

**H.R. 2868, AS AMENDED BY THE SUBCOMMITTEE
ON ENERGY AND ENVIRONMENT ON OCTOBER
14, 2009**

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Chemical Facility Anti-
3 Terrorism Act of 2009”.

4 **SEC. 2. FINDINGS AND PURPOSE.**

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

7 (1) The Nation’s chemical sector represents a
8 target that terrorists could exploit to cause con-
9 sequences, including death, injury, or serious adverse
10 effects to human health, the environment, critical in-
11 frastructure, public health, homeland security, na-
12 tional security, and the national economy.

13 (2) Chemical facilities that pose such potential
14 consequences and that are vulnerable to terrorist at-
15 tacks must be protected.

16 (3) The Secretary of Homeland Security has
17 statutory authority pursuant to section 550 of the
18 Department of Homeland Security Appropriations
19 Act, 2007 (Public Law 109–295) to regulate the se-

1 security practices at chemical facilities that are at sig-
2 nificant risk of being terrorist targets.

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

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

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

15 (a) IN GENERAL.—The Homeland Security Act of
16 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
17 end the following new title:

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

21 **“SEC. 2101. DEFINITIONS.**

22 “In this title, the following definitions apply:

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

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

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

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

12 “(A) Restricting the area perimeter.

13 “(B) Securing site assets.

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

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

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

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

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

19 “(ii) deter chemical facility terrorist
20 incidents through visible, professional, well-
21 maintained security measures and systems,
22 including security personnel, detection sys-
23 tems, barriers and barricades, and hard-
24 ened or reduced value targets;

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

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

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

16 “(F) Deterring theft or diversion of a sub-
17 stance of concern.

18 “(G) Deterring insider sabotage.

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

1 ness systems, and other sensitive computerized
2 systems.

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

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

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

20 “(ii) measures designed to regularly
21 test security systems, note deficiencies,
22 correct for detected deficiencies, and record
23 results so that they are available for in-
24 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 and implement a site se-
14 curity plan for that covered chemical facil-
15 ity that addresses the security vulnerability
16 assessment and meets the risk-based chem-
17 ical security performance standards under
18 subsection (b); 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 clause;

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) RISK-BASED CHEMICAL SECURITY PERFORM-
14 ANCE STANDARDS.—The Secretary shall establish risk-
15 based chemical security performance standards for the site
16 security plans required to be prepared by covered chemical
17 facilities. In establishing such standards, the Secretary
18 shall—

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

23 “(2) permit each covered chemical facility sub-
24 mitting a site security plan to select a combination
25 of security measures that satisfy the risk-based

1 chemical security performance standards established
2 by the Secretary under this subsection.

3 “(c) CO-LOCATED CHEMICAL FACILITIES.—The Sec-
4 retary may allow an owner or operator of a covered chem-
5 ical facility that is located geographically close to another
6 covered chemical facility to develop and implement coordi-
7 nated security vulnerability assessments and site security
8 plans.

9 “(d) ALTERNATE SECURITY PROGRAMS SATISFYING
10 REQUIREMENTS FOR SECURITY VULNERABILITY ASSESS-
11 MENT AND SITE SECURITY PLAN.—

12 “(1) ACCEPTANCE OF PROGRAM.—In response
13 to a request by an owner or operator of a covered
14 chemical facility, the Secretary may accept an alter-
15 nate security program submitted by the owner or op-
16 erator of the facility as a component of the security
17 vulnerability assessment or site security plan re-
18 quired under this section, if the Secretary deter-
19 mines that such alternate security program, in com-
20 bination with other components of the security vul-
21 nerability assessment and site security plan sub-
22 mitted by the owner or operator of the facility—

23 “(A) meets the requirements of this title
24 and the regulations promulgated pursuant to
25 this title;

1 “(B) provides an equivalent level of secu-
2 rity to the level of security established pursuant
3 to the regulations promulgated under this title;
4 and

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

7 “(2) SECRETARIAL REVIEW REQUIRED.—Noth-
8 ing in this subsection shall relieve the Secretary of
9 the obligation—

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

13 “(B) to approve or disapprove each such
14 assessment or plan on an individual basis ac-
15 cording to the deadlines established under sub-
16 section (a).

17 “(3) COVERED FACILITY’S OBLIGATIONS UNAF-
18 FECTED.—Nothing in this subsection shall relieve
19 any covered chemical facility of the obligation and
20 responsibility to comply with all of the requirements
21 of this title.

22 “(4) PERSONNEL SURETY ALTERNATE SECUR-
23 ITY PROGRAM.—In response to an application from
24 a non-profit, personnel surety accrediting organiza-
25 tion acting on behalf of, and with written authoriza-

1 tion from, the owner or operator of a covered chem-
2 ical facility, the Secretary may accept a personnel
3 surety alternate security program that meets the re-
4 quirements of section 2115 and provides for a back-
5 ground check process that is—

6 “(A) expedited, affordable, reliable, and ac-
7 curate;

8 “(B) fully protective of the rights of cov-
9 ered individuals through procedures that are
10 consistent with the privacy protections available
11 under the Fair Credit Reporting Act (15 U.S.C.
12 1681 et seq.); and

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

15 “(e) OTHER AUTHORITIES.—

16 “(1) REGULATION OF MARITIME FACILITIES.—

17 “(A) RISK-BASED TIERING.—Notwith-
18 standing any other provision of law, the owner
19 or operator of a chemical facility required to
20 submit a facility security plan under section
21 70103(c) of title 46, United States Code, shall
22 be required to submit information to the Sec-
23 retary necessary to determine whether to des-
24 ignate such a facility as a covered chemical fa-

1 ility and to assign the facility to a risk-based
2 tier under section 2102 of this title.

3 “(B) ADDITIONAL MEASURES.—In the case
4 of a facility designated as a covered chemical
5 facility under this title that is also regulated
6 under section 70103(c) of title 46, United
7 States Code, the Commandant of the Coast
8 Guard, after consultation with the Secretary,
9 shall require the owner or operator of such fa-
10 cility to update the vulnerability assessments
11 and facility security plans required under that
12 section, if necessary, to ensure an equivalent
13 level of security for substances of concern, in-
14 cluding the requirements under section 2111, in
15 the same manner as other covered chemical fa-
16 cilities in this title.

17 “(C) PERSONNEL SURETY.—

18 “(i) EXCEPTION.—A facility des-
19 ignated as a covered chemical facility
20 under this title that has had its facility se-
21 curity plan approved under section
22 70103(c) of title 46, United States Code,
23 shall not be required to update or amend
24 such plan in order to meet the require-
25 ments of section 2115 of this title.

