

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO THE COMMITTEE PRINT FOR H.R. 908  
OFFERED BY MR. WAXMAN OF CALIFORNIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Chemical Facility Anti-  
3 Terrorism Act of 2011”.

**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 issued  
17 interim final regulations called the Chemical Facility

1 Anti-Terrorism Standards, which became effective  
2 on June 8, 2007.

3 (b) PURPOSE.—The purpose of this Act is to modify  
4 and make permanent the authority of the Secretary of  
5 Homeland Security to regulate security practices at chem-  
6 ical facilities.

7 **SEC. 3. EXTENSION, MODIFICATION, AND RECODIFICATION**  
8 **OF AUTHORITY OF SECRETARY OF HOME-**  
9 **LAND SECURITY TO REGULATE SECURITY**  
10 **PRACTICES AT CHEMICAL FACILITIES.**

11 (a) IN GENERAL.—Section 550 of the Department of  
12 Homeland Security Appropriations Act, 2007 (Public Law  
13 109–295) is amended to read as follows:

14 **“SEC. 550. REGULATION OF SECURITY PRACTICES AT**  
15 **CHEMICAL FACILITIES.**

16 “(a) DEFINITIONS.—In this section, the following  
17 definitions apply:

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

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

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

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

7                   “(A) Restricting the area perimeter.

8                   “(B) Securing site assets.

9                   “(C) Screening and controlling access to  
10           the facility and to restricted areas within the  
11           facility by screening or inspecting individuals  
12           and vehicles as they enter, including—

13                   “(i) measures to deter the unauthor-  
14           ized introduction of dangerous substances  
15           and devices that may facilitate a chemical  
16           facility terrorist incident or actions having  
17           serious negative consequences for the pop-  
18           ulation surrounding the chemical facility;  
19           and

20                   “(ii) measures implementing a regu-  
21           larly updated identification system that  
22           checks the identification of chemical facil-  
23           ity personnel and other persons seeking ac-  
24           cess to the chemical facility and that dis-

1 courages abuse through established dis-  
2 ciplinary measures.

3 “(D) Methods to deter, detect, and delay a  
4 chemical facility terrorist incident, creating suf-  
5 ficient time between detection of a chemical fa-  
6 cility terrorist incident and the point at which  
7 the chemical facility terrorist incident becomes  
8 successful, including measures to—

9 “(i) deter vehicles from penetrating  
10 the chemical facility perimeter, gaining un-  
11 authorized access to restricted areas, or  
12 otherwise presenting a hazard to poten-  
13 tially critical targets;

14 “(ii) deter chemical facility terrorist  
15 incidents through visible, professional, well-  
16 maintained security measures and systems,  
17 including security personnel, detection sys-  
18 tems, barriers and barricades, and hard-  
19 ened or reduced value targets;

20 “(iii) detect chemical facility terrorist  
21 incidents at early stages through counter-  
22 surveillance, frustration of opportunity to  
23 observe potential targets, surveillance and  
24 sensing systems, and barriers and barri-  
25 cades; and

1                   “(iv) delay a chemical facility terrorist  
2                   incident for a sufficient period of time so  
3                   as to allow appropriate response through  
4                   on-site security response, barriers and bar-  
5                   ricades, hardened targets, and well-coordi-  
6                   nated response planning.

7                   “(E) Securing and monitoring the ship-  
8                   ping, receipt, and storage of a substance of con-  
9                   cern for the chemical facility.

10                  “(F) Deterring theft or diversion of a sub-  
11                  stance of concern.

12                  “(G) Deterring insider sabotage.

13                  “(H) Deterring cyber sabotage, including  
14                  by preventing unauthorized onsite or remote ac-  
15                  cess to critical process controls, including super-  
16                  visory control and data acquisition systems, dis-  
17                  tributed control systems, process control sys-  
18                  tems, industrial control systems, critical busi-  
19                  ness systems, and other sensitive computerized  
20                  systems.

21                  “(I) Developing and exercising an internal  
22                  emergency plan for owners, operators, and cov-  
23                  ered individuals of a covered chemical facility  
24                  for responding to chemical facility terrorist inci-  
25                  dents at the facility, including the provision of

1 appropriate information to any local emergency  
2 planning committee, local law enforcement offi-  
3 cials, and emergency response providers to en-  
4 sure an effective, collective response to terrorist  
5 incidents.

6 “(J) Maintaining effective monitoring,  
7 communications, and warning systems, includ-  
8 ing—

9 “(i) measures designed to ensure that  
10 security systems and equipment are in  
11 good working order and inspected, tested,  
12 calibrated, and otherwise maintained;

13 “(ii) measures designed to regularly  
14 test security systems, note deficiencies,  
15 correct for detected deficiencies, and record  
16 results so that they are available for in-  
17 spection by the Secretary; and

18 “(iii) measures to allow the chemical  
19 facility to promptly identify and respond to  
20 security system and equipment failures or  
21 malfunctions.

22 “(K) Ensuring mandatory annual security  
23 training, exercises, and drills of chemical facil-  
24 ity personnel appropriate to their roles, respon-  
25 sibilities, and access to a substance of concern,

1 including participation by local law enforce-  
2 ment, and local emergency response providers,  
3 and appropriate supervisory and non-super-  
4 visory facility employees and their employee  
5 representatives, if any.

6 “(L) Performing personnel surety for indi-  
7 viduals with access to restricted areas or critical  
8 assets by conducting appropriate background  
9 checks and ensuring appropriate credentials for  
10 unescorted visitors and chemical facility per-  
11 sonnel, including permanent and part-time per-  
12 sonnel, temporary personnel, and contract per-  
13 sonnel, including—

14 “(i) measures designed to verify and  
15 validate identity;

16 “(ii) measures designed to check  
17 criminal history;

18 “(iii) measures designed to verify and  
19 validate legal authorization to work; and

20 “(iv) measures designed to identify  
21 people with terrorist ties.

22 “(M) Escalating the level of protective  
23 measures for periods of elevated threat.

1           “(N) Specific threats, vulnerabilities, or  
2 risks identified by the Secretary for that chem-  
3 ical facility.

4           “(O) Reporting of significant security inci-  
5 dents to the Secretary and to appropriate local  
6 law enforcement officials.

7           “(P) Identifying, investigating, reporting,  
8 and maintaining records of significant security  
9 incidents and suspicious activities at or near the  
10 covered chemical facility.

11           “(Q) Establishing one or more officials and  
12 an organization responsible for—

13                   “(i) security;

14                   “(ii) compliance with the standards  
15 under this paragraph;

16                   “(iii) serving as the point of contact  
17 for incident management purposes with  
18 Federal, State, local, and tribal agencies,  
19 law enforcement, and emergency response  
20 providers; and

21                   “(iv) coordination with Federal, State,  
22 local, and tribal agencies, law enforcement,  
23 and emergency response providers regard-  
24 ing plans and security measures for the

1 collective response to a chemical facility  
2 terrorist incident.

3 “(R) Maintaining appropriate records re-  
4 lating to the security of the facility, including a  
5 copy of the most recent security vulnerability  
6 assessment and site security plan, at the chem-  
7 ical facility.

8 “(S) Assessing and, as appropriate, uti-  
9 lizing methods to reduce the consequences of a  
10 terrorist attack.

11 “(T) Methods to recover or mitigate the  
12 release of a substance of concern in the event  
13 of a chemical facility terrorist incident.

14 “(U) Any additional security performance  
15 standards the Secretary may specify.

16 “(3) The term ‘chemical facility terrorist inci-  
17 dent’ means any act or attempted act of terrorism  
18 or terrorist activity committed at, near, or against a  
19 chemical facility, including—

20 “(A) the release of a substance of concern  
21 from a chemical facility;

22 “(B) the theft, misappropriation, or misuse  
23 of a substance of concern from a chemical facil-  
24 ity; or

1           “(C) the sabotage of a chemical facility or  
2           a substance of concern at a chemical facility.

3           “(4) The term ‘employee representative’ means  
4           the representative of the certified or recognized bar-  
5           gaining agent engaged in a collective bargaining re-  
6           lationship with a private or public owner or operator  
7           of a chemical facility.

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

14          “(6) The term ‘covered chemical facility’ means  
15          a chemical facility that meets the criteria of sub-  
16          section (b)(2)(A).

17          “(7) The term ‘environment’ means—

18                 “(A) the navigable waters, the waters of  
19                 the contiguous zone, and the ocean waters of  
20                 which the natural resources are under the ex-  
21                 clusive management authority of the United  
22                 States under the Magnuson-Stevens Fishery  
23                 Conservation and Management Act (16 U.S.C.  
24                 1801 et seq.); and

1           “(B) any other surface water, ground  
2           water, drinking water supply, land surface or  
3           subsurface strata, or ambient air within the  
4           United States or under the jurisdiction of the  
5           United States.

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

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

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

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

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

19           “(10) The term ‘release’ means any spilling,  
20           leaking, pumping, pouring, emitting, emptying, dis-  
21           charging, injecting, escaping, leaching, dumping, or  
22           disposing into the environment (including the aban-  
23           donment or discarding of barrels, containers, and  
24           other closed receptacles containing any hazardous  
25           substance or pollutant or contaminant).

1           “(11) The term ‘substance of concern’ means a  
2 chemical substance in quantity and form that is so  
3 designated by the Secretary under subsection (b)(1).

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

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

15           “(B) the modification of pressures, tem-  
16 peratures, or concentrations of a substance of  
17 concern; and

18           “(C) the reduction or elimination of onsite  
19 handling of a substance of concern through im-  
20 provement of inventory control or chemical use  
21 efficiency.

22           “(13) The term ‘academic laboratory’ means a  
23 facility or area owned by an institution of higher  
24 education (as defined under section 101 of the High-  
25 er Education Act of 1965 (20 U.S.C. 1001)) or a

1 non-profit research institute or teaching hospital  
2 that has a formal affiliation with an institution of  
3 higher education, including photo laboratories, art  
4 studios, field laboratories, research farms, chemical  
5 stockrooms, and preparatory laboratories, where rel-  
6 atively small quantities of chemicals and other sub-  
7 stances, as determined by the Secretary, are used on  
8 a non-production basis for teaching, research, or di-  
9 agnostic purposes, and are stored and used in con-  
10 tainers that are typically manipulated by one person.

11 “(b) RISK-BASED DESIGNATION AND RANKING OF  
12 CHEMICAL FACILITIES.—

13 “(1) SUBSTANCES OF CONCERN.—

14 “(A) DESIGNATION BY THE SECRETARY.—

15 The Secretary may designate any chemical sub-  
16 stance as a substance of concern and establish  
17 the threshold quantity for each such substance  
18 of concern.

