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111TH CONGRESS
1ST SESSION

H. R. 2868

[Report No. 111–205, Parts I and II]

To amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2009

Mr. THOMPSON of Mississippi (for himself, Mr. WAXMAN, Ms. JACKSON-LEE of Texas, Mr. MARKEY of Massachusetts, Ms. CLARKE, and Mr. PASCRELL) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JULY 13, 2009

Reported from the Committee on Homeland Security with an amendment
[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 13, 2009

Referral to the Committee on Energy and Commerce extended for a period ending not later than July 31, 2009

JULY 13, 2009

Referred to the Committee on the Judiciary for a period ending not later than July 31, 2009, for consideration of such provisions of the bill and the amendment as fall within the jurisdiction of that committee pursuant to clause 1(k), rule X

JULY 31, 2009

Referral to the Committees on Energy and Commerce and the Judiciary extended for a period ending not later than September 30, 2009

SEPTEMBER 30, 2009

Referral to the Committees on Energy and Commerce and the Judiciary
extended for a period ending not later than October 23, 2009

OCTOBER 23, 2009

Additional sponsors: Ms. NORTON, Mr. HINCHEY, and Mrs. MALONEY

OCTOBER 23, 2009

Reported from the Committee on Energy and Commerce with an amendment
[Strike out all after the enacting clause and insert the part printed in boldface roman]

OCTOBER 23, 2009

Committee on the Judiciary discharged; committed to the Committee of the
Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on June 15, 2009]

A BILL

To amend the Homeland Security Act of 2002 to extend,
modify, and recodify the authority of the Secretary of
Homeland Security to enhance security and protect
against acts of terrorism against chemical facilities, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Chemical Facility Anti-*
5 *Terrorism Act of 2009”.*

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) *FINDINGS.—Congress makes the following findings:*

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

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

17 (3) *The Secretary of Homeland Security has*
18 *statutory authority pursuant to section 550 of the De-*
19 *partment of Homeland Security Appropriations Act,*
20 *2007 (Public Law 109–295) to regulate the security*
21 *practices at chemical facilities that are at significant*
22 *risk of being terrorist targets.*

23 (4) *The Secretary of Homeland Security issued*
24 *interim final regulations called the Chemical Facility*

1 *Anti-Terrorism Standards, which became effective on*
2 *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.**—*The Homeland Security Act of*
12 *2002 (6 U.S.C. 101 et seq.) is amended by adding at the*
13 *end the following new title:*

14 **“TITLE XXI—REGULATION OF SE-**
15 **CURITY PRACTICES AT CHEM-**
16 **ICAL FACILITIES**

17 **“SEC. 2101. DEFINITIONS.**

18 *“In this title, the following definitions apply:*

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

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

24 *“(B) that meets other risk-related criteria*
25 *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 se-
4 curity of a chemical facility against a chemical facil-
5 ity terrorist incident that are designed to address the
6 following:

7 “(A) Restricting the area perimeter.

8 “(B) Securing site assets.

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

13 “(i) measures to deter the unauthorized
14 introduction of dangerous substances and
15 devices that may facilitate a chemical facil-
16 ity terrorist incident or actions having seri-
17 ous negative consequences for the population
18 surrounding the chemical facility; and

19 “(ii) measures implementing a regu-
20 larly updated identification system that
21 checks the identification of chemical facility
22 personnel and other persons seeking access
23 to the chemical facility and that discourages
24 abuse through established disciplinary
25 measures.

1 “(D) *Methods to deter, detect, and delay a*
2 *chemical facility terrorist incident, creating suf-*
3 *ficient time between detection of a chemical facil-*
4 *ity terrorist incident and the point at which the*
5 *chemical facility terrorist incident becomes suc-*
6 *cessful, including measures to—*

7 “(i) *deter vehicles from penetrating the*
8 *chemical facility perimeter, gaining unau-*
9 *thorized access to restricted areas, or other-*
10 *wise presenting a hazard to potentially crit-*
11 *ical targets;*

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

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

24 “(iv) *delay a chemical facility terrorist*
25 *incident for a sufficient period of time so as*

1 to allow appropriate response through on-
2 site security response, barriers and barri-
3 cades, hardened targets, and well-coordi-
4 nated response planning.

5 “(E) Securing and monitoring the shipping,
6 receipt, and storage of a substance of concern for
7 the chemical facility.

8 “(F) Deterring theft or diversion of a sub-
9 stance of concern.

10 “(G) Deterring insider sabotage.

11 “(H) Deterring cyber sabotage, including by
12 preventing unauthorized onsite or remote access
13 to critical process controls, including supervisory
14 control and data acquisition systems, distributed
15 control systems, process control systems, indus-
16 trial control systems, critical business systems,
17 and other sensitive computerized systems.

18 “(I) Developing and exercising an internal
19 emergency plan for owners, operators, and cov-
20 ered individuals of a covered chemical facility
21 for responding to chemical facility terrorist inci-
22 dents at the facility. Any such plan shall include
23 the provision of appropriate information to any
24 local emergency planning committee, local law
25 enforcement officials, and emergency response

1 providers to ensure an effective, collective re-
2 sponse to terrorist incidents.

3 “(J) Maintaining effective monitoring, com-
4 munications, and warning systems, including—

5 “(i) measures designed to ensure that
6 security systems and equipment are in good
7 working order and inspected, tested, cali-
8 brated, and otherwise maintained;

9 “(ii) measures designed to regularly
10 test security systems, note deficiencies, cor-
11 rect for detected deficiencies, and record re-
12 sults so that they are available for inspec-
13 tion by the Department; and

14 “(iii) measures to allow the chemical
15 facility to promptly identify and respond to
16 security system and equipment failures or
17 malfunctions.

18 “(K) Ensuring mandatory annual security
19 training, exercises, and drills of chemical facility
20 personnel appropriate to their roles, responsibil-
21 ities, and access to chemicals, including partici-
22 pation by local law enforcement, local emergency
23 response providers, appropriate supervisory and
24 non-supervisory facility employees and their em-
25 ployee representatives, if any.

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

9 “(i) *measures designed to verify and*
10 *validate identity;*

11 “(ii) *measures designed to check crimi-*
12 *nal history;*

13 “(iii) *measures designed to verify and*
14 *validate legal authorization to work; and*

15 “(iv) *measures designed to identify*
16 *people with terrorist ties.*

17 “(M) *Escalating the level of protective meas-*
18 *ures for periods of elevated threat.*

19 “(N) *Specific threats, vulnerabilities, or*
20 *risks identified by the Secretary for that chem-*
21 *ical facility.*

22 “(O) *Reporting of significant security inci-*
23 *dents to the Department and to appropriate local*
24 *law enforcement officials.*

1 “(P) Identifying, investigating, reporting,
2 and maintaining records of significant security
3 incidents and suspicious activities in or near the
4 site.

5 “(Q) Establishing one or more officials and
6 an organization responsible for—

7 “(i) security;

8 “(ii) compliance with the standards
9 under this paragraph;

10 “(iii) serving as the point of contact
11 for incident management purposes with
12 Federal, State, local, and tribal agencies,
13 law enforcement, and emergency response
14 providers; and

15 “(iv) coordination with Federal, State,
16 local, and tribal agencies, law enforcement,
17 and emergency response providers regarding
18 plans and security measures for the collec-
19 tive response to a chemical facility terrorist
20 incident.

21 “(R) Maintaining appropriate records re-
22 lating to the security of the facility, including a
23 copy of the most recent security vulnerability as-
24 sessment and site security plan at the chemical
25 facility.

1 “(S) *Assessing and, as appropriate, uti-*
2 *lizing methods to reduce the consequences of a*
3 *terrorist attack.*

4 “(T) *Methods to recover or mitigate the re-*
5 *lease of a substance of concern in the event of a*
6 *chemical facility terrorist incident.*

7 “(U) *Any additional security performance*
8 *standards the Secretary may specify.*

9 “(3) *The term ‘chemical facility terrorist inci-*
10 *dent’ means any act or attempted act of terrorism or*
11 *terrorist activity committed at, near, or against a*
12 *chemical facility, including—*

13 “(A) *the release of a substance of concern*
14 *from a chemical facility;*

15 “(B) *the theft, misappropriation, or misuse*
16 *of a substance of concern from a chemical facil-*
17 *ity; or*

18 “(C) *the sabotage of a chemical facility or*
19 *a substance of concern at a chemical facility.*

20 “(4) *The term ‘employee representative’ means*
21 *the representative of the certified or recognized bar-*
22 *gaining agent engaged in a collective bargaining rela-*
23 *tionship with a private or public owner or operator*
24 *of a chemical facility.*

1 “(5) *The term ‘covered individual’ means a per-*
2 *manent, temporary, full-time, or part-time employee*
3 *of a covered chemical facility or an employee of an*
4 *entity with which the covered chemical facility has*
5 *entered into a contract who is performing responsibil-*
6 *ities at the facility pursuant to the contract.*

7 “(6) *The term ‘covered chemical facility’ means*
8 *a chemical facility that meets the criteria of section*
9 *2102(b)(1).*

10 “(7) *The term ‘environment’ means—*

11 “(A) *the navigable waters, the waters of the*
12 *contiguous zone, and the ocean waters of which*
13 *the natural resources are under the exclusive*
14 *management authority of the United States*
15 *under the Magnuson-Stevens Fishery Conserva-*
16 *tion and Management Act (16 U.S.C. 1801 et*
17 *seq.); and*

18 “(B) *any other surface water, ground water,*
19 *drinking water supply, land surface or sub-*
20 *surface strata, or ambient air within the United*
21 *States or under the jurisdiction of the United*
22 *States.*

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

25 “(A) *The person who owns the facility.*

1 “(B) *The person who has responsibility for*
2 *daily operation of the facility.*”

3 “(C) *The person who leases the facility.*”

4 “(9) *The term ‘person’ means an individual,*
5 *trust, firm, joint stock company, corporation (includ-*
6 *ing a government corporation), partnership, associa-*
7 *tion, State, municipality, commission, political sub-*
8 *division of a State, or any interstate body and shall*
9 *include each department, agency, and instrumentality*
10 *of the United States.*”

11 “(10) *The term ‘release’ means any spilling,*
12 *leaking, pumping, pouring, emitting, emptying, dis-*
13 *charging, injecting, escaping, leaching, dumping, or*
14 *disposing into the environment (including the aban-*
15 *donment or discarding of barrels, containers, and*
16 *other closed receptacles containing any hazardous sub-*
17 *stance or pollutant or contaminant), but excludes (A)*
18 *any release which results in exposure to persons solely*
19 *within a workplace, with respect to a claim which*
20 *such persons may assert against the employer of such*
21 *persons, (B) emissions from the engine exhaust of a*
22 *motor vehicle, rolling stock, aircraft, vessel, or pipe-*
23 *line pumping station engine, (C) release of source, by-*
24 *product, or special nuclear material from a nuclear*
25 *incident, as those terms are defined in the Atomic*

1 *Energy Act of 1954 (42 U.S.C. 2011 et seq.), if such*
2 *release is subject to requirements with respect to fi-*
3 *nancial protection established by the Nuclear Regu-*
4 *latory Commission under section 170 of such Act (42*
5 *U.S.C. 2210), or, for the purposes of section 104 of the*
6 *Comprehensive Environmental Response Compensa-*
7 *tion and Liability Act of 1980 (42 U.S.C. 9604) or*
8 *any other response action, any release of source by-*
9 *product, or special nuclear material from any proc-*
10 *essing site designated under section 102(a)(1) or*
11 *302(a) of the Uranium Mill Tailings Radiation Con-*
12 *trol Act of 1978 (42 U.S.C. 7912(a)(1); and (D) the*
13 *normal application of fertilizer.*

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

17 “(12) *The term ‘method to reduce the con-*
18 *sequences of a terrorist attack’ means a measure used*
19 *at a chemical facility that reduces or eliminates the*
20 *potential consequences of a chemical facility terrorist*
21 *incident, including—*

22 “(A) *the elimination or reduction in the*
23 *amount of a substance of concern possessed or*
24 *planned to be possessed by an owner or operator*

1 *of a covered chemical facility through the use of*
2 *alternate substances, formulations, or processes;*

3 *“(B) the modification of pressures, tempera-*
4 *tures, or concentrations of a substance of con-*
5 *cern; and*

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

10 *“(13) The term ‘academic laboratory’ means an*
11 *area owned by an eligible institution of higher edu-*
12 *cation defined pursuant to section 101 of the Higher*
13 *Education Act of 1965 (20 U.S.C. 2001) or a non-*
14 *profit research institute or teaching hospital that has*
15 *a formal affiliation with a college or university where*
16 *relatively small quantities of chemicals and other sub-*
17 *stances are used on a non-production basis for teach-*
18 *ing, research, or diagnostic purposes, and are stored*
19 *and used in containers that are easily manipulated*
20 *by one person, including photo laboratories, art stu-*
21 *dios, field laboratories research farms, chemical stock-*
22 *rooms, and preparatory laboratories.*

23 *“(14) The term ‘surface transportation modes’*
24 *means mass transit, commuter and long-distance pas-*
25 *senger rail, freight rail, commercial vehicles (includ-*

1 *ing intercity buses), and pipelines, and related infra-*
2 *structure (including roads and highways), that are*
3 *within the territory of the United States.*

4 **“SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF**
5 **CHEMICAL FACILITIES.**

6 *“(a) SUBSTANCES OF CONCERN.—*

7 *“(1) DESIGNATION BY THE SECRETARY.—The*
8 *Secretary may designate any chemical substance as a*
9 *substance of concern and establish the threshold quan-*
10 *tity for each such substance of concern.*

11 *“(2) MATTERS FOR CONSIDERATION.—In desig-*
12 *nating a chemical substance or establishing or adjust-*
13 *ing the threshold quantity for a chemical substance*
14 *under paragraph (1), the Secretary shall consider the*
15 *potential extent of death, injury, and serious adverse*
16 *effects to human health, the environment, critical in-*
17 *frastructure, public health, homeland security, na-*
18 *tional security, and the national economy that could*
19 *result from a chemical facility terrorist incident.*

20 *“(b) LIST OF COVERED CHEMICAL FACILITIES.—*

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

1 “(A) *The potential threat or likelihood that*
2 *the chemical facility will be the target of a chem-*
3 *ical facility terrorist incident.*

4 “(B) *The potential extent and likelihood of*
5 *death, injury, or serious adverse effects to human*
6 *health, the environment, critical infrastructure,*
7 *public health, homeland security, national secu-*
8 *rity, and the national economy that could result*
9 *from a chemical facility terrorist incident.*

10 “(C) *The proximity of the chemical facility*
11 *to large population centers.*

12 “(2) *SUBMISSION OF INFORMATION.—The Sec-*
13 *retary may require the submission of information*
14 *with respect to the quantities of substances of concern*
15 *that an owner or operator of a chemical facility pos-*
16 *sesses or plans to possess in order to determine wheth-*
17 *er to designate a chemical facility as a covered chem-*
18 *ical facility for purposes of this title.*

19 “(c) *ASSIGNMENT OF CHEMICAL FACILITIES TO RISK-*
20 *BASED TIERS.—*

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

1 “(2) *PROVISION OF INFORMATION.*—*The Sec-*
2 *retary may request, and the owner or operator of a*
3 *covered chemical facility shall provide, any addi-*
4 *tional information beyond any information required*
5 *to be submitted under subsection (b)(2) that may be*
6 *necessary for the Secretary to assign the chemical fa-*
7 *cility to the appropriate tier under paragraph (1).*

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

20 “(A) *The number of individuals at risk of*
21 *death, injury, or severe adverse effects to human*
22 *health as a result of a worst case chemical facil-*
23 *ity terrorist incident at the covered chemical fa-*
24 *cility.*

1 “(B) Information related to the criticality
2 of the covered chemical facility.

3 “(C) The proximity or interrelationship of
4 the covered chemical facility to other critical in-
5 frastructure.

6 “(d) REQUIREMENT FOR REVIEW.—The Secretary—

7 “(1) shall periodically review—

8 “(A) the designation of a substance of con-
9 cern and the threshold quantity under subsection
10 (a)(1); and

11 “(B) the criteria under subsection (b)(1);
12 and

13 “(2) may at any time determine whether a
14 chemical facility is a covered chemical facility or
15 change the tier to which such a facility is assigned
16 under subsection (c)(1).

17 “(e) PROVISION OF THREAT-RELATED INFORMA-
18 TION.—In order to effectively assess the vulnerabilities to
19 a covered chemical facility, the Secretary shall provide to
20 the owner, operator, or security officer of a covered chemical
21 facility threat information regarding probable threats to the
22 facility and methods that could be used in a chemical facil-
23 ity terrorist incident.

1 **“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND**
2 **SITE SECURITY PLANS.**

3 *“(a) IN GENERAL.—*

4 *“(1) REQUIREMENT.—The Secretary shall—*

5 *“(A) establish standards, protocols, and pro-*
6 *cedures for security vulnerability assessments*
7 *and site security plans to be required for covered*
8 *chemical facilities;*

9 *“(B) require the owner or operator of each*
10 *covered chemical facility to—*

11 *“(i) conduct an assessment of the vul-*
12 *nerability of the covered chemical facility to*
13 *a range of chemical facility terrorist inci-*
14 *dents, including an incident that results in*
15 *a worst-case release of a substance of con-*
16 *cern;*

17 *“(ii) prepare and implement a site se-*
18 *curity plan for that covered chemical facil-*
19 *ity that addresses the security vulnerability*
20 *assessment and meets the risk-based chem-*
21 *ical security performance standards under*
22 *subsection (b);*

23 *“(iii) include at least one supervisory*
24 *and at least one non-supervisory employee*
25 *of the covered chemical facility, and at least*
26 *one employee representative, from each bar-*

1 *gaining agent at the covered chemical facil-*
2 *ity, if any, in developing the security vul-*
3 *nerability assessment and site security plan*
4 *required under this clause;*

5 *“(iv) include, with the submission of a*
6 *security vulnerability assessment of the fa-*
7 *cility and the site security plan, a signed*
8 *statement by the owner or operator of the*
9 *covered chemical facility that certifies that*
10 *the submission is provided to the Secretary*
11 *with knowledge of the penalty provisions*
12 *under section 2107.*

13 *“(C) set deadlines, by tier, for the comple-*
14 *tion of security vulnerability assessments and*
15 *site security plans;*

16 *“(D) upon request, as necessary, and to the*
17 *extent that resources permit, provide technical*
18 *assistance to a covered chemical facility con-*
19 *ducting a vulnerability assessment or site secu-*
20 *rity plan required under this section;*

21 *“(E) establish specific deadlines and re-*
22 *quirements for the submission by a covered chem-*
23 *ical facility of information describing—*

24 *“(i) any change in the use by the cov-*
25 *ered chemical facility of more than a thresh-*

1 *old amount of any substance of concern that*
2 *may affect the requirements of the chemical*
3 *facility under this title; or*

4 *“(i) any material modification to a*
5 *covered chemical facility’s operations or site*
6 *that may affect the security vulnerability*
7 *assessment or site security plan submitted*
8 *by the covered chemical facility;*

9 *“(F) require the owner or operator of a cov-*
10 *ered chemical facility to review and resubmit a*
11 *security vulnerability assessment or site security*
12 *plan not less frequently than once every 5 years;*

13 *“(G) not later than 180 days after the date*
14 *on which the Secretary receives a security vul-*
15 *nerability assessment or site security plan under*
16 *this title, review and approve or disapprove such*
17 *assessment or plan; and*

18 *“(H) establish, as appropriate, modified or*
19 *separate standards, protocols, and procedures for*
20 *security vulnerability assessments and site secu-*
21 *rity plans for covered chemical facilities that are*
22 *also academic laboratories.*

23 *“(2) INHERENTLY GOVERNMENTAL FUNCTION.—*

24 *The approval or disapproval of a security vulner-*

1 *ability assessment or site security plan under this sec-*
2 *tion is an inherently governmental function.*

3 “(b) *RISK-BASED CHEMICAL SECURITY PERFORMANCE*
4 *STANDARDS.—The Secretary shall establish risk-based*
5 *chemical security performance standards for the site secu-*
6 *rity plans required to be prepared by covered chemical fa-*
7 *cilities. In establishing such standards, the Secretary*
8 *shall—*

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

13 “(2) *permit each covered chemical facility sub-*
14 *mitting a site security plan to select a combination*
15 *of security measures that satisfy the risk-based chem-*
16 *ical security performance standards established by the*
17 *Secretary under this subsection; and*

18 “(3) *provide, as appropriate, academic labora-*
19 *tories with modified or separate security measures*
20 *that recognize the smaller quantities, highly distrib-*
21 *uted environments, and short periods of time that*
22 *characterize the substances of concern at academic*
23 *laboratories.*

24 “(c) *CO-LOCATED CHEMICAL FACILITIES.—The Sec-*
25 *retary may allow an owner or operator of a covered chem-*

1 ical facility that is located geographically close to another
2 covered chemical facility to develop and implement coordi-
3 nated security vulnerability assessments and site security
4 plans.

