

1 Department of Homeland Security Appropriations
2 Act, 2007 (Public Law 109–295) to regulate the se-
3 curity practices at chemical facilities that are at sig-
4 nificant risk of being terrorist targets.

5 (4) The Secretary of Homeland Security issued
6 interim final regulations called the Chemical Facility
7 Anti-Terrorism Standards, which became effective
8 on June 8, 2007.

9 (b) PURPOSE.—The purpose of this Act is to modify
10 and make permanent the authority of the Secretary of
11 Homeland Security to regulate security practices at chem-
12 ical facilities.

13 **SEC. 3. EXTENSION, MODIFICATION, AND RECODIFICATION**
14 **OF AUTHORITY OF SECRETARY OF HOME-**
15 **LAND SECURITY TO REGULATE SECURITY**
16 **PRACTICES AT CHEMICAL FACILITIES.**

17 (a) IN GENERAL.—The Homeland Security Act of
18 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
19 end the following new title:

20 **“TITLE XXI—REGULATION OF SE-**
21 **CURITY PRACTICES AT CHEM-**
22 **ICAL FACILITIES**

23 **“SEC. 2101. DEFINITIONS.**

24 “In this title, the following definitions apply:

1 “(1) The term ‘chemical facility’ means any fa-
2 cility—

3 “(A) at which the owner or operator of the
4 facility possesses or plans to possess at any rel-
5 evant point in time a substance of concern; or

6 “(B) that meets other risk-related criteria
7 identified by the Secretary.

8 “(2) The term ‘chemical facility security per-
9 formance standards’ means risk-based standards es-
10 tablished by the Secretary to ensure or enhance the
11 security of a chemical facility against a chemical fa-
12 cility terrorist incident that are designed to address
13 the following:

14 “(A) Restricting the area perimeter.

15 “(B) Securing site assets.

16 “(C) Screening and controlling access to
17 the facility and to restricted areas within the
18 facility by screening or inspecting individuals
19 and vehicles as they enter, including—

20 “(i) measures to deter the unauthor-
21 ized introduction of dangerous substances
22 and devices that may facilitate a chemical
23 facility terrorist incident or actions having
24 serious negative consequences for the pop-

1 ulation surrounding the chemical facility;
2 and

3 “(ii) measures implementing a regu-
4 larly updated identification system that
5 checks the identification of chemical facil-
6 ity personnel and other persons seeking ac-
7 cess to the chemical facility and that dis-
8 courages abuse through established dis-
9 ciplinary measures.

10 “(D) Methods to deter, detect, and delay a
11 chemical facility terrorist incident, creating suf-
12 ficient time between detection of a chemical fa-
13 cility terrorist incident and the point at which
14 the chemical facility terrorist incident becomes
15 successful, including measures to—

16 “(i) deter vehicles from penetrating
17 the chemical facility perimeter, gaining un-
18 authorized access to restricted areas, or
19 otherwise presenting a hazard to poten-
20 tially critical targets;

21 “(ii) deter chemical facility terrorist
22 incidents through visible, professional, well-
23 maintained security measures and systems,
24 including security personnel, detection sys-

1 tems, barriers and barricades, and hard-
2 ened or reduced value targets;

3 “(iii) detect chemical facility terrorist
4 incidents at early stages through counter
5 surveillance, frustration of opportunity to
6 observe potential targets, surveillance and
7 sensing systems, and barriers and barri-
8 cades; and

9 “(iv) delay a chemical facility terrorist
10 incident for a sufficient period of time so
11 as to allow appropriate response through
12 on-site security response, barriers and bar-
13 ricades, hardened targets, and well-coordi-
14 nated response planning.

15 “(E) Securing and monitoring the ship-
16 ping, receipt, and storage of a substance of con-
17 cern for the chemical facility.

18 “(F) Deterring theft or diversion of a sub-
19 stance of concern.

20 “(G) Deterring insider sabotage.

21 “(H) Deterring cyber sabotage, including
22 by preventing unauthorized onsite or remote ac-
23 cess to critical process controls, including super-
24 visory control and data acquisition systems, dis-
25 tributed control systems, process control sys-

1 tems, industrial control systems, critical busi-
2 ness systems, and other sensitive computerized
3 systems.

4 “(I) Developing and exercising an internal
5 emergency plan for owners, operators, and cov-
6 ered individuals of a covered chemical facility
7 for responding to chemical facility terrorist inci-
8 dents at the facility. Any such plan shall in-
9 clude the provision of appropriate information
10 to any local emergency planning committee,
11 local law enforcement officials, and emergency
12 response providers to ensure an effective, collec-
13 tive response to terrorist incidents.

14 “(J) Maintaining effective monitoring,
15 communications, and warning systems, includ-
16 ing—

17 “(i) measures designed to ensure that
18 security systems and equipment are in
19 good working order and inspected, tested,
20 calibrated, and otherwise maintained;

21 “(ii) measures designed to regularly
22 test security systems, note deficiencies,
23 correct for detected deficiencies, and record
24 results so that they are available for in-
25 spection by the Department; and

1 “(iii) measures to allow the chemical
2 facility to promptly identify and respond to
3 security system and equipment failures or
4 malfunctions.

5 “(K) Ensuring mandatory annual security
6 training, exercises, and drills of chemical facil-
7 ity personnel appropriate to their roles, respon-
8 sibilities, and access to chemicals, including
9 participation by local law enforcement, local
10 emergency response providers, appropriate su-
11 pervisory and non-supervisory facility employees
12 and their employee representatives, if any.

13 “(L) Performing personnel surety for indi-
14 viduals with access to restricted areas or critical
15 assets by conducting appropriate background
16 checks and ensuring appropriate credentials for
17 unescorted visitors and chemical facility per-
18 sonnel, including permanent and part-time per-
19 sonnel, temporary personnel, and contract per-
20 sonnel, including—

21 “(i) measures designed to verify and
22 validate identity;

23 “(ii) measures designed to check
24 criminal history;

1 “(iii) measures designed to verify and
2 validate legal authorization to work; and

3 “(iv) measures designed to identify
4 people with terrorist ties.

5 “(M) Escalating the level of protective
6 measures for periods of elevated threat.

7 “(N) Specific threats, vulnerabilities, or
8 risks identified by the Secretary for that chem-
9 ical facility.

10 “(O) Reporting of significant security inci-
11 dents to the Department and to appropriate
12 local law enforcement officials.

13 “(P) Identifying, investigating, reporting,
14 and maintaining records of significant security
15 incidents and suspicious activities in or near the
16 site.

17 “(Q) Establishing one or more officials and
18 an organization responsible for—

19 “(i) security;

20 “(ii) compliance with the standards
21 under this paragraph;

22 “(iii) serving as the point of contact
23 for incident management purposes with
24 Federal, State, local, and tribal agencies,

1 law enforcement, and emergency response
2 providers; and

3 “(iv) coordination with Federal, State,
4 local, and tribal agencies, law enforcement,
5 and emergency response providers regard-
6 ing plans and security measures for the
7 collective response to a chemical facility
8 terrorist incident.

9 “(R) Maintaining appropriate records re-
10 lating to the security of the facility, including a
11 copy of the most recent security vulnerability
12 assessment and site security plan at the chem-
13 ical facility.

14 “(S) Assessing and, as appropriate, uti-
15 lizing methods to reduce the consequences of a
16 terrorist attack.

17 “(T) Methods to recover or mitigate the
18 release of a substance of concern in the event
19 of a chemical facility terrorist incident.

20 “(U) Any additional security performance
21 standards the Secretary may specify.

22 “(3) The term ‘chemical facility terrorist inci-
23 dent’ means any act or attempted act of terrorism
24 or terrorist activity committed at, near, or against a
25 chemical facility, including—

1 “(A) the release of a substance of concern
2 from a chemical facility;

3 “(B) the theft, misappropriation, or misuse
4 of a substance of concern from a chemical facil-
5 ity; or

6 “(C) the sabotage of a chemical facility or
7 a substance of concern at a chemical facility.

8 “(4) The term ‘employee representative’ means
9 the representative of the certified or recognized bar-
10 gaining agent engaged in a collective bargaining re-
11 lationship with a private or public owner or operator
12 of a chemical facility.

13 “(5) The term ‘covered individual’ means a per-
14 manent, temporary, full-time, or part-time employee
15 of a covered chemical facility or an employee of an
16 entity with which the covered chemical facility has
17 entered into a contract who is performing respon-
18 sibilities at the facility pursuant to the contract.

19 “(6) The term ‘covered chemical facility’ means
20 a chemical facility that meets the criteria of section
21 2102(b)(1).

22 “(7) The term ‘environment’ means—

23 “(A) the navigable waters, the waters of
24 the contiguous zone, and the ocean waters of
25 which the natural resources are under the ex-

1 exclusive management authority of the United
2 States under the Magnuson-Stevens Fishery
3 Conservation and Management Act (16 U.S.C.
4 1801 et seq.); and

5 “(B) any other surface water, ground
6 water, drinking water supply, land surface or
7 subsurface strata, or ambient air within the
8 United States or under the jurisdiction of the
9 United States.

10 “(8) The term ‘owner or operator’ with respect
11 to a facility means any of the following:

12 “(A) The person who owns the facility.

13 “(B) The person who has responsibility for
14 daily operation of the facility.

15 “(C) The person who leases the facility.

16 “(9) The term ‘person’ means an individual,
17 trust, firm, joint stock company, corporation (includ-
18 ing a government corporation), partnership, associa-
19 tion, State, municipality, commission, political sub-
20 division of a State, or any interstate body and shall
21 include each department, agency, and instrumen-
22 tality of the United States.

23 “(10) The term ‘release’ means any spilling,
24 leaking, pumping, pouring, emitting, emptying, dis-
25 charging, injecting, escaping, leaching, dumping, or

1 disposing into the environment (including the aban-
2 donment or discarding of barrels, containers, and
3 other closed receptacles containing any hazardous
4 substance or pollutant or contaminant).

5 “(11) The term ‘substance of concern’ means a
6 chemical substance in quantity and form that is so
7 designated by the Secretary under section 2102(a).

8 “(12) The term ‘method to reduce the con-
9 sequences of a terrorist attack’ means a measure
10 used at a chemical facility that reduces or eliminates
11 the potential consequences of a chemical facility ter-
12 rorist incident, including—

13 “(A) the elimination or reduction in the
14 amount of a substance of concern possessed or
15 planned to be possessed by an owner or oper-
16 ator of a covered chemical facility through the
17 use of alternate substances, formulations, or
18 processes;

19 “(B) the modification of pressures, tem-
20 peratures, or concentrations of a substance of
21 concern; and

22 “(C) the reduction or elimination of onsite
23 handling of a substance of concern through im-
24 provement of inventory control or chemical use
25 efficiency.

