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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Secure Chemical Facilities Act”.

SECTION 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The chemical sector of the United States represents a target that terrorists could exploit to cause consequences, including death, injury, or seri-
ous adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy.

(2) Chemical facilities that pose such potential consequences and that are vulnerable to terrorist attacks must be protected.

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

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

(b) PURPOSE.—The purpose of this Act is to modify and make permanent the authority of the Secretary of Homeland Security to regulate security practices at chemical facilities.
SEC. 3. EXTENSION, MODIFICATION, AND RECODIFICATION OF AUTHORITY OF SECRETARY OF HOME- LAND SECURITY TO REGULATE SECURITY PRACTICES AT CHEMICAL FACILITIES.

(a) In General.—The Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by adding at the end the following:

“TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES

“SEC. 2101. DEFINITIONS.

“In this title:

“(1) ACADEMIC LABORATORY.—The term ‘academic laboratory’ means a facility or area owned by an institution of higher education (as defined under section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a nonprofit research institute or teaching hospital that has a formal affiliation with an institution of higher education, including photo laboratories, art studios, field laboratories, research farms, chemical stockrooms, and preparatory laboratories, where relatively small quantities of chemicals and other substances, as determined by the Secretary, are—

“(A) used on a nonproduction basis for—

“(i) teaching;
“(ii) research; or
“(iii) diagnostic purposes; and
“(B) stored and used in containers that are typically manipulated by 1 person.
“(2) CHEMICAL FACILITY.—The term ‘chemical facility’ means any facility—
“(A) at which the owner or operator of the facility possesses or plans to possess a sub-
stance of concern; or
“(B) that meets other risk-related criteria identified by the Secretary.
“(3) CHEMICAL FACILITY SECURITY PERFORMANCE STANDARDS.—The term ‘chemical facility security performance standards’ means risk-based standards established by the Secretary under section 2103(c).
“(4) CHEMICAL FACILITY TERRORIST INCIDENT.—The term ‘chemical facility terrorist incident’ means any act or attempted act of terrorism or terrorist incident committed at, near, or against a chemical facility, including such an act that involves—
“(A) the release of a substance of concern from a chemical facility;
“(B) the theft, misappropriation, or misuse of a substance of concern from a chemical facility; or

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

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

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

“(7) EMPLOYEE REPRESENTATIVE.—The term ‘employee representative’ means the representative of a certified or recognized bargaining agent engaged in a collective bargaining relationship with the owner or operator of a chemical facility.

“(8) ENVIRONMENT.—The term ‘environment’ has the meaning given the term in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601).
“(9) Method to reduce the consequences of a terrorist attack.—The term ‘method to reduce the consequences of a terrorist attack’ means a measure used at a chemical facility that reduces or eliminates the potential consequences of a chemical facility terrorist incident, including—

“(A) the elimination or reduction in the amount of a substance of concern possessed or planned to be possessed by an owner or operator of a covered chemical facility through the use of alternate substances, formulations, or processes;

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

“(C) the reduction or elimination of onsite handling of a substance of concern through improvement of inventory control or chemical use efficiency.

“(10) Owner or operator.—The term ‘owner or operator’ with respect to a facility means—

“(A) the person who owns the facility;

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

“(C) the person who leases the facility.
“(11) PERSON.—The term ‘person’—

“(A) means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or interstate body; and

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

“(12) PROTECTED INFORMATION.—

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

“(i) security vulnerability assessments and site security plans, including any assessment required under section 2111;

“(ii) portions of the following documents, records, orders, notices, or letters that the Secretary has determined by regulation would be detrimental to chemical facility security if disclosed and that are developed by the Secretary or the owner or operator of a covered chemical facility for the purposes of this title—

“(I) documents directly related to the review and approval or disapproval of a security vulnerability ass-
assessment or site security plan under this title by the Secretary;

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

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

“(IV) information or a document or record required to be provided to or created by the Secretary under subsection (b) or (c) of section 2102; and

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

“(iii) any other information, document, or record developed exclusively for the purposes of this title that the Secretary has determined, by rule, would, if disclosed, be detrimental to chemical facility security.

“(B) EXCLUSIONS.—The term ‘protected information’ does not include—
“(i) information, other than a security
vulnerability assessment or site security
plan, that the Secretary has determined,
by rule, to be—

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

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

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

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

“(II) information that a chemical
facility has lawfully disclosed other
than in a submission to the Secretary under this title.

“(13) Release.—The term ‘release’ means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant).


“(15) Site security plan.—The term ‘site security plan’ means a plan described in section 2103(a)(1)(B)(ii).

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

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

“(a) Substances of concern.—

“(1) Designation by the Secretary.—The Secretary may—
“(A) designate any chemical substance as a substance of concern; and

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

“(2) MATTERS FOR CONSIDERATION.—In designating a chemical substance or establishing or adjusting the threshold quantity for a chemical substance under paragraph (1), the Secretary shall consider the potential extent of death, injury, and serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, and the national economy that could result from a chemical facility terrorist incident involving the chemical substance.

“(b) LIST OF COVERED CHEMICAL FACILITIES.—

“(1) CRITERIA FOR LIST OF FACILITIES.—The Secretary may designate a chemical facility as a covered chemical facility if the Secretary determines the chemical facility is a sufficient security risk based on—

“(A) the potential threat or likelihood that the chemical facility will be a target of a chemical facility terrorist incident;
“(B) the potential extent and likelihood of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, or the national economy that could result from a chemical facility terrorist incident at the chemical facility; and

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

“(2) List.—The Secretary shall maintain a list of covered chemical facilities that the Secretary designates under subparagraph (A).

“(3) Submission of Information.—In making a determination whether to designate a chemical facility as a covered chemical facility under paragraph (1), the Secretary may require the submission of information from an owner or operator of a chemical facility with respect to the quantities of substances of concern that the owner or operator possesses or plans to possess.

“(c) Assignment of Covered Chemical Facilities to Risk-Based Tiers.—

“(1) Assignment.—The Secretary shall assign each covered chemical facility to 1 of 4 risk-based tiers, as established by the Secretary, with tier 1
representing the highest degree of risk and tier 4 representing the lowest degree of risk.

“(2) Provision of Information.—The owner or operator of a covered chemical facility shall provide, at the request of the Secretary, any information in addition to information required by the Secretary under subsection (b)(3) that may be necessary for the Secretary to assign the chemical facility to the appropriate tier under paragraph (1).

“(3) Notification.—

“(A) In general.—Not later than 60 days after the date on which the Secretary determines that a chemical facility is a covered chemical facility or is no longer a covered chemical facility or changes the tier assignment of a covered chemical facility under paragraph (1), the Secretary shall notify the owner or operator of the chemical facility of the determination or change.

“(B) Required information.—A notification made by the Secretary under subparagraph (A) shall include—

“(i) the reason for the determination or change described in subparagraph (A); and
“(ii) upon the request of the owner or operator of a covered chemical facility—

“(I) the number of individuals at risk of death, injury, or severe adverse effects to human health as a result of a worst case chemical facility terrorist incident at the covered chemical facility;

“(II) information relating to why the covered chemical facility is considered critical; and

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

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

“(1) shall periodically review—

“(A) the designation of a chemical substance as a substance of concern and the threshold quantity for the substance under subsection (a)(1); and

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

“(2) may, at any time, determine whether a chemical facility is a covered chemical facility or
change the tier to which the covered chemical facility
is assigned under subsection (e)(1).

“(e) Provision of Threat-Related Information.—The Secretary shall provide to the owner or oper-
ator or security officer of a covered chemical facility threat
information relating to probable threats to the covered
chemical facility and methods that could be used in a
chemical facility terrorist incident in order to assist the
owner or operator in effectively assessing the
vulnerabilities to the covered chemical facility.

“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND
SITE SECURITY PLANS.

