

111TH CONGRESS
2^D SESSION

S. 3599

To enhance the security of chemical facilities and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2010

Mr. LAUTENBERG (for himself and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To enhance the security of 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 “Secure Chemical Fa-
5 cilities Act”.

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

7 (a) FINDINGS.—Congress finds the following:

8 (1) The chemical sector of the United States
9 represents a target that terrorists could exploit to
10 cause consequences, including death, injury, or seri-

1 ous adverse effects to human health, the environ-
2 ment, critical infrastructure, public health, homeland
3 security, national security, and the national econ-
4 omy.

5 (2) Chemical facilities that pose such potential
6 consequences and that are vulnerable to terrorist at-
7 tacks must be protected.

8 (3) The Secretary of Homeland Security has
9 statutory authority under section 550 of the Depart-
10 ment of Homeland Security Appropriations Act,
11 2007 (6 U.S.C. 121 note) to regulate the security
12 practices at chemical facilities that are at significant
13 risk of being terrorist targets.

14 (4) The Secretary of Homeland Security issued
15 interim final regulations entitled the “Chemical Fa-
16 cility Anti-Terrorism Standards”, which became ef-
17 fective on June 8, 2007.

18 (b) PURPOSE.—The purpose of this Act is to modify
19 and make permanent the authority of the Secretary of
20 Homeland Security to regulate security practices at chem-
21 ical 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 Act of
6 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
7 end the following:

8 **“TITLE XXI—REGULATION OF SE-**
9 **CURITY PRACTICES AT CHEM-**
10 **ICAL FACILITIES**

11 **“SEC. 2101. DEFINITIONS.**

12 “In this title:

13 “(1) ACADEMIC LABORATORY.—The term ‘aca-

14 demic laboratory’ means a facility or area owned by

15 an institution of higher education (as defined under

16 section 101 of the Higher Education Act of 1965

17 (20 U.S.C. 1001)) or a nonprofit research institute

18 or teaching hospital that has a formal affiliation

19 with an institution of higher education, including

20 photo laboratories, art studios, field laboratories, re-

21 search farms, chemical stockrooms, and preparatory

22 laboratories, where relatively small quantities of

23 chemicals and other substances, as determined by

24 the Secretary, are—

25 “(A) used on a nonproduction basis for—

26 “(i) teaching;

1 “(ii) research; or

2 “(iii) diagnostic purposes; and

3 “(B) stored and used in containers that
4 are typically manipulated by 1 person.

5 “(2) CHEMICAL FACILITY.—The term ‘chemical
6 facility’ means any facility—

7 “(A) at which the owner or operator of the
8 facility possesses or plans to possess a sub-
9 stance of concern; or

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

12 “(3) CHEMICAL FACILITY SECURITY PERFORM-
13 ANCE STANDARDS.—The term ‘chemical facility se-
14 curity performance standards’ means risk-based
15 standards established by the Secretary under section
16 2103(e).

17 “(4) CHEMICAL FACILITY TERRORIST INCI-
18 DENT.—The term ‘chemical facility terrorist inci-
19 dent’ means any act or attempted act of terrorism
20 or terrorist incident committed at, near, or against
21 a chemical facility, including such an act that in-
22 volves—

23 “(A) the release of a substance of concern
24 from a chemical facility;

1 “(B) the theft, misappropriation, or misuse
2 of a substance of concern from a chemical facil-
3 ity; or

4 “(C) the sabotage of a chemical facility or
5 a substance of concern at a chemical facility.

6 “(5) COVERED CHEMICAL FACILITY.—The term
7 ‘covered chemical facility’ means a chemical facility
8 that the Secretary determines meets the criteria
9 under section 2102(b)(1).

10 “(6) COVERED INDIVIDUAL.—The term ‘cov-
11 ered individual’ means a permanent, temporary, full-
12 time, or part-time employee of a covered chemical
13 facility or an employee of an entity with which the
14 covered chemical facility has entered into a contract
15 who is performing responsibilities at the covered
16 chemical facility pursuant to the contract.

17 “(7) EMPLOYEE REPRESENTATIVE.—The term
18 ‘employee representative’ means the representative
19 of a certified or recognized bargaining agent en-
20 gaged in a collective bargaining relationship with the
21 owner or operator of a chemical facility.

22 “(8) ENVIRONMENT.—The term ‘environment’
23 has the meaning given the term in section 101 of the
24 Comprehensive Environmental Response, Compensa-
25 tion, and Liability Act of 1980 (42 U.S.C. 9601).

1 “(9) METHOD TO REDUCE THE CONSEQUENCES
2 OF A TERRORIST ATTACK.—The term ‘method to re-
3 duce the consequences of a terrorist attack’ means
4 a measure used at a chemical facility that reduces
5 or eliminates the potential consequences of a chem-
6 ical facility terrorist incident, including—

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

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

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

20 “(10) OWNER OR OPERATOR.—The term ‘owner
21 or operator’ with respect to a facility means—

22 “(A) the person who owns the facility;

23 “(B) the person who has responsibility for
24 daily operation of the facility; and

25 “(C) the person who leases the facility.

1 “(11) PERSON.—The term ‘person’—

2 “(A) means an individual, trust, firm, joint
3 stock company, corporation (including a govern-
4 ment corporation), partnership, association,
5 State, municipality, commission, political sub-
6 division of a State, or interstate body; and

7 “(B) includes each department, agency, or
8 instrumentality of the United States.

9 “(12) PROTECTED INFORMATION.—

10 “(A) IN GENERAL.—The term ‘protected
11 information’ includes—

12 “(i) security vulnerability assessments
13 and site security plans, including any as-
14 sessment required under section 2111;

15 “(ii) portions of the following docu-
16 ments, records, orders, notices, or letters
17 that the Secretary has determined by regu-
18 lation would be detrimental to chemical fa-
19 cility security if disclosed and that are de-
20 veloped by the Secretary or the owner or
21 operator of a covered chemical facility for
22 the purposes of this title—

23 “(I) documents directly related to
24 the review and approval or dis-
25 approval of a security vulnerability as-

1 assessment or site security plan under
2 this title by the Secretary;

3 “(II) documents directly related
4 to an inspection or audit under this
5 title;

6 “(III) an order, notice, or letter
7 regarding the compliance of a covered
8 chemical facility with this title;

9 “(IV) information or a document
10 or record required to be provided to or
11 created by the Secretary under sub-
12 section (b) or (c) of section 2102; and

13 “(V) a document directly related
14 to a security drill or training exercise,
15 security threat or breach of security,
16 or maintenance, calibration, or testing
17 of security equipment; and

18 “(iii) any other information, docu-
19 ment, or record developed exclusively for
20 the purposes of this title that the Secretary
21 has determined, by rule, would, if dis-
22 closed, be detrimental to chemical facility
23 security.

24 “(B) EXCLUSIONS.—The term ‘protected
25 information’ does not include—

1 “(i) information, other than a security
2 vulnerability assessment or site security
3 plan, that the Secretary has determined,
4 by rule, to be—

5 “(I) appropriate to describe com-
6 pliance by a chemical facility with this
7 title and the implementation of this
8 title by the Secretary; and

9 “(II) not detrimental to chemical
10 facility security if disclosed; or

11 “(ii) information, whether or not also
12 contained in a security vulnerability assess-
13 ment, site security plan, or in a document,
14 record, order, notice, or letter, or portion
15 thereof, described in clause (ii) or (iii) of
16 subparagraph (A), that is obtained from
17 another source with respect to which the
18 Secretary has not made a determination
19 under either clause, including—

20 “(I) information that is required
21 to be made publicly available under
22 any other provision of law; and

23 “(II) information that a chemical
24 facility has lawfully disclosed other

1 than in a submission to the Secretary
2 under this title.

3 “(13) RELEASE.—The term ‘release’ means any
4 spilling, leaking, pumping, pouring, emitting,
5 emptying, discharging, injecting, escaping, leaching,
6 dumping, or disposing into the environment (includ-
7 ing the abandonment or discarding of barrels, con-
8 tainers, and other closed receptacles containing any
9 hazardous substance or pollutant or contaminant).

10 “(14) SECURITY VULNERABILITY ASSESS-
11 MENT.—The term ‘security vulnerability assessment’
12 means an assessment described in section
13 2103(a)(1)(B)(i).

14 “(15) SITE SECURITY PLAN.—The term ‘site
15 security plan’ means a plan described in section
16 2103(a)(1)(B)(ii).

17 “(16) SUBSTANCE OF CONCERN.—The term
18 ‘substance of concern’ means a chemical substance
19 in quantity and form that is designated by the Sec-
20 retary under section 2102(a).

21 **“SEC. 2102. RISK-BASED DESIGNATION AND RANKING OF**
22 **CHEMICAL FACILITIES.**

23 “(a) SUBSTANCES OF CONCERN.—

24 “(1) DESIGNATION BY THE SECRETARY.—The
25 Secretary may—

1 “(A) designate any chemical substance as
2 a substance of concern; and

3 “(B) establish and adjust the threshold
4 quantity for each chemical substance designated
5 under subparagraph (A).

6 “(2) MATTERS FOR CONSIDERATION.—In desig-
7 nating a chemical substance or establishing or ad-
8 justing the threshold quantity for a chemical sub-
9 stance under paragraph (1), the Secretary shall con-
10 sider the potential extent of death, injury, and seri-
11 ous adverse effects to human health, the environ-
12 ment, critical infrastructure, public health, homeland
13 security, national security, and the national economy
14 that could result from a chemical facility terrorist
15 incident involving the chemical substance.

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

17 “(1) CRITERIA FOR LIST OF FACILITIES.—The
18 Secretary may designate a chemical facility as a cov-
19 ered chemical facility if the Secretary determines the
20 chemical facility is a sufficient security risk based
21 on—

22 “(A) the potential threat or likelihood that
23 the chemical facility will be a target of a chem-
24 ical facility terrorist incident;

1 “(B) the potential extent and likelihood of
2 death, injury, or serious adverse effects to
3 human health, the environment, critical infra-
4 structure, public health, homeland security, na-
5 tional security, or the national economy that
6 could result from a chemical facility terrorist
7 incident at the chemical facility; and

8 “(C) the proximity of the chemical facility
9 to large population centers.

10 “(2) LIST.—The Secretary shall maintain a list
11 of covered chemical facilities that the Secretary des-
12 ignates under subparagraph (A).

13 “(3) SUBMISSION OF INFORMATION.—In mak-
14 ing a determination whether to designate a chemical
15 facility as a covered chemical facility under para-
16 graph (1), the Secretary may require the submission
17 of information from an owner or operator of a chem-
18 ical facility with respect to the quantities of sub-
19 stances of concern that the owner or operator pos-
20 sesses or plans to possess.

21 “(c) ASSIGNMENT OF COVERED CHEMICAL FACILI-
22 TIES TO RISK-BASED TIERS.—

23 “(1) ASSIGNMENT.—The Secretary shall assign
24 each covered chemical facility to 1 of 4 risk-based
25 tiers, as established by the Secretary, with tier 1

1 representing the highest degree of risk and tier 4
2 representing the lowest degree of risk.

3 “(2) PROVISION OF INFORMATION.—The owner
4 or operator of a covered chemical facility shall pro-
5 vide, at the request of the Secretary, any informa-
6 tion in addition to information required by the Sec-
7 retary under subsection (b)(3) that may be nec-
8 essary for the Secretary to assign the chemical facil-
9 ity to the appropriate tier under paragraph (1).

10 “(3) NOTIFICATION.—

11 “(A) IN GENERAL.—Not later than 60
12 days after the date on which the Secretary de-
13 termines that a chemical facility is a covered
14 chemical facility or is no longer a covered chem-
15 ical facility or changes the tier assignment of a
16 covered chemical facility under paragraph (1),
17 the Secretary shall notify the owner or operator
18 of the chemical facility of the determination or
19 change.

20 “(B) REQUIRED INFORMATION.—A notifi-
21 cation made by the Secretary under subpara-
22 graph (A) shall include—

23 “(i) the reason for the determination
24 or change described in subparagraph (A);
25 and

1 “(ii) upon the request of the owner or
2 operator of a covered chemical facility—

3 “(I) the number of individuals at
4 risk of death, injury, or severe adverse
5 effects to human health as a result of
6 a worst case chemical facility terrorist
7 incident at the covered chemical facil-
8 ity;

9 “(II) information relating to why
10 the covered chemical facility is consid-
11 ered critical; and

12 “(III) the proximity or inter-
13 relationship of the covered chemical
14 facility to other critical infrastructure.