19 “(B) MATTERS FOR CONSIDERATION.—In

20 designating a chemical substance or estab-  
21 lishing or adjusting the threshold quantity for  
22 a chemical substance under subparagraph (A),  
23 the Secretary shall consider the potential extent  
24 of death, injury, and serious adverse effects to  
25 human health, the environment, critical infra-

1 structure, public health, homeland security, na-  
2 tional security, and the national economy that  
3 could result from a chemical facility terrorist  
4 incident.

5 “(2) LIST OF COVERED CHEMICAL FACILI-  
6 TIES.—

7 “(A) CRITERIA FOR LIST OF FACILITIES.—  
8 The Secretary shall maintain a list of covered  
9 chemical facilities that the Secretary determines  
10 are of sufficient security risk for inclusion on  
11 the list based on the following criteria:

12 “(i) The potential threat or likelihood  
13 that the chemical facility will be the target  
14 of a chemical facility terrorist incident.

15 “(ii) The potential extent and likeli-  
16 hood of death, injury, or serious adverse  
17 effects to human health, the environment,  
18 critical infrastructure, public health, home-  
19 land security, national security, and the  
20 national economy that could result from a  
21 chemical facility terrorist incident.

22 “(iii) The proximity of the chemical  
23 facility to large population centers.

24 “(B) SUBMISSION OF INFORMATION.—The  
25 Secretary may require the submission of infor-

1           mation with respect to the quantities of sub-  
2           stances of concern that an owner or operator of  
3           a chemical facility possesses or plans to possess  
4           in order to determine whether to designate a  
5           chemical facility as a covered chemical facility  
6           for purposes of this section.

7           “(3) ASSIGNMENT OF CHEMICAL FACILITIES TO  
8           RISK-BASED TIERS.—

9                   “(A) ASSIGNMENT.—The Secretary shall  
10           assign each covered chemical facility to one of  
11           four risk-based tiers established by the Sec-  
12           retary, with tier one representing the highest  
13           degree of risk and tier four the lowest degree  
14           of risk.

15                   “(B) PROVISION OF INFORMATION.—The  
16           Secretary may request, and the owner or oper-  
17           ator of a covered chemical facility shall provide,  
18           any additional information beyond any informa-  
19           tion required to be submitted under paragraph  
20           (2)(B) that may be necessary for the Secretary  
21           to assign the chemical facility to the appro-  
22           priate tier under subparagraph (A).

23                   “(C) NOTIFICATION.—Not later than 60  
24           days after the date on which the Secretary de-  
25           termines that a chemical facility is a covered

1 chemical facility or is no longer a covered chem-  
2 ical facility or changes the tier assignment  
3 under subparagraph (A) of a covered chemical  
4 facility, the Secretary shall notify the owner or  
5 operator of that chemical facility of that deter-  
6 mination or change together with the reason for  
7 the determination or change and, upon the re-  
8 quest of the owner or operator of a covered  
9 chemical facility, provide to the owner or oper-  
10 ator of the covered chemical facility the fol-  
11 lowing information:

12 “(i) The number of individuals at risk  
13 of death, injury, or severe adverse effects  
14 to human health as a result of a worst case  
15 chemical facility terrorist incident at the  
16 covered chemical facility.

17 “(ii) Information related to the criti-  
18 cality of the covered chemical facility.

19 “(iii) The proximity or interrelation-  
20 ship of the covered chemical facility to  
21 other critical infrastructure.

22 “(4) REQUIREMENT FOR REVIEW.—The Sec-  
23 retary—

24 “(A) shall periodically review—

1 “(i) the designation of a chemical sub-  
2 stance as a substance of concern and the  
3 threshold quantity for the substance under  
4 paragraph (1)(A); and

5 “(ii) the criteria under paragraph  
6 (2)(A); and

7 “(B) may, at any time, determine whether  
8 a chemical facility is a covered chemical facility  
9 or change the tier to which such a facility is as-  
10 signed under paragraph (3)(A).

11 “(5) PROVISION OF THREAT-RELATED INFOR-  
12 MATION.—In order to effectively assess the  
13 vulnerabilities to a covered chemical facility, the Sec-  
14 retary shall provide to the owner, operator, or secu-  
15 rity officer of a covered chemical facility threat in-  
16 formation regarding probable threats to the facility  
17 and methods that could be used in a chemical facil-  
18 ity terrorist incident.

19 “(c) SECURITY VULNERABILITY ASSESSMENTS AND  
20 SITE SECURITY PLANS.—

21 “(1) IN GENERAL.—

22 “(A) REQUIREMENT.—The Secretary  
23 shall—

24 “(i) establish standards, protocols,  
25 and procedures for security vulnerability

1 assessments and site security plans to be  
2 required for covered chemical facilities;

3 “(ii) require the owner or operator of  
4 each covered chemical facility to—

5 “(I) conduct an assessment of  
6 the vulnerability of the covered chem-  
7 ical facility to a range of chemical fa-  
8 cility terrorist incidents, including an  
9 incident that results in a worst-case  
10 release of a substance of concern, and  
11 submit such assessment to the Sec-  
12 retary;

13 “(II) prepare and implement a  
14 site security plan for that covered  
15 chemical facility that addresses the se-  
16 curity vulnerability assessment and  
17 meets the risk-based chemical security  
18 performance standards under para-  
19 graph (3) and submit such plan to the  
20 Secretary;

21 “(III) include at least one super-  
22 visory and at least one non-super-  
23 visory employee of the covered chem-  
24 ical facility, and at least one employee  
25 representative from each bargaining

1 agent at the covered chemical facility,  
2 if any, in developing the security vul-  
3 nerability assessment and site security  
4 plan required under this section; and

5 “(IV) include, with the submis-  
6 sion of a security vulnerability assess-  
7 ment and the site security plan of the  
8 covered chemical facility under this  
9 subsection, a signed statement by the  
10 owner or operator of the covered  
11 chemical facility that certifies that the  
12 submission is provided to the Sec-  
13 retary with knowledge of the penalty  
14 provisions under subsection (g);

15 “(iii) set deadlines, by tier, for the  
16 completion of security vulnerability assess-  
17 ments and site security plans;

18 “(iv) upon request, as necessary, and  
19 to the extent that resources permit, provide  
20 technical assistance to a covered chemical  
21 facility conducting a vulnerability assess-  
22 ment or site security plan required under  
23 this subsection;

24 “(v) establish specific deadlines and  
25 requirements for the submission by a cov-

1           ered chemical facility of information de-  
2           scribing—

3                   “(I) any change in the use by the  
4                   covered chemical facility of more than  
5                   a threshold amount of any substance  
6                   of concern that may affect the re-  
7                   quirements of the chemical facility  
8                   under this section; or

9                   “(II) any material modification  
10                  to a covered chemical facility’s oper-  
11                  ations or site that may affect the se-  
12                  curity vulnerability assessment or site  
13                  security plan submitted by the covered  
14                  chemical facility;

15                  “(vi) require the owner or operator of  
16                  a covered chemical facility to review and  
17                  resubmit a security vulnerability assess-  
18                  ment or site security plan not less fre-  
19                  quently than once every 5 years;

20                  “(vii) not later than 180 days after  
21                  the date on which the Secretary receives a  
22                  security vulnerability assessment or site se-  
23                  curity plan under this section, review and  
24                  approve or disapprove such assessment or

1 plan and notify the covered chemical facil-  
2 ity of such approval or disapproval; and

3 “(viii) establish, as appropriate, modi-  
4 fied or separate standards, protocols, and  
5 procedures for security vulnerability as-  
6 sessments and site security plans for cov-  
7 ered chemical facilities that are also aca-  
8 demic laboratories.

9 “(B) INHERENTLY GOVERNMENTAL FUNC-  
10 TION.—The approval or disapproval of a secu-  
11 rity vulnerability assessment or site security  
12 plan under this subsection is an inherently gov-  
13 ernmental function.

14 “(2) PARTICIPATION IN PREPARATION OF SECUR-  
15 ITY VULNERABILITY ASSESSMENTS OR SITE SECUR-  
16 ITY PLANS.—Any person selected by the owner or  
17 operator of a covered chemical facility or by a cer-  
18 tified or recognized bargaining agent of a covered  
19 chemical facility to participate in the development of  
20 the security vulnerability assessment or site security  
21 plan required under this subsection for such covered  
22 chemical facility shall be permitted to participate if  
23 the person possesses knowledge, experience, training,  
24 or education relevant to the portion of the security

1 vulnerability assessment or site security plan on  
2 which the person is participating.

3 “(3) RISK-BASED CHEMICAL SECURITY PER-  
4 FORMANCE STANDARDS.—The Secretary shall estab-  
5 lish risk-based chemical security performance stand-  
6 ards for the site security plans required to be pre-  
7 pared by covered chemical facilities. In establishing  
8 such standards, the Secretary shall—

9 “(A) require separate and, as appropriate,  
10 increasingly stringent risk-based chemical secu-  
11 rity performance standards for site security  
12 plans as the level of risk associated with the  
13 tier increases; and

14 “(B) permit each covered chemical facility  
15 submitting a site security plan to select a com-  
16 bination of security measures that satisfy the  
17 risk-based chemical security performance stand-  
18 ards established by the Secretary under this  
19 paragraph.

20 “(4) CO-LOCATED CHEMICAL FACILITIES.—The  
21 Secretary may allow an owner or operator of a cov-  
22 ered chemical facility that is located geographically  
23 close, as determined by the Secretary, to another  
24 covered chemical facility to develop and implement

1 coordinated security vulnerability assessments and  
2 site security plans.

3 “(5) ALTERNATE SECURITY PROGRAMS SATIS-  
4 FYING REQUIREMENTS FOR SECURITY VULNER-  
5 ABILITY ASSESSMENT AND SITE SECURITY PLAN.—

6 “(A) ACCEPTANCE OF PROGRAM.—In re-  
7 sponse to a request by an owner or operator of  
8 a covered chemical facility, the Secretary may  
9 accept an alternate security program submitted  
10 by the owner or operator of the facility as a  
11 component of the security vulnerability assess-  
12 ment or site security plan required under this  
13 subsection, if the Secretary determines that  
14 such alternate security program, in combination  
15 with other components of the security vulner-  
16 ability assessment and site security plan sub-  
17 mitted by the owner or operator of the facil-  
18 ity—

19 “(i) meets the requirements of this  
20 section and the regulations promulgated  
21 pursuant to this section;

22 “(ii) provides an equivalent level of se-  
23 curity to the level of security established  
24 pursuant to the regulations promulgated  
25 pursuant to this section; and

1                   “(iii) includes employee participation  
2                   as required under paragraph  
3                   (1)(A)(ii)(III).

4                   “(B) SECRETARIAL REVIEW REQUIRED.—  
5                   Nothing in this subsection shall relieve the Sec-  
6                   retary of the obligation—

7                   “(i) to review a security vulnerability  
8                   assessment and site security plan sub-  
9                   mitted by a covered chemical facility under  
10                  this subsection; and

11                  “(ii) to approve or disapprove each  
12                  such assessment or plan on an individual  
13                  basis according to the deadlines established  
14                  under paragraph (1).

