

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 4007
OFFERED BY MS. CLARKE OF NY**

Page 13, after line 4, insert the following (and renumber the subsequent sections and revise the table of contents amendment accordingly):

1 **“SEC. 2104. WHISTLEBLOWER PROTECTIONS.**

2 ~~(c) ESTABLISHMENT. The Secretary shall establish~~
3 ~~lish a process by which any person may provide informa-~~
4 ~~tion to the Secretary to assist in the identification of a~~
5 ~~facility of interest or, in the case of a covered chemical~~
6 ~~facility, information regarding problems, deficiencies, or~~
7 ~~vulnerabilities at a covered chemical facility associated~~
8 ~~with the risk of a chemical facility terrorist incident. The~~
9 Secretary shall publish on the Internet website of the De-
10 partment and in other materials made available to the
11 public the whistleblower protections that an individual
12 providing such information would have.

13 ~~(d) CONFIDENTIALITY. The Secretary shall keep~~
14 ~~confidential the identity of a person who submits a report~~
15 ~~under subsection (a), and any such report shall be treated~~
16 ~~as protected information under section 3 of this Act to~~

1 the extent that it does not consist of publicly available in-
2 formation.

3 “(c) ACKNOWLEDGMENT OF RECEIPT.—If a report
4 submitted under subsection (a) identifies the person sub-
5 mitting the report, the Secretary shall respond promptly
6 to such person to acknowledge receipt of the report.

7 “(d) STEPS TO ADDRESS PROBLEMS.—The Sec-
8 retary shall review and consider the information provided
9 in any report submitted under subsection (a) and shall,
10 as necessary, take appropriate steps under this title to ad-
11 dress any problem, deficiency, or vulnerability identified
12 in the report.

13 “(e) RETALIATION PROHIBITED.—

14 “(1) PROHIBITION.—No owner or operator of a
15 covered chemical facility, for-profit or not-for-profit
16 corporation, association, or any contractor, subcon-
17 tractor or agent thereof, may discharge any em-
18 ployee or otherwise discriminate against any em-
19 ployee with respect to the employee’s compensation,
20 terms, conditions, or other privileges of employment
21 because the employee (or any person acting pursu-
22 ant to a request of the employee)—

23 “(A) notified the Secretary, the owner or
24 operator of a covered chemical facility, or the
25 employee’s employer of an alleged violation of

1 this title, including notification of such an al-
2 leged violation through communications related
3 to carrying out the employee's job duties;

4 “(B) refused to participate in any conduct
5 that the employee reasonably believes is in non-
6 compliance with a requirement of this title, if
7 the employee has identified the alleged non-
8 compliance to the employer;

9 “(C) testified before or otherwise provided
10 information relevant for Congress or for any
11 Federal or State proceeding regarding any pro-
12 vision (or proposed provision) of this title;

13 “(D) commenced, caused to be commenced,
14 or is about to commence or cause to be com-
15 menced a proceeding under this title;

16 “(E) testified or is about to testify in any
17 such proceeding; or

18 “(F) assisted or participated or is about to
19 assist or participate in any manner in such a
20 proceeding or in any other manner in such a
21 proceeding or in any other action to carry out
22 the purposes of this title.

23 “(2) ENFORCEMENT ACTION.—Any employee
24 covered by this section who alleges discrimination by
25 an employer in violation of paragraph (1) may bring

1 an action governed by the rules and procedures,
2 legal burdens of proof, and remedies applicable
3 under subsections (d) through (h) of section 20109
4 of title 49, United States Code. A party may seek
5 district court review as set forth in subsection (d)(3)
6 of such section not later than 90 days after receiving
7 a written final determination by the Secretary of
8 Labor.

9 “(3) PROHIBITED PERSONNEL PRACTICES AF-
10 FECTING THE DEPARTMENT.—

11 “(A) IN GENERAL.—Notwithstanding any
12 other provision of law, any individual holding or
13 applying for a position within the Department
14 shall be covered by—

15 “(i) paragraphs (1), (8), and (9) of
16 section 2302(b) of title 5, United States
17 Code;

18 “(ii) any provision of law imple-
19 menting any of such paragraphs by pro-
20 viding any right or remedy available to an
21 employee or applicant for employment in
22 the civil service; and

23 “(iii) any rule or regulation prescribed
24 under any such paragraph.

1 “(B) RULE OF CONSTRUCTION.—Nothing
2 in this paragraph shall be construed to affect
3 any rights, apart from those referred to in sub-
4 paragraph (A), to which an individual described
5 in that subparagraph might otherwise be enti-
6 tled to under law.”.

