

.....
(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

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

Mr. THOMPSON of Mississippi (for himself, Mr. WAXMAN, Ms. JACKSON-LEE of Texas, Ms. JACKSON-LEE of Texas, Mr. MARKEY of Massachusetts, and [see ATTACHED LIST of cosponsors]) introduced the following bill; which was referred to the Committee on

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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

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

16 (3) The Secretary of Homeland Security has
17 statutory authority pursuant to section 550 of the
18 Department of Homeland Security Appropriations
19 Act, 2007 (Public Law 109–295) to regulate the se-
20 curity practices at chemical facilities that are at sig-
21 nificant risk of being terrorist targets.

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

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

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

9 (a) IN GENERAL.—The Homeland Security Act of
10 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
11 end the following new title:

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

15 **“SEC. 2101. DEFINITIONS.**

16 “In this title, the following definitions apply:

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

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

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

24 “(2) The term ‘chemical facility security per-
25 formance standards’ means risk-based standards es-

1 established by the Secretary to ensure or enhance the
2 security of a chemical facility against a chemical fa-
3 cility terrorist incident that are designed to address
4 the following:

5 “(A) Restricting the area perimeter.

6 “(B) Securing site assets.

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

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

18 “(ii) measures implementing a regu-
19 larly updated identification system that
20 checks the identification of chemical facil-
21 ity personnel and other persons seeking ac-
22 cess to the chemical facility and that dis-
23 courages abuse through established dis-
24 ciplinary 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 fa-
4 cility terrorist incident and the point at which
5 the chemical facility terrorist incident becomes
6 successful, including measures to—

7 “(i) deter vehicles from penetrating
8 the chemical facility perimeter, gaining un-
9 authorized access to restricted areas, or
10 otherwise presenting a hazard to poten-
11 tially critical 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 hard-
17 ened 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 cades; and

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

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

5 “(E) Securing and monitoring the ship-
6 ping, receipt, and storage of a substance of con-
7 cern for 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
12 by preventing unauthorized onsite or remote ac-
13 cess to critical process controls, including super-
14 visory control and data acquisition systems, dis-
15 tributed control systems, process control sys-
16 tems, industrial control systems, critical busi-
17 ness systems, and other sensitive computerized
18 systems.

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

1 local law enforcement officials, and emergency
2 response providers to ensure an effective, collec-
3 tive response to terrorist incidents.

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

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

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

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

20 “(K) Ensuring mandatory annual security
21 training, exercises, and drills of chemical facil-
22 ity personnel appropriate to their roles, respon-
23 sibilities, and access to chemicals, including
24 participation by local law enforcement, local
25 emergency response providers, appropriate su-

1 pervisory and non-supervisory facility employees
2 and their employee representatives, if any.

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

11 “(i) measures designed to verify and
12 validate identity;

13 “(ii) measures designed to check
14 criminal history;

15 “(iii) measures designed to verify and
16 validate legal authorization to work; and

17 “(iv) measures designed to identify
18 people with terrorist ties.

19 “(M) Escalating the level of protective
20 measures for periods of elevated threat.

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

1 “(O) Reporting of significant security inci-
2 dents to the Department and to appropriate
3 local law enforcement officials.

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

8 “(Q) Establishing one or more officials and
9 an organization responsible for—

10 “(i) security;

11 “(ii) compliance with the standards
12 under this paragraph;

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

18 “(iv) coordination with Federal, State,
19 local, and tribal agencies, law enforcement,
20 and emergency response providers regard-
21 ing plans and security measures for the
22 collective response to a chemical facility
23 terrorist incident.

24 “(R) Maintaining appropriate records re-
25 lating to the security of the facility, including a

1 copy of the most recent security vulnerability
2 assessment and site security plan at the chem-
3 ical facility.

4 “(S) Assessing and, as appropriate, uti-
5 lizing methods to reduce the consequences of a
6 terrorist attack.

7 “(T) Methods to recover or mitigate the
8 release of a substance of concern in the event
9 of a chemical facility terrorist incident.

10 “(U) Any additional security performance
11 standards the Secretary may specify.

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

16 “(A) the release of a substance of concern
17 from a chemical facility;

18 “(B) the theft, misappropriation, or misuse
19 of a substance of concern from a chemical facil-
20 ity; or

21 “(C) the sabotage of a chemical facility or
22 a substance of concern at a chemical facility.

23 “(4) The term ‘employee representative’ means
24 the representative of the certified or recognized bar-
25 gaining agent engaged in a collective bargaining re-

1 relationship with a private or public owner or operator
2 of a chemical facility.

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

9 “(6) The term ‘covered chemical facility’ means
10 a chemical facility that meets the criteria of section
11 2102(b)(1).

12 “(7) The term ‘environment’ means—

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

20 “(B) any other surface water, ground
21 water, drinking water supply, land surface or
22 subsurface strata, or ambient air within the
23 United States or under the jurisdiction of the
24 United States.

