

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 2868**

**OFFERED BY MR. THOMPSON OF MISSISSIPPI,  
MR. WAXMAN OF CALIFORNIA, MR. OBER-  
STAR OF MINNESOTA, MR. MARKEY OF MAS-  
SACHUSETTS, MS. JACKSON-LEE OF TEXAS,  
AND MS. EDDIE BERNICE JOHNSON OF TEXAS**

Strike all after the enacting clause and insert the  
following:

**1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Chemical and Water Security Act of 2009”.

4 (b) TABLE OF CONTENTS.—The table of contents for  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—CHEMICAL FACILITY SECURITY**

Sec. 101. Short title.

Sec. 102. Findings and purpose.

Sec. 103. Extension, modification, and recodification of authority of Secretary  
of Homeland Security to regulate security practices at chemical  
facilities.

**TITLE II—DRINKING WATER SECURITY**

Sec. 201. Short title.

Sec. 202. Intentional acts affecting the security of covered water systems.

Sec. 203. Study to assess the threat of contamination of drinking water dis-  
tribution systems.

**TITLE III—WASTEWATER TREATMENT WORKS SECURITY**

Sec. 301. Short title.

Sec. 302. Wastewater treatment works security.

1     **TITLE I—CHEMICAL FACILITY**  
2                                     **SECURITY**

3     **SEC. 101. SHORT TITLE.**

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

6     **SEC. 102. FINDINGS AND PURPOSE.**

7             (a) FINDINGS.—Congress makes the following find-  
8 ings:

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

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

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

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

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

9   **SEC. 103. EXTENSION, MODIFICATION, AND RECODIFICA-**  
10                           **TION OF AUTHORITY OF SECRETARY OF**  
11                           **HOMELAND SECURITY TO REGULATE SECU-**  
12                           **RITY PRACTICES AT CHEMICAL FACILITIES.**

13           (a) IN GENERAL.—The Homeland Security Act of  
14           2002 (6 U.S.C. 101 et seq.) is amended by adding at the  
15           end the following new title:

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

19   **“SEC. 2101. DEFINITIONS.**

20           “In this title, the following definitions apply:

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

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

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

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

9           “(A) Restricting the area perimeter.

10          “(B) Securing site assets.

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

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

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

1                   cess to the chemical facility and that dis-  
2                   courages abuse through established dis-  
3                   ciplinary measures.

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

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

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

21                   “(iii) detect chemical facility terrorist  
22                   incidents at early stages through counter  
23                   surveillance, frustration of opportunity to  
24                   observe potential targets, surveillance and

1           sensing systems, and barriers and barri-  
2           cades; and

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

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

12          “(F) Deterring theft or diversion of a sub-  
13          stance of concern.

14          “(G) Deterring insider sabotage.

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

23          “(I) Developing and exercising an internal  
24          emergency plan for owners, operators, and cov-  
25          ered individuals of a covered chemical facility

1 for responding to chemical facility terrorist inci-  
2 dents at the facility. Any such plan shall in-  
3 clude the provision of appropriate information  
4 to any local emergency planning committee,  
5 local law enforcement officials, and emergency  
6 response providers to ensure an effective, collec-  
7 tive response to terrorist incidents.

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

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

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

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

24 “(K) Ensuring mandatory annual security  
25 training, exercises, and drills of chemical facil-

1           ity personnel appropriate to their roles, respon-  
2           sibilities, and access to chemicals, including  
3           participation by local law enforcement, local  
4           emergency response providers, appropriate su-  
5           pervisory and non-supervisory facility employees  
6           and their employee representatives, if any.

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

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

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

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

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

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

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

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

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

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

13                   “(i) security;

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

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

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

1 collective response to a chemical facility  
2 terrorist incident.

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

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

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

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

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

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

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

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

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

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

14          “(6) The term ‘covered chemical facility’ means  
15          a chemical facility that meets the criteria of section  
16          2102(b)(1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24           “(a) SUBSTANCES OF CONCERN.—

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

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

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

16                 “(1) CRITERIA FOR LIST OF FACILITIES.—The  
17                 Secretary shall maintain a list of covered chemical  
18                 facilities that the Secretary determines are of suffi-  
19                 cient security risk for inclusion on the list based on  
20                 the following criteria:

21                         “(A) The potential threat or likelihood that  
22                         the chemical facility will be the target of a  
23                         chemical facility terrorist incident.

24                         “(B) The potential extent and likelihood of  
25                         death, injury, or serious adverse effects to

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

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

8 “(2) SUBMISSION OF INFORMATION.—The Sec-  
9 retary may require the submission of information  
10 with respect to the quantities of substances of con-  
11 cern that an owner or operator of a chemical facility  
12 possesses or plans to possess in order to determine  
13 whether to designate a chemical facility as a covered  
14 chemical facility for purposes of this title.

15 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO  
16 RISK-BASED TIERS.—

17 “(1) ASSIGNMENT.—The Secretary shall assign  
18 each covered chemical facility to one of four risk-  
19 based tiers established by the Secretary, with tier  
20 one representing the highest degree of risk and tier  
21 four the lowest degree of risk.

22 “(2) PROVISION OF INFORMATION.—The Sec-  
23 retary may request, and the owner or operator of a  
24 covered chemical facility shall provide, any additional  
25 information beyond any information required to be

1 submitted under subsection (b)(2) that may be nec-  
2 essary for the Secretary to assign the chemical facil-  
3 ity to the appropriate tier under paragraph (1).

4 “(3) NOTIFICATION.—Not later than 60 days  
5 after the date on which the Secretary determines  
6 that a chemical facility is a covered chemical facility  
7 or is no longer a covered chemical facility or changes  
8 the tier assignment under paragraph (1) of a cov-  
9 ered chemical facility, the Secretary shall notify the  
10 owner or operator of that chemical facility of that  
11 determination or change together with the reason for  
12 the determination or change and, upon the request  
13 of the owner or operator of a covered chemical facil-  
14 ity, provide to the owner or operator of the covered  
15 chemical facility the following information:

16 “(A) The number of individuals at risk of  
17 death, injury, or severe adverse effects to  
18 human health as a result of a worst case chem-  
19 ical facility terrorist incident at the covered  
20 chemical facility.

21 “(B) Information related to the criticality  
22 of the covered chemical facility.

23 “(C) The proximity or interrelationship of  
24 the covered chemical facility to other critical in-  
25 frastructure.

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

2 “(1) shall periodically review—

3 “(A) the designation of a substance of con-  
4 cern and the threshold quantity under sub-  
5 section (a)(1); and

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

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

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

19 **“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND**  
20 **SITE SECURITY PLANS.**

21 “(a) IN GENERAL.—

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

23 “(A) establish standards, protocols, and  
24 procedures for security vulnerability assess-

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

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

5                   “(i) conduct an assessment of the vul-  
6 nerability of the covered chemical facility  
7 to a range of chemical facility terrorist in-  
8 cidents, including an incident that results  
9 in a worst-case release of a substance of  
10 concern and submit such assessment to the  
11 Secretary;

12                   “(ii) prepare and implement a site se-  
13 curity plan for that covered chemical facil-  
14 ity that addresses the security vulnerability  
15 assessment and meets the risk-based chem-  
16 ical security performance standards under  
17 subsection (c) and submit such plan to the  
18 Secretary;

19                   “(iii) include at least one supervisory  
20 and at least one non-supervisory employee  
21 of the covered chemical facility, and at  
22 least one employee representative, from  
23 each bargaining agent at the covered  
24 chemical facility, if any, in developing the  
25 security vulnerability assessment and site

1 security plan required under this section;  
2 and

3 “(iv) include, with the submission of a  
4 security vulnerability assessment and the  
5 site security plan of the covered chemical  
6 facility under this title, a signed statement  
7 by the owner or operator of the covered  
8 chemical facility that certifies that the sub-  
9 mission is provided to the Secretary with  
10 knowledge of the penalty provisions under  
11 section 2107;

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

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

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

23 “(i) any change in the use by the cov-  
24 ered chemical facility of more than a  
25 threshold amount of any substance of con-

1           cern that may affect the requirements of  
2           the chemical facility under this title; or

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

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

13          “(G) not later than 180 days after the  
14          date on which the Secretary receives a security  
15          vulnerability assessment or site security plan  
16          under this title, review and approve or dis-  
17          approve such assessment or plan and notify the  
18          covered chemical facility of such approval or  
19          disapproval.

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

24          “(b) PARTICIPATION IN PREPARATION OF SECURITY  
25          VULNERABILITY ASSESSMENTS OR SITE SECURITY

1 PLANS.—Any person selected by the owner or operator of  
2 a covered chemical facility or by a certified or recognized  
3 bargaining agent of a covered chemical facility to partici-  
4 pate in the development of the security vulnerability as-  
5 sessment or site security plan required under this section  
6 for such covered chemical facility shall be permitted to  
7 participate if the person possesses knowledge, experience,  
8 training, or education relevant to the portion of the secu-  
9 rity vulnerability assessment or site security plan on which  
10 the person is participating.

11 “(c) RISK-BASED CHEMICAL SECURITY PERFORM-  
12 ANCE STANDARDS.—The Secretary shall establish risk-  
13 based chemical security performance standards for the site  
14 security plans required to be prepared by covered chemical  
15 facilities. In establishing such standards, the Secretary  
16 shall—

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

21 “(2) permit each covered chemical facility sub-  
22 mitting a site security plan to select a combination  
23 of security measures that satisfy the risk-based  
24 chemical security performance standards established  
25 by the Secretary under this subsection.

1           “(d) CO-LOCATED CHEMICAL FACILITIES.—The Sec-  
2 retary may allow an owner or operator of a covered chem-  
3 ical facility that is located geographically close to another  
4 covered chemical facility to develop and implement coordi-  
5 nated security vulnerability assessments and site security  
6 plans.

7           “(e) ALTERNATE SECURITY PROGRAMS SATISFYING  
8 REQUIREMENTS FOR SECURITY VULNERABILITY ASSESS-  
9 MENT AND SITE SECURITY PLAN.—

10           “(1) ACCEPTANCE OF PROGRAM.—In response  
11 to a request by an owner or operator of a covered  
12 chemical facility, the Secretary may accept an alter-  
13 nate security program submitted by the owner or op-  
14 erator of the facility as a component of the security  
15 vulnerability assessment or site security plan re-  
16 quired under this section, if the Secretary deter-  
17 mines that such alternate security program, in com-  
18 bination with other components of the security vul-  
19 nerability assessment and site security plan sub-  
20 mitted by the owner or operator of the facility—

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

24           “(B) provides an equivalent level of secu-  
25 rity to the level of security established pursuant

1 to the regulations promulgated under this title;  
2 and

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

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

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

11 “(B) to approve or disapprove each such  
12 assessment or plan on an individual basis ac-  
13 cording to the deadlines established under sub-  
14 section (a).

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

20 “(4) PERSONNEL SURETY ALTERNATE SECU-  
21 RITY PROGRAM.—In response to an application from  
22 a non-profit, personnel surety accrediting organiza-  
23 tion acting on behalf of, and with written authoriza-  
24 tion from, the owner or operator of a covered chem-  
25 ical facility, the Secretary may accept a personnel

1 surety alternate security program that meets the re-  
2 quirements of section 2115 and provides for a back-  
3 ground check process that is—

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

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

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

13 “(f) OTHER AUTHORITIES.—

14 “(1) REGULATION OF MARITIME FACILITIES.—

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

1           “(B) ADDITIONAL MEASURES.—In the case  
2 of a facility designated as a covered chemical  
3 facility under this title for which a facility secu-  
4 rity plan is required to be submitted under sec-  
5 tion 70103(c) of title 46, United States Code,  
6 the Commandant of the Coast Guard, after con-  
7 sultation with the Secretary, shall require the  
8 owner or operator of such facility to update the  
9 vulnerability assessments and facility security  
10 plans required under that section, if necessary,  
11 to ensure an equivalent level of security for sub-  
12 stances of concern, including the requirements  
13 under section 2111, in the same manner as  
14 other covered chemical facilities in this title.

15           “(C) PERSONNEL SURETY.—

16           “(i) EXCEPTION.—A facility des-  
17 ignated as a covered chemical facility  
18 under this title that has had its facility se-  
19 curity plan approved under section  
20 70103(c) of title 46, United States Code,  
21 shall not be required to update or amend  
22 such plan in order to meet the require-  
23 ments of section 2115 of this title.

24           “(ii) EQUIVALENT ACCESS.—An indi-  
25 vidual described in section 2115(a)(1)(B)

1           who has been granted access to restricted  
2           areas or critical assets by the owner or op-  
3           erator of a facility for which a security  
4           plan is required to be submitted under sec-  
5           tion 70103(c) of title 46, United States  
6           Code, may be considered by that owner or  
7           operator to have satisfied the requirement  
8           for passing a security background check  
9           otherwise required under section 2115 for  
10          purposes of granting the individual access  
11          to restricted areas or critical assets of a  
12          covered chemical facility that is owned or  
13          operated by the same owner or operator.

14           “(D) INFORMATION SHARING AND PRO-  
15          TECTION.—Notwithstanding section 70103(d)  
16          of title 46, United States Code, the Com-  
17          mandant of the Coast Guard, after consultation  
18          with the Secretary, shall apply the information  
19          sharing and protection requirements in section  
20          2110 of this title to a facility described in sub-  
21          paragraph (B).

22           “(E) ENFORCEMENT.—The Secretary shall  
23          establish, by rulemaking, procedures to ensure  
24          that an owner or operator of a covered chemical  
25          facility required to update the vulnerability as-

1           assessment and facility security plan for the facil-  
2           ity under subparagraph (B) is in compliance  
3           with the requirements of this title.

4           “(F) FORMAL AGREEMENT.—The Sec-  
5           retary shall—

6                     “(i) require the Office of Infrastruc-  
7                     ture Protection and the Coast Guard to  
8                     enter into a formal agreement detailing  
9                     their respective roles and responsibilities in  
10                    carrying out the requirements of this title,  
11                    which shall ensure that the enforcement  
12                    and compliance requirements under this  
13                    title and section 70103 of title 46, United  
14                    States Code, are not conflicting or duplica-  
15                    tive; and

16                    “(ii) designate the agency responsible  
17                    for enforcing the requirements of this title  
18                    with respect to covered chemical facilities  
19                    for which facility security plans are re-  
20                    quired to be submitted under section  
21                    70103(c) of title 46, United States Code,  
22                    consistent with the requirements of sub-  
23                    paragraphs (B) and (D).

24           “(2) COORDINATION OF STORAGE LICENSING  
25           OR PERMITTING REQUIREMENT.—In the case of any

1 storage required to be licensed or permitted under  
2 chapter 40 of title 18, United States Code, the Sec-  
3 retary shall prescribe the rules and regulations for  
4 the implementation of this section with the concur-  
5 rence of the Attorney General and avoid unnecessary  
6 duplication of regulatory requirements.

7 “(g) ROLE OF EMPLOYEES.—

8 “(1) DESCRIPTION OF ROLE REQUIRED.—Site  
9 security plans required under this section shall de-  
10 scribe the roles or responsibilities that covered indi-  
11 viduals are expected to perform to deter or respond  
12 to a chemical facility terrorist incident.

13 “(2) ANNUAL TRAINING FOR EMPLOYEES.—The  
14 owner or operator of a covered chemical facility re-  
15 quired to submit a site security plan under this sec-  
16 tion shall annually provide each covered individual  
17 with a role or responsibility referred to in paragraph  
18 (1) at the facility with a minimum of 8 hours of  
19 training. Such training shall, as relevant to the role  
20 or responsibility of such covered individual—

21 “(A) include an identification and discus-  
22 sion of substances of concern;

23 “(B) include a discussion of possible con-  
24 sequences of a chemical facility terrorist inci-  
25 dent;

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

4           “(D) include a review of information pro-  
5           tection requirements;

6           “(E) include a discussion of physical and  
7           cyber security equipment, systems, and methods  
8           used to achieve chemical security performance  
9           standards;

10          “(F) allow training with other relevant  
11          participants, including Federal, State, local,  
12          and tribal authorities, and first responders,  
13          where appropriate;

14          “(G) use existing national voluntary con-  
15          sensus standards, chosen jointly with employee  
16          representatives, if any;

17          “(H) allow instruction through government  
18          training programs, chemical facilities, academic  
19          institutions, nonprofit organizations, industry  
20          and private organizations, employee organiza-  
21          tions, and other relevant entities that provide  
22          such training;

23          “(I) use multiple training media and meth-  
24          ods; and

1           “(J) include a discussion of appropriate  
2           emergency response procedures, including pro-  
3           cedures to mitigate the effects of a chemical fa-  
4           cility terrorist incident.

5           “(3) EQUIVALENT TRAINING.—During any  
6           year, with respect to any covered individual with  
7           roles or responsibilities under paragraph (1), an  
8           owner or operator of a covered chemical facility may  
9           satisfy any of the training requirements for such  
10          covered individual under subparagraphs (A), (B),  
11          (C), (D), (E), or (J) of paragraph (2) through train-  
12          ing that such owner or operator certifies, in a man-  
13          ner prescribed by the Secretary, is equivalent.

14          “(4) WORKER TRAINING GRANT PROGRAM.—

15                 “(A) AUTHORITY.—The Secretary shall es-  
16                 tablish a grant program to award grants to or  
17                 enter into cooperative agreements with eligible  
18                 entities to provide for the training and edu-  
19                 cation of covered individuals with roles or re-  
20                 sponsibilities described in paragraph (1) and  
21                 first responders and emergency response pro-  
22                 viders that would respond to a chemical facility  
23                 terrorist incident.

24                 “(B) ADMINISTRATION.—The Secretary  
25                 shall seek to enter into an agreement with the

1 Director of the National Institute for Environ-  
2 mental Health Sciences, or with the head of an-  
3 other Federal or State agency, to make and ad-  
4 minister grants or cooperative agreements  
5 under this paragraph.

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

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

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

20 “(D) ELIGIBLE ENTITIES.—For purposes  
21 of this paragraph, an eligible entity is a non-  
22 profit organization with demonstrated experi-  
23 ence in implementing and operating successful  
24 worker or first responder health and safety or  
25 security training programs.

1           “(h) STATE, REGIONAL, OR LOCAL GOVERNMENTAL  
2 ENTITIES.—No covered chemical facility shall be required  
3 under State, local, or tribal law to provide a vulnerability  
4 assessment or site security plan described under this title  
5 to any State, regional, local, or tribal government entity  
6 solely by reason of the requirement under subsection (a)  
7 that the covered chemical facility submit such an assess-  
8 ment and plan to the Secretary.

9           **“SEC. 2104. SITE INSPECTIONS.**

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

16           “(b) INSPECTIONS AND VERIFICATIONS.—

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

21           “(2) REQUIREMENTS.—To ensure and evaluate  
22 compliance with this title, including any regulations  
23 or requirements adopted by the Secretary in further-  
24 ance of the purposes of this title, in conducting an  
25 inspection or verification under paragraph (1), the

1 Secretary shall have access to the owners, operators,  
2 employees, and employee representatives, if any, of  
3 a covered chemical facility.