1 **“SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF**
2 **CHEMICAL FACILITIES.**

3 “(a) SUBSTANCES OF CONCERN.—

4 “(1) DESIGNATION BY THE SECRETARY.—The
5 Secretary may designate any chemical substance as
6 a substance of concern and establish the threshold
7 quantity for each such substance of concern.

8 “(2) MATTERS FOR CONSIDERATION.—In desig-
9 nating a chemical substance or establishing or ad-
10 justing the threshold quantity for a chemical sub-
11 stance under paragraph (1), the Secretary shall con-
12 sider the potential extent of death, injury, and seri-
13 ous adverse effects to human health, the environ-
14 ment, critical infrastructure, public health, homeland
15 security, national security, and the national economy
16 that could result from a chemical facility terrorist
17 incident.

18 “(b) LIST OF COVERED CHEMICAL FACILITIES.—

19 “(1) CRITERIA FOR LIST OF FACILITIES.—The
20 Secretary shall maintain a list of covered chemical
21 facilities that the Secretary determines are of suffi-
22 cient security risk for inclusion on the list based on
23 the following criteria:

24 “(A) The potential threat or likelihood that
25 the chemical facility will be the target of a
26 chemical facility terrorist incident.

1 “(B) The potential extent and likelihood of
2 death, injury, or serious adverse effects to
3 human health, the environment, critical infra-
4 structure, public health, homeland security, na-
5 tional security, and the national economy that
6 could result from a chemical facility terrorist
7 incident.

8 “(C) The proximity of the chemical facility
9 to large population centers.

10 “(2) SUBMISSION OF INFORMATION.—The Sec-
11 retary may require the submission of information
12 with respect to the quantities of substances of con-
13 cern that an owner or operator of a chemical facility
14 possesses or plans to possess in order to determine
15 whether to designate a chemical facility as a covered
16 chemical facility for purposes of this title.

17 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO
18 RISK-BASED TIERS.—

19 “(1) ASSIGNMENT.—The Secretary shall assign
20 each covered chemical facility to one of four risk-
21 based tiers established by the Secretary, with tier
22 one representing the highest degree of risk and tier
23 four the lowest degree of risk.

24 “(2) PROVISION OF INFORMATION.—The Sec-
25 retary may request, and the owner or operator of a

1 covered chemical facility shall provide, any additional
2 information beyond any information required to be
3 submitted under subsection (b)(2) that may be nec-
4 essary for the Secretary to assign the chemical facil-
5 ity to the appropriate tier under paragraph (1).

6 “(3) NOTIFICATION.—Not later than 60 days
7 after the date on which the Secretary determines
8 that a chemical facility is a covered chemical facility
9 or is no longer a covered chemical facility or changes
10 the tier assignment under paragraph (1) of a cov-
11 ered chemical facility, the Secretary shall notify the
12 owner or operator of that chemical facility of that
13 determination or change together with the reason for
14 the determination or change and, upon the request
15 of the owner or operator of a covered chemical facil-
16 ity, provide to the owner or operator of the covered
17 chemical facility the following information:

18 “(A) The number of individuals at risk of
19 death, injury, or severe adverse effects to
20 human health as a result of a worst case chem-
21 ical facility terrorist incident at the covered
22 chemical facility.

23 “(B) Information related to the criticality
24 of the covered chemical facility.

1 “(A) establish standards, protocols, and
2 procedures for security vulnerability assess-
3 ments and site security plans to be required for
4 covered chemical facilities;

5 “(B) require the owner or operator of each
6 covered chemical facility to—

7 “(i) conduct an assessment of the vul-
8 nerability of the covered chemical facility
9 to a range of chemical facility terrorist in-
10 cidents, including an incident that results
11 in a worst-case release of a substance of
12 concern;

13 “(ii) prepare, submit, and implement
14 a site security plan for that covered chem-
15 ical facility that addresses the security vul-
16 nerability assessment and meets the risk-
17 based chemical security performance
18 standards under subsection (c); and

19 “(iii) include at least one supervisory
20 and at least one non-supervisory employee
21 of the covered chemical facility, and at
22 least one employee representative, from
23 each bargaining agent at the covered
24 chemical facility, if any, in developing the

1 security vulnerability assessment and site
2 security plan required under this section;

3 “(C) set deadlines, by tier, for the comple-
4 tion of security vulnerability assessments and
5 site security plans;

6 “(D) upon request, as necessary, and to
7 the extent that resources permit, provide tech-
8 nical assistance to a covered chemical facility
9 conducting a vulnerability assessment or site se-
10 curity plan required under this section;

11 “(E) establish specific deadlines and re-
12 quirements for the submission by a covered
13 chemical facility of information describing—

14 “(i) any change in the use by the cov-
15 ered chemical facility of more than a
16 threshold amount of any substance of con-
17 cern that may affect the requirements of
18 the chemical facility under this title; or

19 “(ii) any material modification to a
20 covered chemical facility’s operations or
21 site that may affect the security vulner-
22 ability assessment or site security plan
23 submitted by the covered chemical facility;

24 “(F) require the owner or operator of a
25 covered chemical facility to review and resubmit

1 a security vulnerability assessment or site secu-
2 rity plan not less frequently than once every 5
3 years; and

4 “(G) not later than 180 days after the
5 date on which the Secretary receives a security
6 vulnerability assessment or site security plan
7 under this title, review and approve or dis-
8 approve such assessment or plan.

9 “(2) INHERENTLY GOVERNMENTAL FUNC-
10 TION.—The approval or disapproval of a security
11 vulnerability assessment or site security plan under
12 this section is an inherently governmental function.

13 “(b) PARTICIPATION IN PREPARATION OF SECURITY
14 VULNERABILITY ASSESSMENTS OR SITE SECURITY
15 PLANS.—Any person selected by the owner or operator of
16 a covered chemical facility or by a certified or recognized
17 bargaining agent of a covered chemical facility to partici-
18 pate in the development of the security vulnerability as-
19 sessment or site security plan required under this section
20 for such covered chemical facility shall be permitted to
21 participate if the person possesses knowledge, experience,
22 training, or education relevant to the portion of the secu-
23 rity vulnerability assessment or site security plan on which
24 the person is participating.

1 “(c) RISK-BASED CHEMICAL SECURITY PERFORM-
2 ANCE STANDARDS.—The Secretary shall establish risk-
3 based chemical security performance standards for the site
4 security plans required to be prepared by covered chemical
5 facilities. In establishing such standards, the Secretary
6 shall—

7 “(1) require separate and, as appropriate, in-
8 creasingly stringent risk-based chemical security per-
9 formance standards for site security plans as the
10 level of risk associated with the tier increases; and

11 “(2) permit each covered chemical facility sub-
12 mitting a site security plan to select a combination
13 of security measures that satisfy the risk-based
14 chemical security performance standards established
15 by the Secretary under this subsection.

16 “(d) CO-LOCATED CHEMICAL FACILITIES.—The Sec-
17 retary may allow an owner or operator of a covered chem-
18 ical facility that is located geographically close to another
19 covered chemical facility to develop and implement coordi-
20 nated security vulnerability assessments and site security
21 plans.

22 “(e) ALTERNATE SECURITY PROGRAMS SATISFYING
23 REQUIREMENTS FOR SECURITY VULNERABILITY ASSESS-
24 MENT AND SITE SECURITY PLAN.—

1 “(1) ACCEPTANCE OF PROGRAM.—In response
2 to a request by an owner or operator of a covered
3 chemical facility, the Secretary may accept an alter-
4 nate security program submitted by the owner or op-
5 erator of the facility as a component of the security
6 vulnerability assessment or site security plan re-
7 quired under this section, if the Secretary deter-
8 mines that such alternate security program, in com-
9 bination with other components of the security vul-
10 nerability assessment and site security plan sub-
11 mitted by the owner or operator of the facility—

12 “(A) meets the requirements of this title
13 and the regulations promulgated pursuant to
14 this title;

15 “(B) provides an equivalent level of secu-
16 rity to the level of security established pursuant
17 to the regulations promulgated under this title;
18 and

19 “(C) includes employee participation as re-
20 quired under subsection (a)(1)(B)(iii).

21 “(2) SECRETARIAL REVIEW REQUIRED.—Noth-
22 ing in this subsection shall relieve the Secretary of
23 the obligation—

1 “(A) to review a security vulnerability as-
2 sessment and site security plan submitted by a
3 covered chemical facility under this section; and

4 “(B) to approve or disapprove each such
5 assessment or plan on an individual basis ac-
6 cording to the deadlines established under sub-
7 section (a).

8 “(3) COVERED FACILITY’S OBLIGATIONS UNAF-
9 FECTED.—Nothing in this subsection shall relieve
10 any covered chemical facility of the obligation and
11 responsibility to comply with all of the requirements
12 of this title.

13 “(4) PERSONNEL SURETY ALTERNATE SECUR-
14 ITY PROGRAM.—In response to an application from
15 a non-profit, personnel surety accrediting organiza-
16 tion acting on behalf of, and with written authoriza-
17 tion from, the owner or operator of a covered chem-
18 ical facility, the Secretary may accept a personnel
19 surety alternate security program that meets the re-
20 quirements of section 2115 and provides for a back-
21 ground check process that is—

22 “(A) expedited, affordable, reliable, and ac-
23 curate;

24 “(B) fully protective of the rights of cov-
25 ered individuals through procedures that are

1 consistent with the privacy protections available
2 under the Fair Credit Reporting Act (15 U.S.C.
3 1681 et seq.); and

4 “(C) is a single background check con-
5 sistent with a risk-based tiered program.

6 “(f) OTHER AUTHORITIES.—

7 “(1) REGULATION OF MARITIME FACILITIES.—

8 “(A) RISK-BASED TIERING.—Notwith-
9 standing any other provision of law, the owner
10 or operator of a chemical facility required to
11 submit a facility security plan under section
12 70103(c) of title 46, United States Code, shall
13 be required to submit information to the Sec-
14 retary necessary to determine whether to des-
15 ignate such a facility as a covered chemical fa-
16 cility and to assign the facility to a risk-based
17 tier under section 2102 of this title.

18 “(B) ADDITIONAL MEASURES.—In the case
19 of a facility designated as a covered chemical
20 facility under this title that is also regulated
21 under section 70103(c) of title 46, United
22 States Code, the Commandant of the Coast
23 Guard, after consultation with the Secretary,
24 shall require the owner or operator of such fa-
25 cility to update the vulnerability assessments

1 and facility security plans required under that
2 section, if necessary, to ensure an equivalent
3 level of security for substances of concern, in-
4 cluding the requirements under section 2111, in
5 the same manner as other covered chemical fa-
6 cilities in this title.

