

111TH CONGRESS
1ST SESSION

H. R. 2070

To amend the Homeland Security Act of 2002 to secure domestic sources of radiological materials that could be used to make a radiological dispersion device against access by terrorists, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 23, 2009

Ms. CLARKE (for herself, Mrs. LOWEY, Mr. THOMPSON of Mississippi, Mr. HOLT, and Mr. LANGEVIN) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Homeland Security, 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

A BILL

To amend the Homeland Security Act of 2002 to secure domestic sources of radiological materials that could be used to make a radiological dispersion device against access by terrorists, and for other purposes.

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 “Radiological Materials
5 Security Act”.

1 **SEC. 2. FINDING AND PURPOSES.**

2 (a) FINDING.—The Congress finds that radiological
3 materials used in medical, industrial, academic, and other
4 facilities must be secured to prevent theft for possible use
5 in a radiological dispersion device by terrorists.

6 (b) PURPOSES.—The purposes of this Act are to sup-
7 port and extend the current cooperative efforts of the De-
8 partment of Homeland Security, the Nuclear Regulatory
9 Commission, and the Department of Energy to secure ra-
10 diological source materials against access by terrorists, by
11 establishing, in statute, requirements and authority for a
12 security system for domestic sources of radiological mate-
13 rials that could be used to make a radiological dispersion
14 device, implemented by the Department of Homeland Se-
15 curity, the Nuclear Regulatory Commission, State and
16 local law enforcement and public health authorities, and
17 facilities possessing radiological materials with the support
18 of the Department of Energy.

19 **SEC. 3. RESPONSIBILITIES OF THE SECRETARY OF HOME-**
20 **LAND SECURITY.**

21 (a) IN GENERAL.—Title XIX of the Homeland Secu-
22 rity Act of 2002 (6 U.S.C. 592 et seq.) is amended by
23 adding at the end the following:

24 **“SEC. 1908. RADIOLOGICAL MATERIALS SECURITY.**

25 **“(a) TERRORISM RISK ASSESSMENT.—**

1 “(1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of the Radiological Ma-
3 terials Security Act, the Secretary shall enhance do-
4 mestic preparedness for and collective response to
5 terrorism by conducting a risk assessment regarding
6 the threat, vulnerability, and consequences of theft
7 or other procurement of radiological materials that
8 could be used by a terrorist in a radiological disper-
9 sion device, including any specific threat information
10 pertinent to the use of radiological materials in a
11 possible terrorist attack using a radiological disper-
12 sion device.

13 “(2) CONSIDERATIONS.—In conducting the ter-
14 rorism risk assessment the Secretary shall—

15 “(A) consult with the Secretary of Energy
16 and the Nuclear Regulatory Commission;

17 “(B) consider relevant studies previously
18 prepared by other Federal agencies, or other
19 reputable sources;

20 “(C) focus on those radiological materials
21 that constitute the greatest risk, and designate
22 those materials as high-risk radiological mate-
23 rials for purposes of this section;

24 “(D) consider the potential radiological
25 dispersion device value of different radiological

1 materials including availability, dispersability,
2 and ease of handling of such materials;

3 “(E) consider the vulnerability for theft or
4 other procurement that different facilities rep-
5 resent; and

6 “(F) consider the consequences of a suc-
7 cessful radiological dispersion device attack, in-
8 cluding risk of death or injury and economic
9 losses.

10 “(3) CONSULTATION.—In conducting the ter-
11 rorism risk assessment, the Secretary shall consult
12 with the intelligence community, the Secretary of
13 Energy and the Field Intelligence Elements of the
14 National Laboratories, and the Nuclear Regulatory
15 Commission, the Secretary of Defense, and other ap-
16 propriate experts to integrate and analyze informa-
17 tion needed to develop the risk assessment.

18 “(4) DISSEMINATION OF FINDINGS.—The Sec-
19 retary shall disseminate the findings of the risk as-
20 sessment and any specific risk information developed
21 in the assessment to all participants in the radio-
22 logical sources security system described in the Ra-
23 diological Materials Security Act including the Nu-
24 clear Regulatory Commission, the Secretary of En-
25 ergy, State and local agencies, and the facilities con-

1 taining radiological source material and regulated by
2 the Nuclear Regulatory Commission.

3 “(5) CLASSIFICATION.—The Secretary—

4 “(A) shall develop a classification system
5 for information regarding radiological materials
6 and shall classify the terrorism risk assessment
7 at the appropriate level under such system; and

8 “(B) shall share the terrorism risk assess-
9 ment with all participants with appropriate
10 clearances. The Secretary shall also make avail-
11 able an unclassified version to all participants
12 in the radiological sources security system de-
13 scribed in the Radiological Materials Security
14 Act.