5 “(d) ALTERNATE SECURITY PROGRAMS SATISFYING
6 REQUIREMENTS FOR SECURITY VULNERABILITY ASSESS-
7 MENT AND SITE SECURITY PLAN.—

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

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

22 “(B) provides an equivalent level of security
23 to the level of security established pursuant to the
24 regulations promulgated under this title; and

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

3 “(2) *SECRETARIAL REVIEW REQUIRED.*—Nothing
4 in this subsection shall relieve the Secretary of the ob-
5 ligation—

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

9 “(B) to approve or disapprove each such as-
10 sessment or plan on an individual basis accord-
11 ing to the deadlines established under subsection
12 (a).

13 “(3) *COVERED FACILITY’S OBLIGATIONS UNAF-*
14 *FECTED.*—Nothing in this subsection shall relieve any
15 covered chemical facility of the obligation and respon-
16 sibility to comply with all of the requirements of this
17 title.

18 “(4) *PERSONNEL SURETY ALTERNATE SECURITY*
19 *PROGRAM.*—In response to an application from a
20 non-profit, personnel surety accrediting organization
21 acting on behalf of, and with written authorization
22 from, the owner or operator of a covered chemical fa-
23 cility, the Secretary may accept a personnel surety
24 alternate security program that meets the require-

1 *ments of section 2115 and provides for a background*
2 *check process that is—*

3 *“(A) expedited, affordable, reliable, and ac-*
4 *curate;*

5 *“(B) fully protective of the rights of covered*
6 *individuals through procedures that are con-*
7 *sistent with the privacy protections available*
8 *under the Fair Credit Reporting Act (15 U.S.C.*
9 *1681 et seq.); and*

10 *“(C) is a single background check consistent*
11 *with a risk-based tiered program.*

12 *“(e) OTHER AUTHORITIES.—*

13 *“(1) REGULATION OF MARITIME FACILITIES.—*

14 *“(A) RISK-BASED TIERING.—Notwith-*
15 *standing any other provision of law, the owner*
16 *or operator of a chemical facility required to*
17 *submit a facility security plan under section*
18 *70103(c) of title 46, United States Code, shall be*
19 *required to submit information to the Secretary*
20 *necessary to determine whether to designate such*
21 *a facility as a covered chemical facility and to*
22 *assign the facility to a risk-based tier under sec-*
23 *tion 2102 of this title.*

24 *“(B) ADDITIONAL MEASURES.—In the case*
25 *of a facility designated as a covered chemical fa-*

1 *cility under this title that is also regulated under*
2 *section 70103(c) of title 46, United States Code,*
3 *the Secretary shall require the owner or operator*
4 *of such facility to update the vulnerability as-*
5 *essments and facility security plans required*
6 *under that section, if necessary, to ensure an*
7 *equivalent level of security for substances of con-*
8 *cern, including the requirements under section*
9 *2111, in the same manner as other covered chem-*
10 *ical facilities in this title.*

11 *“(C) INFORMATION SHARING AND PROTEC-*
12 *TION.—Notwithstanding section 70103(d) of title*
13 *46, United States Code, the Secretary shall*
14 *apply the information sharing and protection re-*
15 *quirements in section 2110 of this title to a facil-*
16 *ity described in subparagraph (B).*

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

24 *“(E) FORMAL AGREEMENT.—The Secretary*
25 *shall—*

1 “(i) require the Office of Infrastructure
2 Protection and the Coast Guard to enter
3 into a formal agreement detailing their re-
4 spective roles and responsibilities in car-
5 rying out the requirements of this title.
6 Such agreement shall ensure that the en-
7 forcement and compliance requirements
8 under this title and section 70103 of title
9 46, United States Code, are not conflicting
10 or duplicative; and

11 “(ii) designate the agency responsible
12 for enforcement of the requirements of this
13 title for covered chemical facilities referred
14 to in subparagraph (A).

15 “(2) COORDINATION OF STORAGE LICENSING OR
16 PERMITTING REQUIREMENT.—In the case of any stor-
17 age required to be licensed or permitted under chapter
18 40 of title 18, United States Code, the Secretary shall
19 prescribe the rules and regulations for the implemen-
20 tation of this section with the concurrence of the At-
21 torney General and avoid unnecessary duplication of
22 regulatory requirements.

23 “(f) ROLE OF EMPLOYEES.—

24 “(1) DESCRIPTION OF ROLE REQUIRED.—As ap-
25 propriate, security vulnerability assessments or site

1 *security plans required under this section shall de-*
2 *scribe the roles or responsibilities that covered indi-*
3 *viduals are expected to perform to deter or respond to*
4 *a chemical facility terrorist incident.*

5 “(2) *TRAINING FOR EMPLOYEES.—The owner or*
6 *operator of a covered chemical facility required to*
7 *submit a site security plan under this section shall*
8 *annually provide each covered individual with a role*
9 *or responsibility referred to in paragraph (1) at the*
10 *facility with a minimum of 8 hours of training. Such*
11 *training shall—*

12 “(A) *include an identification and discus-*
13 *sion of substances of concern;*

14 “(B) *include a discussion of possible con-*
15 *sequences of a chemical facility terrorist inci-*
16 *dent;*

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

20 “(D) *include a review of information pro-*
21 *tection requirements;*

22 “(E) *include a discussion of physical and*
23 *cyber security equipment, systems, and methods*
24 *used to achieve chemical security performance*
25 *standards;*

1 “(F) allow training with other relevant par-
2 ticipants, including Federal, State, local, and
3 tribal authorities, and first responders, where
4 appropriate;

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

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

14 “(I) use multiple training media and meth-
15 ods;

16 “(J) include identification and assessment
17 of methods to reduce the consequences of a ter-
18 rorist attack; and

19 “(K) include a discussion of appropriate
20 emergency response procedures.

21 “(g) WORKER TRAINING GRANTS PROGRAM.—

22 “(1) AUTHORITY.—The Secretary shall establish
23 a grant program to award grants to eligible entities
24 to provide for training and education of covered indi-

1 *viduals, first responders, and emergency response pro-*
2 *viders.*

3 “(2) *ADMINISTRATION.*—*The Secretary shall*
4 *enter into an agreement with another Federal or*
5 *State agency to make and administer grants or coop-*
6 *erative agreements under this section.*

7 “(3) *USE OF FUNDS.*—*The recipient of a grant*
8 *under this subsection shall use the grant to provide*
9 *for training and education of covered individuals,*
10 *first responders, and emergency response providers,*
11 *including—*

12 “(A) *the annual mandatory training speci-*
13 *fied in subsection (f)(2); and*

14 “(B) *other appropriate training for first re-*
15 *sponders and emergency response providers in*
16 *protecting nearby persons, property, critical in-*
17 *frastructure, or the environment from the effects*
18 *of a chemical facility terrorist incident.*

19 “(4) *ELIGIBLE ENTITIES.*—*For purposes of this*
20 *subsection, an eligible entity is a nonprofit organiza-*
21 *tion with demonstrated experience in implementing*
22 *and operating successful worker or first responder*
23 *health and safety training programs.*

1 **“SEC. 2104. SITE INSPECTIONS.**

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

8 “(b) *INSPECTIONS AND VERIFICATIONS.*—

9 “(1) *IN GENERAL.*—*The Secretary shall, at such*
10 *time and place as the Secretary determines to be rea-*
11 *sonable and appropriate, conduct chemical facility se-*
12 *curity inspections and verifications.*

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

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

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

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

5 “(A) the ability of the chemical facility to
6 prevent a chemical facility terrorist incident that
7 applicable chemical security performance stand-
8 ards are intended to prevent;

9 “(B) the ability of the chemical facility to
10 protect against security threats that are required
11 to be addressed by applicable chemical security
12 performance standards; and

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

15 “(3) conducted so as not to affect the actual secu-
16 rity, physical integrity, or safety of the chemical fa-
17 cility or its employees while the inspection is con-
18 ducted; and

19 “(4) conducted—

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

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

24 “(d) *CHEMICAL SECURITY INSPECTORS AUTHOR-*
25 *IZED.—Subject to availability of appropriations for such*

1 *purpose, the Secretary shall hire not fewer than 100 addi-*
2 *tional chemical facility inspectors in fiscal years 2010 and*
3 *2011 to ensure compliance with this title.*

4 **“SEC. 2105. RECORDS.**

5 *“(a) REQUESTS FOR RECORDS.—*

6 *“(1) IN GENERAL.—In carrying out this title, the*
7 *Secretary may require the submission of or, on pres-*
8 *entation of credentials, may at reasonable times ob-*
9 *tain access to and copy any records, including any*
10 *records maintained in electronic format, necessary*
11 *for—*

12 *“(A) reviewing or analyzing a security vul-*
13 *nerability assessment or site security plan sub-*
14 *mitted under section 2103; or*

15 *“(B) assessing the implementation of such a*
16 *site security plan.*

17 *“(2) PROPER HANDLING OF RECORDS.—In ac-*
18 *cessing or copying any records under paragraph (1),*
19 *the Secretary shall ensure that such records are han-*
20 *dled and secured appropriately in accordance with*
21 *section 2110.*

22 *“(b) PROVISION OF RECORDS TO EMPLOYEE REP-*
23 *RESENTATIVES.—If a covered chemical facility has one or*
24 *more certified or recognized bargaining agents, the owner*
25 *or operator of the covered chemical facility shall provide*

1 *an employee representative designated by each such bar-*
2 *gaining agent at such facility with a copy of any security*
3 *vulnerability assessment or site security plan submitted.*
4 *Each employee representative shall ensure that any such as-*
5 *essment or plan provided to the representative is handled*
6 *and secured appropriately in accordance with section 2110.*

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

8 “(a) *RESPONSIBILITIES OF SECRETARY.*—Upon the
9 receipt of information concerning a threat that is relevant
10 to a certain covered chemical facility, the Secretary shall
11 provide such information in a timely manner, to the max-
12 imum extent practicable under applicable authority and in
13 the interests of national security, to the owner, operator,
14 or security officer of that covered chemical facility, to a rep-
15 resentative of each recognized or certified bargaining agent
16 at the facility, if any, and to relevant State, local, and trib-
17 al authorities, including the State Homeland Security Ad-
18 visor, if applicable.

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

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

3 **“SEC. 2107. ENFORCEMENT.**

4 *“(a) REVIEW OF SITE SECURITY PLAN.—*

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

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

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

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

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

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

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

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

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

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

1 *owner or operator of the covered chemical facility to*
2 *consult with the Secretary, may—*

3 *“(A) issue an order assessing a civil penalty*
4 *for any past or current violation, requiring com-*
5 *pliance immediately or within a specified time*
6 *period, or both; or*

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

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

23 *“(b) PENALTIES.—*

24 *“(1) CIVIL PENALTIES.—A court may award a*
25 *civil penalty, pursuant to an order issued by the Sec-*

1 *retary under this title, of not more than \$50,000 for*
2 *each day on which a violation occurs or a failure to*
3 *comply continues.*

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

9 “(3) *APPLICABILITY OF PENALTIES.*—*Penalties*
10 *under paragraphs (1) and (2) may be awarded for*
11 *any violation of this title, including a violation of the*
12 *whistleblower protections under section 2108.*

13 **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

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

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

1 “(c) *ACKNOWLEDGMENT OF RECEIPT.*—If a report
2 submitted under subsection (a) identifies the person submit-
3 ting the report, the Secretary shall respond promptly to
4 such person to acknowledge receipt of the report.

5 “(d) *STEPS TO ADDRESS PROBLEMS.*—The Secretary
6 shall review and consider the information provided in any
7 report submitted under subsection (a) and shall, as nec-
8 essary, take appropriate steps under this title to address
9 any problem, deficiency, or vulnerability identified in the
10 report.

11 “(e) *RETALIATION PROHIBITED.*—

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

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

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

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

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

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

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

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

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

3 “(f) *PROHIBITED PERSONNEL PRACTICES AFFECTING*
4 *THE DEPARTMENT.*—

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

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

11 “(B) *any provision of law implementing*
12 *any of such paragraphs by providing any right*
13 *or remedy available to an employee or applicant*
14 *for employment in the civil service; and*

15 “(C) *any rule or regulation prescribed*
16 *under any such paragraph.*

17 “(2) *RULE OF CONSTRUCTION.*—*Nothing in this*
18 *paragraph shall be construed to affect any rights,*
19 *apart from those referred to in paragraph (1), to*
20 *which an individual described in that subparagraph*
21 *might otherwise be entitled to under law.*

22 **“SEC. 2109. FEDERAL PREEMPTION.**

23 *“This title does not preclude or deny any right of any*
24 *State or political subdivision thereof to adopt or enforce any*
25 *regulation, requirement, or standard of performance with*

1 *respect to a covered chemical facility that is more stringent*
2 *than a regulation, requirement, or standard of performance*
3 *issued under this title, or otherwise impair any right or*
4 *jurisdiction of any State or political subdivision thereof*
5 *with respect to covered chemical facilities within that State*
6 *or political subdivision thereof.*

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

8 “(a) *PROHIBITION OF PUBLIC DISCLOSURE OF PRO-*
9 *TECTED INFORMATION.—Protected information, as de-*
10 *scribed in subsection (g), that is provided to the Department*
11 *by the owner or operator of a covered chemical facility or*
12 *created by the Department under the requirements of this*
13 *title—*

14 “(1) *is exempt from disclosure under section 552*
15 *of title 5, United States Code; and*

16 “(2) *may not be made available pursuant to any*
17 *State or local law requiring disclosure of information*
18 *or records.*

19 “(b) *INFORMATION SHARING.—The Secretary shall fa-*
20 *cilitate and provide standards for the appropriate sharing*
21 *of protected information with and between Federal, State,*
22 *local, and tribal governments, emergency response pro-*
23 *viders, law enforcement officials, designated supervisory*
24 *and non-supervisory covered chemical facility personnel*
25 *with security, operational, or fiduciary responsibility for*

1 *the facility, and designated facility employee representa-*
2 *tives, if any.*

3 “(c) *TREATMENT OF INFORMATION IN ADJUDICATIVE*
4 *PROCEEDINGS.—In a proceeding under this title, protected*
5 *information described in subsection (g), or related vulner-*
6 *ability or security information, shall be treated in any judi-*
7 *cial or administrative action in a manner consistent with*
8 *the treatment of sensitive security information under sec-*
9 *tion 525 of the Department of Homeland Security Appro-*
10 *priations Act, 2007 (Public Law 109-295; 120 Stat. 1321).*

11 “(d) *OTHER OBLIGATIONS UNAFFECTED.—Nothing in*
12 *this section affects any obligation of the owner or operator*
13 *of a chemical facility under any other law to submit or*
14 *make available information required by such other law to*
15 *facility employees, employee organizations, or a Federal,*
16 *State, tribal, or local government.*

17 “(e) *SUBMISSION OF INFORMATION TO CONGRESS.—*
18 *Nothing in this title shall permit or authorize the with-*
19 *holding of information from Congress or any committee or*
20 *subcommittee thereof.*

21 “(f) *DISCLOSURE OF INDEPENDENTLY FURNISHED IN-*
22 *FORMATION.—Nothing in this title shall affect any author-*
23 *ity or obligation of a Federal, State, or local agency to pro-*
24 *tect or disclose any record or information that the Federal,*

1 *State, or local government agency obtains from a chemical*
2 *facility under any other law.*

3 “(g) *PROTECTED INFORMATION.*—

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

6 “(A) *Security vulnerability assessments and*
7 *site security plans submitted to the Secretary*
8 *under this title.*

9 “(B) *Portions of the following documents,*
10 *records, orders, notices, or letters that the Sec-*
11 *retary determines would be detrimental to chem-*
12 *ical facility security if disclosed and that are de-*
13 *veloped by the Secretary or the owner or oper-*
14 *ator of a covered chemical facility exclusively for*
15 *the purposes of this title:*

16 “(i) *Documents directly related to the*
17 *Secretary’s review and approval or dis-*
18 *approval of vulnerability assessments and*
19 *site security plans under this title.*

20 “(ii) *Documents directly related to in-*
21 *spections and audits under this title.*

22 “(iii) *Orders, notices, or letters regard-*
23 *ing the compliance of a covered chemical fa-*
24 *cility with the requirements of this title.*

1 “(iv) Information provided to or cre-
2 ated by the Secretary under section sub-
3 section (b) or (c) of section 2102.

4 “(C) Other information developed exclu-
5 sively for the purposes of this title that the Sec-
6 retary determines, if disclosed, would be detri-
7 mental to chemical facility security.

8 “(2) EXCLUSIONS.—For purposes of this section,
9 protected information does not include—

10 “(A) information that is otherwise publicly
11 available, including information that is required
12 to be made publicly available under any law;

13 “(B) information that a chemical facility
14 has lawfully disclosed other than in accordance
15 with this title; or

16 “(C) information that, if disclosed, would
17 not be detrimental to the security of a chemical
18 facility, including aggregate regulatory data that
19 the Secretary determines is appropriate to de-
20 scribe facility compliance with the requirements
21 of this title and the Secretary’s implementation
22 of such requirements.

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

3 *“(a) ASSESSMENT REQUIRED.—The owner or operator*
4 *of a covered chemical facility shall include in the site secu-*
5 *rity plan conducted pursuant to section 2103, an assess-*
6 *ment of methods to reduce the consequences of a terrorist*
7 *attack on that chemical facility, including—*

8 *“(1) a description of the methods to reduce the*
9 *consequences of a terrorist attack assessed by the cov-*
10 *ered chemical facility;*

11 *“(2) the degree to which each method to reduce*
12 *the consequences of a terrorist attack could, if applied,*
13 *reduce the potential extent of death, injury, or serious*
14 *adverse effects to human health resulting from a ter-*
15 *rorist release;*

16 *“(3) the technical viability, costs, avoided costs*
17 *(including liabilities), savings, and applicability of*
18 *implementing each method to reduce the consequences*
19 *of a terrorist attack; and*

20 *“(4) any other information that the owner or op-*
21 *erator of the covered chemical facility considered in*
22 *conducting the assessment.*

23 *“(b) IMPLEMENTATION.—*

24 *“(1) IMPLEMENTATION.—The owner or operator*
25 *of a covered chemical facility assigned to tier 1 or tier*
26 *2 that is required to conduct an assessment under*

1 *subsection (a) shall implement methods to reduce the*
2 *consequences of a terrorist attack on the chemical fa-*
3 *ility if the Secretary determines, based on an assess-*
4 *ment in subsection (a), that the implementation of*
5 *such methods at the facility—*

6 *“(A) would significantly reduce the risk of*
7 *death, injury, or serious adverse effects to human*
8 *health resulting from a chemical facility terrorist*
9 *incident but would not increase the interim stor-*
10 *age of a substance of concern outside the facility*
11 *or directly result in the creation of a new covered*
12 *chemical facility assigned to tier 1 or tier 2 or*
13 *the elevation of an existing covered chemical fa-*
14 *ility to tier 1 or tier 2;*

15 *“(B) can feasibly be incorporated into the*
16 *operation of the covered chemical facility;*

17 *“(C) would not significantly and demon-*
18 *strably impair the ability of the owner or oper-*
19 *ator of the covered chemical facility to continue*
20 *the business of the facility at its location;*

21 *“(D) would not significantly or demon-*
22 *strably reduce the operations of the covered chem-*
23 *ical facility or result in a reduction of the work-*
24 *force of the covered chemical facility; and*

1 “(E) would not significantly transfer secu-
2 rity risk to the transportation infrastructure of
3 the United States.

