

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3258, AS AMENDED BY THE SUB-
COMMITTEE ON ENERGY AND ENVIRONMENT
ON OCTOBER 14, 2009**

OFFERED BY M__ . _____

Strike all and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Drinking Water Sys-
3 tem Security Act of 2009”.

4 **SEC. 2. INTENTIONAL ACTS AFFECTING THE SECURITY OF**
5 **COVERED WATER SYSTEMS.**

6 (a) AMENDMENT OF SAFE DRINKING WATER ACT.—
7 Section 1433 of the Safe Drinking Water Act (42 U.S.C.
8 300i–2) is amended to read as follows:

9 **“SEC. 1433. INTENTIONAL ACTS.**

10 **“(a) RISK-BASED PERFORMANCE STANDARDS; VUL-**
11 **NERABILITY ASSESSMENTS; SITE SECURITY PLANS;**
12 **EMERGENCY RESPONSE PLANS.—**

13 **“(1) IN GENERAL.—**The Administrator shall
14 issue regulations—

15 **“(A) establishing risk-based performance**
16 **standards for the security of covered water sys-**
17 **tems; and**

1 “(B) establishing requirements and dead-
2 lines for each covered water system—

3 “(i) to conduct a vulnerability assess-
4 ment or, if the system already has a vul-
5 nerability assessment, to revise the assess-
6 ment to be in accordance with this section;

7 “(ii) to update the vulnerability as-
8 sessment not less than every 5 years and
9 promptly after any change at the system
10 that could cause the reassignment of the
11 system to a different risk-based tier under
12 subsection (d);

13 “(iii) to develop, implement, and, as
14 appropriate, revise a site security plan not
15 less than every 5 years and promptly after
16 a revision to the vulnerability assessment;

17 “(iv) to develop an emergency re-
18 sponse plan (or, if the system has already
19 developed an emergency response plan, to
20 revise the plan to be in accordance with
21 this section) and revise the plan not less
22 than every 5 years thereafter; and

23 “(v) to provide annual training to em-
24 ployees and contractor employees of cov-
25 ered water systems on implementing site

1 security plans and emergency response
2 plans.

3 “(2) COVERED WATER SYSTEMS.—For purposes
4 of this section, the term ‘covered water system’
5 means a public water system that—

6 “(A) is a community water system serving
7 a population greater than 3,300; or

8 “(B) in the discretion of the Adminis-
9 trator, presents a security risk making regula-
10 tion under this section appropriate.

11 “(3) CONSULTATION WITH STATE AUTHORI-
12 TIES.—In developing and carrying out the regula-
13 tions under paragraph (1), the Administrator shall
14 consult with States exercising primary enforcement
15 responsibility for public water systems.

16 “(4) CONSULTATION WITH OTHER PERSONS.—
17 In developing and carrying out the regulations under
18 paragraph (1), the Administrator shall consult with
19 the Secretary of Homeland Security, and, as appro-
20 priate, other persons regarding—

21 “(A) provision of threat-related and other
22 baseline information to covered water systems;

23 “(B) designation of substances of concern;

24 “(C) development of risk-based perform-
25 ance standards;

1 “(D) establishment of risk-based tiers and
2 process for the assignment of covered water
3 systems to risk-based tiers;

4 “(E) process for the development and eval-
5 uation of vulnerability assessments, site security
6 plans, and emergency response plans;

7 “(F) treatment of protected information;

8 “(G) security at co-managed drinking
9 water and wastewater facilities; and

10 “(H) such other matters as the Adminis-
11 trator determines necessary.

12 “(5) SUBSTANCES OF CONCERN.—For purposes
13 of this section, the Administrator, in consultation
14 with the Secretary of Homeland Security—

15 “(A) may designate any chemical sub-
16 stance as a substance of concern;

17 “(B) at the time any substance is des-
18 igned pursuant to subparagraph (A), shall es-
19 tablish by rule a threshold quantity for the re-
20 lease or theft of the substance, taking into ac-
21 count the toxicity, reactivity, volatility,
22 dispersability, combustibility, and flammability
23 of the substance and the amount of the sub-
24 stance that, as a result of a release, is known
25 to cause or may be reasonably anticipated to

1 cause death, injury, or serious adverse effects to
2 human health or the environment; and

3 “(C) in making such a designation, shall
4 take into account appendix A to part 27 of title
5 6, Code of Federal Regulations (or any suc-
6 cessor regulations).

7 “(6) BASELINE INFORMATION.—The Adminis-
8 trator, after consultation with appropriate depart-
9 ments and agencies of the Federal Government and
10 with State, local, and tribal governments, shall, for
11 purposes of facilitating compliance with the require-
12 ments of this section, promptly after the effective
13 date of the regulations under subsection (a)(1) and
14 as appropriate thereafter, provide baseline informa-
15 tion to covered water systems regarding which kinds
16 of intentional acts are the probable threats to—

17 “(A) substantially disrupt the ability of the
18 system to provide a safe and reliable supply of
19 drinking water;

20 “(B) cause the release of a substance of
21 concern at the covered water system; or

22 “(C) cause the theft, misuse, or misappro-
23 priation of a substance of concern.