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

16 “(1) shall periodically review—

17 “(A) the designation of a chemical sub-
18 stance as a substance of concern and the
19 threshold quantity for the substance under sub-
20 section (a)(1); and

21 “(B) whether a chemical facility meets the
22 criteria under subsection (b)(1); and

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

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

3 “(e) PROVISION OF THREAT-RELATED INFORMA-
4 TION.—The Secretary shall provide to the owner or oper-
5 ator or security officer of a covered chemical facility threat
6 information relating to probable threats to the covered
7 chemical facility and methods that could be used in a
8 chemical facility terrorist incident in order to assist the
9 owner or operator in effectively assessing the
10 vulnerabilities to the covered chemical facility.

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

13 “(a) IN GENERAL.—

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

15 “(A) establish standards, protocols, and
16 procedures for security vulnerability assess-
17 ments and site security plans required for cov-
18 ered chemical facilities under this paragraph;

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

21 “(i) conduct and submit to the Sec-
22 retary an assessment of the vulnerability of
23 the covered chemical facility to a range of
24 chemical facility terrorist incidents, includ-

1 ing an incident that results in a worst-case
2 release of a substance of concern;

3 “(ii) prepare, implement, and submit
4 to the Secretary a site security plan for the
5 covered chemical facility that addresses the
6 security vulnerability assessment and
7 meets the risk-based chemical security per-
8 formance standards established under sub-
9 section (c);

10 “(iii) in developing the security vul-
11 nerability assessment and site security
12 plan, include participation by—

13 “(I) not less than 1 supervisory
14 employee of the covered chemical fa-
15 cility;

16 “(II) not less than 1 non-
17 supervisory employee of the covered
18 chemical facility; and

19 “(III) not less than 1 employee
20 representative from each bargaining
21 agent at the covered chemical facility,
22 if any; and

23 “(iv) include, with the submission of
24 the security vulnerability assessment and
25 the site security plan of the covered chem-

1 ical facility, a signed statement by the
2 owner or operator of the covered chemical
3 facility that certifies that the submission is
4 provided to the Secretary with knowledge
5 of the possible penalties under section
6 2107;

7 “(C) set deadlines, by tier, for the comple-
8 tion of security vulnerability assessments and
9 site security plans;

10 “(D) upon request, as necessary, and to
11 the extent that resources permit, provide tech-
12 nical assistance to a covered chemical facility
13 conducting a security vulnerability assessment
14 or site security plan;

15 “(E) establish specific deadlines and re-
16 quirements for the submission by a covered
17 chemical facility of information describing—

18 “(i) any change in the use by the cov-
19 ered chemical facility of more than a
20 threshold amount of any substance of con-
21 cern that may affect the requirements of
22 the covered chemical facility under this
23 title; or

24 “(ii) any material modification to the
25 operations or site of the covered chemical

1 facility that may affect the security vulner-
2 ability assessment or site security plan
3 submitted by the covered chemical facility;

4 “(F) require the owner or operator of a
5 covered chemical facility to review and resubmit
6 a security vulnerability assessment or site secu-
7 rity plan not less frequently than once every 5
8 years;

9 “(G) not later than 180 days after the
10 date on which the Secretary receives a security
11 vulnerability assessment or site security plan
12 under this paragraph—

13 “(i) review and approve or disapprove
14 the security vulnerability assessment or
15 site security plan; and

16 “(ii) notify the covered chemical facil-
17 ity of the approval or disapproval; and

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

23 “(2) INHERENTLY GOVERNMENTAL FUNC-
24 TION.—The approval or disapproval of a security
25 vulnerability assessment or site security plan by the

1 Secretary under this section is an inherently govern-
2 mental function.

3 “(b) PARTICIPATION IN PREPARATION OF SECURITY
4 VULNERABILITY ASSESSMENTS OR SITE SECURITY
5 PLANS.—Any person selected by the owner or operator of
6 a covered chemical facility or by a certified or recognized
7 bargaining agent of a covered chemical facility to partici-
8 pate in the development of the security vulnerability as-
9 sessment or site security plan for the covered chemical fa-
10 cility shall be permitted to participate if the person pos-
11 sesses knowledge, experience, training, or education rel-
12 evant to the portion of the security vulnerability assess-
13 ment or site security plan on which the person is partici-
14 pating.

15 “(c) CHEMICAL FACILITY SECURITY PERFORMANCE
16 STANDARDS.—The Secretary shall establish risk-based
17 performance standards to ensure or enhance the security
18 of a covered chemical facility against a chemical facility
19 terrorist incident that are designed to address—

20 “(1) restricting the area perimeter of the cov-
21 ered chemical facility;

22 “(2) securing site assets;

23 “(3) screening and controlling access to the cov-
24 ered chemical facility and to restricted areas within
25 the covered chemical facility by screening or inspect-

1 ing individuals and vehicles as they enter, includ-
2 ing—

3 “(A) measures to deter the unauthorized
4 introduction of dangerous substances and de-
5 vices that may facilitate a chemical facility ter-
6 rorist incident or actions having serious nega-
7 tive consequences for the population sur-
8 rounding the covered chemical facility; and

9 “(B) measures implementing a regularly
10 updated identification system that checks the
11 identification of covered chemical facility per-
12 sonnel and other persons seeking access to the
13 covered chemical facility and that discourages
14 abuse through established disciplinary meas-
15 ures;

16 “(4) methods to deter, detect, and delay a
17 chemical facility terrorist incident, creating sufficient
18 time between detection of a chemical facility ter-
19 rorist incident and the point at which the chemical
20 facility terrorist incident becomes successful, includ-
21 ing measures to—

22 “(A) deter vehicles from penetrating the
23 perimeter of the covered chemical facility, gain-
24 ing unauthorized access to restricted areas, or

1 otherwise presenting a hazard to potentially
2 critical targets;

3 “(B) deter chemical facility terrorist inci-
4 dents through visible, professional, well-main-
5 tained security measures and systems, includ-
6 ing—

7 “(i) security personnel;

8 “(ii) detection systems;

9 “(iii) barriers and barricades; and

10 “(iv) hardened or reduced value tar-
11 gets;

12 “(C) detect chemical facility terrorist inci-
13 dents at early stages through—

14 “(i) counter-surveillance at the site of
15 the covered chemical facility;

16 “(ii) frustration of opportunity to ob-
17 serve potential targets;

18 “(iii) site surveillance and sensing sys-
19 tems; and

20 “(iv) barriers and barricades; and

21 “(D) delay a chemical facility terrorist in-
22 cident for a sufficient period of time so as to
23 allow appropriate response through—

24 “(i) onsite security response;

25 “(ii) barriers and barricades;

- 1 “(iii) hardened targets; and
- 2 “(iv) well-coordinated response plan-
- 3 ning;
- 4 “(5) securing and monitoring the shipping, re-
- 5 ceipt, and storage of a substance of concern for the
- 6 covered chemical facility;
- 7 “(6) deterring theft or diversion of a substance
- 8 of concern;
- 9 “(7) deterring insider sabotage;
- 10 “(8) deterring cyber sabotage, including by pre-
- 11 venting unauthorized onsite or remote access to crit-
- 12 ical process controls, including—
- 13 “(A) supervisory control and data acquisi-
- 14 tion systems;
- 15 “(B) distributed control systems;
- 16 “(C) process control systems;
- 17 “(D) industrial control systems;
- 18 “(E) critical business systems; and
- 19 “(F) other sensitive computerized systems;
- 20 “(9) developing and conducting exercises of an
- 21 internal emergency plan for owners, operators, and
- 22 covered individuals for a covered chemical facility for
- 23 responding to chemical facility terrorist incidents at
- 24 the covered chemical facility, including providing ap-
- 25 propriate information to any local emergency plan-

1 ning committee, State emergency response commis-
2 sion, local law enforcement officials, and emergency
3 response providers to ensure an effective, collective
4 response to terrorist incidents;

5 “(10) maintaining effective monitoring, commu-
6 nications, and warning systems, including—

7 “(A) measures designed to ensure that se-
8 curity systems and equipment are in good work-
9 ing order and inspected, tested, calibrated, and
10 otherwise maintained;

11 “(B) measures designed to regularly test
12 security systems, note deficiencies, correct for
13 detected deficiencies, and record results so that
14 the results are available for inspection by the
15 Secretary; and

16 “(C) measures to allow the chemical facil-
17 ity to promptly identify and respond to security
18 system and equipment failures or malfunctions;

19 “(11) ensuring mandatory annual security
20 training, exercises, and drills of covered chemical fa-
21 cility personnel appropriate to their roles, respon-
22 sibilities, and access to a substance of concern, in-
23 cluding participation by local law enforcement agen-
24 cies, and local emergency response providers, and

1 appropriate supervisory and non-supervisory facility
2 employees and employee representatives, if any;

3 “(12) performing personnel surety for individ-
4 uals with access to restricted areas or critical assets
5 by conducting appropriate background checks and
6 ensuring appropriate credentials for unescorted visi-
7 tors and covered chemical facility personnel, includ-
8 ing permanent and part-time personnel, temporary
9 personnel, and contract personnel, including—

10 “(A) measures designed to verify and vali-
11 date identity;

12 “(B) measures designed to check criminal
13 history;

14 “(C) measures designed to verify and vali-
15 date legal authorization to work; and

16 “(D) measures designed to identify individ-
17 uals with terrorist ties;

18 “(13) escalating the level of protective measures
19 for periods of elevated threat;

20 “(14) specific threats, vulnerabilities, or risks
21 identified by the Secretary for the covered chemical
22 facility;

23 “(15) reporting of significant security incidents
24 to the Secretary and to appropriate local law en-
25 forcement officials;

1 “(16) identifying, investigating, reporting, and
2 maintaining records of significant security incidents
3 and suspicious activities at or near the covered
4 chemical facility;

5 “(17) establishing 1 or more officials and an or-
6 ganization responsible for—

7 “(A) security;

8 “(B) compliance with the standards estab-
9 lished under this subsection;

10 “(C) serving as the point of contact for in-
11 cident management purposes with Federal
12 agencies, agencies of State or local government
13 (including law enforcement agencies), and emer-
14 gency response providers; and

15 “(D) coordination with Federal agencies,
16 agencies of State or local government (including
17 law enforcement agencies), and emergency re-
18 sponse providers regarding plans and security
19 measures for the collective response to a chem-
20 ical facility terrorist incident;

21 “(18) maintaining appropriate records relating
22 to the security of the covered chemical facility, in-
23 cluding a copy of the most recent security vulner-
24 ability assessment and site security plan, at the cov-
25 ered chemical facility;

1 “(19) assessing and, as appropriate, using
2 methods to reduce the consequences of a terrorist
3 attack;

4 “(20) 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 “(21) methods to mitigate the risks of exposure
8 to chemical agents by maintaining an adequate sup-
9 ply of equipment and products to provide for decon-
10 tamination procedures designed to neutralize the
11 chemical agents; and

12 “(22) any additional security performance
13 standards the Secretary may specify.

14 “(d) RISK-BASED CHEMICAL SECURITY PERFORM-
15 ANCE STANDARDS.—

16 “(1) IN GENERAL.—The Secretary shall estab-
17 lish risk-based chemical security performance stand-
18 ards for the site security plans required to be sub-
19 mitted by covered chemical facilities under sub-
20 section (a).

21 “(2) REQUIREMENTS.—In establishing the risk-
22 based chemical security performance standards
23 under paragraph (1), the Secretary shall—

24 “(A) require separate and, as appropriate,
25 increasingly stringent risk-based chemical secu-

1 rity performance standards for site security
2 plans as the level of risk associated with the
3 tier increases; and

4 “(B) permit each covered chemical facility
5 that submits a site security plan to select a
6 combination of security measures that satisfy
7 the risk-based chemical security performance
8 standards established by the Secretary under
9 this subsection.

10 “(e) COLLOCATED CHEMICAL FACILITIES.—The Sec-
11 retary may allow an owner or operator of a covered chem-
12 ical facility that is located geographically close, as deter-
13 mined by the Secretary, to another covered chemical facil-
14 ity to develop and implement coordinated security vulner-
15 ability assessments and site security plans.