“(a) In General.—

“(1) Requirement.—The Secretary shall—

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

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

“(i) conduct and submit to the Sec-
retary an assessment of the vulnerability of
the covered chemical facility to a range of
chemical facility terrorist incidents, includ-
(ii) prepare, implement, and submit to the Secretary a site security plan for the covered chemical facility that addresses the security vulnerability assessment and meets the risk-based chemical security performance standards established under subsection (c);

(iii) in developing the security vulnerability assessment and site security plan, include participation by—

(I) not less than 1 supervisory employee of the covered chemical facility;

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

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

(iv) include, with the submission of the security vulnerability assessment and the site security plan of the covered chem-
ical facility, a signed statement by the owner or operator of the covered chemical facility that certifies that the submission is provided to the Secretary with knowledge of the possible penalties under section 2107;

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

“(D) upon request, as necessary, and to the extent that resources permit, provide technical assistance to a covered chemical facility conducting a security vulnerability assessment or site security plan;

“(E) establish specific deadlines and requirements for the submission by a covered chemical facility of information describing—

“(i) any change in the use by the covered chemical facility of more than a threshold amount of any substance of concern that may affect the requirements of the covered chemical facility under this title; or

“(ii) any material modification to the operations or site of the covered chemical
facility that may affect the security vulnerability assessment or site security plan submitted by the covered chemical facility;

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

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

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

“(ii) notify the covered chemical facility of the approval or disapproval; and

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

“(2) Inherently Governmental Function.—The approval or disapproval of a security vulnerability assessment or site security plan by the
Secretary under this section is an inherently governmental function.

“(b) Participation in Preparation of Security Vulnerability Assessments or Site Security Plans.—Any person selected by the owner or operator of a covered chemical facility or by a certified or recognized bargaining agent of a covered chemical facility to participate in the development of the security vulnerability assessment or site security plan for the covered chemical facility shall be permitted to participate if the person possesses knowledge, experience, training, or education relevant to the portion of the security vulnerability assessment or site security plan on which the person is participating.

“(c) Chemical Facility Security Performance Standards.—The Secretary shall establish risk-based performance standards to ensure or enhance the security of a covered chemical facility against a chemical facility terrorist incident that are designed to address—

“(1) restricting the area perimeter of the covered chemical facility;

“(2) securing site assets;

“(3) screening and controlling access to the covered chemical facility and to restricted areas within the covered chemical facility by screening or inspect-
ing individuals and vehicles as they enter, including—

“(A) measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate a chemical facility terrorist incident or actions having serious negative consequences for the population surrounding the covered chemical facility; and

“(B) measures implementing a regularly updated identification system that checks the identification of covered chemical facility personnel and other persons seeking access to the covered chemical facility and that discourages abuse through established disciplinary measures;

“(4) methods to deter, detect, and delay a chemical facility terrorist incident, creating sufficient time between detection of a chemical facility terrorist incident and the point at which the chemical facility terrorist incident becomes successful, including measures to—

“(A) deter vehicles from penetrating the perimeter of the covered chemical facility, gaining unauthorized access to restricted areas, or
otherwise presenting a hazard to potentially critical targets;

“(B) deter chemical facility terrorist incidents through visible, professional, well-maintained security measures and systems, including—

“(i) security personnel;
“(ii) detection systems;
“(iii) barriers and barricades; and
“(iv) hardened or reduced value targets;

“(C) detect chemical facility terrorist incidents at early stages through—

“(i) counter-surveillance at the site of the covered chemical facility;
“(ii) frustration of opportunity to observe potential targets;
“(iii) site surveillance and sensing systems; and
“(iv) barriers and barricades; and

“(D) delay a chemical facility terrorist incident for a sufficient period of time so as to allow appropriate response through—

“(i) onsite security response;
“(ii) barriers and barricades;
“(iii) hardened targets; and

“(iv) well-coordinated response planning;

“(5) securing and monitoring the shipping, receipt, and storage of a substance of concern for the covered chemical facility;

“(6) deterring theft or diversion of a substance of concern;

“(7) deterring insider sabotage;

“(8) deterring cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, including—

“(A) supervisory control and data acquisition systems;

“(B) distributed control systems;

“(C) process control systems;

“(D) industrial control systems;

“(E) critical business systems; and

“(F) other sensitive computerized systems;

“(9) developing and conducting exercises of an internal emergency plan for owners, operators, and covered individuals for a covered chemical facility for responding to chemical facility terrorist incidents at the covered chemical facility, including providing appropriate information to any local emergency plan-
ning committee, State emergency response commis-
mission, local law enforcement officials, and emergency
response providers to ensure an effective, collective
response to terrorist incidents;

“(10) maintaining effective monitoring, commu-
ications, and warning systems, including—

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

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

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

“(11) ensuring mandatory annual security
training, exercises, and drills of covered chemical fa-
cility personnel appropriate to their roles, respon-
sibilities, and access to a substance of concern, in-
cluding participation by local law enforcement agen-
cies, and local emergency response providers, and
appropriate supervisory and non-supervisory facility
employees and employee representatives, if any;

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

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

“(B) measures designed to check criminal
history;

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

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

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

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

“(15) reporting of significant security incidents
to the Secretary and to appropriate local law en-
forcement officials;
“(16) identifying, investigating, reporting, and maintaining records of significant security incidents and suspicious activities at or near the covered chemical facility;

“(17) establishing 1 or more officials and an organization responsible for—

“(A) security;

“(B) compliance with the standards established under this subsection;

“(C) serving as the point of contact for incident management purposes with Federal agencies, agencies of State or local government (including law enforcement agencies), and emergency response providers; and

“(D) coordination with Federal agencies, agencies of State or local government (including law enforcement agencies), and emergency response providers regarding plans and security measures for the collective response to a chemical facility terrorist incident;

“(18) maintaining appropriate records relating to the security of the covered chemical facility, including a copy of the most recent security vulnerability assessment and site security plan, at the covered chemical facility;
“(19) assessing and, as appropriate, using methods to reduce the consequences of a terrorist attack;

“(20) methods to recover or mitigate the release of a substance of concern in the event of a chemical facility terrorist incident;

“(21) methods to mitigate the risks of exposure to chemical agents by maintaining an adequate supply of equipment and products to provide for decontamination procedures designed to neutralize the chemical agents; and

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

“(d) Risk-Based Chemical Security Performance Standards.—

“(1) In general.—The Secretary shall establish risk-based chemical security performance standards for the site security plans required to be submitted by covered chemical facilities under subsection (a).

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

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

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

“(e) COLLOCATED CHEMICAL FACILITIES.—The Secretary may allow an owner or operator of a covered chemical facility that is located geographically close, as determined by the Secretary, to another covered chemical facility to develop and implement coordinated security vulnerability assessments and site security plans.

“(f) ALTERNATE SECURITY PROGRAMS AS COMPONENT OF SECURITY VULNERABILITY ASSESSMENT AND SITE SECURITY PLAN.—

“(1) ACCEPTANCE OF PROGRAM.—At the request of an owner or operator of a covered chemical facility, the Secretary may accept an alternate security program submitted by the owner or operator as a component of the security vulnerability assessment or site security plan required under this section, if the Secretary determines that the alternate security
program, in combination with other components of
the security vulnerability assessment and site secu-

rity plan submitted by the owner or operator of the
covered chemical facility—

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

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

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

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

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

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

“(3) OBLIGATIONS OF COVERED CHEMICAL FA-
cility unaffected.—Nothing in this subsection
shall relieve a covered chemical facility of the obligation and responsibility to comply with any requirement under this title.

“(4) Personnel surety alternate security program.—Upon application from a nonprofit personnel surety accrediting organization acting on behalf of, and with written authorization from, the owner or operator of a covered chemical facility, the Secretary may accept a personnel surety alternate security program that—

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

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

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

“(ii) fully protective of the rights of covered individuals through procedures that are consistent with the privacy protections available under the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); and

“(iii) a single background check consistent with a risk-based tiered program.

“(g) Other Authorities.—

“(1) Regulation of maritime facilities.—
“(A) RISK-BASED TIERING.—The owner or operator of a chemical facility required to submit a facility security plan under section 70103(e) of title 46, United States Code, shall be required to submit information to the Secretary necessary to—

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

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

“(B) ADDITIONAL MEASURES.—Subject to subparagraph (C), in the case of a facility for which a facility security plan is required to be submitted under section 70103(e) of title 46, United States Code, that is designated as a covered chemical facility, the Commandant of the Coast Guard, after consultation with the Secretary, shall require the owner or operator of the facility to update the security vulnerability assessments and facility security plans required under section 70103(e) of title 46, United States Code, if necessary, to ensure a level of security for substances of concern that is equiv-
alent to the level of security required by regulations promulgated under this title, including the requirements under section 2111, in the same manner as other covered chemical facilities in this title.

“(C) PERSONNEL SURETY.—

“(i) EXCEPTION.—The owner or operator of a covered chemical facility that has a facility security plan approved under section 70103(c) of title 46, United States Code, shall not be required to update or amend the facility security plan in order to meet the requirements under section 2115 of this title.