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

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

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

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

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

14 “(10) The term ‘release’ means any spilling,
15 leaking, pumping, pouring, emitting, emptying, dis-
16 charging, injecting, escaping, leaching, dumping, or
17 disposing into the environment (including the aban-
18 donment or discarding of barrels, containers, and
19 other closed receptacles containing any hazardous
20 substance or pollutant or contaminant), but excludes
21 (A) any release which results in exposure to persons
22 solely within a workplace, with respect to a claim
23 which such persons may assert against the employer
24 of such persons, (B) emissions from the engine ex-
25 haust of a motor vehicle, rolling stock, aircraft, ves-

1 sel, or pipeline pumping station engine, (C) release
2 of source, byproduct, or special nuclear material
3 from a nuclear incident, as those terms are defined
4 in the Atomic Energy Act of 1954 (42 U.S.C. 2011
5 et seq.), if such release is subject to requirements
6 with respect to financial protection established by
7 the Nuclear Regulatory Commission under section
8 170 of such Act (42 U.S.C. 2210), or, for the pur-
9 poses of section 104 of the Comprehensive Environ-
10 mental Response Compensation and Liability Act of
11 1980 (42 U.S.C. 9604) or any other response action,
12 any release of source byproduct, or special nuclear
13 material from any processing site designated under
14 section 102(a)(1) or 302(a) of the Uranium Mill
15 Tailings Radiation Control Act of 1978 (42 U.S.C.
16 7912(a)(1); and (D) the normal application of fer-
17 tilizer.

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

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

1 “(A) the elimination or reduction in the
2 amount of a substance of concern possessed or
3 planned to be possessed by an owner or oper-
4 ator of a covered chemical facility through the
5 use of alternate substances, formulations, or
6 processes;

7 “(B) the modification of pressures, tem-
8 peratures, or concentrations of a substance of
9 concern; and

10 “(C) the reduction or elimination of onsite
11 handling of a substance of concern through im-
12 provement of inventory control or chemical use
13 efficiency.

14 **“SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF**
15 **CHEMICAL FACILITIES.**

16 “(a) SUBSTANCES OF CONCERN.—

17 “(1) DESIGNATION BY THE SECRETARY.—The
18 Secretary may designate any chemical substance as
19 a substance of concern and establish the threshold
20 quantity for each such substance of concern.

21 “(2) MATTERS FOR CONSIDERATION.—In desig-
22 nating a chemical substance or establishing or ad-
23 justing the threshold quantity for a chemical sub-
24 stance under paragraph (1), the Secretary shall con-
25 sider the potential extent of death, injury, and seri-

1 ous adverse effects to human health, the environ-
2 ment, critical infrastructure, public health, homeland
3 security, national security, and the national economy
4 that could result from a chemical facility terrorist
5 incident.

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

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

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

15 “(B) The potential extent and likelihood of
16 death, injury, or serious adverse effects to
17 human health, the environment, critical infra-
18 structure, public health, homeland security, na-
19 tional security, and the national economy that
20 could result from a chemical facility terrorist
21 incident.

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

24 “(2) SUBMISSION OF INFORMATION.—The Sec-
25 retary may require the submission of information

1 with respect to the quantities of substances of con-
2 cern that an owner or operator of a chemical facility
3 possesses or plans to possess in order to determine
4 whether to designate a chemical facility as a covered
5 chemical facility for purposes of this title.

6 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO
7 RISK-BASED TIERS.—

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

13 “(2) PROVISION OF INFORMATION.—The Sec-
14 retary may request, and the owner or operator of a
15 covered chemical facility shall provide, any additional
16 information beyond any information required to be
17 submitted under subsection (b)(2) that may be nec-
18 essary for the Secretary to assign the chemical facil-
19 ity to the appropriate tier under paragraph (1).

20 “(3) NOTIFICATION.—Not later than 60 days
21 after the date on which the Secretary determines
22 that a chemical facility is a covered chemical facility
23 or is no longer a covered chemical facility or changes
24 the tier assignment under paragraph (1) of a cov-
25 ered chemical facility, the Secretary shall notify the

1 owner or operator of that chemical facility of that
2 determination or change together with the reason for
3 the determination or change and, upon the request
4 of the owner or operator of a covered chemical facil-
5 ity, provide to the owner or operator of the covered
6 chemical facility the following information:

7 “(A) The number of individuals at risk of
8 death, injury, or severe adverse effects to
9 human health as a result of a worst case chem-
10 ical facility terrorist incident at the covered
11 chemical facility.

12 “(B) Information related to the criticality
13 of the covered chemical facility.

14 “(C) The proximity or interrelationship of
15 the covered chemical facility to other critical in-
16 frastructure.

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

18 “(1) shall periodically review—

19 “(A) the designation of a substance of con-
20 cern and the threshold quantity under sub-
21 section (a)(1); and

22 “(B) the criteria under subsection (b)(1);
23 and

24 “(2) may at any time determine whether a
25 chemical facility is a covered chemical facility or

1 change the tier to which such a facility is assigned
2 under subsection (c)(1).