16 “(f) ALTERNATE SECURITY PROGRAMS AS COMPO-
17 NENT OF SECURITY VULNERABILITY ASSESSMENT AND
18 SITE SECURITY PLAN.—

19 “(1) ACCEPTANCE OF PROGRAM.—At the re-
20 quest of an owner or operator of a covered chemical
21 facility, the Secretary may accept an alternate secu-
22 rity program submitted by the owner or operator as
23 a component of the security vulnerability assessment
24 or site security plan required under this section, if
25 the Secretary determines that the alternate security

1 program, in combination with other components of
2 the security vulnerability assessment and site secu-
3 rity plan submitted by the owner or operator of the
4 covered chemical facility—

5 “(A) meets the requirements under this
6 title and the regulations promulgated under this
7 title;

8 “(B) provides the level of security that is
9 equivalent to the level of security required
10 under this title and the regulations promulgated
11 under this title; and

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

14 “(2) SECRETARIAL REVIEW REQUIRED.—Noth-
15 ing in this subsection shall relieve the Secretary of
16 the obligation to—

17 “(A) review a security vulnerability assess-
18 ment or site security plan submitted by a cov-
19 ered chemical facility under this section; and

20 “(B) approve or disapprove the security
21 vulnerability assessment or site security plan on
22 an individual basis according to the deadlines
23 established under subsection (a).

24 “(3) OBLIGATIONS OF COVERED CHEMICAL FA-
25 CILITY UNAFFECTED.—Nothing in this subsection

1 shall relieve a covered chemical facility of the obliga-
2 tion and responsibility to comply with any require-
3 ment under this title.

4 “(4) PERSONNEL SURETY ALTERNATE SECUR-
5 RITY PROGRAM.—Upon application from a nonprofit
6 personnel surety accrediting organization acting on
7 behalf of, and with written authorization from, the
8 owner or operator of a covered chemical facility, the
9 Secretary may accept a personnel surety alternate
10 security program that—

11 “(A) meets the requirements of section
12 2115; and

13 “(B) provides for a background check
14 process that is—

15 “(i) expedited, affordable, reliable,
16 and accurate;

17 “(ii) fully protective of the rights of
18 covered individuals through procedures
19 that are consistent with the privacy protec-
20 tions available under the Fair Credit Re-
21 porting Act (15 U.S.C. 1681 et seq.); and

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

24 “(g) OTHER AUTHORITIES.—

25 “(1) REGULATION OF MARITIME FACILITIES.—

1 “(A) RISK-BASED TIERING.—The owner or
2 operator of a chemical facility required to sub-
3 mit a facility security plan under section
4 70103(c) of title 46, United States Code, shall
5 be required to submit information to the Sec-
6 retary necessary to—

7 “(i) determine whether to designate
8 the chemical facility as a covered chemical
9 facility; and

10 “(ii) assign the chemical facility to a
11 risk-based tier under section 2102 of this
12 title.

13 “(B) ADDITIONAL MEASURES.—Subject to
14 subparagraph (C), in the case of a facility for
15 which a facility security plan is required to be
16 submitted under section 70103(c) of title 46,
17 United States Code, that is designated as a cov-
18 ered chemical facility, the Commandant of the
19 Coast Guard, after consultation with the Sec-
20 retary, shall require the owner or operator of
21 the facility to update the security vulnerability
22 assessments and facility security plans required
23 under section 70103(c) of title 46, United
24 States Code, if necessary, to ensure a level of
25 security for substances of concern that is equiv-

1 alent to the level of security required by regula-
2 tions promulgated under this title, including the
3 requirements under section 2111, in the same
4 manner as other covered chemical facilities in
5 this title.

6 “(C) PERSONNEL SURETY.—

7 “(i) EXCEPTION.—The owner or oper-
8 ator of a covered chemical facility that has
9 a facility security plan approved under sec-
10 tion 70103(c) of title 46, United States
11 Code, shall not be required to update or
12 amend the facility security plan in order to
13 meet the requirements under section 2115
14 of this title.

15 “(ii) EQUIVALENT ACCESS.—An indi-
16 vidual described in section 2115(b)(1)(B)
17 who has been granted access to restricted
18 areas or critical assets by the owner or op-
19 erator of a facility for which a facility se-
20 curity plan is required to be submitted
21 under section 70103(c) of title 46, United
22 States Code, may be considered by the
23 owner or operator to have satisfied the re-
24 quirement for passing a security back-
25 ground check required under section 2115

1 for purposes of granting the individual ac-
2 cess to restricted areas or critical assets of
3 a covered chemical facility that is owned or
4 operated by the same owner or operator.

5 “(D) INFORMATION SHARING AND PRO-
6 TECTION.—Notwithstanding section 70103(d)
7 of title 46, United States Code, the Com-
8 mandant of the Coast Guard, after consultation
9 with the Secretary, shall apply the information
10 sharing and protection requirements in section
11 2110 of this title to a facility described in sub-
12 paragraph (B).

13 “(E) ENFORCEMENT.—The Secretary shall
14 establish, by rule, procedures to ensure that an
15 owner or operator of a covered chemical facility
16 that is required to update the security vulner-
17 ability assessment and facility security plan for
18 the covered chemical facility under subpara-
19 graph (B) is in compliance with this title.

20 “(F) FORMAL AGREEMENT.—The Sec-
21 retary shall—

22 “(i) require the Office of Infrastruc-
23 ture Protection and the Coast Guard to
24 enter into a formal agreement detailing the
25 respective roles and responsibilities of the

1 Office of Infrastructure Protection and the
2 Coast Guard in carrying out this title,
3 which shall ensure that the enforcement
4 and compliance requirements under this
5 title and section 70103 of title 46, United
6 States Code, are not conflicting or dupli-
7 cative; and

8 “(ii) designate the agency responsible
9 for enforcing this title with respect to cov-
10 ered chemical facilities for which facility
11 security plans are required to be submitted
12 under section 70103(c) of title 46, United
13 States Code, consistent with the require-
14 ments of subparagraphs (B) and (D).

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

23 “(h) ROLE OF EMPLOYEES.—

24 “(1) DESCRIPTION OF ROLE REQUIRED.—A site
25 security plan for an owner or operator of a covered

1 chemical facility shall describe the roles or respon-
2 sibilities that covered individuals are expected to per-
3 form to deter or respond to a chemical facility ter-
4 rorist incident.

5 “(2) ANNUAL TRAINING FOR EMPLOYEES.—

6 “(A) IN GENERAL.—The owner or operator
7 of a covered chemical facility shall annually pro-
8 vide each covered individual with a role or re-
9 sponsibility referred to in paragraph (1) at the
10 covered chemical facility with not less than 8
11 hours of training.

12 “(B) REQUIREMENTS.—The training re-
13 quired under subparagraph (A) shall, as rel-
14 evant to the role or responsibility of the covered
15 individual—

16 “(i) include an identification and dis-
17 cussion of substances of concern;

18 “(ii) include a discussion of possible
19 consequences of a chemical facility ter-
20 rorist incident;

21 “(iii) review and include exercises of
22 the site security plan of the covered chem-
23 ical facility, including any requirements for
24 differing threat levels;

1 “(iv) include a review of information
2 protection requirements;

3 “(v) include a discussion of physical
4 and cyber security equipment, systems,
5 and methods used to achieve chemical se-
6 curity performance standards;

7 “(vi) allow training with other rel-
8 evant participants, including Federal em-
9 ployees, employees of a State or local gov-
10 ernment, and emergency response pro-
11 viders, where appropriate;

12 “(vii) use national voluntary con-
13 sensus standards, chosen jointly with em-
14 ployee representatives, if any;

15 “(viii) allow instruction through gov-
16 ernment training programs, chemical facili-
17 ties, academic institutions, nonprofit orga-
18 nizations, industry and private organiza-
19 tions, employee organizations, and other
20 relevant entities that provide such training;

21 “(ix) use multiple training media and
22 methods;

23 “(x) include a discussion of appro-
24 priate emergency response procedures, in-

1 cluding procedures to mitigate the effects
2 of a chemical facility terrorist incident; and
3 “(xi) include review and discussion of
4 methods to reduce the consequences of a
5 terrorist attack that are applicable to the
6 covered chemical facility.

7 “(3) EQUIVALENT TRAINING.—An owner or op-
8 erator of a covered chemical facility may satisfy the
9 training requirement described in clause (i), (ii),
10 (iii), (iv), (v), or (x) of subparagraph (2)(B) for a
11 covered individual with roles or responsibilities under
12 paragraph (1) through training that the owner or
13 operator certifies is equivalent, in a manner pre-
14 scribed by the Secretary.

15 “(4) WORKER TRAINING GRANT PROGRAM.—
16 “(A) AUTHORITY.—The Secretary may
17 make grants to, and enter into cooperative
18 agreements with, eligible entities to provide for
19 the training and education of—

20 “(i) covered individuals with roles or
21 responsibilities described in paragraph (1);
22 and

23 “(ii) emergency response providers
24 who would respond to a chemical facility
25 terrorist incident.

1 “(B) ADMINISTRATION.—The Secretary
2 shall seek to enter into an agreement with the
3 Director of the National Institute for Environ-
4 mental Health Sciences, or with the head of an-
5 other Federal or State agency, to make and ad-
6 minister grants or cooperative agreements
7 under this paragraph.

8 “(C) USE OF FUNDS.—Amounts provided
9 under this paragraph shall be used to provide
10 for the training and education of covered indi-
11 viduals with roles or responsibilities described in
12 paragraph (1) and emergency response pro-
13 viders, including—

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

16 “(ii) other appropriate training to
17 protect nearby persons, property, critical
18 infrastructure, or the environment from
19 the effects of a chemical facility terrorist
20 incident.

21 “(D) ELIGIBLE ENTITIES.—In this para-
22 graph, the term ‘eligible entity’ means a non-
23 profit organization with demonstrated experi-
24 ence in implementing and operating successful

1 health and safety or security training programs
2 for employees or emergency response providers.

3 “(E) PRESUMPTION OF CONGRESS RELAT-
4 ING TO COMPETITIVE PROCEDURES.—

5 “(i) PRESUMPTION.—It is the pre-
6 sumption of Congress that grants awarded
7 under this paragraph will be awarded
8 using competitive procedures based on
9 merit.

10 “(ii) REPORT TO CONGRESS.—If the
11 Secretary awards grants under this para-
12 graph without using competitive proce-
13 dures, the Secretary shall submit to Con-
14 gress a report explaining why competitive
15 procedures were not used.

16 “(i) STATE, REGIONAL, OR LOCAL GOVERNMENTAL
17 ENTITIES.—A covered chemical facility may not be re-
18 quired under the law of a State or local government to
19 provide a security vulnerability assessment or site security
20 plan to any entity of a State, regional government, or local
21 government entity solely based on the requirement under
22 subsection (a) that the covered chemical facility submit a
23 security vulnerability assessment or site security plan to
24 the Secretary.

1 **“SEC. 2104. SITE INSPECTIONS.**

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

8 “(b) INSPECTIONS AND VERIFICATIONS.—

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

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

22 “(c) UNANNOUNCED INSPECTIONS.—

23 “(1) IN GENERAL.—In addition to any inspec-
24 tion conducted under subsection (b), the Secretary
25 shall conduct unannounced facility inspections of

1 covered chemical facilities assigned to tier 1 or tier
2 2 under section 2102(c)(1).

3 “(2) REQUIREMENTS.—The inspections re-
4 quired under this subsection shall be—

5 “(A) conducted without prior notice to the
6 owner, operator, or any employee of the covered
7 chemical facility;

8 “(B) designed to evaluate at the covered
9 chemical facility undergoing inspection—

10 “(i) the ability of the covered chemical
11 facility to prevent a chemical facility ter-
12 rorist incident that the site security plan of
13 the covered chemical facility is intended to
14 prevent;

15 “(ii) the ability of the covered chem-
16 ical facility to protect against security
17 threats that are required to be addressed
18 by the site security plan of the covered
19 chemical facility; and

20 “(iii) any weaknesses in the site secu-
21 rity plan of the covered chemical facility;

22 “(C) conducted so as not to affect the ac-
23 tual security, physical integrity, safety, or reg-
24 ular operations of the covered chemical facility

1 or the employees of the covered chemical facility
2 while the inspection is conducted; and

3 “(D) conducted—

4 “(i) every 2 years in the case of a cov-
5 ered chemical facility assigned to tier 1;
6 and

7 “(ii) every 4 years in the case of a
8 covered chemical facility assigned to tier 2.