15                  “(C) COVERED FACILITY’S OBLIGATIONS  
16                  UNAFFECTED.—Nothing in this paragraph shall  
17                  relieve any covered chemical facility of the obli-  
18                  gation and responsibility to comply with all of  
19                  the requirements of this section.

20                  “(D) PERSONNEL SURETY ALTERNATE SE-  
21                  CURITY PROGRAM.—In response to an applica-  
22                  tion from a non-profit, personnel surety accred-  
23                  iting organization acting on behalf of, and with  
24                  written authorization from, the owner or oper-  
25                  ator of a covered chemical facility, the Sec-

1           retary may accept a personnel surety alternate  
2           security program that meets the requirements  
3           of subsection (e) and provides for a background  
4           check process that is—

5                     “(i) expedited, affordable, reliable,  
6                     and accurate;

7                     “(ii) fully protective of the rights of  
8                     covered individuals through procedures  
9                     that are consistent with the privacy protec-  
10                    tions available under the Fair Credit Re-  
11                    porting Act (15 U.S.C. 1681 et seq.); and

12                    “(iii) a single background check con-  
13                    sistent with a risk-based tiered program.

14           “(6) OTHER AUTHORITIES.—

15                    “(A) EQUIVALENT ACCESS.—An individual  
16                    described in subsection (e)(1)(A)(ii) who has  
17                    been granted access to restricted areas or crit-  
18                    ical assets by the owner or operator of a facility  
19                    for which a security plan is required to be sub-  
20                    mitted under section 70103(c) of title 46,  
21                    United States Code, may be considered by that  
22                    owner or operator to have satisfied the require-  
23                    ment for passing a security background check  
24                    otherwise required under subsection (e) for pur-  
25                    poses of granting the individual access to re-

1           stricted areas or critical assets of a covered  
2           chemical facility that is owned or operated by  
3           the same owner or operator.

4           “(B) COORDINATION OF STORAGE LICENS-  
5           ING OR PERMITTING REQUIREMENT.—In the  
6           case of any storage required to be licensed or  
7           permitted under chapter 40 of title 18, United  
8           States Code, the Secretary shall prescribe the  
9           rules and regulations for the implementation of  
10          this subsection and avoid unnecessary duplica-  
11          tion of regulatory requirements.

12          “(7) ROLE OF EMPLOYEES.—

13           “(A) DESCRIPTION OF ROLE REQUIRED.—  
14          Site security plans required under this sub-  
15          section shall describe the roles or responsibil-  
16          ities that covered individuals are expected to  
17          perform to deter or respond to a chemical facil-  
18          ity terrorist incident.

19           “(B) ANNUAL TRAINING FOR EMPLOY-  
20          EES.—The owner or operator of a covered  
21          chemical facility required to submit a site secu-  
22          rity plan under this subsection shall annually  
23          provide each covered individual with a role or  
24          responsibility referred to in subparagraph (A)  
25          at the facility with a minimum of 8 hours of

1 training. Such training shall, as relevant to the  
2 role or responsibility of such covered indi-  
3 vidual—

4 “(i) include an identification and dis-  
5 cussion of substances of concern;

6 “(ii) include a discussion of possible  
7 consequences of a chemical facility ter-  
8 rorist incident;

9 “(iii) review and exercise the covered  
10 chemical facility’s site security plan, in-  
11 cluding any requirements for differing  
12 threat levels;

13 “(iv) include a review of information  
14 protection requirements;

15 “(v) include a discussion of physical  
16 and cyber security equipment, systems,  
17 and methods used to achieve chemical se-  
18 curity performance standards;

19 “(vi) allow training with other rel-  
20 evant participants, including Federal,  
21 State, local, and tribal authorities, and  
22 first responders, where appropriate;

23 “(vii) use existing national voluntary  
24 consensus standards, chosen jointly with  
25 employee representatives, if any;

1           “(viii) allow instruction through gov-  
2           ernment training programs, chemical facili-  
3           ties, academic institutions, nonprofit orga-  
4           nizations, industry and private organiza-  
5           tions, employee organizations, and other  
6           relevant entities that provide such training;

7           “(ix) use multiple training media and  
8           methods; and

9           “(x) include a discussion of appro-  
10          priate emergency response procedures, in-  
11          cluding procedures to mitigate the effects  
12          of a chemical facility terrorist incident.

13          “(C) EQUIVALENT TRAINING.—During any  
14          year, with respect to any covered individual  
15          with roles or responsibilities under subpara-  
16          graph (A), an owner or operator of a covered  
17          chemical facility may satisfy any of the training  
18          requirements for such covered individual under  
19          clause (i), (ii), (iii), (iv), (v), or (x) of subpara-  
20          graph (B) through training that such owner or  
21          operator certifies, in a manner prescribed by  
22          the Secretary, is equivalent.

23          “(D) WORKER TRAINING GRANT PRO-  
24          GRAM.—

1           “(i) AUTHORITY.—The Secretary  
2           shall establish a grant program to award  
3           grants to or enter into cooperative agree-  
4           ments with eligible entities to provide for  
5           the training and education of covered indi-  
6           viduals with roles or responsibilities de-  
7           scribed in subparagraph (A) and first re-  
8           sponders and emergency response pro-  
9           viders who would respond to a chemical fa-  
10          cility terrorist incident.

11          “(ii) ADMINISTRATION.—The Sec-  
12          retary shall seek to enter into an agree-  
13          ment with the Director of the National In-  
14          stitute for Environmental Health Sciences,  
15          or with the head of another Federal or  
16          State agency, to make and administer  
17          grants or cooperative agreements under  
18          this subparagraph.

19          “(iii) USE OF FUNDS.—The recipient  
20          of funds under this subparagraph shall use  
21          such funds to provide for the training and  
22          education of covered individuals with roles  
23          or responsibilities described in subpara-  
24          graph (A), first responders, and emergency  
25          response providers, including—

1                   “(I) the annual mandatory train-  
2                   ing specified in subparagraph (B);  
3                   and

4                   “(II) other appropriate training  
5                   to protect nearby persons, property,  
6                   critical infrastructure, or the environ-  
7                   ment from the effects of a chemical  
8                   facility terrorist incident.

9                   “(iv) ELIGIBLE ENTITIES.—For pur-  
10                  poses of this subparagraph, an eligible en-  
11                  tity is a nonprofit organization with dem-  
12                  onstrated experience in implementing and  
13                  operating successful worker or first re-  
14                  sponder health and safety or security  
15                  training programs.

16                  “(v) PRESUMPTION OF CONGRESS RE-  
17                  LATING TO COMPETITIVE PROCEDURES.—

18                  “(I) PRESUMPTION.—It is the  
19                  presumption of Congress that grants  
20                  awarded under this subparagraph will  
21                  be awarded using competitive proce-  
22                  dures based on merit.

23                  “(II) REPORT TO CONGRESS.—If  
24                  grants are awarded under this sub-  
25                  paragraph using procedures other

1 than competitive procedures, the Sec-  
2 retary shall submit to Congress a re-  
3 port explaining why competitive proce-  
4 dures were not used.

5 “(vi) PROHIBITION ON EARMARKS.—  
6 None of the funds appropriated to carry  
7 out this subparagraph may be used for a  
8 congressional earmark as defined in clause  
9 9d, of Rule XXI of the rules of the House  
10 of Representatives of the 111th Congress.

11 “(8) STATE, REGIONAL, OR LOCAL GOVERN-  
12 MENTAL ENTITIES.—No covered chemical facility  
13 shall be required under State, local, or tribal law to  
14 provide a vulnerability assessment or site security  
15 plan described under this section to any State, re-  
16 gional, local, or tribal government entity solely by  
17 reason of the requirement under paragraph (1) that  
18 the covered chemical facility submit such an assess-  
19 ment and plan to the Secretary.

20 “(d) SITE INSPECTIONS.—

21 “(1) RIGHT OF ENTRY.—For purposes of car-  
22 rying out this section, the Secretary shall have, at  
23 a reasonable time and on presentation of credentials,  
24 a right of entry to, on, or through any property of  
25 a covered chemical facility or any property on which

1 any record required to be maintained under this sub-  
2 section is located.

3 “(2) INSPECTIONS AND VERIFICATIONS.—

4 “(A) IN GENERAL.—The Secretary shall,  
5 at such time and place as the Secretary deter-  
6 mines to be reasonable and appropriate, con-  
7 duct chemical facility security inspections and  
8 verifications.

9 “(B) REQUIREMENTS.—To ensure and  
10 evaluate compliance with this section, including  
11 any regulations or requirements adopted by the  
12 Secretary in furtherance of the purposes of this  
13 section, in conducting an inspection or  
14 verification under subparagraph (A), the Sec-  
15 retary shall have access to the owners, opera-  
16 tors, employees, and employee representatives,  
17 if any, of a covered chemical facility.

18 “(3) UNANNOUNCED INSPECTIONS.—In addi-  
19 tion to any inspection conducted pursuant to para-  
20 graph (2), the Secretary shall require covered chem-  
21 ical facilities assigned to tier 1 and tier 2 under sub-  
22 section (b)(3)(A) to undergo unannounced facility  
23 inspections. The inspections required under this  
24 paragraph shall be—

1           “(A) conducted without prior notice to the  
2 facility;

3           “(B) designed to evaluate at the chemical  
4 facility undergoing inspection—

5           “(i) the ability of the chemical facility  
6 to prevent a chemical facility terrorist inci-  
7 dent that the site security plan of the facil-  
8 ity is intended to prevent;

9           “(ii) the ability of the chemical facility  
10 to protect against security threats that are  
11 required to be addressed by the site secu-  
12 rity plan of the facility; and

13           “(iii) any weaknesses in the site secu-  
14 rity plan of the chemical facility;

15           “(C) conducted so as not to affect the ac-  
16 tual security, physical integrity, safety, or reg-  
17 ular operations of the chemical facility or its  
18 employees while the inspection is conducted;  
19 and

20           “(D) conducted—

21           “(i) every two years in the case of a  
22 covered chemical facility assigned to tier 1;  
23 and

24           “(ii) every four years in the case of a  
25 covered chemical facility assigned to tier 2.

1           “(4) APPROPRIATE INSPECTIONS.—During fis-  
2           cal years 2012 and 2013, subject to the availability  
3           of appropriations for such purpose, the Secretary  
4           shall take action to ensure that appropriate inspec-  
5           tions are carried out to ensure compliance with this  
6           section.