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

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

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

14 “(A) the ability of the chemical facility to  
15 prevent a chemical facility terrorist incident  
16 that the site security plan of the facility is in-  
17 tended to prevent;

18 “(B) the ability of the chemical facility to  
19 protect against security threats that are re-  
20 quired to be addressed by the site security plan  
21 of the facility; and

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

24 “(3) conducted so as not to affect the actual se-  
25 curity, physical integrity, safety, or regular oper-

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

3           “(4) conducted—

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

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

8           “(d) CHEMICAL FACILITY INSPECTORS AUTHOR-  
9           ORIZED.—During the period of fiscal years 2011 and 2012,  
10           subject to the availability of appropriations for such pur-  
11           pose, the Secretary shall increase by not fewer than 100  
12           the total number of chemical facility inspectors within the  
13           Department to ensure compliance with this title.

14           “(e) CONFIDENTIAL COMMUNICATIONS.—The Sec-  
15           retary shall offer non-supervisory employees the oppor-  
16           tunity to confidentially communicate information relevant  
17           to the employer’s compliance or non-compliance with this  
18           title, including compliance or non-compliance with any  
19           regulation or requirement adopted by the Secretary in fur-  
20           therance of the purposes of this title. An employee rep-  
21           resentative of each certified or recognized bargaining  
22           agent at the covered chemical facility, if any, or, if none,  
23           a non-supervisory employee, shall be given the opportunity  
24           to accompany the Secretary during a physical inspection  
25           of such covered chemical facility for the purpose of aiding

1 in such inspection, if representatives of the owner or oper-  
2 ator of the covered chemical facility will also be accom-  
3 panying the Secretary on such inspection.

4 **“SEC. 2105. RECORDS.**

5 “(a) REQUEST FOR RECORDS.—In carrying out this  
6 title, the Secretary may require submission of, or on pres-  
7 entation of credentials may at reasonable times obtain ac-  
8 cess to and copy, any records, including any records main-  
9 tained in electronic format, necessary for—

10 “(1) reviewing or analyzing a security vulner-  
11 ability assessment or site security plan submitted  
12 under section 2103; or

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

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

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

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

1 or security officer of that covered chemical facility, to a  
2 representative of each recognized or certified bargaining  
3 agent at the facility, if any, and to relevant State, local,  
4 and tribal authorities, including the State Homeland Security  
5 Advisor, if any.

6 “(b) RESPONSIBILITIES OF OWNER OR OPERATOR.—  
7 The Secretary shall require the owner or operator of a  
8 covered chemical facility to provide information concerning  
9 a threat in a timely manner about any significant security  
10 incident or threat to the covered chemical facility or any  
11 intentional or unauthorized penetration of the physical security  
12 or cyber security of the covered chemical facility  
13 whether successful or unsuccessful.

14 **“SEC. 2107. ENFORCEMENT.**

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

17 “(1) DISAPPROVAL.—The Secretary shall dis-  
18 approve a security vulnerability assessment or site  
19 security plan submitted under this title if the Secretary  
20 determines, in his or her discretion, that—

21 “(A) the security vulnerability assessment  
22 or site security plan does not comply with the  
23 standards, protocols, or procedures under section  
24 2103(a)(1)(A); or

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

1                   “(i) the plan or the implementation of  
2                   the plan is insufficient to address  
3                   vulnerabilities identified in a security vul-  
4                   nerability assessment, site inspection, or  
5                   unannounced inspection of the covered  
6                   chemical facility; or

7                   “(ii) the plan fails to meet all applica-  
8                   ble chemical facility security performance  
9                   standards.

10                  “(2) NOTIFICATION OF DISAPPROVAL.—If the  
11                  Secretary disapproves the security vulnerability as-  
12                  sessment or site security plan submitted by a cov-  
13                  ered chemical facility under this title or the imple-  
14                  mentation of a site security plan by such a chemical  
15                  facility, the Secretary shall provide the owner or op-  
16                  erator of the covered chemical facility a written noti-  
17                  fication of the disapproval not later than 14 days  
18                  after the date on which the Secretary disapproves  
19                  such assessment or plan, that—

20                  “(A) includes a clear explanation of defi-  
21                  ciencies in the assessment, plan, or implementa-  
22                  tion of the plan; and

23                  “(B) requires the owner or operator of the  
24                  covered chemical facility to revise the assess-  
25                  ment or plan to address any deficiencies and,

1           by such date as the Secretary determines is ap-  
2           propriate, to submit to the Secretary the re-  
3           vised assessment or plan.

4           “(b) REMEDIES.—

5           “(1) ORDER FOR COMPLIANCE.—Whenever the  
6           Secretary determines that the owner or operator of  
7           a covered chemical facility has violated or is in viola-  
8           tion of any requirement of this title or has failed or  
9           is failing to address any deficiencies in the assess-  
10          ment, plan, or implementation of the plan by such  
11          date as the Secretary determines to be appropriate,  
12          the Secretary may—

13                 “(A) after providing notice to the owner or  
14                 operator of the covered chemical facility and an  
15                 opportunity, pursuant to the regulations issued  
16                 under this title, for such owner or operator to  
17                 seek review within the Department of the Sec-  
18                 retary’s determination, issue an order assessing  
19                 an administrative penalty of not more than  
20                 \$25,000 for each day on which a past or cur-  
21                 rent violation occurs or a failure to comply con-  
22                 tinues, requiring compliance immediately or  
23                 within a specified time period, or both; or

24                 “(B) in a civil action, obtain appropriate  
25                 equitable relief, a civil penalty of not more than

1           \$25,000 for each day on which a past or cur-  
2           rent violation occurs or a failure to comply con-  
3           tinues, or both.

4           “(2) ORDER TO CEASE OPERATIONS.—When-  
5           ever the Secretary determines that the owner or op-  
6           erator of a covered chemical facility continues to be  
7           in noncompliance after an order for compliance is  
8           issued under paragraph (1), the Secretary may issue  
9           an order to the owner or operator to cease oper-  
10          ations at the facility until compliance is achieved to  
11          the satisfaction of the Secretary.

12          “(c) APPLICABILITY OF PENALTIES.—A penalty  
13          under subsection (b)(1) may be awarded for any violation  
14          of this title, including a violation of the whistleblower pro-  
15          tections under section 2108.

16          **“SEC. 2108. WHISTLEBLOWER PROTECTIONS.**

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

23          “(b) CONFIDENTIALITY.—The Secretary shall keep  
24          confidential the identity of a person that submits a report  
25          under subsection (a) and any such report shall be treated

1 as protected information under section 2110 to the extent  
2 that it does not consist of publicly available information.

3 “(c) ACKNOWLEDGMENT OF RECEIPT.—If a report  
4 submitted under subsection (a) identifies the person sub-  
5 mitting the report, the Secretary shall respond promptly  
6 to such person to acknowledge receipt of the report.

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

13 “(e) RETALIATION PROHIBITED.—

14 “(1) PROHIBITION.—No owner or operator of a  
15 covered chemical facility, profit or not-for-profit cor-  
16 poration, association, or any contractor, subcon-  
17 tractor or agent thereof, may discharge any em-  
18 ployee or otherwise discriminate against any em-  
19 ployee with respect to the employee’s compensation,  
20 terms, conditions, or other privileges of employment  
21 because the employee (or any person acting pursu-  
22 ant to a request of the employee)—

23 “(A) notified the Secretary, the owner or  
24 operator of a covered chemical facility, or the  
25 employee’s employer of an alleged violation of

1 this title, including notification of such an al-  
2 leged violation through communications related  
3 to carrying out the employee's job duties;

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

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

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

16 “(E) testified or is about to testify in any  
17 such proceeding; or

18 “(F) assisted or participated or is about to  
19 assist or participate in any manner in such a  
20 proceeding or in any other manner in such a  
21 proceeding or in any other action to carry out  
22 the purposes of this title.

23 “(2) ENFORCEMENT ACTION.—Any employee  
24 covered by this section who alleges discrimination by  
25 an employer in violation of paragraph (1) may bring

1 an action governed by the rules and procedures,  
2 legal burdens of proof, and remedies applicable  
3 under subsections (d) through (h) of section 20109  
4 of title 49, United States Code. A party may seek  
5 district court review as set forth in subsection (d)(3)  
6 of such section not later than 90 days after receiving  
7 a written final determination by the Secretary of  
8 Labor.

9 “(3) PROHIBITED PERSONNEL PRACTICES AF-  
10 FECTING THE DEPARTMENT.—

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

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

18 “(ii) any provision of law imple-  
19 menting any of such paragraphs by pro-  
20 viding any right or remedy available to an  
21 employee or applicant for employment in  
22 the civil service; and

23 “(iii) any rule or regulation prescribed  
24 under any such paragraph.

1           “(B) RULE OF CONSTRUCTION.—Nothing  
2           in this paragraph shall be construed to affect  
3           any rights, apart from those referred to in sub-  
4           paragraph (A), to which an individual described  
5           in that subparagraph might otherwise be enti-  
6           tled to under law.

7   **“SEC. 2109. FEDERAL PREEMPTION.**

8           “‘This title does not preclude or deny any right of any  
9   State or political subdivision thereof to adopt or enforce  
10 any regulation, requirement, or standard of performance  
11 with respect to a covered chemical facility that is more  
12 stringent than a regulation, requirement, or standard of  
13 performance issued under this title, or otherwise impair  
14 any right or jurisdiction of any State or political subdivi-  
15 sion thereof with respect to covered chemical facilities  
16 within that State or political subdivision thereof.

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

18           “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-  
19 TECTED INFORMATION.—Protected information, as de-  
20 scribed in subsection (g)—

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

23           “(2) shall not be made available pursuant to  
24 any State, local, or tribal law requiring disclosure of  
25 information or records.

1 “(b) INFORMATION SHARING.—

2 “(1) IN GENERAL.—The Secretary shall pre-  
3 scribe such regulations, and may issue such orders,  
4 as necessary to prohibit the unauthorized disclosure  
5 of protected information, as described in subsection  
6 (g).

7 “(2) SHARING OF PROTECTED INFORMATION.—

8 The regulations under paragraph (1) shall provide  
9 standards for and facilitate the appropriate sharing  
10 of protected information with and between Federal,  
11 State, local, and tribal authorities, emergency re-  
12 sponse providers, law enforcement officials, des-  
13 ignated supervisory and nonsupervisory covered  
14 chemical facility personnel with security, operational,  
15 or fiduciary responsibility for the facility, and des-  
16 ignated facility employee representatives, if any.  
17 Such standards shall include procedures for the  
18 sharing of all portions of a covered chemical facili-  
19 ty’s vulnerability assessment and site security plan  
20 relating to the roles and responsibilities of covered  
21 individuals under section 2103(g)(1) with a rep-  
22 resentative of each certified or recognized bargaining  
23 agent representing such covered individuals, if any,  
24 or, if none, with at least one supervisory and at least

1 one non-supervisory employee with roles or respon-  
2 sibilities under section 2103(g)(1).

3 “(3) PENALTIES.—Protected information, as  
4 described in subsection (g), shall not be shared ex-  
5 cept in accordance with the regulations under para-  
6 graph (1). Whoever discloses protected information  
7 in knowing violation of the regulations and orders  
8 issued under paragraph (1) shall be fined under title  
9 18, United States Code, imprisoned for not more  
10 than one year, or both, and, in the case of a Federal  
11 officeholder or employee, shall be removed from Fed-  
12 eral office or employment.

13 “(c) TREATMENT OF INFORMATION IN ADJUDICA-  
14 TIVE PROCEEDINGS.—In any judicial or administrative  
15 proceeding, protected information described in subsection  
16 (g) shall be treated in a manner consistent with the treat-  
17 ment of sensitive security information under section 525  
18 of the Department of Homeland Security Appropriations  
19 Act, 2007 (Public Law 109–295; 120 Stat. 1381).

20 “(d) OTHER OBLIGATIONS UNAFFECTED.—Except  
21 as provided in section 2103(h), nothing in this section af-  
22 fects any obligation of the owner or operator of a chemical  
23 facility under any other law to submit or make available  
24 information required by such other law to facility employ-

1 ees, employee organizations, or a Federal, State, tribal,  
2 or local government.

3 “(e) SUBMISSION OF INFORMATION TO CONGRESS.—  
4 Nothing in this title shall permit or authorize the with-  
5 holding of information from Congress or any committee  
6 or subcommittee thereof.

7 “(f) DISCLOSURE OF INDEPENDENTLY FURNISHED  
8 INFORMATION.—Nothing in this title shall affect any au-  
9 thority or obligation of a Federal, State, local, or tribal  
10 government agency to protect or disclose any record or  
11 information that the Federal, State, local, or tribal govern-  
12 ment agency obtains from a chemical facility under any  
13 other law.

14 “(g) PROTECTED INFORMATION.—

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

17 “(A) Security vulnerability assessments  
18 and site security plans, including any assess-  
19 ment required under section 2111.

20 “(B) Portions of the following documents,  
21 records, orders, notices, or letters that the Sec-  
22 retary determines would be detrimental to  
23 chemical facility security if disclosed and that  
24 are developed by the Secretary or the owner or

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

3 “(i) Documents directly related to the  
4 Secretary’s review and approval or dis-  
5 approval of vulnerability assessments and  
6 site security plans under this title.

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

9 “(iii) Orders, notices, or letters re-  
10 garding the compliance of a covered chem-  
11 ical facility with the requirements of this  
12 title.

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

17 “(v) Documents directly related to se-  
18 curity drills and training exercises, security  
19 threats and breaches of security, and  
20 maintenance, calibration, and testing of se-  
21 curity equipment.

22 “(C) Other information, documents, or  
23 records developed exclusively for the purposes of  
24 this title that the Secretary has determined by

1 regulation would, if disclosed, be detrimental to  
2 chemical facility security.

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

5 “(A) information that is otherwise publicly  
6 available, including information that is required  
7 to be made publicly available under any law;

8 “(B) information that a chemical facility  
9 has lawfully disclosed other than in accordance  
10 with this title; or

11 “(C) information that, if disclosed, would  
12 not be detrimental to the security of a chemical  
13 facility, including aggregate regulatory data  
14 that the Secretary has determined by regulation  
15 to be appropriate to describe facility compliance  
16 with the requirements of this title and the Sec-  
17 retary’s implementation of such requirements.

18 **“SEC. 2111. METHODS TO REDUCE THE CONSEQUENCES OF**

19 **A TERRORIST ATTACK.**

20 “(a) ASSESSMENT REQUIRED.—

21 “(1) ASSESSMENT.—The owner or operator of  
22 a covered chemical facility shall include in the site  
23 security plan conducted pursuant to section 2103,  
24 an assessment of methods to reduce the con-

1 sequences of a terrorist attack on that chemical fa-  
2 cility, including—

3 “(A) a description of the methods to re-  
4 duce the consequences of a terrorist attack im-  
5 plemented and considered for implementation  
6 by the covered chemical facility;

7 “(B) the degree to which each method to  
8 reduce the consequences of a terrorist attack, if  
9 already implemented, has reduced, or, if imple-  
10 mented, could reduce, the potential extent of  
11 death, injury, or serious adverse effects to  
12 human health resulting from a release of a sub-  
13 stance of concern;

14 “(C) the technical feasibility, costs, avoided  
15 costs (including liabilities), personnel implica-  
16 tions, savings, and applicability of implementing  
17 each method to reduce the consequences of a  
18 terrorist attack; and

19 “(D) any other information that the owner  
20 or operator of the covered chemical facility con-  
21 sidered in conducting the assessment.

22 “(2) FEASIBLE.—For the purposes of this sec-  
23 tion, the term ‘feasible’ means feasible with the use  
24 of best technology, techniques, and other means that  
25 the Secretary finds, after examination for efficacy

1 under field conditions and not solely under labora-  
2 tory conditions, are available for use at the covered  
3 chemical facility.

4 “(b) IMPLEMENTATION.—

5 “(1) IMPLEMENTATION.—

6 “(A) IN GENERAL.—The owner or operator  
7 of a covered chemical facility that is assigned to  
8 tier 1 or tier 2 because of the potential extent  
9 and likelihood of death, injury, and serious ad-  
10 verse effects to human health, the environment,  
11 critical infrastructure, public health, homeland  
12 security, national security, and the national  
13 economy from a release of a substance of con-  
14 cern at the covered chemical facility, shall im-  
15 plement methods to reduce the consequences of  
16 a terrorist attack on the chemical facility if the  
17 Director of the Office of Chemical Facility Se-  
18 curity determines, in his or her discretion, using  
19 the assessment conducted pursuant to sub-  
20 section (a), that the implementation of such  
21 methods at the facility—

22 “(i) would significantly reduce the  
23 risk of death, injury, or serious adverse ef-  
24 fects to human health resulting from a  
25 chemical facility terrorist incident but—

1           “(I) would not increase the in-  
2           terim storage of a substance of con-  
3           cern outside the facility;

4           “(II) would not directly result in  
5           the creation of a new covered chemical  
6           facility assigned to tier 1 or tier 2 be-  
7           cause of the potential extent and like-  
8           lihood of death, injury, and serious  
9           adverse effects to human health, the  
10          environment, critical infrastructure,  
11          public health, homeland security, na-  
12          tional security, and the national econ-  
13          omy from a release of a substance of  
14          concern at the covered chemical facil-  
15          ity;

16          “(III) would not result in the re-  
17          assignment of an existing covered  
18          chemical facility from tier 3 or tier 4  
19          to tier 1 or tier 2 because of the po-  
20          tential extent and likelihood of death,  
21          injury, and serious adverse effects to  
22          human health, the environment, crit-  
23          ical infrastructure, public health,  
24          homeland security, national security,  
25          and the national economy from a re-

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

3                   “(IV) would not significantly in-  
4                   crease the potential extent and likeli-  
5                   hood of death, injury, and serious ad-  
6                   verse effects to human health, the en-  
7                   vironment, critical infrastructure,  
8                   public health, homeland security, na-  
9                   tional security, and the national econ-  
10                  omy from a release of a substance of  
11                  concern due to a terrorist attack on  
12                  the transportation infrastructure of  
13                  the United States;

14                  “(ii) can feasibly be incorporated into  
15                  the operation of the covered chemical facil-  
16                  ity; and

17                  “(iii) would not significantly and de-  
18                  monstrably impair the ability of the owner  
19                  or operator of the covered chemical facility  
20                  to continue the business of the facility at  
21                  its location.

22                  “(B) WRITTEN DETERMINATION.—A de-  
23                  termination by the Director of the Office of  
24                  Chemical Facility Security pursuant to sub-  
25                  paragraph (A) shall be made in writing and in-

1           clude the basis and reasons for such determina-  
2           tion, including the Director’s analysis of the  
3           covered chemical facility’s assessment of the  
4           technical feasibility, costs, avoided costs (includ-  
5           ing liabilities), personnel implications, savings,  
6           and applicability of implementing each method  
7           to reduce the consequences of a terrorist attack.

8           “(C) MARITIME FACILITIES.—With respect  
9           to a covered chemical facility for which a secu-  
10          rity plan is required under section 70103(e) of  
11          title 46, United States Code, a written deter-  
12          mination pursuant to subparagraph (A) shall be  
13          made only after consultation with the Captain  
14          of the Port for the area in which the covered  
15          chemical facility is located.