9 “(d) CHEMICAL FACILITY INSPECTORS AUTHOR-
10 IZED.—During fiscal years 2011 and 2012, and subject
11 to the availability of appropriations, the Secretary shall
12 increase by not less than 100 the total number of chemical
13 facility inspectors within the Department to ensure com-
14 pliance with this title.

15 “(e) CONFIDENTIAL COMMUNICATIONS.—The Sec-
16 retary shall offer non-supervisory employees of a covered
17 chemical facility the opportunity to confidentially commu-
18 nicate information relevant to the compliance or non-
19 compliance of the employer with this title, including com-
20 pliance or noncompliance with any regulation or require-
21 ment adopted by the Secretary under this title.

22 “(f) RIGHT TO ACCOMPANY DURING PHYSICAL IN-
23 SPECTION.—If a representative of the owner or operator
24 of a covered chemical facility will accompany the Secretary
25 on a physical inspection of the covered chemical facility,

1 an employee representative of each certified or recognized
2 bargaining agent at the covered chemical facility, if any,
3 or, if none, a nonsupervisory employee, shall be offered
4 the opportunity to accompany the Secretary during the
5 physical inspection to aid in the inspection.

6 **“SEC. 2105. RECORDS.**

7 “(a) REQUEST FOR RECORDS.—For purposes of car-
8 rying out this title, the Secretary may require submission
9 of, or upon presentation of credentials and at reasonable
10 times may obtain access to and copy, any records, includ-
11 ing any records maintained in electronic format, necessary
12 for reviewing or analyzing a security vulnerability assess-
13 ment, or site security plan submitted under section 2103,
14 or for assessing the implementation of a site security plan.

15 “(b) PROPER HANDLING OF RECORDS.—The Sec-
16 retary shall ensure that any records accessed under sub-
17 section (a) are handled and secured appropriately in ac-
18 cordance with section 2110.

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

20 “(a) RESPONSIBILITIES OF SECRETARY.—Upon the
21 receipt of information concerning a threat that is relevant
22 to a certain covered chemical facility, the Secretary shall
23 provide the information in a timely manner, to the max-
24 imum extent practicable under applicable authority and in
25 the interests of national security, to—

1 “(1) the owner, operator, or security officer of
2 the covered chemical facility;

3 “(2) a representative of each recognized or cer-
4 tified bargaining agent at the covered chemical facil-
5 ity, if any; and

6 “(3) relevant authorities of State or local gov-
7 ernment, including the State Homeland Security Ad-
8 visor, if any.

9 “(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—
10 The Secretary shall require the owner or operator of a
11 covered chemical facility to provide to the Secretary in a
12 timely manner, information concerning—

13 “(1) a threat about any significant security in-
14 cident or threat to the covered chemical facility; or

15 “(2) any intentional or unauthorized penetra-
16 tion of the physical security or cyber security of the
17 covered chemical facility, whether successful or un-
18 successful.

19 **“SEC. 2107. ENFORCEMENT.**

20 “(a) REVIEW OF SECURITY VULNERABILITY ASSESS-
21 MENT AND SITE SECURITY PLAN.—

22 “(1) DISAPPROVAL.—The Secretary shall dis-
23 approve a security vulnerability assessment or site
24 security plan submitted under this title if the Sec-
25 retary determines that—

1 “(A) the security vulnerability assessment
2 or site security plan does not comply with the
3 standards, protocols, or procedures under sec-
4 tion 2103(a)(1)(A); or

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

6 “(i) the site security plan or the im-
7 plementation of the site security plan is in-
8 sufficient to address vulnerabilities identi-
9 fied in a security vulnerability assessment,
10 site inspection, or unannounced inspection
11 of the covered chemical facility; or

12 “(ii) the site security plan fails to
13 meet all applicable chemical facility secu-
14 rity performance standards.

15 “(2) NOTIFICATION OF DISAPPROVAL.—If the
16 Secretary disapproves the security vulnerability as-
17 sessment or site security plan submitted by a cov-
18 ered chemical facility under this title or the imple-
19 mentation of a site security plan by a covered chem-
20 ical facility, the Secretary shall provide the owner or
21 operator of the covered chemical facility a written
22 notification of the disapproval not later than 14 days
23 after the date on which the Secretary disapproves
24 the security vulnerability assessment or site security
25 plan, which shall—

1 “(A) include a clear explanation of defi-
2 ciencies in the security vulnerability assessment,
3 site security plan, or implementation of the site
4 security plan; and

5 “(B) require the owner or operator of the
6 covered chemical facility to—

7 “(i) revise the security vulnerability
8 assessment or site security plan to address
9 any deficiencies; and

10 “(ii) by such date as the Secretary de-
11 termines is appropriate, submit the revised
12 security vulnerability assessment or site se-
13 curity plan to the Secretary.

14 “(b) REMEDIES.—

15 “(1) ORDER FOR COMPLIANCE.—If the Sec-
16 retary determines that an owner or operator of a
17 covered chemical facility has violated or is in viola-
18 tion of any requirement of this title or has failed or
19 is failing to address any deficiencies in the security
20 vulnerability assessment, site security plan, or imple-
21 mentation of the site security plan for the covered
22 chemical facility by such date as designated by the
23 Secretary, the Secretary may—

24 “(A) after providing notice to the owner or
25 operator and an opportunity, in accordance

1 with the regulations issued under this title, for
2 the owner or operator to seek review by the De-
3 partment of the determination of the Secretary,
4 issue an order assessing an administrative pen-
5 alty of not more than \$25,000 for each day be-
6 fore, on, or after the date of the order that the
7 violation occurs or for each day after the date
8 of the order that a failure to comply continues,
9 requiring compliance immediately or within a
10 specified time period, or both; or

11 “(B) in a civil action, obtain appropriate
12 equitable relief, a civil penalty of not more than
13 \$25,000 for each day before, on, or after the
14 date of the order that the violation occurs or for
15 each day after the date of the order that a fail-
16 ure to comply continues, or both.

17 “(2) ORDER TO CEASE OPERATIONS.—If the
18 Secretary determines that an owner or operator of
19 a covered chemical facility continues to be in non-
20 compliance after an order for compliance is issued
21 under paragraph (1), the Secretary may issue an
22 order to the owner or operator to cease operations
23 at the covered chemical facility until the Secretary
24 determines the owner or operator is in compliance.

1 “(c) APPLICABILITY OF PENALTIES.—A penalty
2 under subsection (b)(1) may be imposed for any violation
3 of this title, including a violation of the whistleblower pro-
4 tections under section 2108.

5 **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

6 “(a) ESTABLISHMENT.—

7 “(1) IN GENERAL.—The Secretary shall estab-
8 lish and provide information to the public regarding
9 a process by which an individual may submit a re-
10 port to the Secretary regarding problems, defi-
11 ciencies, or vulnerabilities at a covered chemical fa-
12 cility associated with the risk of a chemical facility
13 terrorist incident.

14 “(2) CONFIDENTIALITY.—

15 “(A) IN GENERAL.—The Secretary shall
16 keep confidential the identity of any individual
17 who submits a report under this subsection.

18 “(B) COMPLIANCE WITH SECTION 2110.—A
19 report submitted under this subsection shall be
20 treated as protected information under section
21 2110 to the extent that the report does not con-
22 sist of publicly available information.

23 “(3) ACKNOWLEDGMENT OF RECEIPT.—If a re-
24 port submitted under this subsection identifies the
25 individual submitting the report, the Secretary shall

1 respond promptly to the individual to acknowledge
2 receipt of the report.

3 “(4) STEPS TO ADDRESS PROBLEMS.—The Sec-
4 retary shall—

5 “(A) review and consider the information
6 provided in a report submitted under this sub-
7 section; and

8 “(B) as necessary, take appropriate steps
9 under this title to address any problem, defi-
10 ciency, or vulnerability identified in the report.

11 “(b) RETALIATION PROHIBITED.—

12 “(1) PROHIBITION.—An owner or operator of a
13 covered chemical facility, for-profit or nonprofit cor-
14 poration, association, or any contractor, subcon-
15 tractor or agent thereof, may not discharge an em-
16 ployee or otherwise discriminate against an employee
17 with respect to compensation of the employee, terms,
18 conditions, or other privileges of employment be-
19 cause the employee (or any individual acting on be-
20 half of the employee)—

21 “(A) notified the Secretary, the owner or
22 operator of a covered chemical facility, or the
23 employer of the employee of an alleged violation
24 of this title, including notification of such an al-

1 leged violation through communications related
2 to carrying out the job duties of the employee;

3 “(B) refused to participate in any conduct
4 that the employee reasonably believes is in non-
5 compliance with a requirement under this title,
6 if the employee has identified the alleged non-
7 compliance to the employer;

8 “(C) testified before or otherwise provided
9 information relevant for Congress or for any
10 Federal or State proceeding regarding any pro-
11 vision (or proposed provision) of this title;

12 “(D) commenced, caused to be commenced,
13 or is about to commence or cause to be com-
14 menced a proceeding under this title;

15 “(E) testified, or is about to testify, in a
16 proceeding under this title; or

17 “(F) assisted or participated, or is about
18 to assist or participate, in any manner in a pro-
19 ceeding under this title or in any other action
20 to carry out the purposes of this title.

21 “(2) ENFORCEMENT ACTION.—

22 “(A) IN GENERAL.—An employee covered
23 by this section who alleges discrimination by an
24 employer in violation of paragraph (1) may
25 bring an action governed by the rules and pro-

1 cedures, legal burdens of proof, and remedies
2 applicable under subsections (d) through (h) of
3 section 20109 of title 49, United States Code.

4 “(B) DISTRICT COURT REVIEW.—An em-
5 ployee who brings an action under subpara-
6 graph (A) may seek review by a district court
7 of the United States as set forth in subsection
8 (d)(3) of section 20109 of title 49, United
9 States Code not later than 90 days after receiv-
10 ing a written final determination by the Sec-
11 retary of Labor.

12 “(3) PROHIBITED PERSONNEL PRACTICES AF-
13 FECTING THE DEPARTMENT.—

14 “(A) IN GENERAL.—Notwithstanding any
15 other provision of law, an individual holding or
16 applying for a position within the Department
17 shall be covered by—

18 “(i) paragraphs (1), (8), and (9) of
19 section 2302(b) of title 5, United States
20 Code;

21 “(ii) any provision of law imple-
22 menting paragraph (1), (8), or (9) of sec-
23 tion 2302(b) of title 5, United States
24 Code, by providing any right or remedy

1 available to an employee or applicant for
2 employment in the civil service; and

3 “(iii) any rule or regulation prescribed
4 under paragraph (1), (8), or (9) of section
5 2302(b) of title 5, United States Code.

6 “(B) RULE OF CONSTRUCTION.—Nothing
7 in this paragraph shall be construed to affect
8 any rights, apart from those referred to in sub-
9 paragraph (A), to which an individual described
10 in subparagraph (A) might otherwise be enti-
11 tled to under law.

12 **“SEC. 2109. FEDERAL PREEMPTION.**

13 “This title does not preclude or deny any right of any
14 State or unit of local government to adopt or enforce any
15 regulation, requirement, or standard of performance with
16 respect to a covered chemical facility that is more strin-
17 gent than a regulation, requirement, or standard of per-
18 formance issued under this title, or otherwise impair any
19 right or jurisdiction of any State or unit of local govern-
20 ment with respect to covered chemical facilities within the
21 State or unit of local government.

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

23 “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-
24 TECTED INFORMATION.—Protected information—

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

3 “(2) shall not be made available under the law
4 of any State or local government requiring disclosure
5 of information or records.

6 “(b) INFORMATION SHARING.—

7 “(1) IN GENERAL.—The Secretary shall pre-
8 scribe such regulations, and may issue such orders,
9 as necessary to prohibit the unauthorized disclosure
10 of protected information.