4 “(2) ANALYSIS REQUIRED.—

5 “(A) IN GENERAL.—The Secretary may not
6 require facilities to implement methods to reduce
7 the consequences of a terrorist attack until the
8 Secretary conducts a detailed analysis of the ef-
9 fects of such mandatory implementation. Such
10 analysis shall consider—

11 “(i) the costs companies and facilities
12 will incur as a result of mandatory imple-
13 mentation;

14 “(ii) any resultant loss of employment
15 sustained; and

16 “(iii) any loss of production due to im-
17 plementation.

18 “(B) CONSULTATION.— In completing the
19 analysis required by subparagraph (A), the Sec-
20 retary shall consult with relevant stakeholder
21 groups, including—

22 “(i) experts from the chemical indus-
23 try;

24 “(ii) representatives of covered chem-
25 ical facilities;

1 “(iii) members of the academic com-
2 munity; and

3 “(iv) appropriate representatives from
4 organized labor.

5 “(C) *REPORT.*—*The Secretary shall submit*
6 *to the Committee on Homeland Security of the*
7 *House of Representatives and the Committee on*
8 *Homeland Security and Governmental Affairs of*
9 *the Senate a report detailing the Secretary’s*
10 *analysis required by this subsection.*

11 “(3) *REVIEW OF INABILITY TO COMPLY.*—

12 “(A) *IN GENERAL.*—*An owner or operator*
13 *of a covered chemical facility who is unable to*
14 *comply with the Secretary’s determination under*
15 *paragraph (1) shall, within 60 days of receipt of*
16 *the Secretary’s determination, provide to the*
17 *Secretary a written explanation that includes the*
18 *reasons therefor.*

19 “(B) *REVIEW.*—*Not later than 60 days*
20 *after the receipt of an explanation submitted*
21 *under subparagraph (A), the Secretary, after*
22 *consulting with the owner or operator of the cov-*
23 *ered chemical facility who submitted such expla-*
24 *nation, shall provide to the owner or operator a*
25 *written determination of whether implementa-*

1 tion shall be required pursuant to paragraph (1).
2 If the Secretary determines that implementation
3 is required, the facility shall be required to begin
4 implementation within 180 days of that deter-
5 mination.

6 “(4) APPEALS.—

7 “(A) IN GENERAL.—An owner or operator
8 of a covered chemical facility who is unable to
9 comply with the Secretary’s determination under
10 paragraph (3)(B) may request a *de novo* hearing
11 before an administrative law judge of the De-
12 partment of Homeland Security within 30 days
13 of receipt of the Secretary’s determination. An
14 owner or operator of a covered facility requesting
15 such a hearing shall not be required to begin im-
16 plementation otherwise required by paragraph
17 (3)(B).

18 “(B) HEARING.—To the extent necessary for
19 the decision in a proceeding commenced under
20 this paragraph, the administrative law judge
21 shall decide all relevant questions of law and reg-
22 ulation. The administrative law judge shall set
23 aside the Secretary’s determination if it is deter-
24 mined to be—

1 “(i) arbitrary, capricious, an abuse of
2 discretion, or otherwise not consistent with
3 law;

4 “(ii) not made consistent with required
5 procedures; or

6 “(iii) not supported by substantial evi-
7 dence.

8 “(C) *TIME FRAME FOR DECISIONS.*—*The de-*
9 *cision of the administrative law judge shall be*
10 *rendered within 30 days of the de novo hearing*
11 *and shall constitute final action by the Sec-*
12 *retary.*

13 “(D) *ACTION UPON DECISION.*—*If the ad-*
14 *ministrative law judge—*

15 “(i) concurs with the Secretary’s deter-
16 mination under paragraph (1), the owner
17 or operator of a covered chemical facility
18 shall begin to implement the methods to re-
19 duce the consequences of a terrorist attack
20 required by the Secretary not later than 180
21 days following the decision of the adminis-
22 trative law judge; or

23 “(ii) sets aside the Secretary’s deter-
24 mination under such paragraph, the owner
25 or operator of a covered chemical facility

1 *shall not be required to comply with such*
2 *methods.*

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

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

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

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

14 “(B) *combinations of chemical sources, sub-*
15 *stances of concern, and hazardous processes or*
16 *conditions for which such methods could be ap-*
17 *propriate;*

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

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

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

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

3 “(G) such other matters as the Secretary de-
4 termines is appropriate.

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

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

16 “(e) APPLICABILITY TO SMALL BUSINESS CON-
17 CERNS.—

18 “(1) REPORT.—

19 “(A) IN GENERAL.—Not later than one year
20 after the date of the enactment of this Act, the
21 Secretary shall submit a report to the Committee
22 on Homeland Security of the House of Rep-
23 resentatives that reviews and assesses the security
24 issues associated with exempting from this sec-
25 tion businesses that are small business concerns,

1 *as determined by the Administrator of the Small*
2 *Business Administration pursuant to the regula-*
3 *tions set forth in 13 C.F.R. 121.201, as in effect*
4 *on January 1, 2009.*

5 “(B) *CONTENTS.—The report shall in-*
6 *clude—*

7 “(i) *an analysis of the potential issues*
8 *relevant to exempting small business con-*
9 *cerns, as defined in subparagraph (A), from*
10 *the requirements of this section, including*
11 *the potential effect of such an exemption on*
12 *the security of chemical facilities in the*
13 *United States and the economic effect of ap-*
14 *plying this section to such small business*
15 *concerns; and*

16 “(ii) *any other elements the Secretary*
17 *determines to be relevant or appropriate.*

18 “(2) *DETERMINATION OF APPLICABILITY.—Upon*
19 *submission of the report required in paragraph (1),*
20 *the Secretary shall determine whether a small busi-*
21 *ness concern, as defined in paragraph (1)(A), shall be*
22 *subject to or exempt from this section.*

23 **“SEC. 2112. APPLICABILITY.**

24 *“This title shall not apply to—*

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

3 “(2) the transportation in commerce, including
4 incidental storage, of any substance of concern regu-
5 lated as a hazardous material under chapter 51 of
6 title 49, United States Code; or

7 “(3) all or a specified portion of any chemical
8 facility that—

9 “(A) is subject to regulation by the Nuclear
10 Regulatory Commission (hereinafter in this
11 paragraph referred to as the ‘Commission’) or a
12 State that has entered into an agreement with
13 the Commission under section 274 b. of the
14 Atomic Energy Act of 1954 (42 U.S.C. 2021 b.);

15 “(B) has had security controls imposed by
16 the Commission or State, whichever has the regu-
17 latory authority, on the entire facility or the
18 specified portion of the facility; and

19 “(C) has been designated by the Commis-
20 sion, after consultation with the State, if any,
21 that regulates the facility, and the Secretary, as
22 excluded from the application of this title.

23 **“SEC. 2113. SAVINGS CLAUSE.**

24 “(a) *IN GENERAL.*—Nothing in this title shall affect
25 or modify in any way any obligation or liability of any

1 *person under any other Federal law, including section 112*
2 *of the Clean Air Act (42 U.S.C. 7412), the Federal Water*
3 *Pollution Control Act (33 U.S.C. 1251 et seq.), the Resource*
4 *Conservation and Recovery Act of 1976 (42 U.S.C. 6901*
5 *et seq.), the National Environmental Policy Act of 1969 (42*
6 *U.S.C. 4321 et seq.), the Occupational Safety and Health*
7 *Act (29 U.S.C. 651 et seq.), the National Labor Relations*
8 *Act (29 U.S.C. 151 et seq.), the Emergency Planning and*
9 *Community Right to Know Act of 1996 (42 U.S.C. 11001*
10 *et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et*
11 *seq.), the Maritime Transportation Security Act of 2002*
12 *(Public Law 107–295), the Comprehensive Environmental*
13 *Response, Compensation, and Liability Act of 1980 (42*
14 *U.S.C. 9601 et seq.), and the Toxic Substances Control Act*
15 *(15 U.S.C. 2601 et seq.).*

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

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

22 “(a) *IN GENERAL.—There is established in the Depart-*
23 *ment an Office of Chemical Facility Security, headed by*
24 *a Director, who shall be a member of the Senior Executive*
25 *Service in accordance with subchapter VI of chapter 33 of*

1 *title 5, United States Code, under section 5382 of that title,*
2 *and who shall be responsible for carrying out the respon-*
3 *sibilities of the Secretary under this title.*

4 “(b) *PROFESSIONAL QUALIFICATIONS.—The indi-*
5 *vidual selected by the Secretary as the Director of the Office*
6 *of Chemical Facility Security shall have professional quali-*
7 *fications and experience necessary for effectively directing*
8 *the Office of Chemical Facility Security and carrying out*
9 *the requirements of this title, including a demonstrated*
10 *knowledge of physical infrastructure protection, cybersecu-*
11 *rity, chemical facility security, hazard analysis, chemical*
12 *process engineering, chemical process safety reviews, or*
13 *other such qualifications that the Secretary determines to*
14 *be necessary.*

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

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

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

5 *“(1) IN GENERAL.—*

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

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

18 *“(ii) measures designed to check crimi-*
19 *nal history;*

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

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

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

1 *with access to restricted areas or critical assets*
2 *of a covered chemical facility, including—*

3 “(i) a covered individual who has
4 unescorted access to restricted areas or crit-
5 ical assets or who is provided with a copy
6 of a security vulnerability assessment or site
7 security plan;

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

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

16 “(2) *REGULATIONS.*—*The regulations required*
17 *by paragraph (1) shall set forth—*

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

23 “(B) *the processes to conduct the security*
24 *background checks;*

1 “(C) the necessary biographical information
2 and other data required in order to conduct the
3 security background checks;

4 “(D) a redress process for an adversely-af-
5 fected person consistent with subsections (b) and
6 (d); and

7 “(E) a prohibition on an owner or operator
8 of a covered chemical facility unreasonably mis-
9 representing to an employee or other relevant
10 person, including an arbiter involved in a labor
11 arbitration, the scope, application, or meaning of
12 any rules, regulations, directives, or guidance
13 issued by the Secretary related to security back-
14 ground check requirements for covered individ-
15 uals when conducting a security background
16 check.

17 “(b) REQUIREMENTS.—Upon issuance of regulations
18 under subsection (a), the Secretary shall prohibit the owner
19 or operator of a covered chemical facility from making an
20 adverse employment decision, including removal or suspen-
21 sion of the employee, due to such regulations with respect
22 to such person unless such person—

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

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

3 *“(2) was convicted of or found not guilty by rea-*
4 *son of insanity of an interim disqualifying criminal*
5 *offense listed in part 1572 of title 49, Code of Federal*
6 *Regulations, within 7 years of the date on which the*
7 *covered chemical facility performs the security back-*
8 *ground check;*

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

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

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

19 *“(c) TERMINATION OF EMPLOYMENT.—If an owner or*
20 *operator of a chemical facility finds that pursuant to a se-*
21 *curity background check a covered individual is not legally*
22 *authorized to work in the United States, the owner or oper-*
23 *ator shall cease to employ the covered individual subject to*
24 *the redress process under subsection (d).*

1 “(d) *REDRESS PROCESS.*—Upon the issuance of regu-
2 *lations under subsection (a), the Secretary shall—*

3 “(1) *require an adequate and prompt redress*
4 *process for a person subject to a security background*
5 *check under subsection (a)(1) who is subjected to an*
6 *adverse employment decision, including removal or*
7 *suspension of the employee, due to such regulations*
8 *that is consistent with the appeals and waiver proc-*
9 *esses established for applicants for transportation*
10 *workers at ports, as required by section 70105(c) of*
11 *title 46, United States Code, including all rights to*
12 *hearings before an administration law judge, scope of*
13 *review, a review of an unclassified summary of classi-*
14 *fied evidence equivalent to the summary provided in*
15 *part 1515 of title 49, Code of Federal Regulations,*
16 *and procedures for new evidence for both appeals and*
17 *waiver decisions;*

18 “(2) *have the authority to order an appropriate*
19 *remedy, including reinstatement of the person subject*
20 *to a security background check under subsection*
21 *(a)(1), should the Secretary determine that the owner*
22 *or operator of a covered chemical facility wrongfully*
23 *made an adverse employment decision regarding such*
24 *person pursuant to such rule, regulation, directive, or*
25 *guidance;*

1 “(3) ensure that the redress process required
2 under this subsection affords to the covered individual
3 a full disclosure of any public-record event covered by
4 subsection (b) that provides the basis for an adverse
5 employment decision; and

6 “(4) ensure that the person subject to a security
7 background check under subsection (a)(1) receives the
8 person’s full wages and benefits until all appeals and
9 waiver procedures are exhausted.

10 “(e) *RESTRICTIONS ON USE AND MAINTENANCE OF IN-*
11 *FORMATION.—Information obtained under this section by*
12 *the Secretary or the owner or operator of a covered chemical*
13 *facility shall be handled as follows:*

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

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

21 “(3) Such information shall be maintained con-
22 fidentially by the facility and the Secretary and may
23 be used only for making determinations under this
24 section.

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

4 “(f) *RIGHTS AND RESPONSIBILITIES.—Nothing in this*
5 *section shall be construed to abridge any right or responsi-*
6 *bility of a person subject to a security background check*
7 *under subsection (a)(1) or an owner or operator of a covered*
8 *chemical facility under any other Federal, State, local, or*
9 *tribal law or collective bargaining agreement.*

10 “(g) *PREEMPTION.—Nothing in this section shall be*
11 *construed to preempt, alter, or affect a Federal, State, local,*
12 *or tribal law that requires criminal history background*
13 *checks, checks on the authorization of an individual to work*
14 *in the United States, or other background checks of persons*
15 *subject to security background checks under subsection*
16 *(a)(1).*

17 “(h) *DEFINITION OF SECURITY BACKGROUND*
18 *CHECK.—The term ‘security background check’ means a re-*
19 *view at no cost to any person subject to a security back-*
20 *ground check under subsection (a)(1) of the following for*
21 *the purpose of identifying individuals who may pose a*
22 *threat to chemical facility security, to national security, or*
23 *of terrorism:*

24 “(1) *Relevant databases to verify and validate*
25 *identity.*

1 “(2) *Relevant criminal history databases.*

2 “(3) *In the case of an alien (as defined in section*
3 *101 of the Immigration and Nationality Act (8*
4 *U.S.C. 1101(a)(3))), the relevant databases to deter-*
5 *mine the status of the alien under the immigration*
6 *laws of the United States.*

7 “(4) *The consolidated terrorist watchlist.*

8 “(5) *Other relevant information or databases, as*
9 *determined by the Secretary.*

10 “(i) *SAVINGS CLAUSE.—Nothing in this section shall*
11 *be construed as creating any new right or modifying any*
12 *existing right of an individual to appeal a determination*
13 *by the Secretary as a result of a check against a terrorist*
14 *watch list.*

15 **“SEC. 2116. CITIZEN SUITS.**

16 “(a) *IN GENERAL.—Except as provided in subsection*
17 *(c), any person may commence a civil action on the person’s*
18 *own behalf—*

19 “(1) *against any person (including the United*
20 *States and any other governmental instrumentality*
21 *or agency, to the extent permitted by the eleventh*
22 *amendment to the Constitution) who is alleged to be*
23 *in violation of any standard, regulation, condition,*
24 *requirement, prohibition, or order which has become*
25 *effective pursuant to this title; or*

1 “(2) *against the Secretary, if there is an alleged*
2 *failure of the Secretary to perform any act or duty*
3 *under this title that is not discretionary for the Sec-*
4 *retary.*

5 “(b) *COURT OF JURISDICTION.—*

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

13 “(2) *RELIEF.—The district court shall have ju-*
14 *risdiction, without regard to the amount in con-*
15 *troversy or the citizenship of the parties, to enforce*
16 *the standard, regulation, condition, requirement, pro-*
17 *hibition, or order, referred to in subsection (a)(1), to*
18 *order such person to take such other action as may*
19 *be necessary, or both, or to order the Secretary to per-*
20 *form the act or duty referred to in subsection (a)(2),*
21 *as the case may be, and to apply any appropriate*
22 *civil penalties under section 2107.*

23 “(c) *ACTIONS PROHIBITED.—No action may be com-*
24 *menced under subsection (a)—*

1 “(1) prior to 120 days after the date on which
2 the person commencing the action has given notice of
3 the alleged violation to—

4 “(A) the Secretary; and

5 “(B) in the case of an action under sub-
6 section (a), any alleged violator of such stand-
7 ard, regulation, condition, requirement, prohibi-
8 tion, or order; or

9 “(2) if the Secretary has commenced and is dili-
10 gently prosecuting a civil or criminal action in a
11 court of the United States or a State, or has issued
12 an administrative order, to require compliance with
13 such standard, regulation, condition, requirement,
14 prohibition, or order.

15 “(d) NOTICE.—Notice under this section shall be given
16 in such manner as the Secretary shall prescribe by regula-
17 tion.

18 “(e) INTERVENTION.—In any action under this section
19 the Secretary, if not a party, may intervene as a matter
20 of right.

21 “(f) COSTS.—The court, in issuing any final order in
22 any action brought pursuant to this section, may award
23 costs of litigation (including reasonable attorney and expert
24 witness fees) to the prevailing or substantially prevailing
25 party, whenever the court determines such an award is ap-

1 *appropriate. The court may, if a temporary restraining order*
2 *or preliminary injunction is sought, require the filing of*
3 *a bond or equivalent security in accordance with the Fed-*
4 *eral Rules of Civil Procedure.*

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

8 **“SEC. 2117. ANNUAL REPORT TO CONGRESS.**

9 “(a) *ANNUAL REPORT.*—*Not later than one year after*
10 *the date of the enactment of this title, annually thereafter*
11 *for the next four years, and biennially thereafter, the Sec-*
12 *retary shall submit to the Committee on Homeland Security*
13 *and the Committee on Energy and Commerce of the House*
14 *of Representatives and the Committee on Homeland Secu-*
15 *rity and Governmental Affairs and the Committee on Envi-*
16 *ronment and Public Works of the Senate a report on*
17 *progress in achieving compliance with this title. Each such*
18 *report shall include the following:*

19 “(1) *A qualitative discussion of how covered*
20 *chemical facilities, differentiated by tier, have reduced*
21 *the risks of chemical facility terrorist incidents at*
22 *such facilities, including—*

23 “(A) *a generalized summary of measures*
24 *implemented by covered chemical facilities in*
25 *order to meet each risk-based chemical facility*

1 *performance standard established by this title,*
2 *and those that the facilities already had in*
3 *place—*

4 “(i) *in the case of the first report*
5 *under this section, before the issuance of the*
6 *final rule implementing the regulations*
7 *known as the ‘Chemical Facility Anti-Ter-*
8 *rorism Standards’, issued on April 9, 2007;*
9 *and*

10 “(ii) *in the case of each subsequent re-*
11 *port, since the submittal of the most recent*
12 *report submitted under this section; and*

13 “(B) *any other generalized summary the*
14 *Secretary deems appropriate to describe the*
15 *measures covered chemical facilities are imple-*
16 *menting to comply with the requirements of this*
17 *title.*

18 “(2) *A quantitative summary of how the covered*
19 *chemical facilities, differentiated by tier, are com-*
20 *plying with the requirements of this title during the*
21 *period covered by the report and how the Secretary is*
22 *implementing and enforcing such requirements dur-*
23 *ing such period, including—*

24 “(A) *the number of chemical facilities that*
25 *provided the Secretary with information about*

1 *possessing substances of concern, as described in*
2 *section 2102(b)(2);*

3 “(B) *the number of covered chemical facili-*
4 *ties assigned to each tier;*

5 “(C) *the number of security vulnerability*
6 *assessments and site security plans submitted by*
7 *covered chemical facilities;*

8 “(D) *the number of security vulnerability*
9 *assessments and site security plans approved*
10 *and disapproved by the Secretary;*

11 “(E) *the number of covered chemical facili-*
12 *ties without approved security vulnerability as-*
13 *sessments or site security plans;*

14 “(F) *the number of chemical facilities that*
15 *have been assigned to a different tier or are no*
16 *longer regulated by the Secretary due to imple-*
17 *mentation of a method to reduce the consequences*
18 *of a terrorist attack;*

19 “(G) *the number of orders for compliance*
20 *issued by the Secretary;*

21 “(H) *the administrative penalties assessed*
22 *by the Secretary for non-compliance with the re-*
23 *quirements of this title;*

1 “(I) the civil penalties assessed by the court
2 for non-compliance with the requirements of this
3 title; and

4 “(J) any other regulatory data the Sec-
5 retary deems appropriate to describe facility
6 compliance with the requirements of this title
7 and the Secretary’s implementation of such re-
8 quirements.