1 “(ii) EQUIVALENT ACCESS.—An indi-
2 vidual described in section 2115(a)(1)(B)
3 who has been granted access to restricted
4 areas or critical assets by the owner or op-
5 erator of a facility for which a security
6 plan is required to be submitted under sec-
7 tion 70103(c) of title 46, United States
8 Code, may be considered by that owner or
9 operator to have satisfied the requirement
10 for passing a security background check
11 otherwise required under section 2115 for
12 purposes of granting the individual access
13 to restricted areas or critical assets of a
14 covered chemical facility that is owned or
15 operated by the same owner or operator.

16 “(D) INFORMATION SHARING AND PRO-
17 TECTION.—Notwithstanding section 70103(d)
18 of title 46, United States Code, the Com-
19 mandant of the Coast Guard, after consultation
20 with the Secretary, shall apply the information
21 sharing and protection requirements in section
22 2110 of this title to a facility described in sub-
23 paragraph (B).

24 “(E) ENFORCEMENT.—The Secretary shall
25 establish, by rulemaking, procedures to ensure

1 that an owner or operator of a covered chemical
2 facility required to update the vulnerability as-
3 sessment and facility security plan for the facil-
4 ity under subparagraph (B) is in compliance
5 with the requirements of this title.

6 “(F) FORMAL AGREEMENT.—The Sec-
7 retary shall require the Office of Infrastructure
8 Protection and the Coast Guard to enter into a
9 formal agreement detailing their respective roles
10 and responsibilities in carrying out the require-
11 ments of this title. Such agreement shall ensure
12 that the enforcement and compliance require-
13 ments under this title and section 70103 of title
14 46, United States Code, are not conflicting or
15 duplicative.

16 “(2) COORDINATION OF STORAGE LICENSING
17 OR PERMITTING REQUIREMENT.—In the case of any
18 storage required to be licensed or permitted under
19 chapter 40 of title 18, United States Code, the Sec-
20 retary shall prescribe the rules and regulations for
21 the implementation of this section with the concur-
22 rence of the Attorney General and avoid unnecessary
23 duplication of regulatory requirements.

24 “(f) ROLE OF EMPLOYEES.—

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

6 “(2) ANNUAL TRAINING FOR EMPLOYEES.—The
7 owner or operator of a covered chemical facility re-
8 quired to submit a site security plan under this sec-
9 tion shall annually provide each covered individual
10 with a role or responsibility referred to in paragraph
11 (1) at the facility with a minimum of 8 hours of
12 training. Such training shall, as relevant to the role
13 or responsibility of such covered individual—

14 “(A) include an identification and discus-
15 sion of substances of concern;

16 “(B) include a discussion of possible con-
17 sequences of a chemical facility terrorist inci-
18 dent;

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

22 “(D) include a review of information pro-
23 tection requirements;

24 “(E) include a discussion of physical and
25 cyber security equipment, systems, and methods

1 used to achieve chemical security performance
2 standards;

3 “(F) allow training with other relevant
4 participants, including Federal, State, local,
5 and tribal authorities, and first responders,
6 where appropriate;

7 “(G) use existing national voluntary con-
8 sensus standards, chosen jointly with employee
9 representatives, if any;

10 “(H) allow instruction through government
11 training programs, chemical facilities, academic
12 institutions, nonprofit organizations, industry
13 and private organizations, employee organiza-
14 tions, and other relevant entities that provide
15 such training;

16 “(I) use multiple training media and meth-
17 ods; and

18 “(J) include a discussion of appropriate
19 emergency response procedures, including pro-
20 cedures to mitigate the effects of a chemical fa-
21 cility terrorist incident.

22 “(3) EQUIVALENT TRAINING.—During any
23 year, with respect to any covered individual with
24 roles or responsibilities under paragraph (1), an
25 owner or operator of a covered chemical facility may

1 satisfy any of the training requirements for such
2 covered individual under subparagraphs (A), (B),
3 (C), (D), (E), or (J) of paragraph (2) through train-
4 ing that such owner or operator certifies, in a man-
5 ner prescribed by the Secretary, as equivalent.

6 “(4) WORKER TRAINING GRANT PROGRAM.—

7 “(A) AUTHORITY.—The Secretary shall es-
8 tablish a grant program to award grants to or
9 enter into cooperative agreements with eligible
10 entities to provide for the training and edu-
11 cation of covered individuals with roles or re-
12 sponsibilities described in paragraph (1) and
13 first responders and emergency response pro-
14 viders that would respond to a chemical facility
15 terrorist incident.

16 “(B) ADMINISTRATION.—The Secretary
17 shall seek to enter into an agreement with the
18 National Institute for Environmental Health
19 Sciences to make and administer grants or co-
20 operative agreements under this paragraph.

21 “(C) USE OF FUNDS.—The recipient of
22 funds under this paragraph shall use such
23 funds to provide for the training and education
24 of covered individuals with roles or responsibil-
25 ities described in paragraph (1), first respond-

1 ers, and emergency response providers, includ-
2 ing—

3 “(i) the annual mandatory training
4 specified in paragraph (2); and

5 “(ii) other appropriate training to
6 protect nearby persons, property, critical
7 infrastructure, or the environment from
8 the effects of a chemical facility terrorist
9 incident.

10 “(D) ELIGIBLE ENTITIES.—For purposes
11 of this paragraph, an eligible entity is a non-
12 profit organization with demonstrated experi-
13 ence in implementing and operating successful
14 worker or first responder health and safety or
15 security training programs.

16 “(g) STATE, REGIONAL, OR LOCAL GOVERNMENTAL
17 ENTITIES.—No covered chemical facility shall be required
18 under State, local, or tribal law to provide a vulnerability
19 assessment or site security plan described under this title
20 to any State, regional, local, or tribal government entity
21 solely by reason of the requirement under subsection (a)
22 that the covered chemical facility submit such an assess-
23 ment and plan to the Secretary.

1 **“SEC. 2104. SITE INSPECTIONS.**

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

8 “(b) INSPECTIONS AND VERIFICATIONS.—

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

13 “(2) REQUIREMENTS.—To ensure and evaluate
14 compliance with this title, including any regulations
15 or requirements adopted by the Secretary in further-
16 ance of the purposes of this title, in conducting an
17 inspection or verification under paragraph (1), the
18 Secretary shall have access to the owners, operators,
19 employees, and employee representatives, if any, of
20 a covered chemical facility.

21 “(c) UNANNOUNCED INSPECTIONS.—In addition to
22 any inspection conducted pursuant to subsection (b), the
23 Secretary shall require covered chemical facilities assigned
24 to tier 1 and tier 2 under section 2102(c)(1) to undergo
25 unannounced facility inspections. The inspections required
26 under this subsection shall be—

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

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

5 “(A) the ability of the chemical facility to
6 prevent a chemical facility terrorist incident
7 that the site security plan of the facility is in-
8 tended to prevent;

9 “(B) the ability of the chemical facility to
10 protect against security threats that are re-
11 quired to be addressed by the site security plan
12 of the facility; and

13 “(C) any weaknesses in the site security
14 plan of the chemical facility;

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

19 “(4) conducted—

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

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

24 “(d) CHEMICAL FACILITY INSPECTORS AUTHOR-
25 IZED.—During the period of fiscal years 2010 and 2011,

1 subject to the availability of appropriations for such pur-
2 pose, the Secretary shall increase by not fewer than 100
3 the total number of chemical facility inspectors within the
4 Department to ensure compliance with this title.