3 “(e) PROVISION OF THREAT-RELATED INFORMA-
4 TION.—In order to effectively assess the vulnerabilities to
5 a covered chemical facility, the Secretary shall provide to
6 the owner, operator, or security officer of a covered chem-
7 ical facility threat information regarding probable threats
8 to the facility and methods that could be used in a chem-
9 ical facility terrorist incident.

10 **“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND**
11 **SITE SECURITY PLANS.**

12 “(a) IN GENERAL.—

13 “(1) REQUIREMENT.—The Secretary shall—

14 “(A) establish standards, protocols, and
15 procedures for security vulnerability assess-
16 ments and site security plans to be required for
17 covered chemical facilities;

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

20 “(i) conduct an assessment of the vul-
21 nerability of the covered chemical facility
22 to a range of chemical facility terrorist in-
23 cidents, including an incident that results
24 in a worst-case release of a substance of
25 concern;

1 “(ii) prepare and implement a site se-
2 curity plan for that covered chemical facil-
3 ity that addresses the security vulnerability
4 assessment and meets the risk-based chem-
5 ical security performance standards under
6 subsection (b); and

7 “(iii) include at least one supervisory
8 and at least one non-supervisory employee
9 of the covered chemical facility, and at
10 least one employee representative, from
11 each bargaining agent at the covered
12 chemical facility, if any, in developing the
13 security vulnerability assessment and site
14 security plan required under this clause;

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

18 “(D) upon request, as necessary, and to
19 the extent that resources permit, provide tech-
20 nical assistance to a covered chemical facility
21 conducting a vulnerability assessment or site se-
22 curity plan required under this section;

23 “(E) establish specific deadlines and re-
24 quirements for the submission by a covered
25 chemical facility of information describing—

1 “(i) any change in the use by the cov-
2 ered chemical facility of more than a
3 threshold amount of any substance of con-
4 cern that may affect the requirements of
5 the chemical facility under this title; or

6 “(ii) any material modification to a
7 covered chemical facility’s operations or
8 site that may affect the security vulner-
9 ability assessment or site security plan
10 submitted by the covered chemical facility;

11 “(F) require the owner or operator of a
12 covered chemical facility to review and resubmit
13 a security vulnerability assessment or site secu-
14 rity plan not less frequently than once every 5
15 years; and

16 “(G) not later than 180 days after the
17 date on which the Secretary receives a security
18 vulnerability assessment or site security plan
19 under this title, review and approve or dis-
20 approve such assessment or plan.

21 “(2) INHERENTLY GOVERNMENTAL FUNC-
22 TION.—The approval or disapproval of a security
23 vulnerability assessment or site security plan under
24 this section is an inherently governmental function.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(e) OTHER AUTHORITIES.—

7 “(1) REGULATION OF MARITIME FACILITIES.—

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

18 “(B) ADDITIONAL MEASURES.—In the case
19 of a facility designated as a covered chemical
20 facility under this title that is also regulated
21 under section 70103(c) of title 46, United
22 States Code, the Secretary shall require the
23 owner or operator of such facility to update the
24 vulnerability assessments and facility security
25 plans required under that section, if necessary,

1 to ensure an equivalent level of security for sub-
2 stances of concern, including the requirements
3 under section 2111, in the same manner as
4 other covered chemical facilities in this title.

5 “(C) INFORMATION SHARING AND PROTEC-
6 TION.—Notwithstanding section 70103(d) of
7 title 46, United States Code, the Secretary shall
8 apply the information sharing and protection
9 requirements in section 2110 of this title to a
10 facility described in subparagraph (B).

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

18 “(E) FORMAL AGREEMENT.—The Sec-
19 retary shall require the Office of Infrastructure
20 Protection and the Coast Guard to enter into a
21 formal agreement detailing their respective roles
22 and responsibilities in carrying out the require-
23 ments of this title. Such agreement shall ensure
24 that the enforcement and compliance require-
25 ments under this title and section 70103 of title

1 46, United States Code, are not conflicting or
2 duplicative.

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

11 “(f) ROLE OF EMPLOYEES.—

12 “(1) DESCRIPTION OF ROLE REQUIRED.—As
13 appropriate, security vulnerability assessments or
14 site security plans required under this section shall
15 describe the roles or responsibilities that covered in-
16 dividuals are expected to perform to deter or re-
17 spond to a chemical facility terrorist incident.