“(ii) EQUIVALENT ACCESS.—An individual described in section 2115(b)(1)(B) who has been granted access to restricted areas or critical assets by the owner or operator of a facility for which a facility security plan is required to be submitted under section 70103(c) of title 46, United States Code, may be considered by the owner or operator to have satisfied the requirement for passing a security background check required under section 2115
for purposes of granting the individual ac-

cess to restricted areas or critical assets of

a covered chemical facility that is owned or

operated by the same owner or operator.

“(D) INFORMATION SHARING AND PRO-

TECTION.—Notwithstanding section 70103(d)
of title 46, United States Code, the Com-

mandant of the Coast Guard, after consultation

with the Secretary, shall apply the information

sharing and protection requirements in section

2110 of this title to a facility described in sub-

paragraph (B).

“(E) ENFORCEMENT.—The Secretary shall

establish, by rule, procedures to ensure that an

owner or operator of a covered chemical facility

that is required to update the security vulner-

ability assessment and facility security plan for

the covered chemical facility under subpara-

graph (B) is in compliance with this title.

“(F) FORMAL AGREEMENT.—The Sec-

retary shall—

“(i) require the Office of Infrastruc-

ture Protection and the Coast Guard to

enter into a formal agreement detailing the

respective roles and responsibilities of the
Office of Infrastructure Protection and the Coast Guard in carrying out this title, which shall ensure that the enforcement and compliance requirements under this title and section 70103 of title 46, United States Code, are not conflicting or duplicative; and

“(ii) designate the agency responsible for enforcing this title with respect to covered chemical facilities for which facility security plans are required to be submitted under section 70103(c) of title 46, United States Code, consistent with the requirements of subparagraphs (B) and (D).

“(2) COORDINATION OF STORAGE LICENSING OR PERMITTING REQUIREMENT.—In the case of any storage required to be licensed or permitted under chapter 40 of title 18, United States Code, the Secretary shall prescribe the rules and regulations for the implementation of this section, with the concurrence of the Attorney General, and avoid unnecessary duplication of regulatory requirements.

“(h) ROLE OF EMPLOYEES.—

“(1) DESCRIPTION OF ROLE REQUIRED.—A site security plan for an owner or operator of a covered
chemical facility shall describe the roles or responsibilities that covered individuals are expected to perform to deter or respond to a chemical facility terrorist incident.

"(2) ANNUAL TRAINING FOR EMPLOYEES.—

“(A) IN GENERAL.—The owner or operator of a covered chemical facility shall annually provide each covered individual with a role or responsibility referred to in paragraph (1) at the covered chemical facility with not less than 8 hours of training.

“(B) REQUIREMENTS.—The training required under subparagraph (A) shall, as relevant to the role or responsibility of the covered individual—

“(i) include an identification and discussion of substances of concern;

“(ii) include a discussion of possible consequences of a chemical facility terrorist incident;

“(iii) review and include exercises of the site security plan of the covered chemical facility, including any requirements for differing threat levels;
“(iv) include a review of information protection requirements;

“(v) include a discussion of physical and cyber security equipment, systems, and methods used to achieve chemical security performance standards;

“(vi) allow training with other relevant participants, including Federal employees, employees of a State or local government, and emergency response providers, where appropriate;

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

“(viii) allow instruction through government training programs, chemical facilities, academic institutions, nonprofit organizations, industry and private organizations, employee organizations, and other relevant entities that provide such training;

“(ix) use multiple training media and methods;

“(x) include a discussion of appropriate emergency response procedures, in-
cluding procedures to mitigate the effects of a chemical facility terrorist incident; and

“(xi) include review and discussion of methods to reduce the consequences of a terrorist attack that are applicable to the covered chemical facility.

“(3) EQUIVALENT TRAINING.—An owner or operator of a covered chemical facility may satisfy the training requirement described in clause (i), (ii), (iii), (iv), (v), or (x) of subparagraph (2)(B) for a covered individual with roles or responsibilities under paragraph (1) through training that the owner or operator certifies is equivalent, in a manner prescribed by the Secretary.

“(4) WORKER TRAINING GRANT PROGRAM.—

“(A) AUTHORITY.—The Secretary may make grants to, and enter into cooperative agreements with, eligible entities to provide for the training and education of—

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

“(ii) emergency response providers who would respond to a chemical facility terrorist incident.
“(B) Administration.—The Secretary shall seek to enter into an agreement with the Director of the National Institute for Environmental Health Sciences, or with the head of another Federal or State agency, to make and administer grants or cooperative agreements under this paragraph.

“(C) Use of Funds.—Amounts provided under this paragraph shall be used to provide for the training and education of covered individuals with roles or responsibilities described in paragraph (1) and emergency response providers, including—

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

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

“(D) Eligible Entities.—In this paragraph, the term ‘eligible entity’ means a non-profit organization with demonstrated experience in implementing and operating successful
health and safety or security training programs
for employees or emergency response providers.

“(E) PRESUMPTION OF CONGRESS RELATING
TO COMPETITIVE PROCEDURES.—

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

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

“(i) STATE, REGIONAL, OR LOCAL GOVERNMENTAL
ENTITIES.—A covered chemical facility may not be re-
quired under the law of a State or local government to
provide a security vulnerability assessment or site security
plan to any entity of a State, regional government, or local
government entity solely based on the requirement under
subsection (a) that the covered chemical facility submit a
security vulnerability assessment or site security plan to
the Secretary.
“SEC. 2104. SITE INSPECTIONS.

“(a) Right of Entry.—For purposes of carrying out this title, the Secretary shall have, at a reasonable time and on presentation of credentials, a right of entry to, on, or through any property of a covered chemical facility or any property on which any record required to be maintained under this section is located.

“(b) Inspections and Verifications.—

“(1) In general.—The Secretary shall, at such time and place as the Secretary determines to be reasonable and appropriate, conduct security inspections and verifications of a covered chemical facility.

“(2) Requirements.—To ensure and evaluate compliance with this title, including any regulations or requirements adopted by the Secretary in furtherance of the purposes of this title, in conducting an inspection or verification under paragraph (1), the Secretary shall have access to the owners, operators, employees, and employee representatives, if any, of a covered chemical facility.

“(c) Unannounced Inspections.—

“(1) In general.—In addition to any inspection conducted under subsection (b), the Secretary shall conduct unannounced facility inspections of
covered chemical facilities assigned to tier 1 or tier 2 under section 2102(c)(1).

“(2) REQUIREMENTS.—The inspections required under this subsection shall be—

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

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

“(i) the ability of the covered chemical facility to prevent a chemical facility terrorist incident that the site security plan of the covered chemical facility is intended to prevent;

“(ii) the ability of the covered chemical facility to protect against security threats that are required to be addressed by the site security plan of the covered chemical facility; and

“(iii) any weaknesses in the site security plan of the covered chemical facility;

“(C) conducted so as not to affect the actual security, physical integrity, safety, or regular operations of the covered chemical facility.
or the employees of the covered chemical facility while the inspection is conducted; and

“(D) conducted—

“(i) every 2 years in the case of a covered chemical facility assigned to tier 1; and

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

“(d) CHEMICAL FACILITY INSPECTORS AUTHORIZED.—During fiscal years 2011 and 2012, and subject to the availability of appropriations, the Secretary shall increase by not less than 100 the total number of chemical facility inspectors within the Department to ensure compliance with this title.

“(e) CONFIDENTIAL COMMUNICATIONS.—The Secretary shall offer non-supervisory employees of a covered chemical facility the opportunity to confidentially communicate information relevant to the compliance or non-compliance of the employer with this title, including compliance or noncompliance with any regulation or requirement adopted by the Secretary under this title.

“(f) RIGHT TO ACCOMPANY DURING PHYSICAL INSPECTION.—If a representative of the owner or operator of a covered chemical facility will accompany the Secretary on a physical inspection of the covered chemical facility,
an employee representative of each certified or recognized
bargaining agent at the covered chemical facility, if any,
or, if none, a nonsupervisory employee, shall be offered
the opportunity to accompany the Secretary during the
physical inspection to aid in the inspection.

“SEC. 2105. RECORDS.

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

“(b) Proper Handling of Records.—The Sec-
retary shall ensure that any records accessed under sub-
section (a) are handled and secured appropriately in ac-
cordance with section 2110.

“SEC. 2106. TIMELY SHARING OF THREAT INFORMATION.

