOLESALER.—The term 'farm supplies merchant wholesaler' means a covered chemical facility that is primarily engaged in the merchant wholesale distribution of farm supplies, such as animal feeds, fertilizers, agricultural chemicals, pesticides, plant seeds, and plant bulbs.

''(B) AGRICULTURAL END-USERS.—The term 'agricultural end-users' means facilities such as—

''(i) farms, including crop, fruit, nut, and vegetable farms;

''(ii) ranches and rangeland;

''(iii) poultry, dairy, and equine facilities;

''(iv) turfgrass growers;

''(v) golf courses;

''(vi) nurseries;

''(vii) floricultural operations; and

''(viii) public and private parks.

The Acting CHAIR. Pursuant to House Resolution 885, the gentleman from Oregon (Mr. SCHRADER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Oregon.

□ 1445

Mr. SCHRADER. I yield myself as much time as I may consume.

Mr. Chairman, I want to thank my colleague Mr. KISSELL from North Carolina for working with me on this amendment to help address some of the concerns from the agricultural community with the underlying bill.

The Schrader-Kissell amendment is a perfecting amendment, and it builds on the efforts of Mr. ROSS of Arkansas, of Mr. SPACE of Ohio, and of the Energy and Commerce Committee in the consideration of H.R. 2868. I believe it is noncontroversial and that it has broad support from the agricultural community.

There are concerns within the ag community that H.R. 2868 has the potential to cause undue burdens, possibly resulting in the industry's dropping widely used and essential products listed as ''chemicals of interest'' due to increased regulatory costs and liability concerns.

This amendment would require the Department of Homeland Security to conduct an impact assessment that an inherently safer technology would have on agricultural facilities covered by these security regulations. Through this impact assessment, we hope to determine whether an IST mandate would result in fewer product options for farmers or ranchers, possibly leading to increased production costs as alternative, higher-priced crop input products that may not have the same agronomic benefits may only be available and could impact their crop yields. Additionally, the amendment would authorize grant funding for agricultural facilities to assist with any IST compliance requirements.

I think my colleagues will all agree we want to ensure the highest safety standards possible for facilities using these potentially dangerous chemicals. However, it is also essential we have all of the data at our disposal, so we will proceed in a thoughtful manner and will fully understand the impacts these new regulations may have on our family farms and ranchers.

I ask that my colleagues support this amendment and urge its adoption.

Mr. Chairman, I yield the balance of my time to the gentleman from North Carolina.

Mr. KISSELL. I would like to thank the gentleman from Oregon for recognizing me.

Mr. Chair, I would just like to add to what Mr. SCHRADER has said. This bill is straight, simple—straightforward.

In the agricultural community, farm supply wholesalers and agriculture end users very much want to protect homeland security. They very much want to protect the safety of the facilities of whose products end up in our food supply. Also, they are concerned about what possible ramifications the bill may have.

This is just simply calling for a study to see what impacts may be had. It strengthens the language that is already in the bill. It strengthens that language so that we can see what the results may be in terms of ranchers and farmers and the agricultural community all together.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I seek time in opposition, although I do not oppose the amendment.

The Acting CHAIR. Without objection, the gentleman is recognized for 5 minutes.

There was no objection.

Mr. DANIEL E. LUNGREN of California. Mr. Chairman, I would support this amendment as it does give, after the fact, support for the position of agriculture in this debate over the imposition of ISTs, which I would remind my colleagues, from every single expert who testified before our committee, is a concept, not a completed process or product. Yet we are requiring that which is a concept, for which

there are no true methodologies, to be imposed by the Secretary.

This is better than nothing, I suppose, because what this amendment does is it requires a report to be submitted to Congress after the mandates on agriculture go into effect, so at least we'll know how bad it is.

I support this amendment because, as I say, it's better than nothing, but I would remind my colleagues that, in the letter of November 3, 2009, signed by representatives of the American Farm Bureau Federation, the Chemical Producers and Distributors Association, the National Agriculture Association, the National Association of Wheat Growers, the National Cotton Council, The Fertilizer Institute, and the USA Rice Federation, they oppose this bill precisely because of the mandate of inherently safer technologies on their industries.

It is not a question of the great men and women in agriculture being opposed to securing this Nation against a terrorist attack. It is the position of the great men and women in agriculture that this is an imposition of a technology or a process or a concept, whatever you want to call it, that those who came up with it testified before our committee does not fit neatly into a legislative mandate. Nonetheless, we here on this floor are saying we know better than those who came up with the concept those who actually will suffer from this concept being imposed on them.

I support this amendment. I only wish that this amendment were stronger because, unfortunately, it is going to mandate a report that will come too late, a report to tell us what the effects of the mandate of IST will be or will have been on agriculture.

So, Mr. Chairman, I hope we will support this amendment. I only wish we could have had a stronger amendment.

I yield back the balance of my time.

Mr. SCHRADER. Mr. Chairman, I just urge my colleagues to support the amendment.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Oregon (Mr. SCHRADER).

The amendment was agreed to.

AMENDMENT NO. 8 OFFERED BY MR. MCCAUL

The Acting CHAIR. It is now in order to consider amendment No. 8 printed in part B of House Report 111–327.

Mr. MCCAUL. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. MCCAUL:

Page 76, beginning on line 11, strike the proposed section 2116 and redesignate the proposed sections 2117 through 2120 as sections 2116 through 2119, respectively.

Page 88, in the proposed amendment to the table of contents of the Homeland Security Act of 2002, strike the item relating to section 2116 and redesignate the items relating to sections 2117 through 2120 as items relating to sections 2116 through 2119, respectively.

The Acting CHAIR. Pursuant to House Resolution 885, the gentleman from Texas (Mr. MCCAUL) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Texas.

Mr. MCCAUL. I yield myself as much time as I may consume.

Mr. Chairman, this amendment would strike the provision authorizing the Secretary of Homeland Security to be subjected to civil suits by uninjured third parties. If complaints have been made against the Secretary for failing to enforce the law, the inspector general of DHS can already initiate an investigation. If that is insufficient, then Congress can act.

Allowing any third party—anybody—to sue the Secretary is both reckless and unnecessary. This provision would be a boon to trial lawyers and to environmentalists at the expense of the Department of Homeland Security and national security interests. Citizen suits have no place in a national security context, and this would be the very first time that Congress would be authorizing such suits in the homeland security arena.