5 “(e) CONFIDENTIAL COMMUNICATIONS.—The Sec-
6 retary shall offer non-supervisory employees the oppor-
7 tunity to confidentially communicate information relevant
8 to the employer’s compliance or non-compliance with this
9 title, including compliance or non-compliance with any
10 regulation or requirement adopted by the Secretary in fur-
11 therance of the purposes of this title. An employee rep-
12 resentative of a covered chemical facility, if any, shall be
13 given the opportunity to accompany the Secretary during
14 a physical inspection of such covered chemical facility for
15 the purpose of aiding in such inspection, if representatives
16 of the owner or operator of the covered chemical facility
17 will also be accompanying the Secretary on such inspec-
18 tion.

19 **“SEC. 2105. RECORDS.**

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

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

4 “(2) assessing the implementation of such a site
5 security plan.

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

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

11 “(a) RESPONSIBILITIES OF SECRETARY.—Upon the
12 receipt of information concerning a threat that is relevant
13 to a certain covered chemical facility, the Secretary shall
14 provide such information in a timely manner, to the max-
15 imum extent practicable under applicable authority and in
16 the interests of national security, to the owner, operator,
17 or security officer of that covered chemical facility and to
18 a representative of each recognized or certified bargaining
19 agent at the facility, if any.

20 “(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—
21 The Secretary shall require the owner or operator of a
22 covered chemical facility to provide information concerning
23 a threat in a timely manner about any significant security
24 incident or threat to the covered chemical facility or any
25 intentional or unauthorized penetration of the physical se-

1 curity or cyber security of the covered chemical facility
2 whether successful or unsuccessful.

3 **“SEC. 2107. ENFORCEMENT.**

4 “(a) REVIEW OF SITE SECURITY PLAN.—

5 “(1) DISAPPROVAL.—The Secretary shall dis-
6 approve a security vulnerability assessment or site
7 security plan submitted under this title if the Sec-
8 retary determines that—

9 “(A) the security vulnerability assessment
10 or site security plan does not comply with the
11 standards, protocols, or procedures under sec-
12 tion 2103(a)(1)(A); or

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

14 “(i) the plan or the implementation of
15 the plan is insufficient to address
16 vulnerabilities identified in a security vul-
17 nerability assessment, site inspection, or
18 unannounced inspection of the covered
19 chemical facility; or

20 “(ii) the plan fails to meet all applica-
21 ble chemical facility security performance
22 standards.

23 “(2) PROVISION OF NOTIFICATION OF DIS-
24 APPROVAL.—If the Secretary disapproves the secu-
25 rity vulnerability assessment or site security plan

1 submitted by a covered chemical facility under this
2 title or the implementation of a site security plan by
3 such a chemical facility, the Secretary shall provide
4 the owner or operator of the covered chemical facil-
5 ity a written notification of the disapproval within
6 14 days of the date on which the Secretary dis-
7 approves such assessment or plan, that—

8 “(A) includes a clear explanation of defi-
9 ciencies in the assessment, plan, or implementa-
10 tion of the plan; and

11 “(B) requires the owner or operator of the
12 covered chemical facility to revise the assess-
13 ment or plan to address any deficiencies and,
14 by such date as the Secretary determines is ap-
15 propriate, to submit to the Secretary the re-
16 vised assessment or plan.

17 “(3) ORDER FOR COMPLIANCE.—Whenever the
18 Secretary determines that the owner or operator of
19 a covered chemical facility has violated or is in viola-
20 tion of any requirement of this title or has failed or
21 is failing to address any deficiencies in the assess-
22 ment, plan, or implementation of the plan by such
23 date as the Secretary determines to be appropriate,
24 the Secretary may—

1 “(A) after providing notice to the owner or
2 operator of the covered chemical facility and an
3 opportunity for such owner or operator to ap-
4 peal the Secretary’s determination, issue an
5 order assessing a civil penalty for any past or
6 current violation, requiring compliance imme-
7 diately or within a specified time period, or
8 both; or

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

13 “(4) ORDER TO CEASE OPERATIONS.—If the
14 Secretary determines that the owner or operator of
15 a covered chemical facility continues to be in non-
16 compliance after an order for compliance is issued
17 under paragraph (3), the Secretary may issue an
18 order to the owner or operator of a covered chemical
19 facility to cease operations at the facility until the
20 owner or operator complies with such order issued
21 under paragraph (3). Notwithstanding the preceding
22 sentence, the Secretary may not issue an order to
23 cease operations under this paragraph to the owner
24 or operator of a wastewater facility.

25 “(b) PENALTIES.—

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

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

11 **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

12 “(a) ESTABLISHMENT.—The Secretary shall estab-
13 lish and provide information to the public regarding a
14 process by which any person may submit a report to the
15 Secretary regarding problems, deficiencies, or
16 vulnerabilities at a covered chemical facility associated
17 with the risk of a chemical facility terrorist incident.

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

23 “(c) ACKNOWLEDGMENT OF RECEIPT.—If a report
24 submitted under subsection (a) identifies the person sub-

1 mitting the report, the Secretary shall respond promptly
2 to such person to acknowledge receipt of the report.

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

9 “(e) RETALIATION PROHIBITED.—

10 “(1) PROHIBITION.—No owner or operator of a
11 covered chemical facility, profit or not-for-profit cor-
12 poration, association, or any contractor, subcon-
13 tractor or agent thereof, may discharge any em-
14 ployee or otherwise discriminate against any em-
15 ployee with respect to his compensation, terms, con-
16 ditions, or other privileges of employment because
17 the employee (or any person acting pursuant to a re-
18 quest of the employee)—

19 “(A) notified the Secretary, the owner or
20 operator of a covered chemical facility, or the
21 employee’s employer of an alleged violation of
22 this title, including communications related to
23 carrying out the employee’s job duties;

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

4 “(C) testified before or otherwise provided
5 information relevant for Congress or for any
6 Federal or State proceeding regarding any pro-
7 vision (or proposed provision) of this title;

8 “(D) commenced, caused to be commenced,
9 or is about to commence or cause to be com-
10 menced a proceeding under this title;

11 “(E) testified or is about to testify in any
12 such proceeding; or

13 “(F) assisted or participated or is about to
14 assist or participate in any manner in such a
15 proceeding or in any other manner in such a
16 proceeding or in any other action to carry out
17 the purposes of this title.