7           “(5) CONFIDENTIAL COMMUNICATIONS.—The  
8           Secretary shall offer non-supervisory employees the  
9           opportunity to confidentially communicate informa-  
10          tion relevant to the employer’s compliance or non-  
11          compliance with this section, including compliance or  
12          non-compliance with any regulation or requirement  
13          adopted by the Secretary in furtherance of the pur-  
14          poses of this section. An employee representative of  
15          each certified or recognized bargaining agent at the  
16          covered chemical facility, if any, or, if none, a non-  
17          supervisory employee, shall be given the opportunity  
18          to accompany the Secretary during a physical in-  
19          spection of such covered chemical facility for the  
20          purpose of aiding in such inspection, if representa-  
21          tives of the owner or operator of the covered chem-  
22          ical facility will also be accompanying the Secretary  
23          on such inspection.

24          “(e) RECORDS.—

1           “(1) REQUEST FOR RECORDS.—In carrying out  
2 this section, the Secretary may require submission  
3 of, or on presentation of credentials may at reason-  
4 able times obtain access to and copy, any records,  
5 including any records maintained in electronic for-  
6 mat, necessary for—

7                   “(A) reviewing or analyzing a security vul-  
8 nerability assessment or site security plan sub-  
9 mitted under subsection (c); or

10                   “(B) assessing the implementation of such  
11 a site security plan.

12           “(2) PROPER HANDLING OF RECORDS.—In ac-  
13 cessing or copying any records under paragraph (1),  
14 the Secretary shall ensure that such records are  
15 handled and secured appropriately in accordance  
16 with section 2110.

17           “(f) TIMELY SHARING OF THREAT INFORMATION.—

18                   “(1) RESPONSIBILITIES OF SECRETARY.—Upon  
19 the receipt of information concerning a threat that  
20 is relevant to a certain covered chemical facility, the  
21 Secretary shall provide such information in a timely  
22 manner, to the maximum extent practicable under  
23 applicable authority and in the interests of national  
24 security, to the owner, operator, or security officer  
25 of that covered chemical facility, to a representative

1 of each recognized or certified bargaining agent at  
2 the facility, if any, and to relevant State, local, and  
3 tribal authorities, including the State Homeland Se-  
4 curity Advisor, if any.

5 “(2) RESPONSIBILITIES OF OWNER OR OPER-  
6 ATOR.—The Secretary shall require the owner or op-  
7 erator of a covered chemical facility to provide to the  
8 Secretary in a timely manner, information con-  
9 cerning a threat about any significant security inci-  
10 dent or threat to the covered chemical facility or any  
11 intentional or unauthorized penetration of the phys-  
12 ical security or cyber security of the covered chem-  
13 ical facility whether successful or unsuccessful.

14 “(g) ENFORCEMENT.—

15 “(1) REVIEW OF SECURITY VULNERABILITY AS-  
16 SESSMENT AND SITE SECURITY PLAN.—

17 “(A) DISAPPROVAL.—The Secretary shall  
18 disapprove a security vulnerability assessment  
19 or site security plan submitted under this sec-  
20 tion if the Secretary determines, in his or her  
21 discretion, that—

22 “(i) the security vulnerability assess-  
23 ment or site security plan does not comply  
24 with the standards, protocols, or proce-  
25 dures under subsection (c)(1)(A)(i); or

1                   “(ii) in the case of a site security  
2                   plan—

3                               “(I) the plan or the implementa-  
4                               tion of the plan is insufficient to ad-  
5                               dress vulnerabilities identified in a se-  
6                               curity vulnerability assessment, site  
7                               inspection, or unannounced inspection  
8                               of the covered chemical facility; or

9                               “(II) the plan fails to meet all  
10                              applicable chemical facility security  
11                              performance standards.

12                   “(B) NOTIFICATION OF DISAPPROVAL.—If  
13                   the Secretary disapproves the security vulner-  
14                   ability assessment or site security plan sub-  
15                   mitted by a covered chemical facility under this  
16                   section or the implementation of a site security  
17                   plan by such a chemical facility, the Secretary  
18                   shall provide the owner or operator of the cov-  
19                   ered chemical facility a written notification of  
20                   the disapproval not later than 14 days after the  
21                   date on which the Secretary disapproves such  
22                   assessment or plan, that—

23                              “(i) includes a clear explanation of de-  
24                              ficiencies in the assessment, plan, or imple-  
25                              mentation of the plan; and

1                   “(ii) requires the owner or operator of  
2                   the covered chemical facility to revise the  
3                   assessment or plan to address any defi-  
4                   ciencies and, by such date as the Secretary  
5                   determines is appropriate, to submit to the  
6                   Secretary the revised assessment or plan.

7                   “(2) REMEDIES.—

8                   “(A) ORDER FOR COMPLIANCE.—When-  
9                   ever the Secretary determines that the owner or  
10                  operator of a covered chemical facility has vio-  
11                  lated or is in violation of any requirement of  
12                  this section or has failed or is failing to address  
13                  any deficiencies in the assessment, plan, or im-  
14                  plementation of the plan by such date as the  
15                  Secretary determines to be appropriate, the  
16                  Secretary may—

17                  “(i) after providing notice to the  
18                  owner or operator of the covered chemical  
19                  facility and an opportunity, pursuant to  
20                  the regulations issued under this section,  
21                  for such owner or operator to seek depart-  
22                  mental review of the Secretary’s deter-  
23                  mination, issue an order assessing an ad-  
24                  ministrative penalty of not more than  
25                  \$25,000 for each day on which a past or

1 current violation occurs or a failure to  
2 comply continues, requiring compliance im-  
3 mediately or within a specified time period,  
4 or both; or

5 “(ii) in a civil action, obtain appro-  
6 priate equitable relief, a civil penalty of not  
7 more than \$25,000 for each day on which  
8 a past or current violation occurs or a fail-  
9 ure to comply continues, or both.

10 “(B) ORDER TO CEASE OPERATIONS.—  
11 Whenever the Secretary determines that the  
12 owner or operator of a covered chemical facility  
13 continues to be in noncompliance after an order  
14 for compliance is issued under subparagraph  
15 (A), the Secretary may issue an order to the  
16 owner or operator to cease operations at the fa-  
17 cility until compliance is achieved to the satis-  
18 faction of the Secretary.

19 “(3) APPLICABILITY OF PENALTIES.—A penalty  
20 under paragraph (2)(A) may be awarded for any vio-  
21 lation of this section.

22 “(h) FEDERAL PREEMPTION.—This section does not  
23 preclude or deny any right of any State or political sub-  
24 division thereof to adopt or enforce any regulation, re-  
25 quirement, or standard of performance with respect to a

1 covered chemical facility that is more stringent than a reg-  
2 ulation, requirement, or standard of performance issued  
3 under this section, or otherwise impair any right or juris-  
4 diction of any State or political subdivision thereof with  
5 respect to covered chemical facilities within that State or  
6 political subdivision thereof.

7 “(i) PROTECTION OF INFORMATION.—

8 “(1) INFORMATION SHARING.—

9 “(A) IN GENERAL.—The Secretary shall  
10 prescribe such regulations, and may issue such  
11 orders, as necessary to prohibit the unauthor-  
12 ized disclosure of protected information, as de-  
13 scribed in paragraph (6).

14 “(B) SHARING OF PROTECTED INFORMA-  
15 TION.—The regulations under subparagraph  
16 (A) shall provide standards for and facilitate  
17 the appropriate sharing of protected informa-  
18 tion with and between Federal, State, local, and  
19 tribal authorities, emergency response pro-  
20 viders, law enforcement officials, designated su-  
21 pervisory and nonsupervisory covered chemical  
22 facility personnel with security, operational, or  
23 fiduciary responsibility for the facility, and des-  
24 igned facility employee representatives, if any.  
25 Such standards shall include procedures for the

1 sharing of all portions of a covered chemical fa-  
2 cility's vulnerability assessment and site secu-  
3 rity plan relating to the roles and responsibil-  
4 ities of covered individuals under subsection  
5 (c)(7)(A) with a representative of each certified  
6 or recognized bargaining agent representing  
7 such covered individuals, if any, or, if none,  
8 with at least one supervisory and at least one  
9 non-supervisory employee with roles or respon-  
10 sibilities under subsection (c)(7)(A).

11 “(2) TREATMENT OF INFORMATION IN ADJU-  
12 DICATIVE PROCEEDINGS.—In any judicial or admin-  
13 istrative proceeding, protected information described  
14 in paragraph (7) shall be treated in a manner con-  
15 sistent with the treatment of sensitive security infor-  
16 mation under section 525.

17 “(3) OTHER OBLIGATIONS UNAFFECTED.—Ex-  
18 cept as provided in subsection (c)(8), nothing in this  
19 section affects any obligation of the owner or oper-  
20 ator of a chemical facility under any other law to  
21 submit or make available information required by  
22 such other law to facility employees, employee orga-  
23 nizations, or a Federal, State, tribal, or local govern-  
24 ment.

1           “(4) SUBMISSION OF INFORMATION TO CON-  
2           GRESS.—Nothing in this section shall permit or au-  
3           thorize the withholding of information from Con-  
4           gress or any committee or subcommittee thereof.

5           “(5) DISCLOSURE OF INDEPENDENTLY FUR-  
6           NISHED INFORMATION.—Nothing in this section  
7           shall affect any authority or obligation of a Federal,  
8           State, local, or tribal government agency to protect  
9           or disclose any record or information that the Fed-  
10          eral, State, local, or tribal government agency ob-  
11          tains from a chemical facility under any other law.

12          “(6) PROTECTED INFORMATION.—

13                 “(A) IN GENERAL.—For purposes of this  
14                 section, the term ‘protected information’ means  
15                 any of the following:

16                         “(i) Security vulnerability assessments  
17                         and site security plans, including any as-  
18                         sessment required under subsection (j).

19                         “(ii) Portions of the following docu-  
20                         ments, records, orders, notices, or letters  
21                         that the Secretary has determined by regu-  
22                         lation would be detrimental to chemical fa-  
23                         cility security if disclosed and that are de-  
24                         veloped by the Secretary or the owner or

1 operator of a covered chemical facility for  
2 the purposes of this section:

3 “(I) Documents directly related  
4 to the Secretary’s review and approval  
5 or disapproval of vulnerability assess-  
6 ments and site security plans under  
7 this section.

8 “(II) Documents directly related  
9 to inspections and audits under this  
10 section.

11 “(III) Orders, notices, or letters  
12 regarding the compliance of a covered  
13 chemical facility with the require-  
14 ments of this section.

15 “(IV) Information, documents, or  
16 records required to be provided to or  
17 created by the Secretary under para-  
18 graph (2) or (3) of subsection (b).

19 “(V) Documents directly related  
20 to security drills and training exer-  
21 cises, security threats and breaches of  
22 security, and maintenance, calibration,  
23 and testing of security equipment.

24 “(iii) Other information, documents,  
25 or records developed exclusively for the

1 purposes of this section that the Secretary  
2 has determined by regulation would, if dis-  
3 closed, be detrimental to chemical facility  
4 security.