18 “(2) TRAINING FOR EMPLOYEES.—The owner
19 or operator of a covered chemical facility required to
20 submit a site security plan under this section shall
21 annually provide each covered individual with a role
22 or responsibility referred to in paragraph (1) at the
23 facility with a minimum of 8 hours of training. Such
24 training shall—

1 “(A) include an identification and discus-
2 sion of substances of concern;

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

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

9 “(D) include a review of information pro-
10 tection requirements;

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

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

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

22 “(H) allow instruction through government
23 training programs, chemical facilities, academic
24 institutions, nonprofit organizations, industry
25 and private organizations, employee organiza-

1 tions, and other relevant entities that provide
2 such training;

3 “(I) use multiple training media and meth-
4 ods;

5 “(J) include identification and assessment
6 of methods to reduce the consequences of a ter-
7 rorist attack; and

8 “(K) include a discussion of appropriate
9 emergency response procedures.

10 **“SEC. 2104. SITE INSPECTIONS.**

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

17 “(b) INSPECTIONS AND VERIFICATIONS.—

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

22 “(2) REQUIREMENTS.—To ensure and evaluate
23 compliance with this title, including any regulations
24 or requirements adopted by the Secretary in further-
25 ance of the purposes of this title, in conducting an

1 inspection or verification under paragraph (1), the
2 Secretary shall have access to the owners, operators,
3 employees, and employee representatives, if any, of
4 a covered chemical facility.

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

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

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

15 “(A) the ability of the chemical facility to
16 prevent a chemical facility terrorist incident
17 that applicable chemical security performance
18 standards are intended to prevent;

19 “(B) the ability of the chemical facility to
20 protect against security threats that are re-
21 quired to be addressed by applicable chemical
22 security performance standards; and

23 “(C) any weaknesses in the security plan
24 of the chemical facility;

1 “(3) conducted so as not to affect the actual se-
2 curity, physical integrity, or safety of the chemical
3 facility or its employees while the inspection is con-
4 ducted; and

5 “(4) conducted—

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

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

10 **“SEC. 2105. RECORDS.**

11 “(a) REQUESTS FOR RECORDS.—

12 “(1) IN GENERAL.—In carrying out this title,
13 the Secretary may require the submission of or, on
14 presentation of credentials, may at reasonable times
15 obtain access to and copy any records, including any
16 records maintained in electronic format, necessary
17 for—

18 “(A) reviewing or analyzing a security vul-
19 nerability assessment or site security plan sub-
20 mitted under section 2103; or

21 “(B) assessing the implementation of such
22 a site security plan.

23 “(2) PROPER HANDLING OF RECORDS.—In ac-
24 cessing or copying any records under paragraph (1),
25 the Secretary shall ensure that such records are

1 handled and secured appropriately in accordance
2 with section 2110.

3 “(b) PROVISION OF RECORDS TO EMPLOYEE REP-
4 RESENTATIVES.—If a covered chemical facility has one or
5 more certified or recognized bargaining agents, the owner
6 or operator of the covered chemical facility shall provide
7 an employee representative designated by each such bar-
8 gaining agent at such facility with a copy of any security
9 vulnerability assessment or site security plan submitted.
10 Each employee representative shall ensure that any such
11 assessment or plan provided to the representative is han-
12 dled and secured appropriately in accordance with section
13 2110.

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

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

24 “(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—
25 The Secretary shall require the owner or operator of a

1 covered chemical facility to provide information concerning
2 a threat in a timely manner about any significant security
3 incident or threat to the covered chemical facility or any
4 intentional or unauthorized penetration of the physical se-
5 curity or cyber security of the covered chemical facility
6 whether successful or unsuccessful.

7 **“SEC. 2107. ENFORCEMENT.**

8 “(a) REVIEW OF SITE SECURITY PLAN.—

9 “(1) DISAPPROVAL.—The Secretary shall dis-
10 approve a security vulnerability assessment or site
11 security plan submitted under this title if the Sec-
12 retary determines that—

13 “(A) the security vulnerability assessment
14 or site security plan does not comply with the
15 standards, protocols, or procedures under sec-
16 tion 2103(a)(1)(A); or

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

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

1 “(ii) the plan fails to meet all applica-
2 ble chemical facility security performance
3 standards.

4 “(2) PROVISION OF NOTIFICATION OF DIS-
5 APPROVAL.—If the Secretary disapproves the secu-
6 rity vulnerability assessment or site security plan
7 submitted by a covered chemical facility under this
8 title or the implementation of a site security plan by
9 such a chemical facility, the Secretary shall provide
10 the owner or operator of the covered chemical facil-
11 ity a written notification of the disapproval within
12 14 days of the date on which the Secretary dis-
13 approves such assessment or plan, that—

14 “(A) includes a clear explanation of defi-
15 ciencies in the assessment, plan, or implementa-
16 tion of the plan; and

17 “(B) requires the owner or operator of the
18 covered chemical facility to revise the assess-
19 ment or plan to address any deficiencies and,
20 by such date as the Secretary determines is ap-
21 propriate, to submit to the Secretary the re-
22 vised assessment or plan.