18 “(2) ENFORCEMENT ACTION.—Any employee
19 covered by this section who alleges discrimination by
20 an employer in violation of paragraph (1) may bring
21 an action governed by the rules and procedures,
22 legal burdens of proof, and remedies applicable
23 under subsections (d) through (h) of section 20109
24 of title 49, United States Code. A party may seek
25 district court review as set forth in subsection (d)(4)

1 of such section not later than 90 days after receiving
2 a written final determination by the Secretary of
3 Labor.

4 “(3) PROHIBITED PERSONNEL PRACTICES AF-
5 FECTING THE DEPARTMENT.—

6 “(A) IN GENERAL.—Notwithstanding any
7 other provision of law, any individual holding or
8 applying for a position within the Department
9 shall be covered by—

10 “(i) paragraphs (1), (8), and (9) of
11 section 2302(b) of title 5, United States
12 Code;

13 “(ii) any provision of law imple-
14 menting any of such paragraphs by pro-
15 viding any right or remedy available to an
16 employee or applicant for employment in
17 the civil service; and

18 “(iii) any rule or regulation prescribed
19 under any such paragraph.

20 “(B) RULE OF CONSTRUCTION.—Nothing
21 in this paragraph shall be construed to affect
22 any rights, apart from those referred to in sub-
23 paragraph (A), to which an individual described
24 in that subparagraph might otherwise be enti-
25 tled to under law.

1 **“SEC. 2109. FEDERAL PREEMPTION.**

2 “This title does not preclude or deny any right of any
3 State or political subdivision thereof to adopt or enforce
4 any regulation, requirement, or standard of performance
5 with respect to a covered chemical facility that is more
6 stringent than a regulation, requirement, or standard of
7 performance issued under this title, or otherwise impair
8 any right or jurisdiction of any State or political subdivi-
9 sion thereof with respect to covered chemical facilities
10 within that State or political subdivision thereof.

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

12 “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-
13 TECTED INFORMATION.—Protected information, as de-
14 scribed in subsection (g)—

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

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

20 “(b) INFORMATION SHARING.—

21 “(1) IN GENERAL.—The Secretary shall pre-
22 scribe such regulations, and may issue such orders,
23 as necessary to prohibit the unauthorized disclosure
24 of protected information, as described in subsection
25 (g).

1 “(2) SHARING OF PROTECTED INFORMATION.—

2 The regulations under paragraph (1) shall provide
3 standards for and facilitate the appropriate sharing
4 of protected information with and between Federal,
5 State, local, and tribal authorities, emergency re-
6 sponse providers, law enforcement officials, des-
7 ignated supervisory and nonsupervisory covered
8 chemical facility personnel with security, operational,
9 or fiduciary responsibility for the facility, and des-
10 ignated facility employee representatives, if any.
11 Such standards shall include procedures for the
12 sharing of all portions of a covered chemical facili-
13 ty’s vulnerability assessment and site security plan
14 relating to the roles and responsibilities of covered
15 individuals under section 2103(f)(1) with a rep-
16 resentative of each certified or recognized bargaining
17 agent representing such covered individuals, if any,
18 or, if none, with at least one supervisory and at least
19 one non-supervisory employee with roles or respon-
20 sibilities under section 2103(f)(1).

21 “(3) PENALTIES.—Protected information, as
22 described in subsection (g), shall not be shared ex-
23 cept in accordance with the regulations under para-
24 graph (1). Any person who purposefully publishes,
25 divulges, discloses, or makes known protected infor-

1 mation in any manner or to any extent not author-
2 ized by the standards provided by the regulations
3 under paragraph (1), shall, upon conviction, be im-
4 prisoned for not more than one year or fined in ac-
5 cordance with the provisions of chapter 227 of title
6 18, United States Code, applicable to class A mis-
7 demeanors, or both, and, in the case of Federal em-
8 ployees or officeholders, shall be removed from Fed-
9 eral office or employment.

10 “(c) TREATMENT OF INFORMATION IN ADJUDICA-
11 TIVE PROCEEDINGS.—In any judicial or administrative
12 proceeding, protected information described in subsection
13 (g) shall be treated in a manner consistent with the treat-
14 ment of sensitive security information under section 525
15 of the Department of Homeland Security Appropriations
16 Act, 2007 (Public Law 109–295; 120 Stat. 1381).

17 “(d) OTHER OBLIGATIONS UNAFFECTED.—Nothing
18 in this section affects any obligation of the owner or oper-
19 ator of a chemical facility under any other law to submit
20 or make available information required by such other law
21 to facility employees, employee organizations, or a Fed-
22 eral, State, tribal, or local government.

23 “(e) SUBMISSION OF INFORMATION TO CONGRESS.—
24 Nothing in this title shall permit or authorize the with-

1 holding of information from Congress or any committee
2 or subcommittee thereof.

3 “(f) DISCLOSURE OF INDEPENDENTLY FURNISHED
4 INFORMATION.—Except as provided in section 2103(g),
5 nothing in this title shall affect any authority or obligation
6 of a Federal, State, local, or tribal government agency to
7 protect or disclose any record or information that the Fed-
8 eral, State, local, or tribal government agency obtains
9 from a chemical facility under any other law.

10 “(g) PROTECTED INFORMATION.—

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

13 “(A) Security vulnerability assessments
14 and site security plans, including any assess-
15 ment required under section 2111.

16 “(B) Portions of the following documents,
17 records, orders, notices, or letters that the Sec-
18 retary determines would be detrimental to
19 chemical facility security if disclosed and that
20 are developed by the Secretary or the owner or
21 operator of a covered chemical facility for the
22 purposes of this title:

23 “(i) Documents directly related to the
24 Secretary’s review and approval or dis-

1 approval of vulnerability assessments and
2 site security plans under this title.

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

5 “(iii) Orders, notices, or letters re-
6 garding the compliance of a covered chem-
7 ical facility with the requirements of this
8 title.

9 “(iv) Information required to be pro-
10 vided to, or documents and records created
11 by, the Secretary under section subsection
12 (b) or (c) of section 2102.

13 “(v) Documents directly related to se-
14 curity drills and training exercises, security
15 threats and breaches of security, and
16 maintenance, calibration, and testing of se-
17 curity equipment.

18 “(C) Other information, documents, or
19 records developed exclusively for the purposes of
20 this title that the Secretary determines, if dis-
21 closed, would be detrimental to chemical facility
22 security.

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

1 “(A) information that is otherwise publicly
2 available, including information that is required
3 to be made publicly available under any law;

4 “(B) information that a chemical facility
5 has lawfully disclosed other than in accordance
6 with this title; or

7 “(C) information that, if disclosed, would
8 not be detrimental to the security of a chemical
9 facility, including aggregate regulatory data
10 that the Secretary determines is appropriate to
11 describe facility compliance with the require-
12 ments of this title and the Secretary’s imple-
13 mentation of such requirements.