11 “(2) SHARING OF PROTECTED INFORMATION.—

12 “(A) IN GENERAL.—The regulations pre-
13 scribed under paragraph (1) shall provide
14 standards for and facilitate the appropriate
15 sharing of protected information with and be-
16 tween—

17 “(i) Federal agencies and agencies of
18 State and local governments;

19 “(ii) emergency response providers;

20 “(iii) law enforcement officials;

21 “(iv) designated supervisory and non-
22 supervisory covered chemical facility per-
23 sonnel with security, operational, or fidu-
24 ciary responsibility for the covered chem-
25 ical facility; and

1 “(v) designated employee representa-
2 tives for a covered chemical facility, if any.

3 “(B) REQUIREMENTS.—The standards re-
4 quired to be established under subparagraph
5 (A) shall include procedures for the sharing of
6 all portions of a security vulnerability assess-
7 ment or site security plan of a covered chemical
8 facility relating to the roles and responsibilities
9 of covered individuals under section 2103(h)(1)
10 with a representative of each certified or recog-
11 nized bargaining agent representing the covered
12 individuals, if any, or, if none, with not less
13 than 1 supervisory and not less than 1 non-su-
14 pervisory employee with roles or responsibilities
15 under section 2103(h)(1).

16 “(C) PENALTIES.—

17 “(i) IN GENERAL.—Protected infor-
18 mation shall not be shared except in ac-
19 cordance with the standards provided by
20 the regulations prescribed under paragraph
21 (1).

22 “(ii) KNOWING VIOLATION.—Any per-
23 son that discloses protected information in
24 knowing violation of the regulations issued
25 under paragraph (1) shall—

1 “(I) be fined under title 18,
2 United States Code, imprisoned for
3 not more than 1 year, or both; and

4 “(II) in the case of a Federal of-
5 ficeholder or employee, removed from
6 Federal office or employment.

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

14 “(d) OTHER OBLIGATIONS UNAFFECTED.—Except
15 as provided in section 2103(i), nothing in this section af-
16 fects any obligation of the owner or operator of a chemical
17 facility under any other law to submit or make available
18 information required by such other law to—

19 “(1) employees of the chemical facility;

20 “(2) employee organizations;

21 “(3) health professionals;

22 “(4) emergency response organizations; or

23 “(5) the Federal Government or a State or local
24 government.

1 considered for implementation by the covered chem-
2 ical facility;

3 “(2) the degree to which each method to reduce
4 the consequences of a terrorist attack, if already im-
5 plemented, has reduced, or, if implemented, could re-
6 duce, the potential extent of death, injury, or serious
7 adverse effects to human health resulting from a re-
8 lease of a substance of concern;

9 “(3) the technical feasibility, costs, avoided
10 costs (including liabilities), personnel implications,
11 savings, and applicability of implementing each
12 method to reduce the consequences of a terrorist at-
13 tack; and

14 “(4) any other information that the owner or
15 operator of the covered chemical facility considered
16 in conducting the assessment.

17 “(c) IMPLEMENTATION.—

18 “(1) IMPLEMENTATION.—

19 “(A) IN GENERAL.—The owner or operator
20 of a covered chemical facility that is assigned to
21 tier 1 or tier 2 because of the potential extent
22 and likelihood of death, injury, or serious ad-
23 verse effects to human health, the environment,
24 critical infrastructure, public health, homeland
25 security, national security, or the national econ-

1 omy from a release of a substance of concern
2 at the covered chemical facility shall implement
3 methods to reduce the consequences of a ter-
4 rorist attack on the covered chemical facility if
5 the Director of the Office of Chemical Facility
6 Security determines, using the assessment con-
7 ducted under subsection (b), that the implemen-
8 tation of the methods at the covered chemical
9 facility—

10 “(i)(I) would significantly reduce the
11 risk of death, injury, or serious adverse ef-
12 fects to human health resulting from a
13 chemical facility terrorist incident; and

14 “(II) would not—

15 “(aa) increase the interim stor-
16 age of a substance of concern outside
17 the covered chemical facility;

18 “(bb) directly result in the cre-
19 ation of a covered chemical facility as-
20 signed to tier 1 or tier 2 because of
21 the potential extent and likelihood of
22 death, injury, or serious adverse ef-
23 fects to human health, the environ-
24 ment, critical infrastructure, public
25 health, homeland security, national se-

1 curity, or the national economy from
2 a release of a substance of concern at
3 the covered chemical facility;

4 “(cc) result in the reassignment
5 of a covered chemical facility from tier
6 3 or tier 4 to tier 1 or tier 2 because
7 of the potential extent and likelihood
8 of death, injury, or serious adverse ef-
9 fects to human health, the environ-
10 ment, critical infrastructure, public
11 health, homeland security, national se-
12 curity, or the national economy from
13 a release of a substance of concern at
14 the covered chemical facility; and

15 “(dd) significantly increase the
16 potential extent and likelihood of
17 death, injury, or serious adverse ef-
18 fects to human health, the environ-
19 ment, critical infrastructure, public
20 health, homeland security, national se-
21 curity, or the national economy from
22 a release of a substance of concern
23 due to a terrorist attack on the trans-
24 portation infrastructure of the United
25 States;

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

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

9 “(B) WRITTEN DETERMINATION.—A de-
10 termination made by the Director of the Office
11 of Chemical Facility Security under subpara-
12 graph (A) shall be made in writing and include
13 the basis and reasons for the determination, in-
14 cluding the analysis of the Director of the as-
15 sessment by the covered chemical facility of the
16 technical feasibility, costs, avoided costs (includ-
17 ing liabilities), personnel implications, savings,
18 and applicability of implementing each method
19 to reduce the consequences of a terrorist attack.

20 “(C) MARITIME FACILITIES.—With respect
21 to a covered chemical facility for which a facil-
22 ity security plan is required under section
23 70103(c) of title 46, United States Code, a
24 written determination under subparagraph (A)
25 shall be made only after consultation with the

1 Captain of the Port for the area in which the
2 covered chemical facility is located.

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

4 “(A) IN GENERAL.—Not later than 120
5 days after receipt of a determination made by
6 the Director under paragraph (1), an owner or
7 operator of a covered chemical facility who is
8 unable to comply with the determination shall
9 provide to the Secretary a written explanation
10 that—

11 “(i) includes the reasons for non-
12 compliance; and

13 “(ii) specifies whether the inability of
14 owner or operator to comply arises under
15 clause (ii) or (iii) of paragraph (1)(A), or
16 both.

17 “(B) REVIEW.—

18 “(i) IN GENERAL.—Not later than
19 120 days after receipt of an explanation
20 submitted by an owner or operator of a
21 covered chemical facility under subpara-
22 graph (A), the Secretary, after consulting
23 with the owner or operator, as well as ex-
24 perts in the subjects of environmental
25 health and safety, security, chemistry, de-

1 sign and engineering, process controls and
2 implementation, maintenance, production
3 and operations, chemical process safety,
4 and occupational health, as appropriate,
5 shall provide to the owner or operator a
6 written determination of whether, in the
7 discretion of the Secretary, implementation
8 shall be required under paragraph (1).

9 “(ii) DETERMINATION THAT IMPLE-
10 MENTATION IS REQUIRED.—If the Sec-
11 retary determines that implementation is
12 required under clause (i), the Secretary
13 shall issue an order that establishes the
14 basis for the determination, including—

15 “(I) the findings of the relevant
16 experts;

17 “(II) the specific methods se-
18 lected for implementation; and

19 “(III) a schedule for implementa-
20 tion of the methods at the covered
21 chemical facility.

22 “(d) AGRICULTURAL SECTOR.—

23 “(1) DEFINITIONS.—In this subsection:

24 “(A) FARM SUPPLIES MERCHANT WHOLE-
25 SALER.—The term ‘farm supplies merchant

1 wholesaler' means a covered chemical facility
2 that is primarily engaged in the merchant
3 wholesale distribution of farm supplies, includ-
4 ing animal feeds, fertilizers, agricultural chemi-
5 cals, pesticides, plant seeds, and plant bulbs.

6 “(B) AGRICULTURAL END-USERS.—The
7 term ‘agricultural end-users’ means facilities
8 such as—

9 “(i) farms, including crop, fruit, nut,
10 and vegetable farms;

11 “(ii) ranches and rangeland;

12 “(iii) poultry, dairy, and equine facili-
13 ties;

14 “(iv) turfgrass growers;

15 “(v) golf courses;

16 “(vi) nurseries;

17 “(vii) floricultural operations; and

18 “(viii) public and private parks.

19 “(2) GUIDANCE FOR FARM SUPPLIES MER-
20 CHANT WHOLESALERS.—

21 “(A) IN GENERAL.—The Secretary shall
22 provide guidance and, as appropriate, tools,
23 methodologies, or computer software, to assist
24 farm supplies merchant wholesalers in com-
25 plying with this section.

1 “(B) GRANTS AUTHORIZED.—The Sec-
2 retary may award grants to farm supplies mer-
3 chant wholesalers to assist compliance with sub-
4 section (b), and in awarding grants, shall give
5 priority to farm supplies merchant wholesalers
6 that, in the discretion of the Secretary, have the
7 greatest need for the grants.

8 “(3) ASSESSMENT OF AGRICULTURAL IM-
9 PACTS.—Not later than 6 months after the date of
10 the enactment of this title, the Secretary shall sub-
11 mit an assessment of the potential impacts of com-
12 pliance with this section regarding the assessment
13 and, as appropriate, implementation of methods to
14 reduce the consequences of a terrorist attack on the
15 agricultural sector to—

16 “(A) the Committee on Homeland Security
17 and Governmental Affairs, the Committee on
18 Environment and Public Works, and the Com-
19 mittee on Agriculture, Nutrition and Forestry
20 of the Senate; and

21 “(B) the Committee on Homeland Secu-
22 rity, the Committee on Energy and Commerce,
23 and the Committee on Agriculture of the House
24 of Representatives.

1 “(4) CONSULTATION.—The assessment required
2 under paragraph (3) shall be conducted by the Sec-
3 retary in consultation with other appropriate Fed-
4 eral agencies.

5 “(5) REQUIREMENTS.—The assessment re-
6 quired under paragraph (3) shall include—

7 “(A) data on the scope of agricultural fa-
8 cilities to which this title applies, including—

9 “(i) the number and type of manufac-
10 turers, retailers, aerial commercial applica-
11 tors, and distributors of pesticide and fer-
12 tilizer required to assess methods to reduce
13 the consequences of a terrorist attack
14 under subsection (b); and

15 “(ii) the number and type of manufac-
16 turers, retailers, aerial commercial applica-
17 tors, and distributors of pesticide and fer-
18 tilizer assigned to tier 1 or tier 2 by the
19 Secretary because of the potential ex-
20 tent and likelihood of death, injury, or
21 serious adverse effects to human health,
22 the environment, critical infrastructure,
23 public health, homeland security, national
24 security, or the national economy from the

1 release of a substance of concern at the
2 covered chemical facility;

3 “(B) a survey of known methods, processes
4 or practices, other than elimination of or ces-
5 sation of manufacturing of the pesticide or fer-
6 tilizer, that manufacturers, retailers, aerial
7 commercial applicators, and distributors of pes-
8 ticide and fertilizer could use to reduce the con-
9 sequences of a terrorist attack, including an as-
10 sessment of the costs and technical feasibility of
11 each such method, process, or practice;

12 “(C) an analysis of how the assessment of
13 methods to reduce the consequences of a ter-
14 rorist attack under subsection (b) by manufac-
15 turers, retailers, aerial commercial applicators,
16 and distributors of pesticide and fertilizer, and,
17 as appropriate, the implementation of methods
18 to reduce the consequences of a terrorist attack
19 by such manufacturers, retailers, aerial com-
20 mercial applicators, and distributors of pesticide
21 and fertilizer subject to subsection (c), are like-
22 ly to impact agricultural end-users; and

23 “(D) recommendations for how to mitigate
24 any adverse impacts identified under subpara-
25 graph (C).

1 “(e) SMALL COVERED CHEMICAL FACILITIES.—

2 “(1) DEFINITION.—For purposes of this sub-
3 section, the term ‘small covered chemical facility’
4 means a covered chemical facility that—

5 “(A) has fewer than 350 employees em-
6 ployed at the covered chemical facility; and

7 “(B) is not a branch or subsidiary of an-
8 other entity.

9 “(2) GUIDANCE FOR SMALL COVERED CHEM-
10 ICAL FACILITIES.—The Secretary may provide guid-
11 ance and, as appropriate, tools, methodologies, or
12 computer software, to assist small covered chemical
13 facilities in complying with this section.