5 “(B) EXCLUSIONS.—Notwithstanding sub-  
6 paragraph (A), the term ‘protected information’  
7 does not include—

8 “(i) information, other than a security  
9 vulnerability assessment or site security  
10 plan, that the Secretary has determined by  
11 regulation to be—

12 “(I) appropriate to describe facil-  
13 ity compliance with the requirements  
14 of this section and the Secretary’s im-  
15 plementation of such requirements;  
16 and

17 “(II) not detrimental to chemical  
18 facility security if disclosed; or

19 “(ii) information, whether or not also  
20 contained in a security vulnerability assess-  
21 ment, site security plan, or in a document,  
22 record, order, notice, or letter, or portion  
23 thereof, described in clause (ii) or (iii) of  
24 subparagraph (A), that is obtained from  
25 another source with respect to which the

1 Secretary has not made a determination  
2 under either such clause, including—

3 “(I) information that is required  
4 to be made publicly available under  
5 any other provision of law; and

6 “(II) information that a chemical  
7 facility has lawfully disclosed other  
8 than in a submission to the Secretary  
9 pursuant to a requirement of this sec-  
10 tion.

11 “(j) METHODS TO REDUCE THE CONSEQUENCES OF  
12 A TERRORIST ATTACK.—

13 “(1) ASSESSMENT REQUIRED.—

14 “(A) ASSESSMENT.—The owner or oper-  
15 ator of a covered chemical facility shall include  
16 in the site security plan conducted pursuant to  
17 subsection (c), an assessment of methods to re-  
18 duce the consequences of a terrorist attack on  
19 that chemical facility, including—

20 “(i) a description of the methods to  
21 reduce the consequences of a terrorist at-  
22 tack implemented and considered for im-  
23 plementation by the covered chemical facil-  
24 ity;

1           “(ii) the degree to which each method  
2           to reduce the consequences of a terrorist  
3           attack, if already implemented, has re-  
4           duced, or, if implemented, could reduce,  
5           the potential extent of death, injury, or se-  
6           rious adverse effects to human health re-  
7           sulting from a release of a substance of  
8           concern;

9           “(iii) the technical feasibility, costs,  
10          avoided costs (including liabilities), per-  
11          sonnel implications, savings, and applica-  
12          bility of implementing each method to re-  
13          duce the consequences of a terrorist at-  
14          tack; and

15          “(iv) any other information that the  
16          owner or operator of the covered chemical  
17          facility considered in conducting the as-  
18          sessment.

19          “(B) FEASIBLE.—For the purposes of this  
20          subsection, the term ‘feasible’ means feasible  
21          with the use of best technology, techniques, and  
22          other means that the Secretary finds, after ex-  
23          amination for efficacy under field conditions  
24          and not solely under laboratory conditions, are

1 available for use at the covered chemical facil-  
2 ity.

3 “(2) IMPLEMENTATION.—

4 “(A) IMPLEMENTATION.—

5 “(i) IN GENERAL.—The owner or op-  
6 erator of a covered chemical facility that is  
7 assigned to tier 1 or tier 2 because of the  
8 potential extent and likelihood of death, in-  
9 jury, and serious adverse effects to human  
10 health, the environment, critical infrastruc-  
11 ture, public health, homeland security, na-  
12 tional security, and the national economy  
13 from a release of a substance of concern at  
14 the covered chemical facility, shall imple-  
15 ment methods to reduce the consequences  
16 of a terrorist attack on the chemical facil-  
17 ity if the Director of the Office of Chem-  
18 ical Facility Security determines, in his or  
19 her discretion, using the assessment con-  
20 ducted pursuant to paragraph (1), that the  
21 implementation of such methods at the fa-  
22 cility—

23 “(I) would significantly reduce  
24 the risk of death, injury, or serious  
25 adverse effects to human health re-

1 sulting from a chemical facility ter-  
2 rorist incident but—

3 “(aa) would not increase the  
4 interim storage of a substance of  
5 concern outside the facility;

6 “(bb) would not directly re-  
7 sult in the creation of a new cov-  
8 ered chemical facility assigned to  
9 tier 1 or tier 2 because of the po-  
10 tential extent and likelihood of  
11 death, injury, and serious adverse  
12 effects to human health, the envi-  
13 ronment, critical infrastructure,  
14 public health, homeland security,  
15 national security, and the na-  
16 tional economy from a release of  
17 a substance of concern at the  
18 covered chemical facility;

19 “(cc) would not result in the  
20 reassignment of an existing cov-  
21 ered chemical facility from tier 3  
22 or tier 4 to tier 1 or tier 2 be-  
23 cause of the potential extent and  
24 likelihood of death, injury, and  
25 serious adverse effects to human

1 health, the environment, critical  
2 infrastructure, public health,  
3 homeland security, national secu-  
4 rity, and the national economy  
5 from a release of a substance of  
6 concern at the covered chemical  
7 facility; and

8 “(dd) would not significantly  
9 increase the potential extent and  
10 likelihood of death, injury, and  
11 serious adverse effects to human  
12 health, the environment, critical  
13 infrastructure, public health,  
14 homeland security, national secu-  
15 rity, and the national economy  
16 from a release of a substance of  
17 concern due to a terrorist attack  
18 on the transportation infrastruc-  
19 ture of the United States;

20 “(II) can feasibly be incorporated  
21 into the operation of the covered  
22 chemical facility; and

23 “(III) would not significantly and  
24 demonstrably impair the ability of the  
25 owner or operator of the covered

1 chemical facility to continue the busi-  
2 ness of the facility at its location.

3 “(ii) WRITTEN DETERMINATION.—A  
4 determination by the Director of the Office  
5 of Chemical Facility Security pursuant to  
6 clause (i) shall be made in writing and in-  
7 clude the basis and reasons for such deter-  
8 mination, including the Director’s analysis  
9 of the covered chemical facility’s assess-  
10 ment of the technical feasibility, costs,  
11 avoided costs (including liabilities), per-  
12 sonnel implications, savings, and applica-  
13 bility of implementing each method to re-  
14 duce the consequences of a terrorist at-  
15 tack.

16 “(B) REVIEW OF INABILITY TO COMPLY.—

17 “(i) IN GENERAL.—An owner or oper-  
18 ator of a covered chemical facility who is  
19 unable to comply with the Director’s deter-  
20 mination under subparagraph (A) shall,  
21 within 120 days of receipt of the Director’s  
22 determination, provide to the Secretary a  
23 written explanation that includes the rea-  
24 sons therefor. Such written explanation  
25 shall specify whether the owner or opera-

1           tor's inability to comply arises under sub-  
2           clause (II) or (III) of subparagraph (A)(i),  
3           or both.

4           “(ii) REVIEW.—Not later than 120  
5           days after receipt of an explanation sub-  
6           mitted under clause (i), the Secretary,  
7           after consulting with the owner or operator  
8           of the covered chemical facility who sub-  
9           mitted such explanation, as well as experts  
10          in the subjects of environmental health and  
11          safety, security, chemistry, design and en-  
12          gineering, process controls and implemen-  
13          tation, maintenance, production and oper-  
14          ations, chemical process safety, and occu-  
15          pational health, as appropriate, shall pro-  
16          vide to the owner or operator a written de-  
17          termination, in his or her discretion, of  
18          whether implementation shall be required  
19          pursuant to subparagraph (A). If the Sec-  
20          retary determines that implementation is  
21          required, the Secretary shall issue an order  
22          that establishes the basis for such deter-  
23          mination, including the findings of the rel-  
24          evant experts, the specific methods selected

1           for implementation, and a schedule for im-  
2           plementation of the methods at the facility.

3           “(3) AGRICULTURAL SECTOR.—

4           “(A) GUIDANCE FOR FARM SUPPLIES MER-  
5           CHANT WHOLESALERS.—The Secretary shall  
6           provide guidance and, as appropriate, tools,  
7           methodologies or computer software, to assist  
8           farm supplies merchant wholesalers in com-  
9           plying with the requirements of this subsection.  
10          The Secretary may award grants to farm sup-  
11          plies merchant wholesalers to assist with com-  
12          pliance with paragraph (1), and in awarding  
13          such grants, shall give priority to farm supplies  
14          merchant wholesalers that have the greatest  
15          need for such grants.

16          “(B) ASSESSMENT OF AGRICULTURAL IM-  
17          PACTS.—Not later than 6 months after the date  
18          of the enactment of this section, the Secretary  
19          shall transmit an assessment of the potential  
20          impacts of compliance with provisions of this  
21          subsection regarding the assessment and, as ap-  
22          propriate, implementation, of methods to reduce  
23          the consequences of a terrorist attack on the  
24          agricultural sector to the Committee on Energy  
25          and Commerce of the House of Representatives,

1 the Committee on Homeland Security of the  
2 House of Representatives, the Committee on  
3 Homeland Security and Governmental Affairs  
4 of the Senate, the Committee on Agriculture of  
5 the House of Representatives, and the Com-  
6 mittee on Agriculture, Nutrition and Forestry  
7 of the Senate. Such assessment shall be con-  
8 ducted by the Secretary in consultation with  
9 other appropriate Federal agencies and shall in-  
10 clude the following:

11 “(i) Data on the scope of agricultural  
12 facilities covered by this section, including  
13 the number and type of manufacturers, re-  
14 tailers, aerial commercial applicators and  
15 distributors of pesticide and fertilizer re-  
16 quired to assess methods to reduce the  
17 consequences of a terrorist attack under  
18 paragraph (1) and the number and type of  
19 manufacturers, retailers, aerial commercial  
20 applicators, and distributors of pesticide  
21 and fertilizer assigned to tier 1 or tier 2 by  
22 the Secretary because of the potential  
23 extent and likelihood of death, injury,  
24 and serious adverse effects to human  
25 health, the environment, critical infrastruc-

1           ture, public health, homeland security, na-  
2           tional security, and the national economy  
3           from the release of a substance of concern  
4           at the facility.

5           “(ii) A survey of known methods,  
6           processes or practices, other than elimi-  
7           nation of or cessation of manufacture of  
8           the pesticide or fertilizer, that manufactur-  
9           ers, retailers, aerial commercial applica-  
10          tors, and distributors of pesticide and fer-  
11          tilizer could use to reduce the consequences  
12          of a terrorist attack, including an assess-  
13          ment of the costs and technical feasibility  
14          of each such method, process, or practice.

15          “(iii) An analysis of how the assess-  
16          ment of methods to reduce the con-  
17          sequences of a terrorist attack under  
18          paragraph (1) by manufacturers, retail-  
19          ers, aerial commercial applicators, and dis-  
20          tributors of pesticide and fertilizer, and,  
21          as appropriate, the implementation of  
22          methods to reduce the consequences of a  
23          terrorist attack by such manufacturers,  
24          retailers, aerial commercial applicators,  
25          and distributors of pesticide and fertilizer

1 subject to paragraph (2), are likely to  
2 impact agricultural endusers.

