

109TH CONGRESS
2^D SESSION

H. R. 5695

To amend the Homeland Security Act of 2002 to provide for the regulation of certain chemical facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 28, 2006

Mr. DANIEL E. LUNGREN of California (for himself, Mr. THOMPSON of Mississippi, Mr. SHAYS, Ms. LORETTA SANCHEZ of California, Mr. LINDER, Ms. HARMAN, Mr. MCCAUL of Texas, Ms. JACKSON-LEE of Texas, Mr. SIMMONS, Mrs. CHRISTENSEN, and Mr. FOSSELLA) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Homeland Security Act of 2002 to provide for the regulation of certain chemical facilities, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Chemical Facility Anti-
5 Terrorism Act of 2006”.

1 **SEC. 2. REGULATION OF CHEMICAL FACILITIES.**

2 (a) IN GENERAL.—The Homeland Security Act of
3 2002 (6 U.S.C. 101 et seq.) is amended by adding at the
4 end the following new title:

5 **“TITLE XVIII—REGULATION OF**
6 **CHEMICAL FACILITIES**

7 **“SEC. 1801. DEFINITIONS.**

8 “In this title, the following definitions apply:

9 “(1) The term ‘environment’ has the meaning
10 given the term in section 101 of the Comprehensive
11 Environmental Response Compensation and Liability
12 Act of 1980 (42 U.S.C. 9601).

13 “(2) The term ‘owner or operator of a chemical
14 facility’ means any person who owns, leases, or oper-
15 ates a chemical facility.

16 “(3) The term ‘release’ has the meaning given
17 the term in section 101 of the Comprehensive Envi-
18 ronmental Response Compensation and Liability Act
19 of 1980 (42 U.S.C. 9601).

20 “(4) The term ‘chemical facility security meas-
21 ure’ means any action taken to ensure or enhance
22 the security of a chemical facility against a chemical
23 facility terrorist incident, including—

24 “(A) employee background checks;

25 “(B) employee training;

26 “(C) personnel security measures;

1 “(D) the limitation and prevention of ac-
2 cess to controls of the chemical facility;

3 “(E) protection of the perimeter of the
4 chemical facility or the portion or sector within
5 the facility in which a substance of concern is
6 stored, used or handled, utilizing fences, bar-
7 riers, guards, or other means;

8 “(F) installation and operation of cameras
9 or other intrusion detection sensors;

10 “(G) the implementation of measures to
11 increase computer or computer network secu-
12 rity;

13 “(H) contingency and evacuation plans;

14 “(I) the relocation or hardening of storage
15 or containment equipment; and

16 “(J) other security measures to prevent,
17 protect against, or reduce the consequences of
18 a chemical facility terrorist incident, as deter-
19 mined by the Secretary.

20 “(5) The term ‘substance of concern’ means a
21 chemical substance in quantity and form that—

22 “(A) is listed under paragraph (3) of sec-
23 tion 112(r) of the Clean Air Act (42 U.S.C.
24 7412(r)) and has not been exempted from des-

1 “(C) establish and revise, for purposes of
2 making determinations under subsection (b),
3 the threshold quantity for a chemical substance;
4 or

5 “(D) require the submission of information
6 with respect to the quantities of substances of
7 concern that are used, stored, manufactured,
8 processed, or distributed by any chemical facil-
9 ity.

10 “(2) MATTERS FOR CONSIDERATION.—

11 “(A) IN GENERAL.—In designating or ex-
12 empting a chemical substance or establishing or
13 adjusting the threshold quantity for a chemical
14 substance under paragraph (1), the Secretary
15 shall consider the potential extent of death, in-
16 jury, or serious adverse effects to human
17 health, the environment, critical infrastructure,
18 national security, the national economy, or pub-
19 lic welfare that would result from a terrorist re-
20 lease of the chemical substance.

21 “(B) ADOPTION OF CERTAIN THRESHOLD
22 QUANTITIES.—The Secretary may adopt the
23 threshold quantity established under paragraph
24 (5) of subsection (r) of section 112 of the Clean
25 Air Act (42 U.S.C. 7412(r)(5)) for any sub-

1 stance of concern that is also listed under para-
2 graph (3) of that subsection.

3 “(b) LIST OF SIGNIFICANT CHEMICAL FACILITIES.—

4 “(1) IN GENERAL.—The Secretary shall main-
5 tain a list of significant chemical facilities in accord-
6 ance with this subsection.

7 “(2) REQUIRED FACILITIES.—The Secretary
8 shall include on the list maintained under paragraph
9 (1) a chemical facility that has more than the
10 threshold quantity established by the Secretary of
11 any substance of concern.