23 “(3) ORDER FOR COMPLIANCE.—Whenever the
24 Secretary determines that the owner or operator of
25 a covered chemical facility has violated or is in viola-

1 tion of any requirement of this title or has failed or
2 is failing to address any deficiencies in the assess-
3 ment, plan, or implementation of the plan by such
4 date as the Secretary determines to be appropriate,
5 the Secretary, after providing an opportunity for the
6 owner or operator of the covered chemical facility to
7 consult with the Secretary, may—

8 “(A) issue an order assessing a civil pen-
9 alty for any past or current violation, requiring
10 compliance immediately or within a specified
11 time period, or both; or

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

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

1 cease operations under this paragraph to the owner
2 or operator of a wastewater facility.

3 “(b) PENALTIES.—

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

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

14 **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

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

21 “(b) CONFIDENTIALITY.—The Secretary shall keep
22 confidential the identity of a person that submits a report
23 under subsection (a) and any such report shall be treated
24 as protected information under section 2110 to the extent
25 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 sub-
3 mitting the report, the Secretary shall respond promptly
4 to such person to acknowledge receipt of the report.

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

11 “(e) RETALIATION PROHIBITED.—

12 “(1) PROHIBITION.—No owner or operator of a
13 covered chemical facility, profit or not-for-profit cor-
14 poration, association, or any contractor, subcon-
15 tractor or agent thereof, may discharge any em-
16 ployee or otherwise discriminate against any em-
17 ployee with respect to his compensation, terms, con-
18 ditions, or other privileges of employment because
19 the employee (or any person acting pursuant to a re-
20 quest of the 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
19 covered by this section who alleges discrimination by
20 an employer in violation of paragraph (1) may bring
21 an action governed by the rules and procedures,
22 legal burdens of proof, and remedies applicable
23 under subsections (d) through (h) of section 20109
24 of title 49, United States Code. A party may seek
25 district court review as set forth in subsection (d)(4)

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

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

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

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

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

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

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

1 **“SEC. 2109. FEDERAL PREEMPTION.**

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

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

12 “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-
13 TECTED INFORMATION.—Protected information, as de-
14 scribed in subsection (g), that is provided to the Depart-
15 ment by the owner or operator of a covered chemical facil-
16 ity or created by the Department under the requirements
17 of this title—

18 “(1) is exempt from disclosure under section
19 552 of title 5, United States Code; and

20 “(2) may not be made available pursuant to
21 any State or local law requiring disclosure of infor-
22 mation or records.

23 “(b) INFORMATION SHARING.—The Secretary shall
24 facilitate and provide standards for the appropriate shar-
25 ing of protected information with and between Federal,
26 State, local, and tribal governments, emergency response

1 providers, law enforcement officials, designated super-
2 visory and non-supervisory covered chemical facility per-
3 sonnel with security, operational, or fiduciary responsi-
4 bility for the facility, and designated facility employee rep-
5 resentatives, if any.

6 “(c) TREATMENT OF INFORMATION IN ADJUDICA-
7 TIVE PROCEEDINGS.—In a proceeding under this title,
8 protected information described in subsection (g), or re-
9 lated vulnerability or security information, shall be treated
10 in any judicial or administrative action in a manner con-
11 sistent with the treatment of sensitive security information
12 under section 525 of the Department of Homeland Secu-
13 rity Appropriations Act, 2007 (Public Law 109-295; 120
14 Stat. 1321).

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

21 “(e) SUBMISSION OF INFORMATION TO CONGRESS.—
22 Nothing in this title shall permit or authorize the with-
23 holding of information from Congress or any committee
24 or subcommittee thereof.

1 “(f) DISCLOSURE OF INDEPENDENTLY FURNISHED
2 INFORMATION.—Nothing in this title shall affect any au-
3 thority or obligation of a Federal, State, or local agency
4 to protect or disclose any record or information that the
5 Federal, State, or local government agency obtains from
6 a chemical facility under any other law.

7 “(g) PROTECTED INFORMATION.—

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

10 “(A) Security vulnerability assessments
11 and site security plans submitted to the Sec-
12 retary under this title.

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

20 “(i) Documents directly related to the
21 Secretary’s review and approval or dis-
22 approval of vulnerability assessments and
23 site security plans under this title.

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

1 “(iii) Orders, notices, or letters re-
2 garding the compliance of a covered chem-
3 ical facility with the requirements of this
4 title.

5 “(iv) Information provided to or cre-
6 ated by the Secretary under section sub-
7 section (b) or (c) of section 2102.

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

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

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

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

20 “(C) information that, if disclosed, would
21 not be detrimental to the security of a chemical
22 facility, including aggregate regulatory data
23 that the Secretary determines is appropriate to
24 describe facility compliance with the require-

1 ments of this title and the Secretary’s imple-
2 mentation of such requirements.