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

17          “(A) IN GENERAL.—An owner or operator  
18          of a covered chemical facility who is unable to  
19          comply with the Director’s determination under  
20          paragraph (1) shall, within 120 days of receipt  
21          of the Director’s determination, provide to the  
22          Secretary a written explanation that includes  
23          the reasons therefor. Such written explanation  
24          shall specify whether the owner or operator’s in-

1 ability to comply arises under clause (ii) or (iii)  
2 of paragraph (1)(A), or both.

3 “(B) REVIEW.—Not later than 120 days of  
4 receipt of an explanation submitted under sub-  
5 paragraph (A), the Secretary, after consulting  
6 with the owner or operator of the covered chem-  
7 ical facility who submitted such explanation, as  
8 well as experts in the subjects of environmental  
9 health and safety, security, chemistry, design  
10 and engineering, process controls and imple-  
11 mentation, maintenance, production and oper-  
12 ations, chemical process safety, and occupa-  
13 tional health, as appropriate, shall provide to  
14 the owner or operator a written determination,  
15 in his or her discretion, of whether implementa-  
16 tion shall be required pursuant to paragraph  
17 (1). If the Secretary determines that implemen-  
18 tation is required, the Secretary shall issue an  
19 order that establishes the basis for such deter-  
20 mination, including the findings of the relevant  
21 experts, the specific methods selected for imple-  
22 mentation, and a schedule for implementation  
23 of the methods at the facility.

24 “(c) SECTORAL IMPACTS.—

1           “(1) GUIDANCE FOR FARM SUPPLIES MER-  
2           CHANT WHOLESALERS.—The Secretary shall provide  
3           guidance and, as appropriate, tools, methodologies or  
4           computer software, to assist farm supplies merchant  
5           wholesalers in complying with the requirements of  
6           this section. The Secretary may award grants to  
7           farm supplies merchant wholesalers to assist with  
8           compliance with subsection (a), and in awarding  
9           such grants, shall give priority to farm supplies mer-  
10          chant wholesalers that have the greatest need for  
11          such grants.

12          “(2) ASSESSMENT OF IMPACTS OF COMPLI-  
13          ANCE.—Not later than 6 months after the date of  
14          the enactment of this title, the Secretary shall trans-  
15          mit an assessment of the potential impacts of com-  
16          pliance with provisions of this section regarding the  
17          assessment and, as appropriate, implementation, of  
18          methods to reduce the consequences of a terrorist  
19          attack by manufacturers, retailers, aerial commercial  
20          applicators, and distributors of pesticide and fer-  
21          tilizer to the Committee on Energy and Commerce  
22          of the House of Representatives, the Committee on  
23          Homeland Security of the House of Representatives  
24          and the Committee on Homeland Security and Gov-  
25          ernmental Affairs of the Senate. Such assessment

1 shall be conducted by the Secretary in consultation  
2 with other appropriate Federal agencies and shall in-  
3 clude the following:

4 “(A) Data on the scope of facilities covered  
5 by this title, including the number and type of  
6 manufacturers, retailers, aerial commercial ap-  
7 plicators and distributors of pesticide and fer-  
8 tilizer required to assess methods to reduce the  
9 consequences of a terrorist attack under sub-  
10 section (a) and the number and type of manu-  
11 facturers, retailers, aerial commercial applica-  
12 tors and distributors of pesticide and fertilizer  
13 assigned to tier 1 or tier 2 by the Secretary  
14 because of the potential extent and likeli-  
15 hood of death, injury, and serious adverse ef-  
16 fects to human health, the environment, critical  
17 infrastructure, public health, homeland security,  
18 national security, and the national economy  
19 from the release of a substance of concern at  
20 the facility.

21 “(B) A survey of known methods, proc-  
22 esses or practices, other than elimination of or  
23 cessation of manufacture of the pesticide or fer-  
24 tilizer, that manufacturers, retailers, aerial  
25 commercial applicators, and distributors of pes-

1            pesticide and fertilizer could use to reduce the con-  
2            sequences of a terrorist attack, including an as-  
3            sessment of the costs and technical feasibility of  
4            each such method, process, or practice.

5            “(C) An analysis of how the assessment  
6            of methods to reduce the consequences of a  
7            terrorist attack under subsection (a) by manu-  
8            facturers, retailers, aerial commercial applica-  
9            tors, and distributors of pesticide and fertilizer,  
10          and, as appropriate, the implementation of  
11          methods to reduce the consequences of a ter-  
12          rorist attack by such manufacturers, retailers,  
13          aerial commercial applicators, and distributors  
14          of pesticide and fertilizer subject to sub-  
15          section (b), are likely to impact other sectors  
16          engaged in commerce.

17          “(D) Recommendations for how to miti-  
18          gate any adverse impacts identified pursuant to  
19          subparagraph (C).

20          “(3) FARM SUPPLIES MERCHANT WHOLE-  
21          SALER.—In this subsection, the term ‘farm supplies  
22          merchant wholesaler’ means a covered chemical facil-  
23          ity that is primarily engaged in the merchant whole-  
24          sale distribution of farm supplies, such as animal

1 feeds, fertilizers, agricultural chemicals, pesticides,  
2 plant seeds, and plant bulbs.

3 “(d) ASSESSMENT OF IMPACTS ON SMALL COVERED  
4 CHEMICAL FACILITIES.—

5 “(1) IN GENERAL.—Not later than 6 months  
6 after the date of the enactment of this title, the Sec-  
7 retary shall transmit to the Committee on Energy  
8 and Commerce of the House of Representatives, the  
9 Committee on Homeland Security of the House of  
10 Representatives, and the Committee on Homeland  
11 Security and Governmental Affairs of the Senate an  
12 assessment of the potential effects on small covered  
13 chemical facilities of compliance with provisions of  
14 this section regarding the assessment and, as appro-  
15 priate, implementation, of methods to reduce the  
16 consequences of a terrorist attack. Such assessment  
17 shall include—

18 “(A) data on the scope of facilities covered  
19 by this title, including the number and type of  
20 small covered chemical facilities that are re-  
21 quired to assess methods to reduce the con-  
22 sequences of a terrorist attack under subsection  
23 (a) and the number and type of small covered  
24 chemical facilities assigned to tier 1 or tier 2  
25 under section 2102(c)(1) by the Secretary be-

1 cause of the potential extent and likelihood of  
2 death, injury, and serious adverse effects to  
3 human health, the environment, critical infra-  
4 structure, public health, homeland security, na-  
5 tional security, and the national economy from  
6 the release of a substance of concern at the fa-  
7 cility; and

8 “(B) a discussion of how the Secretary  
9 plans to apply the requirement that before re-  
10 quiring a small covered chemical facility that is  
11 required to implement methods to reduce the  
12 consequences of a terrorist attack under sub-  
13 section (b) the Secretary shall first determine  
14 that the implementation of such methods at the  
15 small covered chemical facility not significantly  
16 and demonstrably impair the ability of the  
17 owner or operator of the covered chemical facil-  
18 ity to continue the business of the facility at its  
19 location.

20 “(2) DEFINITION.—For purposes of this sub-  
21 section, the term ‘small covered chemical facility’  
22 means a covered chemical facility that has fewer  
23 than 350 employees employed at the covered chem-  
24 ical facility, and is not a branch or subsidiary of an-  
25 other entity.

1           “(e) PROVISION OF INFORMATION ON ALTERNATIVE  
2 APPROACHES.—

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

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

10           “(A) general and specific types of such  
11 methods;

12           “(B) combinations of chemical sources,  
13 substances of concern, and hazardous processes  
14 or conditions for which such methods could be  
15 appropriate;

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

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

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

23           “(F) the availability of technical assistance  
24 and best practices; and

1                   “(G) such other matters that the Secretary  
2                   determines are appropriate.

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

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

14 **“SEC. 2112. APPLICABILITY.**

15                   ““This title shall not apply to—

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

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

22                   “(3) all or a specified portion of any chemical  
23                   facility that—

24                   “(A) is subject to regulation by the Nu-  
25                   clear Regulatory Commission (hereinafter in

1           this paragraph referred to as the ‘Commission’  
2           or a State that has entered into an agreement  
3           with the Commission under section 274 b. of  
4           the Atomic Energy Act of 1954 (42 U.S.C.  
5           2021 b.);

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

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

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

16           or

17           “(5) any treatment works, as defined in section  
18           212 of the Federal Water Pollution Control Act (33  
19           U.S.C. 1292).

20   **“SEC. 2113. SAVINGS CLAUSE.**

21           “(a) IN GENERAL.—Nothing in this title shall affect  
22           or modify in any way any obligation or liability of any  
23           person under any other Federal law, including section 112  
24           of the Clean Air Act (42 U.S.C. 7412), the Federal Water  
25           Pollution Control Act (33 U.S.C. 1251 et seq.), the Re-

1 source Conservation and Recovery Act of 1976 (42 U.S.C.  
2 6901 et seq.), the National Environmental Policy Act of  
3 1969 (42 U.S.C. 4321 et seq.), the Occupational Safety  
4 and Health Act (29 U.S.C. 651 et seq.), the National  
5 Labor Relations Act (29 U.S.C. 151 et seq.), the Emer-  
6 gency Planning and Community Right to Know Act of  
7 1996 (42 U.S.C. 11001 et seq.), the Safe Drinking Water  
8 Act (42 U.S.C. 300f et seq.), the Maritime Transportation  
9 Security Act of 2002 (Public Law 107–295), the Com-  
10 prehensive Environmental Response, Compensation, and  
11 Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Toxic  
12 Substances Control Act (15 U.S.C. 2601 et seq.), and the  
13 Fair Credit Reporting Act (15 U.S.C. 1681 et seq.).

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

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

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

23 “(a) IN GENERAL.—There is established in the De-  
24 partment an Office of Chemical Facility Security, headed  
25 by a Director, who shall be a member of the Senior Execu-

1 tive Service in accordance with subchapter VI of chapter  
2 53 of title 5, United States Code, under section 5382 of  
3 that title, and who shall be responsible for carrying out  
4 the responsibilities of the Secretary under this title.

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

16 “(c) SELECTION PROCESS.—The Secretary shall  
17 make a reasonable effort to select an individual to serve  
18 as the Director from among a group of candidates that  
19 is diverse with respect to race, ethnicity, age, gender, and  
20 disability characteristics and submit to the Committee on  
21 Homeland Security and the Committee on Energy and  
22 Commerce of the House of Representatives and the Com-  
23 mittee on Homeland Security and Governmental Affairs  
24 of the Senate information on the selection process, includ-

1 ing details on efforts to assure diversity among the can-  
2 didates considered for this position.

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

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

7 “(1) IN GENERAL.—

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

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

20 “(ii) measures designed to check  
21 criminal history;

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

24 “(iv) measures designed to identify  
25 people with terrorist ties.

1           “(B) INDIVIDUALS DESCRIBED.—For pur-  
2           poses of subparagraph (A), an individual de-  
3           scribed in this subparagraph is—

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

9                   “(ii) a person associated with a cov-  
10                  ered chemical facility, including any des-  
11                  ignated employee representative, who is  
12                  provided with a copy of a security vulner-  
13                  ability assessment or site security plan; or

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

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

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

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

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

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

9           “(E) a prohibition on an owner or operator  
10 of a covered chemical facility misrepresenting to  
11 an employee or other relevant person, including  
12 an arbiter involved in a labor arbitration, the  
13 scope, application, or meaning of any rules, reg-  
14 ulations, directives, or guidance issued by the  
15 Secretary related to security background check  
16 requirements for covered individuals when con-  
17 ducting a security background check.

18       “(b) MISREPRESENTATION OF ADVERSE EMPLOY-  
19 MENT DECISIONS.—The regulations required by sub-  
20 section (a)(1) shall set forth that it shall be a misrepresen-  
21 tation under subsection (a)(2)(E) to attribute an adverse  
22 employment decision, including removal or suspension of  
23 the employee, to such regulations unless the owner or op-  
24 erator finds, after opportunity for appropriate redress  
25 under the processes provided under subsection (c)(1) and

1 (c)(2), that the person subject to such adverse employment  
2 decision—

3 “(1) has been convicted of, has been found not  
4 guilty of by reason of insanity, or is under want,  
5 warrant, or indictment for, a permanent disquali-  
6 fying criminal offense listed in part 1572 of title 49,  
7 Code of Federal Regulations;

8 “(2) was convicted of, or found not guilty of by  
9 reason of insanity, an interim disqualifying criminal  
10 offense listed in part 1572 of title 49, Code of Fed-  
11 eral Regulations, within 7 years of the date on which  
12 the covered chemical facility performs the security  
13 background check;

14 “(3) was incarcerated for an interim disquali-  
15 fying criminal offense listed in part 1572 of title 49,  
16 Code of Federal Regulations, and released from in-  
17 carceration within 5 years of the date that the chem-  
18 ical facility performs the security background check;

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

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

24 “(c) REDRESS PROCESSES.—Upon the issuance of  
25 regulations under subsection (a), the Secretary shall—

1           “(1) require the owner or operator to provide  
2           an adequate and prompt redress process for a per-  
3           son subject to a security background check under  
4           subsection (a)(1) who is subjected to an adverse em-  
5           ployment decision, including removal or suspension  
6           of the employee, due to such regulations that is con-  
7           sistent with the appeals process established for em-  
8           ployees subject to consumer reports under the Fair  
9           Credit Reporting Act (15 U.S.C. 1681 et seq.), as  
10          in force on the date of the enactment of this title;

11          “(2) provide an adequate and prompt redress  
12          process for a person subject to a security back-  
13          ground check under subsection (a)(1) who is sub-  
14          jected to an adverse employment decision, including  
15          removal or suspension of the employee, due to a de-  
16          termination by the Secretary under subsection  
17          (b)(4), that is consistent with the appeals process es-  
18          tablished under section 70105(c) of title 46, United  
19          States Code, including all rights to hearings before  
20          an administrative law judge, scope of review, and a  
21          review of an unclassified summary of classified evi-  
22          dence equivalent to the summary provided in part  
23          1515 of title 49, Code of Federal Regulations;

24          “(3) provide an adequate and prompt redress  
25          process for a person subject to a security back-

1 ground check under subsection (a)(1) who is sub-  
2 jected to an adverse employment decision, including  
3 removal or suspension of the employee, due to a vio-  
4 lation of subsection (a)(2)(E), which shall not pre-  
5 clude the exercise of any other rights available under  
6 collective bargaining agreements or applicable laws;

7 “(4) establish a reconsideration process de-  
8 scribed in subsection (d) for a person subject to an  
9 adverse employment decision that was attributed by  
10 an owner or operator to the regulations required by  
11 subsection (a)(1);

12 “(5) have the authority to order an appropriate  
13 remedy, including reinstatement of the person sub-  
14 ject to a security background check under subsection  
15 (a)(1), if the Secretary determines that the adverse  
16 employment decision was made in violation of the  
17 regulations required under subsection (a)(1) or as a  
18 result of an erroneous determination by the Sec-  
19 retary under subsection (b)(4);

20 “(6) ensure that the redress processes required  
21 under paragraphs (1), (2), or (3) afford to the per-  
22 son a full disclosure of any public-record event cov-  
23 ered by subsection (b) that provides the basis for an  
24 adverse employment decision; and

1           “(7) ensure that the person subject to a secu-  
2           rity background check under subsection (a)(1) re-  
3           ceives the person’s full wages and benefits until all  
4           redress processes under this subsection are ex-  
5           hausted.

6           “(d) RECONSIDERATION PROCESS.—

7           “(1) IN GENERAL.—The reconsideration proc-  
8           ess required under subsection (c)(4) shall—

9                   “(A) require the Secretary to determine,  
10                  within 30 days after receiving a petition sub-  
11                  mitted by a person subject to an adverse em-  
12                  ployment decision that was attributed by an  
13                  owner or operator to the regulations required  
14                  by subsection (a)(1), whether such person poses  
15                  a security risk to the covered chemical facility;  
16                  and

17                   “(B) include procedures consistent with  
18                  section 70105(c) of title 46, United States  
19                  Code, including all rights to hearings before an  
20                  administrative law judge, scope of review, and  
21                  a review of an unclassified summary of classi-  
22                  fied evidence equivalent to the summary pro-  
23                  vided in part 1515 of title 49, Code of Federal  
24                  Regulations.

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

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

11                   “(B) provide his or her determination as to  
12                  whether such person poses a security risk to the  
13                  covered chemical facility to the petitioner and to  
14                  the owner or operator of the covered chemical  
15                  facility.

16           “(3) OWNER OR OPERATOR RECONSIDER-  
17           ATION.—If the Secretary determines pursuant to  
18           paragraph (1)(A) that the person does not pose a se-  
19           curity risk to the covered chemical facility, it shall  
20           thereafter constitute a prohibited misrepresentation  
21           for the owner or operator of the covered chemical fa-  
22           cility to continue to attribute the adverse employ-  
23           ment decision to the regulations under subsection  
24           (a)(1).

1           “(e) RESTRICTIONS ON USE AND MAINTENANCE OF  
2 INFORMATION.—Information obtained under this section  
3 by the Secretary or the owner or operator of a covered  
4 chemical facility shall be handled as follows:

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

7           “(2) Such information may not be accessed by  
8 employees of the facility except for such employees  
9 who are directly involved with collecting the informa-  
10 tion or conducting or evaluating security background  
11 checks.

12           “(3) Such information shall be maintained con-  
13 fidentially by the facility and the Secretary and may  
14 be used only for making determinations under this  
15 section.

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

19           “(f) SAVINGS CLAUSE.—

20           “(1) RIGHTS AND RESPONSIBILITIES.—Nothing  
21 in this section shall be construed to abridge any  
22 right or responsibility of a person subject to a secu-  
23 rity background check under subsection (a)(1) or an  
24 owner or operator of a covered chemical facility

1 under any other Federal, State, local, or tribal law  
2 or collective bargaining agreement.

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

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

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

22 “(1) Relevant databases to verify and validate  
23 identity.

24 “(2) Relevant criminal history databases.

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

6           “(4) The consolidated terrorist watchlist.

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

9           “(i) DEPARTMENT-CONDUCTED SECURITY BACK-  
10          GROUND CHECK.—The regulations under subsection  
11          (a)(1) shall set forth a process by which the Secretary,  
12          on an ongoing basis, shall determine whether alternate se-  
13          curity background checks conducted by the Department  
14          are sufficient to meet the requirements of this section such  
15          that no additional security background check under this  
16          section is required for an individual for whom such a  
17          qualifying alternate security background check was con-  
18          ducted. The Secretary may require the owner or operator  
19          of a covered chemical facility to which the individual will  
20          have unescorted access to sensitive or restricted areas to  
21          submit identifying information about the individual and  
22          the alternate security background check conducted for  
23          that individual to the Secretary in order to enable the Sec-  
24          retary to verify the validity of the alternate security back-  
25          ground check. Such regulations shall provide that no secu-

1 rity background check under this section is required for  
2 an individual holding a transportation security card issued  
3 under section 70105 of title 46, United States Code.

