

112th CONGRESS

1st Session

S. 473

To extend the chemical facility security program of the Department of Homeland Security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

March 3, 2011

Ms. COLLINS (for herself, Mr. PRYOR, Mr. PORTMAN, and Ms. LANDRIEU) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To extend the chemical facility security program of the Department of Homeland Security, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the `Continuing Chemical Facilities Antiterrorism Security Act of 2011'.

SEC. 2. EXTENSION OF CHEMICAL FACILITIES ANTITERRORISM SECURITY PROGRAM.

(a) In General- Section 550(b) of the Department of Homeland Security Appropriations Act, 2007 (6 U.S.C. 121 note) is amended by striking `October 4, 2010' and inserting `October 4, 2014'.

(b) Chemical Facility Security Enhancements-

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

`TITLE XXI--CHEMICAL FACILITY SECURITY

`SEC. 2101. DEFINITIONS.

`In this title--

`(1) the term `Board' means the Chemical Facility Security Advisory Board established under section 2105(a);

`(2) the term `Chemical Facility Anti-Terrorism Standards' means the interim final regulations issued by the Secretary under section 550 of the Department of Homeland Security Appropriations Act, 2007 (6 U.S.C. 121 note); and

`(3) the term `covered chemical facility' means a chemical facility subject to the Chemical Facility Anti-Terrorism Standards.

`SEC. 2102. CHEMICAL SECURITY TRAINING PROGRAM.

`(a) Establishment- Acting through the Administrator of the Federal Emergency Management Agency and in coordination with the Under Secretary for National Protection and Programs, the Secretary shall establish a voluntary chemical security training program (referred to in this section as the `training program') for the purpose of enhancing the capabilities of covered chemical facilities to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual acts of terrorism, natural disasters, and other man-made disasters.

`(b) Requirements- The training program shall provide validated voluntary training that--

`(1) reaches multiple disciplines, including Federal, State, and local government officials, commercial personnel and management, and governmental and nongovernmental emergency response providers;

`(2) provides training at the awareness, performance, and management and planning levels;

`(3) uses multiple training mediums and methods;

`(4) is coordinated with training provided by government training facilities, academic institutions, private organizations, and other entities that provide specialized, state-of-the-art training for governmental and nongovernmental emergency responder providers or commercial personnel and management;

`(5) uses, as appropriate, government training facilities, courses provided by community colleges, public safety academies, State and private universities, and other facilities;

`(6) is consistent with, and supports implementation of, the National Incident Management System, the National Response Framework, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, the National Maritime Transportation Security Plan, and other such national initiatives, and any successors thereto;

`(7) is evaluated against clear and consistent performance measures;

`(8) addresses security requirements under chemical facility security plans; and

`(9) educates, trains, and involves individuals in neighborhoods around chemical facilities on how to observe and report security risks.

`SEC. 2103. CHEMICAL SECURITY EXERCISE PROGRAM.

`(a) In General- Acting through the Administrator of the Federal Emergency Management Agency and in coordination with Under Secretary for National Protection and Programs, the Secretary shall develop a voluntary chemical security exercise program (referred to in this section as the `exercise program') for the purpose of offering voluntary testing and evaluation of the capabilities of the Federal Government, State governments, commercial personnel and management, governmental and nongovernmental emergency response providers, the private sector, or any other organization or entity, as the Secretary determines to be appropriate, to prevent, prepare for, mitigate against, respond to, and recover from acts of terrorism, natural disasters, and other emergencies at covered chemical facilities.

`(b) Requirements- Under the exercise program, the Secretary shall conduct, on a periodic basis, voluntary joint security exercises at chemical facilities that are--

`(1) scaled and tailored to the needs of each chemical facility;

`(2) for the highest risk chemical facilities, as determined by the Secretary, live training exercises;

`(3) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences;

`(4) consistent with the National Incident Management System, the National Response Framework, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, the National Maritime Transportation Security Plan, and other such national initiatives, and any successors thereto;

`(5) evaluated against clear and consistent performance measures;

`(6) assessed to learn best practices, which shall be shared with appropriate Federal, State, and local officials, commercial personnel and management, governmental and nongovernmental emergency response providers, and the private sector;

`(7) followed by remedial action in response to lessons learned; and

`(8) designed to assist State and local governments and chemical facilities in designing, implementing, and evaluating exercises that--

`(A) conform to the requirements of this paragraph; and

`(B) are consistent with any applicable Buffer Zone Protection Plan, State homeland security plan, or urban area homeland security plan.

`SEC. 2104. VOLUNTARY TECHNICAL ASSISTANCE PROGRAM.

`(a) Establishment- The Secretary, acting through the Assistant Secretary for Infrastructure Protection, in coordination with the Under Secretary for Science and Technology, and in consultation with the Board, shall establish a voluntary technical assistance program under which, upon request by the owner or operator of a covered chemical facility, and subject to the availability of resources at the

Department, the Secretary may provide nonbinding assistance or recommendations to the owner or operator to--

`(1) reduce the risk or consequences associated with a successful act of terrorism against a covered chemical facility, including the reduction of risk or consequences--

`(A) sufficient to decrease the risk-based tier assigned to the covered chemical facility under the Chemical Facility Anti-Terrorism Standards; or

`(B) such that the covered chemical facility no longer presents a high level of security risk; or

`(2) aid in compliance with the risk-based performance standards applicable to the covered chemical facility under the Chemical Facility Anti-Terrorism Standards.

`(b) Voluntary Nature of Assistance-

`(1) IN GENERAL- The decision to--

`(A) participate in the voluntary technical assistance program under this section; or

`(B) implement any assistance or recommendations provided by the Secretary under this section, shall be at the sole discretion of the owner or operator of a covered chemical facility.

