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Senate Proposals To Enhance Chemical Facility Security

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Summary

The 109th Congress is considering how to address the risks and consequences of potential terrorist attacks on chemical facilities. This report compares and analyzes two bills in the Senate that would address these issues: S. 2145, as reported, and S. 2486, as introduced. S. 2145 was reported, amended (without written report), by the Committee on Homeland Security and Governmental Affairs on June 26, 2006. For background information on chemical facility security and summaries of other legislative proposals, see CRS Report RL31530, *Chemical Facility Security*. For more information about alternative legislative approaches, see CRS Report RL33043, *Legislative Approaches to Chemical Facility Security*.

S. 2145 would direct the Secretary of the Department of Homeland Security (DHS) to issue rules designating chemical facilities subject to regulation, assigning them to various risk-based tiers, and establishing performance-based standards for each tier. Designated facilities would include facilities selected from those required to complete risk management plans under the Clean Air Act (CAA), Section 112(r)(7), and facilities handling more than specified quantities of ammonium nitrate or any other substance designated by the Secretary. Facilities would be required to submit to DHS vulnerability assessments, security plans, and emergency response plans for terrorist incidents. Plans would have to be "sufficient to deter, to the maximum extent practicable, a terrorist incident or a substantial threat of such an incident," and "include security measures to mitigate the consequences of a terrorist incident." To oversee implementation, S. 2145 would establish regional DHS security offices and area security committees and plans. DHS, other federal agencies, and state and local agencies would be prohibited from releasing to the public "protected information." S. 2145 expressly prohibits any private civil actions against an owner or operator to enforce provisions of the Act. S. 2145 also requires regulation of ammonium nitrate sales.

S. 2486 addresses security and safety at "stationary sources," as defined by the CAA Section 112(r)(2), and other facilities holding substances of concern that the DHS Secretary, in consultation with the Administrator of the Environmental Protection Agency, designates as "high priority." For all stationary sources, S. 2486 would establish a general duty to identify hazards; ensure safe facility design, operation, and maintenance (including use of use of inherently safer technology); and reduce the consequences of a criminal release. Employees would assist owners or operators in these tasks. Each high-priority facility would be required to submit to DHS a vulnerability assessment, hazard assessment, and prevention, preparedness, and response plan. S. 2486 would exempt DHS from public disclosure requirements of the federal Freedom of Information Act for "all documents provided to the DHS Secretary under this Act, and all information that describes a specific vulnerability or stationary source derived from those documents." S. 2486 establishes Employees' Safety and Security Committees and mandates employee training with respect to the Act's requirements. This report will be updated as warranted by congressional activity.

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Introduction

The 109th Congress is considering how to address the risks and consequences of potential terrorist attacks on chemical facilities. Competing bills, S. 2145 and S. 2486, have been introduced in the Senate. Other legislation has been introduced in the House, including a companion to S. 2145 (H.R. 4999). H.R. 5695 is similar to S. 2145, while two other bills, H.R. 1562 and H.R. 2237, are similar to proposals in the 108th Congress. This report focuses on legislation in the Senate. For background information on chemical facility security and summaries of other legislative proposals, see CRS Report RL31530, *Chemical Facility Security*, by Linda-Jo Schierow. For more information on alternative legislative approaches, see CRS Report RL33043, *Legislative Approaches to Chemical Facility Security*, by Dana A. Shea.

S. 2145 and S. 2486 direct the Secretary of the Department of Homeland Security (DHS) to designate "substances of concern" and high-priority facilities for regulation. Both bills require assessments of vulnerability for designated facilities and preparation and implementation of security plans. Beyond these basic provisions, however, the bills would mandate facility actions, federal oversight mechanisms, and other requirements that differ in significant and often controversial ways. The purpose of this report is to summarize key provisions of the two bills, highlighting selected areas of disagreement and agreement.

S. 2145 (Collins)

Senator Collins, Chairman of the Homeland Security and Governmental Affairs Committee (HSGAC), introduced S. 2145, the Chemical Facility Anti-Terrorism Act, on December 19, 2005, following four full Committee hearings on the subject.[1] Co-sponsors on introduction included Senator Lieberman (the HSGAC Ranking

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[1] Recordings of the four hearings are available on the Committee's website. They are "Chemical Attack on America: How Vulnerable Are We?" held April 27, 2005; "Is the Federal Government Doing Enough to Secure Chemical Facilities and Is More Authority Needed?" held June 15, 2005; "Chemical Facility Security: What Is the Appropriate Federal Role?" held July 13, 2005; and "Chemical Facility Security: What Is the Appropriate Federal Role? (Part II)," held July 27, 2005. The House Committee on Homeland Security, Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity also held a hearing on this issue on June 15, 2005, "Preventing Terrorist Attacks on America's Chemical Plants." A recording of the House hearing is not posted on the Committee website, but a transcript is available on the Congressional Quarterly website at [http://www.cq.com/].

Member), Senator Coleman, Senator Carper, and Senator Levin, all members of the HSGAC. The HSGAC reported an amended bill (without written report) on June 26, 2006.

Chemical Sources and Substances of Concern. S. 2145 would direct the DHS Secretary to promulgate rules for designating chemical facilities (referred to in the legislation as "chemical sources") that would be subject to regulation, assigning these facilities to various risk-based tiers and establishing performance-based security standards for each tier. Facilities would be considered for designation if they produced, used, or stored a substance of concern in a quantity equal to or greater than a threshold quantity. To assist DHS in identifying facilities, the bill would establish a duty to report to DHS for facilities handling more than a threshold quantity of a designated substance of concern. Substances of concern would be those that trigger risk management planning requirements under the Clean Air Act (CAA), Section 112(r)(7),[2] as well as ammonium nitrate and any other substance designated by the Secretary. A decision to designate a substance would be based on the potential extent of death, injury, or serious adverse effects to human health and safety or the environment, or the potential impact on national or economic security or critical infrastructure caused by a terrorist incident.

Vulnerability Assessments and Planning Requirements. Designated facilities would be assigned to risk-based tiers and required to complete and submit to DHS vulnerability assessments, security plans, and emergency response plans for terrorist incidents. DHS would be required to review these submissions within five years of their date of submission and to provide a written determination to approve, disapprove, or modify facility assessments and plans, as well as implementation of plans. DHS would be prohibited from disapproving a site security plan based on the presence or absence of a particular security measure, if the plan satisfied the performance standards established for the applicable risk-based tier.

For facilities in the higher-risk tiers, S. 2145 would require a preliminary DHS review of facility assessments and plans within nine months of the date when DHS issues regulations concerning assessments and plans. At that time, DHS would have to provide notice and compliance assistance to facilities for which an assessment or plan may not be approved. Three months later, (within one year of the date when DHS issues regulations concerning assessments and plans), S. 2145 requires a written determination by DHS to approve, disapprove, or modify facility assessments and plans, as well as implementation of plans for higher-risk facilities.

S. 2145 would require intergovernmental coordination, and requires facility owners or operators to specify in their plans "steps taken by the chemical source to coordinate security measures and plans for response to a terrorist incident with Federal, State, and local government officials, including law enforcement and first responders." Plans would have to be "sufficient to deter, to the maximum extent

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[2] The list of regulated substances may be found at 40 CFR 68.130. Risk management planning is required to reduce and mitigate the risk to neighboring communities from accidental releases at facilities handling more than a threshold quantity of any of the 140 listed substances.

practicable, a terrorist incident or a substantial threat of such an incident," and "include security measures to mitigate the consequences of a terrorist incident."

Enforcement. S. 2145 would provide administrative, civil, and criminal penalties for facility owners or operators who fail to submit assessments or plans or to implement plans adequately. DHS would be authorized to issue an order for the chemical source to cease operation if the facility persisted in noncompliance with the requirements established under S. 2145.