24 “(b) RISK-BASED PERFORMANCE STANDARDS.—The
25 regulations under subsection (a)(1) shall set forth risk-

1 based performance standards for site security plans re-
2 quired by this section. The standards shall be separate
3 and, as appropriate, increasingly stringent based on the
4 level of risk associated with the covered water system's
5 risk-based tier assignment under subsection (d). In devel-
6 oping such standards, the Administrator shall take into
7 account section 27.230 of title 6, Code of Federal Regula-
8 tions (or any successor regulations).

9 “(c) VULNERABILITY ASSESSMENT.—The regula-
10 tions under subsection (a)(1) shall require each covered
11 water system to assess the system's vulnerability to a
12 range of intentional acts, including an intentional act that
13 results in a release of a substance of concern that is known
14 to cause or may be reasonably anticipated to cause death,
15 injury, or serious adverse effects to human health or the
16 environment. At a minimum, the vulnerability assessment
17 shall include a review of—

18 “(1) pipes and constructed conveyances;

19 “(2) physical barriers;

20 “(3) water collection, pretreatment, treatment,
21 storage, and distribution facilities, including fire hy-
22 drants;

23 “(4) electronic, computer, and other automated
24 systems that are used by the covered water system;

1 “(5) the use, storage, or handling of various
2 chemicals, including substances of concern;

3 “(6) the operation and maintenance of the cov-
4 ered water system; and

5 “(7) the covered water system’s resiliency and
6 ability to ensure continuity of operations in the
7 event of a disruption caused by an intentional act.

8 “(d) RISK-BASED TIERS.—The regulations under
9 subsection (a)(1) shall provide for 4 risk-based tiers appli-
10 cable to covered water systems, with tier one representing
11 the highest degree of security risk.

12 “(1) ASSIGNMENT OF RISK-BASED TIERS.—

13 “(A) SUBMISSION OF INFORMATION.—The
14 Administrator may require a covered water sys-
15 tem to submit information in order to deter-
16 mine the appropriate risk-based tier for the cov-
17 ered water system.

18 “(B) FACTORS TO CONSIDER.—The Ad-
19 ministrator shall assign (and reassign when ap-
20 propriate) each covered water system to one of
21 the risk-based tiers established pursuant to this
22 subsection. In assigning a covered water system
23 to a risk-based tier, the Administrator shall
24 consider the potential consequences (such as
25 death, injury, or serious adverse effects to

1 human health, the environment, critical infra-
2 structure, national security, and the national
3 economy) from—

4 “(i) an intentional act to cause a re-
5 lease, including a worst-case release, of a
6 substance of concern at the covered water
7 system;

8 “(ii) an intentional act to introduce a
9 contaminant into the drinking water sup-
10 ply or disrupt the safe and reliable supply
11 of drinking water; and

12 “(iii) an intentional act to steal, mis-
13 appropriate, or misuse substances of con-
14 cern.

15 “(2) EXPLANATION FOR RISK-BASED TIER AS-
16 SIGNMENT.—The Administrator shall provide each
17 covered water system assigned to a risk-based tier
18 with the reasons for the tier assignment and whether
19 such system is required to submit an assessment
20 under subsection (g)(2).

21 “(e) DEVELOPMENT AND IMPLEMENTATION OF SITE
22 SECURITY PLANS.—The regulations under subsection
23 (a)(1) shall permit each covered water system, in devel-
24 oping and implementing its site security plan required by

1 this section, to select layered security and preparedness
2 measures that, in combination, appropriately—

3 “(1) address the security risks identified in its
4 vulnerability assessment; and

5 “(2) comply with the applicable risk-based per-
6 formance standards required under this section.

7 “(f) ROLE OF EMPLOYEES.—

8 “(1) DESCRIPTION OF ROLE.—Site security
9 plans and emergency response plans required under
10 this section shall describe the appropriate roles or
11 responsibilities that employees and contractor em-
12 ployees are expected to perform to deter or respond
13 to the intentional acts described in subsection
14 (d)(1)(B).

15 “(2) TRAINING FOR EMPLOYEES.—Each cov-
16 ered water system shall annually provide employees
17 and contractor employees with roles or responsibil-
18 ities described in paragraph (1) with a minimum of
19 8 hours of training on carrying out those roles or re-
20 sponsibilities.

21 “(3) EMPLOYEE PARTICIPATION.—In devel-
22 oping, revising, or updating a vulnerability assess-
23 ment, site security plan, and emergency response
24 plan required under this section, a covered water
25 system shall include—

1 “(A) at least one supervisory and at least
2 one non-supervisory employee of the covered
3 water system; and

4 “(B) at least one representative of each
5 certified or recognized bargaining agent rep-
6 resenting facility employees or contractor em-
7 ployees with roles or responsibilities described
8 in paragraph (1), if any, in a collective bar-
9 gaining relationship with the private or public
10 owner or operator of the system or with a con-
11 tractor to that system.

12 “(g) METHODS TO REDUCE THE CONSEQUENCES OF
13 A CHEMICAL RELEASE FROM AN INTENTIONAL ACT.—

14 “(1) DEFINITION.—In this section, the term
15 ‘method to reduce the consequences of a chemical re-
16 lease from an intentional act’ means a measure at
17 a covered water system that reduces or eliminates
18 the potential consequences of a release of a sub-
19 stance of concern from an intentional act such as—

20 “(A) the elimination or reduction in the
21 amount of a substance of concern possessed or
22 planned to be possessed by a covered water sys-
23 tem through the use of alternate substances,
24 formulations, or processes;

1 “(B) the modification of pressures, tem-
2 peratures, or concentrations of a substance of
3 concern; and

4 “(C) the reduction or elimination of onsite
5 handling of a substance of concern through im-
6 provement of inventory control or chemical use
7 efficiency.