9 “(b) *PUBLIC AVAILABILITY.*—A report submitted
10 under this section shall be made publicly available.

11 **“SEC. 2118. AUTHORIZATION OF APPROPRIATIONS.**

12 “*There is authorized to be appropriated to the Sec-*
13 *retary of Homeland Security to carry out this title—*

14 “(1) \$325,000,000 for fiscal year 2011, of which
15 \$100,000,000 shall be made available to provide fund-
16 ing for methods to reduce the consequences of a ter-
17 rorist attack;

18 “(2) \$300,000,000 for fiscal year 2012, of which
19 \$75,000,000 shall be made available to provide fund-
20 ing for methods to reduce the consequences of a ter-
21 rorist attack; and

22 “(3) \$275,000,000 for fiscal year 2013, of which
23 \$50,000,000 shall be made available to provide fund-
24 ing for methods to reduce the consequences of a ter-
25 rorist attack.

1 **“SEC. 2119. NOTIFICATION SYSTEM TO ADDRESS PUBLIC**
2 **CONCERNS.**

3 “(a) *ESTABLISHMENT.*—*The Secretary shall establish*
4 *a notification system, which provides any individual the*
5 *ability to report a suspected security deficiency or suspected*
6 *non-compliance with this title. Such notification system*
7 *shall include the ability to report the suspected security de-*
8 *ficiency or non-compliance via telephonic and internet-*
9 *based means.*

10 “(b) *ACKNOWLEDGMENT.*—*The Secretary shall respond*
11 *in a timely manner, but in no case exceed 30 days, to any*
12 *report received through the notification system established*
13 *under subsection (a).*

14 “(c) *STEPS TO ADDRESS PROBLEMS.*—*The Secretary*
15 *shall review the report of suspected security deficiency and*
16 *shall, as necessary, take appropriate enforcement action au-*
17 *thorized under section 2107 of this title.*

18 “(d) *FEEDBACK REQUIRED.*—*Upon request, the Sec-*
19 *retary shall provide the individual who reported the sus-*
20 *pected security deficiency or non-compliance a written re-*
21 *sponse as to the Secretary’s findings and what, if any, com-*
22 *pliance action was taken.*

23 “(e) *INSPECTOR GENERAL REPORT REQUIRED.*—*The*
24 *Inspector General for the Department of Homeland Secu-*
25 *rity shall provide a report to the Committee on Homeland*
26 *Security of the House of Representatives and the Committee*

1 *on Homeland Security and Government Affairs of the Sen-*
 2 *ate on the number of reports received by the notification*
 3 *system established under subsection (a) and the Secretary’s*
 4 *disposition of such reports.”.*

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

“TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL
 FACILITIES

“Sec. 2101. *Definitions.*

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

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

“Sec. 2104. *Site inspections.*

“Sec. 2105. *Records.*

“Sec. 2106. *Timely sharing of threat information.*

“Sec. 2107. *Enforcement.*

“Sec. 2108. *Whistleblower protections.*

“Sec. 2109. *Federal preemption.*

“Sec. 2110. *Protection of information.*

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

“Sec. 2112. *Applicability.*

“Sec. 2113. *Savings clause.*

“Sec. 2114. *Office of Chemical Facility Security.*

“Sec. 2115. *Security background checks of covered individuals at certain chemical
 facilities.*

“Sec. 2116. *Citizen suits.*

“Sec. 2117. *Annual report to Congress.*

“Sec. 2118. *Authorization of appropriations.*

“Sec. 2119. *Notification system to address public concerns.”.*

8 (c) *CONFORMING REPEAL.—*

9 (1) *REPEAL.—The Department of Homeland Se-*
 10 *curity Appropriations Act, 2007 (Public Law 109–*
 11 *295) is amended by striking section 550.*

12 (2) *EFFECTIVE DATE.—The amendment made by*
 13 *paragraph (1) shall take effect on October 1, 2009.*

14 (d) *TREATMENT OF CFATS REGULATIONS.—*

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

10 (2) *USE OF CURRENT REGULATIONS.*—*In car-*
11 *rying out the requirements of title XXI of the Home-*
12 *land Security Act of 2002, as added by subsection (a),*
13 *the Secretary may, to the extent that the Secretary de-*
14 *termines is appropriate, use any of the regulations*
15 *known as CFATS regulations, as in effect imme-*
16 *diately before the date of the enactment of this Act,*
17 *that the Secretary determines carry out such require-*
18 *ments.*

19 (3) *AMENDMENT OF CFATS.*—*The Secretary shall*
20 *amend the regulations known as the Chemical Facil-*
21 *ity Anti-Terrorism Standards to ensure that such reg-*
22 *ulations fulfill the requirements of this Act and the*
23 *amendments made by this Act, to the extent that the*
24 *requirements of this Act and the amendments made*
25 *by this Act differ from the requirements of such regu-*

1 *lations, as in effect on the date of the enactment of*
2 *this Act.*

3 (4) *USE OF TOOLS DEVELOPED FOR CFATS.*—*In*
4 *carrying out this Act and the amendments made by*
5 *this Act, to the extent determined appropriate by the*
6 *Secretary, the Secretary may use such rules or tools*
7 *developed for purposes of the regulations known as the*
8 *Chemical Facility Anti-Terrorism Standards, includ-*
9 *ing the list of substances of concern, usually referred*
10 *to as “Appendix A” and the chemical security assess-*
11 *ment tool (which includes facility registration, a top-*
12 *screen questionnaire, a security vulnerability assess-*
13 *ment tool, a site security plan template, and a chem-*
14 *ical vulnerability information repository).*

15 (e) *FACILITIES COVERED BY CFATS.*—*The owner or*
16 *operator of a covered chemical facility, who, before the effec-*
17 *tive date of the final regulations issued under title XXI of*
18 *the Homeland Security Act of 2002, as added by subsection*
19 *(a), submits a security vulnerability assessment or site secu-*
20 *rity plan under the regulations known as CFATS regula-*
21 *tions, as in effect immediately before the enactment of this*
22 *Act, shall be required to update or amend the facility’s secu-*
23 *rity vulnerability assessment and site security plan to re-*
24 *flect any additional requirements of this Act or the amend-*

1 *ments made by this Act, according to a timeline established*
2 *by the Secretary.*

3 *(f) CONSULTATION WITH OTHER PERSONS.—In devel-*
4 *oping and carrying out the regulations under title XXI of*
5 *the Homeland Security Act of 2002, as added by subsection*
6 *(a), the Secretary shall consult with the Administrator of*
7 *the Environmental Protection Agency, and other persons,*
8 *as appropriate, regarding—*

9 *(1) the designation of substances of concern;*

10 *(2) methods to reduce the consequences of a ter-*
11 *rorist attack;*

12 *(3) security at co-owned or co-operated drinking*
13 *water and wastewater facilities;*

14 *(4) the treatment of protected information; and*

15 *(5) such other matters as the Secretary deter-*
16 *mines necessary.*

17 *(g) DEADLINE FOR REGULATIONS.—*

18 *(1) PROPOSED RULE.—The Secretary of Home-*
19 *land Security shall promulgate a proposed rule to ful-*
20 *fill the requirements of title XXI of the Homeland Se-*
21 *curity Act of 2002, as added by subsection (a), not*
22 *later than 6 months after the date of the enactment*
23 *of this Act.*

24 *(2) FINAL RULE.—The Secretary shall, after*
25 *proper notice and opportunity for public comment,*

1 *promulgate a final rule to fulfill the requirements of*
2 *such title not later than 18 months after the date of*
3 *the enactment of this Act.*

4 *(h) REVIEW OF DESIGNATION OF SODIUM*
5 *FLUOROACETATE AS A SUBSTANCE OF CONCERN.—The Sec-*
6 *retary of Homeland Security shall review the designation*
7 *of sodium fluoroacetate as a substance of concern pursuant*
8 *to subparagraph (A) of paragraph (1) of subsection (d) of*
9 *section 2102 of the Homeland Security Act of 2002, as*
10 *added by subsection (a), by the earlier of the following dates:*

11 *(1) The date of the first periodic review con-*
12 *ducted pursuant to such subsection after the date of*
13 *the enactment of this Act.*

14 *(2) The date that is one year after the date of*
15 *the enactment of this Act.*

16 **SECTION 1. SHORT TITLE.**

17 **This Act may be cited as the “Chemical**
18 **Facility Anti-Terrorism Act of 2009”.**

19 **SEC. 2. FINDINGS AND PURPOSE.**

20 **(a) FINDINGS.—Congress makes the fol-**
21 **lowing findings:**

22 **(1) The Nation’s chemical sector rep-**
23 **resents a target that terrorists could ex-**
24 **loit to cause consequences, including**
25 **death, injury, or serious adverse effects**

1 to human health, the environment, crit-
2 ical infrastructure, public health, home-
3 land security, national security, and the
4 national economy.

5 (2) Chemical facilities that pose such
6 potential consequences and that are vul-
7 nerable to terrorist attacks must be pro-
8 tected.

9 (3) The Secretary of Homeland Secu-
10 rity has statutory authority pursuant to
11 section 550 of the Department of Home-
12 land Security Appropriations Act, 2007
13 (Public Law 109–295) to regulate the se-
14 curity practices at chemical facilities that
15 are at significant risk of being terrorist
16 targets.

17 (4) The Secretary of Homeland Secu-
18 rity issued interim final regulations
19 called the Chemical Facility Anti-Ter-
20 rorism Standards, which became effec-
21 tive on June 8, 2007.

22 (b) PURPOSE.—The purpose of this Act is to
23 modify and make permanent the authority of
24 the Secretary of Homeland Security to regu-
25 late security practices at chemical facilities.

1 SEC. 3. EXTENSION, MODIFICATION, AND RECODIFICATION
2 OF AUTHORITY OF SECRETARY OF HOME-
3 LAND SECURITY TO REGULATE SECURITY
4 PRACTICES AT CHEMICAL FACILITIES.

5 (a) IN GENERAL.—The Homeland Security
6 Act of 2002 (6 U.S.C. 101 et seq.) is amended
7 by adding at the end the following new title:
8 **“TITLE XXI—REGULATION OF SE-
9 CURITY PRACTICES AT CHEM-
10 ICAL FACILITIES**

11 **“SEC. 2101. DEFINITIONS.**

12 **“In this title, the following definitions**
13 **apply:**

14 **“(1) The term ‘chemical facility’**
15 **means any facility—**

16 **“(A) at which the owner or oper-**
17 **ator of the facility possesses or plans**
18 **to possess at any relevant point in**
19 **time a substance of concern; or**

20 **“(B) that meets other risk-related**
21 **criteria identified by the Secretary.**

22 **“(2) The term ‘chemical facility secu-**
23 **rity performance standards’ means risk-**
24 **based standards established by the Sec-**
25 **retary to ensure or enhance the security**
26 **of a chemical facility against a chemical**

1 **facility terrorist incident that are de-**
2 **signed to address the following:**

3 **“(A) Restricting the area perim-**
4 **eter.**

5 **“(B) Securing site assets.**

6 **“(C) Screening and controlling ac-**
7 **cess to the facility and to restricted**
8 **areas within the facility by screening**
9 **or inspecting individuals and vehicles**
10 **as they enter, including—**

11 **“(i) measures to deter the un-**
12 **authorized introduction of dan-**
13 **gerous substances and devices**
14 **that may facilitate a chemical fa-**
15 **ility terrorist incident or actions**
16 **having serious negative con-**
17 **sequences for the population sur-**
18 **rounding the chemical facility;**
19 **and**

20 **“(ii) measures implementing a**
21 **regularly updated identification**
22 **system that checks the identifica-**
23 **tion of chemical facility personnel**
24 **and other persons seeking access**
25 **to the chemical facility and that**

1 discourages abuse through estab-
2 lished disciplinary measures.

3 “(D) Methods to deter, detect, and
4 delay a chemical facility terrorist in-
5 cident, creating sufficient time be-
6 tween detection of a chemical facility
7 terrorist incident and the point at
8 which the chemical facility terrorist
9 incident becomes successful, includ-
10 ing measures to—

11 “(i) deter vehicles from pene-
12 trating the chemical facility pe-
13 rimeter, gaining unauthorized ac-
14 cess to restricted areas, or other-
15 wise presenting a hazard to po-
16 tentially critical targets;

17 “(ii) deter chemical facility
18 terrorist incidents through visi-
19 ble, professional, well-maintained
20 security measures and systems,
21 including security personnel, de-
22 tection systems, barriers and bar-
23 ricades, and hardened or reduced
24 value targets;

1 “(iii) detect chemical facility
2 terrorist incidents at early stages
3 through counter surveillance,
4 frustration of opportunity to ob-
5 serve potential targets, surveil-
6 lance and sensing systems, and
7 barriers and barricades; and

8 “(iv) delay a chemical facility
9 terrorist incident for a sufficient
10 period of time so as to allow ap-
11 propriate response through on-
12 site security response, barriers
13 and barricades, hardened targets,
14 and well-coordinated response
15 planning.

16 “(E) Securing and monitoring the
17 shipping, receipt, and storage of a
18 substance of concern for the chemical
19 facility.

20 “(F) Deterring theft or diversion
21 of a substance of concern.

22 “(G) Deterring insider sabotage.

23 “(H) Deterring cyber sabotage, in-
24 cluding by preventing unauthorized
25 onsite or remote access to critical

1 process controls, including super-
2 visory control and data acquisition
3 systems, distributed control systems,
4 process control systems, industrial
5 control systems, critical business sys-
6 tems, and other sensitive computer-
7 ized systems.

8 “(I) Developing and exercising an
9 internal emergency plan for owners,
10 operators, and covered individuals of
11 a covered chemical facility for re-
12 sponding to chemical facility terrorist
13 incidents at the facility. Any such
14 plan shall include the provision of ap-
15 propriate information to any local
16 emergency planning committee, local
17 law enforcement officials, and emer-
18 gency response providers to ensure
19 an effective, collective response to
20 terrorist incidents.

21 “(J) Maintaining effective moni-
22 toring, communications, and warning
23 systems, including—

24 “(i) measures designed to en-
25 sure that security systems and

1 **equipment are in good working**
2 **order and inspected, tested, cali-**
3 **brated, and otherwise main-**
4 **tained;**

5 **“(ii) measures designed to reg-**
6 **ularly test security systems, note**
7 **deficiencies, correct for detected**
8 **deficiencies, and record results so**
9 **that they are available for inspec-**
10 **tion by the Department; and**

11 **“(iii) measures to allow the**
12 **chemical facility to promptly**
13 **identify and respond to security**
14 **system and equipment failures or**
15 **malfunctions.**

16 **“(K) Ensuring mandatory annual**
17 **security training, exercises, and drills**
18 **of chemical facility personnel appro-**
19 **priate to their roles, responsibilities,**
20 **and access to chemicals, including**
21 **participation by local law enforce-**
22 **ment, local emergency response pro-**
23 **viders, appropriate supervisory and**
24 **non-supervisory facility employees**

1 **and their employee representatives, if**
2 **any.**

3 **“(L) Performing personnel surety**
4 **for individuals with access to re-**
5 **stricted areas or critical assets by**
6 **conducting appropriate background**
7 **checks and ensuring appropriate cre-**
8 **dentials for unescorted visitors and**
9 **chemical facility personnel, including**
10 **permanent and part-time personnel,**
11 **temporary personnel, and contract**
12 **personnel, including—**

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

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

17 **“(iii) measures designed to**
18 **verify and validate legal author-**
19 **ization to work; and**

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

22 **“(M) Escalating the level of pro-**
23 **TECTIVE measures for periods of ele-**
24 **vated threat.**

1 **“(N) Specific threats,**
2 **vulnerabilities, or risks identified by**
3 **the Secretary for that chemical facil-**
4 **ity.**

5 **“(O) Reporting of significant secu-**
6 **rity incidents to the Department and**
7 **to appropriate local law enforcement**
8 **officials.**

9 **“(P) Identifying, investigating, re-**
10 **porting, and maintaining records of**
11 **significant security incidents and sus-**
12 **picious activities in or near the site.**

13 **“(Q) Establishing one or more of-**
14 **ficials and an organization respon-**
15 **sible for—**

16 **“(i) security;**

17 **“(ii) compliance with the**
18 **standards under this paragraph;**

19 **“(iii) serving as the point of**
20 **contact for incident management**
21 **purposes with Federal, State,**
22 **local, and tribal agencies, law en-**
23 **forcement, and emergency re-**
24 **sponse providers; and**

1 “(iv) coordination with Fed-
2 eral, State, local, and tribal agen-
3 cies, law enforcement, and emer-
4 gency response providers regard-
5 ing plans and security measures
6 for the collective response to a
7 chemical facility terrorist inci-
8 dent.

9 “(R) Maintaining appropriate
10 records relating to the security of the
11 facility, including a copy of the most
12 recent security vulnerability assess-
13 ment and site security plan at the
14 chemical facility.

15 “(S) Assessing and, as appro-
16 priate, utilizing methods to reduce
17 the consequences of a terrorist at-
18 tack.

19 “(T) Methods to recover or miti-
20 gate the release of a substance of con-
21 cern in the event of a chemical facil-
22 ity terrorist incident.

23 “(U) Any additional security per-
24 formance standards the Secretary
25 may specify.

1 **“(3) The term ‘chemical facility ter-**
2 **rorist incident’ means any act or at-**
3 **tempted act of terrorism or terrorist ac-**
4 **tivity committed at, near, or against a**
5 **chemical facility, including—**

6 **“(A) the release of a substance of**
7 **concern from a chemical facility;**

8 **“(B) the theft, misappropriation,**
9 **or misuse of a substance of concern**
10 **from a chemical facility; or**

11 **“(C) the sabotage of a chemical fa-**
12 **cility or a substance of concern at a**
13 **chemical facility.**

14 **“(4) The term ‘employee representa-**
15 **tive’ means the representative of the cer-**
16 **tified or recognized bargaining agent en-**
17 **gaged in a collective bargaining relation-**
18 **ship with a private or public owner or**
19 **operator of a chemical facility.**

20 **“(5) The term ‘covered individual’**
21 **means a permanent, temporary, full-time,**
22 **or part-time employee of a covered chem-**
23 **ical facility or an employee of an entity**
24 **with which the covered chemical facility**
25 **has entered into a contract who is per-**

1 **forming responsibilities at the facility**
2 **pursuant to the contract.**

3 **“(6) The term ‘covered chemical facil-**
4 **ity’ means a chemical facility that meets**
5 **the criteria of section 2102(b)(1).**

6 **“(7) The term ‘environment’ means—**

7 **“(A) the navigable waters, the wa-**
8 **ters of the contiguous zone, and the**
9 **ocean waters of which the natural re-**
10 **sources are under the exclusive man-**
11 **agement authority of the United**
12 **States under the Magnuson-Stevens**
13 **Fishery Conservation and Manage-**
14 **ment Act (16 U.S.C. 1801 et seq.); and**

15 **“(B) any other surface water,**
16 **ground water, drinking water supply,**
17 **land surface or subsurface strata, or**
18 **ambient air within the United States**
19 **or under the jurisdiction of the**
20 **United States.**

21 **“(8) The term ‘owner or operator’**
22 **with respect to a facility means any of**
23 **the following:**

24 **“(A) The person who owns the fa-**
25 **cility.**

1 **“(B) The person who has responsi-**
2 **bility for daily operation of the facil-**
3 **ity.**

4 **“(C) The person who leases the fa-**
5 **cility.**

6 **“(9) The term ‘person’ means an indi-**
7 **vidual, trust, firm, joint stock company,**
8 **corporation (including a government cor-**
9 **poration), partnership, association, State,**
10 **municipality, commission, political sub-**
11 **division of a State, or any interstate body**
12 **and shall include each department, agen-**
13 **cy, and instrumentality of the United**
14 **States.**

15 **“(10) The term ‘release’ means any**
16 **spilling, leaking, pumping, pouring, emit-**
17 **ting, emptying, discharging, injecting, es-**
18 **caping, leaching, dumping, or disposing**
19 **into the environment (including the**
20 **abandonment or discarding of barrels,**
21 **containers, and other closed receptacles**
22 **containing any hazardous substance or**
23 **pollutant or contaminant).**

24 **“(11) The term ‘substance of concern’**
25 **means a chemical substance in quantity**

1 **and form that is so designated by the Sec-**
2 **retary under section 2102(a).**

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

9 **“(A) the elimination or reduction**
10 **in the amount of a substance of con-**
11 **cern possessed or planned to be pos-**
12 **sessed by an owner or operator of a**
13 **covered chemical facility through the**
14 **use of alternate substances, formula-**
15 **tions, or processes;**

16 **“(B) the modification of pressures,**
17 **temperatures, or concentrations of a**
18 **substance of concern; and**

19 **“(C) the reduction or elimination**
20 **of onsite handling of a substance of**
21 **concern through improvement of in-**
22 **ventory control or chemical use effi-**
23 **ciency.**

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

3 **“(a) SUBSTANCES OF CONCERN.—**

4 **“(1) DESIGNATION BY THE SECRETARY.—**

5 **The Secretary may designate any chem-**
6 **ical substance as a substance of concern**
7 **and establish the threshold quantity for**
8 **each such substance of concern.**

9 **“(2) MATTERS FOR CONSIDERATION.—In**
10 **designating a chemical substance or es-**
11 **tablishing or adjusting the threshold**
12 **quantity for a chemical substance under**
13 **paragraph (1), the Secretary shall con-**
14 **sider the potential extent of death, in-**
15 **jury, and serious adverse effects to**
16 **human health, the environment, critical**
17 **infrastructure, public health, homeland**
18 **security, national security, and the na-**
19 **tional economy that could result from a**
20 **chemical facility terrorist incident.**

21 **“(b) LIST OF COVERED CHEMICAL FACILI-**
22 **TIES.—**

23 **“(1) CRITERIA FOR LIST OF FACILITIES.—**

24 **The Secretary shall maintain a list of cov-**
25 **ered chemical facilities that the Sec-**
26 **retary determines are of sufficient secu-**

1 **rity risk for inclusion on the list based on**
2 **the following criteria:**

3 **“(A) The potential threat or likeli-**
4 **hood that the chemical facility will be**
5 **the target of a chemical facility ter-**
6 **rorist incident.**

7 **“(B) The potential extent and like-**
8 **lihood of death, injury, or serious ad-**
9 **verse effects to human health, the en-**
10 **vironment, critical infrastructure,**
11 **public health, homeland security, na-**
12 **tional security, and the national econ-**
13 **omy that could result from a chemical**
14 **facility terrorist incident.**

15 **“(C) The proximity of the chem-**
16 **ical facility to large population cen-**
17 **ters.**

18 **“(2) SUBMISSION OF INFORMATION.—The**
19 **Secretary may require the submission of**
20 **information with respect to the quan-**
21 **tities of substances of concern that an**
22 **owner or operator of a chemical facility**
23 **possesses or plans to possess in order to**
24 **determine whether to designate a chem-**

1 ical facility as a covered chemical facility
2 for purposes of this title.