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

11 **“SEC. 2116. CITIZEN ENFORCEMENT.**

12 “(a) **IN GENERAL.**—Except as provided in subsection  
13 (c), any person may commence a civil action on such per-  
14 son’s own behalf—

15 “(1) against any governmental entity (including  
16 the United States and any other governmental in-  
17 strumentality or agency, to the extent permitted by  
18 the eleventh amendment to the Constitution, and  
19 any federally owned-contractor operated facility) al-  
20 leged to be in violation of any order that has become  
21 effective pursuant to this title; or

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

25 “(b) **COURT OF JURISDICTION.**—

1           “(1) IN GENERAL.—Any action under sub-  
2           section (a)(1) shall be brought in the district court  
3           for the district in which the alleged violation oc-  
4           curred. Any action brought under subsection (a)(2)  
5           may be brought in the district court for the district  
6           in which the alleged violation occurred or in the  
7           United States District Court for the District of Co-  
8           lumbia.

9           “(2) RELIEF.—The district court shall have ju-  
10          risdiction, without regard to the amount in con-  
11          troversy or the citizenship of the parties to enforce  
12          the order referred to in subsection (a)(1), to order  
13          such governmental entity to take such action as may  
14          be necessary, or both, or, in an action commenced  
15          under subsection (a)(2), to order the Secretary to  
16          perform the non-discretionary act or duty, and to  
17          order any civil penalties, as appropriate, under sec-  
18          tion 2107.

19          “(c) ACTIONS PROHIBITED.—No action may be com-  
20          menced under subsection (a) prior to 60 days after the  
21          date on which the person commencing the action has given  
22          notice of the alleged violation to—

23                 “(1) the Secretary; and

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

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

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

10          “(f) COSTS; BOND.—The court, in issuing any final  
11          order in any action brought pursuant to this section, may  
12          award costs of litigation (including reasonable attorney  
13          and expert witness fees) to the prevailing or substantially  
14          prevailing party, whenever the court determines such an  
15          award is appropriate. The court may, if a temporary re-  
16          straining order or preliminary injunction is sought, require  
17          the filing of a bond or equivalent security in accordance  
18          with the Federal Rules of Civil Procedure.

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

22          **“SEC. 2117. CITIZEN PETITIONS.**

23          “(a) REGULATIONS.—The Secretary shall issue regu-  
24          lations to establish a citizen petition process for petitions

1 described in subsection (b). Such regulations shall in-  
2 clude—

3 “(1) the format for such petitions;

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

5 “(3) the procedure for response to such peti-  
6 tions, including timelines; and

7 “(4) the procedure for referral to and review by  
8 the Office of the Inspector General of the Depart-  
9 ment without deference to the Secretary’s deter-  
10 mination with respect to the petition; and

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

14 “(b) PETITIONS.—The regulations issued pursuant to  
15 subsection (a) shall allow any person to file a petition with  
16 the Secretary—

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

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

1        bition, plan, or order that has become effective  
2        under this title by that person.

3        “(c) REQUIREMENTS.—Upon issuance of regulations  
4        under subsection (a), the Secretary shall—

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

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

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

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

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

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

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



1 report in a timely manner, but in no case shall the Sec-  
2 retary respond to such a report later than 30 days after  
3 receipt of the report.

4 “(c) STEPS TO ADDRESS PROBLEMS.—The Secretary  
5 shall review each report received through the notification  
6 system established under subsection (a) and shall, as nec-  
7 essary, take appropriate enforcement action under section  
8 2107.

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

17 “(e) INSPECTOR GENERAL REPORT REQUIRED.—  
18 The Inspector General of the Department shall submit to  
19 the Committee on Homeland Security and the Committee  
20 on Energy and Commerce of the House of Representatives  
21 and the Committee on Homeland Security and Govern-  
22 mental Affairs of the Senate an annual report on the re-  
23 ports received under the notification system established  
24 under subsection (a) and the Secretary’s disposition of  
25 such reports.

1 **“SEC. 2119. ANNUAL REPORT TO CONGRESS.**

2 “(a) ANNUAL REPORT.—Not later than one year  
3 after the date of the enactment of this title, annually  
4 thereafter for the next four years, and biennially there-  
5 after, the Secretary shall submit to the Committee on  
6 Homeland Security and the Committee on Energy and  
7 Commerce of the House of Representatives and the Com-  
8 mittee on Homeland Security and Governmental Affairs  
9 of the Senate a report on progress in achieving compliance  
10 with this title. Each such report shall include the fol-  
11 lowing:

12 “(1) A qualitative discussion of how covered  
13 chemical facilities, differentiated by tier, have re-  
14 duced the risks of chemical facility terrorist inci-  
15 dents at such facilities, including—

16 “(A) a generalized summary of measures  
17 implemented by covered chemical facilities in  
18 order to meet each risk-based chemical facility  
19 performance standard established by this title,  
20 and those that the facilities already had in  
21 place—

22 “(i) in the case of the first report  
23 under this section, before the issuance of  
24 the final rule implementing the regulations  
25 known as the ‘Chemical Facility Anti-Ter-

1                   rorism Standards’, issued on April 9,  
2                   2007; and

3                   “(ii) in the case of each subsequent  
4                   report, since the submittal of the most re-  
5                   cent report submitted under this section;  
6                   and

7                   “(B) any other generalized summary the  
8                   Secretary deems appropriate to describe the  
9                   measures covered chemical facilities are imple-  
10                  menting to comply with the requirements of  
11                  this title.

12                  “(2) A quantitative summary of how the cov-  
13                  ered chemical facilities, differentiated by tier, are  
14                  complying with the requirements of this title during  
15                  the period covered by the report and how the Sec-  
16                  retary is implementing and enforcing such require-  
17                  ments during such period, including—

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

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

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

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

7           “(E) the number of covered chemical facili-  
8 ties without approved security vulnerability as-  
9 sessments or site security plans;

10          “(F) the number of chemical facilities that  
11 have been assigned to a different tier or are no  
12 longer regulated by the Secretary due to imple-  
13 mentation of a method to reduce the con-  
14 sequences of a terrorist attack and a descrip-  
15 tion of such implemented methods;

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

18          “(H) the administrative penalties assessed  
19 by the Secretary for non-compliance with the  
20 requirements of this title;

21          “(I) the civil penalties assessed by the  
22 court for non-compliance with the requirements  
23 of this title;

24          “(J) the number of terrorist watchlist  
25 checks conducted by the Secretary in order to

1           comply with the requirements of this title, the  
2           number of appeals conducted by the Secretary  
3           pursuant to the processes described under para-  
4           graphs (2), (3) and (4) of section 2115(c), ag-  
5           gregate information regarding the time taken  
6           for such appeals, aggregate information regard-  
7           ing the manner in which such appeals were re-  
8           solved, and, based on information provided to  
9           the Secretary annually by each owner or oper-  
10          ator of a covered chemical facility, the number  
11          of persons subjected to adverse employment de-  
12          cisions that were attributed by the owner or op-  
13          erator to the regulations required by section  
14          2115; and

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

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

22   **“SEC. 2120. AUTHORIZATION OF APPROPRIATIONS.**

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

1           “(1) \$325,000,000 for fiscal year 2011, of  
2           which \$100,000,000 shall be made available to pro-  
3           vide funding for methods to reduce the consequences  
4           of a terrorist attack, of which up to \$3,000,000 shall  
5           be made available for grants authorized under sec-  
6           tion 2111(c)(1);

7           “(2) \$300,000,000 for fiscal year 2012, of  
8           which \$75,000,000 shall be made available to pro-  
9           vide funding for methods to reduce the consequences  
10          of a terrorist attack, of which up to \$3,000,000 shall  
11          be made available for grants authorized under sec-  
12          tion 2111(c)(1); and

13          “(3) \$275,000,000 for fiscal year 2013, of  
14          which \$50,000,000 shall be made available to pro-  
15          vide funding for methods to reduce the consequences  
16          of a terrorist attack, of which up to \$3,000,000 shall  
17          be made available for grants authorized under sec-  
18          tion 2111(c)(1).”.

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

“TITLE XXI—REGULATION OF SECURITY PRACTICES AT  
CHEMICAL FACILITIES

“Sec. 2101. Definitions.

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

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

“Sec. 2104. Site inspections.

“Sec. 2105. Records.

“Sec. 2106. Timely sharing of threat information.

“Sec. 2107. Enforcement.

- “Sec. 2108. Whistleblower protections.
- “Sec. 2109. Federal preemption.
- “Sec. 2110. Protection of information.
- “Sec. 2111. Methods to reduce the consequences of a terrorist attack.
- “Sec. 2112. Applicability.
- “Sec. 2113. Savings clause.
- “Sec. 2114. Office of Chemical Facility Security.
- “Sec. 2115. Security background checks of covered individuals at certain chemical facilities.
- “Sec. 2116. Citizen enforcement.
- “Sec. 2117. Citizen petitions.
- “Sec. 2118. Notification system to address public concerns.
- “Sec. 2119. Annual report to Congress.
- “Sec. 2120. Authorization of appropriations.”.

1 (c) CONFORMING REPEAL.—

2 (1) REPEAL.—The Department of Homeland  
3 Security Appropriations Act, 2007 (Public Law  
4 109–295) is amended by striking section 550.

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

8 (d) REGULATIONS.—

9 (1) DEADLINE.—The Secretary shall issue pro-  
10 posed rules to carry out title XXI of the Homeland  
11 Security Act of 2002, as added by subsection (a), by  
12 not later than 6 months after the date of the enact-  
13 ment of this Act, and shall issue final rules to carry  
14 out such title by not later than 18 months after the  
15 date of the enactment of this Act.

16 (2) CONSULTATION.—In developing and imple-  
17 menting the rules required under paragraph (1), the  
18 Secretary shall consult with the Administrator of the

1 Environmental Protection Agency, and other per-  
2 sons, as appropriate, regarding—

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

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

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

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

11 (E) such other matters as the Secretary  
12 determines necessary.

13 (3) SENSE OF CONGRESS REGARDING CFATS.—

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

24 (4) INTERIM USE AND AMENDMENT OF  
25 CFATS.—Until the final rules prescribed pursuant to

1 paragraph (1) take effect, in carrying out title XXI  
2 of the Homeland Security Act of 2002, as added by  
3 subsection (a), the Secretary may, to the extent the  
4 Secretary determines appropriate—

5 (A) continue to carry out the CFATS reg-  
6 ulations, as in effect immediately before the  
7 date of the enactment of this title;

8 (B) amend any of such regulations as may  
9 be necessary to ensure that such regulations are  
10 consistent with the requirements of this title  
11 and the amendments made by this title; and

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

21 (5) UPDATE OF FACILITY PLANS ASSESSMENTS  
22 AND PLANS PREPARED UNDER CFATS.—The owner  
23 or operator of a covered chemical facility, who, be-  
24 fore the effective date of the final regulations issued  
25 under title XXI of the Homeland Security Act of

1       2002, as added by subsection (a), submits a security  
2       vulnerability assessment or site security plan under  
3       the CFATS regulations, shall be required to update  
4       or amend the facility’s security vulnerability assess-  
5       ment and site security plan to reflect any additional  
6       requirements of this title or the amendments made  
7       by this title, according to a timeline established by  
8       the Secretary.

9       (e)   REVIEW   OF   DESIGNATION   OF   SODIUM  
10   FLUOROACETATE AS A SUBSTANCE OF CONCERN.—The  
11   Secretary of Homeland Security shall review the designa-  
12   tion of sodium fluoroacetate as a substance of concern  
13   pursuant to subsection (d) of section 2102 of the Home-  
14   land Security Act of 2002, as added by subsection (a),  
15   by the earlier of the following dates:

16           (1) The date of the first periodic review con-  
17           ducted pursuant to such subsection after the date of  
18           the enactment of this title.

19           (2) The date that is one year after the date of  
20           the enactment of this title.

## 21       **TITLE II—DRINKING WATER** 22       **SECURITY**

### 23   **SEC. 201. SHORT TITLE.**

24       This title may be cited as the “Drinking Water Sys-  
25   tem Security Act of 2009”.

1 **SEC. 202. INTENTIONAL ACTS AFFECTING THE SECURITY**  
2 **OF COVERED WATER SYSTEMS.**

3 (a) AMENDMENT OF SAFE DRINKING WATER ACT.—  
4 Section 1433 of the Safe Drinking Water Act (42 U.S.C.  
5 300i–2) is amended to read as follows:

6 **“SEC. 1433. INTENTIONAL ACTS.**

7 “(a) RISK-BASED PERFORMANCE STANDARDS; VUL-  
8 NERABILITY ASSESSMENTS; SITE SECURITY PLANS;  
9 EMERGENCY RESPONSE PLANS.—

10 “(1) IN GENERAL.—The Administrator shall  
11 issue regulations—

12 “(A) establishing risk-based performance  
13 standards for the security of covered water sys-  
14 tems; and

15 “(B) establishing requirements and dead-  
16 lines for each covered water system—

17 “(i) to conduct a vulnerability assess-  
18 ment or, if the system already has a vul-  
19 nerability assessment, to revise the assess-  
20 ment to be in accordance with this section,  
21 and submit such assessment to the Admin-  
22 istrator;

23 “(ii) to update the vulnerability as-  
24 sessment not less than every 5 years and  
25 promptly after any change at the system  
26 that could cause the reassignment of the

1 system to a different risk-based tier under  
2 subsection (d);

3 “(iii) to develop, implement, and, as  
4 appropriate, revise a site security plan not  
5 less than every 5 years and promptly after  
6 a revision to the vulnerability assessment  
7 and submit such plan to the Adminis-  
8 trator;

9 “(iv) to develop an emergency re-  
10 sponse plan (or, if the system has already  
11 developed an emergency response plan, to  
12 revise the plan to be in accordance with  
13 this section) and revise the plan not less  
14 than every 5 years thereafter; and

15 “(v) to provide annual training to em-  
16 ployees and contractor employees of cov-  
17 ered water systems on implementing site  
18 security plans and emergency response  
19 plans.

20 “(2) COVERED WATER SYSTEMS.—For purposes  
21 of this section, the term ‘covered water system’  
22 means a public water system that—

23 “(A) is a community water system serving  
24 a population greater than 3,300; or

1           “(B) in the discretion of the Adminis-  
2           trator, presents a security risk making regula-  
3           tion under this section appropriate.

4           “(3) CONSULTATION WITH STATE AUTHORI-  
5           TIES.—In developing and carrying out the regula-  
6           tions under paragraph (1), the Administrator shall  
7           consult with States exercising primary enforcement  
8           responsibility for public water systems.

9           “(4) CONSULTATION WITH OTHER PERSONS.—  
10          In developing and carrying out the regulations under  
11          paragraph (1), the Administrator shall consult with  
12          the Secretary of Homeland Security, and, as appro-  
13          priate, other persons regarding—

14                 “(A) provision of threat-related and other  
15                 baseline information to covered water systems;

16                 “(B) designation of substances of concern;

17                 “(C) development of risk-based perform-  
18                 ance standards;

19                 “(D) establishment of risk-based tiers and  
20                 process for the assignment of covered water  
21                 systems to risk-based tiers;

22                 “(E) process for the development and eval-  
23                 uation of vulnerability assessments, site security  
24                 plans, and emergency response plans;

1           “(F) treatment of protected information;  
2           and

3           “(G) such other matters as the Adminis-  
4           trator determines necessary.

5           “(5) SUBSTANCES OF CONCERN.—For purposes  
6           of this section, the Administrator, in consultation  
7           with the Secretary of Homeland Security—

8           “(A) may designate any chemical sub-  
9           stance as a substance of concern;

10           “(B) at the time any substance is des-  
11           ignated pursuant to subparagraph (A), shall es-  
12           tablish by rule a threshold quantity for the re-  
13           lease or theft of the substance, taking into ac-  
14           count the toxicity, reactivity, volatility,  
15           dispersability, combustibility, and flammability  
16           of the substance and the amount of the sub-  
17           stance that, as a result of a release, is known  
18           to cause or may be reasonably anticipated to  
19           cause death, injury, or serious adverse effects to  
20           human health or the environment; and

21           “(C) in making such a designation, shall  
22           take into account appendix A to part 27 of title  
23           6, Code of Federal Regulations (or any suc-  
24           cessor regulations).

1           “(6) BASELINE INFORMATION.—The Adminis-  
2           trator, after consultation with appropriate depart-  
3           ments and agencies of the Federal Government and  
4           with State, local, and tribal governments, shall, for  
5           purposes of facilitating compliance with the require-  
6           ments of this section, promptly after the effective  
7           date of the regulations under subsection (a)(1) and  
8           as appropriate thereafter, provide baseline informa-  
9           tion to covered water systems regarding which kinds  
10          of intentional acts are the probable threats to—

11                   “(A) substantially disrupt the ability of the  
12                   system to provide a safe and reliable supply of  
13                   drinking water;

14                   “(B) cause the release of a substance of  
15                   concern at the covered water system; or

16                   “(C) cause the theft, misuse, or misappro-  
17                   piation of a substance of concern.

18          “(b) RISK-BASED PERFORMANCE STANDARDS.—The  
19          regulations under subsection (a)(1) shall set forth risk-  
20          based performance standards for site security plans re-  
21          quired by this section. The standards shall be separate  
22          and, as appropriate, increasingly stringent based on the  
23          level of risk associated with the covered water system’s  
24          risk-based tier assignment under subsection (d). In devel-  
25          oping such standards, the Administrator shall take into

1 account section 27.230 of title 6, Code of Federal Regula-  
2 tions (or any successor regulations).

3 “(c) VULNERABILITY ASSESSMENT.—The regula-  
4 tions under subsection (a)(1) shall require each covered  
5 water system to assess the system’s vulnerability to a  
6 range of intentional acts, including an intentional act that  
7 results in a release of a substance of concern that is known  
8 to cause or may be reasonably anticipated to cause death,  
9 injury, or serious adverse effects to human health or the  
10 environment. At a minimum, the vulnerability assessment  
11 shall include a review of—

12 “(1) pipes and constructed conveyances;

13 “(2) physical barriers;

14 “(3) water collection, pretreatment, treatment,  
15 storage, and distribution facilities, including fire hy-  
16 drants;

17 “(4) electronic, computer, and other automated  
18 systems that are used by the covered water system;

19 “(5) the use, storage, or handling of various  
20 chemicals, including substances of concern;

21 “(6) the operation and maintenance of the cov-  
22 ered water system; and

23 “(7) the covered water system’s resiliency and  
24 ability to ensure continuity of operations in the  
25 event of a disruption caused by an intentional act.

1           “(d) RISK-BASED TIERS.—The regulations under  
2 subsection (a)(1) shall provide for 4 risk-based tiers appli-  
3 cable to covered water systems, with tier one representing  
4 the highest degree of security risk.

5           “(1) ASSIGNMENT OF RISK-BASED TIERS.—

6                   “(A) SUBMISSION OF INFORMATION.—The  
7 Administrator may require a covered water sys-  
8 tem to submit information in order to deter-  
9 mine the appropriate risk-based tier for the cov-  
10 ered water system.