8 “(2) ASSESSMENT.—For each covered water
9 system that possesses or plans to possess a sub-
10 stance of concern in excess of the release threshold
11 quantity set by the Administrator under subsection
12 (a)(5), the regulations under subsection (a)(1) shall
13 require the covered water system to include in its
14 site security plan an assessment of methods to re-
15 duce the consequences of a chemical release from an
16 intentional act at the covered water system. The cov-
17 ered water system shall provide such assessment to
18 the Administrator and the State exercising primary
19 enforcement responsibility for the covered water sys-
20 tem, if any. The regulations under subsection (a)(1)
21 shall require the system, in preparing the assess-
22 ment, to consider factors appropriate to the system’s
23 security, public health, or environmental mission,
24 and include—

1 “(A) a description of the methods to re-
2 duce the consequences of a chemical release
3 from an intentional act;

4 “(B) how each described method to reduce
5 the consequences of a chemical release from an
6 intentional act could, if applied, reduce the po-
7 tential extent of death, injury, or serious ad-
8 verse effects to human health resulting from a
9 chemical release;

10 “(C) how each described method to reduce
11 the consequences of a chemical release from an
12 intentional act could, if applied, affect the pres-
13 ence of contaminants in treated water, human
14 health, or the environment;

15 “(D) whether each described method to re-
16 duce the consequences of a chemical release
17 from an intentional act at the covered water
18 system is feasible, as defined in section
19 1412(b)(4)(D), but not including cost calcula-
20 tions under subparagraph (E);

21 “(E) the costs (including capital and oper-
22 ational costs) and avoided costs (including sav-
23 ings and liabilities) associated with applying
24 each described method to reduce the con-

1 sequences of a chemical release from an inten-
2 tional act at the covered water system;

3 “(F) any other relevant information that
4 the covered water system relied on in con-
5 ducting the assessment; and

6 “(G) a statement of whether the covered
7 water system has implemented or plans to im-
8 plement one or more methods to reduce the
9 consequences of a chemical release from an in-
10 tentional act, a description of any such meth-
11 ods, and, in the case of a covered water system
12 described in paragraph (3)(A), an explanation
13 of the reasons for any decision not to imple-
14 ment any such methods.

15 “(3) REQUIRED METHODS.—

16 “(A) APPLICATION.—This paragraph ap-
17 plies to a covered water system—

18 “(i) that is assigned to one of the two
19 highest risk-based tiers under subsection
20 (d); and

21 “(ii) that possesses or plans to possess
22 a substance of concern in excess of the re-
23 lease threshold quantity set by the Admin-
24 istrator under subsection (a)(5).

1 “(B) HIGHEST-RISK SYSTEMS.—If, on the
2 basis of its assessment under paragraph (2), a
3 covered water system described in subparagraph
4 (A) decides not to implement methods to reduce
5 the consequences of a chemical release from an
6 intentional act, the State exercising primary en-
7 forcement responsibility for the covered water
8 system, if the system is located in such a State,
9 or the Administrator, if the covered water sys-
10 tem is not located in such a State, shall, in ac-
11 cordance with a timeline set by the Adminis-
12 trator—

13 “(i) determine whether to require the
14 covered water system to implement the
15 methods; and

16 “(ii) for States exercising primary en-
17 forcement responsibility, report such deter-
18 mination to the Administrator.

19 “(C) STATE OR ADMINISTRATOR’S CONSID-
20 ERATIONS.—Before requiring, pursuant to sub-
21 paragraph (B), the implementation of a method
22 to reduce the consequences of a chemical re-
23 lease from an intentional act, the State exer-
24 cising primary enforcement responsibility for
25 the covered water system, if the system is lo-

1 cated in such a State, or the Administrator, if
2 the covered water system is not located in such
3 a State, shall consider factors appropriate to
4 the security, public health, and environmental
5 missions of covered water systems, including an
6 examination of whether the method—

7 “(i) would significantly reduce the
8 risk of death, injury, or serious adverse ef-
9 fects to human health resulting directly
10 from a chemical release from an inten-
11 tional act at the covered water system;

12 “(ii) would not increase the interim
13 storage of a substance of concern by the
14 covered water system;

15 “(iii) would not render the covered
16 water system unable to comply with other
17 requirements of this Act or drinking water
18 standards established by the State or polit-
19 ical subdivision in which the system is lo-
20 cated; and

21 “(iv) is feasible, as defined in section
22 1412(b)(4)(D), to be incorporated into the
23 operation of the covered water system.

24 “(D) APPEAL.—Before requiring, pursuant
25 to subparagraph (B), the implementation of a

1 method to reduce the consequences of a chem-
2 ical release from an intentional act, the State
3 exercising primary enforcement responsibility
4 for the covered water system, if the system is
5 located in such a State, or the Administrator,
6 if the covered water system is not located in
7 such a State, shall provide such covered water
8 system an opportunity to appeal the determina-
9 tion to require such implementation made pur-
10 suant to subparagraph (B) by such State or the
11 Administrator.