Coordination. The bill would mandate coordination with existing security and emergency response planning, including planning under the Maritime Transportation Security Act (MTSA). To ensure coordination, S. 2145 establishes regional security offices and area security committees and plans. State and local laws would not be preempted unless they were inconsistent with federal law.

Information Disclosure. DHS, other federal agencies, and state and local agencies would be prohibited from releasing to the public "protected information." That term is defined to include vulnerability assessments, site security plans, security addenda to emergency response plans, area security plans, or materials developed or produced exclusively in preparation for assessments or plans. S. 2145 also includes in the definition of "protected information" any document obtained by DHS or a state or local government from a chemical source in accordance with this Act, and any document prepared by or provided to a federal agency or state or local government, to the extent that the record contains information that (1) describes a specific chemical source or the specific vulnerabilities of a chemical source; (2) was taken from a vulnerability assessment, site security plan, addendum to an emergency response plan, materials produced by a chemical source exclusively in preparation of such documents, or a copy of such record in possession of the chemical source; and (3) would, if disclosed, be detrimental to the security of a chemical source.

The introduced bill would have required public disclosure of written certifications of compliance by facility owners/operators, DHS certificates of compliance issued for individual sources, DHS orders issued for noncompliance, and lists of facilities for which DHS has issued an approval or disapproval, unless the Secretary determined that release of a particular record would increase security risk. An amendment to S. 2145 was approved during markup that reverses this provision, such that certifications and orders could not be disclosed unless the Secretary were to determine that release of a particular record would increase security risk. Even if the Secretary determined an absence of increased risk, the Secretary would be authorized, but not required, to disclose the record.

Judicial Review. As introduced, S. 2145 was silent with respect to judicial review. However, S. 2145 was amended during markup to permit any person to file a petition with the U.S. Court of Appeals for the District of Columbia for judicial review of a rule within 60 days of promulgation. The reported bill directs the court to review rules in accordance with the Administrative Procedure Act (i.e., 5 U.S.C. §701 et seq.).

The amended bill would allow only an owner or operator whose facility is affected by a final agency action to file a petition for judicial review of the action

with an appropriate U.S. district court. (The standard of review would remain that in the Administrative Procedure Act.) Only the owner or operator and the Secretary could participate in such civil actions. In addition, the bill expressly prohibits any private civil actions against an owner or operator to enforce provisions of the Act.

Other Accountability Measures. Other provisions of S. 2145 would require reports by DHS and GAO, establish a process by which any person might submit a report to DHS regarding vulnerabilities of a chemical source, and protect whistle-blowers from retaliation. During markup, an amendment was approved that would prohibit GAO from releasing to the public any "protected information" in its reports.

Ammonium Nitrate. S. 2145 directs the DHS Secretary, in consultation with the Secretary of Agriculture, to regulate the production and sale of ammonium nitrate to prevent misappropriation or use in violation of law. The bill would require registration of facilities and purchasers, and restrict sales to registered producers, sellers, and purchasers.

S. 2486 (Lautenberg)

Senator Lautenberg, a member of the HSGAC, introduced the Chemical Security and Safety Act of 2006 (S. 2486) on March 30, 2006. Co-sponsors on introduction included Senator Obama, Senator Kerry, Senator Menendez, Senator Durbin, and Senator Biden.

Chemical Sources and Substances of Concern. S. 2486 addresses security and safety at "stationary sources," which are defined by reference to the CAA Section 112(r)(2),[3] but also to include other facilities that produce, process, handle, or store any "substance of concern" and which the DHS Secretary designates as "high priority." Substances of concern are defined as substances listed under the CAA Section 112(r)(3) in a threshold quantity or any other substance designated by the Secretary under section 5(d) of the Chemical Security and Safety Act in a threshold quantity.

The DHS Secretary, in consultation with the Administrator of the Environmental Protection Agency (EPA), would be directed to designate by rule at least 3,000 facilities handling substances of concern as "high priority categories." In designating high-priority facilities, the Secretary would be directed to consider potential severity of harm; proximity to population centers; threats to national security; threats to critical infrastructure; threshold quantities of substances of

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[3] The CAA §112(r)(2)(C) defines a "stationary source" to mean "any buildings, structures, equipment, installations, or substance-emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur." The CAA §112(r)(2)(A) defines "accidental release" to mean "an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source." The CAA §112(r)(2)(B) defines "regulated substance" to mean "a substance listed under [CAA §112(r)] paragraph (3)."

concern that pose a serious threat; and other safety or security factors that the DHS Secretary, in consultation with the EPA Administrator, determines to be appropriate. S. 2486 also would require the Secretary to identify the 600 highest priority stationary sources.

General Duty to Ensure Safe Design, Operation, and Maintenance. For all stationary sources, S. 2486 would establish a general duty to —

- identify hazards that may result from a criminal release of a substance;
- ensure that the facility is designed, operated, and maintained in a safe manner; and
- reduce the consequences of a criminal release.

Owners or operators of stationary sources would be required to involve employees in ensuring the "design, operation, and maintenance of safe facilities," an obligation that is defined to include use of inherently safer technology (IST) "to the maximum extent practicable." S. 2486 defines IST as the "use of a technology, product, raw material, or practice that, as compared to the technology, products, raw materials, or practices currently in use ... significantly reduces or eliminates the possibility of the release of a substance of concern, and ... significantly reduces or eliminates the hazards to public health and safety and the environment associated with the release or potential release." This definition includes such actions as "chemical substitution, process redesign, product reformulation, and procedural and technological modification."

Vulnerability Assessments and Planning Requirements. Each owner or operator of a high-priority facility would be required to submit to DHS a written report that would include a vulnerability assessment, a hazard assessment, and a prevention, preparedness, and response plan that would incorporate the results of the assessments and meet requirements established by DHS. Each plan would have to include discussion of the practicability of implementing each element of "safe" facility design, operation, and maintenance. The bill also requires consultation with employees at the facility in developing the assessments and plan.

S. 2486 would require the DHS Secretary to review each submitted report to determine whether it complied with DHS regulations, and to certify approval for compliant facilities. In addition, the bill directs the DHS Secretary to notify any owner or operator who submits a plan that is disapproved. S. 2486 would establish an information clearinghouse to assist facilities in complying with requirements.

Enforcement. S. 2486 would provide administrative, civil, and criminal penalties for facility owners or operators who failed to comply with a compliance order or directive issued by the Secretary. If a threat of a terrorist attack is beyond the scope of a submitted prevention, preparedness, and response plan, or current implementation of the plan is insufficient, DHS would be authorized to issue a compliance order. If a facility persisted in noncompliance, the Secretary would be authorized, after notifying the facility of that fact, to seek judicial relief to abate the threat. Such judicial relief could include an order to cease operation and such other orders as would be necessary to protect public health or welfare.

Coordination. S. 2486 mandates coordination of implementation for the Chemical Security and Safety Act with the MTSA and directs the DHS Secretary to minimize duplication of requirements for risk assessment and response plans under other federal law.

Information Disclosure. S. 2486 would protect DHS from public disclosure requirements of the federal Freedom of Information Act (FOIA) for "all documents provided to the DHS Secretary under this Act, and all information that describes a specific vulnerability or stationary source derived from those documents." A few documents are excepted from this protection, such as compliance certifications by the DHS Secretary. In addition, information derived from the protected documents may be disclosed if it would not divulge trade secrets, not identify any particular stationary source, and "is not reasonably likely to increase the probability or consequences of a criminal release." No protection is provided for information at other federal agencies, but state and local government agencies are protected from disclosure requirements of all federal, state, and local laws. As for DHS information protection, a few documents are excepted from protection at state and local government agencies.

