

Union Calendar No. 368

112TH CONGRESS
2^D SESSION

H. R. 901

[Report No. 112-224, Part I]

To amend the Homeland Security Act of 2002 to codify the requirement that the Secretary of Homeland Security maintain chemical facility anti-terrorism security regulations.

IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 2011

Mr. DANIEL E. LUNGREN of California (for himself, Mr. KING of New York, Mr. ROGERS of Alabama, Mr. MCCAUL, Mr. LONG, Mr. MARINO, Mr. WALBERG, and Mr. WALSH of Illinois) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

SEPTEMBER 26, 2011

Reported from the Committee on Homeland Security with an amendment
[Strike out all after the enacting clause and insert the part printed in *italic*]

SEPTEMBER 26, 2011

Referral to the Committee on Energy and Commerce extended for a period ending not later than November 11, 2011

NOVEMBER 11, 2011

Referral to the Committee on Energy and Commerce extended for a period ending not later than January 6, 2012

JANUARY 6, 2012

Referral to the Committee on Energy and Commerce extended for a period ending not later than January 20, 2012

JANUARY 20, 2012

Referral to the Committee on Energy and Commerce extended for a period ending not later than March 1, 2012

MARCH 1, 2012

Referral to the Committee on Energy and Commerce extended for a period ending not later than March 9, 2012

MARCH 9, 2012

Referral to the Committee on Energy and Commerce extended for a period ending not later than June 8, 2012

JUNE 8, 2012

Additional sponsors: Mrs. MILLER of Michigan and Mr. DUNCAN of South Carolina

JUNE 8, 2012

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

[For text of introduced bill, see copy of bill as introduced on March 3, 2011]

A BILL

To amend the Homeland Security Act of 2002 to codify the requirement that the Secretary of Homeland Security maintain chemical facility anti-terrorism security regulations.

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

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Chemical Facility Anti-*
5 *Terrorism Security Authorization Act of 2011”.*

6 **SEC. 2. CHEMICAL FACILITY ANTI-TERRORISM SECURITY**
7 **REGULATIONS.**

8 *(a) IN GENERAL.—The Homeland Security Act of*
9 *2002 (6 U.S.C. 101 et seq.) is amended by adding at the*
10 *end the following new title:*

11 **“TITLE XXI—CHEMICAL FACILITY**
12 **ANTI-TERRORISM SECURITY**
13 **REGULATIONS**

14 **“SEC. 2101. CHEMICAL FACILITY ANTI-TERRORISM SECU-**
15 **RITY REGULATIONS.**

16 *“(a) IN GENERAL.—The Secretary shall maintain,*
17 *and revise as necessary, regulations to protect chemical fa-*
18 *cilities against terrorism and potential terrorist attacks.*

19 *Such regulations shall include—*

20 *“(1) risk-based performance standards for chem-*
21 *ical facility security;*

22 *“(2) requirements for chemical facility security*
23 *vulnerability assessments; and*

24 *“(3) requirements for the development and im-*
25 *plementation of chemical facility site security plans.*

1 “(b) *FACILITIES REGULATED.*—*The regulations re-*
2 *quired by subsection (a) shall apply to any chemical facility*
3 *that the Secretary determines presents a high level of secu-*
4 *rity risk with respect to acts of terrorism, except that the*
5 *Secretary may not apply such regulations to any of the fol-*
6 *lowing:*

7 “(1) *Any facility owned or operated by the De-*
8 *partment of Defense.*

9 “(2) *Any facility owned or operated by the De-*
10 *partment of Energy.*

11 “(3) *Any facility subject to regulation by the Nu-*
12 *clear Regulatory Commission.*

13 “(4) *Any facility regulated under chapter 701 of*
14 *title 46, United States Code.*

15 “(5) *A public water system, as such term is de-*
16 *finied by section 1401(4) of the Safe Drinking Water*
17 *Act (42 U.S.C. 300f(4)).*

18 “(6) *A treatment works, as such term is defined*
19 *by section 212(2) of the Federal Water Pollution Con-*
20 *trol Act (33 U.S.C. 1292(2)).*

21 “(c) *SECURITY MEASURES.*—*The regulations required*
22 *by subsection (a) shall provide that each such facility, in*
23 *developing and implementing site security plans, be per-*
24 *mitted to select layered security measures that, in combina-*
25 *tion, appropriately address the vulnerability assessment*