3 **“(c) ASSIGNMENT OF CHEMICAL FACILITIES**
4 **TO RISK-BASED TIERS.—**

5 **“(1) ASSIGNMENT.—The Secretary shall**
6 **assign each covered chemical facility to**
7 **one of four risk-based tiers established by**
8 **the Secretary, with tier one representing**
9 **the highest degree of risk and tier four**
10 **the lowest degree of risk.**

11 **“(2) PROVISION OF INFORMATION.—The**
12 **Secretary may request, and the owner or**
13 **operator of a covered chemical facility**
14 **shall provide, any additional information**
15 **beyond any information required to be**
16 **submitted under subsection (b)(2) that**
17 **may be necessary for the Secretary to as-**
18 **sign the chemical facility to the appro-**
19 **priate tier under paragraph (1).**

20 **“(3) NOTIFICATION.—Not later than 60**
21 **days after the date on which the Sec-**
22 **retary determines that a chemical facility**
23 **is a covered chemical facility or is no**
24 **longer a covered chemical facility or**
25 **changes the tier assignment under para-**

1 **graph (1) of a covered chemical facility,**
2 **the Secretary shall notify the owner or**
3 **operator of that chemical facility of that**
4 **determination or change together with**
5 **the reason for the determination or**
6 **change and, upon the request of the**
7 **owner or operator of a covered chemical**
8 **facility, provide to the owner or operator**
9 **of the covered chemical facility the fol-**
10 **lowing information:**

11 **“(A) The number of individuals at**
12 **risk of death, injury, or severe ad-**
13 **verse effects to human health as a re-**
14 **sult of a worst case chemical facility**
15 **terrorist incident at the covered**
16 **chemical facility.**

17 **“(B) Information related to the**
18 **criticality of the covered chemical fa-**
19 **cility.**

20 **“(C) The proximity or inter-**
21 **relationship of the covered chemical**
22 **facility to other critical infrastruc-**
23 **ture.**

24 **“(d) REQUIREMENT FOR REVIEW.—The Sec-**
25 **retary—**

1 **“(1) shall periodically review—**

2 **“(A) the designation of a sub-**
3 **stance of concern and the threshold**
4 **quantity under subsection (a)(1); and**

5 **“(B) the criteria under subsection**
6 **(b)(1); and**

7 **“(2) may at any time determine**
8 **whether a chemical facility is a covered**
9 **chemical facility or change the tier to**
10 **which such a facility is assigned under**
11 **subsection (c)(1).**

12 **“(e) PROVISION OF THREAT-RELATED INFOR-**
13 **MATION.—In order to effectively assess the**
14 **vulnerabilities to a covered chemical facility,**
15 **the Secretary shall provide to the owner, op-**
16 **erator, or security officer of a covered chem-**
17 **ical facility threat information regarding**
18 **probable threats to the facility and methods**
19 **that could be used in a chemical facility ter-**
20 **rorist incident.**

21 **“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND**
22 **SITE SECURITY PLANS.**

23 **“(a) IN GENERAL.—**

24 **“(1) REQUIREMENT.—The Secretary**
25 **shall—**

1 “(A) establish standards, proto-
2 cols, and procedures for security vul-
3 nerability assessments and site secu-
4 rity plans to be required for covered
5 chemical facilities;

6 “(B) require the owner or oper-
7 ator of each covered chemical facility
8 to—

9 “(i) conduct an assessment of
10 the vulnerability of the covered
11 chemical facility to a range of
12 chemical facility terrorist inci-
13 dents, including an incident that
14 results in a worst-case release of
15 a substance of concern;

16 “(ii) prepare, submit, and im-
17 plement a site security plan for
18 that covered chemical facility
19 that addresses the security vul-
20 nerability assessment and meets
21 the risk-based chemical security
22 performance standards under
23 subsection (c); and

24 “(iii) include at least one su-
25 pervisory and at least one non-su-

1 pervisory employee of the cov-
2 ered chemical facility, and at
3 least one employee representa-
4 tive, from each bargaining agent
5 at the covered chemical facility, if
6 any, in developing the security
7 vulnerability assessment and site
8 security plan required under this
9 section;

10 “(C) set deadlines, by tier, for the
11 completion of security vulnerability
12 assessments and site security plans;

13 “(D) upon request, as necessary,
14 and to the extent that resources per-
15 mit, provide technical assistance to a
16 covered chemical facility conducting
17 a vulnerability assessment or site se-
18 curity plan required under this sec-
19 tion;

20 “(E) establish specific deadlines
21 and requirements for the submission
22 by a covered chemical facility of in-
23 formation describing—

24 “(i) any change in the use by
25 the covered chemical facility of

1 **more than a threshold amount of**
2 **any substance of concern that**
3 **may affect the requirements of**
4 **the chemical facility under this**
5 **title; or**

6 **“(ii) any material modification**
7 **to a covered chemical facility’s**
8 **operations or site that may affect**
9 **the security vulnerability assess-**
10 **ment or site security plan sub-**
11 **mitted by the covered chemical**
12 **facility;**

13 **“(F) require the owner or oper-**
14 **ator of a covered chemical facility to**
15 **review and resubmit a security vul-**
16 **nerability assessment or site security**
17 **plan not less frequently than once**
18 **every 5 years; and**

19 **“(G) not later than 180 days after**
20 **the date on which the Secretary re-**
21 **ceives a security vulnerability assess-**
22 **ment or site security plan under this**
23 **title, review and approve or dis-**
24 **approve such assessment or plan.**

1 **“(2) INHERENTLY GOVERNMENTAL FUNC-**
2 **TION.—The approval or disapproval of a**
3 **security vulnerability assessment or site**
4 **security plan under this section is an in-**
5 **herently governmental function.**

6 **“(b) PARTICIPATION IN PREPARATION OF SE-**
7 **URITY VULNERABILITY ASSESSMENTS OR SITE**
8 **SECURITY PLANS.—Any person selected by the**
9 **owner or operator of a covered chemical facil-**
10 **ity or by a certified or recognized bargaining**
11 **agent of a covered chemical facility to partici-**
12 **pate in the development of the security vul-**
13 **nerability assessment or site security plan re-**
14 **quired under this section for such covered**
15 **chemical facility shall be permitted to partici-**
16 **pate if the person possesses knowledge, expe-**
17 **rience, training, or education relevant to the**
18 **portion of the security vulnerability assess-**
19 **ment or site security plan on which the per-**
20 **son is participating.**

21 **“(c) RISK-BASED CHEMICAL SECURITY PER-**
22 **FORMANCE STANDARDS.—The Secretary shall**
23 **establish risk-based chemical security per-**
24 **formance standards for the site security plans**
25 **required to be prepared by covered chemical**

1 **facilities. In establishing such standards, the**
2 **Secretary shall—**

3 **“(1) require separate and, as appro-**
4 **propriate, increasingly stringent risk-based**
5 **chemical security performance standards**
6 **for site security plans as the level of risk**
7 **associated with the tier increases; and**

8 **“(2) permit each covered chemical fa-**
9 **ility submitting a site security plan to**
10 **select a combination of security measures**
11 **that satisfy the risk-based chemical secu-**
12 **rity performance standards established**
13 **by the Secretary under this subsection.**

14 **“(d) CO-LOCATED CHEMICAL FACILITIES.—**
15 **The Secretary may allow an owner or oper-**
16 **ator of a covered chemical facility that is lo-**
17 **cated geographically close to another covered**
18 **chemical facility to develop and implement**
19 **coordinated security vulnerability assess-**
20 **ments and site security plans.**

21 **“(e) ALTERNATE SECURITY PROGRAMS SATIS-**
22 **FYING REQUIREMENTS FOR SECURITY VULNER-**
23 **ABILITY ASSESSMENT AND SITE SECURITY PLAN.—**

24 **“(1) ACCEPTANCE OF PROGRAM.—In re-**
25 **sponse to a request by an owner or oper-**

1 **ator of a covered chemical facility, the**
2 **Secretary may accept an alternate secu-**
3 **rity program submitted by the owner or**
4 **operator of the facility as a component of**
5 **the security vulnerability assessment or**
6 **site security plan required under this**
7 **section, if the Secretary determines that**
8 **such alternate security program, in com-**
9 **bination with other components of the se-**
10 **curity vulnerability assessment and site**
11 **security plan submitted by the owner or**
12 **operator of the facility—**

13 **“(A) meets the requirements of**
14 **this title and the regulations promul-**
15 **gated pursuant to this title;**

16 **“(B) provides an equivalent level**
17 **of security to the level of security es-**
18 **tablished pursuant to the regulations**
19 **promulgated under this title; and**

20 **“(C) includes employee participa-**
21 **tion as required under subsection**
22 **(a)(1)(B)(iii).**

23 **“(2) SECRETARIAL REVIEW REQUIRED.—**
24 **Nothing in this subsection shall relieve**
25 **the Secretary of the obligation—**

1 “(A) to review a security vulner-
2 ability assessment and site security
3 plan submitted by a covered chemical
4 facility under this section; and

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

10 “(3) COVERED FACILITY’S OBLIGATIONS
11 UNAFFECTED.—Nothing in this subsection
12 shall relieve any covered chemical facil-
13 ity of the obligation and responsibility to
14 comply with all of the requirements of
15 this title.

16 “(4) PERSONNEL SURETY ALTERNATE SE-
17 CURITY PROGRAM.—In response to an ap-
18 plication from a non-profit, personnel
19 surety accrediting organization acting on
20 behalf of, and with written authorization
21 from, the owner or operator of a covered
22 chemical facility, the Secretary may ac-
23 cept a personnel surety alternate security
24 program that meets the requirements of

1 **section 2115 and provides for a back-**
2 **ground check process that is—**

3 **“(A) expedited, affordable, reli-**
4 **able, and accurate;**

5 **“(B) fully protective of the rights**
6 **of covered individuals through proce-**
7 **dures that are consistent with the**
8 **privacy protections available under**
9 **the Fair Credit Reporting Act (15**
10 **U.S.C. 1681 et seq.); and**

11 **“(C) is a single background check**
12 **consistent with a risk-based tiered**
13 **program.**

14 **“(f) OTHER AUTHORITIES.—**

15 **“(1) REGULATION OF MARITIME FACILI-**
16 **TIES.—**

17 **“(A) RISK-BASED TIERING.—Not-**
18 **withstanding any other provision of**
19 **law, the owner or operator of a chem-**
20 **ical facility required to submit a facil-**
21 **ity security plan under section**
22 **70103(c) of title 46, United States**
23 **Code, shall be required to submit in-**
24 **formation to the Secretary necessary**
25 **to determine whether to designate**

1 **such a facility as a covered chemical**
2 **facility and to assign the facility to a**
3 **risk-based tier under section 2102 of**
4 **this title.**

5 **“(B) ADDITIONAL MEASURES.—In**
6 **the case of a facility designated as a**
7 **covered chemical facility under this**
8 **title that is also regulated under sec-**
9 **tion 70103(c) of title 46, United States**
10 **Code, the Commandant of the Coast**
11 **Guard, after consultation with the**
12 **Secretary, shall require the owner or**
13 **operator of such facility to update the**
14 **vulnerability assessments and facility**
15 **security plans required under that**
16 **section, if necessary, to ensure an**
17 **equivalent level of security for sub-**
18 **stances of concern, including the re-**
19 **quirements under section 2111, in the**
20 **same manner as other covered chem-**
21 **ical facilities in this title.**

22 **“(C) PERSONNEL SURETY.—**

23 **“(i) EXCEPTION.—A facility des-**
24 **ignated as a covered chemical fa-**
25 **cility under this title that has had**

1 its facility security plan approved
2 under section 70103(c) of title 46,
3 United States Code, shall not be
4 required to update or amend such
5 plan in order to meet the require-
6 ments of section 2115 of this title.

7 “(ii) EQUIVALENT ACCESS.—An
8 individual described in section
9 2115(a)(1)(B) who has been grant-
10 ed access to restricted areas or
11 critical assets by the owner or op-
12 erator of a facility for which a se-
13 curity plan is required to be sub-
14 mitted under section 70103(c) of
15 title 46, United States Code, may
16 be considered by that owner or
17 operator to have satisfied the re-
18 quirement for passing a security
19 background check otherwise re-
20 quired under section 2115 for pur-
21 poses of granting the individual
22 access to restricted areas or crit-
23 ical assets of a covered chemical
24 facility that is owned or operated
25 by the same owner or operator.

1 **“(D) INFORMATION SHARING AND**
2 **PROTECTION.—Notwithstanding sec-**
3 **tion 70103(d) of title 46, United States**
4 **Code, the Commandant of the Coast**
5 **Guard, after consultation with the**
6 **Secretary, shall apply the information**
7 **sharing and protection requirements**
8 **in section 2110 of this title to a facil-**
9 **ity described in subparagraph (B).**

10 **“(E) ENFORCEMENT.—The Sec-**
11 **retary shall establish, by rulemaking,**
12 **procedures to ensure that an owner**
13 **or operator of a covered chemical fa-**
14 **ility required to update the vulner-**
15 **ability assessment and facility secu-**
16 **rity plan for the facility under sub-**
17 **paragraph (B) is in compliance with**
18 **the requirements of this title.**

19 **“(F) FORMAL AGREEMENT.—The**
20 **Secretary shall require the Office of**
21 **Infrastructure Protection and the**
22 **Coast Guard to enter into a formal**
23 **agreement detailing their respective**
24 **roles and responsibilities in carrying**
25 **out the requirements of this title.**

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

6 **“(2) COORDINATION OF STORAGE LICENS-**
7 **ING OR PERMITTING REQUIREMENT.—In the**
8 **case of any storage required to be li-**
9 **censed or permitted under chapter 40 of**
10 **title 18, United States Code, the Secretary**
11 **shall prescribe the rules and regulations**
12 **for the implementation of this section**
13 **with the concurrence of the Attorney**
14 **General and avoid unnecessary duplica-**
15 **tion of regulatory requirements.**

16 **“(g) ROLE OF EMPLOYEES.—**

17 **“(1) DESCRIPTION OF ROLE REQUIRED.—**
18 **Site security plans required under this**
19 **section shall describe the roles or respon-**
20 **sibilities that covered individuals are ex-**
21 **pected to perform to deter or respond to**
22 **a chemical facility terrorist incident.**

23 **“(2) ANNUAL TRAINING FOR EMPLOY-**
24 **EES.—The owner or operator of a covered**
25 **chemical facility required to submit a site**

1 security plan under this section shall an-
2 nually provide each covered individual
3 with a role or responsibility referred to
4 in paragraph (1) at the facility with a
5 minimum of 8 hours of training. Such
6 training shall, as relevant to the role or
7 responsibility of such covered indi-
8 vidual—

9 “(A) include an identification and
10 discussion of substances of concern;

11 “(B) include a discussion of pos-
12 sible consequences of a chemical fa-
13 cility terrorist incident;

14 “(C) review and exercise the cov-
15 ered chemical facility’s site security
16 plan, including any requirements for
17 differing threat levels;

18 “(D) include a review of informa-
19 tion protection requirements;

20 “(E) include a discussion of phys-
21 ical and cyber security equipment,
22 systems, and methods used to achieve
23 chemical security performance stand-
24 ards;

1 “(F) allow training with other rel-
2 evant participants, including Federal,
3 State, local, and tribal authorities,
4 and first responders, where appro-
5 priate;

6 “(G) use existing national vol-
7 untary consensus standards, chosen
8 jointly with employee representa-
9 tives, if any;

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

17 “(I) use multiple training media
18 and methods; and

19 “(J) include a discussion of appro-
20 priate emergency response proce-
21 dures, including procedures to miti-
22 gate the effects of a chemical facility
23 terrorist incident.

24 “(3) EQUIVALENT TRAINING.—During
25 any year, with respect to any covered in-

1 **dividual with roles or responsibilities**
2 **under paragraph (1), an owner or oper-**
3 **ator of a covered chemical facility may**
4 **satisfy any of the training requirements**
5 **for such covered individual under sub-**
6 **paragraphs (A), (B), (C), (D), (E), or (J) of**
7 **paragraph (2) through training that such**
8 **owner or operator certifies, in a manner**
9 **prescribed by the Secretary, as equiva-**
10 **lent.**

11 **“(4) WORKER TRAINING GRANT PRO-**
12 **GRAM.—**

13 **“(A) AUTHORITY.—The Secretary**
14 **shall establish a grant program to**
15 **award grants to or enter into cooper-**
16 **ative agreements with eligible enti-**
17 **ties to provide for the training and**
18 **education of covered individuals with**
19 **roles or responsibilities described in**
20 **paragraph (1) and first responders**
21 **and emergency response providers**
22 **that would respond to a chemical fa-**
23 **ility terrorist incident.**

24 **“(B) ADMINISTRATION.—The Sec-**
25 **retary shall seek to enter into an**

1 **agreement with the National Institute**
2 **for Environmental Health Sciences to**
3 **make and administer grants or coop-**
4 **erative agreements under this para-**
5 **graph.**

6 **“(C) USE OF FUNDS.—The recipient**
7 **of funds under this paragraph shall**
8 **use such funds to provide for the**
9 **training and education of covered in-**
10 **dividuals with roles or responsibil-**
11 **ities described in paragraph (1), first**
12 **responders, and emergency response**
13 **providers, including—**

14 **“(i) the annual mandatory**
15 **training specified in paragraph**
16 **(2); and**

17 **“(ii) other appropriate train-**
18 **ing to protect nearby persons,**
19 **property, critical infrastructure,**
20 **or the environment from the ef-**
21 **fects of a chemical facility ter-**
22 **rorist incident.**

23 **“(D) ELIGIBLE ENTITIES.—For pur-**
24 **poses of this paragraph, an eligible**
25 **entity is a nonprofit organization**

1 with demonstrated experience in im-
2 plementing and operating successful
3 worker or first responder health and
4 safety or security training programs.