7 “(C) PERSONNEL SURETY.—

8 “(i) EXCEPTION.—A facility des-
9 ignated as a covered chemical facility
10 under this title that has had its facility se-
11 curity plan approved under section
12 70103(c) of title 46, United States Code,
13 shall not be required to update or amend
14 such plan in order to meet the require-
15 ments of section 2115 of this title.

16 “(ii) EQUIVALENT ACCESS.—An indi-
17 vidual described in section 2115(a)(1)(B)
18 who has been granted access to restricted
19 areas or critical assets by the owner or op-
20 erator of a facility for which a security
21 plan is required to be submitted under sec-
22 tion 70103(c) of title 46, United States
23 Code, may be considered by that owner or
24 operator to have satisfied the requirement
25 for passing a security background check

1 otherwise required under section 2115 for
2 purposes of granting the individual access
3 to restricted areas or critical assets of a
4 covered chemical facility that is owned or
5 operated by the same owner or operator.

6 “(D) INFORMATION SHARING AND PRO-
7 TECTION.—Notwithstanding section 70103(d)
8 of title 46, United States Code, the Com-
9 mandant of the Coast Guard, after consultation
10 with the Secretary, shall apply the information
11 sharing and protection requirements in section
12 2110 of this title to a facility described in sub-
13 paragraph (B).

14 “(E) ENFORCEMENT.—The Secretary shall
15 establish, by rulemaking, procedures to ensure
16 that an owner or operator of a covered chemical
17 facility required to update the vulnerability as-
18 sessment and facility security plan for the facil-
19 ity under subparagraph (B) is in compliance
20 with the requirements of this title.

21 “(F) FORMAL AGREEMENT.—The Sec-
22 retary shall require the Office of Infrastructure
23 Protection and the Coast Guard to enter into a
24 formal agreement detailing their respective roles
25 and responsibilities in carrying out the require-

1 ments of this title. Such agreement shall ensure
2 that the enforcement and compliance require-
3 ments under this title and section 70103 of title
4 46, United States Code, are not conflicting or
5 duplicative.

6 “(2) COORDINATION OF STORAGE LICENSING
7 OR PERMITTING REQUIREMENT.—In the case of any
8 storage required to be licensed or permitted under
9 chapter 40 of title 18, United States Code, the Sec-
10 retary shall prescribe the rules and regulations for
11 the implementation of this section with the concur-
12 rence of the Attorney General and avoid unnecessary
13 duplication of regulatory requirements.

14 “(g) ROLE OF EMPLOYEES.—

15 “(1) DESCRIPTION OF ROLE REQUIRED.—Site
16 security plans required under this section shall de-
17 scribe the roles or responsibilities that covered indi-
18 viduals are expected to perform to deter or respond
19 to a chemical facility terrorist incident.

20 “(2) ANNUAL TRAINING FOR EMPLOYEES.—The
21 owner or operator of a covered chemical facility re-
22 quired to submit a site security plan under this sec-
23 tion shall annually provide each covered individual
24 with a role or responsibility referred to in paragraph
25 (1) at the facility with a minimum of 8 hours of

1 training. Such training shall, as relevant to the role
2 or responsibility of such covered individual—

3 “(A) include an identification and discus-
4 sion of substances of concern;

5 “(B) include a discussion of possible con-
6 sequences of a chemical facility terrorist inci-
7 dent;

8 “(C) review and exercise the covered chem-
9 ical facility’s site security plan, including any
10 requirements for differing threat levels;

11 “(D) include a review of information pro-
12 tection requirements;

13 “(E) include a discussion of physical and
14 cyber security equipment, systems, and methods
15 used to achieve chemical security performance
16 standards;

17 “(F) allow training with other relevant
18 participants, including Federal, State, local,
19 and tribal authorities, and first responders,
20 where appropriate;

21 “(G) use existing national voluntary con-
22 sensus standards, chosen jointly with employee
23 representatives, if any;

24 “(H) allow instruction through government
25 training programs, chemical facilities, academic

1 institutions, nonprofit organizations, industry
2 and private organizations, employee organiza-
3 tions, and other relevant entities that provide
4 such training;

5 “(I) use multiple training media and meth-
6 ods; and

7 “(J) include a discussion of appropriate
8 emergency response procedures, including pro-
9 cedures to mitigate the effects of a chemical fa-
10 cility terrorist incident.

11 “(3) EQUIVALENT TRAINING.—During any
12 year, with respect to any covered individual with
13 roles or responsibilities under paragraph (1), an
14 owner or operator of a covered chemical facility may
15 satisfy any of the training requirements for such
16 covered individual under subparagraphs (A), (B),
17 (C), (D), (E), or (J) of paragraph (2) through train-
18 ing that such owner or operator certifies, in a man-
19 ner prescribed by the Secretary, as equivalent.

20 “(4) WORKER TRAINING GRANT PROGRAM.—

21 “(A) AUTHORITY.—The Secretary shall es-
22 tablish a grant program to award grants to or
23 enter into cooperative agreements with eligible
24 entities to provide for the training and edu-
25 cation of covered individuals with roles or re-

1 responsibilities described in paragraph (1) and
2 first responders and emergency response pro-
3 viders that would respond to a chemical facility
4 terrorist incident.

5 “(B) ADMINISTRATION.—The Secretary
6 shall seek to enter into an agreement with the
7 National Institute for Environmental Health
8 Sciences to make and administer grants or co-
9 operative agreements under this paragraph.

10 “(C) USE OF FUNDS.—The recipient of
11 funds under this paragraph shall use such
12 funds to provide for the training and education
13 of covered individuals with roles or responsibil-
14 ities described in paragraph (1), first respond-
15 ers, and emergency response providers, includ-
16 ing—

17 “(i) the annual mandatory training
18 specified in paragraph (2); and

19 “(ii) other appropriate training to
20 protect nearby persons, property, critical
21 infrastructure, or the environment from
22 the effects of a chemical facility terrorist
23 incident.

24 “(D) ELIGIBLE ENTITIES.—For purposes
25 of this paragraph, an eligible entity is a non-

1 profit organization with demonstrated experi-
2 ence in implementing and operating successful
3 worker or first responder health and safety or
4 security training programs.

5 “(h) STATE, REGIONAL, OR LOCAL GOVERNMENTAL
6 ENTITIES.—No covered chemical facility shall be required
7 under State, local, or tribal law to provide a vulnerability
8 assessment or site security plan described under this title
9 to any State, regional, local, or tribal government entity
10 solely by reason of the requirement under subsection (a)
11 that the covered chemical facility submit such an assess-
12 ment and plan to the Secretary.

13 **“SEC. 2104. SITE INSPECTIONS.**

14 “(a) RIGHT OF ENTRY.—For purposes of carrying
15 out this title, the Secretary shall have, at a reasonable
16 time and on presentation of credentials, a right of entry
17 to, on, or through any property of a covered chemical facil-
18 ity or any property on which any record required to be
19 maintained under this section is located.

20 “(b) INSPECTIONS AND VERIFICATIONS.—

21 “(1) IN GENERAL.—The Secretary shall, at
22 such time and place as the Secretary determines to
23 be reasonable and appropriate, conduct chemical fa-
24 cility security inspections and verifications.

1 “(2) REQUIREMENTS.—To ensure and evaluate
2 compliance with this title, including any regulations
3 or requirements adopted by the Secretary in further-
4 ance of the purposes of this title, in conducting an
5 inspection or verification under paragraph (1), the
6 Secretary shall have access to the owners, operators,
7 employees, and employee representatives, if any, of
8 a covered chemical facility.

9 “(c) UNANNOUNCED INSPECTIONS.—In addition to
10 any inspection conducted pursuant to subsection (b), the
11 Secretary shall require covered chemical facilities assigned
12 to tier 1 and tier 2 under section 2102(c)(1) to undergo
13 unannounced facility inspections. The inspections required
14 under this subsection shall be—

15 “(1) conducted without prior notice to the facil-
16 ity;

17 “(2) designed to evaluate at the chemical facil-
18 ity undergoing inspection—

19 “(A) the ability of the chemical facility to
20 prevent a chemical facility terrorist incident
21 that the site security plan of the facility is in-
22 tended to prevent;

23 “(B) the ability of the chemical facility to
24 protect against security threats that are re-

1 required to be addressed by the site security plan
2 of the facility; and

3 “(C) any weaknesses in the site security
4 plan of the chemical facility;

5 “(3) conducted so as not to affect the actual se-
6 curity, physical integrity, safety, or regular oper-
7 ations of the chemical facility or its employees while
8 the inspection is conducted; and

9 “(4) conducted—

10 “(A) every two years in the case of a cov-
11 ered chemical facility assigned to tier 1; and

12 “(B) every four years in the case of a cov-
13 ered chemical facility assigned to tier 2.

14 “(d) CHEMICAL FACILITY INSPECTORS AUTHOR-
15 IZED.—During the period of fiscal years 2011 and 2012,
16 subject to the availability of appropriations for such pur-
17 pose, the Secretary shall increase by not fewer than 100
18 the total number of chemical facility inspectors within the
19 Department to ensure compliance with this title.

20 “(e) CONFIDENTIAL COMMUNICATIONS.—The Sec-
21 retary shall offer non-supervisory employees the oppor-
22 tunity to confidentially communicate information relevant
23 to the employer’s compliance or non-compliance with this
24 title, including compliance or non-compliance with any
25 regulation or requirement adopted by the Secretary in fur-

1 therance of the purposes of this title. An employee rep-
2 resentative of each certified or recognized bargaining
3 agent at the covered chemical facility, if any, or, if none,
4 a non-supervisory employee, shall be given the opportunity
5 to accompany the Secretary during a physical inspection
6 of such covered chemical facility for the purpose of aiding
7 in such inspection, if representatives of the owner or oper-
8 ator of the covered chemical facility will also be accom-
9 panying the Secretary on such inspection.

10 **“SEC. 2105. RECORDS.**

11 “(a) REQUEST FOR RECORDS.—In carrying out this
12 title, the Secretary may require submission of, or on pres-
13 entation of credentials may at reasonable times obtain ac-
14 cess to and copy, any records, including any records main-
15 tained in electronic format, necessary for—

16 “(1) reviewing or analyzing a security vulner-
17 ability assessment or site security plan submitted
18 under section 2103; or

19 “(2) assessing the implementation of such a site
20 security plan.