Environmentalists file hundreds of citizen suits annually, and they consume substantial governmental resources and taxpayer funds. Some agencies expend almost their entire annual budgets simply responding to these lawsuits. For instance, in May of 2008, The Washington Post noted that the Fish and Wildlife Service had been caught in a legal vise that has forced it to spend most of its time responding to lawsuits and following judges' orders while its mission has slowed to a near halt. We cannot afford the same consequence with the Department of Homeland Security. In the meantime, the mission of the agency falls by the wayside.

This bill currently allows a citizen suit by any person. There is no requirement that the person be harmed or that the person be a local resident or even a United States citizen. The Congress has always treated national security as an inherently governmental matter and one in which sensitive security-related information has been rigorously protected. This marks the first time that citizen suits may result in the disclosure of very sensitive chemical facility vulnerability information.

The Department of Homeland Security also opposes the civil suit provisions. Deputy Under Secretary Philip Reitinger, who I had the pleasure to work with at the Department of Justice, testified that it is true that any civil suit provision at least raises a specter of some diversion of resources. As a former longtime litigator in the DOJ, he also testified that, inevitably, there is some risk of disclosure of information, and this information is very sensitive. That means sensitive security information could easily get into the wrong hands. I think yesterday is a reminder that we need to stay vigilant.

Committee staff spoke just this Tuesday with DHS staff to see if their position on this citizen suit provision had changed. It had not. They are still strongly opposed to this provision.

Introducing these provisions in the national security arena has the potential not only to divert DHS from its security-related missions but to also result in the disclosure of protected sensitive information. This entire bill, including the provision I am trying to strike, will inadvertently have an impact on the private sector, on business, and on the overall economy at a time when we can least afford it.

I reserve the balance of my time.

Mr. PASCRELL. Mr. Chairman, I rise to claim time in opposition to Brother MCCAUL's amendment.

The Acting CHAIR. The gentleman from New Jersey is recognized for 5 minutes.

Mr. PASCRELL. First of all, this bill does not authorize suits by uninjured parties. Article III of the Constitution is very, very clear. It requires that any person who files a lawsuit be able to show injury. H.R. 2868 will have no effect on this constitutional requirement whatsoever, Mr. Chairman. In fact, the Supreme Court has repeatedly held that Congress cannot pass a law changing this requirement. So it's in the Constitution. It has been upheld by the Supreme Court of this country.

I oppose this amendment. It works against government accountability and against the security of our chemical facilities.

Title I of H.R. 2868 allows citizens to file suit against the Secretary of Homeland Security for failing to meet her duties, such as issuing regulations or reviewing site security plans in a timely manner, in other words, if the Secretary, whomever that may be, does not do what he is supposed to do according to law.

Are you putting our citizens in further jeopardy? Is this what you think of the American citizens that they cannot speak for themselves?

This bill does not allow citizens to file suit against privately owned chemical facilities for alleged violations. Here is the bill. On pages 66, 67, 68, it doesn't say it. I don't know what you're reading.

Therefore, this bill will not compel a chemical facility to turn over sensitive security information in court. It will not put this information at risk of public disclosure. Moreover, citizens cannot file suit against the Secretary for making a decision that is discretionary. It is very different from what the Constitution is talking about, such as whether to require a facility to switch chemicals or processes. Any claims to the contrary are simply false. This amendment would strip citizen enforcement out entirely.

Why would we want to discourage the enforcement of these critical security standards? The American Chemical

Council, the Society of Chemical Manufacturers and its affiliate, and the environmental and labor groups have endorsed the citizen enforcement provisions in this bill. I rest my case. With that breadth of support for the compromise, this amendment is an ineffective solution for a nonexistent problem.

The members of the Energy and Commerce Committee devoted considerable time to crafting a solution that ensures government accountability while protecting sensitive information. Eliminating citizen suits without replacement is unnecessary. It undermines accountability, and it will leave our Nation less secure.

I urge my colleagues to vote ''no'' on Mr. MCCAUL's amendment.

I reserve the balance of my time.

Mr. MCCAUL. Mr. Chairman, how much time is remaining?

The Acting CHAIR. Both sides have 2 minutes remaining.

Mr. MCCAUL. Very quickly, to my good friend from New Jersey, courts have broadly and loosely interpreted the constitutional standing requirement to virtually allow anyone with any evidence of perceived harm to bring a lawsuit under these citizen suits.

With respect to sensitive information, we are now going to turn that over into the discovery process as to what is sensitive and what information is not.

With respect to the groups that my good friend mentioned, it is my understanding, while they are not opposed to the bill, they have certainly not endorsed this bill.

I yield the remainder of my time to the gentleman from Texas (Mr. POE).

Mr. POE of Texas. Mr. Chairman, how much time remains?

The Acting CHAIR. The gentleman has 1½ minutes remaining.

Mr. POE of Texas. I thank the gentleman from Texas for yielding.

Mr. Chairman, specifically, I stand in support of the gentleman's amendment. I probably represent as many, if not more, refineries and chemical plants as any Member of Congress.

I agree. It is imperative that we have security at these institutions, at these plants. I do believe, however, that the citizen suit problem exposes two specific issues, one of which is that it's too broad. It allows anybody to file a lawsuit, and it leaves the discretion as to what is sensitive material up to the Federal judges, and the Federal judges have broad discretion as to what material they will release and will make public.

The second problem I see—and it's specifically under (b)(2)—is that ''the district court will have jurisdiction without regard of the amount in controversy or the citizenship of the parties.'' I am not clear why that would be added, but it allows standing to anyone, regardless of citizenship of the parties, to file a lawsuit. Specifically, it gives that permission.

□ 1500

Under the environmental suits that have been filed, standing has always been regarded—in most cases it's very broad, giving many people that standing. I think it's unwise. What it will do is bring unnecessary litigation. I think that's the purpose and duty of the Federal agencies, to bring this litigation against these chemical plants and not citizens because, of course, it will promote litigation; it will promote discovery of sensitive information; and it will allow anyone, anywhere, to file these lawsuits.

Mr. PASCRELL. Mr. Chairman, a couple of things here. First, the groups that I mentioned before support that part of the legislation which I mentioned. Number two, let's get to the meat and potatoes: this bill does not create a boon for trial lawyers. No one is eligible to receive damage awards in lawsuits under this bill.