Judicial Review. S. 2486 is silent with respect to judicial review of DHS actions. That means that final actions by DHS, whether rules or orders, would be subject to judicial review as provided by the generally applicable Administrative Procedure Act (APA; 5 U.S.C. §501 et seq.). The APA permits any person the right to petition a federal district court for review of a final agency action. Under the APA, an agency rulemaking can be held unlawful or set aside if it is found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law."[4] The court can also "compel agency action unlawfully withheld or unreasonably delayed."

Other Accountability Measures. S. 2486 would establish Employees' Safety and Security Committees at stationary sources with at least 15 employees, and mandates employee training at all stationary sources with respect to the Act's requirements. In addition, the bill would require notification and involvement of employees in facility inspections and investigations. Protection is provided for employees who might report problems at their facilities to authorities.

Ammonium Nitrate. S. 2486 does not authorize additional regulation regarding sale or purchase of ammonium nitrate.

Key Similarities and Differences

Chemical Sources. Both bills would direct the Secretary to focus on chemical sources regulated under the CAA §112(r). However, S. 2145 provides the Secretary discretion with respect to designating and requires only that the Secretary consider "any facility that is a stationary source ... for which the owner or operator is required to complete a risk management plan...." Facilities required to complete a risk management plan are those at which a regulated substance is present at a

[4] The judicial review provisions of the APA are codified at 5 U.S.C 701-706.

quantity greater than a threshold quantity (CAA §112(r)(7)). In contrast, S. 2486 would apply to all stationary sources, which the bill defines with reference to the CAA §112(r)(2). That definition includes "any buildings, structures, equipment, installations, or substance-emitting stationary activities" (arguably a wider category than "facilities") "(i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur."

In addition, both bills would authorize designation of additional facilities for regulation. S. 2145, but not S. 2486, exempts facilities owned or operated by the Department of Energy, the Department of Defense, or a licensee or certificate holder of the Nuclear Regulatory Commission.

Substances of Concern. S. 2145 would define "substance of concern" as a chemical substance present at a chemical source in a quantity equal to or exceeding the threshold quantity, as established under the CAA §112(r)(3) and (5); ammonium nitrate, in a quantity to be determined by the Secretary; or any other chemical substance above a threshold quantity designated by the Secretary. S. 2486 would define "substance of concern" similarly, but does not include ammonium nitrate in its definition.

General Duty. S. 2145 would not impose a general duty on stationary sources that produce, process, handle, or store any "substance of concern," as does S. 2486. The latter would require owners or operators of stationary sources (1) to identify hazards that may result from a criminal release; (2) to ensure the "design, operation, and maintenance of safe facilities"; and (3) to eliminate or minimize the consequences of any criminal release.

Inherently Safer Technology. S. 2486 would require owners or operators of stationary sources to ensure the "design, operation, and maintenance of safe facilities," which the bill defines to include the use of IST "to the maximum extent practicable." Higher priority stationary sources are required to consider use of IST, implement IST to the maximum extent practicable, and document consideration in security and response plans. S. 2145 does not require consideration or implementation of IST, although it explicitly allows consideration and use of technologies that would reduce potential consequences of any successful terrorist attack as a security measure in a site security plan. During markup of S. 2145, the committee approved an amendment that would prohibit the Secretary from disapproving a security plan because it failed to incorporate a particular security measure. This provision was adopted to ensure that the Secretary would not require IST.

Information Protection. Both bills would exempt DHS from FOIA requirements for public disclosure of agency documents. S. 2145 would prohibit disclosure of "protected information" (see definition above). In addition, it prohibits disclosure of certifications and orders that might reveal the compliance status of regulated facilities. Certifications (but not orders) may be released only if the Secretary determines that release of such information would not increase the risk to a facility. S. 2145 directs the Secretary to develop protocols to ensure, to the

maximum extent practicable, that protected information will be maintained in a secure location and that access will be limited to persons granted access for the purpose of carrying out the Chemical Facility Anti-Terrorism Act. The bill also mandates that any officer or employee of a federal, state, or local government agency who knowingly discloses any protected information be imprisoned for up to one year, fined under chapter 227 of title 18, United States Code, or both, and if a federal employee, removed from office or employment.

S. 2486 would exempt DHS from FOIA requirements with respect to "all documents provided to the DHS Secretary under this Act, and all information that describes a specific vulnerability or stationary source derived from those documents," but the bill also would allow public disclosure of information derived from the documents and information that is protected if it would not divulge trade secrets, identify any particular stationary source, and "is not reasonably likely to increase the probability or consequences of a criminal release." S. 2486 would not restrict disclosure of certifications under §6(b), orders under §10(a), or best practices established under §13(4) of the Act. The bill would require the Secretary to develop information protection protocols, but S. 2486 would not authorize penalties for unauthorized disclosure of protected information.

Regional and Area Planning. S. 2145 would establish regional DHS security offices to oversee facility efforts and area committees to coordinate local, state, and federal security and emergency response planning. S. 2486 does not include such provisions.

Judicial Review. S. 2145 distinguishes between rulemaking and other final agency actions with respect to courts of jurisdiction, as well as parties authorized to act. S. 2145 would allow challenges to final rules only in the U.S. Court of Appeals for the District of Columbia, but challenges to any other final actions could be filed only in the appropriate federal district court. Because S. 2486 does not address judicial review of final DHS actions, actions may be filed in any federal district court.

S. 2145 would permit any person to file a petition for judicial review of a final regulation but would permit only the owner or operator of a chemical source to file a petition for review of a final agency action or order. Only that owner or operator and the Secretary would have the right to participate in such civil action. In contrast, because S. 2486 does not address judicial review of final DHS actions, any person who is affected by a final DHS action, including promulgation of a final rule, has the right under the Administrative Procedure Act to file an action for its review and to participate in any civil action initiated by another.

Finally, S. 2145 explicitly denies any right to private civil actions against an owner or operator to enforce provisions of the Act. Again, S. 2486 is silent with respect to private rights of action. As a result, it is unclear whether a private right of action would be permitted.

Worker Involvement. S. 2486 would establish Employees' Safety and Security Committees at facilities with 15 or more employees to identify, discuss, and make recommendations to owners or operators concerning potential hazards and risks relevant to security, safety, health, and the environment. These committees are to

participate in developing, reviewing, and revising vulnerability assessments, hazard assessments, and prevention, preparedness, and response plans at their facilities. Owners or operators would be required to provide employees annually with four hours of training relevant to security and safety planning. S. 2145 does not have such provisions. Both bills provide protection for employees who might report problems at their facilities to authorities, but whistle-blower protection provisions are more extensive and detailed in S. 2486 than in S. 2145.

Ammonium nitrate. S. 2145 directs the DHS Secretary, in consultation with the Secretary of Agriculture, to regulate the production and sale of ammonium nitrate to prevent misappropriation or use in violation of law. The bill would require registration of facilities and purchasers, and it would restrict sales to registered producers, sellers, and purchasers. S. 2486 does not contain such provisions.

Table 1 summarizes selected provisions of the two bills.

Table 1. Comparison of S. 2145, as Reported, and S. 2486, as Introduced, in the 109th Congress

Provision	S. 2145, as reported	S. 2486, as introduced
Title	Chemical Facility Anti-Terrorism Act [§1]	Chemical Security and Safety Act [§1]
Key Definitions		
Chemical source	Defined as a facility designated by the Secretary of the Department of Homeland Security (DHS).	Not defined. Instead defines "stationary source" as defined in the Clean Air Act (CAA) §112(r)(2) with the addition of any chemical facility designated by the DHS Secretary under §5(d) of the Chemical Security and Safety Act.
Protected information	Includes (1) any vulnerability assessment, site security plan, area security plan, and security addendum to an emergency response plan prepared for the purposes of this Act and obtained by DHS under §4; (2) any materials obtained by DHS and developed or produced by a chemical source exclusively in preparation of records, documents, or information referred to by an assessment, plan, or addendum or an emergency response plan; (3) any document or other information obtained by DHS or a state or local government from a chemical source in accordance with this Act, and any document prepared by or provided to a federal agency or state or local government, to the extent that the document or information (a) describes a specific chemical source or the specific vulnerabilities of a chemical source; (b) was taken from a vulnerability assessment, site security plan, area security plan, addendum to an emergency response plan, or an emergency response plan or from a copy of such record in possession of the chemical source; and (c) would, if disclosed, be detrimental to the security of a chemical source.	Not defined. Information that is to be protected under §11(a) includes "all documents provided to the DHS Secretary under this Act, and all information that describes a specific vulnerability or stationary source derived from those documents," except certifications under §6(b), orders under §10(a), and best practices for IST established under §13(4).