21 “(b) PROPER HANDLING OF RECORDS.—In accessing
22 or copying any records under subsection (a), the Secretary
23 shall ensure that such records are handled and secured
24 appropriately in accordance with section 2110.

1 **“SEC. 2106. TIMELY SHARING OF THREAT INFORMATION.**

2 “(a) RESPONSIBILITIES OF SECRETARY.—Upon the
3 receipt of information concerning a threat that is relevant
4 to a certain covered chemical facility, the Secretary shall
5 provide such information in a timely manner, to the max-
6 imum extent practicable under applicable authority and in
7 the interests of national security, to the owner, operator,
8 or security officer of that covered chemical facility and to
9 a representative of each recognized or certified bargaining
10 agent at the facility, if any.

11 “(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—
12 The Secretary shall require the owner or operator of a
13 covered chemical facility to provide information concerning
14 a threat in a timely manner about any significant security
15 incident or threat to the covered chemical facility or any
16 intentional or unauthorized penetration of the physical se-
17 curity or cyber security of the covered chemical facility
18 whether successful or unsuccessful.

19 **“SEC. 2107. ENFORCEMENT.**

20 “(a) REVIEW OF SITE SECURITY PLAN.—

21 “(1) DISAPPROVAL.—The Secretary shall dis-
22 approve a security vulnerability assessment or site
23 security plan submitted under this title if the Sec-
24 retary determines, in his or her discretion, that—

25 “(A) the security vulnerability assessment
26 or site security plan does not comply with the

1 standards, protocols, or procedures under sec-
2 tion 2103(a)(1)(A); or

3 “(B) in the case of a site security plan—

4 “(i) the plan or the implementation of
5 the plan is insufficient to address
6 vulnerabilities identified in a security vul-
7 nerability assessment, site inspection, or
8 unannounced inspection of the covered
9 chemical facility; or

10 “(ii) the plan fails to meet all applica-
11 ble chemical facility security performance
12 standards.

13 “(2) PROVISION OF NOTIFICATION OF DIS-
14 APPROVAL.—If the Secretary disapproves the secu-
15 rity vulnerability assessment or site security plan
16 submitted by a covered chemical facility under this
17 title or the implementation of a site security plan by
18 such a chemical facility, the Secretary shall provide
19 the owner or operator of the covered chemical facil-
20 ity a written notification of the disapproval within
21 14 days of the date on which the Secretary dis-
22 approves such assessment or plan, that—

23 “(A) includes a clear explanation of defi-
24 ciencies in the assessment, plan, or implementa-
25 tion of the plan; and

1 “(B) requires the owner or operator of the
2 covered chemical facility to revise the assess-
3 ment or plan to address any deficiencies and,
4 by such date as the Secretary determines is ap-
5 propriate, to submit to the Secretary the re-
6 vised assessment or plan.

7 “(3) ORDER FOR COMPLIANCE.—Whenever the
8 Secretary determines that the owner or operator of
9 a covered chemical facility has violated or is in viola-
10 tion of any requirement of this title or has failed or
11 is failing to address any deficiencies in the assess-
12 ment, plan, or implementation of the plan by such
13 date as the Secretary determines to be appropriate,
14 the Secretary may—

15 “(A) after providing notice to the owner or
16 operator of the covered chemical facility and an
17 opportunity for such owner or operator to ap-
18 peal the Secretary’s determination, issue an
19 order assessing a civil penalty for any past or
20 current violation, requiring compliance imme-
21 diately or within a specified time period, or
22 both; or

23 “(B) commence a civil action in the United
24 States district court in the district in which the

1 violation occurred for appropriate relief, includ-
2 ing temporary or permanent injunction.

3 “(4) ORDER TO CEASE OPERATIONS.—If the
4 Secretary determines that the owner or operator of
5 a covered chemical facility continues to be in non-
6 compliance after an order for compliance is issued
7 under paragraph (3), the Secretary may issue an
8 order to the owner or operator of a covered chemical
9 facility to cease operations at the facility until the
10 owner or operator complies with such order issued
11 under paragraph (3). Notwithstanding the preceding
12 sentence, the Secretary may not issue an order to
13 cease operations under this paragraph to the owner
14 or operator of a wastewater facility.

15 “(b) PENALTIES.—

16 “(1) CIVIL PENALTIES.—A court may award a
17 civil penalty, pursuant to an order issued by the Sec-
18 retary under this title, of not more than \$50,000 for
19 each day on which a violation occurs or a failure to
20 comply continues.

21 “(2) ADMINISTRATIVE PENALTIES.—The Sec-
22 retary may award an administrative penalty, pursu-
23 ant to an order issued under this title, of not more
24 than \$25,000 for each day on which a violation oc-
25 curs or a failure to comply continues.

1 **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

2 “(a) ESTABLISHMENT.—The Secretary shall estab-
3 lish and provide information to the public regarding a
4 process by which any person may submit a report to the
5 Secretary regarding problems, deficiencies, or
6 vulnerabilities at a covered chemical facility associated
7 with the risk of a chemical facility terrorist incident.

8 “(b) CONFIDENTIALITY.—The Secretary shall keep
9 confidential the identity of a person that submits a report
10 under subsection (a) and any such report shall be treated
11 as protected information under section 2110 to the extent
12 that it does not consist of publicly available information.

13 “(c) ACKNOWLEDGMENT OF RECEIPT.—If a report
14 submitted under subsection (a) identifies the person sub-
15 mitting the report, the Secretary shall respond promptly
16 to such person to acknowledge receipt of the report.

17 “(d) STEPS TO ADDRESS PROBLEMS.—The Sec-
18 retary shall review and consider the information provided
19 in any report submitted under subsection (a) and shall,
20 as necessary, take appropriate steps under this title to ad-
21 dress any problem, deficiency, or vulnerability identified
22 in the report.

23 “(e) RETALIATION PROHIBITED.—

24 “(1) PROHIBITION.—No owner or operator of a
25 covered chemical facility, profit or not-for-profit cor-
26 poration, association, or any contractor, subcon-

1 tractor or agent thereof, may discharge any em-
2 ployee or otherwise discriminate against any em-
3 ployee with respect to his compensation, terms, con-
4 ditions, or other privileges of employment because
5 the employee (or any person acting pursuant to a re-
6 quest of the employee)—

7 “(A) notified the Secretary, the owner or
8 operator of a covered chemical facility, or the
9 employee’s employer of an alleged violation of
10 this title, including communications related to
11 carrying out the employee’s job duties;

12 “(B) refused to engage in any practice
13 made unlawful by this title, if the employee has
14 identified the alleged illegality to the employer;

15 “(C) testified before or otherwise provided
16 information relevant for Congress or for any
17 Federal or State proceeding regarding any pro-
18 vision (or proposed provision) of this title;

19 “(D) commenced, caused to be commenced,
20 or is about to commence or cause to be com-
21 menced a proceeding under this title;

22 “(E) testified or is about to testify in any
23 such proceeding; or

24 “(F) assisted or participated or is about to
25 assist or participate in any manner in such a

1 proceeding or in any other manner in such a
2 proceeding or in any other action to carry out
3 the purposes of this title.

4 “(2) ENFORCEMENT ACTION.—Any employee
5 covered by this section who alleges discrimination by
6 an employer in violation of paragraph (1) may bring
7 an action governed by the rules and procedures,
8 legal burdens of proof, and remedies applicable
9 under subsections (d) through (h) of section 20109
10 of title 49, United States Code. A party may seek
11 district court review as set forth in subsection (d)(4)
12 of such section not later than 90 days after receiving
13 a written final determination by the Secretary of
14 Labor.

15 “(3) PROHIBITED PERSONNEL PRACTICES AF-
16 FECTING THE DEPARTMENT.—

17 “(A) IN GENERAL.—Notwithstanding any
18 other provision of law, any individual holding or
19 applying for a position within the Department
20 shall be covered by—

21 “(i) paragraphs (1), (8), and (9) of
22 section 2302(b) of title 5, United States
23 Code;

24 “(ii) any provision of law imple-
25 menting any of such paragraphs by pro-

1 viding any right or remedy available to an
2 employee or applicant for employment in
3 the civil service; and

4 “(iii) any rule or regulation prescribed
5 under any such paragraph.

6 “(B) **RULE OF CONSTRUCTION.**—Nothing
7 in this paragraph shall be construed to affect
8 any rights, apart from those referred to in sub-
9 paragraph (A), to which an individual described
10 in that subparagraph might otherwise be enti-
11 tled to under law.

12 **“SEC. 2109. FEDERAL PREEMPTION.**

13 “‘This title does not preclude or deny any right of any
14 State or political subdivision thereof to adopt or enforce
15 any regulation, requirement, or standard of performance
16 with respect to a covered chemical facility that is more
17 stringent than a regulation, requirement, or standard of
18 performance issued under this title, or otherwise impair
19 any right or jurisdiction of any State or political subdivi-
20 sion thereof with respect to covered chemical facilities
21 within that State or political subdivision thereof.

22 **“SEC. 2110. PROTECTION OF INFORMATION.**

23 “(a) **PROHIBITION OF PUBLIC DISCLOSURE OF PRO-**
24 **TECTED INFORMATION.**—Protected information, as de-
25 scribed in subsection (g)—

1 “(1) shall be exempt from disclosure under sec-
2 tion 552 of title 5, United States Code; and

3 “(2) shall not be made available pursuant to
4 any State, local, or tribal law requiring disclosure of
5 information or records.

6 “(b) INFORMATION SHARING.—

7 “(1) IN GENERAL.—The Secretary shall pre-
8 scribe such regulations, and may issue such orders,
9 as necessary to prohibit the unauthorized disclosure
10 of protected information, as described in subsection
11 (g).

12 “(2) SHARING OF PROTECTED INFORMATION.—

13 The regulations under paragraph (1) shall provide
14 standards for and facilitate the appropriate sharing
15 of protected information with and between Federal,
16 State, local, and tribal authorities, emergency re-
17 sponse providers, law enforcement officials, des-
18 ignated supervisory and nonsupervisory covered
19 chemical facility personnel with security, operational,
20 or fiduciary responsibility for the facility, and des-
21 ignated facility employee representatives, if any.
22 Such standards shall include procedures for the
23 sharing of all portions of a covered chemical facili-
24 ty’s vulnerability assessment and site security plan
25 relating to the roles and responsibilities of covered

1 individuals under section 2103(g)(1) with a rep-
2 resentative of each certified or recognized bargaining
3 agent representing such covered individuals, if any,
4 or, if none, with at least one supervisory and at least
5 one non-supervisory employee with roles or respon-
6 sibilities under section 2103(g)(1).