Mr. MCCAUL. Will the gentleman yield?

Mr. PASCRELL. I yield to the gentleman from Texas.

Mr. MCCAUL. They certainly will receive attorneys' fees. They're being paid by these organizations to bring lawsuits.

Mr. PASCRELL. Reclaiming my time, no one is eligible to receive damage awards. Lawyers will not receive a dime of any civil penalties that the courts may award because they are paid to the United States Treasury. I don't think that this is a Treasury scheme by any stretch of the imagination.

This bill is not the first time citizen suits have been authorized in a national security context. Since the passage of the Bioterrorism Act in 2002, citizen suits have been available to enforce the requirements of section 1433 of the Safe Drinking Water Act, which is focused on security at drinking water facilities throughout the United States of America.

By the way, to my other friend from Texas, this is very standard language that is used throughout this legislation.

I yield to my friend from Massachusetts.

Mr. MARKEY of Massachusetts. I just want to say that this is just giving the right to ordinary people to sue their own government because they're not providing for the security around facilities that could be attacked by al Qaeda. This is at the essence of the philosophy of the tea-baggers, to give ordinary citizens the right to challenge their government, to be able to rise up and to be able to say, you are not doing your job to protect us, your fundamental responsibility to protect the security of citizens in their homes and where they work.

Mr. PASCRELL. Reclaiming my time, we must remember also—I think you would agree with me, Mr. Chairman—that nowhere in this legislation are we in any manner, shape or form jeopardizing the private plans of any facility, any chemical facility.

The Acting CHAIR (Mr. MORAN of Virginia). The question is on the amendment offered by the gentleman from Texas (Mr. MCCAUL).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. MCCAUL. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Texas will be postponed.

AMENDMENT NO. 9 OFFERED BY MRS. HALVORSON

The Acting CHAIR. It is now in order to consider amendment No. 9 printed in part B of House Report 111–327.

Mrs. HALVORSON. Mr. Chairman, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Mrs. HALVORSON:

Page 58, beginning on line 3, strike ''ASSESSMENT OF IMPACTS ON SMALL COVERED CHEMICAL FACILITIES'' and insert ''SMALL COVERED CHEMICAL FACILITIES''.

Page 58, after line 4, insert the following:

''(1) GUIDANCE FOR SMALL COVERED CHEMICAL FACILITIES.—The Secretary may provide guidance and, as appropriate, tools, methodologies, or computer software, to assist small covered chemical facilities in complying with the requirements of this section.

Page 58, line 5, strike ''(1) IN GENERAL'' and insert ''(2) ASSESSMENT OF IMPACTS ON SMALL COVERED CHEMICAL FACILITIES''.

Page 59, line 20, strike ''(2) DEFINITION'' and insert ''(3) DEFINITION''.

The Acting CHAIR. Pursuant to House Resolution 885, the gentlewoman from Illinois (Ms. HALVORSON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Illinois.

Mrs. HALVORSON. Mr. Chairman, as a small business owner and as a member of the Small Business Committee, I understand the challenges that small business owners face on a day-to-day basis. I offer this amendment to help small chemical facilities in meeting some of those challenges.

My amendment is straightforward and necessary. It would improve this bill by giving the Secretary of the Department of Homeland Security the authority to provide facilities with less than 350 employees the guidance, tools and software to help them comply with the security requirements of this bill.

We have a responsibility to make sure chemical facilities are safe, but we also have a responsibility to make sure that small businesses have the assistance and the resources that they need to comply with new security requirements. That is what my amendment does. It helps small chemical facilities to comply with security standards in an effective and profitable manner.

Based on DHS analysis, we can expect that 15 to 20 percent of the chemical facilities across the country have

less than 350 employees onsite. That's a significant number of small businesses that we cannot forget as we move forward on security requirements. These are facilities that create jobs that invest in economic growth. In a tough economic environment, these small businesses need to have the tools available to compete and succeed and, again, that's what this amendment does.

The bottom line is that we need small chemical facilities to be secure, but we also need them to be successful. This is an important amendment, and it will help make sure that those two critical goals are accomplished. We can't forget that as we move forward.

I reserve the balance of my time.

Mr. OLSON. Mr. Chairman, I claim time in opposition, but I don't necessarily oppose the bill.

The Acting CHAIR. Without objection, the gentleman from Texas is recognized for 5 minutes.

There was no objection.

Mr. OLSON. Mr. Chairman, this amendment allows the Secretary to provide guidance, tools, methodologies or computer software to assist small covered chemical facilities in complying with the IST assessments and implementation requirements of the act.

While I support the sentiment behind the amendment, given the costs associated with IST assessments and mandatory implementation, I am genuinely concerned there will be few small businesses left that would benefit from any guidance the Secretary may or may not provide based on this provision.

This amendment simply gives the Secretary the option of providing guidance to small businesses to meet the costly IST provisions of the bill. How much guidance do we expect from an office that employs fewer than 200 people and is responsible for overseeing a program that covers 6,100 facilities?

While it's difficult to object to Mrs. HALVORSON's amendment, I find it ironic that the majority would make in order an amendment that recognizes that small businesses will be affected by the IST mandate. But rather than address the problem before they create it, they ask the Secretary to clean up the mess for them.

I would have preferred to debate Mr. AUSTRIA's amendment that was not ruled in order. That amendment would have been a real benefit to the 3,630 smallest of the small businesses by exempting them altogether from this costly and unnecessary provision.

I reserve the balance of my time.

Mrs. HALVORSON. Mr. Chairman, I yield such time as he may consume to the gentleman from Mississippi (Mr. THOMPSON).

Mr. THOMPSON of Mississippi. Mr. Chairman, I rise in support of the gentlelady's amendment. The size of a facility's workforce or annual operating budget has nothing to do with the facility's security risk.

At our October 1 hearing, we heard testimony from Rand Beers, Undersecretary of the DHS, about this issue. He said, and I quote, this is not an issue of defining whether the risk is less important because the size of a firm is small. The risk doesn't change with respect to the size of a firm.

But what is different about small businesses is that some lack the administrative resources of large multi-billion-dollar chemical companies. They might not have an in-house security expert that can direct or prepare their security vulnerability assessment or site security plan. They might not know how to navigate the Washington bureaucracy in order to learn how to best comply with these new regulations.