`(2) NO REQUIRED ASSESSMENT- The Secretary may not require the owner or operator of a covered chemical facility to--

`(A) consider any assistance or recommendation provided under this section as part of a security vulnerability assessment under the Chemical Facility Anti-Terrorism Standards; or

`(B) assess, directly or indirectly, the costs, benefits, economic or technical feasibility, or practicality of implementing any assistance or recommendation provided under this section.

`(3) SITE SECURITY PLAN REVIEW- If the site security plan for a covered chemical facility satisfies the risk-based performance standards applicable to the covered chemical facility under the Chemical Facility Anti-Terrorism Standards, the Secretary may not disapprove the site security plan based on--

`(A) a decision by the owner or operator of a covered chemical facility not to--

`(i) participate in the voluntary technical assistance program under this section; or

`(ii) implement assistance or a recommendation provided by the Secretary under this section; or

`(B) the presence or absence of a particular security measure.

`(4) EFFECT ON TIERING- At the request of the owner or operator of a covered chemical facility, the Secretary shall advise the owner or operator of the overall effect that implementing all categories of assistance or recommendations provided by the Secretary under this section would have on the determination by the Secretary--

`(A) of the placement of the covered chemical facility in a risk-based tier under the Chemical Facility Anti-Terrorism Standards; or

`(B) regarding whether the covered chemical facility would no longer present a high level of security risk.

`(5) CIVIL LIABILITY-

`(A) IN GENERAL- Subject to subparagraph (B), no action, or failure to act, by the owner or operator of a covered chemical facility relating to assistance or a recommendation provided by the Secretary under this section shall be interpreted, construed, implied, or applied to create any liability or cause of action for compensation for bodily injury, any other injury, or property damage to any person that may result from an act of terrorism or incident at the covered chemical facility.

`(B) ADDITIONAL OR INTERVENING ACTS OR OMISSIONS- Subparagraph (A) shall not apply to any injury or damage caused by any additional or intervening act or omission of the owner or operator of a covered chemical facility.

`(C) RULE OF CONSTRUCTION- Except as provided in this section, nothing in subparagraph (A) shall be construed to abrogate or limit any right, remedy, or authority that the Federal Government, any State or local government, or any entity or agency of the Federal Government or a State or local government may possess under any other provision of law.

`(c) Best Practices- Subject to subsection (d), the Secretary shall develop a repository for information and data on best practices and cost-effective technologies for implementing the Chemical Facility Anti-Terrorism Standards and the voluntary technical assistance program under this section.

`(d) Information Protection- Any information obtained by the Secretary under the voluntary technical assistance program under this section or for purposes of subsection (c) shall--

`(1) to the extent that the information may reveal vulnerabilities or other details of the security capabilities of a covered chemical facility that may be exploited by terrorists, be protected as chemical-terrorism vulnerability information under the Chemical Facility Anti-Terrorism Standards; and

`(2) to the extent that the information may reveal trade secrets or commercial or financial information that is not customarily in the public domain, be protected as though the information was voluntarily shared critical infrastructure information under section 214, except that the requirement under section 214 that the information be voluntarily submitted, including the requirement for an express statement specified in section 214(a)(2), shall not apply to information obtained under this section.

`(e) Report on Lessons Learned- Not later than October 4, 2013, the Secretary, in coordination with the Board, shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report regarding lessons learned from the voluntary technical assistance program under this section.

`(f) Availability of Appropriations- Of the amounts made available for the Chemical Facility Anti-Terrorism Standards for each of fiscal years 2011 through 2015, not less than \$5,000,000 shall be made available for the provision of voluntary technical assistance under this section.

`SEC. 2105. CHEMICAL FACILITY SECURITY ADVISORY BOARD.

`(a) Establishment- Not later than 90 days after the date of enactment of this section, the Secretary shall establish under section 871 a Chemical Facility Security Advisory Board.

`(b) Responsibilities- The Board shall advise the Secretary on the implementation of the Chemical Facility Anti-Terrorism Standards, including regarding the implementation of the voluntary technical assistance program under section 2103.

`(c) Membership- There shall be 9 members of the Board, who shall be appointed by the Secretary and shall represent a geographic and substantive cross-section of the United States, including--

`(1) not less than 5 owners or operators of covered chemical facilities;

`(2) not less than 2 employees of covered chemical facilities with direct responsibility for process design and engineering, production and operations, or chemical process security; and

`(3) not less than 2 other experts in the fields of chemistry, security, process design and engineering, process controls and instrumentation, environmental health and safety, maintenance, production and operations, or chemical process security.

`(d) Term- The members of the Board shall be appointed for such terms as the Secretary may determine.

`(e) Applicability of Federal Advisory Committee Act- Notwithstanding section 871(a), except as provided in subsection (f), the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the Board.

`(f) Exemption From Termination Requirements- Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) and section 871(b) shall not apply to the Board.

`SEC. 2106. AUTHORIZATION OF APPROPRIATIONS.

`There are authorized to be appropriated to the Secretary such sums as are necessary to carry out this title.'

(2) TABLE OF CONTENTS- The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 2022 the following:

`TITLE XXI--CHEMICAL FACILITY SECURITY

`Sec. 2101. Definitions.

`Sec. 2102. Chemical security training program.

`Sec. 2103. Chemical security exercise program.

`Sec. 2104. Voluntary technical assistance program.

`Sec. 2105. Chemical Facility Security Advisory Board.

`Sec. 2106. Authorization of appropriations.'.

END