7 “(3) PENALTIES.—Protected information, as
8 described in subsection (g), shall not be shared ex-
9 cept in accordance with the regulations under para-
10 graph (1). Any person who purposefully publishes,
11 divulges, discloses, or makes known protected infor-
12 mation in any manner or to any extent not author-
13 ized by the standards provided by the regulations
14 under paragraph (1), shall, upon conviction, be im-
15 prisoned for not more than one year or fined in ac-
16 cordance with the provisions of chapter 227 of title
17 18, United States Code, applicable to class A mis-
18 demeanors, or both, and, in the case of Federal em-
19 ployees or officeholders, shall be removed from Fed-
20 eral office or employment.

21 “(c) TREATMENT OF INFORMATION IN ADJUDICA-
22 TIVE PROCEEDINGS.—In any judicial or administrative
23 proceeding, protected information described in subsection
24 (g) shall be treated in a manner consistent with the treat-
25 ment of sensitive security information under section 525

1 of the Department of Homeland Security Appropriations
2 Act, 2007 (Public Law 109–295; 120 Stat. 1381).

3 “(d) OTHER OBLIGATIONS UNAFFECTED.—Except
4 as provided in section 2103(h), nothing in this section af-
5 fects any obligation of the owner or operator of a chemical
6 facility under any other law to submit or make available
7 information required by such other law to facility employ-
8 ees, employee organizations, or a Federal, State, tribal,
9 or local government.

10 “(e) SUBMISSION OF INFORMATION TO CONGRESS.—
11 Nothing in this title shall permit or authorize the with-
12 holding of information from Congress or any committee
13 or subcommittee thereof.

14 “(f) DISCLOSURE OF INDEPENDENTLY FURNISHED
15 INFORMATION.—Nothing in this title shall affect any au-
16 thority or obligation of a Federal, State, local, or tribal
17 government agency to protect or disclose any record or
18 information that the Federal, State, local, or tribal govern-
19 ment agency obtains from a chemical facility under any
20 other law.

21 “(g) PROTECTED INFORMATION.—

22 “(1) IN GENERAL.—For purposes of this title,
23 protected information is the following:

1 “(A) Security vulnerability assessments
2 and site security plans, including any assess-
3 ment required under section 2111.

4 “(B) Portions of the following documents,
5 records, orders, notices, or letters that the Sec-
6 retary determines would be detrimental to
7 chemical facility security if disclosed and that
8 are developed by the Secretary or the owner or
9 operator of a covered chemical facility for the
10 purposes of this title:

11 “(i) Documents directly related to the
12 Secretary’s review and approval or dis-
13 approval of vulnerability assessments and
14 site security plans under this title.

15 “(ii) Documents directly related to in-
16 spections and audits under this title.

17 “(iii) Orders, notices, or letters re-
18 garding the compliance of a covered chem-
19 ical facility with the requirements of this
20 title.

21 “(iv) Information required to be pro-
22 vided to, or documents and records created
23 by, the Secretary under section subsection
24 (b) or (c) of section 2102.

1 “(v) Documents directly related to se-
2 curity drills and training exercises, security
3 threats and breaches of security, and
4 maintenance, calibration, and testing of se-
5 curity equipment.

6 “(C) Other information, documents, or
7 records developed exclusively for the purposes of
8 this title that the Secretary determines, if dis-
9 closed, would be detrimental to chemical facility
10 security.

11 “(2) EXCLUSIONS.—For purposes of this sec-
12 tion, protected information does not include—

13 “(A) information that is otherwise publicly
14 available, including information that is required
15 to be made publicly available under any law;

16 “(B) information that a chemical facility
17 has lawfully disclosed other than in accordance
18 with this title; or

19 “(C) information that, if disclosed, would
20 not be detrimental to the security of a chemical
21 facility, including aggregate regulatory data
22 that the Secretary determines is appropriate to
23 describe facility compliance with the require-
24 ments of this title and the Secretary’s imple-
25 mentation of such requirements.

1 **“SEC. 2111. METHODS TO REDUCE THE CONSEQUENCES OF**
2 **A TERRORIST ATTACK.**

3 “(a) ASSESSMENT REQUIRED.—

4 “(1) ASSESSMENT.—The owner or operator of
5 a covered chemical facility shall include in the site
6 security plan conducted pursuant to section 2103,
7 an assessment of methods to reduce the con-
8 sequences of a terrorist attack on that chemical fa-
9 cility, including—

10 “(A) a description of the methods to re-
11 duce the consequences of a terrorist attack im-
12 plemented and considered for implementation
13 by the covered chemical facility;

14 “(B) the degree to which each method to
15 reduce the consequences of a terrorist attack, if
16 already implemented, has reduced, or, if imple-
17 mented, could reduce, the potential extent of
18 death, injury, or serious adverse effects to
19 human health resulting from a release of a sub-
20 stance of concern;

21 “(C) the technical feasibility, costs, avoided
22 costs (including liabilities), personnel implica-
23 tions, savings, and applicability of implementing
24 each method to reduce the consequences of a
25 terrorist attack; and

1 “(D) any other information that the owner
2 or operator of the covered chemical facility con-
3 sidered in conducting the assessment.

4 “(2) FEASIBLE.—For the purposes of this sec-
5 tion, the term ‘feasible’ means feasible with the use
6 of best technology, techniques, and other means that
7 the Secretary finds, after examination for efficacy
8 under field conditions and not solely under labora-
9 tory conditions, are available for use at the covered
10 chemical facility.

11 “(b) IMPLEMENTATION.—

12 “(1) IMPLEMENTATION.—

13 “(A) IN GENERAL.—The owner or operator
14 of a covered chemical facility that is assigned to
15 tier 1 or tier 2 because of the potential extent
16 and likelihood of death, injury, and serious ad-
17 verse effects to human health, the environment,
18 critical infrastructure, public health, homeland
19 security, national security, and the national
20 economy from a release of a substance of con-
21 cern at the covered chemical facility, shall im-
22 plement methods to reduce the consequences of
23 a terrorist attack on the chemical facility if the
24 Director of the Office of Chemical Facility Se-
25 curity determines, in his or her discretion, using

1 the assessment conducted pursuant to sub-
2 section (a), that the implementation of such
3 methods at the facility—

4 “(i) would significantly reduce the
5 risk of death, injury, or serious adverse ef-
6 fects to human health resulting from a
7 chemical facility terrorist incident but—

8 “(I) would not increase the in-
9 terim storage of a substance of con-
10 cern outside the facility;

11 “(II) would not directly result in
12 the creation of a new covered chemical
13 facility assigned to tier 1 or tier 2 be-
14 cause of the potential extent and like-
15 lihood of death, injury, and serious
16 adverse effects to human health, the
17 environment, critical infrastructure,
18 public health, homeland security, na-
19 tional security, and the national econ-
20 omy from a release of a substance of
21 concern at the covered chemical facil-
22 ity; and

23 “(III) would not result in the re-
24 assignment of an existing covered
25 chemical facility from tier 3 or tier 4

1 to tier 1 or tier 2 because of the po-
2 tential extent and likelihood of death,
3 injury, and serious adverse effects to
4 human health, the environment, crit-
5 ical infrastructure, public health,
6 homeland security, national security,
7 and the national economy from a re-
8 lease of a substance of concern at the
9 covered chemical facility;

10 “(ii) can feasibly be incorporated into
11 the operation of the covered chemical facil-
12 ity; and

13 “(iii) would not significantly and de-
14 monstrably impair the ability of the owner
15 or operator of the covered chemical facility
16 to continue the business of the facility at
17 its location.

18 “(B) WRITTEN DETERMINATION.—A de-
19 termination by the Director of the Office of
20 Chemical Facility Security pursuant to sub-
21 paragraph (A) shall be made in writing and in-
22 clude the basis and reasons for such determina-
23 tion.

24 “(C) MARITIME FACILITIES.—With respect
25 to a covered chemical facility for which a secu-

1 rity plan is required under section 70103(e) of
2 title 46, United States Code, a written deter-
3 mination pursuant to subparagraph (A) shall be
4 made only after consultation with the Captain
5 of the Port for the area in which the covered
6 chemical facility is located.

7 “(2) REVIEW OF INABILITY TO COMPLY.—

8 “(A) IN GENERAL.—An owner or operator
9 of a covered chemical facility who is unable to
10 comply with the Director’s determination under
11 paragraph (1) shall, within 120 days of receipt
12 of the Director’s determination, provide to the
13 Secretary a written explanation that includes
14 the reasons therefor. Such written explanation
15 shall specify whether the owner or operator’s in-
16 ability to comply arises under clause (ii) or (iii)
17 of paragraph (1)(A), or both.

18 “(B) REVIEW.—Not later than 120 days of
19 receipt of an explanation submitted under sub-
20 paragraph (A), the Secretary, after consulting
21 with the owner or operator of the covered chem-
22 ical facility who submitted such explanation, as
23 well as experts in the subjects of environmental
24 health and safety, security, chemistry, design
25 and engineering, process controls and imple-

1 mentation, maintenance, production and oper-
2 ations, chemical process safety, and occupa-
3 tional health, as appropriate, shall provide to
4 the owner or operator a written determination,
5 in his or her discretion, of whether implementa-
6 tion shall be required pursuant to paragraph
7 (1). If the Secretary determines that implemen-
8 tation is required, the Secretary shall issue an
9 order that establishes the basis for such deter-
10 mination, including the findings of the relevant
11 experts, the specific methods selected for imple-
12 mentation, and a schedule for implementation
13 of the methods at the facility.

14 “(c) GUIDANCE FOR FARM SUPPLIES MERCHANT
15 WHOLESALERS.—

16 “(1) IN GENERAL.—The Secretary shall provide
17 guidance and, as appropriate, tools, methodologies,
18 or computer software, to assist farm supplies mer-
19 chant wholesalers in complying with the require-
20 ments of this section.

21 “(2) DEFINITION.—For purposes of this sub-
22 section, the term ‘farm supplies merchant whole-
23 saler’ means a covered chemical facility that is pri-
24 marily engaged in the merchant wholesale distribu-
25 tion of farm supplies such as animal feeds, fer-

1 tilizers, agricultural chemicals, pesticides, plant
2 seeds, and plant bulbs.

3 “(d) PROVISION OF INFORMATION ON ALTERNATIVE
4 APPROACHES.—

5 “(1) IN GENERAL.—The Secretary shall make
6 available information on the use and availability of
7 methods to reduce the consequences of a chemical
8 facility terrorist incident.