14 “(3) LIMITATION ON IMPLEMENTATION OF
15 METHODS.—The Secretary may not require a small
16 covered chemical facility to implement methods to
17 reduce the consequences of a terrorist attack under
18 subsection (e) unless the Secretary determines that
19 the implementation of the methods at the small cov-
20 ered chemical facility do not significantly and de-
21 monstrably impair the ability of the owner or oper-
22 ator of the covered chemical facility to continue the
23 business of the covered chemical facility at the loca-
24 tion of the covered chemical facility.

1 “(4) ASSESSMENT OF IMPACTS ON SMALL COV-
2 ERED CHEMICAL FACILITIES.—

3 “(A) IN GENERAL.—Not later than 6
4 months after the date of the enactment of this
5 title, the Secretary shall submit an assessment
6 of the potential effects on small covered chem-
7 ical facilities of compliance with this section re-
8 garding the assessment and, as appropriate, im-
9 plementation of methods to reduce the con-
10 sequences of a terrorist attack to—

11 “(i) the Committee on Environment
12 and Public Works and the Committee on
13 Homeland Security and Governmental Af-
14 fairs of the Senate; and

15 “(ii) the Committee on Energy and
16 Commerce and the Committee on Home-
17 land Security of the House of Representa-
18 tives.

19 “(B) REQUIREMENTS.—The assessment
20 required under subparagraph (A) shall in-
21 clude—

22 “(i) data on the scope of small cov-
23 ered chemical facilities to which this title
24 applies, including—

1 “(I) the number and type of
2 small covered chemical facilities that
3 are required to assess methods to re-
4 duce the consequences of a terrorist
5 attack under subsection (b); and

6 “(II) the number and type of
7 small covered chemical facilities as-
8 signed to tier 1 or tier 2 under section
9 2102(c)(1) by the Secretary because
10 of the potential extent and likelihood
11 of death, injury, or serious adverse ef-
12 fects to human health, the environ-
13 ment, critical infrastructure, public
14 health, homeland security, national se-
15 curity, or the national economy from
16 the release of a substance of concern
17 at the covered chemical facility; and

18 “(ii) a discussion of how the Secretary
19 plans to implement paragraph (3).

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

22 “(1) INFORMATION ON METHODS TO REDUCE
23 CONSEQUENCES OF A TERRORIST ACT.—

1 “(A) IN GENERAL.—Not later than 1 year
2 after the date of enactment of the Secure
3 Chemical Facilities Act, the Secretary shall—

4 “(i) make available information on the
5 use and availability of methods to reduce
6 the consequences of a chemical facility ter-
7 rorist attack; and

8 “(ii) periodically update the informa-
9 tion described in clause (i).

10 “(B) INFORMATION TO BE INCLUDED.—
11 The information made available under subpara-
12 graph (A) may include information relating
13 to—

14 “(i) general and specific types of the
15 methods to reduce the consequences of a
16 chemical facility terrorist attack;

17 “(ii) combinations of chemical
18 sources, substances of concern, and haz-
19 ardous processes or conditions for which
20 the methods described in clause (i) could
21 be appropriate;

22 “(iii) the availability of specific meth-
23 ods to reduce the consequences of a ter-
24 rorist attack;

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

3 “(v) emerging technologies that could
4 be transferred from research models or
5 prototypes to practical applications;

6 “(vi) the availability of technical as-
7 sistance and best practices; and

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

10 “(2) SECTOR REPORTS ON METHODS TO RE-
11 DUCE CONSEQUENCES OF A TERRORIST ACT.—

12 “(A) IN GENERAL.—The Secretary shall
13 periodically make available industry sector re-
14 ports on methods to reduce the consequences of
15 a terrorist attack that are in use at chemical fa-
16 cilities.

17 “(B) CONTENTS OF REPORT.—The reports
18 described in subparagraph (A) shall include, by
19 industry sector or appropriate groupings of in-
20 dustry sectors, elements of feasible technologies,
21 techniques, or other means described in sub-
22 section (b) that are—

23 “(i) identified by covered chemical fa-
24 cilities under subsection (b) and submitted
25 to the Secretary under section 2103; or

1 “(ii) identified by the Secretary from
2 relevant information sources.

3 “(C) PUBLIC AVAILABILITY.—Information
4 made available under this paragraph—

5 “(i) shall not identify any specific
6 chemical facility;

7 “(ii) shall be made available in ac-
8 cordance with section 2110; and

9 “(iii) shall not disclose any propri-
10 etary information.

11 “(g) FUNDING FOR METHODS TO REDUCE THE CON-
12 SEQUENCES OF A TERRORIST ATTACK.—The Secretary
13 shall make grants to covered chemical facilities, with pri-
14 ority given to the highest risk covered chemical facilities,
15 as determined by the Secretary, to supplement a portion
16 of the costs of implementing methods to reduce the con-
17 sequences of a terrorist attack.

18 **“SEC. 2112. APPLICABILITY.**

19 “‘This title shall not apply to—

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

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

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

3 “(A) is subject to regulation by the Nu-
4 clear Regulatory Commission (referred to in
5 this paragraph as the ‘Commission’) or a State
6 that has entered into an agreement with the
7 Commission under section 274 b. of the Atomic
8 Energy Act of 1954 (42 U.S.C. 2021 b.);

9 “(B) has had security controls imposed by
10 the Commission or State, whichever has the
11 regulatory authority, on the entire facility or
12 the specified portion of the chemical facility;
13 and

14 “(C) has been designated by the Commis-
15 sion, after consultation with the State, if any,
16 that regulates the facility, and the Secretary, as
17 excluded from the application of this title;

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

21 “(5) any treatment works, as defined in section
22 212 of the Federal Water Pollution Control Act (33
23 U.S.C. 1292).

1 **“SEC. 2113. SAVINGS CLAUSE.**

2 “(a) IN GENERAL.—Nothing in this title shall affect
3 or modify in any way any obligation or liability of any
4 person under any other Federal law, including—

5 “(1) section 112 of the Clean Air Act (42
6 U.S.C. 7412);

7 “(2) the Federal Water Pollution Control Act
8 (33 U.S.C. 1251 et seq.);

9 “(3) the Resource Conservation and Recovery
10 Act of 1976 (42 U.S.C. 6901 et seq.);

11 “(4) the National Environmental Policy Act of
12 1969 (42 U.S.C. 4321 et seq.);

13 “(5) the Occupational Safety and Health Act
14 (29 U.S.C. 651 et seq.);

15 “(6) the National Labor Relations Act (29
16 U.S.C. 151 et seq.);

17 “(7) the Emergency Planning and Community
18 Right to Know Act of 1986 (42 U.S.C. 11001 et
19 seq.);

20 “(8) the Safe Drinking Water Act (42 U.S.C.
21 300f et seq.);

22 “(9) the Maritime Transportation Security Act
23 of 2002 (Public Law 107–295);

24 “(10) the Comprehensive Environmental Re-
25 sponse, Compensation, and Liability Act of 1980 (42
26 U.S.C. 9601 et seq.);

1 “(11) the Toxic Substances Control Act (15
2 U.S.C. 2601 et seq.);

3 “(12) the Pollution Prevention Act of 1990 (42
4 U.S.C. 13101 et seq.); and

5 “(13) the Fair Credit Reporting Act (15 U.S.C.
6 1681 et seq.).

7 “(b) STATE AND LOCAL GOVERNMENTS.—Nothing in
8 this title shall preclude or deny the right of any State or
9 unit of local government to adopt or enforce any regula-
10 tion, requirement, or standard of performance relating to
11 environmental protection, health, or safety.

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

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

16 “(a) IN GENERAL.—There is established in the De-
17 partment an Office of Chemical Facility Security, headed
18 by a Director, who shall—

19 “(1) be a member of the Senior Executive Serv-
20 ice under section 5382 of title 5, United States
21 Code; and

22 “(2) be responsible for carrying out the respon-
23 sibilities of the Secretary under this title.

24 “(b) PROFESSIONAL QUALIFICATIONS.—The indi-
25 vidual selected by the Secretary as the Director of the Of-

1 fice of Chemical Facility Security shall have professional
2 qualifications and experience necessary for effectively di-
3 recting the Office of Chemical Facility Security and car-
4 rying out this title, including—

5 “(1) a demonstrated knowledge of—

6 “(A) physical infrastructure protection;

7 “(B) cybersecurity;

8 “(C) chemical facility security;

9 “(D) hazard analysis;

10 “(E) chemical process engineering;

11 “(F) chemical process safety reviews; or

12 “(2) other such qualifications that the Sec-
13 retary determines to be necessary.

14 “(c) SELECTION PROCESS.—The Secretary shall—

15 “(1) make a reasonable effort to select an indi-
16 vidual to serve as the Director of the Office of
17 Chemical Facility Security from among a group of
18 candidates that is diverse with respect to race, eth-
19 nicity, age, gender, and disability characteristics;
20 and

21 “(2) submit information on the selection proc-
22 ess, including details on efforts to assure diversity
23 among the candidates, to—

24 “(A) the Committee on Homeland Security
25 and Governmental Affairs of the Senate; and

1 “(B) the Committee on Homeland Security
2 and the Committee on Energy and Commerce
3 of the House of Representatives.

4 “(d) OUTREACH SUPPORT.—

5 “(1) POINT OF CONTACT.—The Secretary shall
6 designate a point of contact for the Administrator of
7 the Environmental Protection Agency, and the head
8 of any other agency designated by the Secretary,
9 with respect to the requirements under this title.

10 “(2) OUTREACH.—The Secretary shall, as ap-
11 propriate, and in accordance with this title, inform
12 State emergency response commissions appointed
13 under section 301(a) of the Emergency Planning
14 and Community Right-To-Know Act of 1986 (42
15 U.S.C. 11001), local emergency planning committees
16 appointed under section 301(c) of that Act, and any
17 other entity designated by the Secretary of the find-
18 ings of the Office of Chemical Facility Security so
19 that the commissions and committees may update
20 emergency planning and training procedures.

21 **“SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED**
22 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
23 **TIES.**

24 “(a) DEFINITION OF SECURITY BACKGROUND
25 CHECK.—In this section, the term ‘security background

1 check' means a review, at no cost to an individual subject
2 to the review, under subsection (b)(1) to identify individ-
3 uals who may pose a threat to chemical facility security,
4 to national security, or of terrorism of—

5 “(1) relevant databases to verify and validate
6 identity;

7 “(2) relevant criminal history databases;

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

13 “(4) the consolidated terrorist watchlist; and

14 “(5) any other relevant information or data-
15 bases, as determined by the Secretary.

16 “(b) REGULATIONS ISSUED BY THE SECRETARY.—

17 “(1) IN GENERAL.—

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

1 time personnel, temporary personnel, and con-
2 tract personnel, 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 in-
10 dividuals with terrorist ties.

11 “(B) INDIVIDUALS DESCRIBED.—For pur-
12 poses of subparagraph (A), an individual de-
13 scribed in this subparagraph is—

14 “(i) a covered individual who—

15 “(I) has unescorted access to re-
16 stricted areas or critical assets; or

17 “(II) is provided with a copy of a
18 security vulnerability assessment or
19 site security plan;

20 “(ii) an individual associated with a
21 covered chemical facility, including any
22 designated employee representative, who is
23 provided with a copy of a security vulner-
24 ability assessment or site security plan; or

1 “(iii) an individual who is determined
2 by the Secretary to require a security
3 background check based on chemical facil-
4 ity security performance standards.

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

7 “(A) the scope of the security background
8 checks, including—

9 “(i) a list of offenses that are reason-
10 ably related to terrorism at a chemical fa-
11 cility and therefore disqualify, on an in-
12 terim or permanent basis, the individual
13 from working at the covered chemical facil-
14 ity;

15 “(ii) the time period after which an
16 interim disqualifying offense is no longer a
17 disqualification, including applying the
18 time periods described in part 1572 of title
19 49, Code of Federal Regulations, or any
20 successor thereto, where applicable to the
21 offenses identified in clause (i); and

22 “(iii) the time period covered for each
23 person subject to a security background
24 check under paragraph (1);

1 “(B) the processes to conduct the security
2 background checks;

3 “(C) the necessary biographical informa-
4 tion and other data required in order to con-
5 duct the security background checks;

6 “(D) a redress process for an adversely af-
7 fected individual consistent with subsections (c)
8 and (d);

9 “(E) a prohibition on an owner or operator
10 of a covered chemical facility misrepresenting to
11 an employee or other relevant individual, includ-
12 ing an arbiter involved in a labor arbitration,
13 the scope, application, or meaning of any rules,
14 regulations, directives, or guidance issued by
15 the Secretary related to security background
16 check requirements for covered individuals when
17 conducting a security background check; and

18 “(F) a requirement that any adverse em-
19 ployment decision based on a finding in sub-
20 paragraph (C), of a person subject to a security
21 background check under subsection (a)(1), shall
22 be based on accurate and up-to-date informa-
23 tion.