3 **“SEC. 2111. METHODS TO REDUCE THE CONSEQUENCES OF**
4 **A TERRORIST ATTACK.**

5 “(a) ASSESSMENT REQUIRED.—The owner or oper-
6 ator of a covered chemical facility shall include in the site
7 security plan conducted pursuant to section 2103, an as-
8 sessment of methods to reduce the consequences of a ter-
9 rorist attack on that chemical facility, including—

10 “(1) a description of the methods to reduce the
11 consequences of a terrorist attack assessed by the
12 covered chemical facility;

13 “(2) the degree to which each method to reduce
14 the consequences of a terrorist attack could, if ap-
15 plied, reduce the potential extent of death, injury, or
16 serious adverse effects to human health resulting
17 from a terrorist release;

18 “(3) the technical viability, costs, avoided costs
19 (including liabilities), savings, and applicability of
20 implementing each method to reduce the con-
21 sequences of a terrorist attack; and

22 “(4) any other information that the owner or
23 operator of the covered chemical facility considered
24 in conducting the assessment.

25 “(b) IMPLEMENTATION.—

1 “(1) IMPLEMENTATION.—The owner or oper-
2 ator of a covered chemical facility assigned to tier 1
3 or tier 2 that is required to conduct an assessment
4 under subsection (a) shall implement methods to re-
5 duce the consequences of a terrorist attack on the
6 chemical facility if the Secretary determines, based
7 on an assessment in subsection (a), that the imple-
8 mentation of such methods at the facility—

9 “(A) would significantly reduce the risk of
10 death, injury, or serious adverse effects to
11 human health resulting from a chemical facility
12 terrorist incident but would not increase the in-
13 terim storage of a substance of concern outside
14 the facility or directly result in the creation of
15 a new covered chemical facility assigned to tier1
16 or tier 2 or the elevation of an existing covered
17 chemical facility to tier 1 or tier 2;

18 “(B) can feasibly be incorporated into the
19 operation of the covered chemical facility; and

20 “(C) would not significantly and demon-
21 strably impair the ability of the owner or oper-
22 ator of the covered chemical facility to continue
23 the business of the facility at its location.

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

1 “(A) IN GENERAL.—An owner or operator
2 of a covered chemical facility who is unable to
3 comply with the Secretary’s determination
4 under paragraph (1) shall, within 60 days of re-
5 ceipt of the Secretary’s determination, provide
6 to the Secretary a written explanation that in-
7 cludes the reasons therefor.

8 “(B) REVIEW.—Not later than 60 days
9 after the receipt of an explanation submitted
10 under subparagraph (A), the Secretary, after
11 consulting with the owner or operator of the
12 covered chemical facility who submitted such
13 explanation, shall provide to the owner or oper-
14 ator a written determination of whether imple-
15 mentation shall be required pursuant to para-
16 graph (1). If the Secretary determines that im-
17 plementation is required, the facility shall be re-
18 quired to begin implementation within 180 days
19 of that determination.

20 “(c) PROVISION OF INFORMATION ON ALTERNATIVE
21 APPROACHES.—

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

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

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

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

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

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

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

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

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

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

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

7 **“SEC. 2112. APPLICABILITY.**

8 “This title shall not apply to—

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

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

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

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

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

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

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

7 **“SEC. 2113. SAVINGS CLAUSE.**

8 “(a) IN GENERAL.—Nothing in this title shall affect
9 or modify in any way any obligation or liability of any
10 person under any other Federal law, including section 112
11 of the Clean Air Act (42 U.S.C. 7412), the Federal Water
12 Pollution Control Act (33 U.S.C. 1251 et seq.), the Re-
13 source Conservation and Recovery Act of 1976 (42 U.S.C.
14 6901 et seq.), the National Environmental Policy Act of
15 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety
16 and Health Act (29 U.S.C. 651 et seq.), the National
17 Labor Relations Act (29 U.S.C. 151 et seq.), the Emer-
18 gency Planning and Community Right to Know Act of
19 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water
20 Act (42 U.S.C. 300f et seq.), the Maritime Transportation
21 Security Act of 2002 (Public Law 107–295), the Com-
22 prehensive Environmental Response, Compensation, and
23 Liability Act of 1980 (42 U.S.C. 9601 et seq.), and the
24 Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

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

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

7 “(a) IN GENERAL.—There is established in the De-
8 partment an Office of Chemical Facility Security, headed
9 by a Director, who shall be a member of the Senior Execu-
10 tive Service in accordance with subchapter VI of chapter
11 33 of title 5, United States Code, under section 5382 of
12 that title, and who shall be responsible for carrying out
13 the responsibilities of the Secretary under this title.

14 “(b) PROFESSIONAL QUALIFICATIONS.—The indi-
15 vidual selected by the Secretary as the Director of the Of-
16 fice of Chemical Facility Security shall have professional
17 qualifications and experience necessary for effectively di-
18 recting the Office of Chemical Facility Security and car-
19 rying out the requirements of this title, including a dem-
20 onstrated knowledge of physical infrastructure protection,
21 cybersecurity, chemical facility security, hazard analysis,
22 chemical process engineering, chemical process safety re-
23 views, or other such qualifications that the Secretary de-
24 termines to be necessary.