9 “(2) INFORMATION TO BE INCLUDED.—The in-
10 formation under paragraph (1) may include informa-
11 tion about—

12 “(A) general and specific types of such
13 methods;

14 “(B) combinations of chemical sources,
15 substances of concern, and hazardous processes
16 or conditions for which such methods could be
17 appropriate;

18 “(C) the availability of specific methods to
19 reduce the consequences of a terrorist attack;

20 “(D) the costs and cost savings resulting
21 from the use of such methods;

22 “(E) emerging technologies that could be
23 transferred from research models or prototypes
24 to practical applications;

1 “(F) the availability of technical assistance
2 and best practices; and

3 “(G) such other matters that the Secretary
4 determines are appropriate.

5 “(3) PUBLIC AVAILABILITY.—Information made
6 available under this subsection shall not identify any
7 specific chemical facility, violate the protection of in-
8 formation provisions under section 2110, or disclose
9 any proprietary information.

10 “(e) FUNDING FOR METHODS TO REDUCE THE CON-
11 SEQUENCES OF A TERRORIST ATTACK.—The Secretary
12 may make funds available to help defray the cost of imple-
13 menting methods to reduce the consequences of a terrorist
14 attack to covered chemical facilities that are required by
15 the Secretary to implement such methods.

16 **“SEC. 2112. APPLICABILITY.**

17 ““This title shall not apply to—

18 “(1) any chemical facility that is owned and op-
19 erated by the Secretary of Defense;

20 “(2) the transportation in commerce, including
21 incidental storage, of any substance of concern regu-
22 lated as a hazardous material under chapter 51 of
23 title 49, United States Code;

24 “(3) all or a specified portion of any chemical
25 facility that—

1 “(A) is subject to regulation by the Nu-
2 clear Regulatory Commission (hereinafter in
3 this paragraph referred to as the ‘Commission’)
4 or a State that has entered into an agreement
5 with the Commission under section 274 b. of
6 the Atomic Energy Act of 1954 (42 U.S.C.
7 2021 b.);

8 “(B) has had security controls imposed by
9 the Commission or State, whichever has the
10 regulatory authority, on the entire facility or
11 the specified portion of the facility; and

12 “(C) has been designated by the Commis-
13 sion, after consultation with the State, if any,
14 that regulates the facility, and the Secretary, as
15 excluded from the application of this title; or

16 “(4) any public water system subject to the
17 Safe Drinking Water Act (42 U.S.C. 300f et seq.).

18 **“SEC. 2113. SAVINGS CLAUSE.**

19 “(a) IN GENERAL.—Nothing in this title shall affect
20 or modify in any way any obligation or liability of any
21 person under any other Federal law, including section 112
22 of the Clean Air Act (42 U.S.C. 7412), the Federal Water
23 Pollution Control Act (33 U.S.C. 1251 et seq.), the Re-
24 source Conservation and Recovery Act of 1976 (42 U.S.C.
25 6901 et seq.), the National Environmental Policy Act of

1 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety
2 and Health Act (29 U.S.C. 651 et seq.), the National
3 Labor Relations Act (29 U.S.C. 151 et seq.), the Emer-
4 gency Planning and Community Right to Know Act of
5 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water
6 Act (42 U.S.C. 300f et seq.), the Maritime Transportation
7 Security Act of 2002 (Public Law 107–295), the Com-
8 prehensive Environmental Response, Compensation, and
9 Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Toxic
10 Substances Control Act (15 U.S.C. 2601 et seq.), and the
11 Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

12 “(b) OTHER REQUIREMENTS.—Nothing in this title
13 shall preclude or deny the right of any State or political
14 subdivision thereof to adopt or enforce any regulation, re-
15 quirement, or standard of performance relating to environ-
16 mental protection, health, or safety.

17 “(c) ACCESS.—Nothing in this title shall abridge or
18 deny access to a chemical facility site to any person where
19 required or permitted under any other law or regulation.

20 **“SEC. 2114. OFFICE OF CHEMICAL FACILITY SECURITY.**

21 “(a) IN GENERAL.—There is established in the De-
22 partment an Office of Chemical Facility Security, headed
23 by a Director, who shall be a member of the Senior Execu-
24 tive Service in accordance with subchapter VI of chapter
25 53 of title 5, United States Code, under section 5382 of

1 that title, and who shall be responsible for carrying out
2 the responsibilities of the Secretary under this title.

3 “(b) PROFESSIONAL QUALIFICATIONS.—The indi-
4 vidual selected by the Secretary as the Director of the Of-
5 fice of Chemical Facility Security shall have professional
6 qualifications and experience necessary for effectively di-
7 recting the Office of Chemical Facility Security and car-
8 rying out the requirements of this title, including a dem-
9 onstrated knowledge of physical infrastructure protection,
10 cybersecurity, chemical facility security, hazard analysis,
11 chemical process engineering, chemical process safety re-
12 views, or other such qualifications that the Secretary de-
13 termines to be necessary.

14 “(c) SELECTION PROCESS.—The Secretary shall
15 make a reasonable effort to select an individual to serve
16 as the Director from among a group of candidates that
17 is diverse with respect to race, ethnicity, age, gender, and
18 disability characteristics and submit to the Committee on
19 Homeland Security and the Committee on Energy and
20 Commerce of the House of Representatives and the Com-
21 mittee on Homeland Security and Governmental Affairs
22 of the Senate information on the selection process, includ-
23 ing details on efforts to assure diversity among the can-
24 didates considered for this position.

1 **“SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED**
2 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
3 **TIES.**

4 “(a) REGULATIONS ISSUED BY THE SECRETARY.—

5 “(1) IN GENERAL.—

6 “(A) REQUIREMENT.—The Secretary shall
7 issue regulations to require covered chemical fa-
8 cilities to establish personnel surety for individ-
9 uals described in subparagraph (B) by con-
10 ducting appropriate security background checks
11 and ensuring appropriate credentials for
12 unescorted visitors and chemical facility per-
13 sonnel, including permanent and part-time per-
14 sonnel, temporary personnel, and contract per-
15 sonnel, including—

16 “(i) measures designed to verify and
17 validate identity;

18 “(ii) measures designed to check
19 criminal history;

20 “(iii) measures designed to verify and
21 validate legal authorization to work; and

22 “(iv) measures designed to identify
23 people with terrorist ties.

24 “(B) INDIVIDUALS DESCRIBED.—For pur-
25 poses of subparagraph (A), an individual de-
26 scribed in this subparagraph is—

1 “(i) a covered individual who has
2 unescorted access to restricted areas or
3 critical assets or who is provided with a
4 copy of a security vulnerability assessment
5 or site security plan;

6 “(ii) a person associated with a cov-
7 ered chemical facility who is provided with
8 a copy of a security vulnerability assess-
9 ment or site security plan; or

10 “(iii) a person who is determined by
11 the Secretary to require a security back-
12 ground check based on chemical facility se-
13 curity performance standards.

14 “(2) REGULATIONS.—The regulations required
15 by paragraph (1) shall set forth—

16 “(A) the scope of the security background
17 checks, including the types of disqualifying of-
18 fenses and the time period covered for each per-
19 son subject to a security background check
20 under paragraph (1);

21 “(B) the processes to conduct the security
22 background checks;

23 “(C) the necessary biographical informa-
24 tion and other data required in order to con-
25 duct the security background checks;

1 “(D) a redress process for an adversely-af-
2 fected person consistent with subsections (b)
3 and (c); and

4 “(E) a prohibition on an owner or operator
5 of a covered chemical facility misrepresenting to
6 an employee or other relevant person, including
7 an arbiter involved in a labor arbitration, the
8 scope, application, or meaning of any rules, reg-
9 ulations, directives, or guidance issued by the
10 Secretary related to security background check
11 requirements for covered individuals when con-
12 ducting a security background check.

13 “(b) MISREPRESENTATION OF ADVERSE EMPLOY-
14 MENT DECISIONS.—The regulations required by sub-
15 section (a)(1) shall set forth that it shall be a misrepresen-
16 tation under subsection (a)(2)(E) to attribute an adverse
17 employment decision, including removal or suspension of
18 the employee, to such regulations unless the owner or op-
19 erator finds, after opportunity for appropriate redress
20 under the processes provided under subsection (c)(1) and
21 (c)(2), that the person subject to such adverse employment
22 decision—

23 “(1) has been convicted of, has been found not
24 guilty of by reason of insanity, or is under want,
25 warrant, or indictment for a permanent disqualifying

1 criminal offense listed in part 1572 of title 49, Code
2 of Federal Regulations;

3 “(2) was convicted of or found not guilty by
4 reason of insanity of an interim disqualifying crimi-
5 nal offense listed in part 1572 of title 49, Code of
6 Federal Regulations, within 7 years of the date on
7 which the covered chemical facility performs the se-
8 curity background check;

9 “(3) was incarcerated for an interim disquali-
10 fying criminal offense listed in part 1572 of title 49,
11 Code of Federal Regulations, and released from in-
12 carceration within 5 years of the date that the chem-
13 ical facility performs the security background check;

14 “(4) is determined by the Secretary to be on
15 the consolidated terrorist watchlist; or

16 “(5) is determined, as a result of the security
17 background check, not to be legally authorized to
18 work in the United States.

19 “(c) REDRESS PROCESS.—Upon the issuance of reg-
20 ulations under subsection (a), the Secretary shall—

21 “(1) require the owner or operator to provide
22 an adequate and prompt redress process for a per-
23 son subject to a security background check under
24 subsection (a)(1) who is subjected to an adverse em-
25 ployment decision, including removal or suspension

1 of the employee, due to such regulations that is con-
2 sistent with the appeals process established for em-
3 ployees subject to consumer reports under the Fair
4 Credit Reporting Act (15 U.S.C. 1681 et seq.), as
5 in force on the date of enactment of this title;

6 “(2) provide an adequate and prompt redress
7 process for a person subject to a security back-
8 ground check under subsection (a)(1) who is sub-
9 jected to an adverse employment decision, including
10 removal or suspension of the employee, due to a de-
11 termination by the Secretary under subsection
12 (b)(4), that is consistent with the appeals process es-
13 tablished under section 70105(c) of title 46, United
14 States Code, including all rights to hearings before
15 an administrative law judge, scope of review, and a
16 review of an unclassified summary of classified evi-
17 dence equivalent to the summary provided in part
18 1515 of title 49, Code of Federal Regulations;

19 “(3) provide an adequate and prompt redress
20 process for a person subject to a security back-
21 ground check under subsection (a)(1) who is sub-
22 jected to an adverse employment decision, including
23 removal or suspension of the employee, due to a vio-
24 lation of subsection (a)(2)(E), which shall not pre-

1 clude the exercise of any other rights available under
2 collective bargaining agreements or applicable laws;

3 “(4) establish a reconsideration process de-
4 scribed in subsection (d) for a person subject to an
5 adverse employment decision that was attributed by
6 an owner or operator to the regulations required by
7 subsection (a)(1).