“(a) Responsibilities of Secretary.—Upon the
receipt of information concerning a threat that is relevant
to a certain covered chemical facility, the Secretary shall
provide the information in a timely manner, to the max-
imum extent practicable under applicable authority and in
the interests of national security, to—
“(1) the owner, operator, or security officer of
the covered chemical facility;
“(2) a representative of each recognized or cer-
tified bargaining agent at the covered chemical facil-
ity, if any; and
“(3) relevant authorities of State or local gov-
ernment, including the State Homeland Security Ad-
visor, if any.
“(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—
The Secretary shall require the owner or operator of a
covered chemical facility to provide to the Secretary in a
timely manner, information concerning—
“(1) a threat about any significant security in-
cident or threat to the covered chemical facility; or
“(2) any intentional or unauthorized penetra-
tion of the physical security or cyber security of the
covered chemical facility, whether successful or un-
successful.
“SEC. 2107. ENFORCEMENT.
“(a) REVIEW OF SECURITY VULNERABILITY ASSESS-
MENT AND SITE SECURITY PLAN.—
“(1) DISAPPROVAL.—The Secretary shall dis-
approve a security vulnerability assessment or site
security plan submitted under this title if the Sec-
retary determines that—
“(A) the security vulnerability assessment or site security plan does not comply with the standards, protocols, or procedures under section 2103(a)(1)(A); or

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

“(i) the site security plan or the implementation of the site security plan is insufficient to address vulnerabilities identified in a security vulnerability assessment, site inspection, or unannounced inspection of the covered chemical facility; or

“(ii) the site security plan fails to meet all applicable chemical facility security performance standards.

“(2) Notification of Disapproval.—If the Secretary disapproves the security vulnerability assessment or site security plan submitted by a covered chemical facility under this title or the implementation of a site security plan by a covered chemical facility, the Secretary shall provide the owner or operator of the covered chemical facility a written notification of the disapproval not later than 14 days after the date on which the Secretary disapproves the security vulnerability assessment or site security plan, which shall—
“(A) include a clear explanation of deficiencies in the security vulnerability assessment, site security plan, or implementation of the site security plan; and

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

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

“(ii) by such date as the Secretary determines is appropriate, submit the revised security vulnerability assessment or site security plan to the Secretary.

“(b) Remedies.—

“(1) Order for compliance.—If the Secretary determines that an owner or operator of a covered chemical facility has violated or is in violation of any requirement of this title or has failed or is failing to address any deficiencies in the security vulnerability assessment, site security plan, or implementation of the site security plan for the covered chemical facility by such date as designated by the Secretary, the Secretary may—

“(A) after providing notice to the owner or operator and an opportunity, in accordance
with the regulations issued under this title, for
the owner or operator to seek review by the De-
partment of the determination of the Secretary,
issue an order assessing an administrative pen-
alty of not more than $25,000 for each day be-
fore, on, or after the date of the order that the
violation occurs or for each day after the date
of the order that a failure to comply continues,
requiring compliance immediately or within a
specified time period, or both; or

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

“(2) ORDER TO CEASE OPERATIONS.—If the
Secretary determines that an owner or operator of
a covered chemical facility continues to be in non-
compliance after an order for compliance is issued
under paragraph (1), the Secretary may issue an
order to the owner or operator to cease operations
at the covered chemical facility until the Secretary
determines the owner or operator is in compliance.
“(c) Applicability of Penalties.—A penalty under subsection (b)(1) may be imposed for any violation of this title, including a violation of the whistleblower protections under section 2108.

“SEC. 2108. WHISTLEBLOWER PROTECTIONS.

“(a) Establishment.—

“(1) IN GENERAL.—The Secretary shall establish and provide information to the public regarding a process by which an individual may submit a report to the Secretary regarding problems, deficiencies, or vulnerabilities at a covered chemical facility associated with the risk of a chemical facility terrorist incident.

“(2) Confidentiality.—

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

“(B) Compliance with section 2110.—A report submitted under this subsection shall be treated as protected information under section 2110 to the extent that the report does not consist of publicly available information.

“(3) Acknowledgment of receipt.—If a report submitted under this subsection identifies the individual submitting the report, the Secretary shall
respond promptly to the individual to acknowledge receipt of the report.

“(4) STEPS TO ADDRESS PROBLEMS.—The Secretary shall—

“(A) review and consider the information provided in a report submitted under this subsection; and

“(B) as necessary, take appropriate steps under this title to address any problem, deficiency, or vulnerability identified in the report.

“(b) RETALIATION PROHIBITED.—

“(1) PROHIBITION.—An owner or operator of a covered chemical facility, for-profit or nonprofit corporation, association, or any contractor, subcontractor or agent thereof, may not discharge an employee or otherwise discriminate against an employee with respect to compensation of the employee, terms, conditions, or other privileges of employment because the employee (or any individual acting on behalf of the employee)—

“(A) notified the Secretary, the owner or operator of a covered chemical facility, or the employer of the employee of an alleged violation of this title, including notification of such an al-
leged violation through communications related
to carrying out the job duties of the employee;

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

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

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

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

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

“(2) ENFORCEMENT ACTION.—

“(A) IN GENERAL.—An employee covered
by this section who alleges discrimination by an
employer in violation of paragraph (1) may
bring an action governed by the rules and pro-
cedures, legal burdens of proof, and remedies
applicable under subsections (d) through (h) of
section 20109 of title 49, United States Code.

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

“(3) Prohibited personnel practices af-
flecting the department.—

“(A) In general.—Notwithstanding any
other provision of law, an individual holding or
applying for a position within the Department
shall be covered by—

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

“(ii) any provision of law imple-
menting paragraph (1), (8), or (9) of sec-
tion 2302(b) of title 5, United States
Code, by providing any right or remedy
available to an employee or applicant for employment in the civil service; and

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

“(B) Rule of construction.—Nothing in this paragraph shall be construed to affect any rights, apart from those referred to in sub-
paragraph (A), to which an individual described in subparagraph (A) might otherwise be enti-
tled to under law.

“SEC. 2109. FEDERAL PREEMPTION.

“This title does not preclude or deny any right of any State or unit of local government to adopt or enforce any regulation, requirement, or standard of performance with respect to a covered chemical facility that is more string-
ent than a regulation, requirement, or standard of per-
formance issued under this title, or otherwise impair any right or jurisdiction of any State or unit of local govern-
ment with respect to covered chemical facilities within the State or unit of local government.

“SEC. 2110. PROTECTION OF INFORMATION.

“(a) Prohibition of public disclosure of protected information.—Protected information—
“(1) shall be exempt from disclosure under section 552 of title 5, United States Code; and

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

“(b) INFORMATION SHARING.—

“(1) IN GENERAL.—The Secretary shall prescribe such regulations, and may issue such orders, as necessary to prohibit the unauthorized disclosure of protected information.

“(2) SHARING OF PROTECTED INFORMATION.—

“(A) IN GENERAL.—The regulations prescribed under paragraph (1) shall provide standards for and facilitate the appropriate sharing of protected information with and between—

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

“(ii) emergency response providers;

“(iii) law enforcement officials;

“(iv) designated supervisory and non-supervisory covered chemical facility personnel with security, operational, or fiduciary responsibility for the covered chemical facility; and
“(v) designated employee representatives for a covered chemical facility, if any.

“(B) REQUIREMENTS.—The standards required to be established under subparagraph (A) shall include procedures for the sharing of all portions of a security vulnerability assessment or site security plan of a covered chemical facility relating to the roles and responsibilities of covered individuals under section 2103(h)(1) with a representative of each certified or recognized bargaining agent representing the covered individuals, if any, or, if none, with not less than 1 supervisory and not less than 1 non-supervisory employee with roles or responsibilities under section 2103(h)(1).

“(C) PENALTIES.—

“(i) IN GENERAL.—Protected information shall not be shared except in accordance with the standards provided by the regulations prescribed under paragraph (1).

“(ii) KNOWING VIOLATION.—Any person that discloses protected information in knowing violation of the regulations issued under paragraph (1) shall—
“(I) be fined under title 18, United States Code, imprisoned for not more than 1 year, or both; and
“(II) in the case of a Federal officeholder or employee, removed from Federal office or employment.

“(c) Treatment of Information in Adjudicative Proceedings.—In any judicial or administrative proceeding, protected information shall be treated in a manner consistent with the treatment of sensitive security information under section 525 of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 120 Stat. 1381).

“(d) Other Obligations Unaffected.—Except as provided in section 2103(i), nothing in this section affects any obligation of the owner or operator of a chemical facility under any other law to submit or make available information required by such other law to—
“(1) employees of the chemical facility;
“(2) employee organizations;
“(3) health professionals;
“(4) emergency response organizations; or
“(5) the Federal Government or a State or local government.
“(e) Submission of Information to Congress.—Nothing in this title shall permit or authorize the withholding of information from Congress or any committee or subcommittee thereof.