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

12 **“SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED**
13 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
14 **TIES.**

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

16 “(1) IN GENERAL.—

17 “(A) REQUIREMENT.—The Secretary shall
18 issue regulations to require covered chemical fa-
19 cilities to establish personnel surety for individ-
20 uals described in subparagraph (B) by con-
21 ducting appropriate security background checks
22 and ensuring appropriate credentials for
23 unescorted visitors and chemical facility per-
24 sonnel, including permanent and part-time per-

1 sonnel, temporary personnel, and contract per-
2 sonnel, including—

3 “(i) measures designed to verify and
4 validate identity;

5 “(ii) measures designed to check
6 criminal history;

7 “(iii) measures designed to verify and
8 validate legal authorization to work; and

9 “(iv) measures designed to identify
10 people with terrorist ties.

11 “(B) INDIVIDUALS DESCRIBED.—For pur-
12 poses of subparagraph (A), an individual de-
13 scribed in this subparagraph is an individual
14 with access to restricted areas or critical assets
15 of a covered chemical facility, including—

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

21 “(ii) a person associated with a cov-
22 ered chemical facility who is provided with
23 a copy of a security vulnerability assess-
24 ment or site security plan; or

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

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

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

12 “(B) the processes to conduct the security
13 background checks;

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

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

20 “(E) a prohibition on an owner or operator
21 of a covered chemical facility unreasonably mis-
22 representing to an employee or other relevant
23 person, including an arbiter involved in a labor
24 arbitration, the scope, application, or meaning
25 of any rules, regulations, directives, or guidance

1 issued by the Secretary related to security back-
2 ground check requirements for covered individ-
3 uals when conducting a security background
4 check.

5 “(b) REQUIREMENTS.—Upon issuance of regulations
6 under subsection (a), the Secretary shall prohibit the
7 owner or operator of a covered chemical facility from mak-
8 ing an adverse employment decision, including removal or
9 suspension of the employee, due to such regulations with
10 respect to such person unless such person—

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

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

22 “(3) was incarcerated for an interim disquali-
23 fying criminal offense listed in part 1572 of title 49,
24 Code of Federal Regulations, and released from in-

1 carceration within 5 years of the date that the chem-
2 ical facility performs the security background check;

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

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

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

10 “(1) require an adequate and prompt redress
11 process for a person subject to a security back-
12 ground check under subsection (a)(1) who is sub-
13 jected to an adverse employment decision, including
14 removal or suspension of the employee, due to such
15 regulations that is consistent with the appeals and
16 waiver processes established for applicants for trans-
17 portation workers at ports, as required by section
18 70105(c) of title 46, United States Code, including
19 all rights to hearings before an administration law
20 judge, scope of review, a review of an unclassified
21 summary of classified evidence equivalent to the
22 summary provided in part 1515 of title 49, Code of
23 Federal Regulations, and procedures for new evi-
24 dence for both appeals and waiver decisions;

1 “(2) have the authority to order an appropriate
2 remedy, including reinstatement of the person sub-
3 ject to a security background check under subsection
4 (a)(1), should the Secretary determine that the
5 owner or operator of a covered chemical facility
6 wrongfully made an adverse employment decision re-
7 garding such person pursuant to such rule, regula-
8 tion, directive, or guidance;

9 “(3) ensure that the redress process required
10 under this subsection affords to the covered indi-
11 vidual a full disclosure of any public-record event
12 covered by subsection (b) that provides the basis for
13 an adverse employment decision; and

14 “(4) ensure that the person subject to a secu-
15 rity background check under subsection (a)(1) re-
16 ceives the person’s full wages and benefits until all
17 appeals and waiver procedures are exhausted.

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

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

24 “(2) Such information may not be accessed by
25 employees of the facility except for such employees

1 who are directly involved with collecting the informa-
2 tion or conducting or evaluating security background
3 checks.

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

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

11 “(e) RIGHTS AND RESPONSIBILITIES.—Nothing in
12 this section shall be construed to abridge any right or re-
13 sponsibility of a person subject to a security background
14 check under subsection (a)(1) or an owner or operator of
15 a covered chemical facility under any other Federal, State,
16 local, or tribal law or collective bargaining agreement.

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

24 “(g) DEFINITION OF SECURITY BACKGROUND
25 CHECK.—The term ‘security background check’ means a

1 review at no cost to any person subject to a security back-
2 ground check under subsection (a)(1) of the following for
3 the purpose of identifying individuals who may pose a
4 threat to chemical facility security, to national security,
5 or of terrorism:

6 “(1) Relevant databases to verify and validate
7 identity.

8 “(2) Relevant criminal history databases.

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

14 “(4) The consolidated terrorist watchlist.

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

17 “(h) SAVINGS CLAUSE.—Nothing in this section shall
18 be construed as creating any new right or modifying any
19 existing right of an individual to appeal a determination
20 by the Secretary as a result of a check against a terrorist
21 watch list.