14 **“SEC. 2111. METHODS TO REDUCE THE CONSEQUENCES OF**
15 **A TERRORIST ATTACK.**

16 “(a) ASSESSMENT REQUIRED.—

17 “(1) ASSESSMENT.—The owner or operator of
18 a covered chemical facility shall include in the site
19 security plan conducted pursuant to section 2103,
20 an assessment of methods to reduce the con-
21 sequences of a terrorist attack on that chemical fa-
22 cility, including—

23 “(A) a description of the methods to re-
24 duce the consequences of a terrorist attack im-

1 plemented and considered for implementation
2 by the covered chemical facility;

3 “(B) the degree to which each method to
4 reduce the consequences of a terrorist attack, if
5 already implemented, has reduced, or, if imple-
6 mented, could reduce, the potential extent of
7 death, injury, or serious adverse effects to
8 human health resulting from a release of a sub-
9 stance of concern;

10 “(C) the technical feasibility, costs, avoided
11 costs (including liabilities), personnel implica-
12 tions, savings, and applicability of implementing
13 each method to reduce the consequences of a
14 terrorist attack; and

15 “(D) any other information that the owner
16 or operator of the covered chemical facility con-
17 sidered in conducting the assessment.

18 “(2) FEASIBLE.—For the purposes of this sub-
19 section, the term ‘feasible’ means feasible with the
20 use of best technology, techniques, and other means
21 which the Secretary finds, after examination for effi-
22 cacy under field conditions and not solely under lab-
23 oratory conditions, are available for use at the cov-
24 ered chemical facility.

25 “(b) IMPLEMENTATION.—

1 “(1) IMPLEMENTATION.—

2 “(A) IN GENERAL.—The owner or operator
3 of a covered chemical facility that is assigned to
4 tier 1 or tier 2 because of the potential extent
5 and likelihood of death, injury, and serious ad-
6 verse effects to human health, the environment,
7 critical infrastructure, public health, homeland
8 security, national security, and the national
9 economy from a release of a substance of con-
10 cern at the covered chemical facility, shall im-
11 plement methods to reduce the consequences of
12 a terrorist attack on the chemical facility if the
13 Director of the Office of Chemical Facility Se-
14 curity determines, in his or her discretion,
15 based in part on an assessment conducted pur-
16 suant to subsection (a), that the implementa-
17 tion of such methods at the facility—

18 “(i) would significantly reduce the
19 risk of death, injury, or serious adverse ef-
20 fects to human health resulting from a
21 chemical facility terrorist incident but—

22 “(I) would not increase the in-
23 terim storage of a substance of con-
24 cern outside the facility;

1 “(II) would not directly result in
2 the creation of a new covered chemical
3 facility assigned to tier 1 or tier 2 be-
4 cause of the potential extent and like-
5 lihood of death, injury, and serious
6 adverse effects to human health, the
7 environment, critical infrastructure,
8 public health, homeland security, na-
9 tional security, and the national econ-
10 omy from a release of a substance of
11 concern at the covered chemical facil-
12 ity; or

13 “(III) would not result in the re-
14 assignment of an existing covered
15 chemical facility from tier 3 or tier 4
16 to tier 1 or tier 2 because of the po-
17 tential extent and likelihood of death,
18 injury, and serious adverse effects to
19 human health, the environment, crit-
20 ical infrastructure, public health,
21 homeland security, national security,
22 and the national economy from a re-
23 lease of a substance of concern at the
24 covered chemical facility;

1 “(ii) can feasibly be incorporated into
2 the operation of the covered chemical facil-
3 ity; and

4 “(iii) would not significantly and de-
5 monstrably impair the ability of the owner
6 or operator of the covered chemical facility
7 to continue the business of the facility at
8 its location.

9 “(B) WRITTEN DETERMINATION.—A de-
10 termination by the Director of the Office of
11 Chemical Facility Security pursuant to sub-
12 paragraph (A) shall be made in writing and in-
13 clude the basis and reasons for such determina-
14 tion.

15 “(C) MARITIME FACILITIES.—With respect
16 to a covered chemical facility for which a secu-
17 rity plan is required under section 70103(e) of
18 title 46, United States Code, a written deter-
19 mination pursuant to subparagraph (A) shall be
20 made only after consultation with the Captain
21 of the Port for the area in which the covered
22 chemical facility is located.

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

24 “(A) IN GENERAL.—An owner or operator
25 of a covered chemical facility who is unable to

1 comply with the Director's determination under
2 paragraph (1) shall, within 120 days of receipt
3 of the Director's determination, provide to the
4 Secretary a written explanation that includes
5 the reasons therefor. Such written explanation
6 shall specify whether the owner or operator's in-
7 ability to comply arises under clause (ii) or (iii)
8 of paragraph (1)(A), or both.

9 “(B) REVIEW.—Not later than 120 days of
10 receipt of an explanation submitted under sub-
11 paragraph (A), the Secretary, after consulting
12 with the owner or operator of the covered chem-
13 ical facility who submitted such explanation, as
14 well as experts in the subjects of environmental
15 health and safety, security, chemistry, design
16 and engineering, process controls and imple-
17 mentation, maintenance, production and oper-
18 ations, chemical process safety, and occupa-
19 tional health, as appropriate, shall provide to
20 the owner or operator a written determination,
21 in his or her discretion, of whether implementa-
22 tion shall be required pursuant to paragraph
23 (1). If the Secretary determines that implemen-
24 tation is required, the Secretary shall issue an
25 order that establishes the basis for such deter-

1 mination, including the findings of the relevant
2 experts, the specific methods selected for imple-
3 mentation, and a schedule for implementation
4 of the methods at the facility.

5 “(c) GUIDANCE FOR FARM SUPPLIES MERCHANT
6 WHOLESALERS.—

7 “(1) IN GENERAL.—The Secretary shall provide
8 guidance and, as appropriate, tools, methodologies,
9 or computer software, to assist farm supplies mer-
10 chant wholesalers in complying with the require-
11 ments of this section.

12 “(2) DEFINITION.—For purposes of this sub-
13 section, the term ‘farm supplies merchant whole-
14 saler’ means a covered chemical facility that is pri-
15 marily engaged in the merchant wholesale distribu-
16 tion of farm supplies such as animal feeds, fer-
17 tilizers, agricultural chemicals, pesticides, plant
18 seeds, and plant bulbs.

19 “(d) PROVISION OF INFORMATION ON ALTERNATIVE
20 APPROACHES.—

21 “(1) IN GENERAL.—The Secretary shall make
22 available information on the use and availability of
23 methods to reduce the consequences of a chemical
24 facility terrorist incident.

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

4 “(A) general and specific types of such
5 methods;

6 “(B) combinations of chemical sources,
7 substances of concern, and hazardous processes
8 or conditions for which such methods could be
9 appropriate;

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

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

14 “(E) emerging technologies that could be
15 transferred from research models or prototypes
16 to practical applications;

17 “(F) the availability of technical assistance
18 and best practices; and

19 “(G) such other matters as the Secretary
20 determines is appropriate.