15 “(b) TERRORISM RISK SELF-ASSESSMENT TOOL.—

16 “(1) IN GENERAL.—The Secretary shall develop
17 a terrorism risk self-assessment tool for facilities to
18 ascertain the risk posed to a facility due to its pos-
19 session, transport, sale, or use of material that is
20 designated in the terrorism risk assessment under
21 subsection (a) as a high-risk radiological material.

22 “(2) DISTRIBUTION AND USE.—The Secretary
23 shall provide the terrorism risk self-assessment tool
24 to the Nuclear Regulatory Commission, which shall
25 provide it to facilities included in the radiological

1 sources security system described in the Radiological
2 Materials Security Act.

3 “(c) SECURITY PRACTICES.—

4 “(1) IN GENERAL.—The Secretary shall issue
5 recommended practices for securing high-risk radio-
6 logical materials based on best practices utilized in
7 securing radioactive sources in the United States
8 and abroad.

9 “(2) RISK TIERS.—The recommended security
10 practices shall be tiered based on—

11 “(A) the type of radiological material se-
12 cured;

13 “(B) the quantity of radiological material
14 secured;

15 “(C) the use of and ease of access to the
16 radiological material at the facility;

17 “(D) the type of facility; and

18 “(E) the risk that the radiological material
19 secured poses if used in an radiological disper-
20 sion device.

21 “(3) INCLUDED PRACTICES.—The rec-
22 ommended security practices shall include practices
23 for—

24 “(A) facility access;

1 “(B) physical security of radiological mate-
2 rial sources;

3 “(C) use of less dangerous sources of radi-
4 ological material; and

5 “(D) licensing and tracking procedures for
6 radiological materials.

7 “(d) SECURITY UPGRADE FUNDING.—The Secretary,
8 subject to the availability of appropriations, shall make
9 available infrastructure protection grants for domestic
10 preparedness and collective response to terrorism to own-
11 ers and operators of facilities for which the Nuclear Regu-
12 latory Commission or an Agreement State has approved
13 a facility security plan under section 4(f) of the Radio-
14 logical Materials Security Act to help cover the cost of the
15 site security plan development and implementation.

16 “(e) DEFINITIONS.—In this section:

17 “(1) AGREEMENT STATE.—The term ‘Agree-
18 ment State’ means a State that has signed an agree-
19 ment with the Nuclear Regulatory Commission pur-
20 suant to section 274b. of the Atomic Energy Act of
21 1954 (42 U.S.C. 2021(b)).

22 “(2) HIGH RISK RADIOLOGICAL MATERIAL.—
23 The term ‘high-risk radiological material’ means ra-
24 diological material that is designated by the Sec-
25 retary under subsection (a)(2).

1 “(3) PARTICIPATING FACILITY.—The term ‘par-
2 ticipating facility’ means a private or publicly owned
3 facility that contains radiological material and is li-
4 censed by the Nuclear Regulatory Commission or an
5 Agreement State.

6 “(f) AUTHORIZATION OF APPROPRIATIONS.—To
7 carry out this section there is authorized to be appro-
8 priated to the Secretary \$20,000,000, of which
9 \$10,000,000 shall be for fiscal year 2010 for grants under
10 subsection (e).”.

11 (b) CLERICAL AMENDMENT.—The table of contents
12 in section 1(b) of such Act is amended by adding at the
13 end of the items relating to title XIX the following:

“Sec. 1908. Radiological materials security.”.

14 **SEC. 4. RESPONSIBILITIES OF THE NUCLEAR REGULATORY**
15 **COMMISSION.**

16 (a) REGULATIONS.—Not later than two years after
17 the date of enactment of this Act the Nuclear Regulatory
18 Commission shall update, and as necessary promulgate,
19 and enforce regulations for security of radiological mate-
20 rials against the threat of terrorism at facilities containing
21 radiological materials, and maintain and update a nuclear
22 materials events database. Such regulations shall include
23 the security practices developed by the Secretary of Home-
24 land Security pursuant to section 1908 of the Homeland
25 Security Act of 2002, as added by section 3 of this Act.

1 The regulations shall be tiered so that required security
2 practices of facilities are commensurate with the risk that
3 the materials pose. The Nuclear Regulatory Commission
4 shall determine which risk tier a facility is placed in with
5 the aid of the risk self-assessment tool described in section
6 1908(b) of such Act and the recommended tiers described
7 in paragraph (2) of that subsection.

8 (b) SITE INSPECTIONS.—The Nuclear Regulatory
9 Commission, or an Agreement State, shall conduct inspec-
10 tions of facilities covered under the regulations promul-
11 gated under subsection (a), the frequency and thorough-
12 ness of which shall be determined by the Nuclear Regu-
13 latory Commission commensurate with the facility's risk
14 tier.

15 (c) PENALTIES.—The regulations promulgated under
16 subsection (a) shall include appropriate administrative,
17 civil, and criminal penalties, including revocation of the
18 facility's license issued by the Nuclear Regulatory Com-
19 mission or an Agreement State.