Provision	S. 2145, as reported	S. 2486, as introduced
Security or safety measure	Defines "security measure" broadly to include measures to prevent or detect the presence of terrorists in sensitive areas of the facility, as well as measures to reduce consequences in the event of a successful terrorist attack. [§2]	Defines "design, operation, and maintenance of safe facilities" to include "to the maximum extent practicable" — "use of inherently safer technology;" measures to make facilities impregnable; "outreach to the surrounding community;" improving site security, employee training, and coordination with state and local emergency officials, law enforcement agencies, and first responders; and secondary containment, control, or mitigating equipment. The definition also includes use of buffer zones.
Use of inherently safer technology	No comparable definition.	Defines "use of inherently safer technology" as use of a technology, product, raw material, or practice that significantly reduces or eliminates the possibility of the release of a substance of concern, and significantly reduces or eliminates the hazards to public health and safety and the environment associated with the release or potential release. [§3]
Substance of concern	Defined as a chemical substance present at a chemical source in a quantity equal to or exceeding the threshold quantity for the chemical substance, as established under the CAA §112(r)(3) and (5); ammonium nitrate, in a quantity to be determined by the DHS Secretary; or any other chemical substance above a threshold quantity designated by the DHS Secretary under §3(i). [§2]	Defined as any substance listed under the CAA §112(r)(3) in a threshold quantity or any other substance designated by the Secretary in a threshold quantity under §5(d) of this Act. Does not refer to the CAA §112(r)(5) or ammonium nitrate. [§3]

Provision	S. 2145, as reported	S. 2486, as introduced
Covered Facilities	Includes facilities designated by DHS under §3(a), but not facilities owned or operated by the Department of Energy, Department of Defense, or a licensee or certificate holder of the Nuclear Regulatory Commission. In designating facilities, the DHS Secretary must consider: (1) any facility that is a "stationary source" under the Clean Air Act (CAA), §112(r)(2) and for which the owner or operator is required to complete a risk management plan in accordance with CAA §112(r)(7)(B)(ii); (2) any other facility that produces, uses, or stores a "substance of concern"; and (3) any additional facility that the DHS Secretary determines shall be designated a chemical source. [§3(c)-(d)]	Includes all "stationary sources" under the CAA §112(r)(2), in addition to any other sources designated in regulations as "high priority" under §5(d) by the DHS Secretary. [§5]
Criteria for Designating Facilities	Requires the DHS Secretary to establish criteria for designating chemical sources by regulation. The DHS Secretary must base designation criteria on the following "risk factors": — perceived threat to a facility; — potential extent and likelihood of serious adverse effects to human health and safety or to the environment; — threats to or potential impact on national security or critical infrastructure; — potential threats or harm to the economy; — proximity of a facility to population centers; — nature and quantity of substances of concern; and — other security-related factors necessary to protect public health and safety, critical infrastructure, and national and economic security. [§3(a)-(b)]	No comparable provision, but criteria for designating high-priority sources are similar. See "Identifying Priorities" below.

Provision	S. 2145, as reported	S. 2486, as introduced
Identifying Priorities	Requires the DHS Secretary to promulgate rules establishing a risk-based tier system of chemical sources, consisting of several tiers, and providing guidance to owners and operators regarding actions that would enable a source to move to a lower risk tier. One or more tiers must be "higher risk" tiers. Directs the DHS Secretary to determine the tier applicable to each designated chemical source. (Note that the listing of facilities is not through rule-making.) [§3(e)]	Requires the DHS Secretary, in consultation with the Administrator of the U.S. Environmental Protection Agency (EPA) and state and local government agencies responsible for planning for and responding to criminal releases and for providing emergency health care, to designate "high priority" facilities by regulation, based on "the severity of the threat posed by a criminal release." At least 3,000 facilities must be designated "high priority." In designating facilities "high priority," the DHS Secretary must consider: — potential severity of harm; — proximity to population centers; — threats to national security; — threats to critical infrastructure; — threshold quantities of substances of concern that pose a serious threat; and — other safety or security factors that the DHS Secretary, in consultation with the EPA Administrator, determines to be appropriate. Each stationary source must be considered individually. The DHS Secretary also must identify the 600 highest priority stationary sources. [§5(a)-(b) and §6(c)(1)] In designating high-priority categories, the DHS Secretary, in consultation with the EPA Administrator, is authorized to designate by rule any chemical facility as a "stationary source." [§5(d)]

Provision	S. 2145, as reported	S. 2486, as introduced
General Duty	No comparable provision.	Establishes for each owner and operator of a stationary source that produces, processes, handles, or stores any "substance of concern" a general duty: (1) to identify hazards that may result from a criminal release; (2) to ensure the "design, operation, and maintenance of safe facilities;" and (3) to eliminate or minimize the consequences of any criminal release. Requires that the owner or operator of a stationary source involve employees of the source in each aspect of ensuring the "design, operation, and maintenance of safe facilities." [§4]
Security Standards	Requires the DHS Secretary to establish security performance standards for each risk-based tier of facilities, with stricter requirements for tiers posing greater risks. The standards must allow an owner or operator to select security measures that, in combination, satisfy the security performance standards and must be risk-based, performance-based, flexible, and include consideration of the criteria for designating chemical sources [under §3(a)], cost, technical feasibility, and scale of operations. [§3(f)]	Requires the DHS Secretary, in consultation with the EPA Administrator, the U.S. Chemical Safety and Hazard Investigation Board, and state and local government agencies, to promulgate regulations that require each owner and each operator of a "high priority" stationary source to take action to detect, prevent, and eliminate or reduce the consequences of terrorist attacks and other criminal releases. Such action must be taken in consultation with local law enforcement, first responders, employees, and employee representatives, and must include the "design, operation, and maintenance of safe facilities." [§5(c)(1) and §5(e)]
Notice to Potentially Designated Facilities	Requires the DHS Secretary to notify potentially regulated facilities about the process and timeline for review and designation of chemical sources. [§3(g)]	No comparable provision.
Review of Designation of Chemical Sources	Requires the DHS Secretary to review and revise as necessary the list of designated sources every 3 years. Authorizes additional revisions of the list by the DHS Secretary. [§3(h)]	Requires the DHS Secretary, in consultation with the EPA Administrator, to review the regulations designating "high priority" sources and make necessary revisions, at least once every 5 years. [§5(e)]

Provision	S. 2145, as reported	S. 2486, as introduced
Identification of Additional Chemical Sources	Requires the owner or operator of any facility where a threshold quantity of a substance of concern is present to petition the DHS Secretary for a determination on whether that facility should be designated a chemical source, if that facility has not been required to complete a risk management plan (under the CAA §112(r)(7)(B)(ii). Directs the DHS Secretary to consult with the EPA Administrator to establish a mechanism for DHS to receive timely notice when a facility is required to complete a risk management plan in accordance with CAA §112(r)(7)(B)(ii). Requires the owner or operator of any newly operational facility that handles at least the threshold quantity of a substance of concern to file a petition with the DHS Secretary for a determination on whether that facility should be designated a chemical source. [§3(h)]	No comparable provisions, but see "Identifying Priorities" above.
Authority to Designate Substances of Concern and Threshold Quantities	Authorizes the DHS Secretary to issue a rule designating or exempting a chemical substance as a substance of concern or establishing or revising the threshold quantity. In promulgating such rules, the DHS Secretary must consider "the potential extent of death, injury, or serious adverse effects to human health and safety or the environment and the potential impact on national security, the economy, or critical infrastructure that would result from a terrorist incident involving the chemical substance." [§3(i)]	Authorizes the DHS Secretary, in consultation with the EPA Administrator, for the purpose of designating "high priority" categories, to designate by rule any additional substance that, in a specified threshold quantity, poses a serious threat as a "substance of concern." [§5(d)]

