



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

July 9, 2009

### **H.R. 2868** **Chemical Facility Anti-Terrorism Act of 2009**

*As ordered reported by the House Committee on Homeland Security on June 23, 2009*

#### **SUMMARY**

H.R. 2868 would authorize the appropriation of \$900 million over the 2011-2013 period for the Department of Homeland Security (DHS) to regulate the security of facilities across the United States where certain types of chemicals are present. The bill would authorize a chemical security office within DHS to carry out the provisions of this legislation, including conducting audits and inspections of the nation's chemical facilities. In addition, because the bill's requirements would be permanent, CBO estimates that DHS would need funding of \$283 million for fiscal year 2014 to continue to carry out those activities.

Assuming appropriation of the necessary amounts, we estimate that implementing H.R. 2868 would cost about \$1.1 billion over the 2011-2014 period. In addition, enacting the bill could affect revenues, but we estimate that any such effects would not be significant.

H.R. 2868 would extend intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), and impose new mandates on employers and on owners and operators of public and private facilities where certain chemicals are present. The bill also would preempt state and local laws. Because the cost of some of the mandates would depend on future regulatory actions, CBO cannot determine whether the aggregate costs of complying with the mandates would exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$69 million and \$139 million, respectively, in 2009, adjusted annually for inflation).

#### **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

The estimated budgetary impact of H.R. 2868 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	2010	2011	2012	2013	2014	2010-2014
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>a</sup></b>						
Estimated Authorization Level <sup>b</sup>	0	325	300	275	283	1,183
Estimated Outlays	0	260	305	280	282	1,127

a. Enacting H.R. 2868 could affect revenues, but CBO estimates that any such effect would not be significant in any year.

b. The authorization levels for 2011 through 2013 are specified by H.R. 2868; CBO estimated the 2014 level.

## BASIS OF ESTIMATE

CBO estimates that implementing H.R. 2868 would cost about \$1.1 billion over the 2011-2014 period, assuming appropriation of the necessary funds. Enacting the bill could affect revenues, but we estimate that any effects would be insignificant.

### Spending Subject to Appropriation

For this estimate, CBO assumes that the necessary amounts will be appropriated for each fiscal year and that spending will follow the historical spending patterns for those or similar activities.

The Department of Homeland Security Appropriation Act, 2007 (Public Law 109-295) authorized DHS to regulate chemical facilities, but that authority expires later this year.

H.R. 2869 would authorize the appropriation of \$900 million over the 2011-2013 period for DHS to continue regulating the security of chemical facilities in the United States. In addition, because the bill's provisions would be permanent, CBO estimates that implementing the bill would require funding of \$283 million in 2014 for DHS to continue to carry out the bill's activities. We estimated the 2014 level by adjusting the 2013 level for anticipated inflation.

### Revenues

Enacting H.R. 2868 could affect revenues because the bill would establish civil and administrative penalties against owners and operators of chemical facilities that fail to comply with the bill's requirements. Civil and administrative fines are recorded as revenues and deposited in the Treasury. CBO expects that any additional revenues would not be significant because of the small number of cases likely to be affected.

## **INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT**

H.R. 2868 would extend intergovernmental and private-sector mandates, as defined in UMRA, and impose new mandates on employers and on owners and operators of public and private facilities where certain chemicals are present. The bill also would preempt state and local laws. Because the cost of some of the mandates would depend on future regulatory actions, CBO cannot determine whether the aggregate costs of complying with the mandates would exceed the annual thresholds established in UMRA for intergovernmental or private-sector mandates (\$69 million and \$139 million, respectively, in 2009, adjusted annually for inflation).

### **Extension of Mandates on Chemical Facilities**

The bill would extend and make permanent mandates contained in section 550 of Public Law 109-295, the Chemical Facility Anti-Terrorism Standards (CFATS), that are set to expire in October 2009. Those mandates require owners and operators of public and private facilities where certain chemicals are present to assess the vulnerability of their facilities to a terrorist incident and to prepare and implement security plans. The bill also would extend mandates that require owners and operators of such facilities to maintain records, periodically submit reviews of the adequacy of the vulnerability assessments or security plans, and allow DHS access to their property for security inspections and verifications. In addition, owners and operators would have to continue to conduct background checks on employees with access to restricted areas and provide training to employees. Information from DHS and industry sources indicates that those facilities are currently in compliance with CFATS regulations, and CBO estimates that the cost of continuing to comply with those regulations would be small relative to the annual thresholds established in UMRA.

### **Expansion of Mandates to Drinking Water and Wastewater Facilities**

The bill would require drinking water and wastewater facilities, entities that are currently exempt from the CFATS regulations, to comply with those requirements. According to government and industry representatives, many of the facilities potentially affected by the bill's provisions are currently engaged in activities similar to those that would be required under H.R. 2868. Such facilities are acting either in response to the terrorist attacks of September 11, 2001, as a condition of membership in chemical industry associations, or in accordance with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the Maritime Transportation Security Act, or other federal regulations.

The bill also would require public and private drinking water and wastewater facilities to complete an initial assessment of their chemical holdings. CBO has no basis for estimating how many public water facilities currently use the chemicals affected by those

requirements or the number of those facilities that would be required to complete vulnerability assessments and security plans. Therefore, CBO cannot determine whether the costs to public entities of complying with the mandates would exceed the intergovernmental threshold established in UMRA. Because there are few private water facilities and they tend to be small, CBO expects that the compliance cost for those entities would be small relative to UMRA's annual threshold for private-sector mandates.

### **New Mandates on Chemical Facilities**

H.R. 2868 also would impose new mandates, as defined in UMRA, on owners and operators of chemical facilities.

**Mandates on High-Risk Facilities.** The bill would require owners and operators of public and private high-risk facilities, as determined by the Secretary of DHS, to conduct a specific assessment of plans and procedures to reduce the consequences of a terrorist attack. If the Secretary determines that specific methods are necessary for a facility to reduce the consequences of a terrorist attack, owners or operators would be required to implement such methods. The bill also would require DHS to make funds available to help defray some of the cost of implementing those methods. Because the facilities that would be affected and the types of methods to be required depend on future regulatory actions, CBO cannot estimate the cost of this mandate.

The bill also would impose a new mandate on the owners and operators of those facilities by requiring them to allow the Secretary to conduct unannounced inspections. Based on information from industry sources, CBO expects that the cost to comply with this mandate would be minimal.

**Whistleblower Protections.** H.R. 2868 would prohibit an owner or operator of a chemical facility or other employer from discharging or otherwise discriminating against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee reported an alleged violation of security practices. The prohibition also would apply if the employee engages in other activities, including testifying or providing relevant information in a governmental proceeding. Based on information from industry sources, CBO estimates that public and private entities would incur minimal costs, if any, to comply with such protections for their employees.

### **Other Intergovernmental Mandates**

The bill would exempt some security plans and documents from state and local laws that provide public access to information and preempt any state or local regulation that would conflict with the security activities authorized by the bill. CBO estimates that the costs, if any, of those preemptions would be small.

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