11                   “(B) FACTORS TO CONSIDER.—The Ad-  
12 ministrator shall assign (and reassign when ap-  
13 propriate) each covered water system to one of  
14 the risk-based tiers established pursuant to this  
15 subsection. In assigning a covered water system  
16 to a risk-based tier, the Administrator shall  
17 consider the potential consequences (such as  
18 death, injury, or serious adverse effects to  
19 human health, the environment, critical infra-  
20 structure, national security, and the national  
21 economy) from—

22                           “(i) an intentional act to cause a re-  
23 lease, including a worst-case release, of a  
24 substance of concern at the covered water  
25 system;

1                   “(ii) an intentional act to introduce a  
2                   contaminant into the drinking water sup-  
3                   ply or disrupt the safe and reliable supply  
4                   of drinking water; and

5                   “(iii) an intentional act to steal, mis-  
6                   appropriate, or misuse substances of con-  
7                   cern.

8                   “(2) EXPLANATION FOR RISK-BASED TIER AS-  
9                   SIGNMENT.—The Administrator shall provide each  
10                  covered water system assigned to a risk-based tier  
11                  with the reasons for the tier assignment and whether  
12                  such system is required to submit an assessment  
13                  under subsection (g)(2).

14                  “(e) DEVELOPMENT AND IMPLEMENTATION OF SITE  
15                  SECURITY PLANS.—The regulations under subsection  
16                  (a)(1) shall permit each covered water system, in devel-  
17                  oping and implementing its site security plan required by  
18                  this section, to select layered security and preparedness  
19                  measures that, in combination, appropriately—

20                  “(1) address the security risks identified in its  
21                  vulnerability assessment; and

22                  “(2) comply with the applicable risk-based per-  
23                  formance standards required under this section.

24                  “(f) ROLE OF EMPLOYEES.—

1           “(1) DESCRIPTION OF ROLE.—Site security  
2 plans and emergency response plans required under  
3 this section shall describe the appropriate roles or  
4 responsibilities that employees and contractor em-  
5 ployees are expected to perform to deter or respond  
6 to the intentional acts described in subsection  
7 (d)(1)(B).

8           “(2) TRAINING FOR EMPLOYEES.—Each cov-  
9 ered water system shall annually provide employees  
10 and contractor employees with roles or responsibil-  
11 ities described in paragraph (1) with a minimum of  
12 8 hours of training on carrying out those roles or re-  
13 sponsibilities.

14           “(3) EMPLOYEE PARTICIPATION.—In devel-  
15 oping, revising, or updating a vulnerability assess-  
16 ment, site security plan, and emergency response  
17 plan required under this section, a covered water  
18 system shall include—

19           “(A) at least one supervisory and at least  
20 one non-supervisory employee of the covered  
21 water system; and

22           “(B) at least one representative of each  
23 certified or recognized bargaining agent rep-  
24 resenting facility employees or contractor em-  
25 ployees with roles or responsibilities described

1 in paragraph (1), if any, in a collective bar-  
2 gaining relationship with the private or public  
3 owner or operator of the system or with a con-  
4 tractor to that system.

5 “(g) METHODS TO REDUCE THE CONSEQUENCES OF  
6 A CHEMICAL RELEASE FROM AN INTENTIONAL ACT.—

7 “(1) DEFINITION.—In this section, the term  
8 ‘method to reduce the consequences of a chemical re-  
9 lease from an intentional act’ means a measure at  
10 a covered water system that reduces or eliminates  
11 the potential consequences of a release of a sub-  
12 stance of concern from an intentional act such as—

13 “(A) the elimination or reduction in the  
14 amount of a substance of concern possessed or  
15 planned to be possessed by a covered water sys-  
16 tem through the use of alternate substances,  
17 formulations, or processes;

18 “(B) the modification of pressures, tem-  
19 peratures, or concentrations of a substance of  
20 concern; and

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

1           “(2) ASSESSMENT.—For each covered water  
2           system that possesses or plans to possess a sub-  
3           stance of concern in excess of the release threshold  
4           quantity set by the Administrator under subsection  
5           (a)(5), the regulations under subsection (a)(1) shall  
6           require the covered water system to include in its  
7           site security plan an assessment of methods to re-  
8           duce the consequences of a chemical release from an  
9           intentional act at the covered water system. The cov-  
10          ered water system shall provide such assessment to  
11          the Administrator and the State exercising primary  
12          enforcement responsibility for the covered water sys-  
13          tem, if any. The regulations under subsection (a)(1)  
14          shall require the system, in preparing the assess-  
15          ment, to consider factors appropriate to the system’s  
16          security, public health, or environmental mission,  
17          and include—

18                   “(A) a description of the methods to re-  
19                   duce the consequences of a chemical release  
20                   from an intentional act;

21                   “(B) how each described method to reduce  
22                   the consequences of a chemical release from an  
23                   intentional act could, if applied, reduce the po-  
24                   tential extent of death, injury, or serious ad-

1           verse effects to human health resulting from a  
2           chemical release;

3           “(C) how each described method to reduce  
4           the consequences of a chemical release from an  
5           intentional act could, if applied, affect the pres-  
6           ence of contaminants in treated water, human  
7           health, or the environment;

8           “(D) whether each described method to re-  
9           duce the consequences of a chemical release  
10          from an intentional act at the covered water  
11          system is feasible, as defined in section  
12          1412(b)(4)(D), but not including cost calcula-  
13          tions under subparagraph (E);

14          “(E) the costs (including capital and oper-  
15          ational costs) and avoided costs (including sav-  
16          ings and liabilities) associated with applying  
17          each described method to reduce the con-  
18          sequences of a chemical release from an inten-  
19          tional act at the covered water system;

20          “(F) any other relevant information that  
21          the covered water system relied on in con-  
22          ducting the assessment; and

23          “(G) a statement of whether the covered  
24          water system has implemented or plans to im-  
25          plement one or more methods to reduce the

1 consequences of a chemical release from an in-  
2 tentional act, a description of any such meth-  
3 ods, and, in the case of a covered water system  
4 described in paragraph (3)(A), an explanation  
5 of the reasons for any decision not to imple-  
6 ment any such methods.

7 “(3) REQUIRED METHODS.—

8 “(A) APPLICATION.—This paragraph ap-  
9 plies to a covered water system—

10 “(i) that is assigned to one of the two  
11 highest risk-based tiers under subsection  
12 (d); and

13 “(ii) that possesses or plans to possess  
14 a substance of concern in excess of the re-  
15 lease threshold quantity set by the Admin-  
16 istrator under subsection (a)(5).

17 “(B) HIGHEST-RISK SYSTEMS.—If, on the  
18 basis of its assessment under paragraph (2), a  
19 covered water system described in subparagraph  
20 (A) decides not to implement methods to reduce  
21 the consequences of a chemical release from an  
22 intentional act, the State exercising primary en-  
23 forcement responsibility for the covered water  
24 system, if the system is located in such a State,  
25 or the Administrator, if the covered water sys-

1           tem is not located in such a State, shall, in ac-  
2           cordance with a timeline set by the Adminis-  
3           trator—

4                   “(i) determine whether to require the  
5                   covered water system to implement the  
6                   methods; and

7                   “(ii) for States exercising primary en-  
8                   forcement responsibility, report such deter-  
9                   mination to the Administrator.

10                   “(C) STATE OR ADMINISTRATOR’S CONSID-  
11                   ERATIONS.—Before requiring, pursuant to sub-  
12                   paragraph (B), the implementation of a method  
13                   to reduce the consequences of a chemical re-  
14                   lease from an intentional act, the State exer-  
15                   cising primary enforcement responsibility for  
16                   the covered water system, if the system is lo-  
17                   cated in such a State, or the Administrator, if  
18                   the covered water system is not located in such  
19                   a State, shall consider factors appropriate to  
20                   the security, public health, and environmental  
21                   missions of covered water systems, including an  
22                   examination of whether the method—

23                   “(i) would significantly reduce the  
24                   risk of death, injury, or serious adverse ef-  
25                   fects to human health resulting directly

1 from a chemical release from an inten-  
2 tional act at the covered water system;

3 “(ii) would not increase the interim  
4 storage of a substance of concern by the  
5 covered water system;

6 “(iii) would not render the covered  
7 water system unable to comply with other  
8 requirements of this Act or drinking water  
9 standards established by the State or polit-  
10 ical subdivision in which the system is lo-  
11 cated; and

12 “(iv) is feasible, as defined in section  
13 1412(b)(4)(D), to be incorporated into the  
14 operation of the covered water system.

15 “(D) APPEAL.—Before requiring, pursuant  
16 to subparagraph (B), the implementation of a  
17 method to reduce the consequences of a chem-  
18 ical release from an intentional act, the State  
19 exercising primary enforcement responsibility  
20 for the covered water system, if the system is  
21 located in such a State, or the Administrator,  
22 if the covered water system is not located in  
23 such a State, shall provide such covered water  
24 system an opportunity to appeal the determina-  
25 tion to require such implementation made pur-

1           suant to subparagraph (B) by such State or the  
2           Administrator.

3           “(4) INCOMPLETE OR LATE ASSESSMENTS.—

4                   “(A) INCOMPLETE ASSESSMENTS.—If the  
5           Administrator finds that the covered water sys-  
6           tem, in conducting its assessment under para-  
7           graph (2), did not meet the requirements of  
8           paragraph (2) and the applicable regulations,  
9           the Administrator shall, after notifying the cov-  
10          ered water system and the State exercising pri-  
11          mary enforcement responsibility for that sys-  
12          tem, if any, require the covered water system to  
13          submit a revised assessment not later than 60  
14          days after the Administrator notifies such sys-  
15          tem. The Administrator may require such addi-  
16          tional revisions as are necessary to ensure that  
17          the system meets the requirements of para-  
18          graph (2) and the applicable regulations.

19                   “(B) LATE ASSESSMENTS.—If the Admin-  
20          istrator finds that a covered water system, in  
21          conducting its assessment pursuant to para-  
22          graph (2), did not complete such assessment in  
23          accordance with the deadline set by the Admin-  
24          istrator, the Administrator may, after notifying  
25          the covered water system and the State exer-

1 cising primary enforcement responsibility for  
2 that system, if any, take appropriate enforce-  
3 ment action under subsection (o).

4 “(C) REVIEW.—The State exercising pri-  
5 mary enforcement responsibility for the covered  
6 water system, if the system is located in such  
7 a State, or the Administrator, if the system is  
8 not located in such a State, shall review a re-  
9 vised assessment that meets the requirements  
10 of paragraph (2) and applicable regulations to  
11 determine whether the covered water system  
12 will be required to implement methods to reduce  
13 the consequences of an intentional act pursuant  
14 to paragraph (3).

15 “(5) ENFORCEMENT.—

16 “(A) FAILURE BY STATE TO MAKE DETER-  
17 MINATION.—Whenever the Administrator finds  
18 that a State exercising primary enforcement re-  
19 sponsibility for a covered water system has  
20 failed to determine whether to require the cov-  
21 ered water system to implement methods to re-  
22 duce the consequences of a chemical release  
23 from an intentional act, as required by para-  
24 graph (3)(B), the Administrator shall so notify  
25 the State and covered water system. If, beyond

1           the thirtieth day after the Administrator’s noti-  
2           fication under the preceding sentence, the State  
3           has failed to make the determination described  
4           in such sentence, the Administrator shall so no-  
5           tify the State and covered water system and  
6           shall determine whether to require the covered  
7           water system to implement methods to reduce  
8           the consequences of a chemical release from an  
9           intentional act based on the factors described in  
10          paragraph (3)(C).

11           “(B) FAILURE BY STATE TO BRING EN-  
12          FORCEMENT ACTION.—If the Administrator  
13          finds, with respect to a period in which a State  
14          has primary enforcement responsibility for a  
15          covered water system, that the system has  
16          failed to implement methods to reduce the con-  
17          sequences of a chemical release from an inten-  
18          tional act (as required by the State or the Ad-  
19          ministrator under paragraph (3)(B) or the Ad-  
20          ministrator under subparagraph (A)), the Ad-  
21          ministrator shall so notify the State and the  
22          covered water system. If, beyond the thirtieth  
23          day after the Administrator’s notification under  
24          the preceding sentence, the State has not com-  
25          menced appropriate enforcement action, the Ad-

1            administrator shall so notify the State and may  
2            commence an enforcement action against the  
3            system, including by seeking or imposing civil  
4            penalties under subsection (o), to require imple-  
5            mentation of such methods.

6            “(C) CONSIDERATION OF CONTINUED PRI-  
7            MARY ENFORCEMENT RESPONSIBILITY.—For a  
8            State with primary enforcement responsibility  
9            for a covered water system, the Administrator  
10           may consider the failure of such State to make  
11           a determination as described under subpara-  
12           graph (A) or to bring enforcement action as de-  
13           scribed under subparagraph (B) when deter-  
14           mining whether a State may retain primary en-  
15           forcement responsibility under this Act.

16           “(6) GUIDANCE FOR COVERED WATER SYSTEMS  
17           ASSIGNED TO TIER 3 AND TIER 4.—For covered  
18           water systems required to conduct an assessment  
19           under paragraph (2) and assigned by the Adminis-  
20           trator to tier 3 or tier 4 under subsection (d), the  
21           Administrator shall issue guidance and, as appro-  
22           priate, provide or recommend tools, methodologies,  
23           or computer software, to assist such covered water  
24           systems in complying with the requirements of this  
25           section.

1 “(h) REVIEW BY ADMINISTRATOR.—

2 “(1) IN GENERAL.—The regulations under sub-  
3 section (a)(1) shall require each covered water sys-  
4 tem to submit its vulnerability assessment and site  
5 security plan to the Administrator for review accord-  
6 ing to deadlines set by the Administrator. The Ad-  
7 ministrator shall review each vulnerability assess-  
8 ment and site security plan submitted under this  
9 section and—

10 “(A) if the assessment or plan has any sig-  
11 nificant deficiency described in paragraph (2),  
12 require the covered water system to correct the  
13 deficiency; or

14 “(B) approve such assessment or plan.

15 “(2) SIGNIFICANT DEFICIENCIES.—A vulner-  
16 ability assessment or site security plan of a covered  
17 water system has a significant deficiency under this  
18 subsection if the Administrator, in consultation, as  
19 appropriate, with the State exercising primary en-  
20 forcement responsibility for such system, if any, de-  
21 termines that—

22 “(A) such assessment does not comply with  
23 the regulations established under section (a)(1);  
24 or

25 “(B) such plan—

1                   “(i) fails to address vulnerabilities  
2                   identified in a vulnerability assessment; or

3                   “(ii) fails to meet applicable risk-  
4                   based performance standards.

5                   “(3) STATE, REGIONAL, OR LOCAL GOVERN-  
6                   MENTAL ENTITIES.—No covered water system shall  
7                   be required under State, local, or tribal law to pro-  
8                   vide a vulnerability assessment or site security plan  
9                   described in this section to any State, regional, local,  
10                  or tribal governmental entity solely by reason of the  
11                  requirement set forth in paragraph (1) that the sys-  
12                  tem submit such an assessment and plan to the Ad-  
13                  ministrator.

14                  “(i) EMERGENCY RESPONSE PLAN.—

15                  “(1) IN GENERAL.—Each covered water system  
16                  shall prepare or revise, as appropriate, an emergency  
17                  response plan that incorporates the results of the  
18                  system’s most current vulnerability assessment and  
19                  site security plan.

20                  “(2) CERTIFICATION.—Each covered water sys-  
21                  tem shall certify to the Administrator that the sys-  
22                  tem has completed an emergency response plan. The  
23                  system shall submit such certification to the Admin-  
24                  istrator not later than 6 months after the system’s  
25                  first completion or revision of a vulnerability assess-

1       ment under this section and shall submit an addi-  
2       tional certification following any update of the emer-  
3       gency response plan.

4           “(3) CONTENTS.—A covered water system’s  
5       emergency response plan shall include—

6           “(A) plans, procedures, and identification  
7       of equipment that can be implemented or used  
8       in the event of an intentional act at the covered  
9       water system; and

10          “(B) actions, procedures, and identification  
11       of equipment that can obviate or significantly  
12       lessen the impact of intentional acts on public  
13       health and the safety and supply of drinking  
14       water provided to communities and individuals.

15          “(4) COORDINATION.—As part of its emergency  
16       response plan, each covered water system shall pro-  
17       vide appropriate information to any local emergency  
18       planning committee, local law enforcement officials,  
19       and local emergency response providers to ensure an  
20       effective, collective response.

21          “(j) MAINTENANCE OF RECORDS.—Each covered  
22       water system shall maintain an updated copy of its vulner-  
23       ability assessment, site security plan, and emergency re-  
24       sponse plan.

25          “(k) AUDIT; INSPECTION.—

1           “(1) IN GENERAL.—Notwithstanding section  
2           1445(b)(2), the Administrator, or duly designated  
3           representatives of the Administrator, shall audit and  
4           inspect covered water systems, as necessary, for pur-  
5           poses of determining compliance with this section.

6           “(2) ACCESS.—In conducting an audit or in-  
7           spection of a covered water system, the Adminis-  
8           trator or duly designated representatives of the Ad-  
9           ministrator, as appropriate, shall have access to the  
10          owners, operators, employees and contractor employ-  
11          ees, and employee representatives, if any, of such  
12          covered water system.

13          “(3) CONFIDENTIAL COMMUNICATION OF IN-  
14          FORMATION; AIDING INSPECTIONS.—The Adminis-  
15          trator, or a duly designated representative of the  
16          Administrator, shall offer non-supervisory employees  
17          of a covered water system the opportunity confiden-  
18          tially to communicate information relevant to the  
19          employer’s compliance or noncompliance with this  
20          section, including compliance or noncompliance with  
21          any regulation or requirement adopted by the Ad-  
22          ministrator in furtherance of the purposes of this  
23          section. A representative of each certified or recog-  
24          nized bargaining agent described in subsection  
25          (f)(3)(B), if any, or, if none, a non-supervisory em-

1        ployee, shall be given an opportunity to accompany  
2        the Administrator, or the duly designated represent-  
3        ative of the Administrator, during the physical in-  
4        spection of any covered water system for the purpose  
5        of aiding such inspection, if representatives of the  
6        covered water system will also be accompanying the  
7        Administrator or the duly designated representative  
8        of the Administrator on such inspection.

9        “(l) PROTECTION OF INFORMATION.—

10            “(1) PROHIBITION OF PUBLIC DISCLOSURE OF  
11        PROTECTED INFORMATION.—Protected information  
12        shall—

13            “(A) be exempt from disclosure under sec-  
14        tion 552 of title 5, United States Code; and

15            “(B) not be made available pursuant to  
16        any State, local, or tribal law requiring disclo-  
17        sure of information or records.

18        “(2) INFORMATION SHARING.—

19            “(A) IN GENERAL.—The Administrator  
20        shall prescribe such regulations, and may issue  
21        such orders, as necessary to prohibit the unau-  
22        thorized disclosure of protected information, as  
23        described in paragraph (7).

