

112TH CONGRESS  
1ST SESSION

# H. R. 901

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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## 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

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## 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”.

1 **SEC. 2. CHEMICAL FACILITY ANTI-TERRORISM SECURITY**  
2 **REGULATIONS.**

3 (a) IN GENERAL.—The Homeland Security Act of  
4 2002 (6 U.S.C. 101 et seq.) is amended by adding at the  
5 end the following new title:

6 **“TITLE XXI—CHEMICAL FACIL-**  
7 **ITY ANTI-TERRORISM SECU-**  
8 **RITY REGULATIONS**

9 **“SEC. 2101. CHEMICAL FACILITY ANTI-TERRORISM SECU-**  
10 **RITY REGULATIONS.**

11 “(a) IN GENERAL.—The Secretary shall maintain,  
12 and revise as necessary, regulations to protect chemical  
13 facilities against terrorism and potential terrorist attacks.  
14 Such regulations shall include—

15 “(1) risk-based performance standards for  
16 chemical facility security;

17 “(2) requirements for chemical facility security  
18 vulnerability assessments; and

19 “(3) requirements for the development and im-  
20 plementation of chemical facility site security plans.

21 “(b) FACILITIES REGULATED.—The regulations re-  
22 quired by subsection (a) shall apply to any chemical facil-  
23 ity that the Secretary determines presents a high level of  
24 security risk with respect to acts of terrorism, except that  
25 the Secretary may not apply such regulations to any of  
26 the following:

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

3           “(2) Any facility owned or operated by the De-  
4           partment of Energy.

5           “(3) Any facility subject to regulation by the  
6           Nuclear Regulatory Commission.

7           “(4) Any facility regulated under chapter 701  
8           of title 46, United States Code.

9           “(5) A public water system, as such term is de-  
10          fined by section 1401(4) of the Safe Drinking Water  
11          Act (42 U.S.C. 300f(4)).

12          “(6) A treatment works, as such term is de-  
13          fined by section 212(2) of the Federal Water Pollu-  
14          tion Control Act (33 U.S.C. 1292(2)).

15          “(c) SECURITY MEASURES.—The regulations re-  
16          quired by subsection (a) shall provide that each such facil-  
17          ity, in developing and implementing site security plans, be  
18          permitted to select layered security measures that, in com-  
19          bination, appropriately address the vulnerability assess-  
20          ment and the risk-based performance standards for secu-  
21          rity for the facility.

22          “(d) REVIEW.—

23                 “(1) IN GENERAL.—The Secretary shall review  
24                 and approve or disapprove each vulnerability assess-

1       ment and site security plan required under this title  
2       or by the regulations required by subsection (a).

3               “(2) STANDARDS FOR DISAPPROVAL.—The Sec-  
4       retary may not disapprove such a site security plan  
5       based on the presence or absence of a particular se-  
6       curity measure, but the Secretary may disapprove  
7       such a site security plan if the plan fails to satisfy  
8       the risk-based performance standards established by  
9       the Secretary.

10              “(e) ALTERNATIVE SECURITY PROGRAMS.—The Sec-  
11      retary may approve any alternative security program es-  
12      tablished by a private sector entity or Federal, State, or  
13      local authority, or under another applicable law, if the Sec-  
14      retary determines that the requirements of such program  
15      meets the requirements of this title and any regulations  
16      issued or maintained pursuant to this title.

17      **“SEC. 2102. INFORMATION PROTECTION.**

18              “(a) IN GENERAL.—Notwithstanding any other pro-  
19      vision of law, information developed pursuant to this title,  
20      or pursuant to the regulations required by section  
21      2101(a), including vulnerability assessments, site security  
22      plans, and other security related information, records, and  
23      documents shall be given protections from public disclo-  
24      sure consistent with similar information developed by

1 chemical facilities subject to regulation under section  
2 70103 of title 46, United States Code.

3 “(b) SHARING OF INFORMATION.—

4 “(1) STATE AND LOCAL GOVERNMENTS.—This  
5 section does not prohibit the sharing of such infor-  
6 mation, as the Secretary determines appropriate,  
7 with State and local government officials possessing  
8 the appropriate security clearances, including emer-  
9 gency response providers, for the purpose of carrying  
10 out this title, as long as such information may not  
11 be disclosed pursuant to any State or local law.

12 “(2) CONGRESS.—Nothing in this title shall  
13 permit or authorize the withholding of information  
14 from Congress or any committee or subcommittee  
15 thereof.

16 “(c) ADMINISTRATIVE AND JUDICIAL PRO-  
17 CEEDINGS.—In any proceeding to enforce this title, vul-  
18 nerability assessments, site security plans, and other infor-  
19 mation submitted to or obtained by the Secretary under  
20 this title, and related vulnerability or security information,  
21 shall be treated as if the information were classified mate-  
22 rial.

23 **“SEC. 2103. ENFORCEMENT.**

24 “(a) IN GENERAL.—The Secretary shall audit and  
25 inspect chemical facilities subject to regulation under this

1 title for the purposes of determining compliance with this  
2 title and the regulations required by section 2101(a).

3       “(b) ORDERS FOR COMPLIANCE.—If the Secretary  
4 determines that a chemical facility is not in compliance  
5 with this title or the regulations required by section  
6 2101(a), the Secretary shall provide the owner or operator  
7 of the facility with written notification (including a clear  
8 explanation of deficiencies in the vulnerability assessment  
9 and site security plan) and an opportunity for consulta-  
10 tion, and issue an order to comply by such date as the  
11 Secretary determines to be appropriate under the cir-  
12 cumstances.

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

17       “(d) ORDER TO CEASE OPERATION.—If the owner  
18 or operator of a chemical facility subject to regulation  
19 under this title continues to be in noncompliance, the Sec-  
20 retary may issue an order for the facility to cease oper-  
21 ation until the owner or operator complies with the order.

22       “(e) EXCEPTION.—Nothing in this title confers upon  
23 any person except the Secretary a right of action against  
24 an owner or operator of a chemical facility to enforce any  
25 provision of this title.

1 **“SEC. 2104. SCOPE.**

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

6 **“SEC. 2105. PREEMPTION.**

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

16 **“SEC. 2106. TERMINATION.**

17 “The authority provided by this title shall terminate  
18 on September 30, 2018.

19 **“SEC. 2107. AUTHORIZATION OF APPROPRIATIONS.**

20 “There is authorized to be appropriated to the Sec-  
21 retary to carry out this title \$93,000,000 for each of fiscal  
22 years 2012 through 2018.”.

23 (b) TABLE OF CONTENTS.—The table of contents in  
24 section 2 of the Homeland Security Act of 2002 (6 U.S.C.  
25 101 et seq.) is amended by adding at the end the following  
26 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. Scope.
- Sec. 2105. Preemption.
- Sec. 2106. Termination.
- Sec. 2107. Authorization of appropriations.

**1 SEC. 3. CONFORMING REPEAL.**

2       (a) **REPEAL.**—The Department of Homeland Secu-  
3 rity Appropriations Act, 2007 (Public Law 109–295) is  
4 amended by striking section 550.

5       (b) **EFFECTIVE DATE.**—The amendment made by  
6 subsection (a) shall take effect on the date of the enact-  
7 ment of this Act.

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