12 “(4) INCOMPLETE OR LATE ASSESSMENTS.—

13 “(A) INCOMPLETE ASSESSMENTS.—If the
14 Administrator finds that the covered water sys-
15 tem, in conducting its assessment under para-
16 graph (2), did not meet the requirements of
17 paragraph (2) and the applicable regulations,
18 the Administrator shall, after notifying the cov-
19 ered water system and the State exercising pri-
20 mary enforcement responsibility for that sys-
21 tem, if any, require the covered water system to
22 submit a revised assessment not later than 60
23 days after the Administrator notifies such sys-
24 tem. The Administrator may require such addi-
25 tional revisions as are necessary to ensure that

1 the system meets the requirements of para-
2 graph (2) and the applicable regulations.

3 “(B) LATE ASSESSMENTS.—If the Admin-
4 istrator finds that a covered water system, in
5 conducting its assessment pursuant to para-
6 graph (2), did not complete such assessment in
7 accordance with the deadline set by the Admin-
8 istrator, the Administrator may, after notifying
9 the covered water system and the State exer-
10 cising primary enforcement responsibility for
11 that system, if any, take appropriate enforce-
12 ment action under subsection (o).

13 “(C) REVIEW.—The State exercising pri-
14 mary enforcement responsibility for the covered
15 water system, if the system is located in such
16 a State, or the Administrator, if the system is
17 not located in such a State, shall review a re-
18 vised assessment that meets the requirements
19 of paragraph (2) and applicable regulations to
20 determine whether the covered water system
21 will be required to implement methods to reduce
22 the consequences of an intentional act pursuant
23 to paragraph (3).

24 “(5) ENFORCEMENT.—

1 “(A) FAILURE BY STATE TO MAKE DETER-
2 MINATION.—Whenever the Administrator finds
3 that a State exercising primary enforcement re-
4 sponsibility for a covered water system has
5 failed to determine whether to require the cov-
6 ered water system to implement methods to re-
7 duce the consequences of a chemical release
8 from an intentional act, as required by para-
9 graph (3)(B), the Administrator shall so notify
10 the State and covered water system. If, beyond
11 the thirtieth day after the Administrator’s noti-
12 fication under the preceding sentence, the State
13 has failed to make the determination described
14 in such sentence, the Administrator shall so no-
15 tify the State and covered water system and
16 shall determine whether to require the covered
17 water system to implement methods to reduce
18 the consequences of a chemical release from an
19 intentional act based on the factors described in
20 paragraph (3)(C).

21 “(B) FAILURE BY STATE TO BRING EN-
22 FORCEMENT ACTION.—If the Administrator
23 finds, with respect to a period in which a State
24 has primary enforcement responsibility for a
25 covered water system, that the system has

1 failed to implement methods to reduce the con-
2 sequences of a chemical release from an inten-
3 tional act (as required by the State or the Ad-
4 ministrator under paragraph (3)(B) or the Ad-
5 ministrator under subparagraph (A)), the Ad-
6 ministrator shall so notify the State and the
7 covered water system. If, beyond the thirtieth
8 day after the Administrator's notification under
9 the preceding sentence, the State has not com-
10 menced appropriate enforcement action, the Ad-
11 ministrator shall so notify the State and may
12 commence an enforcement action against the
13 system, including by seeking or imposing civil
14 penalties under subsection (o), to require imple-
15 mentation of such methods.

16 “(C) CONSIDERATION OF CONTINUED PRI-
17 MARY ENFORCEMENT RESPONSIBILITY.—For a
18 State with primary enforcement responsibility
19 for a covered water system, the Administrator
20 may consider the failure of such State to make
21 a determination as described under subpara-
22 graph (A) or to bring enforcement action as de-
23 scribed under subparagraph (B) when deter-
24 mining whether a State may retain primary en-
25 forcement responsibility under this Act.

1 “(6) GUIDANCE FOR COVERED WATER SYSTEMS
2 ASSIGNED TO TIER 3 AND TIER 4.—For covered
3 water systems required to conduct an assessment
4 under paragraph (2) and assigned by the Adminis-
5 trator to tier 3 or tier 4 under subsection (d), the
6 Administrator shall issue guidance and, as appro-
7 priate, provide or recommend tools, methodologies,
8 or computer software, to assist such covered water
9 systems in complying with the requirements of this
10 section.

11 “(h) REVIEW BY ADMINISTRATOR.—

12 “(1) IN GENERAL.—The regulations under sub-
13 section (a)(1) shall require each covered water sys-
14 tem to submit its vulnerability assessment and site
15 security plan to the Administrator for review accord-
16 ing to deadlines set by the Administrator. The Ad-
17 ministrator shall review each vulnerability assess-
18 ment and site security plan submitted under this
19 section and—

20 “(A) if the assessment or plan has any sig-
21 nificant deficiency described in paragraph (2),
22 require the covered water system to correct the
23 deficiency; or

24 “(B) approve such assessment or plan.