21 “(3) PUBLIC AVAILABILITY.—Information made
22 available under this subsection shall not identify any
23 specific chemical facility, violate the protection of in-
24 formation provisions under section 2110, or disclose
25 any proprietary information.

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

7 **“SEC. 2112. APPLICABILITY.**

8 “‘This title shall not apply to—

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

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

15 “(3) all or a specified portion of any chemical
16 facility that—

17 “(A) is subject to regulation by the Nu-
18 clear Regulatory Commission (hereinafter in
19 this paragraph referred to as the ‘Commission’)
20 or a State that has entered into an agreement
21 with the Commission under section 274 b. of
22 the Atomic Energy Act of 1954 (42 U.S.C.
23 2021 b.);

24 “(B) has had security controls imposed by
25 the Commission or State, whichever has the

1 regulatory authority, on the entire facility or
2 the specified portion of the facility; and

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

7 “(4) any public water system subject to the pro-
8 visions of the Safe Drinking Water Act (42 U.S.C.
9 300f et seq.).

10 **“SEC. 2113. SAVINGS CLAUSE.**

11 “(a) IN GENERAL.—Nothing in this title shall affect
12 or modify in any way any obligation or liability of any
13 person under any other Federal law, including section 112
14 of the Clean Air Act (42 U.S.C. 7412), the Federal Water
15 Pollution Control Act (33 U.S.C. 1251 et seq.), the Re-
16 source Conservation and Recovery Act of 1976 (42 U.S.C.
17 6901 et seq.), the National Environmental Policy Act of
18 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety
19 and Health Act (29 U.S.C. 651 et seq.), the National
20 Labor Relations Act (29 U.S.C. 151 et seq.), the Emer-
21 gency Planning and Community Right to Know Act of
22 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water
23 Act (42 U.S.C. 300f et seq.), the Maritime Transportation
24 Security Act of 2002 (Public Law 107–295), the Com-
25 prehensive Environmental Response, Compensation, and

1 Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Toxic
2 Substances Control Act (15 U.S.C. 2601 et seq.), and the
3 Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

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

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

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

13 “(a) IN GENERAL.—There is established in the De-
14 partment an Office of Chemical Facility Security, headed
15 by a Director, who shall be a member of the Senior Execu-
16 tive Service in accordance with subchapter VI of chapter
17 53 of title 5, United States Code, under section 5382 of
18 that title, and who shall be responsible for carrying out
19 the responsibilities of the Secretary under this title.

20 “(b) PROFESSIONAL QUALIFICATIONS.—The indi-
21 vidual selected by the Secretary as the Director of the Of-
22 fice of Chemical Facility Security shall have professional
23 qualifications and experience necessary for effectively di-
24 recting the Office of Chemical Facility Security and car-
25 rying out the requirements of this title, including a dem-

1 onstrated knowledge of physical infrastructure protection,
2 cybersecurity, chemical facility security, hazard analysis,
3 chemical process engineering, chemical process safety re-
4 views, or other such qualifications that the Secretary de-
5 termines to be necessary.

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

17 **“SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED**
18 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
19 **TIES.**

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

21 “(1) IN GENERAL.—

22 “(A) REQUIREMENT.—The Secretary shall
23 issue regulations to require covered chemical fa-
24 cilities to establish personnel surety for individ-
25 uals described in subparagraph (B) by con-

1 ducting appropriate security background checks
2 and ensuring appropriate credentials for
3 unescorted visitors and chemical facility per-
4 sonnel, including permanent and part-time per-
5 sonnel, temporary personnel, and contract per-
6 sonnel, including—

7 “(i) measures designed to verify and
8 validate identity;

9 “(ii) measures designed to check
10 criminal history;

11 “(iii) measures designed to verify and
12 validate legal authorization to work; and

13 “(iv) measures designed to identify
14 people with terrorist ties.

15 “(B) INDIVIDUALS DESCRIBED.—For pur-
16 poses of subparagraph (A), an individual de-
17 scribed in this subparagraph is—

18 “(i) a covered individual who has
19 unescorted access to restricted areas or
20 critical assets or who is provided with a
21 copy of a security vulnerability assessment
22 or site security plan;

23 “(ii) a person associated with a cov-
24 ered chemical facility who is provided with

1 a copy of a security vulnerability assess-
2 ment or site security plan; or

3 “(iii) a person who is determined by
4 the Secretary to require a security back-
5 ground check based on chemical facility se-
6 curity performance standards.

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

9 “(A) the scope of the security background
10 checks, including the types of disqualifying of-
11 fenses and the time period covered for each per-
12 son subject to a security background check
13 under paragraph (1);

14 “(B) the processes to conduct the security
15 background checks;

16 “(C) the necessary biographical informa-
17 tion and other data required in order to con-
18 duct the security background checks;

19 “(D) a redress process for an adversely-af-
20 fected person consistent with subsections (b)
21 and (c); and

22 “(E) a prohibition on an owner or operator
23 of a covered chemical facility misrepresenting to
24 an employee or other relevant person, including
25 an arbiter involved in a labor arbitration, the

1 scope, application, or meaning of any rules, reg-
2 ulations, directives, or guidance issued by the
3 Secretary related to security background check
4 requirements for covered individuals when con-
5 ducting a security background check.

6 “(b) MISREPRESENTATION.—The regulations re-
7 quired by subsection (a)(1) shall set forth that it shall be
8 a misrepresentation under subsection (a)(2)(E) to at-
9 tribute an adverse employment decision, including removal
10 or suspension of the employee, to such regulations unless
11 the owner or operator finds, after opportunity for appro-
12 priate redress under the processes provided under sub-
13 section (c)(1) and (c)(2) that the person subject to such
14 adverse employment decision—

15 “(1) has been convicted of, has been found not
16 guilty of by reason of insanity, or is under want,
17 warrant, or indictment for a permanent disqualifying
18 criminal offense listed in part 1572 of title 49, Code
19 of Federal Regulations;

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

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

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

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

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

13 “(1) require the owner or operator to provide
14 an adequate and prompt redress process for a per-
15 son subject to a security background check under
16 subsection (a)(1) who is subjected to an adverse em-
17 ployment decision, including removal or suspension
18 of the employee, due to such regulations that is con-
19 sistent with the appeals process established for em-
20 ployees subject to consumer reports under the Fair
21 Credit Reporting Act (15 U.S.C. 1681 et seq.), as
22 in force on the date of enactment of this title;

23 “(2) provide an adequate and prompt redress
24 process for a person subject to a security back-
25 ground check under subsection (a)(1) who is sub-

1 jected to an adverse employment decision, including
2 removal or suspension of the employee, due to a de-
3 termination by the Secretary under subsection
4 (b)(4), that is consistent with the appeals process es-
5 tablished under section 70105(c) of title 46, United
6 States Code, including all rights to hearings before
7 an administrative law judge, scope of review, and a
8 review of an unclassified summary of classified evi-
9 dence equivalent to the summary provided in part
10 1515 of title 49, Code of Federal Regulations;