24 “(c) MISREPRESENTATION OF ADVERSE EMPLOY-
25 MENT DECISIONS.—The regulations required under sub-

1 section (b)(1) shall provide that it shall be a misrepresenta-
2 tion under subsection (b)(2)(E) to attribute an adverse
3 employment decision, including removal or suspension of
4 an employee, to the regulations unless the owner or oper-
5 ator of a covered chemical facility determines, after oppor-
6 tunity for appropriate redress under the processes pro-
7 vided under subsection (d)(1), that the individual subject
8 to the adverse employment decision—

9 “(1)(A) meets the requirements for interim or
10 permanent disqualifying offenses reasonably related
11 to terrorism at a covered chemical facility promul-
12 gated under subsection (b)(1);

13 “(B) is on the consolidated terrorist watchlist;
14 or

15 “(C) is determined, as a result of the security
16 background check, not to be legally authorized to
17 work in the United States; and

18 “(2) has been informed of the basis for the de-
19 cision and the full rights of the individual to the
20 prompt appeals and reconsideration procedures
21 under subsection (d) before an adverse employment
22 action is taken.

23 “(d) REDRESS PROCESSES.—The regulations issued
24 by the Secretary under subsection (b) shall—

1 “(1) provide an adequate and prompt redress
2 process for an individual subject to a security back-
3 ground check under subsection (b)(1) who is sub-
4 jected to an adverse employment decision, including
5 removal or suspension of the individual, due to a de-
6 termination by the employer under subsection (c),
7 that is consistent with the appeals process estab-
8 lished under section 70105(e) of title 46, United
9 States Code, including all rights to—

10 “(A) hearings before an administrative law
11 judge;

12 “(B) scope of review; and

13 “(C) a review of an unclassified summary
14 of classified evidence equivalent to the summary
15 provided in part 1515 of title 49, Code of Fed-
16 eral Regulations;

17 “(2) provide an adequate and prompt redress
18 process for an individual subject to a security back-
19 ground check under subsection (b)(1) who is sub-
20 jected to an adverse employment decision, including
21 removal or suspension of the individual, due to a vio-
22 lation of subsection (b)(2)(E), which shall not pre-
23 clude the exercise of any other rights available under
24 collective bargaining agreements or applicable laws;

1 “(3) establish a reconsideration process de-
2 scribed in subsection (e) for an individual subject to
3 an adverse employment decision that was attributed
4 by an owner or operator to the regulations required
5 under subsection (b)(1);

6 “(4) include the authority to order an appro-
7 priate remedy, including reinstatement of the indi-
8 vidual subject to a security background check under
9 subsection (b)(1), if the Secretary determines that
10 the adverse employment decision was made—

11 “(A) in violation of the regulations re-
12 quired under subsection (b)(1);

13 “(B) as a result of an erroneous deter-
14 mination by the Secretary to place the indi-
15 vidual on the consolidated terrorist watchlist; or

16 “(C) as a result of an erroneous deter-
17 mination by the owner or operator of a covered
18 chemical facility under subsection (c);

19 “(5) ensure that the redress processes required
20 under paragraphs (1) and (2) afford to the indi-
21 vidual a full disclosure of any public-record event
22 covered under subsection (c) that provides the basis
23 for an adverse employment decision; and

24 “(6) ensure that the individual subject to a se-
25 curity background check under subsection (b)(1) re-

1 ceives the full wages and benefits due to the indi-
2 vidual until all redress processes under this sub-
3 section are exhausted.

4 “(e) RECONSIDERATION PROCESS.—

5 “(1) IN GENERAL.—The reconsideration proc-
6 ess required under subsection (d)(3) shall—

7 “(A) require the Secretary to determine,
8 within 30 days after receiving a petition sub-
9 mitted by an individual subject to an adverse
10 employment decision that was attributed by an
11 owner or operator to the regulations required
12 under subsection (b)(1), whether the individual
13 poses a security risk to the covered chemical fa-
14 cility; and

15 “(B) include procedures consistent with
16 section 70105(c) of title 46, United States
17 Code, including all rights to—

18 “(i) hearings before an administrative
19 law judge;

20 “(ii) scope of review; and

21 “(iii) a review of an unclassified sum-
22 mary of classified evidence equivalent to
23 the summary provided in part 1515 of title
24 49, Code of Federal Regulations.

1 “(2) DETERMINATION BY THE SECRETARY.—In
2 making a determination described under paragraph
3 (1)(A), the Secretary shall—

4 “(A) give consideration to the cir-
5 cumstance of any disqualifying act or offense,
6 restitution made by the individual, Federal and
7 State mitigation remedies, and other factors
8 from which it may be concluded that the indi-
9 vidual does not pose a security risk to the cov-
10 ered chemical facility; and

11 “(B) determine whether the individual
12 poses a security risk to the covered chemical fa-
13 cility to the petitioner and to the owner or oper-
14 ator of the covered chemical facility.

15 “(3) OWNER OR OPERATOR RECONSIDER-
16 ATION.—If the Secretary determines under para-
17 graph (1)(A) that the individual does not pose a se-
18 curity risk to the covered chemical facility, it shall
19 be a prohibited misrepresentation for the owner or
20 operator of the covered chemical facility to continue
21 to attribute the adverse employment decision to the
22 regulations under subsection (b)(1).

23 “(f) RESTRICTIONS ON USE AND MAINTENANCE OF
24 INFORMATION.—Information obtained under this section

1 by the Secretary or the owner or operator of a covered
2 chemical facility—

3 “(1) may not be made available to the public;

4 “(2) may not be accessed by an employee of the
5 covered chemical facility, except for an employee who
6 is directly involved with collecting the information or
7 conducting or evaluating security background
8 checks;

9 “(3) shall be maintained confidentially by the
10 covered chemical facility and the Secretary;

11 “(4) shall be used only for making determina-
12 tions under this section; and

13 “(5) may be shared by the Secretary with other
14 Federal law enforcement agencies and law enforce-
15 ment agencies of State and local governments.

16 “(g) SAVINGS CLAUSE.—

17 “(1) RIGHTS AND RESPONSIBILITIES.—Nothing
18 in this section shall be construed to abridge any
19 right or responsibility of an individual subject to a
20 security background check under subsection (b)(1)
21 or an owner or operator of a covered chemical facil-
22 ity under any other Federal law, the law of a State
23 or local government, or a collective bargaining agree-
24 ment.

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

6 “(h) PREEMPTION.—Nothing in this section shall be
7 construed to preempt, alter, or affect a Federal law or the
8 law of a State local or local government that requires
9 criminal history background checks, checks on the author-
10 ization of an individual to work in the United States, or
11 other background checks of individuals subject to security
12 background checks under subsection (b)(1).

13 “(i) DEPARTMENT-CONDUCTED SECURITY BACK-
14 GROUND CHECK.—

15 “(1) IN GENERAL.—The regulations under sub-
16 section (b)(1) shall set forth a process by which the
17 Secretary, on an ongoing basis, shall determine
18 whether alternate security background checks con-
19 ducted by the Secretary are sufficient to meet the
20 requirements under this section such that no addi-
21 tional security background check under this section
22 is required for an individual for whom the qualifying
23 alternate security background check was conducted.

24 “(2) SUBMISSION OF INFORMATION FOR
25 VERIFICATION.—The Secretary may require the

1 owner or operator of a covered chemical facility to
2 which an individual will have unescorted access to
3 sensitive or restricted areas to submit identifying in-
4 formation about the individual and the alternate se-
5 curity background check conducted for the individual
6 to the Secretary in order to enable the Secretary to
7 verify the validity of the alternate security back-
8 ground check.

9 “(3) DETERMINATION OF EXEMPTION FROM
10 SECURITY BACKGROUND CHECK.—

11 “(A) IN GENERAL.—The Secretary shall
12 determine whether a security background check
13 under this section is required for an individual
14 holding a transportation security card issued
15 under section 70105 of title 46, United States
16 Code.

17 “(B) REGULATIONS.—If the Secretary de-
18 termines under subparagraph (A) that no back-
19 ground check is required for an individual hold-
20 ing a transportation security card issued under
21 section 70105 of title 46, United States Code,
22 the Secretary shall include the determination in
23 the regulations required under subsection
24 (b)(1).

1 “(j) **TERMINATION OF EMPLOYMENT.**—If, as the re-
2 sult of a security background check, an owner or operator
3 of a covered chemical facility finds that a covered indi-
4 vidual is not legally authorized to work in the United
5 States, the owner or operator shall cease to employ the
6 covered individual, subject to the appropriate redress proc-
7 esses available to the individual under this section.

8 **“SEC. 2116. CITIZEN ENFORCEMENT.**

9 “(a) **IN GENERAL.**—Except as provided in subsection
10 (c), a person may bring a civil action—

11 “(1) against any governmental entity (including
12 the United States and any other governmental in-
13 strumentality or agency, to the extent permitted by
14 the eleventh amendment to the Constitution of the
15 United States, and any federally owned-contractor
16 operated facility) alleged to be in violation of any
17 order that has become effective under this title; or

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

21 “(b) **COURT OF JURISDICTION.**—

22 “(1) **IN GENERAL.**—Any action under sub-
23 section (a)(1) shall be brought in the district court
24 of the United States for the district in which the al-
25 leged violation occurred.

1 “(2) ACTION AGAINST THE SECRETARY.—Any
2 action brought under subsection (a)(2) may be
3 brought in the district court of the United States for
4 the district in which the alleged violation occurred or
5 in the United States District Court for the District
6 of Columbia.

7 “(3) RELIEF.—A district court of the United
8 States may, without regard to the amount in con-
9 troversy or the citizenship of the parties—

10 “(A) enforce an order described in sub-
11 section (a)(1);

12 “(B) order a governmental entity to take
13 such action as may be necessary to enforce an
14 order described in subsection (a)(1); and

15 “(C) in a civil action brought under sub-
16 section (a)(2), order the Secretary to perform a
17 non-discretionary act or duty under this title,
18 and impose civil penalties, as appropriate,
19 under section 2107.

20 “(c) ACTIONS PROHIBITED.—A civil action may not
21 be filed under subsection (a) before 60 days after the date
22 on which the person commencing the action has given no-
23 tice of the alleged violation to—

24 “(1) the Secretary; and

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

4 “(d) NOTICE.—Notice under this section shall be
5 given in such manner as the Secretary shall prescribe by
6 regulation.

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

10 “(f) COSTS.—If determined appropriate by the court,
11 the court may award the costs of litigation (including rea-
12 sonable attorney and expert witness fees) to the prevailing
13 or substantially prevailing party in a civil action under
14 subsection (a).

15 “(g) BOND.—The court may, if a temporary restrain-
16 ing order or preliminary injunction is sought, require the
17 filing of a bond or equivalent security in accordance with
18 the Federal Rules of Civil Procedure.

19 “(h) OTHER RIGHTS PRESERVED.—Nothing in this
20 section shall restrict any right which any person (or class
21 of persons) may have under any statute or common law.

22 **“SEC. 2117. CITIZEN PETITIONS.**

23 “(a) REGULATIONS.—The Secretary shall issue regu-
24 lations to establish a citizen petition process for petitions
25 described in subsection (b), which shall establish—

1 “(1) the format for the petitions;

2 “(2) the procedure for investigation of the peti-
3 tions;

4 “(3) the procedure for response to the petitions,
5 including timelines;

6 “(4) the procedure for referral to and review by
7 the Office of the Inspector General of the Depart-
8 ment without deference to a determination made by
9 the Secretary with respect to the petition; and

10 “(5) the procedure for rejection or acceptance
11 by the Secretary of the recommendation of the Of-
12 fice of the Inspector General.