1 “(2) SIGNIFICANT DEFICIENCIES.—A vulner-
2 ability assessment or site security plan of a covered
3 water system has a significant deficiency under this
4 subsection if the Administrator, in consultation, as
5 appropriate, with the State exercising primary en-
6 forcement responsibility for such system, if any, de-
7 termines that—

8 “(A) such assessment does not comply with
9 the regulations established under section (a)(1);
10 or

11 “(B) such plan—

12 “(i) fails to address vulnerabilities
13 identified in a vulnerability assessment; or

14 “(ii) fails to meet applicable risk-
15 based performance standards.

16 “(3) STATE, REGIONAL, OR LOCAL GOVERN-
17 MENTAL ENTITIES.—No covered water system shall
18 be required under State, local, or tribal law to pro-
19 vide a vulnerability assessment or site security plan
20 described in this section to any State, regional, local,
21 or tribal governmental entity solely by reason of the
22 requirement set forth in paragraph (1) that the sys-
23 tem submit such an assessment and plan to the Ad-
24 ministrator.

25 “(i) EMERGENCY RESPONSE PLAN.—

1 “(1) IN GENERAL.—Each covered water system
2 shall prepare or revise, as appropriate, an emergency
3 response plan that incorporates the results of the
4 system’s most current vulnerability assessment and
5 site security plan.

6 “(2) CERTIFICATION.—Each covered water sys-
7 tem shall certify to the Administrator that the sys-
8 tem has completed an emergency response plan. The
9 system shall submit such certification to the Admin-
10 istrator not later than 6 months after the system’s
11 first completion or revision of a vulnerability assess-
12 ment under this section and shall submit an addi-
13 tional certification following any update of the emer-
14 gency response plan.

15 “(3) CONTENTS.—A covered water system’s
16 emergency response plan shall include—

17 “(A) plans, procedures, and identification
18 of equipment that can be implemented or used
19 in the event of an intentional act at the covered
20 water system; and

21 “(B) actions, procedures, and identification
22 of equipment that can obviate or significantly
23 lessen the impact of intentional acts on public
24 health and the safety and supply of drinking
25 water provided to communities and individuals.

1 “(4) COORDINATION.—As part of its emergency
2 response plan, each covered water system shall pro-
3 vide appropriate information to any local emergency
4 planning committee, local law enforcement officials,
5 and local emergency response providers to ensure an
6 effective, collective response.

7 “(j) MAINTENANCE OF RECORDS.—Each covered
8 water system shall maintain an updated copy of its vulner-
9 ability assessment, site security plan, and emergency re-
10 sponse plan.

11 “(k) AUDIT; INSPECTION.—

12 “(1) IN GENERAL.—Notwithstanding section
13 1445(b)(2), the Administrator, or duly designated
14 representatives of the Administrator, shall audit and
15 inspect covered water systems, as necessary, for pur-
16 poses of determining compliance with this section.

17 “(2) ACCESS.—In conducting an audit or in-
18 spection of a covered water system, the Adminis-
19 trator or duly designated representatives of the Ad-
20 ministrator, as appropriate, shall have access to the
21 owners, operators, employees and contractor employ-
22 ees, and employee representatives, if any, of such
23 covered water system.

24 “(3) CONFIDENTIAL COMMUNICATION OF IN-
25 FORMATION; AIDING INSPECTIONS.—The Adminis-

1 trator, or a duly designated representative of the
2 Administrator, shall offer non-supervisory employees
3 of a covered water system the opportunity confiden-
4 tially to communicate information relevant to the
5 employer's compliance or noncompliance with this
6 section, including compliance or noncompliance with
7 any regulation or requirement adopted by the Ad-
8 ministrator in furtherance of the purposes of this
9 section. A representative of each certified or recog-
10 nized bargaining agent described in subsection
11 (f)(3)(B), if any, or, if none, a non-supervisory em-
12 ployee, shall be given an opportunity to accompany
13 the Administrator, or the duly designated represent-
14 ative of the Administrator, during the physical in-
15 spection of any covered water system for the purpose
16 of aiding such inspection, if representatives of the
17 covered water system will also be accompanying the
18 Administrator or the duly designated representative
19 of the Administrator on such inspection.

20 “(1) PROTECTION OF INFORMATION.—

21 “(1) PROHIBITION OF PUBLIC DISCLOSURE OF
22 PROTECTED INFORMATION.—Protected information
23 shall—

24 “(A) be exempt from disclosure under sec-
25 tion 552 of title 5, United States Code; and

1 “(B) not be made available pursuant to
2 any State, local, or tribal law requiring disclo-
3 sure of information or records.

4 “(2) INFORMATION SHARING.—

5 “(A) IN GENERAL.—The Administrator
6 shall prescribe such regulations, and may issue
7 such orders, as necessary to prohibit the unau-
8 thorized disclosure of protected information, as
9 described in paragraph (7).

10 “(B) SHARING OF PROTECTED INFORMA-
11 TION.—The regulations under subparagraph
12 (A) shall provide standards for and facilitate
13 the appropriate sharing of protected informa-
14 tion with and between Federal, State, local, and
15 tribal authorities, first responders, law enforce-
16 ment officials, designated supervisory and non-
17 supervisory covered water system personnel
18 with security, operational, or fiduciary responsi-
19 bility for the system, and designated facility
20 employee representatives, if any. Such stand-
21 ards shall include procedures for the sharing of
22 all portions of a covered water system’s vulner-
23 ability assessment and site security plan relat-
24 ing to the roles and responsibilities of system
25 employees or contractor employees under sub-

1 section (f)(1) with a representative of each cer-
2 tified or recognized bargaining agent rep-
3 resenting such employees, if any, or, if none,
4 with at least one supervisory and at least one
5 non-supervisory employee with roles and re-
6 sponsibilities under subsection (f)(1).

