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H.R.2868

Chemical Facility Anti-Terrorism Act of 2009 (Introduced in House)

SECTION 1. SHORT TITLE.

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

SEC. 2. 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 Act is to modify and make permanent the authority of the Secretary of Homeland Security to regulate security practices at chemical facilities.

SEC. 3. 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), but excludes (A) any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons, (B)

emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine, (C) release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such Act (42 U.S.C. 2210), or, for the purposes of section 104 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. 9604) or any other response action, any release of source byproduct, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7912(a)(1); and (D) the normal application of fertilizer.

`(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;
 - (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 (b); and
 - (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 clause;
 - (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.
` (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) 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.

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