The underlying legislation does acknowledge that the impact of inherently safer technology provisions on small businesses should be examined by the Department of Homeland Security. DHS has told us that they estimate that 15 to 20 percent of all regulated facilities might be classified as small businesses.

I think the gentlelady's amendment takes the language one useful step further by giving DHS the authority to create tools specifically for small businesses to help them in complying with the inherent safer technology provisions of the bill. This could be guidance and outreach directed to the small business community or it could be software or other methodologies that could make compliance easier.

I urge my colleagues to support the Halvorson amendment.

Mr. OLSON. Mr. Chairman, I yield back the balance of my time.

Mrs. HALVORSON. I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentlewoman from Illinois (Mrs. HALVORSON).

The amendment was agreed to.

AMENDMENT NO. 10 OFFERED BY MR. FOSTER

The Acting CHAIR. It is now in order to consider amendment No. 10 printed in part B of House Report 111–327.

Mr. FOSTER. Mr. Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 offered by Mr. FOSTER:

Page 13, after line 21, insert the following:

''(13) The term 'academic laboratory' means a facility or area owned by an institution of higher education (as defined under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a non-profit research institute or teaching hospital that has a formal affiliation with an institution of higher education, including photo laboratories, art studios, field laboratories, research farms, chemical stockrooms, and preparatory laboratories, where relatively small quantities of chemicals and other substances, as determined by the Secretary, are used on a non-production basis for teaching, research, or diagnostic purposes, and are stored and used in containers that are typically manipulated by one person.

Page 20, line 12, strike ''and'' after the semicolon.

Page 20, line 19, strike the period after ''disapproval'' and insert ''; and''.

Page 20, after line 19, insert the following:

''(H) establish, as appropriate, modified or separate standards, protocols, and procedures for security vulnerability assessments and site security plans for covered chemical facilities that are also academic laboratories.

The Acting CHAIR. Pursuant to House Resolution 885, the gentleman from Illinois (Mr. FOSTER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois.

Mr. FOSTER. Mr. Chair, I yield myself 2 minutes.

I would like to first thank Mr. LUJÁN of New Mexico for allowing me to work with him on this important and commonsense amendment to the Chemical Facility Anti-Terrorism Act.

The underlying bill is a positive step towards ensuring the security of America's chemical facilities, but overlooks key differences between commercial facilities and university and educational laboratories. This amendment directs the Secretary of Homeland Security to take a graduated approach to security in school labs and to create a separate and appropriate set of protocols for university affiliated laboratories with relatively small quantities of chemicals.

One-size-fits-all safety regulations only create more paperwork, more bureaucracy and more confusion without necessarily making us safer. This is especially true in educational settings where large numbers of students move in and out of smaller chemical labs constantly, making it difficult and expensive to impose on them the same security protocols as large commercial facilities.

However, this amendment does not let our schools off the hook for maintaining a safe and secure environment. The Secretary of Homeland Security will still require that universities create and report a security plan of precaution and prevention as part of normal campus safety procedures. At a time when university budgets are already tight, this amendment will avoid placing potentially large financial hardships on our educational institutions.

This amendment is supported by a number of higher educational associations, including the American Council on Education, the Association of American Universities, and the Association of Public and Land-grant Universities. I was very happy to be able to work on this commonsense solution.

I reserve the balance of my time.

Mr. OLSON. Mr. Chairman, I claim time in opposition, but do not necessarily oppose the underlying amendment.

The Acting CHAIR. Without objection, the gentleman from Texas is recognized for 5 minutes.

There was no objection.

Mr. OLSON. Mr. Chairman, this amendment addresses academic laboratories which is defined as a facility

owned by an institution of higher learning where relatively small quantities of substances are used for teaching or research purposes.

These types of institutions are vastly different from the majority of chemical facilities that we all think of in terms of large manufacturing plants. The Secretary is required to take these differences into account and may develop modified or separate procedures for such institutions.

The American Council on Education supports this amendment.

□ 1515

They will still be required to conduct security vulnerability assessments and site security plans.

The qualifier ''as appropriate'' included in the amendment still gives the Secretary some direction as to if she wants to provide separate procedures for conducting the vulnerability assessments and site security plans. Most colleges and universities have already completed these required vulnerability assessments, and so this language, while well-intended, will have little impact.

It is unfortunate that the amendment does not provide colleges and universities any exceptions or alternative procedures for the IST assessment and implementation requirements of this legislation. Despite this amendment, 99 colleges and universities will have to conduct costly IST assessments, and 23 of them in 14 States may be required to implement the findings of these assessments.

I reserve the balance of my time.

Mr. FOSTER. Mr. Chairman, I happily yield such time as he may consume to my colleague from New Mexico (Mr. LUJÁN).

Mr. LUJÁN. Mr. Chairman, I thank my colleague, Mr. FOSTER, for recognition and for his cooperation in working on this amendment. I also commend Chairman THOMPSON for bringing this important legislation to the floor.

In universities, colleges, and educational institutions across the Nation, researchers and students are currently utilizing educational laboratories to expand the limits of our scientific knowledge and develop the skills needed to thrive in high-tech jobs of tomorrow. This is an important opportunity to make sure that we are preparing them for the jobs of the future.

This commonsense amendment will allow this work to continue, while ensuring that academic laboratories are protected from the unique security threats that they may face. Through this amendment, the Department of Homeland Security will have the flexibility to recognize that these labs, which may contain a large variety of chemicals, rarely possess any specific chemical in the large quantities typical of industrial facilities. The Department will have the capability to assess and oversee specific security challenges these labs face from infiltration, tampering, theft or attack.

This amendment is supported by the American Chemical Society, and I want to reiterate and emphasize it is also supported by the American Council of Education and institutions of learning across the country.

I urge my colleagues to join me in support of this amendment, which will ensure that the Department of Homeland Security adequately protects our Nation's students, teachers, and research institutions.

Mr. OLSON. Mr. Chairman, with no one on my side waiting to speak, I yield back the balance of my time.

Mr. FOSTER. I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Illinois (Mr. FOSTER).

The amendment was agreed to.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments printed in part B of House Report 111–327 on which further proceedings were postponed, in the following order:

Amendment No. 1 by Mr. THOMPSON of Mississippi.