7 “(C) PENALTIES.—Protected information,
8 as described in paragraph (7), shall not be
9 shared except in accordance with the standards
10 provided by the regulations under subparagraph
11 (A). Any person who purposefully publishes, di-
12 vulges, discloses, or makes known protected in-
13 formation in any manner or to any extent not
14 authorized by the standards provided by the
15 regulations under subparagraph (A), shall,
16 upon conviction, be imprisoned for not more
17 than one year or fined in accordance with the
18 provisions of chapter 227 of title 18, United
19 States Code, applicable to class A mis-
20 demeanors, or both, and, in the case of Federal
21 employees or officeholders, shall be removed
22 from Federal office or employment.

23 “(3) TREATMENT OF INFORMATION IN ADJU-
24 DICATIVE PROCEEDINGS.—In any judicial or admin-
25 istrative proceeding, protected information, as de-

1 scribed in paragraph (7), shall be treated in a man-
2 ner consistent with the treatment of Sensitive Secu-
3 rity Information under section 525 of the Depart-
4 ment of Homeland Security Appropriations Act,
5 2007 (Public Law 109–295; 120 Stat. 1381).

6 “(4) OTHER OBLIGATIONS UNAFFECTED.—Ex-
7 cept as provided in subsection (h)(3), nothing in this
8 section amends or affects an obligation of a covered
9 water system—

10 “(A) to submit or make available informa-
11 tion to system employees, employee organiza-
12 tions, or a Federal, State, tribal, or local gov-
13 ernment agency under any other law; or

14 “(B) to comply with any other law.

15 “(5) CONGRESSIONAL OVERSIGHT.—Nothing in
16 this section permits or authorizes the withholding of
17 information from Congress or any committee or sub-
18 committee thereof.

19 “(6) DISCLOSURE OF INDEPENDENTLY FUR-
20 NISHED INFORMATION.—Nothing in this section
21 amends or affects any authority or obligation of a
22 Federal, State, local, or tribal agency to protect or
23 disclose any record or information that the Federal,
24 State, local, or tribal agency obtains from a covered

1 water system or the Administrator under any other
2 law.

3 “(7) PROTECTED INFORMATION.—

4 “(A) IN GENERAL.—For purposes of this
5 section, protected information is any of the fol-
6 lowing:

7 “(i) Vulnerability assessments and
8 site security plans under this section, in-
9 cluding any assessment developed pursuant
10 to subsection (g)(2).

11 “(ii) Documents directly related to the
12 Administrator’s review of assessments and
13 plans described in clause (i) and, as appli-
14 cable, the State’s review of an assessment
15 prepared under subsection (g)(2).

16 “(iii) Documents directly related to
17 inspections and audits under this section.

18 “(iv) Orders, notices, or letters re-
19 garding the compliance of a covered water
20 system with the requirements of this sec-
21 tion.

22 “(v) Information required to be pro-
23 vided to, or documents and records created
24 by, the Administrator under subsection
25 (d).

1 “(vi) 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 “(vii) Other information, documents,
7 and records developed exclusively for the
8 purposes of this section that the Adminis-
9 trator determines would be detrimental to
10 the security of one or more covered water
11 systems if disclosed.

12 “(B) DETRIMENT REQUIREMENT.—For
13 purposes of clauses (ii), (iii), (iv), (v), and (vi)
14 of subparagraph (A), the only portions of docu-
15 ments, records, orders, notices, and letters that
16 shall be considered protected information are
17 those portions that—

18 “(i) would be detrimental to the secu-
19 rity of one or more covered water systems
20 if disclosed; and

21 “(ii) are developed by the Adminis-
22 trator, the State, or the covered water sys-
23 tem for the purposes of this section.

1 “(C) EXCLUSIONS.—For purposes of this
2 section, protected information does not in-
3 clude—

4 “(i) information that is otherwise pub-
5 licly available, including information that is
6 required to be made publicly available
7 under any law;

8 “(ii) information that a covered water
9 system has lawfully disclosed other than in
10 accordance with this section; and

11 “(iii) information that, if disclosed,
12 would not be detrimental to the security of
13 one or more covered water systems, includ-
14 ing aggregate regulatory data that the Ad-
15 ministrator determines appropriate to de-
16 scribe system compliance with the require-
17 ments of this section and the Administra-
18 tor’s implementation of such requirements.

19 “(m) RELATION TO CHEMICAL FACILITY SECURITY
20 REQUIREMENTS.—The following provisions (and any reg-
21 ulations promulgated thereunder) shall not apply to any
22 public water system subject to this Act:

23 “(1) Title XXI of the Homeland Security Act
24 of 2002 (as proposed to be added by H.R. 2868, the
25 Chemical Facility Anti-Terrorism Act of 2009).

1 “(2) Section 550 of the Department of Home-
2 land Security Appropriations Act, 2007 (Public Law
3 109–295).