“(f) Disclosure of Independently Furnished Information.—Nothing in this title shall affect any authority or obligation of a Federal agency or agency of a State or local government to protect or disclose any record or information that the agency obtains from a chemical facility under any other law.

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

“(a) Definition.—In this section, the term ‘feasible’ means feasible with the use of best technology, techniques, and other means that the Secretary finds, after examination for efficacy under operational conditions and not solely under laboratory conditions, are available for use at a covered chemical facility.

“(b) Assessment Required.—The site security plan for a covered chemical facility shall include an assessment of methods to reduce the consequences of a terrorist attack on the covered chemical facility, including—

“(1) a description of the methods to reduce the consequences of a terrorist attack implemented and
considered for implementation by the covered chemical facility;

“(2) the degree to which each method to reduce the consequences of a terrorist attack, if already implemented, has reduced, or, if implemented, could reduce, the potential extent of death, injury, or serious adverse effects to human health resulting from a release of a substance of concern;

“(3) the technical feasibility, costs, avoided costs (including liabilities), personnel implications, savings, and applicability of implementing each method to reduce the consequences of a terrorist attack; and

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

“(c) Implementation.—

“(1) Implementation.—

“(A) In general.—The owner or operator of a covered chemical facility that is assigned to tier 1 or tier 2 because of the potential extent and likelihood of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, or the national econ-
om from a release of a substance of concern at the covered chemical facility shall implement methods to reduce the consequences of a terrorist attack on the covered chemical facility if the Director of the Office of Chemical Facility Security determines, using the assessment conducted under subsection (b), that the implementation of the methods at the covered chemical facility—

“(i)(I) would significantly reduce the risk of death, injury, or serious adverse effects to human health resulting from a chemical facility terrorist incident; and

“(II) would not—

“(aa) increase the interim storage of a substance of concern outside the covered chemical facility;

“(bb) directly result in the creation of a covered chemical facility assigned to tier 1 or tier 2 because of the potential extent and likelihood of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national se-
curity, or the national economy from
a release of a substance of concern at
the covered chemical facility;

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

“(dd) significantly increase the
potential extent and likelihood of
death, injury, or serious adverse ef-
fects to human health, the environ-
ment, critical infrastructure, public
health, homeland security, national se-
curity, or the national economy from
a release of a substance of concern
due to a terrorist attack on the trans-
portation infrastructure of the United
States;
“(ii) can feasibly be incorporated into
the operation of the covered chemical facil-
ity; and

“(iii) would not significantly and de-
omonstrably impair the ability of the owner
or operator of the covered chemical facility
to continue the business of the covered
chemical facility at its location.

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

“(C) MARITIME FACILITIES.—With respect
to a covered chemical facility for which a facil-
ity security plan is required under section
70103(e) of title 46, United States Code, a
written determination under subparagraph (A)
shall be made only after consultation with the
Captain of the Port for the area in which the covered chemical facility is located.

“(2) REVIEW OF INABILITY TO COMPLY.—

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

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

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

“(B) REVIEW.—

“(i) IN GENERAL.—Not later than 120 days after receipt of an explanation submitted by an owner or operator of a covered chemical facility under subparagraph (A), the Secretary, after consulting with the owner or operator, as well as experts in the subjects of environmental health and safety, security, chemistry, de-
sign and engineering, process controls and
implementation, maintenance, production
and operations, chemical process safety,
and occupational health, as appropriate,
shall provide to the owner or operator a
written determination of whether, in the
discretion of the Secretary, implementation
shall be required under paragraph (1).

“(ii) Determination that Implementation is Required.—If the Sec-
retary determines that implementation is
required under clause (i), the Secretary
shall issue an order that establishes the
basis for the determination, including—

“(I) the findings of the relevant
experts;

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

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

“(d) Agricultural Sector.—

“(1) Definitions.—In this subsection:

“(A) Farm Supplies Merchant Whole-
saler.—The term ‘farm supplies merchant
wholesaler’ means a covered chemical facility that is primarily engaged in the merchant wholesale distribution of farm supplies, including animal feeds, fertilizers, agricultural chemicals, pesticides, plant seeds, and plant bulbs.

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

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

“(ii) ranches and rangeland;

“(iii) poultry, dairy, and equine facilities;

“(iv) turfgrass growers;

“(v) golf courses;

“(vi) nurseries;

“(vii) floricultural operations; and

“(viii) public and private parks.

“(2) GUIDANCE FOR FARM SUPPLIES MERCHANT WHOLESALERS.—

“(A) IN GENERAL.—The Secretary shall provide guidance and, as appropriate, tools, methodologies, or computer software, to assist farm supplies merchant wholesalers in complying with this section.
“(B) Grants authorized.—The Secretary may award grants to farm supplies merchant wholesalers to assist compliance with subsection (b), and in awarding grants, shall give priority to farm supplies merchant wholesalers that, in the discretion of the Secretary, have the greatest need for the grants.

“(3) Assessment of agricultural impacts.—Not later than 6 months after the date of the enactment of this title, the Secretary shall submit an assessment of the potential impacts of compliance with this section regarding the assessment and, as appropriate, implementation of methods to reduce the consequences of a terrorist attack on the agricultural sector to—

“(A) the Committee on Homeland Security and Governmental Affairs, the Committee on Environment and Public Works, and the Committee on Agriculture, Nutrition and Forestry of the Senate; and

“(B) the Committee on Homeland Security, the Committee on Energy and Commerce, and the Committee on Agriculture of the House of Representatives.
“(4) **CONSULTATION.**—The assessment required under paragraph (3) shall be conducted by the Secretary in consultation with other appropriate Federal agencies.

“(5) **REQUIREMENTS.**—The assessment required under paragraph (3) shall include—

“(A) data on the scope of agricultural facilities to which this title applies, including—

“(i) the number and type of manufacturers, retailers, aerial commercial applicators, and distributors of pesticide and fertilizer required to assess methods to reduce the consequences of a terrorist attack under subsection (b); and

“(ii) the number and type of manufacturers, retailers, aerial commercial applicators, and distributors of pesticide and fertilizer assigned to tier 1 or tier 2 by the Secretary because of the potential extent and likelihood of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, or the national economy from the
release of a substance of concern at the
covered chemical facility;

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

“(C) an analysis of how the assessment of
methods to reduce the consequences of a ter-
orrorist attack under subsection (b) by manufac-
turers, retailers, aerial commercial applicators,
and distributors of pesticide and fertilizer, and,
as appropriate, the implementation of methods
to reduce the consequences of a terrorist attack
by such manufacturers, retailers, aerial com-
mercial applicators, and distributors of pesticide
and fertilizer subject to subsection (c), are like-
ly to impact agricultural end-users; and

“(D) recommendations for how to mitigate
any adverse impacts identified under subpara-
graph (C).
“(e) SMALL COVERED CHEMICAL FACILITIES.—

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

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

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

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

“(3) LIMITATION ON IMPLEMENTATION OF
METHODS.—The Secretary may not require a small
covered chemical facility to implement methods to
reduce the consequences of a terrorist attack under
subsection (c) unless the Secretary determines that
the implementation of the methods at the small cov-
ered chemical facility do not significantly and de-
monstrably impair the ability of the owner or oper-
ator of the covered chemical facility to continue the
business of the covered chemical facility at the loca-
tion of the covered chemical facility.
“(4) ASSESSMENT OF IMPACTS ON SMALL COVERED CHEMICAL FACILITIES.—

“(A) IN GENERAL.—Not later than 6 months after the date of the enactment of this title, the Secretary shall submit an assessment of the potential effects on small covered chemical facilities of compliance with this section regarding the assessment and, as appropriate, implementation of methods to reduce the consequences of a terrorist attack to—

“(i) the Committee on Environment and Public Works and the Committee on Homeland Security and Governmental Affairs of the Senate; and

“(ii) the Committee on Energy and Commerce and the Committee on Homeland Security of the House of Representatives.