Provision	S. 2145, as reported	S. 2486, as introduced
Vulnerability Assessments, Site Security Plans, and Emergency Response Plans	Requires the DHS Secretary to promulgate regulations requiring the owner or operator of each chemical source to conduct a vulnerability assessment, prepare and implement a site security plan, and prepare and implement an emergency response plan or addendum to an existing plan. The regulations must be risk-based, performance-based, flexible, and include consideration of the criteria for designating chemical sources [§3(a)], cost, technical feasibility and scale of operations. Authorizes cooperation among sources operating at contiguous locations. Directs the DHS Secretary to share relevant threat information with state and local government officials and with an owner or operator of a chemical source. Specifies content of vulnerability assessments. [§4(a)]	Requires each owner or operator of a high-priority facility to submit a report to the DHS Secretary within 6 months of the date on which regulations are promulgated under §5(c)(1). The report must include a vulnerability assessment, an assessment of the hazards that may result from a criminal release; and a prevention, preparedness, and response plan. Requires the DHS Secretary to notify each stationary source of an elevated threat if the DHS Secretary, in consultation with local law enforcement officials, determines that a threat of a terrorist attack exists that is beyond the scope of a submitted prevention, preparedness, and response plan of one or more stationary sources. [§5(c)(2) and §10(c)(1)]
Content of Site Security Plans	Requires that each site security plan indicate the tier applicable to the facility; address risks identified in the vulnerability assessment; address appropriate security performance standards; include security measures appropriate to the tier level that are "sufficient to deter, to the maximum extent practicable, a terrorist incident or a substantial threat of such an incident;" include security measures to mitigate the consequences of a terrorist incident; increase security of automated systems; describe contingency plans for the facility; identify roles and responsibilities of employees; identify steps taken to coordinate with government officials; describe training, drills, exercises, and security actions; and describe security measures that would be implemented in response to an order under §7 in the event that heightened security measures became necessary for a particular facility. [§4(a)]	Requires that each plan incorporate the results of the vulnerability and hazard assessments. Required reports to DHS also must include a statement as to how the plan meets the requirements of the regulations; a statement as to how the prevention plan meets the general duty requirements of §4; a discussion of the consideration of the elements of "design, operation, and maintenance of safe facilities," including the practicability of implementing each element; and a statement describing how and when employees and employee representatives were consulted. [§5(c)(2)]

Provision	S. 2145, as reported	S. 2486, as introduced
Contents of Emergency Response Plans	Requires that an emergency response plan address the consequences of a terrorist incident identified in the vulnerability assessment; is consistent with the site security plan; and identifies the roles and responsibilities of employees. Requires plans to be modified versions of plans that have been federally approved or certified and that are in effect on the date of enactment, if consistent with guidance provided by the National Response Team (NRT) established under the National Contingency Plan.[5] If no plan exists, then the owner or operator is required to develop one by following guidance provided by the NRT. Directs owners or operators to place security information in an addendum to the plan, if necessary, to protect it from public disclosure. [§4(a)]	No comparable provision.
Self-Certification and Submission	Within 6 months of promulgation of rules requiring vulnerability assessments, site security plans, and emergency response plans, each owner or operator of a chemical source must certify in writing to the DHS Secretary that a vulnerability assessment has been completed and a site security plan and an emergency response plan have been developed and implemented, and must submit copies of the vulnerability assessment and plans to the DHS Secretary. [§4(b)]	No comparable provision.

[5] The National Contingency Plan (NCP) and the National Response Team (NRT) are established by EPA and the U.S. Coast Guard under the authority of Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (also known as Superfund, 42 U.S.C. 9605). The purpose of the NCP and NRT is to coordinate cleanup of releases of hazardous substances or oil.

Provision	S. 2145, as reported	S. 2486, as introduced
Review and Approval by the DHS Secretary of Reports Submitted by Covered Facilities	Requires the DHS Secretary, within 5 years of the promulgation of requirements for vulnerability assessment and site security and emergency response planning, to review submitted documents to determine whether they comply with requirements promulgated under §4(a). Authorizes subsequent reviews on a schedule to be determined by the DHS Secretary. Requires the DHS Secretary to provide the owner or operator written notice regarding DHS determination of compliance or noncompliance of the vulnerability assessment, security and emergency plans, and facility implementation. DHS is prohibited from disapproving a site security plan based on the presence or absence of a particular security measure, if the plan satisfies the performance standards established for the applicable tier. If a notice indicates disapproval, the notice must include a clear explanation of deficiencies, and DHS must consult with the owner or operator to identify steps to achieve compliance. [§4(c)]	Requires the DHS Secretary, in consultation with the EPA Administrator, to review each report submitted to determine whether the source covered by the report is in compliance with regulations promulgated under §5(c)(1). Requires the DHS Secretary, after consultation with the EPA Administrator, to notify the stationary source and to provide advice and technical assistance to the source, if the DHS Secretary determines, in consultation with the EPA Administrator, that a report does not comply, a threat exists that is beyond the scope of the plan submitted, or the implementation of the plan is insufficient. [§6(a) and (d)]
Schedule for Review and Approval of Reports by Facilities in Higher-risk Tiers	Within 9 months of the promulgation of requirements for vulnerability assessment and site security and emergency response planning, requires the DHS Secretary to conduct a preliminary review of higher-risk facilities and provide notice and compliance assistance to owners or operators if their assessment or plan may not be approved. Within one year of the promulgation of requirements for assessments and plans, requires the DHS Secretary to (1) review and approve, disapprove, or modify a vulnerability assessment, site security plan, and emergency response plan submitted by a chemical source in a higher-risk tier; and 2) determine whether the chemical source is operating in compliance with the submitted site security plan and emergency response plan. [§4(c)]	Within 2 years of the date on which reports are required to be submitted under §5(c)(2), requires the DHS Secretary to complete review and certification of all reports submitted by high-priority stationary sources. Within 6 months of the date on which reports are required to be submitted under §5(c)(2), requires the DHS Secretary to review reports and certify compliance of the 600 highest priority stationary sources. [§6(c)]

Provision	S. 2145, as reported	S. 2486, as introduced
Certificate of Compliance	Requires the DHS Secretary to issue a certificate of approval for facilities in compliance with the requirements of this Act. [§9(b)(2)]	Requires the DHS Secretary to certify each compliance determination for each "higher priority" source, and to include a checklist indicating the consideration by the source of the use of elements of "design, operation, and maintenance of safe facilities." [§6(b)]
Authority to Issue Orders for Noncompliance	Authorizes the DHS Secretary to issue an order requiring certification and submission, if an owner or operator fails to certify or to submit a vulnerability assessment, site security plan, or emergency response plan. Directs the DHS Secretary to issue an order requiring correction of specified deficiencies if the owner or operator does not achieve compliance by a date to be determined by the DHS Secretary. Authorizes the DHS Secretary to issue an order for a chemical source to cease operation, if the owner or operator continues to be in noncompliance after an order to comply with requirements has been issued. [§4(b)-(c)]	Authorizes the DHS Secretary, in consultation with the EPA Administrator, to issue an order requiring compliance by the owner or operator of a stationary source 30 days after the date on which the DHS Secretary first provided assistance, or the owner or operator received notice regarding a deficient report under §6(d)(2), whichever is later. An order may be issued only after such notice and an opportunity for a hearing. [§10(a)]
Authority to Close Non-compliant Facilities in Higher-Risk Tiers	Authorizes the DHS Secretary to issue an order to a chemical source in a higher risk tier to cease operation, if the DHS Secretary disapproves its vulnerability assessment, site security plan, or emergency response plan or determines that a chemical source is not operating in compliance with its site security plan or emergency response plan. [§4(c)]	No comparable provision, but see "Heightened Security Measures" below.