11 “(3) provide an adequate and prompt redress
12 process for a person subject to a security back-
13 ground check under subsection (a)(1) who is sub-
14 jected to an adverse employment decision, including
15 removal or suspension of the employee, due to a vio-
16 lation of subsection (a)(2)(E), which shall not pre-
17 clude the exercise of any other rights available under
18 collective bargaining agreements or applicable laws;

19 “(4) have the authority to order an appropriate
20 remedy, including reinstatement of the person sub-
21 ject to a security background check under subsection
22 (a)(1), if the Secretary determines that the adverse
23 employment decision was made in violation of the
24 regulations required under subsection (a)(1) or as a

1 result of an erroneous determination by the Sec-
2 retary under subsection (b)(4);

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

8 “(6) ensure that the person subject to a secu-
9 rity background check under subsection (a)(1) re-
10 ceives the person’s full wages and benefits until all
11 redress processes under this subsection are ex-
12 hausted.

13 “(d) RESTRICTIONS ON USE AND MAINTENANCE OF
14 INFORMATION.—Information obtained under this section
15 by the Secretary or the owner or operator of a covered
16 chemical facility shall be handled as follows:

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

19 “(2) Such information may not be accessed by
20 employees of the facility except for such employees
21 who are directly involved with collecting the informa-
22 tion or conducting or evaluating security background
23 checks.

24 “(3) Such information shall be maintained con-
25 fidentially by the facility and the Secretary and may

1 be used only for making determinations under this
2 section.

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

6 “(e) SAVINGS CLAUSE.—

7 “(1) RIGHTS AND RESPONSIBILITIES.—Nothing
8 in this section shall be construed to abridge any
9 right or responsibility of a person subject to a secu-
10 rity background check under subsection (a)(1) or an
11 owner or operator of a covered chemical facility
12 under any other Federal, State, local, or tribal law
13 or collective bargaining agreement.

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

19 “(f) PREEMPTION.—Nothing in this section shall be
20 construed to preempt, alter, or affect a Federal, State,
21 local, or tribal law that requires criminal history back-
22 ground checks, checks on the authorization of an indi-
23 vidual to work in the United States, or other background
24 checks of persons subject to security background checks
25 under subsection (a)(1).

1 “(g) DEFINITION OF SECURITY BACKGROUND
2 CHECK.—The term ‘security background check’ means a
3 review at no cost to any person subject to a security back-
4 ground check under subsection (a)(1) of the following for
5 the purpose of identifying individuals who may pose a
6 threat to chemical facility security, to national security,
7 or of terrorism:

8 “(1) Relevant databases to verify and validate
9 identity.

10 “(2) Relevant criminal history databases.

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

16 “(4) The consolidated terrorist watchlist.

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

19 “(h) DEPARTMENT-CONDUCTED SECURITY BACK-
20 GROUND CHECK.—The regulations under subsection
21 (a)(1) shall set forth a process by which the Secretary,
22 on an ongoing basis, shall determine whether alternate se-
23 curity background checks conducted by the Department
24 are sufficient to meet the requirements of this section such
25 that no additional security background check under this

1 section is required for an individual for whom such a
2 qualifying alternate security background check was con-
3 ducted. The Secretary may require a facility to which the
4 individual will have unescorted access to sensitive or re-
5 stricted areas to submit identifying information about the
6 individual and the alternate security background check
7 conducted for that individual to the Secretary in order to
8 enable the Secretary to verify the validity of the alternate
9 security background check. Such regulations shall provide
10 that no security background check under this section is
11 required for an individual holding a transportation secu-
12 rity card issued under section 70105 of title 46, United
13 States Code.

14 **“SEC. 2116. CITIZEN ENFORCEMENT.**

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

18 “(1) against any governmental entity (including
19 the United States, any other governmental instru-
20 mentality or agency, and any federally owned-con-
21 tractor operated facility, to the extent permitted by
22 the eleventh amendment to the Constitution) alleged
23 to be in violation of any order that has become effec-
24 tive pursuant to this title; or

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

4 “(b) COURT OF JURISDICTION.—

5 “(1) IN GENERAL.—Any action under sub-
6 section (a)(1) shall be brought in the district court
7 for the district in which the alleged violation oc-
8 curred. Any action brought under subsection (a)(2)
9 may be brought in the district court for the district
10 in which the alleged violation occurred or in the
11 United States District Court of the District of Co-
12 lumbia.

13 “(2) RELIEF.—The district court shall have ju-
14 risdiction, without regard to the amount in con-
15 troversy or the citizenship of the parties to enforce
16 the order referred to in subsection (a)(1), to order
17 such governmental entity to take such action as may
18 be necessary, or both, or, in an action commenced
19 under subsection (a)(2), to order the Secretary to
20 perform the non-discretionary act or duty, and to
21 order any civil penalties, as appropriate, under sec-
22 tion 2107.

23 “(c) ACTIONS PROHIBITED.—No action may be com-
24 menced under subsection (a) prior to 60 days after the

1 date on which the person commencing the action has given
2 notice of the alleged violation to—

3 “(1) the Secretary; and

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

7 “(d) NOTICE.—Notice under this section shall be
8 given in such manner as the Secretary shall prescribe by
9 regulation.

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

13 “(f) COSTS.—The court, in issuing any final order
14 in any action brought pursuant to this section, may award
15 costs of litigation (including reasonable attorney and ex-
16 pert witness fees) to the prevailing or substantially pre-
17 vailing party, whenever the court determines such an
18 award is appropriate. The court may, if a temporary re-
19 straining order or preliminary injunction is sought, require
20 the filing of a bond or equivalent security in accordance
21 with the Federal Rules of Civil Procedure.

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

1 **“SEC. 2117. CITIZEN PETITIONS.**

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

5 “(1) the format for petitions;

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

7 “(3) the procedures for response to petitions,
8 including timelines; and

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

12 “(b) PETITIONS.—The regulations issued pursuant to
13 subsection (a) shall allow any person to file a petition with
14 the Secretary—

15 “(1) identifying any person (including the
16 United States and any other governmental instru-
17 mentality or agency, to the extent permitted by the
18 eleventh amendment to the Constitution) alleged to
19 be in violation of any standard, regulation, condi-
20 tion, requirement, prohibition, plan, or order that
21 has become effective under this title; and

22 “(2) describing the alleged violation of any
23 standard, regulation, condition, requirement, prohi-
24 bition, plan, or order that has become effective
25 under this title by that person;

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

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

6 “(2) investigate all allegations contained in ac-
7 cepted petitions;

8 “(3) determine whether enforcement action will
9 be taken concerning the alleged violation or viola-
10 tions;

11 “(4) respond to all accepted petitions promptly
12 and in writing;

13 “(5) include in all responses to petitions a brief
14 and concise statement, to the extent permitted under
15 section 2110, of the allegations, the steps taken to
16 investigate, the determination made, and the reasons
17 for such determination;

18 “(6) maintain an internal record including all
19 protected information related to the determination;
20 and

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

25 “(d) FINAL AGENCY ACTION.—

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

6 “(2) DETERMINATION NOT TO PURSUE EN-
7 FORCEMENT.—Any determination by the Secretary
8 not to pursue enforcement action in response to a
9 petition under this section shall constitute final
10 agency action.