8 “(5) have the authority to order an appropriate
9 remedy, including reinstatement of the person sub-
10 ject to a security background check under subsection
11 (a)(1), if the Secretary determines that the adverse
12 employment decision was made in violation of the
13 regulations required under subsection (a)(1) or as a
14 result of an erroneous determination by the Sec-
15 retary under subsection (b)(4);

16 “(6) ensure that the redress processes required
17 under paragraphs (1), (2), or (3) afford to the per-
18 son a full disclosure of any public-record event cov-
19 ered by subsection (b) that provides the basis for an
20 adverse employment decision; and

21 “(7) ensure that the person subject to a secu-
22 rity background check under subsection (a)(1) re-
23 ceives the person’s full wages and benefits until all
24 redress processes under this subsection are ex-
25 hausted.

1 “(d) RECONSIDERATION PROCESS.—

2 “(1) IN GENERAL.—The reconsideration proc-
3 ess required under subsection (c)(4) shall—

4 “(A) require the Secretary to determine,
5 within 30 days after receiving a petition sub-
6 mitted by a person subject to an adverse em-
7 ployment decision that was attributed by an
8 owner or operator to the regulations required
9 by subsection (a)(1), whether such person poses
10 a security risk to the covered chemical facility;
11 and

12 “(B) include procedures consistent with
13 section 70105(c) of title 46, United States
14 Code, including all rights to hearings before an
15 administrative law judge, scope of review, and
16 a review of an unclassified summary of classi-
17 fied evidence equivalent to the summary pro-
18 vided in part 1515 of title 49, Code of Federal
19 Regulations.

20 “(2) DETERMINATION BY THE SECRETARY.—In
21 making a determination described under paragraph
22 (1)(A), the Secretary shall—

23 “(A) give consideration to the cir-
24 cumstance of any disqualifying act or offense,
25 restitution made by the person, Federal and

1 State mitigation remedies, and other factors
2 from which it may be concluded that the person
3 does not pose a security risk to the covered
4 chemical facility;

5 “(B) provide his or her determination as to
6 whether such person poses a security risk to the
7 covered chemical facility to the petitioner and to
8 the owner or operator of the covered chemical
9 facility.

10 “(3) OWNER OR OPERATOR RECONSIDER-
11 ATION.—If the Secretary determines pursuant to
12 paragraph (1)(A) that the person does not pose a se-
13 curity risk to the covered chemical facility, it shall
14 thereafter constitute a prohibited misrepresentation
15 for the owner or operator of the covered chemical fa-
16 cility to continue to attribute the adverse employ-
17 ment decision to the regulations under subsection
18 (a)(1).

19 “(e) RESTRICTIONS ON USE AND MAINTENANCE OF
20 INFORMATION.—Information obtained under this section
21 by the Secretary or the owner or operator of a covered
22 chemical facility shall be handled as follows:

23 “(1) Such information may not be made avail-
24 able to the public.

1 “(2) Such information may not be accessed by
2 employees of the facility except for such employees
3 who are directly involved with collecting the informa-
4 tion or conducting or evaluating security background
5 checks.

6 “(3) Such information shall be maintained con-
7 fidentially by the facility and the Secretary and may
8 be used only for making determinations under this
9 section.

10 “(4) The Secretary may share such information
11 with other Federal, State, local, and tribal law en-
12 forcement agencies.

13 “(f) SAVINGS CLAUSE.—

14 “(1) RIGHTS AND RESPONSIBILITIES.—Nothing
15 in this section shall be construed to abridge any
16 right or responsibility of a person subject to a secu-
17 rity background check under subsection (a)(1) or an
18 owner or operator of a covered chemical facility
19 under any other Federal, State, local, or tribal law
20 or collective bargaining agreement.

21 “(2) EXISTING RIGHTS.—Nothing in this sec-
22 tion shall be construed as creating any new right or
23 modifying any existing right of an individual to ap-
24 peal a determination by the Secretary as a result of
25 a check against a terrorist watch list.

1 “(g) PREEMPTION.—Nothing in this section shall be
2 construed to preempt, alter, or affect a Federal, State,
3 local, or tribal law that requires criminal history back-
4 ground checks, checks on the authorization of an indi-
5 vidual to work in the United States, or other background
6 checks of persons subject to security background checks
7 under subsection (a)(1).

8 “(h) DEFINITION OF SECURITY BACKGROUND
9 CHECK.—The term ‘security background check’ means a
10 review at no cost to any person subject to a security back-
11 ground check under subsection (a)(1) of the following for
12 the purpose of identifying individuals who may pose a
13 threat to chemical facility security, to national security,
14 or of terrorism:

15 “(1) Relevant databases to verify and validate
16 identity.

17 “(2) Relevant criminal history databases.

18 “(3) In the case of an alien (as defined in sec-
19 tion 101 of the Immigration and Nationality Act (8
20 U.S.C. 1101(a)(3))), the relevant databases to deter-
21 mine the status of the alien under the immigration
22 laws of the United States.

23 “(4) The consolidated terrorist watchlist.

24 “(5) Other relevant information or databases,
25 as determined by the Secretary.

1 “(i) DEPARTMENT-CONDUCTED SECURITY BACK-
2 GROUND CHECK.—The regulations under subsection
3 (a)(1) shall set forth a process by which the Secretary,
4 on an ongoing basis, shall determine whether alternate se-
5 curity background checks conducted by the Department
6 are sufficient to meet the requirements of this section such
7 that no additional security background check under this
8 section is required for an individual for whom such a
9 qualifying alternate security background check was con-
10 ducted. The Secretary may require a facility to which the
11 individual will have unescorted access to sensitive or re-
12 stricted areas to submit identifying information about the
13 individual and the alternate security background check
14 conducted for that individual to the Secretary in order to
15 enable the Secretary to verify the validity of the alternate
16 security background check. Such regulations shall provide
17 that no security background check under this section is
18 required for an individual holding a transportation secu-
19 rity card issued under section 70105 of title 46, United
20 States Code.

21 **“SEC. 2116. CITIZEN ENFORCEMENT.**

22 “(a) IN GENERAL.—Except as provided in subsection
23 (c), any person may commence a civil action on such per-
24 son’s own behalf—

1 “(1) against any governmental entity (including
2 the United States, any other governmental instru-
3 mentality or agency, and any federally owned-con-
4 tractor operated facility, to the extent permitted by
5 the eleventh amendment to the Constitution) alleged
6 to be in violation of any order that has become effec-
7 tive pursuant to this title; or

8 “(2) against the Secretary, for an alleged fail-
9 ure to perform any act or duty under this title that
10 is not discretionary for the Secretary.

11 “(b) COURT OF JURISDICTION.—

12 “(1) IN GENERAL.—Any action under sub-
13 section (a)(1) shall be brought in the district court
14 for the district in which the alleged violation oc-
15 curred. Any action brought under subsection (a)(2)
16 may be brought in the district court for the district
17 in which the alleged violation occurred or in the
18 United States District Court of the District of Co-
19 lumbia.

20 “(2) RELIEF.—The district court shall have ju-
21 risdiction, without regard to the amount in con-
22 troversy or the citizenship of the parties to enforce
23 the order referred to in subsection (a)(1), to order
24 such governmental entity to take such action as may
25 be necessary, or both, or, in an action commenced

1 under subsection (a)(2), to order the Secretary to
2 perform the non-discretionary act or duty, and to
3 order any civil penalties, as appropriate, under sec-
4 tion 2107.

5 “(c) ACTIONS PROHIBITED.—No action may be com-
6 menced under subsection (a) prior to 60 days after the
7 date on which the person commencing the action has given
8 notice of the alleged violation to—

9 “(1) the Secretary; and

10 “(2) in the case of an action under subsection
11 (a)(1), any governmental entity alleged to be in vio-
12 lation of an order.

13 “(d) NOTICE.—Notice under this section shall be
14 given in such manner as the Secretary shall prescribe by
15 regulation.

16 “(e) INTERVENTION.—In any action under this sec-
17 tion, the Secretary, if not a party, may intervene as a mat-
18 ter of right.

19 “(f) COSTS.—The court, in issuing any final order
20 in any action brought pursuant to this section, may award
21 costs of litigation (including reasonable attorney and ex-
22 pert witness fees) to the prevailing or substantially pre-
23 vailing party, whenever the court determines such an
24 award is appropriate. The court may, if a temporary re-
25 straining order or preliminary injunction is sought, require

1 the filing of a bond or equivalent security in accordance
2 with the Federal Rules of Civil Procedure.

3 “(g) OTHER RIGHTS PRESERVED.—Nothing in this
4 section shall restrict any right which any person (or class
5 of persons) may have under any statute or common law.

6 **“SEC. 2117. CITIZEN PETITIONS.**

7 “(a) IN GENERAL.—The Secretary shall issue regula-
8 tions to establish a petition process for petitions described
9 in subsection (b), including—

10 “(1) the format for petitions;

11 “(2) the procedures for investigation of claims;

12 “(3) the procedures for response to petitions,
13 including timelines; and

14 “(4) the procedures for de novo review of re-
15 sponses to petitions by the Office of the Inspector
16 General for the Department of Homeland Security;

17 “(b) PETITIONS.—The regulations issued pursuant to
18 subsection (a) shall allow any person to file a petition with
19 the Secretary—

20 “(1) identifying any person (including the
21 United States and any other governmental instru-
22 mentality or agency, to the extent permitted by the
23 eleventh amendment to the Constitution) alleged to
24 be in violation of any standard, regulation, condi-

1 tion, requirement, prohibition, plan, or order that
2 has become effective under this title; and

3 “(2) describing the alleged violation of any
4 standard, regulation, condition, requirement, prohi-
5 bition, plan, or order that has become effective
6 under this title by that person;

7 “(c) REQUIREMENTS.—Upon issuance of regulations
8 under subsection (a), the Secretary shall—

9 “(1) accept all petitions described under sub-
10 section (b) that meet the requirements of the regula-
11 tions promulgated under subsection (a);

12 “(2) investigate all allegations contained in ac-
13 cepted petitions;

14 “(3) determine whether enforcement action will
15 be taken concerning the alleged violation or viola-
16 tions;

17 “(4) respond to all accepted petitions promptly
18 and in writing;

19 “(5) include in all responses to petitions a brief
20 and concise statement, to the extent permitted under
21 section 2110, of the allegations, the steps taken to
22 investigate, the determination made, and the reasons
23 for such determination;

1 “(6) maintain an internal record including all
2 protected information related to the determination;
3 and

4 “(7) provide an opportunity for review by the
5 Department of Homeland Security Inspector General
6 on the full record, including protected information,
7 for all determinations made under such regulations.