Provision	S. 2145, as reported	S. 2486, as introduced
Heightened Security Measures	Authorizes the DHS Secretary to issue an order to the owner or operator of a chemical source mandating security measures specified in rules promulgated under §4(a), if the DHS Secretary determines that additional security measures are necessary to respond to a threat. Orders may be effective for up to 90 days, or longer if the DHS Secretary files an action in a U.S. district court and the court authorizes an extension. [§7]	If the DHS Secretary has notified a stationary source that a threat of a terrorist attack exists that is beyond the scope of a submitted prevention, preparedness, and response plan of one or more stationary sources, or that current implementation of the plan is insufficient, and the response by a stationary source to such notification is insufficient, the DHS Secretary is required to notify the stationary source, the EPA Administrator, and the Attorney General. After the DHS Secretary provides such notice, the DHS Secretary or the Attorney General may secure such relief as is necessary to abate a threat, including an order to cease operation and such other orders as are necessary to protect public health or welfare. Provides district courts with the jurisdiction to grant such relief. [§10(c)(2)]
	No comparable provision.	Authorizes [by reference to the CAA §112(r)(9)] judicial relief in the case of an imminent danger to public health. [§9(a)]
Information clearinghouse	No comparable provision.	Requires the DHS Secretary, in consultation with the EPA Administrator, to establish an information clearinghouse to assist stationary sources in complying with this Act that includes "scalable best practices" for IST and other actions. [§13]

Provision	S. 2145, as reported	S. 2486, as introduced
Submissions and Certification of Changes Affecting the Security of a Chemical Source	Requires owners or operators of chemical sources to notify the DHS Secretary in writing within 60 days of any change to a chemical source that would have a "materially detrimental effect" on its security. Requires owners and operators to certify to the Secretary that they have reviewed and implemented necessary modifications to the vulnerability assessment, site security plan, or emergency response plan. Requires the DHS Secretary to provide written notice to the owner or operator if additional modification of a vulnerability assessment, site security plan, or emergency response plan is required. Requires owners or operators to ensure temporary security measures are implemented before the modified vulnerability assessment, site security plan, or emergency response plan is implemented. [§4(d)]	No comparable provision.

Provision	S. 2145, as reported	S. 2486, as introduced
Facilities Regulated under Other Federal Laws	Requires a facility regulated under the Maritime Transportation Security Act (MTSA) to comply with the Chemical Facility Anti-Terrorism Act by modifying and submitting to the Maritime Security Coordinator and the DHS Secretary its facility security assessment and facility security plan. Modifications should ensure compliance with the security performance standards of the tier applicable to the chemical source under the Chemical Facility Anti-Terrorism Act. Requires the DHS Secretary, in consultation with the Federal Maritime Security Coordinator, to determine whether such facility security assessment and plan meet the security performance standards established by the DHS Secretary. Requires the DHS Secretary to implement this Act and the MTSA in "as consistent and integrated manner as possible," and to ensure coordination between the DHS Under Secretary for Preparedness and the Coast Guard Commandant. [§4(e)]	Requires the DHS Secretary, in consultation with the EPA Administrator, to minimize duplication of the requirements for risk assessments and response plans under the MTSA.
	No comparable provision.	Requires the DHS Secretary, in consultation with the EPA Administrator, to minimize duplication of the requirements for risk assessments and response plans under the CAA and other federal law. [§15(a)]

Provision	S. 2145, as reported	S. 2486, as introduced
Alternative Security Programs	Authorizes the DHS Secretary to consider a petition submitted by any person that describes alternate security procedures, protocols, and standards established by an industry entity, government authority, or other law and the scope of chemical sources to which it would apply. Authorizes the DHS Secretary to determine (by rule, regulation, or order) whether the alternative security program meets all promulgated requirements for a vulnerability assessment, security plan, and emergency response plan. If the DHS Secretary determines that all requirements are met, the DHS Secretary is required to notify the petitioner that any chemical source covered by that program may submit an assessment or plan prepared under that program without revision. Authorizes the DHS Secretary to specify (by rule, regulation, or order) what modifications would be necessary to meet promulgated requirements. Allows an owner or operator covered by the program to submit an alternative assessment or plan with the specified modifications. [§4(f)]	No comparable provision.
Updates to Vulnerability Assessments, Site Security Plans, and Emergency Response Plans	Requires the owner or operator of a chemical source to review the adequacy of the vulnerability assessment, site security plan, and emergency response plan on a schedule to be determined by the DHS Secretary, and to certify to the DHS Secretary that the chemical source has completed the review and implemented any needed modifications. For a facility in a higher-risk tier, requires the DHS Secretary to establish a timeline that requires review within one year of the date of approval of the previous vulnerability assessment, site security plan, and emergency response plan, and not less often than every 3 years thereafter. For a facility in any other tier, review must be required at least every 5 years. [§4(g)]	Requires the owner or operator of a high priority stationary source, within 3 years after the date of submission of the first report and every 2 years thereafter, to review the adequacy of the report, certify that the review is complete, and submit to the DHS Secretary any changes to the assessment or plan. [§6(e)]

Provision	S. 2145, as reported	S. 2486, as introduced
Record Keeping, Site Inspections, and Production of Information	Requires the owner or operator to keep a copy of the vulnerability assessment, site security plan, and emergency response plan for 5 years after the date on which it was approved by the DHS Secretary. Authorizes the DHS Secretary to require submission of, or seek access to and copy, any required copy of a vulnerability assessment, site security plan, or emergency response plan or any documentation needed to support such assessment or plan or to demonstrate implementation of such.	Requires the owner or operator to keep at the stationary source copies of any vulnerability assessment, hazard assessment, or prevention, preparedness, and response plan required under §5(c)(2). Provides to the DHS Secretary and EPA Administrator, for purposes of determining compliance with this Act, authority that is provided to the EPA Administrator by the CAA §112(r)(7), §112(r)(9), or §114. Includes authority to require an owner or operator to prepare and submit hazard assessment, risk management plans, or emergency response plans; to establish and maintain records; make reports; submit compliance certifications; or provide information.
	Provides the DHS Secretary with a right of entry to the premises of a chemical source and any other premises on which any required copy of a vulnerability assessment, site security plan, or emergency response plan is located.	Authorizes the DHS Secretary and the EPA Administrator to enter premises and have access to and copy records.
	Requires the DHS Secretary to conduct, or require the conduct of, facility security audits and inspections to ensure and evaluate compliance with the Chemical Facility Anti-Terrorism Act. [§5]	Directs the DHS Secretary and the EPA Administrator to establish a program to conduct regular inspections. Requires at least 25% of inspections to occur without prior notice to the facility owner or operator.
	No comparable provision.	When notice is provided, the DHS Secretary or the EPA Administrator must inform the owner or operator that public posting of that notice is required. When conducting an inspection, an official must instruct the owner or operator to afford opportunity to participate in the inspection to any employee. Official explanations of the purpose, scope, procedures, progress, or outcome of an inspection or investigation must be shared with such employees. Authorizes officials to interview any person at the stationary source as necessary. [§9]