“(B) REQUIREMENTS.—The assessment required under subparagraph (A) shall include—

“(i) data on the scope of small covered chemical facilities to which this title applies, including—
“(I) the number and type of small covered chemical facilities that are required to assess methods to reduce the consequences of a terrorist attack under subsection (b); and

“(II) the number and type of small covered chemical facilities assigned to tier 1 or tier 2 under section 2102(c)(1) by the Secretary because of the potential extent and likelihood of death, injury, or serious adverse effects to human health, the environment, critical infrastructure, public health, homeland security, national security, or the national economy from the release of a substance of concern at the covered chemical facility; and

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

“(f) Provision of Information on Alternative Approaches.—

“(1) Information on methods to reduce consequences of a terrorist act.—
“(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Secure Chemical Facilities Act, the Secretary shall—

“(i) make available information on the use and availability of methods to reduce the consequences of a chemical facility terrorist attack; and

“(ii) periodically update the information described in clause (i).

“(B) INFORMATION TO BE INCLUDED.—

The information made available under subparagraph (A) may include information relating to—

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

“(ii) combinations of chemical sources, substances of concern, and hazardous processes or conditions for which the methods described in clause (i) could be appropriate;

“(iii) the availability of specific methods to reduce the consequences of a terrorist attack;
“(iv) the costs and cost savings resulting from the use of such methods;

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

“(vi) the availability of technical assistance and best practices; and

“(vii) such other matters that the Secretary determines are appropriate.

“(2) Sector reports on methods to reduce consequences of a terrorist act.—

“(A) In general.—The Secretary shall periodically make available industry sector reports on methods to reduce the consequences of a terrorist attack that are in use at chemical facilities.

“(B) Contents of report.—The reports described in subparagraph (A) shall include, by industry sector or appropriate groupings of industry sectors, elements of feasible technologies, techniques, or other means described in subsection (b) that are—

“(i) identified by covered chemical facilities under subsection (b) and submitted to the Secretary under section 2103; or
“(ii) identified by the Secretary from relevant information sources.

“(C) Public Availability.—Information made available under this paragraph—

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

“(ii) shall be made available in accordance with section 2110; and

“(iii) shall not disclose any proprietary information.

“(g) Funding for Methods to Reduce the Consequences of a Terrorist Attack.—The Secretary shall make grants to covered chemical facilities, with priority given to the highest risk covered chemical facilities, as determined by the Secretary, to supplement a portion of the costs of implementing methods to reduce the consequences of a terrorist attack.

“Sec. 2112. Applicability.

“This title shall not apply to—

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

“(2) the transportation in commerce, including incidental storage, of any substance of concern regulated as a hazardous material under chapter 51 of title 49, United States Code;
“(3) all or a specified portion of any chemical facility that—

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

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

“(C) has been designated by the Commission, after consultation with the State, if any, that regulates the facility, and the Secretary, as excluded from the application of this title;

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

“(5) any treatment works, as defined in section 212 of the Federal Water Pollution Control Act (33 U.S.C. 1292).
“SEC. 2113. SAVINGS CLAUSE.

“(a) In general.—Nothing in this title shall affect or modify in any way any obligation or liability of any person under any other Federal law, including—

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

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

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

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

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

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

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

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

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

“(10) the Comprehensive Environmental Re-

“(11) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.);
“(12) the Pollution Prevention Act of 1990 (42 U.S.C. 13101 et seq.); and
“(13) the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).
“(b) STATE AND LOCAL GOVERNMENTS.—Nothing in this title shall preclude or deny the right of any State or unit of local government to adopt or enforce any regulation, requirement, or standard of performance relating to environmental protection, health, or safety.
“(c) ACCESS.—Nothing in this title shall abridge or deny access to a chemical facility site to any person where required or permitted under any other law or regulation.

“SEC. 2114. OFFICE OF CHEMICAL FACILITY SECURITY.
“(a) IN GENERAL.—There is established in the Department an Office of Chemical Facility Security, headed by a Director, who shall—
“(1) be a member of the Senior Executive Service under section 5382 of title 5, United States Code; and
“(2) be responsible for carrying out the responsibilities of the Secretary under this title.
“(b) PROFESSIONAL QUALIFICATIONS.—The individual selected by the Secretary as the Director of the Of-
Office of Chemical Facility Security shall have professional qualifications and experience necessary for effectively directing the Office of Chemical Facility Security and carrying out this title, including—

“(1) a demonstrated knowledge of—

“(A) physical infrastructure protection;

“(B) cybersecurity;

“(C) chemical facility security;

“(D) hazard analysis;

“(E) chemical process engineering;

“(F) chemical process safety reviews; or

“(2) other such qualifications that the Secretary determines to be necessary.

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

“(1) make a reasonable effort to select an individual to serve as the Director of the Office of Chemical Facility Security from among a group of candidates that is diverse with respect to race, ethnicity, age, gender, and disability characteristics; and

“(2) submit information on the selection process, including details on efforts to assure diversity among the candidates, to—

“(A) the Committee on Homeland Security and Governmental Affairs of the Senate; and
“(B) the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives.

“(d) OUTREACH SUPPORT.—

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

“(2) OUTREACH.—The Secretary shall, as appropriate, and in accordance with this title, inform State emergency response commissions appointed under section 301(a) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001), local emergency planning committees appointed under section 301(c) of that Act, and any other entity designated by the Secretary of the findings of the Office of Chemical Facility Security so that the commissions and committees may update emergency planning and training procedures.

“SEC. 2115. SECURITY BACKGROUND CHECKS OF COVERED INDIVIDUALS AT CERTAIN CHEMICAL FACILITIES.

“(a) DEFINITION OF SECURITY BACKGROUND CHECK.—In this section, the term ‘security background
check’ means a review, at no cost to an individual subject to the review, under subsection (b)(1) to identify individuals who may pose a threat to chemical facility security, to national security, or of terrorism of—

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

“(2) relevant criminal history databases;

“(3) in the case of an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))), the relevant databases to determine the status of the alien under the immigration laws of the United States;

“(4) the consolidated terrorist watchlist; and

“(5) any other relevant information or databases, as determined by the Secretary.

“(b) REGULATIONS ISSUED BY THE SECRETARY.—

“(1) IN GENERAL.—

“(A) REQUIREMENT.—The Secretary shall issue regulations to require covered chemical facilities to establish personnel surety for individuals described in subparagraph (B) by conducting appropriate security background checks and ensuring appropriate credentials for unescorted visitors and personnel of the covered chemical facility, including permanent and part-
time personnel, temporary personnel, and contract personnel, including—

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

“(ii) measures designed to check criminal history;

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

“(iv) measures designed to identify individuals with terrorist ties.

“(B) INDIVIDUALS DESCRIBED.—For purposes of subparagraph (A), an individual described in this subparagraph is—

“(i) a covered individual who—

“(I) has unescorted access to restricted areas or critical assets; or

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

“(ii) an individual associated with a covered chemical facility, including any designated employee representative, who is provided with a copy of a security vulnerability assessment or site security plan; or
“(iii) an individual who is determined
by the Secretary to require a security
background check based on chemical facil-
ity security performance standards.

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

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

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

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

“(iii) the time period covered for each
person subject to a security background
check under paragraph (1);
“(B) the processes to conduct the security background checks;

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

“(D) a redress process for an adversely affected individual consistent with subsections (c) and (d);

“(E) a prohibition on an owner or operator of a covered chemical facility misrepresenting to an employee or other relevant individual, including an arbiter involved in a labor arbitration, the scope, application, or meaning of any rules, regulations, directives, or guidance issued by the Secretary related to security background check requirements for covered individuals when conducting a security background check; and

“(F) a requirement that any adverse employment decision based on a finding in subparagraph (C), of a person subject to a security background check under subsection (a)(1), shall be based on accurate and up-to-date information.

“(c) MISREPRESENTATION OF ADVERSE EMPLOYMENT DECISIONS.—The regulations required under sub-
section (b)(1) shall provide that it shall be a misrepresentation under subsection (b)(2)(E) to attribute an adverse employment decision, including removal or suspension of an employee, to the regulations unless the owner or operator of a covered chemical facility determines, after opportunity for appropriate redress under the processes provided under subsection (d)(1), that the individual subject to the adverse employment decision—

“(1)(A) meets the requirements for interim or permanent disqualifying offenses reasonably related to terrorism at a covered chemical facility promulgated under subsection (b)(1);

“(B) is on the consolidated terrorist watchlist;

or

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

“(2) has been informed of the basis for the decision and the full rights of the individual to the prompt appeals and reconsideration procedures under subsection (d) before an adverse employment action is taken.