20 (d) NUCLEAR MATERIALS EVENTS DATABASE.—The
21 Nuclear Regulatory Commission shall maintain and up-
22 date a database to track regulated radiological materials
23 and orphaned, lost, or stolen radiological materials, and
24 require that Nuclear Regulatory Commission licensees and
25 Agreement State licensees report to the Nuclear Regu-

1 latory Commission the amounts of such radiological mate-
2 rial every 6 months, and promptly report orphaned, lost,
3 or stolen sources. The Nuclear Regulatory Commission
4 shall grant access to the Nuclear Materials Events Data-
5 base to the Secretary.

6 (e) **TERRORISM RISK SELF-ASSESSMENT TOOL.**—
7 The Nuclear Regulatory Commission or Agreement
8 States, as appropriate, shall provide to participating facili-
9 ties the risk self-assessment tool provided to the Nuclear
10 Regulatory Commission by the Secretary pursuant to sec-
11 tion 1908(b) of the Homeland Security Act of 2002, as
12 added by section 3 of this Act. The Nuclear Regulatory
13 Commission and Agreement States shall require all par-
14 ticipating facilities to use the risk self-assessment tool to
15 conduct a risk self-assessment and provide the results to
16 the Nuclear Regulatory Commission or an Agreement
17 State, as appropriate, within 30 days of receipt of the risk
18 self-assessment tool. The Nuclear Regulatory Commission
19 shall use these results to tier facilities pursuant to sub-
20 section (a). The Nuclear Regulatory Commission shall
21 make available to the Secretary the results of the risk self-
22 assessments.

23 (f) **FACILITY SECURITY PLANS.**—

24 (1) **IN GENERAL.**—The Nuclear Regulatory
25 Commission shall issue regulations that require the

1 owner or operator of a facility containing high-risk
2 radiological material to create, submit to the Nu-
3 clear Regulatory Commission and Agreement States,
4 as appropriate, and implement a facility security
5 plan to address the vulnerabilities determined by the
6 facility's risk assessment and any other requirements
7 determined by the Nuclear Regulatory Commission.
8 The Nuclear Regulatory Commission and Agreement
9 States, as appropriate, shall require a facility secu-
10 rity plan to be submitted by a participating facility
11 to the Nuclear Regulatory Commission and an
12 Agreement State within 90 days after submission of
13 the risk self-assessment pursuant to subsection (e).

14 (2) CONTENTS.—The regulations shall require
15 that a facility security plan shall describe—

16 (A) policies, procedures, personnel, and
17 equipment necessary to implement the plan;
18 and

19 (B) the cost of implementation of the plan.

20 (3) REVIEW OF SECURITY PLANS.—The Nu-
21 clear Regulatory Commission or an Agreement
22 State, as appropriate, shall review the facility secu-
23 rity plan submitted under this subsection for each
24 facility to ensure the plan meets the requirements of
25 the facility's risk tier.

1 (4) APPROVAL AND ENFORCEMENT.—The Nu-
2 clear Regulatory Commission or an Agreement
3 State, as appropriate, must approve or disapprove a
4 facility security plan within 90 days of receipt from
5 the facility. If the facility security plan is not ap-
6 proved, the Nuclear Regulatory Commission or
7 Agreement State, as appropriate, shall clearly ex-
8 plain the shortcomings and allow the participating
9 facility 30 days to correct the facility security plan.
10 If after 30 days the facility fails to provide to the
11 Nuclear Regulatory Commission or Agreement
12 State, as appropriate, an approvable plan, the Nu-
13 clear Regulatory Commission or Agreement State, as
14 appropriate, shall apply appropriate penalties to the
15 facility as described in subsection (c).

16 (5) SITE VISITS.—The Nuclear Regulatory
17 Commission or an Agreement State, as appropriate,
18 shall conduct visits to participating facilities to pro-
19 vide expert guidance on design and implementation
20 of the facility security plan.

21 (g) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to the Nuclear Regu-
23 latory Commission for carrying out this section
24 \$10,000,000 for fiscal year 2010. The Nuclear Regulatory
25 Commission is authorized to transfer a portion of those

1 funds to Agreement States in order to carry out the re-
2 quirements of this Act.

3 **SEC. 5. RESPONSIBILITIES OF THE DEPARTMENT OF EN-**
4 **ERGY.**

5 The Secretary of Energy shall provide technical as-
6 sistance for securing high-risk radiological materials to the
7 Department of Homeland Security, the Nuclear Regu-
8 latory Commission, State and local authorities, and the
9 participating facilities.

10 **SEC. 6. RADIOLOGICAL DISPERSION DEVICE RECOVERY**
11 **AND RESPONSE.**

12 Nothing in this Act or the amendments made by this
13 Act affects the responsibilities of the Department of En-
14 ergy to recover orphaned sources of radiological materials
15 or to conduct response and recovery operations with re-
16 spect to such materials.

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