13 “(b) PETITIONS.—The regulations promulgated
14 under subsection (a) shall allow any person to file a peti-
15 tion with the Secretary—

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

24 “(2) describing the alleged violation of any
25 standard, regulation, condition, requirement, prohi-

1 bition, plan, or order that has become effective
2 under this title by the person described in paragraph
3 (1).

4 “(c) REQUIREMENTS.—After the Secretary issues
5 regulations under subsection (a), the Secretary shall—

6 “(1) accept all petitions described under sub-
7 section (b) that meet the requirements of the regula-
8 tions issued under subsection (a);

9 “(2) investigate all allegations contained in ac-
10 cepted petitions;

11 “(3) determine whether enforcement action will
12 be taken concerning the alleged violation or viola-
13 tions;

14 “(4) respond to all accepted petitions promptly
15 and in writing;

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

21 “(6) maintain an internal record including all
22 protected information relating to the determination;

23 “(7) with respect to any petition for which the
24 Secretary has not made a timely response or the re-
25 sponse of the Secretary is unsatisfactory to the peti-

1 retary respond to such a report later than 30 days after
2 receipt of the report.

3 “(c) STEPS TO ADDRESS PROBLEMS.—The Sec-
4 retary shall—

5 “(1) review each report received through the
6 notification system established under subsection (a);
7 and

8 “(2) as necessary, take appropriate enforcement
9 action under section 2107.

10 “(d) FEEDBACK REQUIRED.—Upon request, the Sec-
11 retary shall provide to the individual who reported the sus-
12 pected security deficiency or noncompliance through the
13 notification system established under subsection (a) a
14 written response that includes the findings of the Sec-
15 retary with respect to the report submitted by the indi-
16 vidual and what, if any, compliance action was taken in
17 response to the report.

18 “(e) INSPECTOR GENERAL REPORT REQUIRED.—

19 “(1) IN GENERAL.—The Inspector General of
20 the Department shall submit to the Committee on
21 Homeland Security and Governmental Affairs and
22 the Committee on Environment and Public Works of
23 the Senate and the Committee on Homeland Secu-
24 rity and the Committee on Energy and Commerce of
25 the House of Representatives an annual report on

1 the reports received under the notification system es-
2 tablished under subsection (a) and the disposition of
3 the reports by the Secretary.

4 “(2) CONFIDENTIAL INFORMATION.—The re-
5 port required under paragraph (1) shall be made
6 publically available, except for protected information
7 as determined by the Inspector General, which shall
8 be submitted to Congress in an appendix to the re-
9 port.

10 **“SEC. 2119. EMERGENCY RESPONSE CAPACITY STUDY.**

11 “(a) ASSESSMENT AND REPORT.—

12 “(1) IN GENERAL.—The Secretary shall assess
13 and submit a report to Congress on the emergency
14 response resources that would be required in order
15 to feasibly respond to a worst-case chemical facility
16 terrorist incident, including worst-case release of a
17 substance of concern.

18 “(2) CONTENTS.—The report required under
19 paragraph (1) shall describe—

20 “(A) the availability of fire, police, medical,
21 and other response personnel;

22 “(B) the sufficiency of emergency response
23 facilities, equipment, and supplies;

24 “(C) the logistical feasibility of evacuation;

1 “(D) the carrying capacity of impeded and
2 unimpeded evacuation routes;

3 “(E) the protective capacity of structures;

4 “(F) the availability of health and environ-
5 mental hazard detection, identification, moni-
6 toring, cleanup, and decontamination;

7 “(G) the surge capacities of hospitals and
8 other health care facilities;

9 “(H) the feasibility of warning persons
10 within vulnerable areas prior to impact and the
11 capacity of community notification and warning
12 systems;

13 “(I) the protection of vulnerable popu-
14 lations and immobilized populations (including
15 in schools, day care centers, nursing homes,
16 hospitals, sports arenas, shopping malls, homes,
17 and businesses);

18 “(J) any additional relevant planning pro-
19 visions identified in section 303(c) of the Emer-
20 gency Planning and Community Right to Know
21 Act (42 U.S.C. 11003(c));

22 “(K) the necessary funding, organization
23 (including interagency coordination), personnel,
24 training, equipment, exercises, transportation,
25 community notification, medical, infrastructure,

1 and other elements to appropriately address any
2 deficiencies in response capacities; and

3 “(L) any additional factors affecting the
4 feasibility of appropriately responding to a
5 worst-case chemical facility terrorist incident,
6 including worst-case release of a substance of
7 concern.

8 “(3) PUBLIC AVAILABILITY.—The report re-
9 quired under this section shall be made publicly
10 available, and shall not include protected informa-
11 tion.

12 “(4) CONFIDENTIAL INFORMATION.—The Sec-
13 retary shall submit any protected information relat-
14 ing to the report required under paragraph (1) to
15 Congress in an appendix to the report.

16 **“SEC. 2120. ANNUAL REPORT TO CONGRESS.**

17 “(a) ANNUAL REPORT.—Not later than 1 year after
18 the date of enactment of this title, and annually thereafter
19 for 10 years, the Secretary shall submit a report on
20 progress in achieving compliance with this title to—

21 “(1) the Committee on Homeland Security and
22 Governmental Affairs and the Committee on Envi-
23 ronment and Public Works of the Senate; and

1 “(2) the Committee on Homeland Security and
2 the Committee on Energy and Commerce of the
3 House of Representatives.

4 “(b) REQUIREMENT.—Each report required under
5 subsection (a) shall include—

6 “(1) a qualitative discussion of how covered
7 chemical facilities, differentiated by tier, have re-
8 duced the risks of chemical facility terrorist inci-
9 dents at the covered chemical facilities, including—

10 “(A) a generalized summary of measures
11 implemented by covered chemical facilities in
12 order to meet each risk-based chemical facility
13 performance standard established under this
14 title, and the measures that the covered chem-
15 ical facilities already had in place—

16 “(i) in the case of the first report
17 under this section, before the issuance of
18 the final rule implementing the regulations
19 known as the ‘Chemical Facility Anti-Ter-
20 rorism Standards’, issued on April 9,
21 2007; and

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

1 “(B) any other generalized summary the
2 Secretary determines appropriate to describe
3 the measures covered chemical facilities are im-
4 plementing to comply with this title; and

5 “(2) a quantitative summary of how the covered
6 chemical facilities, differentiated by tier, are com-
7 plying with this title during the period covered by
8 the report and how the Secretary is implementing
9 and enforcing this title during the period covered by
10 the report, including—

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

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

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

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

23 “(E) the number of covered chemical facili-
24 ties without an approved security vulnerability
25 assessment or site security plan;

1 “(F) the number of chemical facilities that
2 have been assigned to a different tier or are no
3 longer designated as a covered chemical facility
4 by the Secretary due to implementation of a
5 method to reduce the consequences of a ter-
6 rorist attack and a description of the method;

7 “(G) the number of orders for compliance
8 issued by the Secretary;

9 “(H) the administrative penalties assessed
10 by the Secretary for noncompliance with this
11 title;

12 “(I) the civil penalties assessed by the
13 court for noncompliance with this title;

14 “(J) the number of terrorist watchlist
15 checks conducted by the Secretary in order to
16 comply with this title;

17 “(K) the number of appeals conducted by
18 the Secretary and the number of petitions for
19 reconsideration considered by the Secretary
20 under the processes established under sub-
21 sections (d) and (e) of section 2115, including
22 those appeals and reconsiderations addressing
23 the processes described under section 2115(c);

1 “(L) aggregate information regarding the
2 time taken for the appeals described in sub-
3 paragraph (K);

4 “(M) aggregate information regarding the
5 manner in which the appeals described in sub-
6 paragraph (K) were resolved;

7 “(N) based on information provided to the
8 Secretary annually by each owner or operator of
9 a covered chemical facility, the number of indi-
10 viduals subjected to adverse employment deci-
11 sions that were attributed by the owner or oper-
12 ator to the regulations required under section
13 2115(b)(1); and

14 “(O) any other data the Secretary deter-
15 mines appropriate to describe compliance with
16 this title by chemical facilities and the imple-
17 mentation of this title by the Secretary.

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

20 **“SEC. 2121. AUTHORIZATION OF APPROPRIATIONS.**

21 “There is authorized to be appropriated to the Sec-
22 retary to carry out this title—

23 “(1) \$300,000,000 for each of fiscal years 2011
24 and 2012, of which \$150,000,000 shall be made
25 available for grants under section 2111(g) for meth-

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

4 (2) EFFECTIVE DATE.—The amendment made
5 by paragraph (1) shall take effect on the date of the
6 enactment of this Act.

7 (d) REGULATIONS.—

8 (1) DEADLINES.—

9 (A) PROPOSED RULES.—Not later than 6
10 months after the date of enactment of this Act,
11 the Secretary of Homeland Security shall issue
12 proposed rules to carry out title XXI of the
13 Homeland Security Act of 2002, as added by
14 subsection (a).

15 (B) FINAL RULES.—Not later than 18
16 months after the date of enactment of this Act,
17 the Secretary of Homeland Security shall issue
18 final rules to carry out title XXI of the Home-
19 land Security Act of 2002, as added by sub-
20 section (a).

21 (2) CONSULTATION.—In developing and imple-
22 menting the rules issued under paragraph (1), the
23 Secretary of Homeland Security shall consult with
24 the Administrator of the Environmental Protection

1 Agency, and other persons, as appropriate, regard-
2 ing—

3 (A) the designation of substances of con-
4 cern;

5 (B) methods to reduce the consequences of
6 a terrorist attack;

7 (C) security at drinking water facilities
8 and wastewater treatment works;

9 (D) the treatment of protected informa-
10 tion; and

11 (E) any other matters the Secretary deter-
12 mines necessary.

13 (3) SENSE OF CONGRESS REGARDING CFATS.—

14 It is the sense of Congress that—

15 (A) the Secretary of Homeland Security
16 was granted statutory authority under section
17 550 of the Department of Homeland Security
18 Appropriations Act (Public Law 109–295) to
19 regulate security practices at chemical facilities
20 until October 1, 2009; and

21 (B) under section 550 of the Department
22 of Homeland Security Appropriations Act (Pub-
23 lic Law 109–295), the Secretary prescribed reg-
24 ulations known as the Chemical Facility Anti-

1 Terrorism Standards (referred to in this section
2 as “CFATS regulations”).

3 (4) INTERIM USE AND AMENDMENT OF
4 CFATS.—Until the final rules issued under para-
5 graph (1) take effect, in carrying out title XXI of
6 the Homeland Security Act of 2002, as added by
7 subsection (a), the Secretary may, to the extent the
8 Secretary determines appropriate—

9 (A) continue to carry out the CFATS reg-
10 ulations, as in effect on the day before the date
11 of the enactment of this Act;

12 (B) amend the CFATS regulations as may
13 be necessary to ensure that the CFATS regula-
14 tions are consistent with this Act and the
15 amendments made by this Act; and

16 (C) continue using any tools developed for
17 purposes of the CFATS regulations, including
18 the list of substances of concern, usually re-
19 ferred to as “Appendix A”, and the chemical se-
20 curity assessment tool (which includes facility
21 registration, a top-screen questionnaire, a secu-
22 rity vulnerability assessment tool, a site security
23 plan template, and a chemical vulnerability in-
24 formation repository).

1 (5) UPDATE OF FACILITY PLANS ASSESSMENTS
2 AND PLANS PREPARED UNDER CFATS.—The owner
3 or operator of a covered chemical facility that, before
4 the effective date of the final regulations issued
5 under paragraph (1), submits a security vulner-
6 ability assessment or site security plan under the
7 CFATS regulations, shall be required to update or
8 amend the security vulnerability assessment and site
9 security plan of the facility to reflect any additional
10 requirements under this Act or the amendments
11 made by this Act, according to a timeline established
12 by the Secretary.

13 (e) REVIEW OF DESIGNATION OF SODIUM
14 FLUOROACETATE AS A SUBSTANCE OF CONCERN.—The
15 Secretary of Homeland Security shall review the designa-
16 tion of sodium fluoroacetate as a substance of concern
17 under section 2102(d) of the Homeland Security Act of
18 2002, as added by subsection (a), by the earlier of—

19 (1) the date of the first periodic review con-
20 ducted under section 2102(d) of the Homeland Se-
21 curity Act of 2002; and

22 (2) the date that is 1 year after the date of en-
23 actment of this Act.

○