12 “(3) AUTHORITY TO DESIGNATE CHEMICAL FA-
13 CILITIES.—The Secretary may designate a chemical
14 facility not required to be included under paragraph
15 (2) as a significant chemical facility and shall in-
16 clude such a facility on the list maintained under
17 paragraph (1). In designating a chemical facility
18 under this paragraph, the Secretary shall use the
19 following criteria:

20 “(A) The potential threat or likelihood that
21 the chemical facility will be the target of ter-
22 rorism.

23 “(B) The potential extent of death, serious
24 injury or adverse effects to the health and safe-

1 ty of the surrounding population that could re-
2 sult from a chemical facility terrorist incident.

3 “(C) The nature and quantity of the sub-
4 stances of concern present at the chemical facil-
5 ity.

6 “(D) The potential threat caused by a per-
7 son obtaining a substance of concern in further-
8 ance of an act of terrorism.

9 “(E) The potential harm to critical infra-
10 structure, national security, and the national
11 economy from a chemical facility terrorist inci-
12 dent.

13 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO
14 RISK-BASED TIERS.—

15 “(1) ASSIGNMENT.—The Secretary shall assign
16 each chemical facility on the list of significant chem-
17 ical facilities under subsection (b) to one of at least
18 four risk-based tiers established by the Secretary.

19 “(2) PROVISION OF INFORMATION.—The Sec-
20 retary may request, and a chemical facility shall pro-
21 vide, any information the Secretary determines is
22 necessary for the Secretary to assign the chemical
23 facility to the appropriate tier under paragraph (1).

24 “(3) NOTIFICATION.—Not later than 60 days
25 after assigning a chemical facility to a tier under

1 this subsection, the Secretary shall notify the chem-
2 ical facility of the tier to which the facility is as-
3 signed and shall provide the facility with the reasons
4 for assignment of the facility to such tier.

5 “(4) HIGH-RISK CHEMICAL FACILITIES.—At
6 least one of the tiers established by the Secretary for
7 the assignment of chemical facilities under this sub-
8 section shall be a tier designated for high-risk chem-
9 ical facilities.

10 “(d) PERIODIC REVIEW OF LIST OF CHEMICAL FA-
11 CILITIES.—

12 “(1) REQUIREMENT.—Not later than 3 years
13 after the date on which the Secretary develops the
14 list of significant chemical facilities under subsection
15 (b)(1) and every 3 years thereafter, the Secretary
16 shall—

17 “(A) consider the criteria under subsection
18 (b)(3); and

19 “(B) determine whether to add a chemical
20 facility to the list of significant chemical facili-
21 ties maintained under subsection (b)(1) or to
22 remove or change the tier assignment of any
23 chemical facility on such list.

24 “(2) AUTHORITY TO REVIEW.—The Secretary
25 may, at any time, after considering the criteria

1 under subsection (b)(3), add a chemical facility to
2 the list of significant chemical facilities maintained
3 under subsection (b)(1) or remove or change the tier
4 assignment of any chemical facility on such list.

5 “(3) NOTIFICATION.—Not later than 30 days
6 after the date on which the Secretary adds a facility
7 to the list of significant chemical facilities main-
8 tained by the Secretary under subsection (b)(1), re-
9 moves a facility from such list, or changes the tier
10 assignment of any facility on such list, the Secretary
11 shall notify the owner of that facility of that addi-
12 tion, removal, or change.

13 **“SEC. 1803. VULNERABILITY ASSESSMENTS AND FACILITY**
14 **SECURITY PLANS.**

15 “(a) VULNERABILITY ASSESSMENT AND FACILITY
16 SECURITY PLAN REQUIRED FOR CHEMICAL FACILI-
17 TIES.—

18 “(1) REQUIREMENT FOR VULNERABILITY AS-
19 SESSMENT AND SECURITY PLAN.—

20 “(A) REGULATIONS REQUIRED.—The Sec-
21 retary shall prescribe regulations to—

22 “(i) establish standards, protocols,
23 and procedures for vulnerability assess-
24 ments and facility security plans to be re-
25 quired for chemical facilities on the list

1 maintained by the Secretary under section
2 1802(b)(1); and

3 “(ii) require the owner or operator of
4 each such facility assigned to the high-risk
5 tier under section 1802(c)(4), to—

6 “(I) conduct an assessment of
7 the vulnerability of the chemical facil-
8 ity to a chemical facility terrorist inci-
9 dent in accordance with section
10 1803(b)(1); and

11 “(II) prepare and implement a
12 facility security plan that addresses
13 the results of the vulnerability assess-
14 ment in accordance with section
15 1803(b)(2); and

16 “(iii) set deadlines for the completion
17 of vulnerability assessments and facility se-
18 curity plans.