8 “(d) FINAL AGENCY ACTION.—

9 “(1) ONGOING ENFORCEMENT PROCEEDINGS.—
10 Any determination by the Secretary to pursue en-
11 forcement action in response to a petition under this
12 section shall not constitute final agency action be-
13 cause of ongoing enforcement proceedings.

14 “(2) DETERMINATION NOT TO PURSUE EN-
15 FORCEMENT.—Any determination by the Secretary
16 not to pursue enforcement action in response to a
17 petition under this section shall constitute final
18 agency action.

19 **“SEC. 2118. ANNUAL REPORT TO CONGRESS.**

20 “(a) ANNUAL REPORT.—Not later than one year
21 after the date of the enactment of this title, annually
22 thereafter for the next four years, and biennially there-
23 after, the Secretary shall submit to the Committee on
24 Homeland Security and the Committee on Energy and
25 Commerce of the House of Representatives and the Com-

1 mittee on Homeland Security and Governmental Affairs
2 and the Committee on Environment and Public Works of
3 the Senate a report on progress in achieving compliance
4 with this title. Each such report shall include the fol-
5 lowing:

6 “(1) A qualitative discussion of how covered
7 chemical facilities, differentiated by tier, have re-
8 duced the risks of chemical facility terrorist inci-
9 dents at such facilities, including—

10 “(A) a generalized summary of measures
11 implemented by covered chemical facilities in
12 order to meet each risk-based chemical facility
13 performance standard established by this title,
14 and those that the facilities already had in
15 place—

16 “(i) in the case of the first report
17 under this section, before the issuance of
18 the final rule implementing the regulations
19 known as the ‘Chemical Facility Anti-Ter-
20 rorism Standards’, issued on April 9,
21 2007; and

22 “(ii) in the case of each subsequent
23 report, since the submittal of the most re-
24 cent report submitted under this section;
25 and

1 “(B) any other generalized summary the
2 Secretary deems appropriate to describe the
3 measures covered chemical facilities are imple-
4 menting to comply with the requirements of
5 this title.

6 “(2) A quantitative summary of how the cov-
7 ered chemical facilities, differentiated by tier, are
8 complying with the requirements of this title during
9 the period covered by the report and how the Sec-
10 retary is implementing and enforcing such require-
11 ments during such period, including—

12 “(A) the number of chemical facilities that
13 provided the Secretary with information about
14 possessing substances of concern, as described
15 in section 2102(b)(2);

16 “(B) the number of covered chemical facili-
17 ties assigned to each tier;

18 “(C) the number of security vulnerability
19 assessments and site security plans submitted
20 by covered chemical facilities;

21 “(D) the number of security vulnerability
22 assessments and site security plans approved
23 and disapproved by the Secretary;

1 “(E) the number of covered chemical facili-
2 ties without approved security vulnerability as-
3 sessments or site security plans;

4 “(F) the number of chemical facilities that
5 have been assigned to a different tier or are no
6 longer regulated by the Secretary due to imple-
7 mentation of a method to reduce the con-
8 sequences of a terrorist attack and a descrip-
9 tion of such implemented methods;

10 “(G) the number of orders for compliance
11 issued by the Secretary;

12 “(H) the administrative penalties assessed
13 by the Secretary for non-compliance with the
14 requirements of this title;

15 “(I) the civil penalties assessed by the
16 court for non-compliance with the requirements
17 of this title;

18 “(J) the number of terrorist watchlist
19 checks conducted by the Secretary in order to
20 comply with the requirements of this title, the
21 number of appeals conducted by the Secretary
22 pursuant to the processes described under para-
23 graphs (2), (3) and (4) of section 2115(c), ag-
24 gregate information regarding the time taken
25 for such appeals, aggregate information regard-

1 ing the manner in which such appeals were re-
2 solved, and, based on information provided to
3 the Secretary annually by each owner or oper-
4 ator of a covered chemical facility, the number
5 of persons subjected to adverse employment de-
6 cisions that were attributed by the owner or op-
7 erator to the regulations required by section
8 2115; and

9 “(K) any other regulatory data the Sec-
10 retary deems appropriate to describe facility
11 compliance with the requirements of this title
12 and the Secretary’s implementation of such re-
13 quirements.

14 “(b) PUBLIC AVAILABILITY.—A report submitted
15 under this section shall be made publicly available.

16 **“SEC. 2119. AUTHORIZATION OF APPROPRIATIONS.**

17 “There is authorized to be appropriated to the Sec-
18 retary of Homeland Security to carry out this title—

19 “(1) \$325,000,000 for fiscal year 2011, of
20 which \$100,000,000 shall be made available to pro-
21 vide funding for methods to reduce the consequences
22 of a terrorist attack;

23 “(2) \$300,000,000 for fiscal year 2012, of
24 which \$75,000,000 shall be made available to pro-

1 vide funding for methods to reduce the consequences
2 of a terrorist attack; and

3 “(3) \$275,000,000 for fiscal year 2013, of
4 which \$50,000,000 shall be made available to pro-
5 vide funding for methods to reduce the consequences
6 of a terrorist attack.”.

7 (b) CLERICAL AMENDMENT.—The table of contents
8 in section 1(b) of such Act is amended by adding at the
9 end the following:

“TITLE XXI—REGULATION OF SECURITY PRACTICES AT
CHEMICAL FACILITIES

“Sec. 2101. Definitions.

“Sec. 2102. Risk-based designation and ranking of chemical facilities.

“Sec. 2103. Security vulnerability assessments and site security plans.

“Sec. 2104. Site inspections.

“Sec. 2105. Records.

“Sec. 2106. Timely sharing of threat information.

“Sec. 2107. Enforcement.

“Sec. 2108. Whistleblower protections.

“Sec. 2109. Federal preemption.

“Sec. 2110. Protection of information.

“Sec. 2111. Methods to reduce the consequences of a terrorist attack.

“Sec. 2112. Applicability.

“Sec. 2113. Savings clause.

“Sec. 2114. Office of Chemical Facility Security.

“Sec. 2115. Security background checks of covered individuals at certain chem-
ical facilities.

“Sec. 2116. Citizen enforcement.

“Sec. 2117. Citizen petitions.

“Sec. 2118. Annual report to Congress.

“Sec. 2119. Authorization of appropriations.”.

10 (c) CONFORMING REPEAL.—

11 (1) REPEAL.—The Department of Homeland
12 Security Appropriations Act, 2007 (Public Law
13 109–295) is amended by striking section 550.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect on the date of the
3 enactment of this Act.

4 (d) TREATMENT OF CFATS REGULATIONS.—

5 (1) SENSE OF CONGRESS.—It is the sense of
6 Congress that the Secretary of Homeland Security
7 was granted statutory authority under section 550
8 of the Department of Homeland Security Appropria-
9 tions Act (Public Law 109–295) to regulate security
10 practices at chemical facilities until October 1, 2009.
11 Pursuant to that section the Secretary prescribed
12 regulations known as the Chemical Facility Anti-
13 Terrorism Standards, or “CFATS”.

14 (2) USE OF CURRENT REGULATIONS.—In car-
15 rying out the requirements of title XXI of the
16 Homeland Security Act of 2002, as added by sub-
17 section (a), the Secretary may, to the extent that the
18 Secretary determines is appropriate, use any of the
19 regulations known as CFATS regulations, as in ef-
20 fect immediately before the date of the enactment of
21 this Act, that the Secretary determines carry out
22 such requirements.

23 (3) AMENDMENT OF CFATS.—The Secretary
24 shall amend the regulations known as the Chemical
25 Facility Anti-Terrorism Standards to ensure that

1 such regulations fulfill the requirements of this Act
2 and the amendments made by this Act, to the extent
3 that the requirements of this Act and the amend-
4 ments made by this Act differ from the requirements
5 of such regulations, as in effect on the date of the
6 enactment of this Act.

7 (4) USE OF TOOLS DEVELOPED FOR CFATS.—
8 In carrying out this Act and the amendments made
9 by this Act, to the extent determined appropriate by
10 the Secretary, the Secretary may use such rules or
11 tools developed for purposes of the regulations
12 known as the Chemical Facility Anti-Terrorism
13 Standards, including the list of substances of con-
14 cern, usually referred to as “Appendix A” and the
15 chemical security assessment tool (which includes fa-
16 cility registration, a top-screen questionnaire, a secu-
17 rity vulnerability assessment tool, a site security
18 plan template, and a chemical vulnerability informa-
19 tion repository).

20 (e) FACILITIES COVERED BY CFATS.—The owner or
21 operator of a covered chemical facility, who, before the ef-
22 fective date of the final regulations issued under title XXI
23 of the Homeland Security Act of 2002, as added by sub-
24 section (a), submits a security vulnerability assessment or
25 site security plan under the regulations known as CFATS

1 regulations, as in effect immediately before the enactment
2 of this Act, shall be required to update or amend the facili-
3 ty's security vulnerability assessment and site security
4 plan to reflect any additional requirements of this Act or
5 the amendments made by this Act, according to a timeline
6 established by the Secretary.

7 (f) CONSULTATION WITH OTHER PERSONS.—In de-
8 veloping and carrying out the regulations under title XXI
9 of the Homeland Security Act of 2002, as added by sub-
10 section (a), the Secretary shall consult with the Adminis-
11 trator of the Environmental Protection Agency, and other
12 persons, as appropriate, regarding—

- 13 (1) the designation of substances of concern;
- 14 (2) methods to reduce the consequences of a
15 terrorist attack;
- 16 (3) security at co-owned and co-operated drink-
17 ing water and wastewater facilities;
- 18 (4) the treatment of protected information; and
- 19 (5) such other matters as the Secretary deter-
20 mines necessary.

21 (g) DEADLINE FOR REGULATIONS.—

- 22 (1) PROPOSED RULE.—The Secretary of Home-
23 land Security shall promulgate a proposed rule to
24 fulfill the requirements of title XXI of the Homeland
25 Security Act of 2002, as added by subsection (a),

1 not later than 6 months after the date of the enact-
2 ment of this Act.

3 (2) FINAL RULE.—The Secretary shall, after
4 proper notice and opportunity for public comment,
5 promulgate a final rule to fulfill the requirements of
6 such title not later than 18 months after the date
7 of the enactment of this Act.