24            “(B) SHARING OF PROTECTED INFORMA-  
25        TION.—The regulations under subparagraph

1 (A) shall provide standards for and facilitate  
2 the appropriate sharing of protected informa-  
3 tion with and between Federal, State, local, and  
4 tribal authorities, first responders, law enforce-  
5 ment officials, designated supervisory and non-  
6 supervisory covered water system personnel  
7 with security, operational, or fiduciary responsi-  
8 bility for the system, and designated facility  
9 employee representatives, if any. Such stand-  
10 ards shall include procedures for the sharing of  
11 all portions of a covered water system's vulner-  
12 ability assessment and site security plan relat-  
13 ing to the roles and responsibilities of system  
14 employees or contractor employees under sub-  
15 section (f)(1) with a representative of each cer-  
16 tified or recognized bargaining agent rep-  
17 resenting such employees, if any, or, if none,  
18 with at least one supervisory and at least one  
19 non-supervisory employee with roles and re-  
20 sponsibilities under subsection (f)(1).

21 “(C) PENALTIES.—Protected information,  
22 as described in paragraph (7), shall not be  
23 shared except in accordance with the standards  
24 provided by the regulations under subparagraph  
25 (A). Whoever discloses protected information in

1 knowing violation of the regulations and orders  
2 issued under subparagraph (A) shall be fined  
3 under title 18, United States Code, imprisoned  
4 for not more than one year, or both, and, in the  
5 case of a Federal officeholder or employee, shall  
6 be removed from Federal office or employment.

7 “(3) TREATMENT OF INFORMATION IN ADJU-  
8 DICATIVE PROCEEDINGS.—In any judicial or admin-  
9 istrative proceeding, protected information, as de-  
10 scribed in paragraph (7), shall be treated in a man-  
11 ner consistent with the treatment of Sensitive Secu-  
12 rity Information under section 525 of the Depart-  
13 ment of Homeland Security Appropriations Act,  
14 2007 (Public Law 109–295; 120 Stat. 1381).

15 “(4) OTHER OBLIGATIONS UNAFFECTED.—Ex-  
16 cept as provided in subsection (h)(3), nothing in this  
17 section amends or affects an obligation of a covered  
18 water system—

19 “(A) to submit or make available informa-  
20 tion to system employees, employee organiza-  
21 tions, or a Federal, State, tribal, or local gov-  
22 ernment agency under any other law; or

23 “(B) to comply with any other law.

24 “(5) CONGRESSIONAL OVERSIGHT.—Nothing in  
25 this section permits or authorizes the withholding of

1 information from Congress or any committee or sub-  
2 committee thereof.

3 “(6) DISCLOSURE OF INDEPENDENTLY FUR-  
4 NISHED INFORMATION.—Nothing in this section  
5 amends or affects any authority or obligation of a  
6 Federal, State, local, or tribal agency to protect or  
7 disclose any record or information that the Federal,  
8 State, local, or tribal agency obtains from a covered  
9 water system or the Administrator under any other  
10 law.

11 “(7) PROTECTED INFORMATION.—

12 “(A) IN GENERAL.—For purposes of this  
13 section, protected information is any of the fol-  
14 lowing:

15 “(i) Vulnerability assessments and  
16 site security plans under this section, in-  
17 cluding any assessment developed pursuant  
18 to subsection (g)(2).

19 “(ii) Documents directly related to the  
20 Administrator’s review of assessments and  
21 plans described in clause (i) and, as appli-  
22 cable, the State’s review of an assessment  
23 prepared under subsection (g)(2).

24 “(iii) Documents directly related to  
25 inspections and audits under this section.

1           “(iv) Orders, notices, or letters re-  
2           garding the compliance of a covered water  
3           system with the requirements of this sec-  
4           tion.

5           “(v) Information, documents, or  
6           records required to be provided to or cre-  
7           ated by, the Administrator under sub-  
8           section (d).

9           “(vi) Documents directly related to se-  
10          curity drills and training exercises, security  
11          threats and breaches of security, and  
12          maintenance, calibration, and testing of se-  
13          curity equipment.

14          “(vii) Other information, documents,  
15          and records developed exclusively for the  
16          purposes of this section that the Adminis-  
17          trator determines would be detrimental to  
18          the security of one or more covered water  
19          systems if disclosed.

20          “(B) DETRIMENT REQUIREMENT.—For  
21          purposes of clauses (ii), (iii), (iv), (v), and (vi)  
22          of subparagraph (A), the only portions of docu-  
23          ments, records, orders, notices, and letters that  
24          shall be considered protected information are  
25          those portions that—

1           “(i) would be detrimental to the secu-  
2           rity of one or more covered water systems  
3           if disclosed; and

4           “(ii) are developed by the Adminis-  
5           trator, the State, or the covered water sys-  
6           tem for the purposes of this section.

7           “(C) EXCLUSIONS.—For purposes of this  
8           section, protected information does not in-  
9           clude—

10           “(i) information that is otherwise pub-  
11           licly available, including information that is  
12           required to be made publicly available  
13           under any law;

14           “(ii) information that a covered water  
15           system has lawfully disclosed other than in  
16           accordance with this section; and

17           “(iii) information that, if disclosed,  
18           would not be detrimental to the security of  
19           one or more covered water systems, includ-  
20           ing aggregate regulatory data that the Ad-  
21           ministrator determines appropriate to de-  
22           scribe system compliance with the require-  
23           ments of this section and the Administra-  
24           tor’s implementation of such requirements.

1           “(m) RELATION TO CHEMICAL FACILITY SECURITY  
2 REQUIREMENTS.—Title XXI of the Homeland Security  
3 Act of 2002 and the amendments made by title I of the  
4 Chemical and Water Security Act of 2009 shall not apply  
5 to any public water system subject to this Act.

6           “(n) PREEMPTION.—This section does not preclude  
7 or deny the right of any State or political subdivision  
8 thereof to adopt or enforce any regulation, requirement,  
9 or standard of performance with respect to a covered  
10 water system that is more stringent than a regulation, re-  
11 quirement, or standard of performance under this section.

12           “(o) VIOLATIONS.—

13                 “(1) IN GENERAL.—A covered water system  
14 that violates any requirement of this section, includ-  
15 ing by not implementing all or part of its site secu-  
16 rity plan by such date as the Administrator requires,  
17 shall be liable for a civil penalty of not more than  
18 \$25,000 for each day on which the violation oc-  
19 curs.

20                 “(2) PROCEDURE.—When the Administrator  
21 determines that a covered water system is subject to  
22 a civil penalty under paragraph (1), the Adminis-  
23 trator, after consultation with the State, for covered  
24 water systems located in a State exercising primary  
25 responsibility for the covered water system, and,

1 after considering the severity of the violation or defi-  
2 ciency and the record of the covered water system in  
3 carrying out the requirements of this section, may—

4 “(A) after notice and an opportunity for  
5 the covered water system to be heard, issue an  
6 order assessing a penalty under such paragraph  
7 for any past or current violation, requiring com-  
8 pliance immediately or within a specified time  
9 period; or

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

14 “(3) METHODS TO REDUCE THE CON-  
15 SEQUENCES OF A CHEMICAL RELEASE FROM AN IN-  
16 TENTIONAL ACT.—Except as provided in subsections  
17 (g)(4) and (g)(5), if a covered water system is lo-  
18 cated in a State exercising primary enforcement re-  
19 sponsibility for the system, the Administrator may  
20 not issue an order or commence a civil action under  
21 this section for any deficiency in the content or im-  
22 plementation of the portion of the system’s site secu-  
23 rity plan relating to methods to reduce the con-  
24 sequences of a chemical release from an intentional  
25 act (as defined in subsection (g)(1)).

1 “(p) REPORT TO CONGRESS.—

2 “(1) PERIODIC REPORT.—Not later than 3  
3 years after the effective date of the regulations  
4 under subsection (a)(1), and every 3 years there-  
5 after, the Administrator shall transmit to the Com-  
6 mittee on Energy and Commerce of the House of  
7 Representatives and the Committee on Environment  
8 and Public Works of the Senate a report on progress  
9 in achieving compliance with this section. Each such  
10 report shall include, at a minimum, the following:

11 “(A) A generalized summary of measures  
12 implemented by covered water systems in order  
13 to meet each risk-based performance standard  
14 established by this section.

15 “(B) A summary of how the covered water  
16 systems, differentiated by risk-based tier as-  
17 signment, are complying with the requirements  
18 of this section during the period covered by the  
19 report and how the Administrator is imple-  
20 menting and enforcing such requirements dur-  
21 ing such period including—

22 “(i) the number of public water sys-  
23 tems that provided the Administrator with  
24 information pursuant to subsection (d)(1);

1                   “(ii) the number of covered water sys-  
2                   tems assigned to each risk-based tier;

3                   “(iii) the number of vulnerability as-  
4                   sessments and site security plans sub-  
5                   mitted by covered water systems;

6                   “(iv) the number of vulnerability as-  
7                   sessments and site security plans approved  
8                   and disapproved by the Administrator;

9                   “(v) the number of covered water sys-  
10                  tems without approved vulnerability assess-  
11                  ments or site security plans;

12                  “(vi) the number of covered water sys-  
13                  tems that have been assigned to a different  
14                  risk-based tier due to implementation of a  
15                  method to reduce the consequences of a  
16                  chemical release from an intentional act  
17                  and a description of the types of such im-  
18                  plemented methods;

19                  “(vii) the number of audits and in-  
20                  spections conducted by the Administrator  
21                  or duly designated representatives of the  
22                  Administrator;

23                  “(viii) the number of orders for com-  
24                  pliance issued by the Administrator;

1                   “(ix) the administrative penalties as-  
2                   sessed by the Administrator for non-com-  
3                   pliance with the requirements of this sec-  
4                   tion;

5                   “(x) the civil penalties assessed by  
6                   courts for non-compliance with the require-  
7                   ments of this section; and

8                   “(xi) any other regulatory data the  
9                   Administrator determines appropriate to  
10                  describe covered water system compliance  
11                  with the requirements of this section and  
12                  the Administrator’s implementation of  
13                  such requirements.

14                  “(2) PUBLIC AVAILABILITY.—A report sub-  
15                  mitted under this section shall be made publicly  
16                  available.

17                  “(q) GRANT PROGRAMS.—

18                  “(1) IMPLEMENTATION GRANTS TO STATES.—  
19                  The Administrator may award grants to, or enter  
20                  into cooperative agreements with, States, based on  
21                  an allocation formula established by the Adminis-  
22                  trator, to assist the States in implementing this sec-  
23                  tion.

24                  “(2) RESEARCH, TRAINING, AND TECHNICAL  
25                  ASSISTANCE GRANTS.—The Administrator may

1 award grants to, or enter into cooperative agree-  
2 ments with, non-profit organizations to provide re-  
3 search, training, and technical assistance to covered  
4 water systems to assist them in carrying out their  
5 responsibilities under this section.

6 “(3) PREPARATION GRANTS.—

7 “(A) GRANTS.—The Administrator may  
8 award grants to, or enter into cooperative  
9 agreements with, covered water systems to as-  
10 sist such systems in—

11 “(i) preparing and updating vulner-  
12 ability assessments, site security plans, and  
13 emergency response plans;

14 “(ii) assessing and implementing  
15 methods to reduce the consequences of a  
16 release of a substance of concern from an  
17 intentional act; and

18 “(iii) implementing any other security  
19 reviews and enhancements necessary to  
20 comply with this section.

21 “(B) PRIORITY.—

22 “(i) NEED.—The Administrator, in  
23 awarding grants or entering into coopera-  
24 tive agreements for purposes described in  
25 subparagraph (A)(i), shall give priority to

1 covered water systems that have the great-  
2 est need.

3 “(ii) SECURITY RISK.—The Adminis-  
4 trator, in awarding grants or entering into  
5 cooperative agreements for purposes de-  
6 scribed in subparagraph (A)(ii), shall give  
7 priority to covered water systems that pose  
8 the greatest security risk.

9 “(4) WORKER TRAINING GRANTS PROGRAM AU-  
10 THORITY.—

11 “(A) IN GENERAL.—The Administrator  
12 shall establish a grant program to award grants  
13 to eligible entities to provide for training and  
14 education of employees and contractor employ-  
15 ees with roles or responsibilities described in  
16 subsection (f)(1) and first responders and emer-  
17 gency response providers who would respond to  
18 an intentional act at a covered water system.

19 “(B) ADMINISTRATION.—The Adminis-  
20 trator shall enter into an agreement with the  
21 National Institute of Environmental Health  
22 Sciences to make and administer grants under  
23 this paragraph.

1           “(C) USE OF FUNDS.—The recipient of a  
2 grant under this paragraph shall use the grant  
3 to provide for—

4           “(i) training and education of employ-  
5 ees and contractor employees with roles or  
6 responsibilities described in subsection  
7 (f)(1), including the annual mandatory  
8 training specified in subsection (f)(2) or  
9 training for first responders in protecting  
10 nearby persons, property, or the environ-  
11 ment from the effects of a release of a sub-  
12 stance of concern at the covered water sys-  
13 tem, with priority given to covered water  
14 systems assigned to tier one or tier two  
15 under subsection (d); and

16           “(ii) appropriate training for first re-  
17 sponders and emergency response pro-  
18 viders who would respond to an intentional  
19 act at a covered water system.

20           “(D) ELIGIBLE ENTITIES.—For purposes  
21 of this paragraph, an eligible entity is a non-  
22 profit organization with demonstrated experi-  
23 ence in implementing and operating successful  
24 worker or first responder health and safety or  
25 security training programs.

1 “(r) AUTHORIZATION OF APPROPRIATIONS.—

2 “(1) IN GENERAL.—To carry out this section,  
3 there are authorized to be appropriated—

4 “(A) \$315,000,000 for fiscal year 2011, of  
5 which up to—

6 “(i) \$30,000,000 may be used for ad-  
7 ministrative costs incurred by the Adminis-  
8 trator or the States, as appropriate; and

9 “(ii) \$125,000,000 may be used to  
10 implement methods to reduce the con-  
11 sequences of a chemical release from an in-  
12 tentional act at covered water systems with  
13 priority given to covered water systems as-  
14 signed to tier one or tier two under sub-  
15 section (d); and

16 “(B) such sums as may be necessary for  
17 fiscal years 2012 through 2015.

18 “(2) SECURITY ENHANCEMENTS.—Funding  
19 under this subsection for basic security enhance-  
20 ments shall not include expenditures for personnel  
21 costs or monitoring, operation, or maintenance of fa-  
22 cilities, equipment, or systems.”.

23 (b) REGULATIONS; TRANSITION.—

24 (1) REGULATIONS.—Not later than 2 years  
25 after the date of the enactment of this title, the Ad-

1 administrator of the Environmental Protection Agency  
2 shall promulgate final regulations to carry out sec-  
3 tion 1433 of the Safe Drinking Water Act, as  
4 amended by subsection (a).

5 (2) EFFECTIVE DATE.—Until the effective date  
6 of the regulations promulgated under paragraph (1),  
7 section 1433 of the Safe Drinking Water Act, as in  
8 effect on the day before the date of the enactment  
9 of this title, shall continue to apply.

10 (3) SAVINGS PROVISION.—Nothing in this sec-  
11 tion or the amendment made by this section shall af-  
12 fect the application of section 1433 of the Safe  
13 Drinking Water Act, as in effect before the effective  
14 date of the regulations promulgated under para-  
15 graph (1), to any violation of such section 1433 oc-  
16 ccurring before such effective date, and the require-  
17 ments of such section 1433 shall remain in force and  
18 effect with respect to such violation until the viola-  
19 tion has been corrected or enforcement proceedings  
20 completed, whichever is later.

21 **SEC. 203. STUDY TO ASSESS THE THREAT OF CONTAMINA-**  
22 **TION OF DRINKING WATER DISTRIBUTION**  
23 **SYSTEMS.**

24 Not later than 180 days after the date of the enact-  
25 ment of this title, the Administrator of the Environmental

1 Protection Agency, in consultation with the Secretary of  
2 Homeland Security, shall—

3 (1) conduct a study to assess the threat of con-  
4 tamination of drinking water being distributed  
5 through public water systems, including fire main  
6 systems; and

7 (2) submit a report to the Congress on the re-  
8 sults of such study.

9 **TITLE III—WASTEWATER**  
10 **TREATMENT WORKS SECURITY**

11 **SECTION 301. SHORT TITLE.**

12 This title may be cited as the “Wastewater Treat-  
13 ment Works Security Act of 2009”.

14 **SEC. 302. WASTEWATER TREATMENT WORKS SECURITY.**

15 (a) IN GENERAL.—Title II of the Federal Water Pol-  
16 lution Control Act (33 U.S.C. 1281 et seq.) is amended  
17 by adding at the end the following:

18 **“(a) ASSESSMENT OF TREATMENT WORKS VULNER-**

19 **ABILITY AND IMPLEMENTATION OF SITE SECURITY AND**  
20 **EMERGENCY RESPONSE PLANS.—**

22 “(1) IN GENERAL.—Each owner or operator of  
23 a treatment works with either a treatment capacity  
24 of at least 2,500,000 gallons per day or, in the dis-  
25 cretion of the Administrator, that presents a secu-

1       rity risk making coverage under this section appro-  
2       priate shall, consistent with regulations developed  
3       under subsection (b)—

4               “(A) conduct and, as required, update a  
5       vulnerability assessment of its treatment works;

6               “(B) develop, periodically update, and im-  
7       plement a site security plan for the treatment  
8       works; and

9               “(C) develop and, as required, revise an  
10      emergency response plan for the treatment  
11      works.

12      “(2) VULNERABILITY ASSESSMENT.—

13              “(A) DEFINITION.—In this section, the  
14      term ‘vulnerability assessment’ means an as-  
15      sessment of the vulnerability of a treatment  
16      works to intentional acts that may—

17              “(i) substantially disrupt the ability of  
18      the treatment works to safely and reliably  
19      operate; or

20              “(ii) have a substantial adverse effect  
21      on critical infrastructure, public health or  
22      safety, or the environment.

23              “(B) REVIEW.—A vulnerability assessment  
24      shall include an identification of the vulner-  
25      ability of the treatment works’—

1           “(i) facilities, systems, and devices  
2           used in the storage, treatment, recycling,  
3           or reclamation of municipal sewage or in-  
4           dustrial wastes;

5           “(ii) intercepting sewers, outfall sew-  
6           ers, sewage collection systems, and other  
7           constructed conveyances under the control  
8           of the owner or operator of the treatment  
9           works;

10          “(iii) electronic, computer, and other  
11          automated systems;

12          “(iv) pumping, power, and other  
13          equipment;

14          “(v) use, storage, and handling of var-  
15          ious chemicals, including substances of  
16          concern, as identified by the Adminis-  
17          trator;

18          “(vi) operation and maintenance pro-  
19          cedures; and

20          “(vii) ability to ensure continuity of  
21          operations.

22          “(3) SITE SECURITY PLAN.—

23          “(A) DEFINITION.—In this section, the  
24          term ‘site security plan’ means a process devel-  
25          oped by the owner or operator of a treatment

1 works to address security risks identified in a  
2 vulnerability assessment developed for the treat-  
3 ment works.

4 “(B) IDENTIFICATION OF SECURITY EN-  
5 HANCEMENTS.—A site security plan carried out  
6 under paragraph (1)(B) shall identify specific  
7 security enhancements, including procedures,  
8 countermeasures, or equipment, that, when im-  
9 plemented or utilized, will reduce the  
10 vulnerabilities identified in a vulnerability as-  
11 sessment (including the identification of the ex-  
12 tent to which implementation or utilization of  
13 such security enhancements may impact the op-  
14 erations of the treatment works in meeting the  
15 goals and requirements of this Act).

