

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 901
OFFERED BY MR. DANIEL E. LUNGREN OF
CALIFORNIA**

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Chemical Facility Anti-
3 Terrorism Security Authorization Act of 2011”.

4 **SEC. 2. CHEMICAL FACILITY ANTI-TERRORISM SECURITY**
5 **REGULATIONS.**

6 (a) IN GENERAL.—The Homeland Security Act of
7 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
8 end the following new title:

9 **“TITLE XXI—CHEMICAL FACIL-**
10 **ITY ANTI-TERRORISM SECU-**
11 **RITY REGULATIONS**

12 **“SEC. 2101. CHEMICAL FACILITY ANTI-TERRORISM SECU-**
13 **RITY REGULATIONS.**

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

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

3 “(2) requirements for chemical facility security
4 vulnerability assessments; and

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

7 “(b) FACILITIES REGULATED.—The regulations re-
8 quired by subsection (a) shall apply to any chemical facil-
9 ity that the Secretary determines presents a high level of
10 security risk with respect to acts of terrorism, except that
11 the Secretary may not apply such regulations to any of
12 the following:

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

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

17 “(3) Any facility subject to regulation by the
18 Nuclear Regulatory Commission.

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

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

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

4 “(c) SECURITY MEASURES.—The regulations re-
5 quired by subsection (a) shall provide that each such facil-
6 ity, in developing and implementing site security plans, be
7 permitted to select layered security measures that, in com-
8 bination, appropriately address the vulnerability assess-
9 ment and the risk-based performance standards for secu-
10 rity for the facility.

11 “(d) REVIEW.—

12 “(1) IN GENERAL.—The Secretary shall review
13 and approve or disapprove each vulnerability assess-
14 ment and site security plan required under this title
15 or by the regulations required by subsection (a).

16 “(2) STANDARDS FOR DISAPPROVAL.—The Sec-
17 retary may not disapprove such a site security plan
18 based on the presence or absence of a particular se-
19 curity measure, but the Secretary may disapprove
20 such a site security plan if the plan fails to satisfy
21 the risk-based performance standards established by
22 the Secretary.

23 “(e) ALTERNATIVE SECURITY PROGRAMS.—The Sec-
24 retary may approve any alternative security program es-
25 tablished by a private sector entity or Federal, State, or

1 local authority, or under another applicable law, if the Sec-
2 retary determines that the requirements of such program
3 meets the requirements of this title and any regulations
4 issued or maintained pursuant to this title.

5 **“SEC. 2102. INFORMATION PROTECTION.**

6 “(a) IN GENERAL.—Notwithstanding any other pro-
7 vision of law, information developed pursuant to this title,
8 or pursuant to the regulations required by section
9 2101(a), including vulnerability assessments, site security
10 plans, and other security related information, records, and
11 documents shall be given protections from public disclo-
12 sure consistent with similar information developed by
13 chemical facilities subject to regulation under section
14 70103 of title 46, United States Code.

15 “(b) SHARING OF INFORMATION.—

16 “(1) STATE AND LOCAL GOVERNMENTS.—This
17 section does not prohibit the sharing of such infor-
18 mation, as the Secretary determines appropriate,
19 with State and local government officials possessing
20 the appropriate security clearances, including emer-
21 gency response providers, for the purpose of carrying
22 out this title, as long as such information may not
23 be disclosed pursuant to any State or local law.

24 “(2) CONGRESS.—Nothing in this title shall
25 permit or authorize the withholding of information

1 from Congress or any committee or subcommittee
2 thereof.

3 “(c) ADMINISTRATIVE AND JUDICIAL PRO-
4 CEEDINGS.—In any proceeding to enforce this title, vul-
5 nerability assessments, site security plans, and other infor-
6 mation submitted to or obtained by the Secretary under
7 this title, and related vulnerability or security information,
8 shall be treated as if the information were classified mate-
9 rial.

10 **“SEC. 2103. ENFORCEMENT.**

11 “(a) IN GENERAL.—The Secretary shall audit and
12 inspect chemical facilities subject to regulation under this
13 title for the purposes of determining compliance with this
14 title and the regulations required by section 2101(a).

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

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
4 Code.

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

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

14 **“SEC. 2104. SCOPE.**

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

19 **“SEC. 2105. PREEMPTION.**

20 “This title shall not preclude or deny any right of
21 any State or political subdivision thereof to adopt or en-
22 force any regulation, requirement, or standard of perform-
23 ance with respect to chemical facility security that is more
24 stringent than a regulation, requirement, or standard of
25 performance required under this title, or otherwise impair

1 any right or jurisdiction of any State with respect to chem-
2 ical facilities within that State, unless there is an actual
3 conflict between this title and the law of that State.

4 **“SEC. 2106. TERMINATION.**

5 “The authority provided by this title shall terminate
6 on September 30, 2018.

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

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

11 (b) TABLE OF CONTENTS.—The table of contents in
12 section 2 of the Homeland Security Act of 2002 (6 U.S.C.
13 101 et seq.) is amended by adding at the end the following
14 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.”.

15 **SEC. 3. CONFORMING REPEAL.**

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

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect on the date of the enact-
3 ment of this Act.