Amendment No. 2 by Mr. BARTON of Texas.

Amendment No. 4 by Mr. DENT of Pennsylvania.

Amendment No. 5 by Mr. DENT of Pennsylvania.

Amendment No. 8 by Mr. MCCAUL of Texas

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 1 OFFERED BY MR. THOMPSON OF MISSISSIPPI

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Mississippi (Mr. THOMPSON) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 253, noes 168, not voting 19, as follows:

[Roll No. 869]

AYES—253

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (NY)
Blumenauer
Boccieri
Bordallo
Boren
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Bright
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Childers
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Griffith
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Marshall
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Melancon
Michaud
Miller (NC)
Miller, George
Minnick
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pierluisi
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Space
Spratt
Stark
Stupak
Sutton
Tanner
Taylor
Teague
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—168

Akin
Alexander
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Bonner
Bono Mack
Boozman
Boustany
Brady (TX)
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Lamborn
Lance
Latham

LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Stearns
Sullivan
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOT VOTING—19

Aderholt
Bishop (GA)
Boehner
Carter
Cassidy
Chandler
Christensen
Conaway
Costa
Ehlers
Emerson
Johnson, E. B.
Meeks (NY)
Murphy, Patrick
Norton
Nunes
Rogers (MI)
Sánchez, Linda T.
Speier

□ 1544

Messrs. CALVERT, McHENRY, PLATTS and CAO changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

Stated for:

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chair, on rollcall No. 869, I had a personal emergency. Had I been present, I would have voted "aye."

AMENDMENT NO. 2 OFFERED BY MR. BARTON OF TEXAS

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Texas (Mr. BARTON) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 165, noes 262, not voting 13, as follows:

[Roll No. 870]

AYES—165

Akin
Alexander
Altmire
Andrews
Austria
Bachmann
Bachus
Barrett (SC)
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Bonner
Bono Mack
Boozman
Boren
Boswell
Boucher
Boustany
Brady (TX)
Bright
Brown (SC)
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Cardoza
Chaffetz
Coble
Coffman (CO)
Cohen
Cole
Cooper
Crenshaw
Davis (KY)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Ellsworth
Emerson
Fallin
Fleming
Forbes
Fortenberry
Foster
Foxx
Franks (AZ)
Gallegly
Garrett (NJ)
Gingrey (GA)
Gohmert
Goodlatte
Gordon (TN)
Granger
Graves
Griffith
Guthrie
Hall (TX)
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jordan (OH)
King (IA)
King (NY)
Kirk
Kline (MN)
Lamborn
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Marchant
Marshall
Matheson
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Moran (KS)
Murphy, Tim
Myrick
Olson
Paulsen
Pence
Petri
Pitts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shea-Porter
Shimkus
Shuster
Simpson
Smith (NE)
Smith (TX)
Souder
Stearns
Sullivan
Teague
Terry
Thompson (PA)
Tiahrt
Tiberi
Turner
Upton
Walden
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)

NOES—262

Abercrombie
Ackerman
Adler (NJ)
Arcuri
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Bordallo
Boyd
Brady (PA)
Braley (IA)
Broun (GA)
Brown, Corrine
Brown-Waite, Ginny
Butterfield
Capito
Capps
Capuano
Carnahan
Carney
Carson (IN)
Castle
Castor (FL)
Childers
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Connolly (VA)
Conyers
Costa
Costello
Courtney
Crowley
Cuellar
Culberson
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Filner
Flake
Frank (MA)
Frelinghuysen
Fudge
Garamendi
Gerlach
Giffords
Gonzalez
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Halvorson
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Jones
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kingston
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Lance
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Manzullo
Markey (CO)
Markey (MA)
Massa
Matsui
McCarthy (NY)
McCollum
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Neugebauer
Nye
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Paul
Payne
Perlmutter
Perriello
Peters
Peterson
Pierluisi
Pingree (ME)
Platts
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Rohrabacher
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Space
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Taylor
Thompson (CA)
Thompson (MS)
Thornberry
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth
Young (FL)

NOT VOTING—13

Aderholt
Boehner
Carter
Cassidy
Chandler
Conaway
Ehlers
McDermott
Murphy, Patrick
Norton
Nunes
Rogers (MI)
Sánchez, Linda T.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). Members have 2 minutes remaining in this vote.

□ 1551

Mr. MORAN of Virginia changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 4 OFFERED BY MR. DENT

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Pennsylvania (Mr. DENT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 186, noes 241, not voting 13, as follows:

[Roll No. 871]

AYES—186

Akin
Alexander
Austria
Bachmann
Bachus
Baird
Barrett (SC)
Barrow
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Cassidy

Castle
Chaffetz
Coble
Coffman (CO)
Cole
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Donnelly (IN)
Dreier
Duncan
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Green, Gene
Griffith
Guthrie
Hall (TX)
Halvorson
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marshall
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Salazar
Scalise
Schmidt
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Space
Spratt
Stearns
Sullivan
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOES—241

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baldwin
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Bordallo
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Childers
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Engel
Eshoo
Etheridge
Faleomavaega
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pierluisi
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Slaughter
Smith (WA)
Snyder
Speier
Stark
Stupak
Sutton
Tanner
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOT VOTING—13

Aderholt
Carter
Chandler
Conaway
Ehlers
Farr
Marchant
Murphy, Patrick
Norton
Nunes
Rogers (MI)
Sánchez, Linda T.
Schock

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). Members have 2 minutes remaining in this vote.

□ 1558

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 5 OFFERED BY MR. DENT

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Pennsylvania (Mr. DENT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 193, noes 236, not voting 11, as follows:

[Roll No. 872]

AYES—193

Akin
Alexander
Arcuri
Austria
Bachmann
Bachus
Baird
Barrett (SC)
Bartlett
Barton (TX)
Berry
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Costello
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Donnelly (IN)
Dreier
Duncan
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Halvorson
Harper
Hastings (WA)
Heller
Hensarling
Herger
Herseth Sandlin
Hoekstra
Holden
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Markey (CO)
Marshall
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Pomeroy
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Space
Stearns
Sullivan
Tanner
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOES—236

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Baca
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Bordallo
Boucher
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Childers
Christensen
Chu
Clarke
Clay
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costa
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Heinrich
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (MA)
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott

McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pierluisi
Pingree (ME)
Polis (CO)
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Salazar
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Slaughter
Smith (WA)
Snyder
Speier
Spratt
Stark
Stupak
Sutton
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOT VOTING—11

Aderholt
Carter
Chandler
Cleaver
Conaway
Ehlers
Murphy, Patrick
Norton
Nunes
Rogers (MI)
Sánchez, Linda T.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining on this vote.