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

15 “SEC. 2104. SITE INSPECTIONS.

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

23 “(b) INSPECTIONS AND VERIFICATIONS.—

24 “(1) IN GENERAL.—The Secretary shall,
25 at such time and place as the Secretary

1 determines to be reasonable and appro-
2 priate, conduct chemical facility security
3 inspections and verifications.

4 “(2) REQUIREMENTS.—To ensure and
5 evaluate compliance with this title, in-
6 cluding any regulations or requirements
7 adopted by the Secretary in furtherance
8 of the purposes of this title, in con-
9 ducting an inspection or verification
10 under paragraph (1), the Secretary shall
11 have access to the owners, operators, em-
12 ployees, and employee representatives, if
13 any, of a covered chemical facility.

14 “(c) UNANNOUNCED INSPECTIONS.—In addi-
15 tion to any inspection conducted pursuant to
16 subsection (b), the Secretary shall require
17 covered chemical facilities assigned to tier 1
18 and tier 2 under section 2102(c)(1) to undergo
19 unannounced facility inspections. The inspec-
20 tions required under this subsection shall
21 be—

22 “(1) conducted without prior notice to
23 the facility;

24 “(2) designed to evaluate at the chem-
25 ical facility undergoing inspection—

1 **“(A) the ability of the chemical fa-**
2 **cility to prevent a chemical facility**
3 **terrorist incident that the site secu-**
4 **rity plan of the facility is intended to**
5 **prevent;**

6 **“(B) the ability of the chemical fa-**
7 **cility to protect against security**
8 **threats that are required to be ad-**
9 **ressed by the site security plan of**
10 **the facility; and**

11 **“(C) any weaknesses in the site**
12 **security plan of the chemical facility;**

13 **“(3) conducted so as not to affect the**
14 **actual security, physical integrity, safety,**
15 **or regular operations of the chemical fa-**
16 **cility or its employees while the inspec-**
17 **tion is conducted; and**

18 **“(4) conducted—**

19 **“(A) every two years in the case of**
20 **a covered chemical facility assigned**
21 **to tier 1; and**

22 **“(B) every four years in the case**
23 **of a covered chemical facility as-**
24 **signed to tier 2.**

1 “(d) **CHEMICAL FACILITY INSPECTORS AU-**
2 **THORIZED.—During the period of fiscal years**
3 **2011 and 2012, subject to the availability of**
4 **appropriations for such purpose, the Sec-**
5 **retary shall increase by not fewer than 100**
6 **the total number of chemical facility inspec-**
7 **tors within the Department to ensure compli-**
8 **ance with this title.**

9 “(e) **CONFIDENTIAL COMMUNICATIONS.—The**
10 **Secretary shall offer non-supervisory employ-**
11 **ees the opportunity to confidentially commu-**
12 **nicate information relevant to the employer’s**
13 **compliance or non-compliance with this title,**
14 **including compliance or non-compliance with**
15 **any regulation or requirement adopted by the**
16 **Secretary in furtherance of the purposes of**
17 **this title. An employee representative of each**
18 **certified or recognized bargaining agent at**
19 **the covered chemical facility, if any, or, if**
20 **none, a non-supervisory employee, shall be**
21 **given the opportunity to accompany the Sec-**
22 **retary during a physical inspection of such**
23 **covered chemical facility for the purpose of**
24 **aiding in such inspection, if representatives**
25 **of the owner or operator of the covered chem-**

1 ical facility will also be accompanying the
2 Secretary on such inspection.

3 “SEC. 2105. RECORDS.

4 “(a) REQUEST FOR RECORDS.—In carrying
5 out this title, the Secretary may require sub-
6 mission of, or on presentation of credentials
7 may at reasonable times obtain access to and
8 copy, any records, including any records
9 maintained in electronic format, necessary
10 for—

11 “(1) reviewing or analyzing a security
12 vulnerability assessment or site security
13 plan submitted under section 2103; or

14 “(2) assessing the implementation of
15 such a site security plan.

16 “(b) PROPER HANDLING OF RECORDS.—In
17 accessing or copying any records under sub-
18 section (a), the Secretary shall ensure that
19 such records are handled and secured appro-
20 priately in accordance with section 2110.

21 “SEC. 2106. TIMELY SHARING OF THREAT INFORMATION.

22 “(a) RESPONSIBILITIES OF SECRETARY.—
23 Upon the receipt of information concerning a
24 threat that is relevant to a certain covered
25 chemical facility, the Secretary shall provide

1 such information in a timely manner, to the
2 maximum extent practicable under applicable
3 authority and in the interests of national se-
4 curity, to the owner, operator, or security offi-
5 cer of that covered chemical facility and to a
6 representative of each recognized or certified
7 bargaining agent at the facility, if any.

8 “(b) RESPONSIBILITIES OF OWNER OR OPER-
9 ATOR.—The Secretary shall require the owner
10 or operator of a covered chemical facility to
11 provide information concerning a threat in a
12 timely manner about any significant security
13 incident or threat to the covered chemical fa-
14 cility or any intentional or unauthorized pen-
15 etration of the physical security or cyber se-
16 curity of the covered chemical facility wheth-
17 er successful or unsuccessful.

18 “SEC. 2107. ENFORCEMENT.

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

20 “(1) DISAPPROVAL.—The Secretary
21 shall disapprove a security vulnerability
22 assessment or site security plan sub-
23 mitted under this title if the Secretary
24 determines, in his or her discretion,
25 that—

1 **“(A) the security vulnerability as-**
2 **essment or site security plan does**
3 **not comply with the standards, proto-**
4 **cols, or procedures under section**
5 **2103(a)(1)(A); or**

6 **“(B) in the case of a site security**
7 **plan—**

8 **“(i) the plan or the implemen-**
9 **tation of the plan is insufficient**
10 **to address vulnerabilities identi-**
11 **fied in a security vulnerability as-**
12 **essment, site inspection, or un-**
13 **announced inspection of the cov-**
14 **ered chemical facility; or**

15 **“(ii) the plan fails to meet all**
16 **applicable chemical facility secu-**
17 **rity performance standards.**

18 **“(2) PROVISION OF NOTIFICATION OF DIS-**
19 **APPROVAL.—If the Secretary disapproves**
20 **the security vulnerability assessment or**
21 **site security plan submitted by a covered**
22 **chemical facility under this title or the**
23 **implementation of a site security plan by**
24 **such a chemical facility, the Secretary**
25 **shall provide the owner or operator of**

1 the covered chemical facility a written
2 notification of the disapproval within 14
3 days of the date on which the Secretary
4 disapproves such assessment or plan,
5 that—

6 “(A) includes a clear explanation
7 of deficiencies in the assessment,
8 plan, or implementation of the plan;
9 and

10 “(B) requires the owner or oper-
11 ator of the covered chemical facility
12 to revise the assessment or plan to
13 address any deficiencies and, by such
14 date as the Secretary determines is
15 appropriate, to submit to the Sec-
16 retary the revised assessment or plan.

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

1 **determines to be appropriate, the Sec-**
2 **retary may—**

3 **“(A) after providing notice to the**
4 **owner or operator of the covered**
5 **chemical facility and an opportunity**
6 **for such owner or operator to appeal**
7 **the Secretary’s determination, issue**
8 **an order assessing a civil penalty for**
9 **any past or current violation, requir-**
10 **ing compliance immediately or within**
11 **a specified time period, or both; or**

12 **“(B) commence a civil action in**
13 **the United States district court in the**
14 **district in which the violation oc-**
15 **curred for appropriate relief, includ-**
16 **ing temporary or permanent injunc-**
17 **tion.**

18 **“(4) ORDER TO CEASE OPERATIONS.—If**
19 **the Secretary determines that the owner**
20 **or operator of a covered chemical facility**
21 **continues to be in noncompliance after**
22 **an order for compliance is issued under**
23 **paragraph (3), the Secretary may issue an**
24 **order to the owner or operator of a cov-**
25 **ered chemical facility to cease operations**

1 **at the facility until the owner or operator**
2 **complies with such order issued under**
3 **paragraph (3). Notwithstanding the pre-**
4 **ceding sentence, the Secretary may not**
5 **issue an order to cease operations under**
6 **this paragraph to the owner or operator**
7 **of a wastewater facility.**

8 **“(b) PENALTIES.—**

9 **“(1) CIVIL PENALTIES.—A court may**
10 **award a civil penalty, pursuant to an**
11 **order issued by the Secretary under this**
12 **title, of not more than \$50,000 for each**
13 **day on which a violation occurs or a fail-**
14 **ure to comply continues.**

15 **“(2) ADMINISTRATIVE PENALTIES.—The**
16 **Secretary may award an administrative**
17 **penalty, pursuant to an order issued**
18 **under this title, of not more than \$25,000**
19 **for each day on which a violation occurs**
20 **or a failure to comply continues.**

21 **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

22 **“(a) ESTABLISHMENT.—The Secretary shall**
23 **establish and provide information to the pub-**
24 **lic regarding a process by which any person**
25 **may submit a report to the Secretary regard-**

1 ing problems, deficiencies, or vulnerabilities
2 at a covered chemical facility associated with
3 the risk of a chemical facility terrorist inci-
4 dent.

5 “(b) CONFIDENTIALITY.—The Secretary
6 shall keep confidential the identity of a per-
7 son that submits a report under subsection (a)
8 and any such report shall be treated as pro-
9 tected information under section 2110 to the
10 extent that it does not consist of publicly
11 available information.

12 “(c) ACKNOWLEDGMENT OF RECEIPT.—If a
13 report submitted under subsection (a) identi-
14 fies the person submitting the report, the Sec-
15 retary shall respond promptly to such person
16 to acknowledge receipt of the report.

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

24 “(e) RETALIATION PROHIBITED.—

1 **“(1) PROHIBITION.—No owner or oper-**
2 **ator of a covered chemical facility, profit**
3 **or not-for-profit corporation, association,**
4 **or any contractor, subcontractor or agent**
5 **thereof, may discharge any employee or**
6 **otherwise discriminate against any em-**
7 **ployee with respect to his compensation,**
8 **terms, conditions, or other privileges of**
9 **employment because the employee (or**
10 **any person acting pursuant to a request**
11 **of the employee)—**

12 **“(A) notified the Secretary, the**
13 **owner or operator of a covered chem-**
14 **ical facility, or the employee’s em-**
15 **ployer of an alleged violation of this**
16 **title, including communications re-**
17 **lated to carrying out the employee’s**
18 **job duties;**

19 **“(B) refused to engage in any**
20 **practice made unlawful by this title,**
21 **if the employee has identified the al-**
22 **leged illegality to the employer;**

23 **“(C) testified before or otherwise**
24 **provided information relevant for**
25 **Congress or for any Federal or State**

1 proceeding regarding any provision
2 (or proposed provision) of this title;

3 “(D) commenced, caused to be
4 commenced, or is about to commence
5 or cause to be commenced a pro-
6 ceeding under this title;

7 “(E) testified or is about to testify
8 in any such proceeding; or

9 “(F) assisted or participated or is
10 about to assist or participate in any
11 manner in such a proceeding or in
12 any other manner in such a pro-
13 ceeding or in any other action to
14 carry out the purposes of this title.

15 “(2) ENFORCEMENT ACTION.—Any em-
16 ployee covered by this section who al-
17 leges discrimination by an employer in
18 violation of paragraph (1) may bring an
19 action governed by the rules and proce-
20 dures, legal burdens of proof, and rem-
21 edies applicable under subsections (d)
22 through (h) of section 20109 of title 49,
23 United States Code. A party may seek dis-
24 trict court review as set forth in sub-
25 section (d)(4) of such section not later

1 **than 90 days after receiving a written**
2 **final determination by the Secretary of**
3 **Labor.**

4 **“(3) PROHIBITED PERSONNEL PRACTICES**
5 **AFFECTING THE DEPARTMENT.—**

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

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

14 **“(ii) any provision of law im-**
15 **plementing any of such para-**
16 **graphs by providing any right or**
17 **remedy available to an employee**
18 **or applicant for employment in**
19 **the civil service; and**

20 **“(iii) any rule or regulation**
21 **prescribed under any such para-**
22 **graph.**

23 **“(B) RULE OF CONSTRUCTION.—**
24 **Nothing in this paragraph shall be**
25 **construed to affect any rights, apart**

1 **from those referred to in subpara-**
2 **graph (A), to which an individual de-**
3 **scribed in that subparagraph might**
4 **otherwise be entitled to under law.**

5 **“SEC. 2109. FEDERAL PREEMPTION.**

6 **“This title does not preclude or deny any**
7 **right of any State or political subdivision**
8 **thereof to adopt or enforce any regulation, re-**
9 **quirement, or standard of performance with**
10 **respect to a covered chemical facility that is**
11 **more stringent than a regulation, require-**
12 **ment, or standard of performance issued**
13 **under this title, or otherwise impair any right**
14 **or jurisdiction of any State or political sub-**
15 **division thereof with respect to covered**
16 **chemical facilities within that State or polit-**
17 **ical subdivision thereof.**

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

19 **“(a) PROHIBITION OF PUBLIC DISCLOSURE OF**
20 **PROTECTED INFORMATION.—Protected informa-**
21 **tion, as described in subsection (g)—**

22 **“(1) shall be exempt from disclosure**
23 **under section 552 of title 5, United States**
24 **Code; and**

1 “(2) shall not be made available pur-
2 suant to any State, local, or tribal law re-
3 quiring disclosure of information or
4 records.

5 “(b) INFORMATION SHARING.—

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

11 “(2) SHARING OF PROTECTED INFORMA-
12 TION.—The regulations under paragraph
13 (1) shall provide standards for and facili-
14 tate the appropriate sharing of protected
15 information with and between Federal,
16 State, local, and tribal authorities, emer-
17 gency response providers, law enforce-
18 ment officials, designated supervisory
19 and nonsupervisory covered chemical fa-
20 cility personnel with security, oper-
21 ational, or fiduciary responsibility for the
22 facility, and designated facility employee
23 representatives, if any. Such standards
24 shall include procedures for the sharing
25 of all portions of a covered chemical fa-

1 **cility’s vulnerability assessment and site**
2 **security plan relating to the roles and re-**
3 **sponsibilities of covered individuals**
4 **under section 2103(g)(1) with a represent-**
5 **ative of each certified or recognized bar-**
6 **gaining agent representing such covered**
7 **individuals, if any, or, if none, with at**
8 **least one supervisory and at least one**
9 **non-supervisory employee with roles or**
10 **responsibilities under section 2103(g)(1).**

11 **“(3) PENALTIES.—Protected informa-**
12 **tion, as described in subsection (g), shall**
13 **not be shared except in accordance with**
14 **the regulations under paragraph (1). Any**
15 **person who purposefully publishes, di-**
16 **scusses, discloses, or makes known pro-**
17 **tection information in any manner or to**
18 **any extent not authorized by the stand-**
19 **ards provided by the regulations under**
20 **paragraph (1), shall, upon conviction, be**
21 **imprisoned for not more than one year or**
22 **fined in accordance with the provisions**
23 **of chapter 227 of title 18, United States**
24 **Code, applicable to class A mis-**
25 **demeanors, or both, and, in the case of**

1 **Federal employees or officeholders, shall**
2 **be removed from Federal office or em-**
3 **ployment.**

4 **“(c) TREATMENT OF INFORMATION IN ADJU-**
5 **DICATIVE PROCEEDINGS.—In any judicial or ad-**
6 **ministrative proceeding, protected informa-**
7 **tion described in subsection (g) shall be treat-**
8 **ed in a manner consistent with the treatment**
9 **of sensitive security information under sec-**
10 **tion 525 of the Department of Homeland Secu-**
11 **rity Appropriations Act, 2007 (Public Law**
12 **109–295; 120 Stat. 1381).**

13 **“(d) OTHER OBLIGATIONS UNAFFECTED.—Ex-**
14 **cept as provided in section 2103(h), nothing in**
15 **this section affects any obligation of the**
16 **owner or operator of a chemical facility under**
17 **any other law to submit or make available in-**
18 **formation required by such other law to facil-**
19 **ity employees, employee organizations, or a**
20 **Federal, State, tribal, or local government.**

21 **“(e) SUBMISSION OF INFORMATION TO CON-**
22 **GRESS.—Nothing in this title shall permit or**
23 **authorize the withholding of information**
24 **from Congress or any committee or sub-**
25 **committee thereof.**

1 **“(f) DISCLOSURE OF INDEPENDENTLY FUR-**
2 **NISHED INFORMATION.—Nothing in this title**
3 **shall affect any authority or obligation of a**
4 **Federal, State, local, or tribal government**
5 **agency to protect or disclose any record or in-**
6 **formation that the Federal, State, local, or**
7 **tribal government agency obtains from a**
8 **chemical facility under any other law.**

9 **“(g) PROTECTED INFORMATION.—**

10 **“(1) IN GENERAL.—For purposes of this**
11 **title, protected information is the fol-**
12 **lowing:**

13 **“(A) Security vulnerability assess-**
14 **ments and site security plans, includ-**
15 **ing any assessment required under**
16 **section 2111.**

17 **“(B) Portions of the following doc-**
18 **uments, records, orders, notices, or**
19 **letters that the Secretary determines**
20 **would be detrimental to chemical fa-**
21 **ility security if disclosed and that**
22 **are developed by the Secretary or the**
23 **owner or operator of a covered chem-**
24 **ical facility for the purposes of this**
25 **title:**

1 “(i) Documents directly re-
2 lated to the Secretary’s review
3 and approval or disapproval of
4 vulnerability assessments and site
5 security plans under this title.

6 “(ii) Documents directly re-
7 lated to inspections and audits
8 under this title.

9 “(iii) Orders, notices, or let-
10 ters regarding the compliance of
11 a covered chemical facility with
12 the requirements of this title.

13 “(iv) Information required to
14 be provided to, or documents and
15 records created by, the Secretary
16 under section subsection (b) or (c)
17 of section 2102.

18 “(v) Documents directly re-
19 lated to security drills and train-
20 ing exercises, security threats and
21 breaches of security, and mainte-
22 nance, calibration, and testing of
23 security equipment.

24 “(C) Other information, docu-
25 ments, or records developed exclu-

1 sively for the purposes of this title
2 that the Secretary determines, if dis-
3 closed, would be detrimental to chem-
4 ical facility security.

5 “(2) EXCLUSIONS.—For purposes of this
6 section, protected information does not
7 include—

8 “(A) information that is otherwise
9 publicly available, including informa-
10 tion that is required to be made pub-
11 licly available under any law;

12 “(B) information that a chemical
13 facility has lawfully disclosed other
14 than in accordance with this title; or

15 “(C) information that, if disclosed,
16 would not be detrimental to the secu-
17 rity of a chemical facility, including
18 aggregate regulatory data that the
19 Secretary determines is appropriate
20 to describe facility compliance with
21 the requirements of this title and the
22 Secretary’s implementation of such
23 requirements.

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

3 **“(a) ASSESSMENT REQUIRED.—**

4 **“(1) ASSESSMENT.—The owner or oper-**
5 **ator of a covered chemical facility shall**
6 **include in the site security plan con-**
7 **ducted pursuant to section 2103, an as-**
8 **essment of methods to reduce the con-**
9 **sequences of a terrorist attack on that**
10 **chemical facility, including—**

11 **“(A) a description of the methods**
12 **to reduce the consequences of a ter-**
13 **rorist attack implemented and con-**
14 **sidered for implementation by the**
15 **covered chemical facility;**

16 **“(B) the degree to which each**
17 **method to reduce the consequences**
18 **of a terrorist attack, if already imple-**
19 **mented, has reduced, or, if imple-**
20 **mented, could reduce, the potential**
21 **extent of death, injury, or serious ad-**
22 **verse effects to human health result-**
23 **ing from a release of a substance of**
24 **concern;**

25 **“(C) the technical feasibility,**
26 **costs, avoided costs (including liabil-**

1 ities), personnel implications, savings,
2 and applicability of implementing
3 each method to reduce the con-
4 sequences of a terrorist attack; and

5 “(D) any other information that
6 the owner or operator of the covered
7 chemical facility considered in con-
8 ducting the assessment.