4 “(3) The Chemical Facility Anti-Terrorism Act
5 of 2009.

6 “(n) PREEMPTION.—This section does not preclude
7 or deny the right of any State or political subdivision
8 thereof to adopt or enforce any regulation, requirement,
9 or standard of performance with respect to a covered
10 water system that is more stringent than a regulation, re-
11 quirement, or standard of performance under this section.

12 “(o) VIOLATIONS.—

13 “(1) IN GENERAL.—A covered water system
14 that violates any requirement of this section, includ-
15 ing by not implementing all or part of its site secu-
16 rity plan by such date as the Administrator requires,
17 shall be liable for a civil penalty of not more than
18 \$25,000 for each day on which the violation oc-
19 curs.

20 “(2) PROCEDURE.—When the Administrator
21 determines that a covered water system is subject to
22 a civil penalty under paragraph (1), the Adminis-
23 trator, after consultation with the State, for covered
24 water systems located in a State exercising primary
25 responsibility for the covered water system, and,

1 after considering the severity of the violation or defi-
2 ciency and the record of the covered water system in
3 carrying out the requirements of this section, may—

4 “(A) after notice and an opportunity for
5 the covered water system to be heard, issue an
6 order assessing a civil penalty under such para-
7 graph for any past or current violation, requir-
8 ing compliance immediately or within a speci-
9 fied time period; or

10 “(B) commence a civil action in the United
11 States district court in the district in which the
12 violation occurred for appropriate relief, includ-
13 ing temporary or permanent injunction.

14 “(3) METHODS TO REDUCE THE CON-
15 SEQUENCES OF A CHEMICAL RELEASE FROM AN IN-
16 TENTIONAL ACT.—Except as provided in subsections
17 (g)(4) and (g)(5), if a covered water system is lo-
18 cated in a State exercising primary enforcement re-
19 sponsibility for the system, the Administrator may
20 not issue an order or commence a civil action under
21 this section for any deficiency in the content or im-
22 plementation of the portion of the system’s site secu-
23 rity plan relating to methods to reduce the con-
24 sequences of a chemical release from an intentional
25 act (as defined in subsection (g)(1)).

1 “(p) REPORT TO CONGRESS.—

2 “(1) PERIODIC REPORT.—Not later than 3
3 years after the effective date of the regulations
4 under subsection (a)(1), and every 3 years there-
5 after, the Administrator shall transmit to the Com-
6 mittee on Energy and Commerce of the House of
7 Representatives and the Committee on Environment
8 and Public Works of the Senate a report on progress
9 in achieving compliance with this section. Each such
10 report shall include, at a minimum, the following:

11 “(A) A generalized summary of measures
12 implemented by covered water systems in order
13 to meet each risk-based performance standard
14 established by this section.

15 “(B) A summary of how the covered water
16 systems, differentiated by risk-based tier as-
17 signment, are complying with the requirements
18 of this section during the period covered by the
19 report and how the Administrator is imple-
20 menting and enforcing such requirements dur-
21 ing such period including—

22 “(i) the number of public water sys-
23 tems that provided the Administrator with
24 information pursuant to subsection (d)(1);

1 “(ii) the number of covered water sys-
2 tems assigned to each risk-based tier;

3 “(iii) the number of vulnerability as-
4 sessments and site security plans sub-
5 mitted by covered water systems;

6 “(iv) the number of vulnerability as-
7 sessments and site security plans approved
8 and disapproved by the Administrator;

9 “(v) the number of covered water sys-
10 tems without approved vulnerability assess-
11 ments or site security plans;

12 “(vi) the number of covered water sys-
13 tems that have been assigned to a different
14 risk-based tier due to implementation of a
15 method to reduce the consequences of a
16 chemical release from an intentional act
17 and a description of the types of such im-
18 plemented methods;

19 “(vii) the number of audits and in-
20 spections conducted by the Administrator
21 or duly designated representatives of the
22 Administrator;

23 “(viii) the number of orders for com-
24 pliance issued by the Administrator;

1 “(ix) the administrative penalties as-
2 sessed by the Administrator for non-com-
3 pliance with the requirements of this sec-
4 tion;

5 “(x) the civil penalties assessed by
6 courts for non-compliance with the require-
7 ments of this section; and

8 “(xi) any other regulatory data the
9 Administrator determines appropriate to
10 describe covered water system compliance
11 with the requirements of this section and
12 the Administrator’s implementation of
13 such requirements.

14 “(2) PUBLIC AVAILABILITY.—A report sub-
15 mitted under this section shall be made publicly
16 available.

17 “(q) GRANT PROGRAMS.—

18 “(1) IMPLEMENTATION GRANTS TO STATES.—
19 The Administrator may award grants to, or enter
20 into cooperative agreements with, States, based on
21 an allocation formula established by the Adminis-
22 trator, to assist the States in implementing this sec-
23 tion.

24 “(2) RESEARCH, TRAINING, AND TECHNICAL
25 ASSISTANCE GRANTS.—The Administrator may

1 award grants to, or enter into cooperative agree-
2 ments with, non-profit organizations to provide re-
3 search, training, and technical assistance to covered
4 water systems to assist them in carrying out their
5 responsibilities under this section.