Provision	S. 2145, as reported	S. 2486, as introduced
Audits for Higher-Risk Tiers	Requires DHS Secretary to conduct an audit or inspection of each higher-risk facility annually. Authorizes exemptions for particular facilities if they have been audited and found in compliance for 5 consecutive years. [§5(b)(2)(C)]	No comparable provision.
Compliance Orders for Record Keeping, Inspections, and Production of Information	If the DHS Secretary determines that an owner or operator of a chemical source is not maintaining, producing, or permitting access to records or to the premises of the chemical source as required, authorizes the DHS Secretary to issue an order requiring compliance. [§5(d)]	Authorizes the DHS Secretary, in consultation with the EPA Administrator, to issue an order directing compliance 30 days after the date on which the DHS Secretary provides notice to the source that it is not in compliance. [§10(a)(1)]
Infrastructure Protection and Implementation	Requires the DHS Secretary to provide necessary infrastructure, leadership, technical assistance, guidance, and accountability to ensure effective security planning and response in areas surrounding chemical sources. Requires the DHS Secretary to promulgate regulations, establish organizations, and take actions to ensure effective planning and response in a manner that models requirements of the MTSA. Requires the DHS Secretary to coordinate with and complement other federal area security and response committees to provide a unified and effective federal security and response organizational infrastructure. [§6(a)]	No comparable provision.
Office for Chemical Facility Security	Establishes under the DHS Assistant Secretary for Infrastructure Protection an office responsible for implementing and enforcing the Chemical Facility Anti-Terrorism Act. [§6(b)]	No comparable provision.
General Authority to Regulate	No comparable general provision.	Authorizes the DHS Secretary and the EPA Administrator to promulgate such regulations as are necessary to carry out this Act. [§15]

Provision	S. 2145, as reported	S. 2486, as introduced
Regional Security Offices	Requires the DHS Secretary to establish in each Federal Emergency Management Agency (FEMA) region an Infrastructure Protection Regional Security Office, to carry out this Act and coordinate regional security. Requires each office to consist of DHS personnel in the Infrastructure Protection Office within the region, and regional security advisory staff, to be appointed by the DHS Secretary. Each such office must review and approve each Area Security Plan in the region, oversee implementation of this Act, and perform other functions as assigned by the DHS Secretary. [§6(c)]	No comparable provision.
Area Security Committees and Coordinators	Requires the DHS Secretary, within 6 months of enactment of this Act, to designate geographic areas for area committees and planning. Requires that no area be larger than a single state, and all parts of the United States are to be included in such areas (except areas designated under MTSA, which shall not be included in any newly designated area). Allows areas to incorporate portions of more than one state. Establishes an Area Security Committee and a Coordinator for each designated area. Requires each Coordinator to conduct audits and inspections of, and provide guidance and support to, chemical sources in the area. [§6(d)]	No comparable provision.

Provision	S. 2145, as reported	S. 2486, as introduced
Area Security Plans	Requires each Area Security Committee, within 2 years of the date of enactment, to prepare and submit to the DHS Secretary an Area Security Plan for the area. Requires that plans coordinate resources, and coordinate with the National Infrastructure Protection Plan, National Response Plan, site security plans of chemical sources in the area, other national security and response plans, and Area Security Plans for contiguous areas. Requires the DHS Secretary to review and approve or require amendments to each Area Security Plan within 24 months of the date of enactment of this Act. [§6(d)]	No comparable provision.
Exercises and Drills	Requires the DHS Secretary to periodically conduct drills and exercises of security and response capability in each area for which an Area Security Plan is required, and under the site security plan and emergency response plans of relevant chemical sources. Requires the DHS Secretary to publish annual reports on drills, including assessments of the effectiveness of plans. [§6(e)]	Requires the DHS Secretary and the EPA Administrator, in consultation with other federal agencies and state and local government officials, to promulgate regulations requiring high-priority stationary sources to participate in emergency preparedness exercises. Requires exercises to be structured based on the threat posed to the public by a criminal release at a stationary source. [§12]

Provision	S. 2145, as reported	S. 2486, as introduced
Employees' Safety and Security Committees	No comparable provision.	Within 6 months of promulgation of regulations under §5(a), requires the owner or operator of a stationary source with at least 15 employees to establish a safety and security committee of employees, including both non-managerial and managerial employees, which must meet at least monthly to identify, discuss, and make recommendations to the owner or operator concerning potential hazards and risks relevant to security, safety, health, and the environment. An existing health and safety committee may be designated to serve as the safety and security committee. Such committee shall participate in the development, review, and revision of the vulnerability assessment, hazard assessment, and prevention, preparedness, and response plan. [§7]
Employee Training	No comparable provision.	Requires the owner or operator of a stationary source to annually provide each employee with 4 hours of training — (1) regarding the requirements of the Chemical Security and Safety Act; (2) identifying and discussing substances of concern; (3) discussing the prevention, preparedness, and response plan for the stationary source; (4) identifying opportunities to reduce or eliminate the vulnerability of a stationary source to a criminal release through the use of the elements of "design, operation, and maintenance of safe facilities;" and (5) discussing appropriate emergency response procedures. [§8]

Provision	S. 2145, as reported	S. 2486, as introduced
Penalties for Non-Compliance		
Administrative	Authorizes administrative penalties of not more than $25,000 per day and not more than $1,000,000 per year, for failure to comply with an order or directive issued by the DHS Secretary, but only after the DHS Secretary has provided written notice of the proposed penalty and 30 days, during which the owner or operator may request a hearing.	Similar, but authorizes administrative penalty orders of not more than $50,000 per day and not more than $2,000,000 per year, for failure to comply with an order or directive issued by the DHS Secretary under §10(a).
Civil	Authorizes the DHS Secretary to bring an action in a U.S. district court against any owner or operator of a chemical source that violates or fails to comply with any order or directive issued by the DHS Secretary or with a site security plan approved by the DHS Secretary. Authorizes the court to issue an order for injunctive relief and to award a civil penalty of not more than $50,000 per day.	Authorizes a U.S. district court to issue civil penalties to owners or operators of facilities in high priority categories of up to $50,000 per day for violation or failure to comply with any compliance order issued under §10(a).
Criminal	Authorizes a fine of up to $50,000 per day and/or imprisonment for up to 2 years for an owner or operator of a chemical source who knowingly and willfully violates any order issued by the DHS Secretary or fails to comply with an approved site security plan. [§8]	Authorizes a fine of between $5,000 and $50,000 per day and/or imprisonment for up to 2 years, the first time that an owner or operator of a facility in a high priority category knowingly violates or fails to comply with a compliance order under §10(a). For subsequent violations or failures, authorizes fines not less than $10,000 nor more than $50,000 per day and/or imprisonment for up to 4 years. [§10(b)]
Exemption from Federal Freedom of Information Act (FOIA)	Exempts DHS from public disclosure requirements of the federal Freedom of Information Act (FOIA; 5 U.S. C. §552) for "protected information." [§9(a)(1)]	Exempts DHS from public disclosure requirements of FOIA for "all documents provided to the DHS Secretary under this Act, and all information that describes a specific vulnerability or stationary source derived from those documents," except for certifications under §6(b), orders under §10(a), and best practices established under §13(4). [§11(a)]