16 “(b) RULEMAKING AND GUIDANCE DOCUMENTS.—

17 “(1) IN GENERAL.—Not later than December  
18 31, 2010, the Administrator, after providing notice  
19 and an opportunity for public comment, shall issue  
20 regulations—

21 “(A) establishing risk-based performance  
22 standards for the security of a treatment works  
23 identified under subsection (a)(1); and

1           “(B) establishing requirements and dead-  
2 lines for each owner or operator of a treatment  
3 works identified under subsection (a)(1)—

4           “(i) to conduct and submit to the Ad-  
5 ministrator a vulnerability assessment or,  
6 if the owner or operator of a treatment  
7 works already has conducted a vulner-  
8 ability assessment, to revise and submit to  
9 the Administrator such assessment in ac-  
10 cordance with this section;

11           “(ii) to update and submit to the Ad-  
12 ministrator the vulnerability assessment  
13 not less than every 5 years and promptly  
14 after any change at the treatment works  
15 that could cause the reassignment of the  
16 treatment works to a different risk-based  
17 tier under paragraph (2)(B);

18           “(iii) to develop and implement a site  
19 security plan and to update such plan not  
20 less than every 5 years and promptly after  
21 an update to the vulnerability assessment;

22           “(iv) to develop an emergency re-  
23 sponse plan (or, if the owner or operator of  
24 a treatment works has already developed  
25 an emergency response plan, to revise the

1 plan to be in accordance with this section)  
2 and to revise the plan not less than every  
3 5 years and promptly after an update to  
4 the vulnerability assessment; and

5 “(v) to provide annual training to em-  
6 ployees of the treatment works on imple-  
7 menting site security plans and emergency  
8 response plans.

9 “(2) RISK-BASED TIERS AND PERFORMANCE  
10 STANDARDS.—

11 “(A) IN GENERAL.—In developing regula-  
12 tions under this subsection, the Administrator  
13 shall—

14 “(i) provide for 4 risk-based tiers ap-  
15 plicable to treatment works identified  
16 under subsection (a)(1), with tier one rep-  
17 resenting the highest degree of security  
18 risk; and

19 “(ii) establish risk-based performance  
20 standards for site security plans and emer-  
21 gency response plans required under this  
22 section.

23 “(B) RISK-BASED TIERS.—

24 “(i) ASSIGNMENT OF RISK-BASED  
25 TIERS.—The Administrator shall assign

1 (and reassign when appropriate) each  
2 treatment works identified under sub-  
3 section (a)(1) to one of the risk-based tiers  
4 established pursuant to this paragraph.

5 “(ii) FACTORS TO CONSIDER.—In as-  
6 signing a treatment works to a risk-based  
7 tier, the Administrator shall consider—

8 “(I) the size of the treatment  
9 works;

10 “(II) the proximity of the treat-  
11 ment works to large population cen-  
12 ters;

13 “(III) the adverse impacts of an  
14 intentional act, including a worst-case  
15 release of a substance of concern des-  
16 ignated under subsection (c), on the  
17 operation of the treatment works or  
18 on critical infrastructure, public  
19 health or safety, or the environment;  
20 and

21 “(IV) any other factor that the  
22 Administrator determines to be appro-  
23 priate.

24 “(iii) INFORMATION REQUEST FOR  
25 TREATMENT WORKS.—The Administrator

1           may require the owner or operator of a  
2           treatment works identified under sub-  
3           section (a)(1) to submit information in  
4           order to determine the appropriate risk-  
5           based tier for the treatment works.

6           “(iv) EXPLANATION FOR RISK-BASED  
7           TIER ASSIGNMENT.—The Administrator  
8           shall provide the owner or operator of each  
9           treatment works assigned to a risk-based  
10          tier with the reasons for the tier assign-  
11          ment and whether such owner or operator  
12          of a treatment works is required to submit  
13          an assessment under paragraph (3)(B).

14          “(C) RISK-BASED PERFORMANCE STAND-  
15          ARDS.—

16                 “(i) CLASSIFICATION.—In establishing  
17                 risk-based performance standards under  
18                 subparagraph (A)(ii), the Administrator  
19                 shall ensure that the standards are sepa-  
20                 rate and, as appropriate, increasingly more  
21                 stringent based on the level of risk associ-  
22                 ated with the risk-based tier assignment  
23                 under subparagraph (B) for the treatment  
24                 works.

1           “(ii) CONSIDERATION.—In carrying  
2           out this subparagraph, the Administrator  
3           shall take into account section 27.230 of  
4           title 6, Code of Federal Regulations (or  
5           any successor regulation).

6           “(D) SITE SECURITY PLANS.—

7           “(i) IN GENERAL.—In developing reg-  
8           ulations under this subsection, the Admin-  
9           istrator shall permit the owner or operator  
10          of a treatment works identified under sub-  
11          section (a)(1), in developing and imple-  
12          menting a site security plan, to select lay-  
13          ered security and preparedness measures  
14          that, in combination—

15                 “(I) address the security risks  
16                 identified in its vulnerability assess-  
17                 ment; and

18                 “(II) comply with the applicable  
19                 risk-based performance standards re-  
20                 quired by this subsection.

21           “(3) METHODS TO REDUCE THE CON-  
22           SEQUENCES OF A CHEMICAL RELEASE FROM AN IN-  
23           TENTIONAL ACT.—

24           “(A) DEFINITION.—In this section, the  
25           term ‘method to reduce the consequences of a

1 chemical release from an intentional act' means  
2 a measure at a treatment works identified  
3 under subsection (a)(1) that reduces or elimi-  
4 nates the potential consequences of a release of  
5 a substance of concern designated under sub-  
6 section (c) from an intentional act, such as—

7 “(i) the elimination of or a reduction  
8 in the amount of a substance of concern  
9 possessed or planned to be possessed by a  
10 treatment works through the use of alter-  
11 nate substances, formulations, or proc-  
12 esses;

13 “(ii) the modification of pressures,  
14 temperatures, or concentrations of a sub-  
15 stance of concern; and

16 “(iii) the reduction or elimination of  
17 onsite handling of a substance of concern  
18 through the improvement of inventory con-  
19 trol or chemical use efficiency.

20 “(B) ASSESSMENT.—

21 “(i) IN GENERAL.—In developing the  
22 regulations under this subsection, for each  
23 treatment works identified under sub-  
24 section (a)(1) that possesses or plans to  
25 possess a substance of concern in excess of

1 the release threshold quantity set by the  
2 Administrator under subsection (c)(2), the  
3 Administrator shall require the treatment  
4 works to include in its site security plan an  
5 assessment of methods to reduce the con-  
6 sequences of a chemical release from an in-  
7 tentional act at the treatment works.

8 “(ii) CONSIDERATIONS FOR ASSESS-  
9 MENT.—In developing the regulations  
10 under this subsection, the Administrator  
11 shall require the owner or operator of each  
12 treatment works, in preparing the assess-  
13 ment, to consider factors appropriate to  
14 address the responsibilities of the treat-  
15 ment works to meet the goals and require-  
16 ments of this Act and to include—

17 “(I) a description of the methods  
18 to reduce the consequences of a chem-  
19 ical release from an intentional act;

20 “(II) a description of how each  
21 described method to reduce the con-  
22 sequences of a chemical release from  
23 an intentional act could, if applied—

24 “(aa) reduce the extent of  
25 death, injury, or serious adverse

1 effects to human health or the  
2 environment as a result of a re-  
3 lease, theft, or misappropriation  
4 of a substance of concern des-  
5 ignated under subsection (c); and  
6 “(bb) impact the operations  
7 of the treatment works in meet-  
8 ing the goals and requirements of  
9 this Act;  
10 “(III) whether each described  
11 method to reduce the consequences of  
12 a chemical release from an intentional  
13 act at the treatment works is feasible,  
14 as determined by the Administrator;  
15 “(IV) the costs (including capital  
16 and operational costs) and avoided  
17 costs (including potential savings) as-  
18 sociated with applying each described  
19 method to reduce the consequences of  
20 a chemical release from an intentional  
21 act at the treatment works;  
22 “(V) any other relevant informa-  
23 tion that the owner or operator of a  
24 treatment works relied on in con-  
25 ducting the assessment; and

1                   “(VI) a statement of whether the  
2                   owner or operator of a treatment  
3                   works has implemented or plans to  
4                   implement a method to reduce the  
5                   consequences of a chemical release  
6                   from an intentional act, a description  
7                   of any such method, and, in the case  
8                   of a treatment works described in sub-  
9                   paragraph (C)(i), an explanation of  
10                  the reasons for any decision not to  
11                  implement any such method.

12                  “(C) REQUIRED METHODS.—

13                  “(i) APPLICATION.—This subpara-  
14                  graph applies to a treatment works identi-  
15                  fied under subsection (a)(1) that—

16                         “(I) is assigned to one of the two  
17                         highest risk-based tiers established  
18                         under paragraph (2)(A); and

19                         “(II) possesses or plans to pos-  
20                         sess a substance of concern in excess  
21                         of the threshold quantity set by the  
22                         Administrator under subsection (c)(2).

23                  “(ii) HIGHEST-RISK SYSTEMS.—If, on  
24                  the basis of its assessment developed pur-  
25                  suant to subparagraph (B), the owner or

1 operator of a treatment works described in  
2 clause (i) decides not to implement a meth-  
3 od to reduce the consequences of a chem-  
4 ical release from an intentional act, in ac-  
5 cordance with a timeline set by the Admin-  
6 istrator—

7 “(I) the Administrator or, where  
8 applicable, a State with an approved  
9 program under section 402, shall de-  
10 termine whether to require the owner  
11 or operator of a treatment works to  
12 implement such method; and

13 “(II) in the case of a State with  
14 such approved program, the State  
15 shall report such determination to the  
16 Administrator.

17 “(iii) CONSIDERATIONS.—Before re-  
18 quiring the implementation of a method to  
19 reduce the consequences of a chemical re-  
20 lease from an intentional act under clause  
21 (ii), the Administrator or a State, as the  
22 case may be, shall consider factors appro-  
23 priate to address the responsibilities of the  
24 treatment works to meet the goals and re-

1                    requirements of this Act, including an exam-  
2                    ination of whether the method—

3                                       “(I) would significantly reduce  
4                                       the risk of death, injury, or serious  
5                                       adverse effects to human health re-  
6                                       sulting from a chemical release from  
7                                       an intentional act at the treatment  
8                                       works;

9                                       “(II) would not increase the in-  
10                                       terim storage by the treatment works  
11                                       of a substance of concern designated  
12                                       under subsection (c);

13                                       “(III) could impact the oper-  
14                                       ations of the treatment works in meet-  
15                                       ing the goals and requirements of this  
16                                       Act or any more stringent standards  
17                                       established by the State or munici-  
18                                       pality in which the treatment works is  
19                                       located; and

20                                       “(IV) is feasible, as determined  
21                                       by the Administrator, to be incor-  
22                                       porated into the operations of the  
23                                       treatment works.

24                                       “(D) APPEAL.—Before requiring the im-  
25                                       plementation of a method to reduce the con-

1 sequences of a chemical release from an inten-  
2 tional act under clause (ii), the Administrator  
3 or a State, as the case may be, shall provide the  
4 owner or operator of the treatment works an  
5 opportunity to appeal the determination to re-  
6 quire such implementation.

7 “(E) INCOMPLETE OR LATE ASSESS-  
8 MENTS.—

9 “(i) INCOMPLETE ASSESSMENTS.—If  
10 the Administrator determines that a treat-  
11 ment works fails to meet the requirements  
12 of subparagraph (B) and the applicable  
13 regulations, the Administrator shall, after  
14 notifying the owner or operator of a treat-  
15 ment works and the State in which the  
16 treatment works is located, require the  
17 owner or operator of the treatment works  
18 to submit a revised assessment not later  
19 than 60 days after the Administrator noti-  
20 fies the owner or operator. The Adminis-  
21 trator may require such additional revi-  
22 sions as are necessary to ensure that the  
23 treatment works meets the requirements of  
24 subparagraph (B) and the applicable regu-  
25 lations.

1           “(ii) LATE ASSESSMENTS.—If the Ad-  
2           ministrator finds that the owner or oper-  
3           ator of a treatment works, in conducting  
4           an assessment pursuant to subparagraph  
5           (B), did not complete such assessment in  
6           accordance with the deadline set by the  
7           Administrator, the Administrator may,  
8           after notifying the owner or operator of the  
9           treatment works and the State in which  
10          the treatment works is located, take appro-  
11          priate enforcement action under subsection  
12          (j).

13           “(iii) REVIEW.—A State with an ap-  
14          proved program under section 402 or the  
15          Administrator, as the case may be, shall  
16          review a revised assessment that meets the  
17          requirements of subparagraph (B) and ap-  
18          plicable regulations to determine whether  
19          the treatment works will be required to im-  
20          plement methods to reduce the con-  
21          sequences of a chemical release from an in-  
22          tentional act pursuant to subparagraph  
23          (C).

24          “(F) ENFORCEMENT.—

1                   “(i) FAILURE BY STATE TO MAKE DE-  
2                   TERMINATION.—

3                   “(I) IN GENERAL.—If the Ad-  
4                   ministrator determines that a State  
5                   with an approved program under sec-  
6                   tion 402 failed to determine whether  
7                   to require a treatment works to imple-  
8                   ment a method to reduce the con-  
9                   sequences of a chemical release from  
10                  an intentional act, as required by sub-  
11                  paragraph (C)(ii), the Administrator  
12                  shall notify the State and the owner  
13                  or operator of the treatment works.

14                  “(II) ADMINISTRATIVE AC-  
15                  TION.—If, after 30 days after the no-  
16                  tification described in subclause (I), a  
17                  State fails to make the determination  
18                  described in that subclause, the Ad-  
19                  ministrator shall notify the State and  
20                  the owner or operator of the treat-  
21                  ment works and shall determine  
22                  whether to require the owner or oper-  
23                  ator to implement a method to reduce  
24                  the consequences of a chemical release  
25                  from an intentional act based on the

1 factors described in subparagraph  
2 (C)(iii).

3 “(ii) FAILURE BY STATE TO BRING  
4 ENFORCEMENT ACTION.—

5 “(I) IN GENERAL.—If, in a State  
6 with an approved program under sec-  
7 tion 402, the Administrator deter-  
8 mines that the owner or operator of a  
9 treatment works fails to implement a  
10 method to reduce the consequences of  
11 a chemical release from an intentional  
12 act (as required by the State or the  
13 Administrator under subparagraph  
14 (C)(ii) or the Administrator under  
15 clause (i)(II)), the Administrator shall  
16 notify the State and the owner or op-  
17 erator of the treatment works.

18 “(II) ADMINISTRATIVE ENFORCE-  
19 MENT ACTION.—If, after 30 days  
20 after the notification described in sub-  
21 clause (I), the State has not com-  
22 menced appropriate enforcement ac-  
23 tion, the Administrator shall notify  
24 the State and may commence an en-  
25 forcement action against the owner or

1 operator of the treatment works, in-  
2 cluding by seeking or imposing civil  
3 penalties under subsection (j), to re-  
4 quire implementation of such method.

5 “(4) CONSULTATION WITH STATE AUTHORI-  
6 TIES.—In developing the regulations under this sub-  
7 section, the Administrator shall consult with States  
8 with approved programs under section 402.

9 “(5) CONSULTATION WITH OTHER PERSONS.—  
10 In developing the regulations under this subsection,  
11 the Administrator shall consult with the Secretary of  
12 Homeland Security, and, as appropriate, other per-  
13 sons regarding—

14 “(A) the provision of threat-related and  
15 other baseline information to treatment works  
16 identified under subsection (a)(1);

17 “(B) the designation of substances of con-  
18 cern under subsection (c);

19 “(C) the development of risk-based per-  
20 formance standards;

21 “(D) the establishment of risk-based tiers  
22 and the process for the assignment of treatment  
23 works identified under subsection (a)(1) to such  
24 tiers;

1           “(E) the process for the development and  
2           evaluation of vulnerability assessments, site se-  
3           curity plans, and emergency response plans;

4           “(F) the treatment of protected informa-  
5           tion; and

6           “(G) any other factor that the Adminis-  
7           trator determines to be appropriate.

8           “(6) CONSIDERATION.—In developing the regu-  
9           lations under this subsection, the Administrator  
10          shall ensure that such regulations are consistent  
11          with the goals and requirements of this Act.

12          “(c) SUBSTANCES OF CONCERN.—For purposes of  
13          this section, the Administrator, in consultation with the  
14          Secretary of Homeland Security—

15               “(1) may designate any chemical substance as  
16               a substance of concern;

17               “(2) at the time any chemical substance is des-  
18               ignated pursuant to paragraph (1), shall establish by  
19               rulemaking a threshold quantity for the release or  
20               theft of a substance, taking into account the toxicity,  
21               reactivity, volatility, dispersability, combustability,  
22               and flammability of the substance and the amount  
23               of the substance, that, as a result of the release or  
24               theft, is known to cause death, injury, or serious ad-

1       verse impacts to human health or the environment;  
2       and

3               “(3) in making such a designation, shall take  
4       into account appendix A to part 27 of title 6, Code  
5       of Federal Regulations (or any successor regulation).

6       “(d) REVIEW OF VULNERABILITY ASSESSMENT AND  
7       SITE SECURITY PLAN.—

8               “(1) IN GENERAL.—Each owner or operator of  
9       a treatment works identified under subsection (a)(1)  
10       shall submit its vulnerability assessment and site se-  
11       curity plan to the Administrator for review in ac-  
12       cordance with deadlines established by the Adminis-  
13       trator.

14               “(2) STANDARD OF REVIEW.—The Adminis-  
15       trator shall review each vulnerability assessment and  
16       site security plan submitted under this subsection  
17       and—

18               “(A) if the assessment or plan has a sig-  
19       nificant deficiency described in paragraph (3),  
20       require the owner or operator of the treatment  
21       works to correct the deficiency; or

22               “(B) approve such assessment or plan.

23               “(3) SIGNIFICANT DEFICIENCY.—A vulner-  
24       ability assessment or site security plan of a treat-  
25       ment works has a significant deficiency under this

1 subsection if the Administrator, in consultation, as  
2 appropriate, with a State with an approved program  
3 under section 402, determines that—

4 “(A) such assessment does not comply with  
5 the regulations promulgated under subsection  
6 (b); or

7 “(B) such plan—

8 “(i) fails to address vulnerabilities  
9 identified in a vulnerability assessment; or

10 “(ii) fails to meet applicable risk-  
11 based performance standards.

12 “(4) IDENTIFICATION OF DEFICIENCIES.—If  
13 the Administrator identifies a significant deficiency  
14 in the vulnerability assessment or site security plan  
15 of an owner or operator of a treatment works under  
16 paragraph (3), the Administrator shall provide the  
17 owner or operator with a written notification of the  
18 deficiency that—

19 “(A) includes a clear explanation of the de-  
20 ficiency in the vulnerability assessment or site  
21 security plan;

22 “(B) provides guidance to assist the owner  
23 or operator in addressing the deficiency; and

24 “(C) requires the owner or operator to cor-  
25 rect the deficiency and, by such date as the Ad-

1            administrator determines appropriate, to submit  
2            to the Administrator a revised vulnerability as-  
3            sessment or site security plan.