19 “(B) DEADLINE FOR HIGH-RISK CHEMICAL
20 FACILITIES.—The owner or operator of a facil-
21 ity assigned to the high-risk tier under section
22 1802(c)(4) shall submit to the Secretary a vul-
23 nerability assessment and facility security plan
24 not later than 6 months after the date on which

1 the Secretary prescribes regulations under this
2 subsection.

3 “(2) CRITERIA FOR REGULATIONS.—The regu-
4 lations required under paragraph (1) shall—

5 “(A) be risk-based;

6 “(B) be performance-based; and

7 “(C) take into consideration—

8 “(i) the cost and technical feasibility
9 of the compliance by a chemical facility
10 with the requirements under this title;

11 “(ii) the different quantities and
12 forms of substances of concern stored,
13 used, and handled at chemical facilities;
14 and

15 “(iii) the matters for consideration
16 under section 1802(a)(2).

17 “(3) PROVISION OF ASSISTANCE AND GUID-
18 ANCE.—The Secretary shall provide assistance and
19 guidance to a chemical facility conducting a vulner-
20 ability assessment or facility security plan required
21 under this section.

22 “(b) ADDITIONAL REQUIREMENTS FOR HIGH-RISK
23 CHEMICAL FACILITIES.—

24 “(1) REQUIREMENTS FOR VULNERABILITY AS-
25 SESSMENTS.—In the case of a facility assigned to

1 the high-risk tier under section 1802(c)(4), the Sec-
2 retary shall require that the vulnerability assessment
3 required under this section include each of the fol-
4 lowing:

5 “(A) The identification of any hazard that
6 could result from a chemical facility terrorist
7 incident at the facility.

8 “(B) The number of individuals at risk of
9 death, injury, or severe adverse effects to
10 human health as a result of a chemical facility
11 terrorist incident at the facility.

12 “(C) Information related to the criticality
13 of the facility for purposes of assessing the de-
14 gree to which the facility is critical to the econ-
15 omy or national security of the United States.

16 “(D) The proximity or interrelationship of
17 the facility to other critical infrastructure.

18 “(E) Any vulnerability of the facility with
19 respect to—

20 “(i) physical security;

21 “(ii) programmable electronic devices,
22 computers, computer or communications
23 networks, or other automated systems used
24 by the facility;

1 “(iii) alarms, cameras, and other pro-
2 tection systems;

3 “(iv) communication systems;

4 “(v) any utility or infrastructure (in-
5 cluding transportation) upon which the fa-
6 cility relies to operate safely and securely;
7 or

8 “(vi) the structural integrity of equip-
9 ment for storage, handling, and other pur-
10 poses.

11 “(F) Any information relating to threats
12 relevant to the facility that is provided by the
13 Secretary in accordance with paragraph (3).

14 “(G) Such other information as the Sec-
15 retary determines is appropriate.

16 “(2) REQUIREMENTS FOR FACILITY SECURITY
17 PLANS.—In the case of a facility assigned to the
18 high-risk tier under section 1802(c)(4), the Sec-
19 retary shall require that the facility security plan re-
20 quired under this section include each of the fol-
21 lowing:

22 “(A) Chemical facility security measures to
23 address the vulnerabilities of the facility to a
24 chemical facility terrorist incident.

1 “(B) A plan for periodic drills and exer-
2 cises to be conducted at the facility that include
3 participation by local law enforcement agencies
4 and first responders, as appropriate.

5 “(C) Equipment, plans, and procedures to
6 be implemented or used by or at the chemical
7 facility in the event of a chemical facility ter-
8 rorist incident that affects the facility, including
9 site evacuation, release mitigation, and contain-
10 ment plans.

11 “(D) An identification of any steps taken
12 to coordinate with State and local law enforce-
13 ment agencies, first responders, and Federal of-
14 ficials on security measures and plans for re-
15 sponse to a chemical facility terrorist incident.

16 “(E) A description of other actions or pro-
17 cedures the Secretary determines are appro-
18 priate to address the vulnerability of the facility
19 to a chemical facility terrorist incident.

20 “(3) PROVISION OF THREAT-RELATED INFOR-
21 MATION.—The Secretary shall provide in a timely
22 manner, to the maximum extent practicable under
23 applicable authority and in the interests of national
24 security, to an owner or operator of a facility as-
25 signed to the high-risk tier under section 1802(c)(4),

1 threat information that is relevant to the facility, in-
2 cluding an assessment of the most likely method
3 that could be used by terrorists to exploit any
4 vulnerabilities of the facility and the likelihood of the
5 success of such method.

6 “(4) RED TEAM EXERCISES.—The Secretary
7 shall conduct red team exercises at facilities selected
8 by the Secretary that have been assigned to the
9 high-risk tier under section 1802(c)(4). The exer-
10 cises shall be conducted after informing the owner or
11 operator of the facility selected and shall be designed
12 to identify at each selected facility—

13 “(A) any vulnerabilities of the facility;

14 “(B) possible modes by which the facility
15 could be attacked; and

16 “(C) any weaknesses in the security plan
17 of the facility.