22 **“SEC. 2116. CITIZEN SUITS.**

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

1 “(1) against any person (including the United
2 States and any other governmental instrumentality
3 or agency, to the extent permitted by the eleventh
4 amendment to the Constitution) who is alleged to be
5 in violation of any standard, regulation, condition,
6 requirement, prohibition, or order which has become
7 effective pursuant to this title; or

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

12 “(b) COURT OF JURISDICTION.—

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

21 “(2) RELIEF.—The district court shall have ju-
22 risdiction, without regard to the amount in con-
23 troversy or the citizenship of the parties, to enforce
24 the standard, regulation, condition, requirement,
25 prohibition, or order, referred to in subsection

1 (a)(1), to order such person to take such other ac-
2 tion as may be necessary, or both, or to order the
3 Secretary to perform the act or duty referred to in
4 subsection (a)(2), as the case may be, and to apply
5 any appropriate civil penalties under section 2107.

6 “(c) ACTIONS PROHIBITED.—No action may be com-
7 menced under subsection (a)—

8 “(1) prior to 60 days after the date on which
9 the person commencing the action has given notice
10 of the alleged violation to—

11 “(A) the Secretary; and

12 “(B) in the case of an action under sub-
13 section (a), any alleged violator of such stand-
14 ard, regulation, condition, requirement, prohibi-
15 tion, or order; or

16 “(2) if the Secretary has commenced and is
17 diligently prosecuting a civil or criminal action in a
18 court of the United States or a State, or has issued
19 an administrative order, to require compliance with
20 such standard, regulation, condition, requirement,
21 prohibition, or order.

22 “(d) NOTICE.—Notice under this section shall be
23 given in such manner as the Secretary shall prescribe by
24 regulation.

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

4 “(f) COSTS.—The court, in issuing any final order
5 in any action brought pursuant to this section, may award
6 costs of litigation (including reasonable attorney and ex-
7 pert witness fees) to the prevailing or substantially pre-
8 vailing party, whenever the court determines such an
9 award is appropriate. The court may, if a temporary re-
10 straining order or preliminary injunction is sought, require
11 the filing of a bond or equivalent security in accordance
12 with the Federal Rules of Civil Procedure.

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

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

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

1 with this title. Each such report shall include the fol-
2 lowing:

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

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

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

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

23 “(B) any other generalized summary the
24 Secretary deems appropriate to describe the
25 measures covered chemical facilities are imple-

1 menting to comply with the requirements of
2 this title.

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

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

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

15 “(C) the number of security vulnerability
16 assessments and site security plans submitted
17 by covered chemical facilities;

18 “(D) the number of security vulnerability
19 assessments and site security plans approved
20 and disapproved by the Secretary;

21 “(E) the number of covered chemical facili-
22 ties without approved security vulnerability as-
23 sessments or site security plans;

24 “(F) the number of chemical facilities that
25 have been assigned to a different tier or are no

1 longer regulated by the Secretary due to imple-
2 mentation of a method to reduce the con-
3 sequences of a terrorist attack;

4 “(G) the number of orders for compliance
5 issued by the Secretary;

6 “(H) the administrative penalties assessed
7 by the Secretary for non-compliance with the
8 requirements of this title;

9 “(I) the civil penalties assessed by the
10 court for non-compliance with the requirements
11 of this title; and

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

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

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

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

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

1 “(2) \$300,000,000 for fiscal year 2012, of
2 which \$75,000,000 shall be made available to pro-
3 vide funding for methods to reduce the consequences
4 of a terrorist attack; and

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

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

“TITLE XXI—REGULATION OF SECURITY PRACTICES AT
CHEMICAL FACILITIES

“Sec. 2101. Definitions.

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

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

“Sec. 2104. Site inspections.

“Sec. 2105. Records.

“Sec. 2106. Timely sharing of threat information.

“Sec. 2107. Enforcement.

“Sec. 2108. Whistleblower protections.

“Sec. 2109. Federal preemption.

“Sec. 2110. Protection of information.

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

“Sec. 2112. Applicability.

“Sec. 2113. Savings clause.

“Sec. 2114. Office of Chemical Facility Security.

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

“Sec. 2116. Citizen suits.

“Sec. 2117. Annual report to Congress.

“Sec. 2118. Authorization of appropriations.”.

12 (c) CONFORMING REPEAL.—

13 (1) REPEAL.—The Department of Homeland
14 Security Appropriations Act, 2007 (Public Law
15 109–295) is amended by striking section 550.

1 (2) EFFECTIVE DATE.—The amendment made
2 by paragraph (1) shall take effect on October 1,
3 2009.

4 (d) TREATMENT OF CFATS REGULATIONS.—

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

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

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

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

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

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

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

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

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

21 (g) DEADLINE FOR REGULATIONS.—

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

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

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