□ 1605

Mrs. CAPPS changed her vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

AMENDMENT NO. 8 OFFERED BY MR. MCCAUL

The Acting CHAIR. The unfinished business is the demand for a recorded vote on the amendment offered by the gentleman from Texas (Mr. MCCAUL) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIR. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 196, noes 232, not voting 12, as follows:

[Roll No. 873]

AYES—196

Adler (NJ)
Akin
Alexander
Altmire
Arcuri
Austria
Bachmann
Bachus
Baird
Barrett (SC)
Bartlett
Barton (TX)
Bean
Berry
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boswell
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Cooper
Costa
Crenshaw
Culberson
Dahlkemper
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Donnelly (IN)
Dreier
Duncan
Ellsworth
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Goodlatte
Gordon (TN)
Granger
Graves
Griffith
Guthrie
Hall (TX)
Halvorson
Harper
Hastings (WA)
Heller
Hensarling
Herger
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson, Sam
Jones
Jordan (OH)
King (NY)
Kingston
Kirk
Kline (MN)
Kratovil
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMahon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Moran (KS)
Murphy (NY)
Murphy, Tim
Myrick
Neugebauer
Olson
Paul
Paulsen
Pence
Petri
Pitts
Platts
Poe (TX)
Pomeroy
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Salazar
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Spratt
Stearns
Sullivan
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Watt
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOES—232

Abercrombie
Ackerman
Andrews
Baca
Baldwin
Barrow
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Bordallo
Boucher
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Childers
Christensen
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Costello
Courtney
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Heinrich
Herseth Sandlin
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Perriello
Peters
Peterson
Pierluisi
Pingree (ME)
Polis (CO)
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sablan
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Space
Speier
Stark
Stupak
Sutton
Tanner
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOT VOTING—12

Aderholt
Carter
Chandler
Conaway
Ehlers
Gohmert
King (IA)
Murphy, Patrick
Norton
Nunes
Rogers (MI)
Sánchez, Linda T.

ANNOUNCEMENT BY THE ACTING CHAIR

The Acting CHAIR (during the vote). There are 2 minutes remaining on this vote.

□ 1612

Mr. TERRY changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

The Acting CHAIR. The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The Acting CHAIR. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. PASTOR of Arizona) having assumed the chair, Mr. MORAN of Virginia, Acting Chair of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 2868) to amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes, pursuant to House Resolution 885, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the amendment in the nature of a substitute, as amended.

The amendment in the nature of a substitute, as amended, was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

□ 1615

MOTION TO RECOMMIT

Mr. DENT. Mr. Speaker, I have a motion to recommit at the desk.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. DENT. I am, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Dent moves to recommit the bill H.R. 2868 to the Committee on Homeland Security with instructions to report the same back to the House forthwith with the following amendments:

Page 52, line 16, strike ''and''.

Page 52, line 21, strike the period and insert ''; and''.

Page 52, after line 21, insert the following:

''(iv) would not significantly or demonstrably reduce the operations of the covered chemical facility or result in any net reduction in private sector employment when national unemployment is above 4 percent.''.

Mr. DENT (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania is recognized for 5 minutes.

Mr. DENT. Mr. Speaker, today, the Bureau of Labor Statistics issued the most recent unemployment numbers, and they rose yet again to 10.2 percent, the highest unemployment rate in over 25 years. Last month, 190,000 hardworking Americans lost their jobs, almost a third of which came from the manufacturing sector.

Now, there are plenty of reasons to oppose the inclusion of any IST mandate in this bill; it's a vague and subjective philosophy that will cost facilities millions of dollars. The Department has no experts on IST, inherently safer technologies, nor any plans to hire them. And it's not really even about security at all.

But the worst part of the IST mandate is that nowhere in the current bill is the Secretary required to consider the impact on the local economy and on the local workforce before imposing these unnecessary requirements. This is simply unimaginable in the current economy. Unemployment is now at 10.2 percent.

The agricultural sector, much of which will now be regulated under this bill, has an unemployment rate of over 11 percent. Perhaps that's why agriculture groups, including the Farm Bureau and others, warn that IST ''could have a devastating impact on American agriculture.'' That's the Farm Bureau's words, not mine.

Mandating implementation would result in increased costs, higher consumer prices, and lower crop yields. And for those of you who say that sector will be exempt, I say prove it. That's not true. That's not in the legislation. If it is, just tell me which page to turn to in here, and we'll try to find it. It's not in here.

The cost of mandating IST is staggering. Twenty-seven associations, including the U.S. Chamber of Commerce, stated that the costs are estimated to range from thousands of dollars to millions of dollars per facility—millions of dollars. Almost 60 percent of the facilities regulated under this act employ fewer than 50 individuals. These are the smallest of small businesses. Do we really think they can afford to put millions of dollars into the redesigning of processes and facilities during these difficult economic times?

We know the reality of these expenses. When the cost of doing business goes up, there are only two options: you can pass the cost on to consumers, or you can lay off workers. In today's competitive market, unfortunately, it is much easier to shed a few employees than to raise prices. You know it, I know it, and the American people know it.

This is just the latest in a string of bills that will cost American jobs. The health care bill will result in millions of lost jobs across the country. In my district alone, more than 2,000 jobs are at risk because of the medical device tax, and another 300 are in jeopardy just because of the dental provisions in the health care bill.

The cap-and-trade bill, the national energy tax will force the Commonwealth of Pennsylvania to shed as many as 66,000 jobs by 2020, according to the Pennsylvania Public Utility Commission, and raise energy costs for consumers and businesses alike. Every district in every State will point to similar job losses as a result of these detrimental policies.

The hemorrhaging of American jobs must stop. I'm not sure about other Members in this Chamber, but to me every job is important and every job counts. This motion to recommit simply requires the Secretary to consider the jobs of hardworking Americans before imposing a mandate to implement inherently safer technologies, ISTs.