“(d) REDRESS PROCESSES.—The regulations issued by the Secretary under subsection (b) shall—
“(1) provide an adequate and prompt redress process for an individual subject to a security background check under subsection (b)(1) who is subjected to an adverse employment decision, including removal or suspension of the individual, due to a determination by the employer under subsection (c), that is consistent with the appeals process established under section 70105(c) of title 46, United States Code, including all rights to—

“(A) hearings before an administrative law judge;

“(B) scope of review; and

“(C) a review of an unclassified summary of classified evidence equivalent to the summary provided in part 1515 of title 49, Code of Federal Regulations;

“(2) provide an adequate and prompt redress process for an individual subject to a security background check under subsection (b)(1) who is subjected to an adverse employment decision, including removal or suspension of the individual, due to a violation of subsection (b)(2)(E), which shall not preclude the exercise of any other rights available under collective bargaining agreements or applicable laws;
“(3) establish a reconsideration process described in subsection (e) for an individual subject to an adverse employment decision that was attributed by an owner or operator to the regulations required under subsection (b)(1);

“(4) include the authority to order an appropriate remedy, including reinstatement of the individual subject to a security background check under subsection (b)(1), if the Secretary determines that the adverse employment decision was made—

“(A) in violation of the regulations required under subsection (b)(1);

“(B) as a result of an erroneous determination by the Secretary to place the individual on the consolidated terrorist watchlist; or

“(C) as a result of an erroneous determination by the owner or operator of a covered chemical facility under subsection (c);

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

“(6) ensure that the individual subject to a security background check under subsection (b)(1) re-
ceives the full wages and benefits due to the indi-

vidual until all redress processes under this sub-
section are exhausted.

“(e) RECONSIDERATION PROCESS.—

“(1) IN GENERAL.—The reconsideration proc-

ess required under subsection (d)(3) shall—

“(A) require the Secretary to determine,

within 30 days after receiving a petition sub-

mitted by an individual subject to an adverse

employment decision that was attributed by an

owner or operator to the regulations required

under subsection (b)(1), whether the individual

poses a security risk to the covered chemical fa-

cility; and

“(B) include procedures consistent with

section 70105(c) of title 46, United States

Code, including all rights to—

“(i) hearings before an administrative

law judge;

“(ii) scope of review; and

“(iii) a review of an unclassified sum-

mary of classified evidence equivalent to

the summary provided in part 1515 of title

“(2) Determination by the Secretary.—In making a determination described under paragraph (1)(A), the Secretary shall—

“(A) give consideration to the circumstance of any disqualifying act or offense, restitution made by the individual, Federal and State mitigation remedies, and other factors from which it may be concluded that the individual does not pose a security risk to the covered chemical facility; and

“(B) determine whether the individual poses a security risk to the covered chemical facility to the petitioner and to the owner or operator of the covered chemical facility.

“(3) Owner or Operator Reconsideration.—If the Secretary determines under paragraph (1)(A) that the individual does not pose a security risk to the covered chemical facility, it shall be a prohibited misrepresentation for the owner or operator of the covered chemical facility to continue to attribute the adverse employment decision to the regulations under subsection (b)(1).

“(f) Restrictions on Use and Maintenance of Information.—Information obtained under this section
by the Secretary or the owner or operator of a covered chemical facility—

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

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

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

“(4) shall be used only for making determinations under this section; and

“(5) may be shared by the Secretary with other Federal law enforcement agencies and law enforcement agencies of State and local governments.

“(g) SAVINGS CLAUSE.—

“(1) RIGHTS AND RESPONSIBILITIES.—Nothing in this section shall be construed to abridge any right or responsibility of an individual subject to a security background check under subsection (b)(1) or an owner or operator of a covered chemical facility under any other Federal law, the law of a State or local government, or a collective bargaining agreement.
“(2) EXISTING RIGHTS.—Nothing in this section shall be construed as creating any new right or modifying any existing right of an individual to appeal a determination by the Secretary as a result of a check against a terrorist watch list.

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

“(i) DEPARTMENT-CONDUCTED SECURITY BACKGROUND CHECK.—

“(1) IN GENERAL.—The regulations under subsection (b)(1) shall set forth a process by which the Secretary, on an ongoing basis, shall determine whether alternate security background checks conducted by the Secretary are sufficient to meet the requirements under this section such that no additional security background check under this section is required for an individual for whom the qualifying alternate security background check was conducted.

“(2) SUBMISSION OF INFORMATION FOR VERIFICATION.—The Secretary may require the
owner or operator of a covered chemical facility to
which an individual will have unescorted access to
sensitive or restricted areas to submit identifying in-
formation about the individual and the alternate se-
curity background check conducted for the individual
to the Secretary in order to enable the Secretary to
verify the validity of the alternate security back-
ground check.

“(3) Determination of exemption from
security background check.—

“(A) In general.—The Secretary shall
determine whether a security background check
under this section is required for an individual
holding a transportation security card issued
under section 70105 of title 46, United States
Code.

“(B) Regulations.—If the Secretary de-
termines under subparagraph (A) that no back-
ground check is required for an individual hold-
ing a transportation security card issued under
section 70105 of title 46, United States Code, the Secretary shall include the determination in
the regulations required under subsection
(b)(1).
“(j) **Termination of Employment.**—If, as the result of a security background check, an owner or operator of a covered chemical facility finds that a covered individual is not legally authorized to work in the United States, the owner or operator shall cease to employ the covered individual, subject to the appropriate redress processes available to the individual under this section.

**SEC. 2116. Citizen Enforcement.**

“(a) **In General.**—Except as provided in subsection (c), a person may bring a civil action—

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

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

“(b) **Court of Jurisdiction.**—

“(1) **In General.**—Any action under subsection (a)(1) shall be brought in the district court of the United States for the district in which the alleged violation occurred.
“(2) **Action Against the Secretary.**—Any action brought under subsection (a)(2) may be brought in the district court of the United States for the district in which the alleged violation occurred or in the United States District Court for the District of Columbia.

“(3) **Relief.**—A district court of the United States may, without regard to the amount in controversy or the citizenship of the parties—

“(A) enforce an order described in subsection (a)(1);

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

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

“(c) **Actions Prohibited.**—A civil action may not be filed under subsection (a) before 60 days after the date on which the person commencing the action has given notice of the alleged violation to—

“(1) the Secretary; and
“(2) in the case of an action under subsection (a)(1), any governmental entity alleged to be in violation of an order.

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

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

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

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

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

“SEC. 2117. CITIZEN PETITIONS.

“(a) REGULATIONS.—The Secretary shall issue regulations to establish a citizen petition process for petitions described in subsection (b), which shall establish—
“(1) the format for the petitions;

“(2) the procedure for investigation of the petitions;

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

“(4) the procedure for referral to and review by the Office of the Inspector General of the Department without deference to a determination made by the Secretary with respect to the petition; and

“(5) the procedure for rejection or acceptance by the Secretary of the recommendation of the Office of the Inspector General.

“(b) PETITIONS.—The regulations promulgated under subsection (a) shall allow any person to file a petition with the Secretary—

“(1) identifying any person (including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution of the United States) alleged to be in violation of any standard, regulation, condition, requirement, prohibition, plan, or order that has become effective under this title; and

“(2) describing the alleged violation of any standard, regulation, condition, requirement, prohi-
bition, plan, or order that has become effective under this title by the person described in paragraph (1).

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

“(1) accept all petitions described under subsection (b) that meet the requirements of the regulations issued under subsection (a);

“(2) investigate all allegations contained in accepted petitions;

“(3) determine whether enforcement action will be taken concerning the alleged violation or violations;

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

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

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

“(7) with respect to any petition for which the Secretary has not made a timely response or the response of the Secretary is unsatisfactory to the peti-
tioner, provide the petitioner with the opportunity to request—

“(A) a review of the full record by the Inspector General of the Department, including a review of protected information; and

“(B) the formulation of recommendations by the Inspector General and submittal of such recommendations to the Secretary and, to the extent permitted under section 2110, to the petitioner; and

“(8) respond to a recommendation submitted by the Inspector General under paragraph (7) by adopting or rejecting the recommendation.

“SEC. 2118. NOTIFICATION SYSTEM TO ADDRESS PUBLIC CONCERNS.

“(a) Establishment.—The Secretary shall establish a notification system, which shall provide an individual the ability to report, via telephonic and Internet-based means, a suspected security deficiency or suspected noncompliance with this title.

“(b) Acknowledgment.—When the Secretary receives a report through the notification system established under subsection (a), the Secretary shall respond to the report in a timely manner, but in no case shall the Sec-
retary respond to such a report later than 30 days after receipt of the report.