3 “(iv) Recommendations for how to  
4 mitigate any adverse impacts identified  
5 pursuant to clause (iii).

6 “(C) DEFINITIONS.—In this paragraph:

7 “(i) FARM SUPPLIES MERCHANT  
8 WHOLESALER.—The term ‘farm supplies  
9 merchant wholesaler’ means a covered  
10 chemical facility that is primarily engaged  
11 in the merchant wholesale distribution of  
12 farm supplies, such as animal feeds, fer-  
13 tilizers, agricultural chemicals, pesticides,  
14 plant seeds, and plant bulbs.

15 “(ii) AGRICULTURAL END-USERS.—  
16 The term ‘agricultural end-users’ means  
17 facilities such as—

18 “(I) farms, including crop, fruit,  
19 nut, and vegetable farms;

20 “(II) ranches and rangeland;

21 “(III) poultry, dairy, and equine  
22 facilities;

23 “(IV) turfgrass growers;

24 “(V) golf courses;

25 “(VI) nurseries;

1 “(VII) floricultural operations;

2 and

3 “(VIII) public and private parks.

4 “(4) SMALL COVERED CHEMICAL FACILITIES.—

5 “(A) GUIDANCE FOR SMALL COVERED  
6 CHEMICAL FACILITIES.—The Secretary may  
7 provide guidance and, as appropriate, tools,  
8 methodologies, or computer software, to assist  
9 small covered chemical facilities in complying  
10 with the requirements of this subsection.

11 “(B) ASSESSMENT OF IMPACTS ON SMALL  
12 COVERED CHEMICAL FACILITIES.—Not later  
13 than 6 months after the date of the enactment  
14 of this section, the Secretary shall transmit to  
15 the Committee on Energy and Commerce of the  
16 House of Representatives, the Committee on  
17 Homeland Security of the House of Representa-  
18 tives, and the Committee on Homeland Security  
19 and Governmental Affairs of the Senate an as-  
20 sessment of the potential effects on small cov-  
21 ered chemical facilities of compliance with pro-  
22 visions of this section regarding the assessment  
23 and, as appropriate, implementation, of meth-  
24 ods to reduce the consequences of a terrorist at-  
25 tack. Such assessment shall include—

1           “(i) data on the scope of facilities cov-  
2           ered by this section, including the number  
3           and type of small covered chemical facili-  
4           ties that are required to assess methods to  
5           reduce the consequences of a terrorist at-  
6           tack under paragraph (1) and the number  
7           and type of small covered chemical facili-  
8           ties assigned to tier 1 or tier 2 under sub-  
9           section (b)(3)(A) by the Secretary because  
10          of the potential extent and likelihood of  
11          death, injury, and serious adverse effects  
12          to human health, the environment, critical  
13          infrastructure, public health, homeland se-  
14          curity, national security, and the national  
15          economy from the release of a substance of  
16          concern at the facility; and

17          “(ii) a discussion of how the Secretary  
18          plans to apply the requirement that before  
19          requiring a small covered chemical facility  
20          that is required to implement methods to  
21          reduce the consequences of a terrorist at-  
22          tack under paragraph (2) the Secretary  
23          shall first determine that the implementa-  
24          tion of such methods at the small covered  
25          chemical facility not significantly and de-

1 monstrably impair the ability of the owner  
2 or operator of the covered chemical facility  
3 to continue the business of the facility at  
4 its location.

5 “(C) DEFINITION.—For purposes of this  
6 paragraph, the term ‘small covered chemical fa-  
7 cility’ means a covered chemical facility that  
8 has fewer than 350 employees employed at the  
9 covered chemical facility, and is not a branch or  
10 subsidiary of another entity.

11 “(5) PROVISION OF INFORMATION ON ALTER-  
12 NATIVE APPROACHES.—

13 “(A) IN GENERAL.—The Secretary shall  
14 make available information on the use and  
15 availability of methods to reduce the con-  
16 sequences of a chemical facility terrorist inci-  
17 dent.

18 “(B) INFORMATION TO BE INCLUDED.—  
19 The information under subparagraph (A) may  
20 include information about—

21 “(i) general and specific types of such  
22 methods;

23 “(ii) combinations of chemical  
24 sources, substances of concern, and haz-

1           ardous processes or conditions for which  
2           such methods could be appropriate;

3           “(iii) the availability of specific meth-  
4           ods to reduce the consequences of a ter-  
5           rorist attack;

6           “(iv) the costs and cost savings result-  
7           ing from the use of such methods;

8           “(v) emerging technologies that could  
9           be transferred from research models or  
10          prototypes to practical applications;

11          “(vi) the availability of technical as-  
12          sistance and best practices; and

13          “(vii) such other matters that the Sec-  
14          retary determines are appropriate.

15          “(C) PUBLIC AVAILABILITY.—Information  
16          made available under this paragraph shall not  
17          identify any specific chemical facility, violate  
18          the protection of information provisions under  
19          subsection (i), or disclose any proprietary infor-  
20          mation.

21          “(6) FUNDING FOR METHODS TO REDUCE THE  
22          CONSEQUENCES OF A TERRORIST ATTACK.—The  
23          Secretary may make funds available to help defray  
24          the cost of implementing methods to reduce the con-  
25          sequences of a terrorist attack to covered chemical

1 facilities that are required by the Secretary to imple-  
2 ment such methods.

3 “(k) APPLICABILITY.—This section shall not apply  
4 to—

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

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

11 “(3) all or a specified portion of any chemical  
12 facility that—

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

20 “(B) has had security controls imposed by  
21 the Commission or State, whichever has the  
22 regulatory authority, on the entire facility or  
23 the specified portion of the facility; and

24 “(C) has been designated by the Commis-  
25 sion, after consultation with the State, if any,

1           that regulates the facility, and the Secretary, as  
2           excluded from the application of this section;

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

6           “(5) any treatment works, as defined in section  
7           212 of the Federal Water Pollution Control Act (33  
8           U.S.C. 1292).

9           “(1) SAVINGS CLAUSE.—

10           “(1) IN GENERAL.—Nothing in this section  
11           shall affect or modify in any way any obligation or  
12           liability of any person under any other Federal law,  
13           including section 112 of the Clean Air Act (42  
14           U.S.C. 7412), the Federal Water Pollution Control  
15           Act (33 U.S.C. 1251 et seq.), the Resource Con-  
16           servation and Recovery Act of 1976 (42 U.S.C.  
17           6901 et seq.), the National Environmental Policy  
18           Act of 1969 (42 U.S.C. 4321 et seq.), the Occupa-  
19           tional Safety and Health Act (29 U.S.C. 651 et  
20           seq.), the National Labor Relations Act (29 U.S.C.  
21           151 et seq.), the Emergency Planning and Commu-  
22           nity Right to Know Act of 1986 (42 U.S.C. 11001  
23           et seq.), the Safe Drinking Water Act (42 U.S.C.  
24           300f et seq.), the Maritime Transportation Security  
25           Act of 2002 (Public Law 107–295), the Comprehen-

1       sive Environmental Response, Compensation, and  
2       Liability Act of 1980 (42 U.S.C. 9601 et seq.), the  
3       Toxic Substances Control Act (15 U.S.C. 2601 et  
4       seq.), and the Fair Credit Reporting Act (15 U.S.C.  
5       1681 et seq.).

6               “(2) OTHER REQUIREMENTS.—Nothing in this  
7       section shall preclude or deny the right of any State  
8       or political subdivision thereof to adopt or enforce  
9       any regulation, requirement, or standard of perform-  
10      ance relating to environmental protection, health, or  
11      safety.

12              “(3) ACCESS.—Nothing in this section shall  
13      abridge or deny access to a chemical facility site to  
14      any person where required or permitted under any  
15      other law or regulation.

16              “(m) SECURITY BACKGROUND CHECKS OF COVERED  
17      INDIVIDUALS AT CERTAIN CHEMICAL FACILITIES.—

18              “(1) REGULATIONS ISSUED BY THE SEC-  
19      RETARY.—

20              “(A) IN GENERAL.—

21              “(i) REQUIREMENT.—The Secretary  
22      shall issue regulations to require covered  
23      chemical facilities to establish personnel  
24      surety for individuals described in clause  
25      (ii) by conducting appropriate security

1 background checks and ensuring appro-  
2 priate credentials for unescorted visitors  
3 and chemical facility personnel, including  
4 permanent and part-time personnel, tem-  
5 porary personnel, and contract personnel,  
6 including—

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

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

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

14 “(IV) measures designed to iden-  
15 tify people with terrorist ties.

16 “(ii) INDIVIDUALS DESCRIBED.—For  
17 purposes of clause (i), an individual de-  
18 scribed in this subparagraph is—

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

24 “(II) a person associated with a  
25 covered chemical facility, including

1 any designated employee representa-  
2 tive, who is provided with a copy of a  
3 security vulnerability assessment or  
4 site security plan; or

5 “(III) a person who is deter-  
6 mined by the Secretary to require a  
7 security background check based on  
8 chemical facility security performance  
9 standards.

10 “(B) REGULATIONS.—The regulations re-  
11 quired by subparagraph (A) shall set forth—

12 “(i) the scope of the security back-  
13 ground checks, including the types of dis-  
14 qualifying offenses and the time period  
15 covered for each person subject to a secu-  
16 rity background check under subparagraph  
17 (A);

18 “(ii) the processes to conduct the se-  
19 curity background checks;

20 “(iii) the necessary biographical infor-  
21 mation and other data required in order to  
22 conduct the security background checks;

23 “(iv) a redress process for an ad-  
24 versely-affected person consistent with  
25 paragraphs (2) and (3); and

1           “(v) a prohibition on an owner or op-  
2           erator of a covered chemical facility mis-  
3           representing to an employee or other rel-  
4           evant person, including an arbiter involved  
5           in a labor arbitration, the scope, applica-  
6           tion, or meaning of any rules, regulations,  
7           directives, or guidance issued by the Sec-  
8           retary related to security background check  
9           requirements for covered individuals when  
10          conducting a security background check.

11           “(2) MISREPRESENTATION OF ADVERSE EM-  
12          PLOYMENT DECISIONS.—The regulations required by  
13          paragraph (1)(A) shall set forth that it shall be a  
14          misrepresentation under paragraph (1)(B)(v) to at-  
15          tribute an adverse employment decision, including  
16          removal or suspension of the employee, to such regu-  
17          lations unless the owner or operator finds, after op-  
18          portunity for appropriate redress under the proc-  
19          esses provided under paragraphs (3)(A) and (3)(B),  
20          that the person subject to such adverse employment  
21          decision—

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

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

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

9 “(C) was incarcerated for an interim dis-  
10 qualifying criminal offense listed in part 1572  
11 of title 49, Code of Federal Regulations, and  
12 released from incarceration within 5 years of  
13 the date that the chemical facility performs the  
14 security background check;

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

17 “(E) is determined, as a result of the secu-  
18 rity background check, not to be legally author-  
19 ized to work in the United States.