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

12 “(a) ANNUAL REPORT.—Not later than one year
13 after the date of the enactment of this title, annually
14 thereafter for the next four years, and biennially there-
15 after, the Secretary shall submit to the Committee on
16 Homeland Security and the Committee on Energy and
17 Commerce of the House of Representatives and the Com-
18 mittee on Homeland Security and Governmental Affairs
19 and the Committee on Environment and Public Works of
20 the Senate a report on progress in achieving compliance
21 with this title. Each such report shall include the fol-
22 lowing:

23 “(1) A qualitative discussion of how covered
24 chemical facilities, differentiated by tier, have re-

1 duced the risks of chemical facility terrorist inci-
2 dents at such facilities, including—

3 “(A) a generalized summary of measures
4 implemented by covered chemical facilities in
5 order to meet each risk-based chemical facility
6 performance standard established by this title,
7 and those that the facilities already had in
8 place—

9 “(i) in the case of the first report
10 under this section, before the issuance of
11 the final rule implementing the regulations
12 known as the ‘Chemical Facility Anti-Ter-
13 rorism Standards’, issued on April 9,
14 2007; and

15 “(ii) in the case of each subsequent
16 report, since the submittal of the most re-
17 cent report submitted under this section;
18 and

19 “(B) any other generalized summary the
20 Secretary deems appropriate to describe the
21 measures covered chemical facilities are imple-
22 menting to comply with the requirements of
23 this title.

24 “(2) A quantitative summary of how the cov-
25 ered chemical facilities, differentiated by tier, are

1 complying with the requirements of this title during
2 the period covered by the report and how the Sec-
3 retary is implementing and enforcing such require-
4 ments during such period, including—

5 “(A) the number of chemical facilities that
6 provided the Secretary with information about
7 possessing substances of concern, as described
8 in section 2102(b)(2);

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

11 “(C) the number of security vulnerability
12 assessments and site security plans submitted
13 by covered chemical facilities;

14 “(D) the number of security vulnerability
15 assessments and site security plans approved
16 and disapproved by the Secretary;

17 “(E) the number of covered chemical facili-
18 ties without approved security vulnerability as-
19 sessments or site security plans;

20 “(F) the number of chemical facilities that
21 have been assigned to a different tier or are no
22 longer regulated by the Secretary due to imple-
23 mentation of a method to reduce the con-
24 sequences of a terrorist attack and a descrip-
25 tion of such implemented methods;

1 “(G) the number of orders for compliance
2 issued by the Secretary;

3 “(H) the administrative penalties assessed
4 by the Secretary for non-compliance with the
5 requirements of this title;

6 “(I) the civil penalties assessed by the
7 court for non-compliance with the requirements
8 of this title;

9 “(J) the number of terrorist watchlist
10 checks done by the Secretary in order to comply
11 with the requirements of this title, the number
12 of appeals pursuant to the redress processes
13 under paragraphs (2) and (3) section 2115(c),
14 and the time taken for such appeals; and

15 “(K) any other regulatory data the Sec-
16 retary deems appropriate to describe facility
17 compliance with the requirements of this title
18 and the Secretary’s implementation of such re-
19 quirements.

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

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

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

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

5 “(2) \$300,000,000 for fiscal year 2012, of
6 which \$75,000,000 shall be made available to pro-
7 vide funding for methods to reduce the consequences
8 of a terrorist attack; and

9 “(3) \$275,000,000 for fiscal year 2013, of
10 which \$50,000,000 shall be made available to pro-
11 vide funding for methods to reduce the consequences
12 of a terrorist attack.”.

13 (b) CLERICAL AMENDMENT.—The table of contents
14 in section 1(b) of such Act is amended by adding at the
15 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.”.

1 (c) CONFORMING REPEAL.—

2 (1) REPEAL.—The Department of Homeland
3 Security Appropriations Act, 2007 (Public Law
4 109–295) is amended by striking section 550.

5 (2) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall take effect on October 1,
7 2009.

8 (d) TREATMENT OF CFATS REGULATIONS.—

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

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

1 this Act, that the Secretary determines carry out
2 such requirements.

3 (3) AMENDMENT OF CFATS.—The Secretary
4 shall amend the regulations known as the Chemical
5 Facility Anti-Terrorism Standards to ensure that
6 such regulations fulfill the requirements of this Act
7 and the amendments made by this Act, to the extent
8 that the requirements of this Act and the amend-
9 ments made by this Act differ from the requirements
10 of such regulations, as in effect on the date of the
11 enactment of this Act.

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

1 (e) FACILITIES COVERED BY CFATS.—The owner or
2 operator of a covered chemical facility, who, before the ef-
3 fective date of the final regulations issued under title XXI
4 of the Homeland Security Act of 2002, as added by sub-
5 section (a), submits a security vulnerability assessment or
6 site security plan under the regulations known as CFATS
7 regulations, as in effect immediately before the enactment
8 of this Act, shall be required to update or amend the facili-
9 ty’s security vulnerability assessment and site security
10 plan to reflect any additional requirements of this Act or
11 the amendments made by this Act, according to a timeline
12 established by the Secretary.

13 (f) CONSULTATION WITH OTHER PERSONS.—In de-
14 veloping and carrying out the regulations under title XXI
15 of the Homeland Security Act of 2002, as added by sub-
16 section (a), the Secretary shall consult with the Adminis-
17 trator of the Environmental Protection Agency, and other
18 persons, as appropriate, regarding—

19 (1) the designation of substances of concern;

20 (2) methods to reduce the consequences of a
21 terrorist attack;

22 (3) security at co-owned and co-operated drink-
23 ing water and wastewater facilities;

24 (4) the treatment of protected information; and

1 (5) such other matters as the Secretary deter-
2 mines necessary.

3 (g) DEADLINE FOR REGULATIONS.—

4 (1) PROPOSED RULE.—The Secretary of Home-
5 land Security shall promulgate a proposed rule to
6 fulfill the requirements of title XXI of the Homeland
7 Security Act of 2002, as added by subsection (a),
8 not later than 6 months after the date of the enact-
9 ment of this Act.

10 (2) FINAL RULE.—The Secretary shall, after
11 proper notice and opportunity for public comment,
12 promulgate a final rule to fulfill the requirements of
13 such title not later than 18 months after the date
14 of the enactment of this Act.