Provision	S. 2145, as reported	S. 2486, as introduced
Exemption from Federal Freedom of Information Act (FOIA) (cont.)	Prohibits disclosure under FOIA of (1) self-certifications by owners or operators under §4(b) that a vulnerability assessment has been completed, and a site security plan and an emergency response plan have been developed and implemented; (2) DHS orders under §4(b)(3) requiring certification and submission, if an owner or operator fails to certify or to submit such documents; (3) DHS compliance certificates for individual facilities under §9(b)(2); and (4) the identity of any chemical source and its owner or operator for which any other order or any approval or disapproval is issued under this Act, including information identifying the applicable order, approval, or disapproval.	No comparable provision.
	Authorizes the DHS Secretary to release to the public a certification under §4(b)(1) or §9(b)(2), if the DHS Secretary finds that security risk would not be increased for a facility if the record were released. [§9(b)(1)]	Allows public disclosure of information derived from information described in §11(a) if it would not divulge trade secrets, identify any particular stationary source, and "is not reasonably likely to increase the probability or consequences of a criminal release." [§11(d)]
Protection of Information by Other Federal Agencies	Exempts other federal agencies from disclosure requirements of FOIA for "protected information." [§9(a)(2)]	No comparable provision.
Protection of Information by State or Local Government Agencies	Exempts state and local government agencies from disclosure requirements of state and local laws for "protected information."[§9(a)(3)]	Exempts state and local government agencies from disclosure requirements of all federal, state, and local laws for "any documents provided by a stationary source under this Act, or any information that describes a specific vulnerability or stationary source derived from those documents," except for certifications under §6(b), orders under §10(a), and best practices established under §13(4). [§11(b)]

Provision	S. 2145, as reported	S. 2486, as introduced
Report to Congress	Requires the DHS Secretary to submit to Congress a public report on the performance of chemical sources (as a group) under the Act. [§9(b)(3)]	No comparable provision.
Development of Information Protection Protocols	Requires the DHS Secretary, in consultation with the Director of the Office of Management and Budget and appropriate federal law enforcement and intelligence officials, in a manner consistent with existing protections for sensitive or classified information, to develop confidentiality protocols for maintaining and using records containing "protected information."	Requires the DHS Secretary to develop within one year of the date of enactment of this Act protocols to protect information described in §11(a) from unauthorized disclosure. Requires protocols to be in effect before the date on which the EPA Administrator receives any report under this Act. [§11(c)]
	Requires protocols to ensure, to the maximum extent practicable, that information protected from public disclosure laws shall be maintained in a secure location and access shall be limited to persons granted access for the purpose of carrying out the Chemical Facility Anti-Terrorism Act. [§9(c)]	No comparable provision.
Process for Reporting Problems	Requires the DHS Secretary to establish a process by which any person may submit a report to the DHS Secretary regarding problems, deficiencies, or vulnerabilities at a chemical source. Requires the DHS Secretary to provide guidance to employees as to how to make such disclosures without compromising security.	Requires the DHS Secretary to establish and publicize information regarding mechanisms through which any person may report an alleged violation of this Act or a threat to the health or safety of the public. [§14]
	Directs Government Accountability Office (GAO) to report on the problems, deficiencies, or vulnerabilities reported and on the DHS Secretary's response to such information. Prohibits GAO from releasing protected information to the public unless the Secretary has released information under §9(b)(1). [§9(d), (k)]	No comparable provision.

Provision	S. 2145, as reported	S. 2486, as introduced
Whistle-blower Protection	Prohibits employers from discriminating against a person who submits a report to the DHS Secretary. Requires information disclosure protocols to accommodate protections for disclosures that are not prohibited by law and are generally permitted for federal employees who believe the information is evidence of a violation of law, "gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety" [5 U.S.C. §2302(b)(8) and §7211].	Prohibits employers from discriminating against a person who: (1) notifies the employer, DHS, or any other appropriate government agency of an alleged violation of this Act or of a threat to the health or safety of the public relating to chemical security or the improper release of any harmful chemical; (2) refuses to engage in unlawful activity; (3) testifies before Congress or at any relevant federal or state proceeding; (4) commences a proceeding for administration or enforcement of this Act; (5) testifies in any such proceeding; or (6) assists in a proceeding or in any other action to carry out the purposes of this Act.
	Directs the DHS Secretary to keep the identity of a person who submits such a report confidential. [§9(d)]	No comparable provision.
	No comparable provision.	Authorizes an employee to file a complaint with the Secretary of Labor alleging discrimination in violation of this provision. Requires the Secretary of Labor to complete an investigation of the alleged violation and notify the complainant of the results within 30 days from the date on which the complaint was received. Within 90 days of receiving the complaint, the Secretary of Labor must issue an order providing relief or denying the complaint "on the record" after notice and opportunity for public hearing. Provides instructions regarding the basis for decisions by the Secretary of Labor. Authorizes a complainant to bring an action at law or equity for *de novo* review of a complaint in a district court, if the Secretary of Labor has not issued a final decision within one year after the date on which a complaint was filed. Any person adversely affected by an order may obtain review in a U.S. court of appeals. [§14]

Provision	S. 2145, as reported	S. 2486, as introduced
Whistle-blower Protection (cont'd)	No comparable provision.	Authorizes the Secretary of Labor to file a civil action in U.S. district court if a person has failed to comply with an order. Also authorizes any person on whose behalf the order was issued to commence a civil action against the person to whom the order was issued. Authorizes enforcement in a mandamus proceeding for any non-discretionary duty imposed by §14. [§14]
Protection of Disclosure Rights and Obligations	Protects the right to make certain disclosures under current law or to a Special Counsel, inspector general, or other employees who might be designated by an agency head. Also protects the right or obligation of a chemical source, a non-governmental organization, or an individual to disclose records or copies of records in their possession. [§9(e)-(h)]	No comparable provision.
Penalties for Unauthorized Disclosure	Requires that any officer or employee of a federal, state, or local government agency who knowingly discloses any record protected from disclosure be imprisoned for up to 1 year, fined, or both, and removed from federal office or employment. [§9(j)]	No comparable provision.
State and Other Laws	Protects the right of states and political subdivisions to adopt or enforce requirements more stringent than requirements in effect under the Chemical Facility Anti-Terrorism Act, unless there is an actual conflict between a provision of this Act and the law of a state. [§10]	The Chemical Security and Safety Act does not affect any duty or other requirement imposed under any other federal, state, or local law or any collective bargaining agreement. [§16]

Provision	S. 2145, as reported	S. 2486, as introduced
National Strategy for Chemical Security	Directs the DHS Secretary, within 6 months of the date of enactment, to submit to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Energy and Commerce an update of the national strategy for the chemical sector that was required to be submitted by February 10, 2006 to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives. [§11]	No comparable provision.
GAO Review	Directs the DHS Secretary to provide access by the GAO to any document or information required to be submitted to, generated by, or otherwise in the possession of DHS under this Act. [§12]	No comparable provision.
GAO Reports	Requires GAO to provide annually to the Senate Committee on Homeland Security and Governmental Affairs and the House Committee on Energy and Commerce a review of site security plans, vulnerability assessments, and emergency response plans under the Act and a determination of whether such plans and assessments are in compliance. [§12]	No comparable provision.

Provision	S. 2145, as reported	S. 2486, as introduced
Judicial Review	Permits any person to file a petition with the U.S. Court of Appeals for the District of Columbia for judicial review of a rule within 60 days of promulgation. Directs the court to review rules in accordance with the Administrative Procedure Act (5 U.S.C. §701 et seq.). Allows only an owner or operator whose facility is affected by a final agency action to file a petition for judicial review of the action with an appropriate U.S. district court. Only the owner or operator and the Secretary could participate in such civil actions. Expressly prohibits any private civil actions against an owner or operator to enforce provisions of the Act. [§13]	No comparable provisions.
Ammonium Nitrate	Directs the DHS Secretary, in consultation with the Secretary of Agriculture, to regulate the production and sale of ammonium nitrate to prevent misappropriation or use in violation of law. Requires registration of facilities and purchasers. Restricts sales to registered producers, sellers, and purchasers. Requires sales records to be maintained. Registration information is to be treated as protected information. Authorizes the DHS Secretary to establish a process for auditing handler records to determine compliance. Authorizes penalties for violations and compliance failures. Gives federal district courts jurisdiction over any action for civil damages against a handler for any harm or damage alleged to have resulted from use of ammonium nitrate in violation of law. [§14]	No comparable provisions.
Authorization of Appropriations	Authorizes such sums as are necessary to carry out the Act. [§15]	Similar, but funds remain available until expended. [§17]