20 “(3) REDRESS PROCESSES.—Upon the issuance  
21 of regulations under paragraph (1), the Secretary  
22 shall—

23 “(A) require the owner or operator to pro-  
24 vide an adequate and prompt redress process  
25 for a person subject to a security background

1 check under paragraph (1)(A) who is subjected  
2 to an adverse employment decision, including  
3 removal or suspension of the employee, due to  
4 such regulations that is consistent with the ap-  
5 peals process established for employees subject  
6 to consumer reports under the Fair Credit Re-  
7 porting Act (15 U.S.C. 1681 et seq.), as in  
8 force on the date of the enactment of this sec-  
9 tion;

10 “(B) provide an adequate and prompt re-  
11 dress process for a person subject to a security  
12 background check under paragraph (1)(A) who  
13 is subjected to an adverse employment decision,  
14 including removal or suspension of the em-  
15 ployee, due to a determination by the Secretary  
16 under paragraph (2)(D), that is consistent with  
17 the appeals process established under section  
18 70105(c) of title 46, United States Code, in-  
19 cluding all rights to hearings before an adminis-  
20 trative law judge, scope of review, and a review  
21 of an unclassified summary of classified evi-  
22 dence equivalent to the summary provided in  
23 part 1515 of title 49, Code of Federal Regula-  
24 tions;

1           “(C) provide an adequate and prompt re-  
2           dress process for a person subject to a security  
3           background check under paragraph (1)(A) who  
4           is subjected to an adverse employment decision,  
5           including removal or suspension of the em-  
6           ployee, due to a violation of paragraph  
7           (1)(B)(v), which shall not preclude the exercise  
8           of any other rights available under collective  
9           bargaining agreements or applicable laws;

10           “(D) establish a reconsideration process  
11           described in paragraph (4) for a person subject  
12           to an adverse employment decision that was at-  
13           tributed by an owner or operator to the regula-  
14           tions required by paragraph (1)(A);

15           “(E) have the authority to order an appro-  
16           priate remedy, including reinstatement of the  
17           person subject to a security background check  
18           under paragraph (1)(A), if the Secretary deter-  
19           mines that the adverse employment decision  
20           was made in violation of the regulations re-  
21           quired under paragraph (1)(A) or as a result of  
22           an erroneous determination by the Secretary  
23           under paragraph (2)(D);

24           “(F) ensure that the redress processes re-  
25           quired under subparagraphs (A), (B), or (C) af-

1           ford to the person a full disclosure of any pub-  
2           lic-record event covered by paragraph (2) that  
3           provides the basis for an adverse employment  
4           decision; and

5           “(G) ensure that the person subject to a  
6           security background check under paragraph  
7           (1)(A) receives the person’s full wages and ben-  
8           efits until all redress processes under this sub-  
9           section are exhausted.

10          “(4) RECONSIDERATION PROCESS.—

11           “(A) IN GENERAL.—The reconsideration  
12          process required under paragraph (3)(D)  
13          shall—

14           “(i) require the Secretary to deter-  
15          mine, within 30 days after receiving a peti-  
16          tion submitted by a person subject to an  
17          adverse employment decision that was at-  
18          tributed by an owner or operator to the  
19          regulations required by paragraph (1)(A),  
20          whether such person poses a security risk  
21          to the covered chemical facility; and

22           “(ii) include procedures consistent  
23          with section 70105(c) of title 46, United  
24          States Code, including all rights to hear-  
25          ings before an administrative law judge,

1 scope of review, and a review of an unclas-  
2 sified summary of classified evidence equiv-  
3 alent to the summary provided in part  
4 1515 of title 49, Code of Federal Regula-  
5 tions.

6 “(B) DETERMINATION BY THE SEC-  
7 RETARY.—In making a determination described  
8 under subparagraph (A)(i), the Secretary  
9 shall—

10 “(i) give consideration to the cir-  
11 cumstance of any disqualifying act or of-  
12 fense, restitution made by the person, Fed-  
13 eral and State mitigation remedies, and  
14 other factors from which it may be con-  
15 cluded that the person does not pose a se-  
16 curity risk to the covered chemical facility;  
17 and

18 “(ii) provide his or her determination  
19 as to whether such person poses a security  
20 risk to the covered chemical facility to the  
21 petitioner and to the owner or operator of  
22 the covered chemical facility.

23 “(C) OWNER OR OPERATOR RECONSIDER-  
24 ATION.—If the Secretary determines pursuant  
25 to subparagraph (A)(i) that the person does not

1           pose a security risk to the covered chemical fa-  
2           cility, it shall thereafter constitute a prohibited  
3           misrepresentation for the owner or operator of  
4           the covered chemical facility to continue to at-  
5           tribute the adverse employment decision to the  
6           regulations under paragraph (1)(A).

7           “(5) RESTRICTIONS ON USE AND MAINTENANCE  
8           OF INFORMATION.—Information obtained under this  
9           subsection by the Secretary or the owner or operator  
10          of a covered chemical facility shall be handled as fol-  
11          lows:

12                 “(A) Such information may not be made  
13                 available to the public.

14                 “(B) Such information may not be  
15                 accessed by employees of the facility except for  
16                 such employees who are directly involved with  
17                 collecting the information or conducting or eval-  
18                 uating security background checks.

19                 “(C) Such information shall be maintained  
20                 confidentially by the facility and the Secretary  
21                 and may be used only for making determina-  
22                 tions under this subsection.

23                 “(D) The Secretary may share such infor-  
24                 mation with other Federal, State, local, and  
25                 tribal law enforcement agencies.

1 “(6) SAVINGS CLAUSE.—

2 “(A) RIGHTS AND RESPONSIBILITIES.—

3 Nothing in this subsection shall be construed to  
4 abridge any right or responsibility of a person  
5 subject to a security background check under  
6 paragraph (1)(A) or an owner or operator of a  
7 covered chemical facility under any other Fed-  
8 eral, State, local, or tribal law or collective bar-  
9 gaining agreement.

10 “(B) EXISTING RIGHTS.—Nothing in this  
11 subsection shall be construed as creating any  
12 new right or modifying any existing right of an  
13 individual to appeal a determination by the Sec-  
14 retary as a result of a check against a terrorist  
15 watch list.

16 “(7) PREEMPTION.—Nothing in this subsection  
17 shall be construed to preempt, alter, or affect a Fed-  
18 eral, State, local, or tribal law that requires criminal  
19 history background checks, checks on the authoriza-  
20 tion of an individual to work in the United States,  
21 or other background checks of persons subject to se-  
22 curity background checks under paragraph (1)(A).

23 “(8) DEFINITION OF SECURITY BACKGROUND  
24 CHECK.—The term ‘security background check’  
25 means a review at no cost to any person subject to

1 a security background check under paragraph (1)(A)  
2 of the following for the purpose of identifying indi-  
3 viduals who may pose a threat to chemical facility  
4 security, to national security, or of terrorism:

5 “(A) Relevant databases to verify and vali-  
6 date identity.

7 “(B) Relevant criminal history databases.

8 “(C) In the case of an alien (as defined in  
9 section 101 of the Immigration and Nationality  
10 Act (8 U.S.C. 1101(a)(3))), the relevant data-  
11 bases to determine the status of the alien under  
12 the immigration laws of the United States.

13 “(D) The consolidated terrorist watchlist.

14 “(E) Other relevant information or data-  
15 bases, as determined by the Secretary.

16 “(9) DEPARTMENT-CONDUCTED SECURITY  
17 BACKGROUND CHECK.—The regulations under para-  
18 graph (1)(A) shall set forth a process by which the  
19 Secretary, on an ongoing basis, shall determine  
20 whether alternate security background checks con-  
21 ducted by the Secretary are sufficient to meet the  
22 requirements of this subsection such that no addi-  
23 tional security background check under this sub-  
24 section is required for an individual for whom such  
25 a qualifying alternate security background check was

1 conducted. The Secretary may require the owner or  
2 operator of a covered chemical facility to which the  
3 individual will have unescorted access to sensitive or  
4 restricted areas to submit identifying information  
5 about the individual and the alternate security back-  
6 ground check conducted for that individual to the  
7 Secretary in order to enable the Secretary to verify  
8 the validity of the alternate security background  
9 check. Such regulations shall provide that no secu-  
10 rity background check under this subsection is re-  
11 quired for an individual holding a transportation se-  
12 curity card issued under section 70105 of title 46,  
13 United States Code.

14 “(10) APPROPRIATE ACTION.—If, as the result  
15 of a security background check, an owner or oper-  
16 ator of a covered chemical facility finds that a cov-  
17 ered individual is not legally authorized to work in  
18 the United States, the owner or operator shall take  
19 appropriate action, subject to the appropriate re-  
20 dress processes available to such individual under  
21 this subsection.

22 “(n) CITIZEN PETITIONS.—

23 “(1) REGULATIONS.—The Secretary shall issue  
24 regulations to establish a citizen petition process for

1 petitions described in paragraph (2). Such regula-  
2 tions shall include—

3 “(A) the format for such petitions;

4 “(B) the procedure for investigation of pe-  
5 titions;

6 “(C) the procedure for response to such  
7 petitions, including timelines;

8 “(D) the procedure for referral to and re-  
9 view by the Office of the Inspector General of  
10 the Department without deference to the Sec-  
11 retary’s determination with respect to the peti-  
12 tion; and

13 “(E) the procedure for rejection or accept-  
14 ance by the Secretary of the recommendation of  
15 the Office of the Inspector General.

16 “(2) PETITIONS.—The regulations issued pur-  
17 suant to paragraph (1) shall allow any person to file  
18 a petition with the Secretary—

19 “(A) identifying any person (including the  
20 United States and any other governmental in-  
21 strumentality or agency, to the extent permitted  
22 by the eleventh amendment to the Constitution)  
23 alleged to be in violation of any standard, regu-  
24 lation, condition, requirement, prohibition, plan,

1 or order that has become effective under this  
2 section; and

3 “(B) describing the alleged violation of any  
4 standard, regulation, condition, requirement,  
5 prohibition, plan, or order that has become ef-  
6 fective under this section by that person.