1 *and the risk-based performance standards for security for*
2 *the facility.*

3 “(d) *REVIEW.*—

4 “(1) *IN GENERAL.*—*The Secretary shall review*
5 *and approve or disapprove each vulnerability assess-*
6 *ment and site security plan required under this title*
7 *or by the regulations required by subsection (a).*

8 “(2) *STANDARDS FOR DISAPPROVAL.*—*The Sec-*
9 *retary may not disapprove such a site security plan*
10 *based on the presence or absence of a particular secu-*
11 *rity measure, but the Secretary may disapprove such*
12 *a site security plan if the plan fails to satisfy the*
13 *risk-based performance standards established by the*
14 *Secretary.*

15 “(3) *DEADLINE FOR NOTIFICATION.*—*Beginning*
16 *after the Secretary publishes final regulations to im-*
17 *plement this section, not later than 180 days, to the*
18 *greatest extent practicable, after the date on which the*
19 *Secretary receives a security vulnerability assessment*
20 *or site security plan under this title, the Secretary*
21 *shall review and approve or disapprove such assess-*
22 *ment or plan and notify the covered chemical facility*
23 *of such approval or disapproval.*

24 “(4) *NOTIFICATION OF DISAPPROVAL.*—*If the*
25 *Secretary disapproves the security vulnerability as-*

1 *assessment or site security plan submitted by a covered*
2 *chemical facility under this title or the implementa-*
3 *tion of a site security plan by such a chemical facil-*
4 *ity, the Secretary shall provide the owner or operator*
5 *of the covered chemical facility a written notification*
6 *of the disapproval not later than 14 days after the*
7 *date on which the Secretary disapproves such assess-*
8 *ment or plan, that—*

9 *“(A) includes a clear explanation of defi-*
10 *ciencies in the assessment, plan, or implementa-*
11 *tion of the plan; and*

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

18 *“(5) REPORTING.—The Secretary shall submit to*
19 *the Committee on Homeland Security of the House of*
20 *Representatives and the Committee on Homeland Se-*
21 *curity and Government Affairs of the Senate, on an*
22 *annual basis, information on the number of instances*
23 *during the year covered by the report where the Sec-*
24 *retary determined that the 180 day notification re-*
25 *quirement under paragraph (3) was impracticable.*

1 “(e) *ALTERNATIVE SECURITY PROGRAMS.*—The Sec-
2 retary may approve any alternative security program es-
3 tablished by a private sector entity or Federal, State, or
4 local authority, or under another applicable law, if the Sec-
5 retary determines that the requirements of such program
6 meets the requirements of this title and any regulations
7 issued or maintained pursuant to this title.

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

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

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

22 “(3) an alternate security background check con-
23 ducted under another applicable law.

24 “(g) *TECHNICAL ASSISTANCE TO SMALL BUSI-*
25 *NESSES.*—The Secretary shall provide technical assistance

1 *to any owner or operator of a covered chemical facility who*
2 *requests such assistance to prepare a security vulnerability*
3 *assessment or site security plan required under this title*
4 *or by the regulations required by subsection (a), if the cov-*
5 *ered chemical facility is a small business concern, under*
6 *the meaning given that term in section 3 of the Small Busi-*
7 *ness Act (15 U.S.C. 632).*

8 **“SEC. 2102. INFORMATION PROTECTION.**

9 “(a) *IN GENERAL.*—Notwithstanding any other provi-
10 *sion of law, information developed pursuant to this title,*
11 *or pursuant to the regulations required by section 2101(a),*
12 *including vulnerability assessments, site security plans,*
13 *and other security related information, records, and docu-*
14 *ments shall be given protections from public disclosure con-*
15 *sistent with similar information developed by chemical fa-*
16 *cilities subject to regulation under section 70103 of title 46,*
17 *United States Code.*

18 “(b) *SHARING OF INFORMATION.*—

19 “(1) *STATE AND LOCAL GOVERNMENTS.*—*This*
20 *section does not prohibit the sharing of such informa-*
21 *tion, as the Secretary determines appropriate, with*
22 *State and local government officials possessing the*
23 *appropriate security clearances, including emergency*
24 *response providers, for the purpose of carrying out*

1 *this title, as long as such information may not be dis-*
2 *closed pursuant to any State or local law.*

3 *“(2) CONGRESS.—Nothing in this title shall per-*
4 *mit or authorize the withholding of information from*
5 *Congress or any committee or subcommittee thereof.*