9 “(2) FEASIBLE.—For the purposes of
10 this section, the term ‘feasible’ means fea-
11 sible with the use of best technology,
12 techniques, and other means that the
13 Secretary finds, after examination for ef-
14 ficacy under field conditions and not
15 solely under laboratory conditions, are
16 available for use at the covered chemical
17 facility.

18 “(b) IMPLEMENTATION.—

19 “(1) IMPLEMENTATION.—

20 “(A) IN GENERAL.—The owner or
21 operator of a covered chemical facil-
22 ity that is assigned to tier 1 or tier 2
23 because of the potential extent and
24 likelihood of death, injury, and seri-
25 ous adverse effects to human health,

1 the environment, critical infrastruc-
2 ture, public health, homeland secu-
3 rity, national security, and the na-
4 tional economy from a release of a
5 substance of concern at the covered
6 chemical facility, shall implement
7 methods to reduce the consequences
8 of a terrorist attack on the chemical
9 facility if the Director of the Office of
10 Chemical Facility Security deter-
11 mines, in his or her discretion, using
12 the assessment conducted pursuant
13 to subsection (a), that the implemen-
14 tation of such methods at the facil-
15 ity—

16 “(i) would significantly reduce
17 the risk of death, injury, or seri-
18 ous adverse effects to human
19 health resulting from a chemical
20 facility terrorist incident but—

21 “(I) would not increase
22 the interim storage of a sub-
23 stance of concern outside the
24 facility;

1 **“(II) would not directly re-**
2 **sult in the creation of a new**
3 **covered chemical facility as-**
4 **signed to tier 1 or tier 2 be-**
5 **cause of the potential extent**
6 **and likelihood of death, in-**
7 **jury, and serious adverse ef-**
8 **fects to human health, the en-**
9 **vironment, critical infrastruc-**
10 **ture, public health, homeland**
11 **security, national security,**
12 **and the national economy**
13 **from a release of a substance**
14 **of concern at the covered**
15 **chemical facility; and**

16 **“(III) would not result in**
17 **the reassignment of an exist-**
18 **ing covered chemical facility**
19 **from tier 3 or tier 4 to tier 1**
20 **or tier 2 because of the poten-**
21 **tial extent and likelihood of**
22 **death, injury, and serious ad-**
23 **verse effects to human health,**
24 **the environment, critical in-**
25 **frastructure, public health,**

1 **homeland security, national**
2 **security, and the national**
3 **economy from a release of a**
4 **substance of concern at the**
5 **covered chemical facility;**

6 **“(ii) can feasibly be incor-**
7 **porated into the operation of the**
8 **covered chemical facility; and**

9 **“(iii) would not significantly**
10 **and demonstrably impair the abil-**
11 **ity of the owner or operator of**
12 **the covered chemical facility to**
13 **continue the business of the facil-**
14 **ity at its location.**

15 **“(B) WRITTEN DETERMINATION.—A**
16 **determination by the Director of the**
17 **Office of Chemical Facility Security**
18 **pursuant to subparagraph (A) shall**
19 **be made in writing and include the**
20 **basis and reasons for such determina-**
21 **tion.**

22 **“(C) MARITIME FACILITIES.—With**
23 **respect to a covered chemical facility**
24 **for which a security plan is required**
25 **under section 70103(c) of title 46,**

1 **United States Code, a written deter-**
2 **mination pursuant to subparagraph**
3 **(A) shall be made only after consulta-**
4 **tion with the Captain of the Port for**
5 **the area in which the covered chem-**
6 **ical facility is located.**

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

8 **“(A) IN GENERAL.—An owner or op-**
9 **erator of a covered chemical facility**
10 **who is unable to comply with the Di-**
11 **rector’s determination under para-**
12 **graph (1) shall, within 120 days of re-**
13 **ceipt of the Director’s determination,**
14 **provide to the Secretary a written ex-**
15 **planation that includes the reasons**
16 **therefor. Such written explanation**
17 **shall specify whether the owner or**
18 **operator’s inability to comply arises**
19 **under clause (ii) or (iii) of paragraph**
20 **(1)(A), or both.**

21 **“(B) REVIEW.—Not later than 120**
22 **days of receipt of an explanation sub-**
23 **mitted under subparagraph (A), the**
24 **Secretary, after consulting with the**
25 **owner or operator of the covered**

1 **chemical facility who submitted such**
2 **explanation, as well as experts in the**
3 **subjects of environmental health and**
4 **safety, security, chemistry, design**
5 **and engineering, process controls and**
6 **implementation, maintenance, pro-**
7 **duction and operations, chemical**
8 **process safety, and occupational**
9 **health, as appropriate, shall provide**
10 **to the owner or operator a written**
11 **determination, in his or her discre-**
12 **tion, of whether implementation shall**
13 **be required pursuant to paragraph**
14 **(1). If the Secretary determines that**
15 **implementation is required, the Sec-**
16 **retary shall issue an order that estab-**
17 **lishes the basis for such determina-**
18 **tion, including the findings of the rel-**
19 **evant experts, the specific methods**
20 **selected for implementation, and a**
21 **schedule for implementation of the**
22 **methods at the facility.**

23 **“(c) SECTORAL IMPACTS.—**

24 **“(1) GUIDANCE FOR FARM SUPPLIES MER-**
25 **CHANT WHOLESALERS.—The Secretary shall**

1 provide guidance and, as appropriate,
2 tools, methodologies or computer soft-
3 ware, to assist farm supplies merchant
4 wholesalers in complying with the re-
5 quirements of this section. The Sec-
6 retary may award grants to farm supplies
7 merchant wholesalers to assist with com-
8 pliance with subsection (a), and in
9 awarding such grants, shall give priority
10 to farm supplies merchant wholesalers
11 that have the greatest need for such
12 grants.

13 “(2) ASSESSMENT OF IMPACTS.—Not
14 later than 6 months after the date of en-
15 actment of this title, the Secretary shall
16 transmit an assessment of the potential
17 impacts of compliance with provisions of
18 this section regarding the assessment
19 and, as appropriate, implementation, of
20 methods to reduce the consequences of a
21 terrorist attack by manufacturers, retail-
22 ers, aerial commercial applicators, and
23 distributors of pesticide and fertilizer to
24 the Committee on Energy and Commerce
25 of the House of Representatives, the Com-

1 **mittee on Homeland Security of the**
2 **House of Representatives and the Com-**
3 **mittee on Homeland Security and Gov-**
4 **ernmental Affairs of the Senate. Such**
5 **assessment shall be conducted by the**
6 **Secretary in consultation with other ap-**
7 **propriate Federal agencies and shall in-**
8 **clude the following:**

9 **“(A) Data on the scope of facilities**
10 **covered by this title, including the**
11 **number and type of manufacturers,**
12 **retailers, aerial commercial applica-**
13 **tors and distributors of pesticide and**
14 **fertilizer required to assess methods**
15 **to reduce the consequences of a ter-**
16 **rorist attack under subsection (a) and**
17 **the number and type of manufactur-**
18 **ers, retailers, aerial commercial ap-**
19 **plicators and distributors of pesticide**
20 **and fertilizer assigned to tier 1 or tier**
21 **2 by the Secretary because of the**
22 **potential extent and likelihood of**
23 **death, injury, and serious adverse ef-**
24 **fects to human health, the environ-**
25 **ment, critical infrastructure, public**

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

5 “(B) A survey of known methods,
6 processes or practices, other than
7 elimination of or cessation of manu-
8 facture of the pesticide or fertilizer,
9 that manufacturers, retailers, aerial
10 commercial applicators, and distribu-
11 tors of pesticide and fertilizer could
12 use to reduce the consequences of a
13 terrorist attack, including an assess-
14 ment of the costs and technical feasi-
15 bility of each such method, process,
16 or practice.

17 “(C) An analysis of how the as-
18 sessment of methods to reduce the
19 consequences of a terrorist attack
20 under subsection (a) by manufactur-
21 ers, retailers, aerial commercial ap-
22 plicators, and distributors of pes-
23 ticide and fertilizer, and, as appro-
24 priate, the implementation of meth-
25 ods to reduce the consequences of a

1 terrorist attack by such manufactur-
2 ers, retailers, aerial commercial ap-
3 plicators, and distributors of pes-
4 ticide and fertilizer subject to sub-
5 section (b), are likely to impact
6 other sectors engaged in commerce.

7 “(D) Recommendations for how to
8 mitigate any adverse impacts identi-
9 fied pursuant to subparagraph (C).

10 “(3) FARM SUPPLIES MERCHANT WHOLE-
11 SALER.—In this subsection, the term ‘farm
12 supplies merchant wholesaler’ means a
13 covered chemical facility that is pri-
14 marily engaged in the merchant whole-
15 sale distribution of farm supplies, such as
16 animal feeds, fertilizers, agricultural
17 chemicals, pesticides, plant seeds, and
18 plant bulbs.

19 “(d) PROVISION OF INFORMATION ON ALTER-
20 NATIVE APPROACHES.—

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

1 **“(2) INFORMATION TO BE INCLUDED.—**
2 **The information under paragraph (1)**
3 **may include information about—**

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

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

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

14 **“(D) the costs and cost savings re-**
15 **sulting from the use of such methods;**

16 **“(E) emerging technologies that**
17 **could be transferred from research**
18 **models or prototypes to practical ap-**
19 **plications;**

20 **“(F) the availability of technical**
21 **assistance and best practices; and**

22 **“(G) such other matters that the**
23 **Secretary determines are appro-**
24 **priate.**

1 **“(3) PUBLIC AVAILABILITY.—**Informa-
2 **tion made available under this subsection**
3 **shall not identify any specific chemical**
4 **facility, violate the protection of informa-**
5 **tion provisions under section 2110, or dis-**
6 **close any proprietary information.**

7 **“(e) FUNDING FOR METHODS TO REDUCE THE**
8 **CONSEQUENCES OF A TERRORIST ATTACK.—**The
9 **Secretary may make funds available to help**
10 **defray the cost of implementing methods to**
11 **reduce the consequences of a terrorist attack**
12 **to covered chemical facilities that are re-**
13 **quired by the Secretary to implement such**
14 **methods.**

15 **“SEC. 2112. APPLICABILITY.**

16 **“This title shall not apply to—**

17 **“(1) any chemical facility that is**
18 **owned and operated by the Secretary of**
19 **Defense;**

20 **“(2) the transportation in commerce,**
21 **including incidental storage, of any sub-**
22 **stance of concern regulated as a haz-**
23 **ardous material under chapter 51 of title**
24 **49, United States Code;**

1 **“(3) all or a specified portion of any**
2 **chemical facility that—**

3 **“(A) is subject to regulation by**
4 **the Nuclear Regulatory Commission**
5 **(hereinafter in this paragraph re-**
6 **ferred to as the ‘Commission’) or a**
7 **State that has entered into an agree-**
8 **ment with the Commission under sec-**
9 **tion 274 b. of the Atomic Energy Act**
10 **of 1954 (42 U.S.C. 2021 b.);**

11 **“(B) has had security controls im-**
12 **posed by the Commission or State,**
13 **whichever has the regulatory author-**
14 **ity, on the entire facility or the speci-**
15 **fied portion of the facility; and**

16 **“(C) has been designated by the**
17 **Commission, after consultation with**
18 **the State, if any, that regulates the fa-**
19 **cility, and the Secretary, as excluded**
20 **from the application of this title; or**

21 **“(4) any public water system subject**
22 **to the Safe Drinking Water Act (42 U.S.C.**
23 **300f et seq.).**

1 **“SEC. 2113. SAVINGS CLAUSE.**

2 **“(a) IN GENERAL.—Nothing in this title**
3 **shall affect or modify in any way any obliga-**
4 **tion or liability of any person under any other**
5 **Federal law, including section 112 of the**
6 **Clean Air Act (42 U.S.C. 7412), the Federal**
7 **Water Pollution Control Act (33 U.S.C. 1251 et**
8 **seq.), the Resource Conservation and Recov-**
9 **ery Act of 1976 (42 U.S.C. 6901 et seq.), the Na-**
10 **tional Environmental Policy Act of 1969 (42**
11 **U.S.C. 4321 et seq.), the Occupational Safety**
12 **and Health Act (29 U.S.C. 651 et seq.), the Na-**
13 **tional Labor Relations Act (29 U.S.C. 151 et**
14 **seq.), the Emergency Planning and Commu-**
15 **nity Right to Know Act of 1996 (42 U.S.C.**
16 **11001 et seq.), the Safe Drinking Water Act (42**
17 **U.S.C. 300f et seq.), the Maritime Transpor-**
18 **tation Security Act of 2002 (Public Law 107–**
19 **295), the Comprehensive Environmental Re-**
20 **sponse, Compensation, and Liability Act of**
21 **1980 (42 U.S.C. 9601 et seq.), the Toxic Sub-**
22 **stances Control Act (15 U.S.C. 2601 et seq.),**
23 **and the Fair Credit Reporting Act (15 U.S.C.**
24 **1681 et seq.).**

25 **“(b) OTHER REQUIREMENTS.—Nothing in**
26 **this title shall preclude or deny the right of**

1 any State or political subdivision thereof to
2 adopt or enforce any regulation, requirement,
3 or standard of performance relating to envi-
4 ronmental protection, health, or safety.

5 “(c) ACCESS.—Nothing in this title shall
6 abridge or deny access to a chemical facility
7 site to any person where required or per-
8 mitted under any other law or regulation.

9 “SEC. 2114. OFFICE OF CHEMICAL FACILITY SECURITY.

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

19 “(b) PROFESSIONAL QUALIFICATIONS.—The
20 individual selected by the Secretary as the Di-
21 rector of the Office of Chemical Facility Secu-
22 rity shall have professional qualifications and
23 experience necessary for effectively directing
24 the Office of Chemical Facility Security and
25 carrying out the requirements of this title, in-

1 **cluding a demonstrated knowledge of phys-**
2 **ical infrastructure protection, cybersecurity,**
3 **chemical facility security, hazard analysis,**
4 **chemical process engineering, chemical proc-**
5 **ess safety reviews, or other such qualifica-**
6 **tions that the Secretary determines to be nec-**
7 **essary.**

8 **“(c) SELECTION PROCESS.—The Secretary**
9 **shall make a reasonable effort to select an in-**
10 **dividual to serve as the Director from among**
11 **a group of candidates that is diverse with re-**
12 **spect to race, ethnicity, age, gender, and dis-**
13 **ability characteristics and submit to the Com-**
14 **mittee on Homeland Security and the Com-**
15 **mittee on Energy and Commerce of the House**
16 **of Representatives and the Committee on**
17 **Homeland Security and Governmental Affairs**
18 **of the Senate information on the selection**
19 **process, including details on efforts to assure**
20 **diversity among the candidates considered**
21 **for this position.**

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

4 **“(a) REGULATIONS ISSUED BY THE SEC-**
5 **RETARY.—**

6 **“(1) IN GENERAL.—**

7 **“(A) REQUIREMENT.—The Secretary**
8 **shall issue regulations to require cov-**
9 **ered chemical facilities to establish**
10 **personnel surety for individuals de-**
11 **scribed in subparagraph (B) by con-**
12 **ducting appropriate security back-**
13 **ground checks and ensuring appro-**
14 **priate credentials for unescorted visi-**
15 **tors and chemical facility personnel,**
16 **including permanent and part-time**
17 **personnel, temporary personnel, and**
18 **contract personnel, including—**

19 **“(i) measures designed to**
20 **verify and validate identity;**

21 **“(ii) measures designed to**
22 **check criminal history;**

23 **“(iii) measures designed to**
24 **verify and validate legal author-**
25 **ization to work; and**

1 “(iv) measures designed to
2 identify people with terrorist ties.

3 “(B) INDIVIDUALS DESCRIBED.—For
4 purposes of subparagraph (A), an in-
5 dividual described in this subpara-
6 graph is—

7 “(i) a covered individual who
8 has unescorted access to re-
9 stricted areas or critical assets or
10 who is provided with a copy of a
11 security vulnerability assessment
12 or site security plan;

13 “(ii) a person associated with
14 a covered chemical facility, in-
15 cluding any designated employee
16 representative, who is provided
17 with a copy of a security vulner-
18 ability assessment or site security
19 plan; or

20 “(iii) a person who is deter-
21 mined by the Secretary to require
22 a security background check
23 based on chemical facility secu-
24 rity performance standards.

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

4 **“(A) the scope of the security**
5 **background checks, including the**
6 **types of disqualifying offenses and**
7 **the time period covered for each per-**
8 **son subject to a security background**
9 **check under paragraph (1);**

10 **“(B) the processes to conduct the**
11 **security background checks;**

12 **“(C) the necessary biographical**
13 **information and other data required**
14 **in order to conduct the security back-**
15 **ground checks;**

16 **“(D) a redress process for an ad-**
17 **versely-affected person consistent**
18 **with subsections (b) and (c); and**

19 **“(E) a prohibition on an owner or**
20 **operator of a covered chemical facil-**
21 **ity misrepresenting to an employee or**
22 **other relevant person, including an**
23 **arbiter involved in a labor arbitra-**
24 **tion, the scope, application, or mean-**
25 **ing of any rules, regulations, direc-**

1 **tives, or guidance issued by the Sec-**
2 **retary related to security background**
3 **check requirements for covered indi-**
4 **viduals when conducting a security**
5 **background check.**

6 **“(b) MISREPRESENTATION OF ADVERSE EM-**
7 **PLOYMENT DECISIONS.—The regulations re-**
8 **quired by subsection (a)(1) shall set forth that**
9 **it shall be a misrepresentation under sub-**
10 **section (a)(2)(E) to attribute an adverse em-**
11 **ployment decision, including removal or sus-**
12 **pension of the employee, to such regulations**
13 **unless the owner or operator finds, after op-**
14 **portunity for appropriate redress under the**
15 **processes provided under subsection (c)(1)**
16 **and (c)(2), that the person subject to such ad-**
17 **verse employment decision—**

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

24 **“(2) was convicted of or found not**
25 **guilty by reason of insanity of an interim**

1 **disqualifying criminal offense listed in**
2 **part 1572 of title 49, Code of Federal Reg-**
3 **ulations, within 7 years of the date on**
4 **which the covered chemical facility per-**
5 **forms the security background check;**

6 **“(3) was incarcerated for an interim**
7 **disqualifying criminal offense listed in**
8 **part 1572 of title 49, Code of Federal Reg-**
9 **ulations, and released from incarceration**
10 **within 5 years of the date that the chem-**
11 **ical facility performs the security back-**
12 **ground check;**

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

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

20 **“(c) REDRESS PROCESS.—Upon the issuance**
21 **of regulations under subsection (a), the Sec-**
22 **retary shall—**

23 **“(1) require the owner or operator to**
24 **provide an adequate and prompt redress**
25 **process for a person subject to a security**

1 background check under subsection
2 (a)(1) who is subjected to an adverse em-
3 ployment decision, including removal or
4 suspension of the employee, due to such
5 regulations that is consistent with the ap-
6 peals process established for employees
7 subject to consumer reports under the
8 Fair Credit Reporting Act (15 U.S.C. 1681
9 et seq.), as in force on the date of enact-
10 ment of this title;

11 “(2) provide an adequate and prompt
12 redress process for a person subject to a
13 security background check under sub-
14 section (a)(1) who is subjected to an ad-
15 verse employment decision, including re-
16 moval or suspension of the employee, due
17 to a determination by the Secretary
18 under subsection (b)(4), that is consistent
19 with the appeals process established
20 under section 70105(c) of title 46, United
21 States Code, including all rights to hear-
22 ings before an administrative law judge,
23 scope of review, and a review of an un-
24 classified summary of classified evidence
25 equivalent to the summary provided in

1 **part 1515 of title 49, Code of Federal Reg-**
2 **ulations;**

3 **“(3) provide an adequate and prompt**
4 **redress process for a person subject to a**
5 **security background check under sub-**
6 **section (a)(1) who is subjected to an ad-**
7 **verse employment decision, including re-**
8 **moval or suspension of the employee, due**
9 **to a violation of subsection (a)(2)(E),**
10 **which shall not preclude the exercise of**
11 **any other rights available under collec-**
12 **tive bargaining agreements or applicable**
13 **laws;**

14 **“(4) establish a reconsideration proc-**
15 **ess described in subsection (d) for a per-**
16 **son subject to an adverse employment de-**
17 **cision that was attributed by an owner or**
18 **operator to the regulations required by**
19 **subsection (a)(1);**

20 **“(5) have the authority to order an**
21 **appropriate remedy, including reinstate-**
22 **ment of the person subject to a security**
23 **background check under subsection**
24 **(a)(1), if the Secretary determines that**
25 **the adverse employment decision was**

1 **made in violation of the regulations re-**
2 **quired under subsection (a)(1) or as a re-**
3 **sult of an erroneous determination by the**
4 **Secretary under subsection (b)(4);**

5 **“(6) ensure that the redress processes**
6 **required under paragraphs (1), (2), or (3)**
7 **afford to the person a full disclosure of**
8 **any public-record event covered by sub-**
9 **section (b) that provides the basis for an**
10 **adverse employment decision; and**

11 **“(7) ensure that the person subject to**
12 **a security background check under sub-**
13 **section (a)(1) receives the person’s full**
14 **wages and benefits until all redress proc-**
15 **esses under this subsection are ex-**
16 **hausted.**

17 **“(d) RECONSIDERATION PROCESS.—**

18 **“(1) IN GENERAL.—The reconsideration**
19 **process required under subsection (c)(4)**
20 **shall—**

21 **“(A) require the Secretary to de-**
22 **termine, within 30 days after receiv-**
23 **ing a petition submitted by a person**
24 **subject to an adverse employment de-**
25 **cision that was attributed by an**

1 owner or operator to the regulations
2 required by subsection (a)(1), wheth-
3 er such person poses a security risk
4 to the covered chemical facility; and

5 “(B) include procedures con-
6 sistent with section 70105(c) of title
7 46, United States Code, including all
8 rights to hearings before an adminis-
9 trative law judge, scope of review,
10 and a review of an unclassified sum-
11 mary of classified evidence equiva-
12 lent to the summary provided in part
13 1515 of title 49, Code of Federal Regu-
14 lations.