This in no way reduces our Nation's security. They are still required to implement site security plans, but as Chairman MARKEY said during markup, The safer technology requirement is not about bolstering security. When I offered a similar amendment at the full committee, my friend, Ms. JACKSON-LEE, and my friend, Mr. CUELLAR, both spoke in strong support stating, We want to make sure that it does not adversely affect the workforce, which is something we all support. That provision passed unanimously. That's why I was angered when it was stripped out by the Rules Committee.

Now, I say enough is enough. This motion simply says we've lost enough American jobs, and we don't need to lose anymore.

We heard the promises from the majority to create jobs. We heard that the stimulus bill would cap unemployment at 8 percent. Just yesterday, I heard several Members of Congress say that this legislation would not cost American jobs. If you believe that, if that wasn't just talk for the television cameras, then you should support this motion to recommit.

This is an opportunity to save jobs before they need creating, to prevent putting more hardworking Americans on unemployment, to stand up for the farmers who put food on our table, to stand up for manufacturers and to stand up for the small businesses owners.

Support the motion to recommit and let's keep America working.

I yield back the balance of my time.

Mr. THOMPSON of Mississippi. Mr. Speaker, I rise to claim time in opposition.

The SPEAKER pro tempore. Is the gentleman from Mississippi opposed to the motion?

Mr. THOMPSON of Mississippi. In its present form, I am.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. THOMPSON of Mississippi. Mr. Speaker, I can say to my colleague in this motion to recommit, we will have a jobs bill coming out of this body in the not-too-distant future. I look forward to Republican support of that jobs bill when it comes forth.

But this is a security bill, Mr. Speaker. How in the world can we sacrifice security and tie it to unemployment? Can you believe when the terrorists come they'll say, Is the unemployment rate low enough for us to attack you, or should we wait until it gets to 4 percent? In the last 478 months, we've had 4 percent unemployment 6 of those months. So we're going to have to wait all that time before we invest in security.

This is a security bill; it is not a jobs bill. We will have an opportunity to do a jobs bill later. I look forward to the Republican support for that.

Mr. Speaker, I yield the balance of my time to the gentleman from Massachusetts (Mr. MARKEY).

Mr. MARKEY of Massachusetts. I thank the gentleman from Mississippi, and I thank him for his great work on this historic legislation.

Unemployment has not been under 4 percent since September 11. One of the reasons that it has not been under 4 percent since September 11 is the attack on September 11, which paralyzed our airline industry, paralyzed our tourism industry, and led to a precipitous drop in GDP because of the reaction to it.

And by the way, these workers that the Republicans want to protect, well, we received a letter from the Steelworkers, the Communications Workers, the Autoworkers, the Chemical Workers, the Teamsters, the SEIU. Here is their letter to us: ''We oppose amendments that purport to protect jobs but

in fact only hinder the implementation of methods to reduce the consequences of a terrorist attack.''

And why do they take that position? They take that position because the attack is coming on them, the workers at these plants.

So the nuclear industry, we have the protections in place, the aviation industry, the cargo industry, the rail industry, the shipping industry; but the chemical industry, with facilities in urban areas or near large population areas, the Republicans for 7 years have said no protection. When unemployment was at 5 percent, they said no; 6 percent; 7 percent; 8 percent; 9 percent; no, no, no, no protection for these workers at chemical facilities and those who live around them.

Al Qaeda has metastasized in the last 7 years. They are coming back; that is their goal. Chemical facilities are at the top of their terrorist target list. We are trying to, finally, in this one last industry, put in place the security around these facilities to protect the American people, to protect the workers at these facilities. That's what this debate is all about. This amendment will undermine, will make it impossible for us to give those protections to the American people.

We need a resounding ''no'' against this recommittal motion. We must stand up for the workers of this country; we must give them the protection that they need. Vote ''no'' on the recommittal motion of the Republicans.

Mr. THOMPSON of Mississippi. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. DENT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 189, noes 236, not voting 9, as follows:

[Roll No. 874]

AYES—189

Akin
Alexander
Austria
Bachmann
Bachus
Baird
Barrett (SC)
Bartlett
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Cassidy
Castle
Chaffetz
Childers
Coble
Coffman (CO)
Cole
Costa
Crenshaw
Culberson
Davis (KY)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Donnelly (IN)
Dreier
Duncan
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Hare
Harper
Hastings (WA)
Heller
Hensarling
Herger
Herseth Sandlin
Hoekstra
Hunter
Inglis
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kirkpatrick (AZ)
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Massa
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
McNerney
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Mitchell
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Olson
Paul
Paulsen
Pence
Perriello
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Space
Stearns
Sullivan
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOES—236

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boccieri
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson (IN)
Castor (FL)
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Halvorson
Harman
Hastings (FL)
Heinrich
Higgins
Hill
Himes
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (CO)
Markey (MA)
Matheson
Matsui
McCarthy (NY)
McCollum
McDermott
McGovern
McIntyre
McMahon
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nunes
Nye
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Ross
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (WA)
Snyder
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOT VOTING—9

Aderholt
Carter
Chandler
Conaway
Ehlers
Issa
Murphy, Patrick
Rogers (MI)
Sánchez, Linda T.

□ 1643

Mr. CLEAVER changed his vote from ''aye'' to ''no.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. DENT. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This is a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 230, noes 193, not voting 11, as follows:

[Roll No. 875]

AYES—230

Abercrombie
Ackerman
Adler (NJ)
Altmire
Andrews
Arcuri
Baca
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boucher
Boyd
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Carnahan
Carney
Carson (IN)
Castor (FL)
Childers
Chu
Clarke
Clay
Cleaver
Clyburn
Cohen
Connolly (VA)
Conyers
Cooper
Costello
Courtney
Crowley
Cuellar
Cummings
Dahlkemper
Davis (AL)
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Donnelly (IN)
Doyle
Driehaus
Edwards (MD)
Edwards (TX)
Ellison
Ellsworth
Engel
Eshoo
Etheridge
Farr
Fattah
Filner
Foster
Frank (MA)
Fudge
Garamendi
Giffords
Gonzalez
Gordon (TN)
Grayson
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Harman
Hastings (FL)
Heinrich
Higgins
Hill
Himes
Hinchey

Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Johnson (GA)
Johnson, E. B.
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick (MI)
Kilroy
Kind
Kirkpatrick (AZ)
Kissell
Klein (FL)
Kosmas
Kratovil
Kucinich
Langevin
Larsen (WA)
Larson (CT)
Lee (CA)
Levin
Lewis (GA)
Lipinski
Loebsack
Lofgren, Zoe
Lowey
Luján
Lynch
Maffei
Maloney
Markey (MA)
Massa
Matheson
Matsui
McCarthy (NY)
McCollum
McGovern
McIntyre
McMahon
McNerney
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murphy (CT)
Murphy (NY)
Murtha
Nadler (NY)
Napolitano
Neal (MA)
Nye
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor (AZ)
Payne
Perlmutter
Peters
Peterson
Pingree (ME)
Polis (CO)
Pomeroy
Price (NC)
Quigley
Rahall
Rangel
Reyes
Richardson
Rodriguez
Rothman (NJ)
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sanchez, Loretta
Sarbanes
Schakowsky
Schauer
Schiff
Schrader
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shea-Porter
Sherman
Shuler
Sires
Slaughter
Smith (WA)
Snyder
Speier
Spratt
Stark
Stupak
Sutton
Tanner
Thompson (CA)
Thompson (MS)
Tierney
Titus
Tonko
Towns
Tsongas
Van Hollen
Velázquez
Visclosky
Walz
Wasserman Schultz
Watson
Watt
Waxman
Weiner
Welch
Wexler
Wilson (OH)
Woolsey
Wu
Yarmuth

NOES—193

Akin
Alexander
Austria
Bachmann
Bachus
Baird
Barrett (SC)
Bartlett
Barton (TX)
Berry
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boccieri
Boehner
Bonner
Bono Mack
Boozman
Boren
Boustany
Brady (TX)
Bright
Broun (GA)
Brown (SC)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp
Campbell
Cantor
Cao
Capito
Cardoza
Cassidy
Castle
Chaffetz
Coble
Coffman (CO)
Cole
Costa
Crenshaw
Culberson
Davis (KY)
Davis (TN)
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dreier
Duncan
Emerson
Fallin
Flake
Fleming
Forbes
Fortenberry
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey (GA)
Gohmert
Goodlatte
Granger
Graves
Griffith
Guthrie
Hall (TX)
Halvorson
Hare
Harper
Hastings (WA)
Heller
Hensarling
Herger
Herseth Sandlin
Hoekstra
Hunter
Inglis
Issa
Jenkins
Johnson (IL)
Johnson, Sam
Jones
Jordan (OH)
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Lamborn
Lance
Latham
LaTourette
Latta
Lee (NY)
Lewis (CA)
Linder
LoBiondo
Lucas
Luetkemeyer
Lummis
Lungren, Daniel E.
Mack
Manzullo
Marchant
Markey (CO)
Marshall
McCarthy (CA)
McCaul
McClintock
McCotter
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Minnick
Moran (KS)
Murphy, Tim
Myrick
Neugebauer
Nunes
Olson
Paul
Paulsen
Pence
Perriello
Petri
Pitts
Platts
Poe (TX)
Posey
Price (GA)
Putnam
Radanovich
Rehberg
Reichert
Roe (TN)
Rogers (AL)
Rogers (KY)
Rohrabacher
Rooney
Ros-Lehtinen
Roskam
Ross
Royce
Ryan (WI)
Scalise
Schmidt
Schock
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Skelton
Smith (NE)
Smith (NJ)
Smith (TX)
Souder
Space
Stearns
Sullivan
Taylor
Teague
Terry
Thompson (PA)
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden
Wamp
Westmoreland
Whitfield
Wilson (SC)
Wittman
Wolf
Young (AK)
Young (FL)

NOT VOTING—11

Aderholt
Carter
Chandler
Cleaver
Conaway
Ehlers
McDermott
Murphy, Patrick
Rogers (MI)
Sánchez, Linda T.
Waters

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). There are 2 minutes remaining in this vote.

□ 1651

So the bill was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: ''A bill to amend the Homeland Security Act of 2002 to enhance security and protect against acts of terrorism against chemical facilities, to amend the Safe Drinking Water Act to enhance the security of public water systems, and to amend the Federal Water Pollution Control Act to enhance the security of wastewater treatment works, and for other purposes.''.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 2868, CHEMICAL FACILITY ANTI-TERRORISM ACT OF 2009

Mr. THOMPSON of Mississippi. Mr. Speaker, I ask unanimous consent that in the engrossment of H.R. 2868, the Clerk be authorized to correct section numbers, punctuation, cross-references, and to make such other technical and conforming changes as may be necessary to accurately reflect the actions of the House.

The SPEAKER pro tempore (Mr. SCHRADER). Is there objection to the request of the gentleman from Mississippi?

There was no objection.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

COMMUNICATION FROM THE HONORABLE FORTNEY PETE STARK, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from the Honorable FORTNEY PETE STARK, Member of Congress:

HOUSE OF REPRESENTATIVES,
Washington, DC, November 2, 2009.

Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC

DEAR MADAME SPEAKER: This is to notify you formally, pursuant to rule VIII of the Rules of the House of Representatives, that I have been served with a subpoena for testimony and production of documents issued by the Superior Court of California, County of Yolo, in connection with a traffic court matter now pending in the same court.

After consultation with the Office of the General Counsel, I have determined that compliance with the subpoena is inconsistent with the precedents and privileges of the House.

Sincerely,

PETE STARK,
Member of Congress.

CONTINUATION OF NATIONAL EMERGENCY WITH RESPECT TO WEAPONS OF MASS DESTRUCTION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 111–75)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, referred to the Committee on Foreign Affairs and ordered to be printed:

To The Congress of the United States:

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the *Federal Register* for publication the enclosed notice, stating that the national emergency with respect to the proliferation of weapons of mass destruction that was declared in Executive Order 12938, as amended, is to continue in effect for 1 year beyond November 14, 2009.

BARACK OBAMA.

THE WHITE HOUSE, *November 6, 2009.*

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote incurs objection under clause 6 of rule XX.

Record votes on postponed questions will be taken later.

EXPRESSING SUPPORT FOR CHINESE HUMAN RIGHTS ACTIVISTS HUANG QI AND TAN ZUOREN

Mr. BERMAN. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 877) expressing support for Chinese human rights activists