7 “(3) REQUIREMENTS.—Upon issuance of regu-  
8 lations under paragraph (1), the Secretary shall—

9 “(A) accept all petitions described under  
10 paragraph (2) that meet the requirements of  
11 the regulations promulgated under paragraph  
12 (1);

13 “(B) investigate all allegations contained  
14 in accepted petitions;

15 “(C) determine whether enforcement action  
16 will be taken concerning the alleged violation or  
17 violations;

18 “(D) respond to all accepted petitions  
19 promptly and in writing;

20 “(E) include in all responses to petitions a  
21 brief and concise statement, to the extent per-  
22 mitted under subsection (i), of the allegations,  
23 the steps taken to investigate, the determina-  
24 tion made, and the reasons for such determina-  
25 tion;

1           “(F) maintain an internal record including  
2 all protected information related to the deter-  
3 mination;

4           “(G) with respect to any petition for which  
5 the Secretary has not made a timely response  
6 or the Secretary’s response is unsatisfactory to  
7 the petitioner, provide the petitioner with the  
8 opportunity to request—

9           “(i) a review of the full record by the  
10 Inspector General of the Department, in-  
11 cluding a review of protected information;  
12 and

13           “(ii) the formulation of recommenda-  
14 tions by the Inspector General and sub-  
15 mittal of such recommendations to the  
16 Secretary and, to the extent permitted  
17 under subsection (i), to the petitioner; and

18           “(H) respond to a recommendation sub-  
19 mitted by the Inspector General under subpara-  
20 graph (G) by adopting or rejecting the rec-  
21 ommendation.

22           “(o) NOTIFICATION SYSTEM TO ADDRESS PUBLIC  
23 CONCERNS.—

24           “(1) ESTABLISHMENT.—The Secretary shall es-  
25 tablish a notification system, which shall provide any

1 individual the ability to report a suspected security  
2 deficiency or suspected non-compliance with this sec-  
3 tion. Such notification system shall provide for the  
4 ability to report the suspected security deficiency or  
5 non-compliance via telephonic and Internet-based  
6 means.

7 “(2) ACKNOWLEDGMENT.—When the Secretary  
8 receives a report through the notification system es-  
9 tablished under paragraph (1), the Secretary shall  
10 respond to such report in a timely manner, but in  
11 no case shall the Secretary respond to such a report  
12 later than 30 days after receipt of the report.

13 “(3) STEPS TO ADDRESS PROBLEMS.—The Sec-  
14 retary shall review each report received through the  
15 notification system established under paragraph (1)  
16 and shall, as necessary, take appropriate enforce-  
17 ment action under subsection (g).

18 “(4) FEEDBACK REQUIRED.—Upon request, the  
19 Secretary shall provide the individual who reported  
20 the suspected security deficiency or non-compliance  
21 through the notification system established under  
22 paragraph (1) a written response that includes the  
23 Secretary’s findings with respect to the report sub-  
24 mitted by the individual and what, if any, compli-  
25 ance action was taken in response to such report.

1           “(5) INSPECTOR GENERAL REPORT RE-  
2           QUIRED.—The Inspector General of the Department  
3           shall submit to the Committee on Homeland Secu-  
4           rity and the Committee on Energy and Commerce of  
5           the House of Representatives and the Committee on  
6           Homeland Security and Governmental Affairs of the  
7           Senate an annual report on the reports received  
8           under the notification system established under  
9           paragraph (1) and the Secretary’s disposition of  
10          such reports.

11          “(p) ANNUAL REPORT TO CONGRESS.—

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

22           “(A) A qualitative discussion of how cov-  
23          ered chemical facilities, differentiated by tier,  
24          have reduced the risks of chemical facility ter-  
25          rorist incidents at such facilities, including—

1           “(i) a generalized summary of meas-  
2           ures implemented by covered chemical fa-  
3           cilities in order to meet each risk-based  
4           chemical facility performance standard es-  
5           tablished by this section, and those that  
6           the facilities already had in place—

7                       “(I) in the case of the first report  
8           under this subsection, before the  
9           issuance of the final rule imple-  
10          menting the regulations known as the  
11          ‘Chemical Facility Anti-Terrorism  
12          Standards’, issued on April 9, 2007;  
13          and

14                      “(II) in the case of each subse-  
15          quent report, since the submittal of  
16          the most recent report submitted  
17          under this subsection; and

18                      “(ii) any other generalized summary  
19          the Secretary deems appropriate to de-  
20          scribe the measures covered chemical facili-  
21          ties are implementing to comply with the  
22          requirements of this section.

23                      “(B) A quantitative summary of how the  
24          covered chemical facilities, differentiated by  
25          tier, are complying with the requirements of

1           this section during the period covered by the re-  
2           port and how the Secretary is implementing  
3           and enforcing such requirements during such  
4           period, including—

5                   “(i) the number of chemical facilities  
6                   that provided the Secretary with informa-  
7                   tion about possessing substances of con-  
8                   cern, as described in subsection (b)(2)(B);

9                   “(ii) the number of covered chemical  
10                  facilities assigned to each tier;

11                  “(iii) the number of security vulner-  
12                  ability assessments and site security plans  
13                  submitted by covered chemical facilities;

14                  “(iv) the number of security vulner-  
15                  ability assessments and site security plans  
16                  approved and disapproved by the Sec-  
17                  retary;

18                  “(v) the number of covered chemical  
19                  facilities without approved security vulner-  
20                  ability assessments or site security plans;

21                  “(vi) the number of chemical facilities  
22                  that have been assigned to a different tier  
23                  or are no longer regulated by the Secretary  
24                  due to implementation of a method to re-  
25                  duce the consequences of a terrorist attack

1 and a description of such implemented  
2 methods;

3 “(vii) the number of orders for com-  
4 pliance issued by the Secretary;

5 “(viii) the administrative penalties as-  
6 sessed by the Secretary for non-compliance  
7 with the requirements of this section;

8 “(ix) the civil penalties assessed by  
9 the court for non-compliance with the re-  
10 quirements of this section;

11 “(x) the number of terrorist watchlist  
12 checks conducted by the Secretary in order  
13 to comply with the requirements of this  
14 section, the number of appeals conducted  
15 by the Secretary pursuant to the processes  
16 described under subparagraphs (B), (C)  
17 and (D) of subsection (n)(3), aggregate in-  
18 formation regarding the time taken for  
19 such appeals, aggregate information re-  
20 garding the manner in which such appeals  
21 were resolved, and, based on information  
22 provided to the Secretary annually by each  
23 owner or operator of a covered chemical fa-  
24 cility, the number of persons subjected to  
25 adverse employment decisions that were at-

1           tributed by the owner or operator to the  
2           regulations required by subsection (n); and  
3           “(xi) any other regulatory data the  
4           Secretary deems appropriate to describe  
5           facility compliance with the requirements  
6           of this section and the Secretary’s imple-  
7           mentation of such requirements.

8           “(2) PUBLIC AVAILABILITY.—A report sub-  
9           mitted under this subsection shall be made publicly  
10          available.

11          “(q) AUTHORIZATION OF APPROPRIATIONS.—There  
12          is authorized to be appropriated to the Secretary of Home-  
13          land Security to carry out this section—

14                 “(1) \$325,000,000 for fiscal year 2011, of  
15                 which \$100,000,000 shall be made available to pro-  
16                 vide funding for methods to reduce the consequences  
17                 of a terrorist attack, of which up to \$3,000,000 shall  
18                 be made available for grants authorized under sub-  
19                 section (j)(3)(A);

20                 “(2) \$300,000,000 for fiscal year 2012, of  
21                 which \$75,000,000 shall be made available to pro-  
22                 vide funding for methods to reduce the consequences  
23                 of a terrorist attack, of which up to \$3,000,000 shall  
24                 be made available for grants authorized under sub-  
25                 section (j)(3)(A)); and

1           “(3) \$275,000,000 for fiscal year 2013, of  
2           which \$50,000,000 shall be made available to pro-  
3           vide funding for methods to reduce the consequences  
4           of a terrorist attack, of which up to \$3,000,000 shall  
5           be made available for grants authorized under sub-  
6           section (j)(3)(A).”.

7           (b) REGULATIONS.—

8           (1) DEADLINE.—The Secretary shall issue pro-  
9           posed rules to carry out section 550 of the Depart-  
10          ment of Homeland Security Appropriations Act,  
11          2007, as amended by subsection (a), by not later  
12          than 6 months after the date of the enactment of  
13          this Act, and shall issue final rules to carry out such  
14          section by not later than 18 months after the date  
15          of the enactment of this Act.

16          (2) CONSULTATION.—In developing and imple-  
17          menting the rules required under paragraph (1), the  
18          Secretary shall consult with the Administrator of the  
19          Environmental Protection Agency, and other per-  
20          sons, as appropriate, regarding—

21                  (A) the designation of substances of con-  
22                  cern;

23                  (B) methods to reduce the consequences of  
24                  a terrorist attack;

1 (C) security at drinking water facilities  
2 and wastewater treatment works;

3 (D) the treatment of protected informa-  
4 tion; and

5 (E) such other matters as the Secretary  
6 determines necessary.

7 (3) SENSE OF CONGRESS REGARDING CFATS.—

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

18 (4) INTERIM USE AND AMENDMENT OF  
19 CFATS.—Until the final rules prescribed pursuant to  
20 paragraph (1) take effect, in carrying out section  
21 550 of the Department of Homeland Security Ap-  
22 propriations Act, 2007, as amended by subsection  
23 (a), the Secretary may, to the extent the Secretary  
24 determines appropriate—

1 (A) continue to carry out the CFATS reg-  
2 ulations, as in effect immediately before the  
3 date of the enactment of this Act;

4 (B) amend any of such regulations as may  
5 be necessary to ensure that such regulations are  
6 consistent with the requirements of this Act  
7 and the amendments made by this Act; and

8 (C) continue using any tools developed for  
9 purposes of such regulations, including the list  
10 of substances of concern, usually referred to as  
11 “Appendix A”, and the chemical security as-  
12 sessment tool (which includes facility registra-  
13 tion, a top-screen questionnaire, a security vul-  
14 nerability assessment tool, a site security plan  
15 template, and a chemical vulnerability informa-  
16 tion repository).

17 (5) UPDATE OF FACILITY PLANS ASSESSMENTS  
18 AND PLANS PREPARED UNDER CFATS.—The owner  
19 or operator of a covered chemical facility, who, be-  
20 fore the effective date of the final regulations issued  
21 under section 550 of the Department of Homeland  
22 Security Appropriations Act, 2007, as amended by  
23 subsection (a), submits a security vulnerability as-  
24 sessment or site security plan under the CFATS  
25 regulations, shall be required to update or amend

1 the facility's security vulnerability assessment and  
2 site security plan to reflect any additional require-  
3 ments of this Act or the amendments made by this  
4 Act, according to a timeline established by the Sec-  
5 retary.

6 (c) REVIEW OF DESIGNATION OF SODIUM  
7 FLUOROACETATE AS A SUBSTANCE OF CONCERN.—The  
8 Secretary of Homeland Security shall review the designa-  
9 tion of sodium fluoroacetate as a substance of concern  
10 pursuant to paragraph (4) of subsection (b) of section 550  
11 of the Department of Homeland Security Appropriations  
12 Act, 2007, as amended by subsection (a), by the earlier  
13 of the following dates:

14 (1) The date of the first periodic review con-  
15 ducted pursuant to such subsection after the date of  
16 the enactment of this Act.

17 (2) The date that is one year after the date of  
18 the enactment of this Act.