15 “(2) DETERMINATION BY THE SEC-
16 RETARY.—In making a determination de-
17 scribed under paragraph (1)(A), the Sec-
18 retary shall—

19 “(A) give consideration to the cir-
20 cumstance of any disqualifying act or
21 offense, restitution made by the per-
22 son, Federal and State mitigation
23 remedies, and other factors from
24 which it may be concluded that the

1 person does not pose a security risk
2 to the covered chemical facility; and

3 “(B) provide his or her determina-
4 tion as to whether such person poses
5 a security risk to the covered chem-
6 ical facility to the petitioner and to
7 the owner or operator of the covered
8 chemical facility.

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

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

23 “(1) Such information may not be
24 made available to the public.
25

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

7 **“(3) Such information shall be main-**
8 **tained confidentially by the facility and**
9 **the Secretary and may be used only for**
10 **making determinations under this sec-**
11 **tion.**

12 **“(4) The Secretary may share such in-**
13 **formation with other Federal, State,**
14 **local, and tribal law enforcement agen-**
15 **cies.**

16 **“(f) SAVINGS CLAUSE.—**

17 **“(1) RIGHTS AND RESPONSIBILITIES.—**
18 **Nothing in this section shall be construed**
19 **to abridge any right or responsibility of a**
20 **person subject to a security background**
21 **check under subsection (a)(1) or an**
22 **owner or operator of a covered chemical**
23 **facility under any other Federal, State,**
24 **local, or tribal law or collective bar-**
25 **gaining agreement.**

1 **“(2) EXISTING RIGHTS.—Nothing in this**
2 **section shall be construed as creating**
3 **any new right or modifying any existing**
4 **right of an individual to appeal a deter-**
5 **mination by the Secretary as a result of a**
6 **check against a terrorist watch list.**

7 **“(g) PREEMPTION.—Nothing in this section**
8 **shall be construed to preempt, alter, or affect**
9 **a Federal, State, local, or tribal law that re-**
10 **quires criminal history background checks,**
11 **checks on the authorization of an individual**
12 **to work in the United States, or other back-**
13 **ground checks of persons subject to security**
14 **background checks under subsection (a)(1).**

15 **“(h) DEFINITION OF SECURITY BACKGROUND**
16 **CHECK.—The term ‘security background**
17 **check’ means a review at no cost to any per-**
18 **son subject to a security background check**
19 **under subsection (a)(1) of the following for**
20 **the purpose of identifying individuals who**
21 **may pose a threat to chemical facility secu-**
22 **rity, to national security, or of terrorism:**

23 **“(1) Relevant databases to verify and**
24 **validate identity.**

1 **“(2) Relevant criminal history data-**
2 **bases.**

3 **“(3) In the case of an alien (as defined**
4 **in section 101 of the Immigration and Na-**
5 **tionality Act (8 U.S.C. 1101(a)(3))), the rel-**
6 **evant databases to determine the status**
7 **of the alien under the immigration laws**
8 **of the United States.**

9 **“(4) The consolidated terrorist**
10 **watchlist.**

11 **“(5) Other relevant information or**
12 **databases, as determined by the Sec-**
13 **retary.**

14 **“(i) DEPARTMENT-CONDUCTED SECURITY**
15 **BACKGROUND CHECK.—The regulations under**
16 **subsection (a)(1) shall set forth a process by**
17 **which the Secretary, on an ongoing basis,**
18 **shall determine whether alternate security**
19 **background checks conducted by the Depart-**
20 **ment are sufficient to meet the requirements**
21 **of this section such that no additional secu-**
22 **rity background check under this section is**
23 **required for an individual for whom such a**
24 **qualifying alternate security background**
25 **check was conducted. The Secretary may re-**

1 **quire a facility to which the individual will**
2 **have unescorted access to sensitive or re-**
3 **stricted areas to submit identifying informa-**
4 **tion about the individual and the alternate se-**
5 **curity background check conducted for that**
6 **individual to the Secretary in order to enable**
7 **the Secretary to verify the validity of the al-**
8 **ternate security background check. Such reg-**
9 **ulations shall provide that no security back-**
10 **ground check under this section is required**
11 **for an individual holding a transportation se-**
12 **curity card issued under section 70105 of title**
13 **46, United States Code.**

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

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

18 **“(1) against any governmental entity**
19 **(including the United States, any other**
20 **governmental instrumentality or agency,**
21 **and any federally owned-contractor oper-**
22 **ated facility, to the extent permitted by**
23 **the eleventh amendment to the Constitu-**
24 **tion) alleged to be in violation of any**

1 order that has become effective pursuant
2 to this title; or

3 “(2) against the Secretary, for an al-
4 leged failure to perform any act or duty
5 under this title that is not discretionary
6 for the Secretary.

7 “(b) COURT OF JURISDICTION.—

8 “(1) IN GENERAL.—Any action under
9 subsection (a)(1) shall be brought in the
10 district court for the district in which the
11 alleged violation occurred. Any action
12 brought under subsection (a)(2) may be
13 brought in the district court for the dis-
14 trict in which the alleged violation oc-
15 curred or in the United States District
16 Court of the District of Columbia.

17 “(2) RELIEF.—The district court shall
18 have jurisdiction, without regard to the
19 amount in controversy or the citizenship
20 of the parties to enforce the order re-
21 ferred to in subsection (a)(1), to order
22 such governmental entity to take such ac-
23 tion as may be necessary, or both, or, in
24 an action commenced under subsection
25 (a)(2), to order the Secretary to perform

1 **the non-discretionary act or duty, and to**
2 **order any civil penalties, as appropriate,**
3 **under section 2107.**

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

9 **“(1) the Secretary; and**

10 **“(2) in the case of an action under**
11 **subsection (a)(1), any governmental enti-**
12 **ty alleged to be in violation of an order.**

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

16 **“(e) INTERVENTION.—In any action under**
17 **this section, the Secretary, if not a party, may**
18 **intervene as a matter of right.**

19 **“(f) COSTS.—The court, in issuing any final**
20 **order in any action brought pursuant to this**
21 **section, may award costs of litigation (includ-**
22 **ing reasonable attorney and expert witness**
23 **fees) to the prevailing or substantially pre-**
24 **vailing party, whenever the court determines**
25 **such an award is appropriate. The court may,**

1 if a temporary restraining order or prelimi-
2 nary injunction is sought, require the filing of
3 a bond or equivalent security in accordance
4 with the Federal Rules of Civil Procedure.

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

9 “SEC. 2117. CITIZEN PETITIONS.

10 “(a) IN GENERAL.—The Secretary shall
11 issue regulations to establish a petition proc-
12 ess for petitions described in subsection (b),
13 including—

14 “(1) the format for petitions;

15 “(2) the procedures for investigation
16 of claims;

17 “(3) the procedures for response to
18 petitions, including timelines; and

19 “(4) the procedures for de novo re-
20 view of responses to petitions by the Of-
21 fice of the Inspector General for the De-
22 partment of Homeland Security.

23 “(b) PETITIONS.—The regulations issued
24 pursuant to subsection (a) shall allow any per-
25 son to file a petition with the Secretary—

1 **“(1) identifying any person (including**
2 **the United States and any other govern-**
3 **mental instrumentality or agency, to the**
4 **extent permitted by the eleventh amend-**
5 **ment to the Constitution) alleged to be in**
6 **violation of any standard, regulation,**
7 **condition, requirement, prohibition, plan,**
8 **or order that has become effective under**
9 **this title; and**

10 **“(2) describing the alleged violation**
11 **of any standard, regulation, condition, re-**
12 **quirement, prohibition, plan, or order**
13 **that has become effective under this title**
14 **by that person.**

15 **“(c) REQUIREMENTS.—Upon issuance of**
16 **regulations under subsection (a), the Sec-**
17 **retary shall—**

18 **“(1) accept all petitions described**
19 **under subsection (b) that meet the re-**
20 **quirements of the regulations promul-**
21 **gated under subsection (a);**

22 **“(2) investigate all allegations con-**
23 **tained in accepted petitions;**

1 **“(3) determine whether enforcement**
2 **action will be taken concerning the al-**
3 **leged violation or violations;**

4 **“(4) respond to all accepted petitions**
5 **promptly and in writing;**

6 **“(5) include in all responses to peti-**
7 **tions a brief and concise statement, to**
8 **the extent permitted under section 2110,**
9 **of the allegations, the steps taken to in-**
10 **vestigate, the determination made, and**
11 **the reasons for such determination;**

12 **“(6) maintain an internal record in-**
13 **cluding all protected information related**
14 **to the determination; and**

15 **“(7) provide an opportunity for re-**
16 **view by the Department of Homeland Se-**
17 **curity Inspector General on the full**
18 **record, including protected information,**
19 **for all determinations made under such**
20 **regulations.**

21 **“(d) FINAL AGENCY ACTION.—**

22 **“(1) ONGOING ENFORCEMENT PRO-**
23 **CEEDINGS.—Any determination by the Sec-**
24 **retary to pursue enforcement action in**
25 **response to a petition under this section**

1 shall not constitute final agency action
2 because of ongoing enforcement pro-
3 ceedings.

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

10 “SEC. 2118. ANNUAL REPORT TO CONGRESS.

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

24 “(1) A qualitative discussion of how
25 covered chemical facilities, differentiated

1 by tier, have reduced the risks of chem-
2 ical facility terrorist incidents at such fa-
3 cilities, including—

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

11 “(i) in the case of the first re-
12 port under this section, before the
13 issuance of the final rule imple-
14 menting the regulations known as
15 the ‘Chemical Facility Anti-Ter-
16 rorism Standards’, issued on April
17 9, 2007; and

18 “(ii) in the case of each subse-
19 quent report, since the submittal
20 of the most recent report sub-
21 mitted under this section; and

22 “(B) any other generalized sum-
23 mary the Secretary deems appro-
24 priate to describe the measures cov-
25 ered chemical facilities are imple-

1 **menting to comply with the require-**
2 **ments of this title.**

3 **“(2) A quantitative summary of how**
4 **the covered chemical facilities, differen-**
5 **tiated by tier, are complying with the re-**
6 **quirements of this title during the period**
7 **covered by the report and how the Sec-**
8 **retary is implementing and enforcing**
9 **such requirements during such period,**
10 **including—**

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

16 **“(B) the number of covered chem-**
17 **ical facilities assigned to each tier;**

18 **“(C) the number of security vul-**
19 **nerability assessments and site secu-**
20 **rity plans submitted by covered**
21 **chemical facilities;**

22 **“(D) the number of security vul-**
23 **nerability assessments and site secu-**
24 **rity plans approved and disapproved**
25 **by the Secretary;**

1 **“(E) the number of covered chem-**
2 **ical facilities without approved secu-**
3 **rity vulnerability assessments or site**
4 **security plans;**

5 **“(F) the number of chemical fa-**
6 **cilities that have been assigned to a**
7 **different tier or are no longer regu-**
8 **lated by the Secretary due to imple-**
9 **mentation of a method to reduce the**
10 **consequences of a terrorist attack**
11 **and a description of such imple-**
12 **mented methods;**

13 **“(G) the number of orders for**
14 **compliance issued by the Secretary;**

15 **“(H) the administrative penalties**
16 **assessed by the Secretary for non-**
17 **compliance with the requirements of**
18 **this title;**

19 **“(I) the civil penalties assessed by**
20 **the court for non-compliance with the**
21 **requirements of this title;**

22 **“(J) the number of terrorist**
23 **watchlist checks conducted by the**
24 **Secretary in order to comply with the**
25 **requirements of this title, the number**

1 of appeals conducted by the Sec-
2 retary pursuant to the processes de-
3 scribed under paragraphs (2), (3) and
4 (4) of section 2115(c), aggregate infor-
5 mation regarding the time taken for
6 such appeals, aggregate information
7 regarding the manner in which such
8 appeals were resolved, and, based on
9 information provided to the Sec-
10 retary annually by each owner or op-
11 erator of a covered chemical facility,
12 the number of persons subjected to
13 adverse employment decisions that
14 were attributed by the owner or oper-
15 ator to the regulations required by
16 section 2115; and

17 “(K) any other regulatory data the
18 Secretary deems appropriate to de-
19 scribe facility compliance with the re-
20 quirements of this title and the Sec-
21 retary’s implementation of such re-
22 quirements.

23 “(b) PUBLIC AVAILABILITY.—A report sub-
24 mitted under this section shall be made pub-
25 licly available.

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

2 **“There is authorized to be appropriated to**
3 **the Secretary of Homeland Security to carry**
4 **out this title—**

5 **“(1) \$325,000,000 for fiscal year 2011,**
6 **of which \$100,000,000 shall be made avail-**
7 **able to provide funding for methods to**
8 **reduce the consequences of a terrorist at-**
9 **tack, of which up to \$3,000,000 shall be**
10 **made available for grants authorized**
11 **under section 2111(c)(1);**

12 **“(2) \$300,000,000 for fiscal year 2012,**
13 **of which \$75,000,000 shall be made avail-**
14 **able to provide funding for methods to**
15 **reduce the consequences of a terrorist at-**
16 **tack, of which up to \$3,000,000 shall be**
17 **made available for grants authorized**
18 **under section 2111(c)(1); and**

19 **“(3) \$275,000,000 for fiscal year 2013,**
20 **of which \$50,000,000 shall be made avail-**
21 **able to provide funding for methods to**
22 **reduce the consequences of a terrorist at-**
23 **tack, of which up to \$3,000,000 shall be**
24 **made available for grants authorized**
25 **under section 2111(c)(1).”.**

1 **(b) CLERICAL AMENDMENT.—**The table of
2 contents in section 1(b) of such Act is amend-
3 ed by adding at the end the following:

“TITLE XXI—REGULATION OF SECURITY PRACTICES AT
CHEMICAL FACILITIES

“Sec. 2101. Definitions.

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

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

“Sec. 2104. Site inspections.

“Sec. 2105. Records.

“Sec. 2106. Timely sharing of threat information.

“Sec. 2107. Enforcement.

“Sec. 2108. Whistleblower protections.

“Sec. 2109. Federal preemption.

“Sec. 2110. Protection of information.

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

“Sec. 2112. Applicability.

“Sec. 2113. Savings clause.

“Sec. 2114. Office of Chemical Facility Security.

“Sec. 2115. Security background checks of covered individuals at certain chemical facilities.

“Sec. 2116. Citizen enforcement.

“Sec. 2117. Citizen petitions.

“Sec. 2118. Annual report to Congress.

“Sec. 2119. Authorization of appropriations.”.

4 **(c) CONFORMING REPEAL.—**

5 **(1) REPEAL.—**The Department of
6 Homeland Security Appropriations Act,
7 2007 (Public Law 109–295) is amended by
8 striking section 550.

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

12 **(d) TREATMENT OF CFATS REGULATIONS.—**

1 **(1) SENSE OF CONGRESS.—It is the**
2 **sense of Congress that the Secretary of**
3 **Homeland Security was granted statutory**
4 **authority under section 550 of the De-**
5 **partment of Homeland Security Appro-**
6 **priations Act (Public Law 109–295) to reg-**
7 **ulate security practices at chemical facili-**
8 **ties until October 1, 2009. Pursuant to**
9 **that section the Secretary prescribed reg-**
10 **ulations known as the Chemical Facility**
11 **Anti-Terrorism Standards, or “CFATS”.**

12 **(2) USE OF CURRENT REGULATIONS.—In**
13 **carrying out the requirements of title XXI**
14 **of the Homeland Security Act of 2002, as**
15 **added by subsection (a), the Secretary**
16 **may, to the extent that the Secretary de-**
17 **termines is appropriate, use any of the**
18 **regulations known as CFATS regulations,**
19 **as in effect immediately before the date**
20 **of the enactment of this Act, that the Sec-**
21 **retary determines carry out such require-**
22 **ments.**

23 **(3) AMENDMENT OF CFATS.—The Sec-**
24 **retary shall amend the regulations**
25 **known as the Chemical Facility Anti-Ter-**

1 rorism Standards to ensure that such reg-
2 ulations fulfill the requirements of this
3 Act and the amendments made by this
4 Act, to the extent that the requirements
5 of this Act and the amendments made by
6 this Act differ from the requirements of
7 such regulations, as in effect on the date
8 of the enactment of this Act.

9 (4) USE OF TOOLS DEVELOPED FOR
10 CFATS.—In carrying out this Act and the
11 amendments made by this Act, to the ex-
12 tent determined appropriate by the Sec-
13 retary, the Secretary may use such rules
14 or tools developed for purposes of the
15 regulations known as the Chemical Facil-
16 ity Anti-Terrorism Standards, including
17 the list of substances of concern, usually
18 referred to as “Appendix A” and the
19 chemical security assessment tool (which
20 includes facility registration, a top-screen
21 questionnaire, a security vulnerability as-
22 sessment tool, a site security plan tem-
23 plate, and a chemical vulnerability infor-
24 mation repository).

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

16 **(f) CONSULTATION WITH OTHER PERSONS.—**
17 **In developing and carrying out the regula-**
18 **tions under title XXI of the Homeland Secu-**
19 **rity Act of 2002, as added by subsection (a),**
20 **the Secretary shall consult with the Adminis-**
21 **trator of the Environmental Protection Agen-**
22 **cy, and other persons, as appropriate, regard-**
23 **ing—**

24 **(1) the designation of substances of**
25 **concern;**

1 **(2) methods to reduce the con-**
2 **sequences of a terrorist attack;**

3 **(3) security at co-owned and co-oper-**
4 **ated drinking water and wastewater fa-**
5 **cilities;**

6 **(4) the treatment of protected infor-**
7 **mation; and**

8 **(5) such other matters as the Sec-**
9 **retary determines necessary.**

10 **(g) DEADLINE FOR REGULATIONS.—**

11 **(1) PROPOSED RULE.—The Secretary of**
12 **Homeland Security shall promulgate a**
13 **proposed rule to fulfill the requirements**
14 **of title XXI of the Homeland Security Act**
15 **of 2002, as added by subsection (a), not**
16 **later than 6 months after the date of the**
17 **enactment of this Act.**

18 **(2) FINAL RULE.—The Secretary shall,**
19 **after proper notice and opportunity for**
20 **public comment, promulgate a final rule**
21 **to fulfill the requirements of such title**
22 **not later than 18 months after the date of**
23 **the enactment of this Act.**

Union Calendar No. 178

111TH CONGRESS
1ST Session

H. R. 2868

[Report No. 111-205, Parts I and II]

A BILL

To amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.

OCTOBER 23, 2009

Reported from the Committee on Energy and Commerce
with an amendment

OCTOBER 23, 2009

Committee on the Judiciary discharged; committed to the
Committee of the Whole House on the State of the
Union and ordered to be printed