6 *“(c) ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.—*
7 *In any proceeding to enforce this title, vulnerability assess-*
8 *ments, site security plans, and other information submitted*
9 *to or obtained by the Secretary under this title, and related*
10 *vulnerability or security information, shall be treated as*
11 *if the information were classified material.*

12 **“SEC. 2103. ENFORCEMENT.**

13 *“(a) IN GENERAL.—The Secretary shall audit and in-*
14 *spect chemical facilities subject to regulation under this title*
15 *for the purposes of determining compliance with this title*
16 *and the regulations required by section 2101(a).*

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

1 “(c) *CIVIL PENALTIES.*—Any person who violates an
2 order issued under this title shall be liable for a civil pen-
3 alty under section 70119(a) of title 46, United States Code.

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

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

13 **“SEC. 2104. JOBS IMPACT.**

14 “Not later than one year after the date of the enact-
15 ment of this title, and annually thereafter, the Secretary
16 shall submit to the Committee on Homeland Security of the
17 House of Representatives and the Committee on Homeland
18 Security and Governmental Affairs of the Senate a report
19 that, at a minimum, includes—

20 “(1) an estimate of the potential jobs created or
21 lost within the private sector as a result of the regula-
22 tions required under section 2101 of this title; and

23 “(2) information on feedback received from own-
24 ers and operators of covered chemical facilities about
25 how the regulations required under section 2101 of

1 *this title could be revised to spur potential job cre-*
2 *ation or stem job losses.*

3 **“SEC. 2105. SCOPE.**

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

8 **“SEC. 2106. PREEMPTION.**

9 *“This title shall not preclude or deny any right of any*
10 *State or political subdivision thereof to adopt or enforce any*
11 *regulation, requirement, or standard of performance with*
12 *respect to chemical facility security that is more stringent*
13 *than a regulation, requirement, or standard of performance*
14 *required under this title, or otherwise impair any right or*
15 *jurisdiction of any State with respect to chemical facilities*
16 *within that State, unless there is an actual conflict between*
17 *this title and the law of that State.*

18 **“SEC. 2107. TERMINATION.**

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

21 **“SEC. 2108. AUTHORIZATION OF APPROPRIATIONS.**

22 *“There is authorized to be appropriated to the Sec-*
23 *retary to carry out this title \$89,928,000 for each of fiscal*
24 *years 2012 through 2018.”.*

1 (b) *TABLE OF CONTENTS.*—*The table of contents in*
 2 *section 1(b) of the Homeland Security Act of 2002 (6 U.S.C.*
 3 *101 et seq.) is amended by adding at the end the following*
 4 *new items:*

“*TITLE XXI—CHEMICAL FACILITY ANTI-TERRORISM SECURITY
 REGULATIONS*”

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

“*Sec. 2102. Information protection.*”

“*Sec. 2103. Enforcement.*”

“*Sec. 2104. Jobs Impact.*”

“*Sec. 2105. Scope.*”

“*Sec. 2106. Preemption.*”

“*Sec. 2107. Termination.*”

“*Sec. 2108. Authorization of appropriations.*”.

5 **SEC. 3. CONFORMING REPEAL.**

6 (a) *REPEAL.*—*The Department of Homeland Security*
 7 *Appropriations Act, 2007 (Public Law 109–295) is amend-*
 8 *ed by striking section 550.*

9 (b) *EFFECTIVE DATE.*—*The amendment made by sub-*
 10 *section (a) shall take effect on the date of the enactment*
 11 *of this Act.*

12 **SEC. 4. HARMONIZATION.**

13 *Not later than 180 days after the date of the enactment*
 14 *of this Act, the Secretary of Homeland Security shall sub-*
 15 *mit to Committee on Homeland Security of the House of*
 16 *Representatives and the Committee on Commerce, Science,*
 17 *and Transportation of the Senate a report on the extent*
 18 *to which the security requirements under title XXI of the*
 19 *Homeland Security Act of 2002, as added by this Act, have*
 20 *been harmonized with the security requirements for facili-*

- 1 *ties regulated under chapter 701 of title 46, United States*
- 2 *Code.*

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H. R. 901

[Report No. 112-224, Part I]

A BILL

To amend the Homeland Security Act of 2002 to codify the requirement that the Secretary of Homeland Security maintain chemical facility anti-terrorism security regulations.

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