4            “(5) STATE, LOCAL, OR TRIBAL GOVERN-  
5            MENTAL ENTITIES.—No owner or operator of a  
6            treatment works identified under subsection (a)(1)  
7            shall be required under State, local, or tribal law to  
8            provide a vulnerability assessment or site security  
9            plan described in this section to any State, local, or  
10          tribal governmental entity solely by reason of the re-  
11          quirement set forth in paragraph (1) that the owner  
12          or operator of a treatment works submit such an as-  
13          sessment and plan to the Administrator.

14          “(e) EMERGENCY RESPONSE PLAN.—

15            “(1) IN GENERAL.—The owner or operator of a  
16            treatment works identified under subsection (a)(1)  
17            shall develop or revise, as appropriate, an emergency  
18            response plan that incorporates the results of the  
19            current vulnerability assessment and site security  
20            plan for the treatment works.

21            “(2) CERTIFICATION.—The owner or operator  
22            of a treatment works identified under subsection  
23            (a)(1) shall certify to the Administrator that the  
24            owner or operator has completed an emergency re-  
25            sponse plan, shall submit such certification to the

1 Administrator not later than 6 months after the first  
2 completion or revision of a vulnerability assessment  
3 under this section, and shall submit an additional  
4 certification following any update of the emergency  
5 response plan.

6 “(3) CONTENTS.—An emergency response plan  
7 shall include a description of—

8 “(A) plans, procedures, and identification  
9 of equipment that can be implemented or used  
10 in the event of an intentional act at the treat-  
11 ment works; and

12 “(B) actions, procedures, and identification  
13 of equipment that can obviate or significantly  
14 reduce the impact of intentional acts to—

15 “(i) substantially disrupt the ability of  
16 the treatment works to safely and reliably  
17 operate; or

18 “(ii) have a substantial adverse effect  
19 on critical infrastructure, public health or  
20 safety, or the environment.

21 “(4) COORDINATION.—As part of its emergency  
22 response plan, the owner or operator of a treatment  
23 works shall provide appropriate information to any  
24 local emergency planning committee, local law en-

1 enforcement officials, and local emergency response  
2 providers to ensure an effective, collective response.

3 “(f) ROLE OF EMPLOYEES.—

4 “(1) DESCRIPTION OF ROLE.—Site security  
5 plans and emergency response plans required under  
6 this section shall describe the appropriate roles or  
7 responsibilities that employees and contractor em-  
8 ployees of treatment works are expected to perform  
9 to deter or respond to the intentional acts identified  
10 in a current vulnerability assessment.

11 “(2) TRAINING FOR EMPLOYEES.—The owner  
12 or operator of a treatment works identified under  
13 subsection (a)(1) shall annually provide employees  
14 and contractor employees with the roles or respon-  
15 sibilities described in paragraph (1) with sufficient  
16 training, as determined by the Administrator, on  
17 carrying out those roles or responsibilities.

18 “(3) EMPLOYEE PARTICIPATION.—In devel-  
19 oping, revising, or updating a vulnerability assess-  
20 ment, site security plan, and emergency response  
21 plan required under this section, the owner or oper-  
22 ator of a treatment works shall include—

23 “(A) at least one supervisory and at least  
24 one nonsupervisory employee of the treatment  
25 works; and

1           “(B) at least one representative of each  
2           certified or recognized bargaining agent rep-  
3           resenting facility employees or contractor em-  
4           ployees with roles or responsibilities described  
5           in paragraph (1), if any, in a collective bar-  
6           gaining relationship with the owner or operator  
7           of the treatment works or with a contractor to  
8           the treatment works.

9           “(g) MAINTENANCE OF RECORDS.—The owner or op-  
10          erator of a treatment works identified under subsection  
11          (a)(1) shall maintain an updated copy of its vulnerability  
12          assessment, site security plan, and emergency response  
13          plan on the premises of the treatment works.

14          “(h) AUDIT; INSPECTION.—

15                 “(1) IN GENERAL.—The Administrator shall  
16                 audit and inspect a treatment works identified under  
17                 subsection (a)(1), as necessary, for purposes of de-  
18                 termining compliance with this section.

19                 “(2) ACCESS.—In conducting an audit or in-  
20                 spection of a treatment works under paragraph (1),  
21                 the Administrator shall have access to the owners,  
22                 operators, employees and contractor employees, and  
23                 employee representatives, if any, of such treatment  
24                 works.

1           “(3) CONFIDENTIAL COMMUNICATION OF IN-  
2           FORMATION; AIDING INSPECTIONS.—The Adminis-  
3           trator shall offer nonsupervisory employees of a  
4           treatment works the opportunity confidentially to  
5           communicate information relevant to the compliance  
6           or noncompliance of the owner or operator of the  
7           treatment works with this section, including compli-  
8           ance or noncompliance with any regulation or re-  
9           quirement adopted by the Administrator in further-  
10          ance of the purposes of this section. A representative  
11          of each certified or recognized bargaining agent de-  
12          scribed in subsection (f)(3)(B), if any, or, if none, a  
13          nonsupervisory employee, shall be given an oppor-  
14          tunity to accompany the Administrator during the  
15          physical inspection of any treatment works for the  
16          purpose of aiding such inspection, if representatives  
17          of the treatment works will also be accompanying  
18          the Administrator on such inspection.

19          “(i) PROTECTION OF INFORMATION.—

20                 “(1) PROHIBITION OF PUBLIC DISCLOSURE OF  
21                 PROTECTED INFORMATION.—Protected information  
22                 shall—

23                         “(A) be exempt from disclosure under sec-  
24                         tion 552 of title 5, United States Code; and

1           “(B) not be made available pursuant to  
2 any State, local, or tribal law requiring disclo-  
3 sure of information or records.

4           “(2) INFORMATION SHARING.—

5           “(A) IN GENERAL.—The Administrator  
6 shall prescribe such regulations, and may issue  
7 such orders, as necessary to prohibit the unau-  
8 thorized disclosure of protected information, as  
9 described in paragraph (7).

10           “(B) SHARING OF PROTECTED INFORMA-  
11 TION.—The regulations under subparagraph  
12 (A) shall provide standards for and facilitate  
13 the appropriate sharing of protected informa-  
14 tion with and among Federal, State, local, and  
15 tribal authorities, first responders, law enforce-  
16 ment officials, supervisory and nonsupervisory  
17 treatment works personnel with security, oper-  
18 ational, or fiduciary responsibility for the sys-  
19 tem designated by the owner or operator of the  
20 treatment works, and facility employee rep-  
21 resentatives designated by the owner or oper-  
22 ator of the treatment works, if any.

23           “(C) INFORMATION SHARING PROCE-  
24 DURES.—Such standards shall include proce-  
25 dures for the sharing of all portions of the vul-

1           nerability assessment and site security plan of  
2           a treatment works relating to the roles and re-  
3           sponsibilities of the employees or contractor em-  
4           ployees of a treatment works under subsection  
5           (f)(1) with a representative of each certified or  
6           recognized bargaining agent representing such  
7           employees, if any, or, if none, with at least one  
8           supervisory and at least one non-supervisory  
9           employee with roles and responsibilities under  
10          subsection (f)(1).

11           “(D) PENALTIES.—Protected information,  
12          as described in paragraph (7), shall not be  
13          shared except in accordance with the standards  
14          provided by the regulations under subparagraph  
15          (A). Whoever discloses protected information in  
16          knowing violation of the regulations and orders  
17          issued under subparagraph (A) shall be fined  
18          under title 18, United States Code, imprisoned  
19          for not more than one year, or both, and, in the  
20          case of a Federal officeholder or employee, shall  
21          be removed from Federal office or employment.

22           “(3) TREATMENT OF INFORMATION IN ADJU-  
23          DICATIVE PROCEEDINGS.—In any judicial or admin-  
24          istrative proceeding, protected information, as de-  
25          scribed in paragraph (7), shall be treated in a man-

1       ner consistent with the treatment of sensitive secu-  
2       rity information under section 525 of the Depart-  
3       ment of Homeland Security Appropriations Act,  
4       2007 (120 Stat. 1381).

5           “(4) OTHER OBLIGATIONS UNAFFECTED.—  
6       Nothing in this section amends or affects an obliga-  
7       tion of the owner or operator of a treatment works  
8       to—

9           “(A) submit or make available information  
10       to employees of the treatment works, employee  
11       organizations, or a Federal, State, local, or trib-  
12       al government agency under any other law; or

13           “(B) comply with any other law.

14           “(5) CONGRESSIONAL OVERSIGHT.—Nothing in  
15       this section permits or authorizes the withholding of  
16       information from Congress or any committee or sub-  
17       committee thereof.

18           “(6) DISCLOSURE OF INDEPENDENTLY FUR-  
19       NISHED INFORMATION.—Nothing in this section  
20       amends or affects any authority or obligation of a  
21       Federal, State, local, or tribal agency to protect or  
22       disclose any record or information that the Federal,  
23       State, local, or tribal agency obtains from a treat-  
24       ment works or the Administrator under any other  
25       law except as provided in subsection (d)(5).

1 “(7) PROTECTED INFORMATION.—

2 “(A) IN GENERAL.—For purposes of this  
3 section, protected information is any of the fol-  
4 lowing:

5 “(i) Vulnerability assessments and  
6 site security plans under this section, in-  
7 cluding any assessment developed under  
8 subsection (b)(3)(B).

9 “(ii) Documents directly related to the  
10 Administrator’s review of assessments and  
11 plans described in clause (i) and, as appli-  
12 cable, the State’s review of an assessment  
13 developed under subsection (b)(3)(B).

14 “(iii) Documents directly related to  
15 inspections and audits under this section.

16 “(iv) Orders, notices, or letters re-  
17 garding the compliance of a treatment  
18 works described in subsection (a)(1) with  
19 the requirements of this section.

20 “(v) Information required to be pro-  
21 vided to, or documents and records created  
22 by, the Administrator under subsection  
23 (b)(2).

24 “(vi) Documents directly related to se-  
25 curity drills and training exercises, security

1 threats and breaches of security, and  
2 maintenance, calibration, and testing of se-  
3 curity equipment.

4 “(vii) Other information, documents,  
5 and records developed for the purposes of  
6 this section that the Administrator deter-  
7 mines would be detrimental to the security  
8 of a treatment works if disclosed.

9 “(B) DETRIMENT REQUIREMENT.—For  
10 purposes of clauses (ii), (iii), (iv), (v), and (vi)  
11 of subparagraph (A), the only portions of docu-  
12 ments, records, orders, notices, and letters that  
13 shall be considered protected information are  
14 those portions that—

15 “(i) would be detrimental to the secu-  
16 rity of a treatment works if disclosed; and

17 “(ii) are developed by the Adminis-  
18 trator, the State, or the treatment works  
19 for the purposes of this section.

20 “(C) EXCLUSIONS.—For purposes of this  
21 paragraph, protected information does not in-  
22 clude—

23 “(i) information that is otherwise pub-  
24 licly available, including information that is

1 required to be made publicly available  
2 under any law;

3 “(ii) information that a treatment  
4 works has lawfully disclosed other than in  
5 accordance with this section; and

6 “(iii) information that, if disclosed,  
7 would not be detrimental to the security of  
8 a treatment works, including aggregate  
9 regulatory data that the Administrator de-  
10 termines appropriate to describe compli-  
11 ance with the requirements of this section  
12 and the Administrator’s implementation of  
13 such requirements.

14 “(j) VIOLATIONS.—For the purposes of section 309  
15 of this Act, any violation of any requirement of this sec-  
16 tion, including any regulations promulgated pursuant to  
17 this section, by an owner or operator of a treatment works  
18 described in subsection (a)(1) shall be treated in the same  
19 manner as a violation of a permit condition under section  
20 402 of this Act.

21 “(k) REPORT TO CONGRESS.—

22 “(1) PERIODIC REPORT.—Not later than 3  
23 years after the effective date of the regulations  
24 issued under subsection (b) and every 3 years there-  
25 after, the Administrator shall transmit to the Com-

1       mittee on Transportation and Infrastructure of the  
2       House of Representatives and the Committee on En-  
3       vironment and Public Works of the Senate a report  
4       on progress in achieving compliance with this sec-  
5       tion.

6               “(2) CONTENTS OF THE REPORT.—Each such  
7       report shall include, at a minimum, the following:

8                       “(A) A generalized summary of measures  
9       implemented by the owner or operator of a  
10      treatment works identified under subsection  
11      (a)(1) in order to meet each risk-based per-  
12      formance standard established by this section.

13                      “(B) A summary of how the treatment  
14      works, differentiated by risk-based tier assign-  
15      ment, are complying with the requirements of  
16      this section during the period covered by the re-  
17      port and how the Administrator is imple-  
18      menting and enforcing such requirements dur-  
19      ing such period, including—

20                               “(i) the number of treatment works  
21      that provided the Administrator with infor-  
22      mation pursuant to subsection  
23      (b)(2)(B)(iii);

24                               “(ii) the number of treatment works  
25      assigned to each risk-based tier;

1           “(iii) the number of vulnerability as-  
2           sessments and site security plans sub-  
3           mitted by treatment works;

4           “(iv) the number of vulnerability as-  
5           sessments and site security plans approved  
6           or found to have a significant deficiency  
7           under subsection (d)(2) by the Adminis-  
8           trator;

9           “(v) the number of treatment works  
10          without approved vulnerability assessments  
11          or site security plans;

12          “(vi) the number of treatment works  
13          that have been assigned to a different risk-  
14          based tier due to implementation of a  
15          method to reduce the consequences of a  
16          chemical release from an intentional act  
17          and a description of the types of such im-  
18          plemented methods;

19          “(vii) the number of audits and in-  
20          spections conducted by the Administrator;  
21          and

22          “(viii) any other regulatory data the  
23          Administrator determines appropriate to  
24          describe the compliance of owners or oper-  
25          ators of treatment works with the require-

1                   ments of this section and the Administra-  
2                   tor's implementation of such requirements.

3                   “(3) PUBLIC AVAILABILITY.—A report sub-  
4                   mitted under this section shall be made publicly  
5                   available.

6                   “(1) GRANTS FOR VULNERABILITY ASSESSMENTS,  
7 SECURITY ENHANCEMENTS, AND WORKER TRAINING  
8 PROGRAMS.—

9                   “(1) IN GENERAL.—The Administrator may  
10                  make a grant to a State, municipality, or inter-  
11                  municipal or interstate agency—

12                   “(A) to conduct or update a vulnerability  
13                   assessment, site security plan, or emergency re-  
14                   sponse plan for a publicly owned treatment  
15                   works identified under subsection (a)(1);

16                   “(B) to implement a security enhancement  
17                   at a publicly owned treatment works identified  
18                   under subsection (a)(1), including a method to  
19                   reduce the consequences of a chemical release  
20                   from an intentional act, identified in an ap-  
21                   proved site security plan and listed in para-  
22                   graph (2);

23                   “(C) to implement an additional security  
24                   enhancement at a publicly owned treatment  
25                   works identified under subsection (a)(1), includ-

1           ing a method to reduce the consequences of a  
2           chemical release from an intentional act, identi-  
3           fied in an approved site security plan; and

4                   “(D) to provide for security-related train-  
5           ing of employees or contractor employees of the  
6           treatment works and training for first respond-  
7           ers and emergency response providers.

8           “(2) GRANTS FOR SECURITY ENHANCE-  
9           MENTS.—

10                   “(A) PREAPPROVED SECURITY ENHANCE-  
11           MENTS.—The Administrator may make a grant  
12           under paragraph (1)(B) to implement a secu-  
13           rity enhancement of a treatment works for one  
14           or more of the following:

15                           “(i) Purchase and installation of  
16                           equipment for access control, intrusion  
17                           prevention and delay, and detection of in-  
18                           truders and hazardous or dangerous sub-  
19                           stances, including—

20                                   “(I) barriers, fencing, and gates;

21                                   “(II) security lighting and cam-  
22                                   eras;

23                                   “(III) metal grates, wire mesh,  
24                                   and outfall entry barriers;

1                   “(IV) securing of manhole covers  
2                   and fill and vent pipes;

3                   “(V) installation and re-keying of  
4                   doors and locks; and

5                   “(VI) smoke, chemical, and ex-  
6                   plosive mixture detection systems.

7                   “(ii) Security improvements to elec-  
8                   tronic, computer, or other automated sys-  
9                   tems and remote security systems, includ-  
10                  ing controlling access to such systems, in-  
11                  trusion detection and prevention, and sys-  
12                  tem backup.

13                  “(iii) Participation in training pro-  
14                  grams and the purchase of training manu-  
15                  als and guidance materials relating to se-  
16                  curity.

17                  “(iv) Security screening of employees  
18                  or contractor support services.

19                  “(B) ADDITIONAL SECURITY ENHANCE-  
20                  MENTS.—The Administrator may make a grant  
21                  under paragraph (1)(C) for additional security  
22                  enhancements not listed in subparagraph (A)  
23                  that are identified in an approved site security  
24                  plan. The additional security enhancements  
25                  may include the implementation of a method to

1           reduce the consequences of a chemical release  
2           from an intentional act.

3           “(C) LIMITATION ON USE OF FUNDS.—  
4           Grants under this subsection may not be used  
5           for personnel costs or operation or maintenance  
6           of facilities, equipment, or systems.

7           “(D) FEDERAL SHARE.—The Federal  
8           share of the cost of activities funded by a grant  
9           under paragraph (1) may not exceed 75 per-  
10          cent.

11          “(3) ELIGIBILITY.—To be eligible for a grant  
12          under this subsection, a State, municipality, or  
13          intermunicipal or interstate agency shall submit in-  
14          formation to the Administrator at such time, in such  
15          form, and with such assurances as the Administrator  
16          may require.

17          “(m) PREEMPTION.—This section does not preclude  
18          or deny the right of any State or political subdivision  
19          thereof to adopt or enforce any regulation, requirement,  
20          or standard of performance with respect to a treatment  
21          works that is more stringent than a regulation, require-  
22          ment, or standard of performance under this section.

23          “(n) AUTHORIZATION OF APPROPRIATIONS.—There  
24          is authorized to be appropriated to the Administrator  
25          \$200,000,000 for each of fiscal years 2010 through 2014

1 for making grants under subsection (l). Such sums shall  
2 remain available until expended.

3 “(o) RELATION TO CHEMICAL FACILITY SECURITY  
4 REQUIREMENTS.—Title XXI of the Homeland Security  
5 Act of 2002 and the amendments made by title I of the  
6 Chemical and Water Security Act of 2009 shall not apply  
7 to any treatment works.”.

Amend the title so as to read: “A bill to amend the Homeland Security Act of 2002 to enhance security and protect against acts of terrorism against chemical facilities, to amend the Safe Drinking Water Act to enhance the security of public water systems, and to amend the Federal Water Pollution Control Act to enhance the security of wastewater treatment works, and for other purposes.”.