“(c) Steps To Address Problems.—The Secretary shall—

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

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

“(d) Feedback Required.—Upon request, the Secretary shall provide to the individual who reported the suspected security deficiency or noncompliance through the notification system established under subsection (a) a written response that includes the findings of the Secretary with respect to the report submitted by the individual and what, if any, compliance action was taken in response to the report.

“(e) Inspector General Report Required.—

“(1) In General.—The Inspector General of the Department shall submit to the Committee on Homeland Security and Governmental Affairs and the Committee on Environment and Public Works of the Senate and the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives an annual report on
the reports received under the notification system es-
established under subsection (a) and the disposition of
the reports by the Secretary.

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

“SEC. 2119. EMERGENCY RESPONSE CAPACITY STUDY.

“(a) ASSESSMENT AND REPORT.—

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

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

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

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

“(C) the logistical feasibility of evacuation;
“(D) the carrying capacity of impeded and
unimpeded evacuation routes;
“(E) the protective capacity of structures;
“(F) the availability of health and environ-
mental hazard detection, identification, moni-
toring, cleanup, and decontamination;
“(G) the surge capacities of hospitals and
other health care facilities;
“(H) the feasibility of warning persons
within vulnerable areas prior to impact and the
capacity of community notification and warning
systems;
“(I) the protection of vulnerable popu-
lations and immobilized populations (including
in schools, day care centers, nursing homes,
hospitals, sports arenas, shopping malls, homes,
and businesses);
“(J) any additional relevant planning pro-
visions identified in section 303(c) of the Emer-
gency Planning and Community Right to Know
Act (42 U.S.C. 11003(c));
“(K) the necessary funding, organization
(including interagency coordination), personnel,
training, equipment, exercises, transportation,
community notification, medical, infrastructure,
and other elements to appropriately address any
deficiencies in response capacities; and

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

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

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

“SEC. 2120. ANNUAL REPORT TO CONGRESS.

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

“(1) the Committee on Homeland Security and
Governmental Affairs and the Committee on Envi-
ronment and Public Works of the Senate; and
“(2) the Committee on Homeland Security and
the Committee on Energy and Commerce of the
House of Representatives.
“(b) REQUIREMENT.—Each report required under
subsection (a) shall include—
“(1) a qualitative discussion of how covered
chemical facilities, differentiated by tier, have re-
duced the risks of chemical facility terrorist inci-
dents at the covered chemical facilities, including—
“(A) a generalized summary of measures
implemented by covered chemical facilities in
order to meet each risk-based chemical facility
performance standard established under this
title, and the measures that the covered chem-
ical facilities already had in place—
“(i) in the case of the first report
under this section, before the issuance of
the final rule implementing the regulations
known as the ‘Chemical Facility Anti-Ter-
rorism Standards’, issued on April 9,
2007; and
“(ii) in the case of each subsequent
report, since the submittal of the most re-
cent report submitted under this section; and
“(B) any other generalized summary the Secretary determines appropriate to describe the measures covered chemical facilities are implementing to comply with this title; and

“(2) a quantitative summary of how the covered chemical facilities, differentiated by tier, are complying with this title during the period covered by the report and how the Secretary is implementing and enforcing this title during the period covered by the report, including—

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

“(B) the number of covered chemical facilities assigned to each tier;

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

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

“(E) the number of covered chemical facilities without an approved security vulnerability assessment or site security plan;
“(F) the number of chemical facilities that have been assigned to a different tier or are no longer designated as a covered chemical facility by the Secretary due to implementation of a method to reduce the consequences of a terrorist attack and a description of the method;

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

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

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

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

“(K) the number of appeals conducted by the Secretary and the number of petitions for reconsideration considered by the Secretary under the processes established under subsections (d) and (e) of section 2115, including those appeals and reconsiderations addressing the processes described under section 2115(e);
“(L) aggregate information regarding the time taken for the appeals described in subparagraph (K);

“(M) aggregate information regarding the manner in which the appeals described in subparagraph (K) were resolved;

“(N) based on information provided to the Secretary annually by each owner or operator of a covered chemical facility, the number of individuals subjected to adverse employment decisions that were attributed by the owner or operator to the regulations required under section 2115(b)(1); and

“(O) any other data the Secretary determines appropriate to describe compliance with this title by chemical facilities and the implementation of this title by the Secretary.

“(c) Public Availability.—A report submitted under this section shall be made publicly available.

“SEC. 2121. AUTHORIZATION OF APPROPRIATIONS.

“There is authorized to be appropriated to the Secretary to carry out this title—

“(1) $300,000,000 for each of fiscal years 2011 and 2012, of which $150,000,000 shall be made available for grants under section 2111(g) for meth-
ods to reduce the consequences of a terrorist attack, of which up to $3,000,000 shall be made available for grants authorized under section 2111(d)(2); and

“(2) $275,000,000 for each of fiscal years 2013, 2014, and 2015, of which $150,000,000 shall be made available for grants under section 2111(g) for methods to reduce the consequences of a terrorist attack, of which up to $3,000,000 shall be made available for grants authorized under section 2111(d)(2).”.

(b) Clerical Amendment.—The table of contents in section 1(b) of such Act is amended by adding at the end the following:

“TITLE XXI—REGULATION OF SECURITY PRACTICES AT CHEMICAL FACILITIES

Sec. 2101. Definitions.
Sec. 2102. Risk-based designation and ranking of covered chemical facilities.
Sec. 2103. Security vulnerability assessments and site security plans.
Sec. 2104. Site inspections.
Sec. 2105. Records.
Sec. 2106. Timely sharing of threat information.
Sec. 2107. Enforcement.
Sec. 2108. Whistleblower protections.
Sec. 2109. Federal preemption.
Sec. 2110. Protection of information.
Sec. 2111. Methods to reduce the consequences of a terrorist attack.
Sec. 2112. Applicability.
Sec. 2113. Savings clause.
Sec. 2114. Office of Chemical Facility Security.
Sec. 2115. Security background checks of covered individuals at certain chemical facilities.
Sec. 2116. Citizen enforcement.
Sec. 2117. Citizen petitions.
Sec. 2118. Notification system to address public concerns.
Sec. 2119. Emergency response capacity study.
Sec. 2120. Annual report to Congress.
Sec. 2121. Authorization of appropriations.”.

c) Conforming Repeal.—

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

(d) REGULATIONS.—

(1) DEADLINES.—

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

(B) FINAL RULES.—Not later than 18 months after the date of enactment of this Act, the Secretary of Homeland Security shall issue final rules to carry out title XXI of the Homeland Security Act of 2002, as added by subsection (a).

(2) CONSULTATION.—In developing and implementing the rules issued under paragraph (1), the Secretary of Homeland Security shall consult with the Administrator of the Environmental Protection
Agency, and other persons, as appropriate, regard-
ing—

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

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

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

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

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

(3) SENSE OF CONGRESS REGARDING CFATS.—
It is the sense of Congress that—

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

(B) under section 550 of the Department
of Homeland Security Appropriations Act (Pub-
lic Law 109–295), the Secretary prescribed reg-
ulations known as the Chemical Facility Anti-
Terrorism Standards (referred to in this section as “CFATS regulations”).

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

(A) continue to carry out the CFATS regulations, as in effect on the day before the date of the enactment of this Act;

(B) amend the CFATS regulations as may be necessary to ensure that the CFATS regulations are consistent with this Act and the amendments made by this Act; and

(C) continue using any tools developed for purposes of the CFATS regulations, including the list of substances of concern, usually referred to as “Appendix A”, and the chemical security assessment tool (which includes facility registration, a top-screen questionnaire, a security vulnerability assessment tool, a site security plan template, and a chemical vulnerability information repository).
(5) **Update of Facility Plans Assessments and Plans Prepared Under CFATS.**—The owner or operator of a covered chemical facility that, before the effective date of the final regulations issued under paragraph (1), submits a security vulnerability assessment or site security plan under the CFATS regulations, shall be required to update or amend the security vulnerability assessment and site security plan of the facility to reflect any additional requirements under this Act or the amendments made by this Act, according to a timeline established by the Secretary.

(e) **Review of Designation of Sodium Fluoroacetate as a Substance of Concern.**—The Secretary of Homeland Security shall review the designation of sodium fluoroacetate as a substance of concern under section 2102(d) of the Homeland Security Act of 2002, as added by subsection (a), by the earlier of—

(1) the date of the first periodic review conducted under section 2102(d) of the Homeland Security Act of 2002; and

(2) the date that is 1 year after the date of enactment of this Act.