6 “(3) PREPARATION GRANTS.—

7 “(A) GRANTS.—The Administrator may
8 award grants to, or enter into cooperative
9 agreements with, covered water systems to as-
10 sist such systems in—

11 “(i) preparing and updating vulner-
12 ability assessments, site security plans, and
13 emergency response plans;

14 “(ii) assessing and implementing
15 methods to reduce the consequences of a
16 release of a substance of concern from an
17 intentional act; and

18 “(iii) implementing any other security
19 reviews and enhancements necessary to
20 comply with this section.

21 “(B) PRIORITY.—

22 “(i) NEED.—The Administrator, in
23 awarding grants or entering into coopera-
24 tive agreements for purposes described in
25 subparagraph (A)(i), shall give priority to

1 covered water systems that have the great-
2 est need.

3 “(ii) SECURITY RISK.—The Adminis-
4 trator, in awarding grants or entering into
5 cooperative agreements for purposes de-
6 scribed in subparagraph (A)(ii), shall give
7 priority to covered water systems that pose
8 the greatest security risk.

9 “(4) WORKER TRAINING GRANTS PROGRAM AU-
10 THORITY.—

11 “(A) IN GENERAL.—The Administrator
12 shall establish a grant program to award grants
13 to eligible entities to provide for training and
14 education of employees and contractor employ-
15 ees with roles or responsibilities described in
16 subsection (f)(1) and first responders and emer-
17 gency response providers who would respond to
18 an intentional act at a covered water system.

19 “(B) ADMINISTRATION.—The Adminis-
20 trator shall enter into an agreement with the
21 National Institute of Environmental Health
22 Sciences to make and administer grants under
23 this paragraph.

1 “(C) USE OF FUNDS.—The recipient of a
2 grant under this paragraph shall use the grant
3 to provide for—

4 “(i) training and education of employ-
5 ees and contractor employees with roles or
6 responsibilities described in subsection
7 (f)(1), including the annual mandatory
8 training specified in subsection (f)(2) or
9 training for first responders in protecting
10 nearby persons, property, or the environ-
11 ment from the effects of a release of a sub-
12 stance of concern at the covered water sys-
13 tem, with priority given to covered water
14 systems assigned to tier one or tier two
15 under subsection (d); and

16 “(ii) appropriate training for first re-
17 sponders and emergency response pro-
18 viders who would respond to an intentional
19 act at a covered water system.

20 “(D) ELIGIBLE ENTITIES.—For purposes
21 of this paragraph, an eligible entity is a non-
22 profit organization with demonstrated experi-
23 ence in implementing and operating successful
24 worker or first responder health and safety or
25 security training programs.

1 “(r) AUTHORIZATION OF APPROPRIATIONS.—

2 “(1) IN GENERAL.—To carry out this section,
3 there are authorized to be appropriated—

4 “(A) \$315,000,000 for fiscal year 2011, of
5 which up to—

6 “(i) \$30,000,000 may be used for ad-
7 ministrative costs incurred by the Adminis-
8 trator or the States, as appropriate; and

9 “(ii) \$125,000,000 may be used to
10 implement methods to reduce the con-
11 sequences of a chemical release from an in-
12 tentional act at covered water systems with
13 priority given to covered water systems as-
14 signed to tier one or tier two under sub-
15 section (d); and

16 “(B) such sums as may be necessary for
17 fiscal years 2012 through 2015.

18 “(2) SECURITY ENHANCEMENTS.—Funding
19 under this subsection for basic security enhance-
20 ments shall not include expenditures for personnel
21 costs or monitoring, operation, or maintenance of fa-
22 cilities, equipment, or systems.”.

23 (b) REGULATIONS; TRANSITION.—

24 (1) REGULATIONS.—Not later than 2 years
25 after the date of the enactment of this Act, the Ad-

1 administrator of the Environmental Protection Agency
2 shall promulgate final regulations to carry out sec-
3 tion 1433 of the Safe Drinking Water Act, as
4 amended by subsection (a).

5 (2) EFFECTIVE DATE.—Until the effective date
6 of the regulations promulgated under paragraph (1),
7 section 1433 of the Safe Drinking Water Act, as in
8 effect on the day before the date of the enactment
9 of this title, shall continue to apply.

10 (3) SAVINGS PROVISION.—Nothing in this sec-
11 tion or the amendment made by this section shall af-
12 fect the application of section 1433 of the Safe
13 Drinking Water Act, as in effect before the effective
14 date of the regulations promulgated under para-
15 graph (1), to any violation of such section 1433 oc-
16 ccurring before such effective date, and the require-
17 ments of such section 1433 shall remain in force and
18 effect with respect to such violation until the viola-
19 tion has been corrected or enforcement proceedings
20 completed, whichever is later.

21 **SEC. 3. STUDY TO ASSESS THE THREAT OF CONTAMINA-**
22 **TION OF DRINKING WATER DISTRIBUTION**
23 **SYSTEMS.**

24 Not later than 180 days after the date of the enact-
25 ment of this Act, the Administrator of the Environmental

1 Protection Agency, in consultation with the Secretary of
2 Homeland Security, shall—

3 (1) conduct a study to assess the threat of con-
4 tamination of drinking water being distributed
5 through public water systems, including fire main
6 systems; and

7 (2) submit a report to the Congress on the re-
8 sults of such study.