18 “(c) SECURITY PERFORMANCE REQUIREMENTS.—

19 “(1) IN GENERAL.—The Secretary shall, by
20 regulation, establish security performance require-
21 ments for the facility security plans required by
22 chemical facilities assigned to each risk-based tier
23 established under section 1802(c). The regulations
24 shall:

1 “(A) require separate and increasingly
2 stringent security performance requirements for
3 facility security plans as the level of risk associ-
4 ated with the tier increases; and

5 “(B) permit each chemical facility submit-
6 ting a facility security plan to select a combina-
7 tion of chemical facility security measures that
8 satisfy the security performance requirements
9 established by the Secretary under this sub-
10 section.

11 “(2) CRITERIA.—In establishing the security
12 performance requirements under paragraph (1), the
13 Secretary shall consider the criteria under subsection
14 (a)(2).

15 “(3) GUIDANCE.—The Secretary shall provide
16 guidance to each chemical facility on the list main-
17 tained by the Secretary under section 1802(b)(1) re-
18 garding the types of chemical facility security meas-
19 ures that, if applied, could satisfy the requirements
20 under this section.

21 “(4) ENHANCED SECURITY MEASURES.—The
22 Secretary may require chemical facilities to maintain
23 the capability to enhance security measures during
24 periods of time when the Secretary determines that
25 heightened threat conditions exist.

1 “(d) CO-LOCATED CHEMICAL FACILITIES.—The Sec-
2 retary shall allow the owners or operators of two or more
3 chemical facilities that are located geographically close to
4 each other or otherwise co-located to develop and imple-
5 ment coordinated vulnerability assessments and facility se-
6 curity plans, at the discretion of the owner or operator
7 of the chemical facilities.

8 “(e) PROCEDURES, PROTOCOLS, AND STANDARDS
9 SATISFYING REQUIREMENTS FOR VULNERABILITY AS-
10 SSESSMENT AND SECURITY PLAN.—

11 “(1) DETERMINATION BY THE SECRETARY.—In
12 response to a petition by any person, or at the dis-
13 cretion of the Secretary, the Secretary may endorse
14 or recognize procedures, protocols, and standards
15 that the Secretary determines meet all or part of the
16 requirements of this section.

17 “(2) USE OF PROCEDURES, PROTOCOLS, AND
18 STANDARDS.—

19 “(A) USE BY INDIVIDUAL FACILITIES.—
20 Upon review and written determination by the
21 Secretary under paragraph (1) that the proce-
22 dures, protocols, or standards of a chemical fa-
23 cility subject to the requirements of this section
24 satisfy some or all of the requirements of this
25 section, the chemical facility may elect to com-

1 ply with those procedures, protocols, or stand-
2 ards.

3 “(B) USE BY CLASSES OF FACILITIES.—At
4 the discretion of the Secretary, the Secretary
5 may identify a class or category of chemical fa-
6 cilities subject to the requirements of this sec-
7 tion that may use the procedures, protocols, or
8 standards recognized under this section in order
9 to comply with all or part of the requirements
10 of this section.

11 “(3) PARTIAL APPROVAL.—If the Secretary
12 finds that a procedure, protocol, or standard satis-
13 fies only part of the requirements of this section, the
14 Secretary may allow a chemical facility subject to
15 the requirements of this section to comply with that
16 procedure, protocol, or standard for purposes of that
17 requirement, but shall require the facility to submit
18 of any additional information required to satisfy the
19 requirements of this section not met by that proce-
20 dure, protocol, or standard.

21 “(4) NOTIFICATION.—If the Secretary does not
22 endorse or recognize a procedure, protocol, or stand-
23 ard for which a petition is submitted under para-
24 graph (1), the Secretary shall provide to the person
25 submitting a petition under paragraph (1) written

1 notification that includes an explanation of the rea-
2 sons why the endorsement or recognition was not
3 made.

4 “(5) REVIEW.—Nothing in this subsection shall
5 relieve the Secretary (or a designee of the Secretary
6 which may be a third party auditor certified by the
7 Secretary) of the obligation—

8 “(A) to review a vulnerability assessment
9 and facility security plan submitted by a high-
10 risk chemical facility under this section; and

11 “(B) to approve or disapprove each assess-
12 ment or plan on an individual basis.

13 “(f) OTHER AUTHORITIES.—

14 “(1) EXISTING AUTHORITIES.—A chemical fa-
15 cility on the list maintained by the Secretary under
16 section 1802(a)(1) that is required to prepare a vul-
17 nerability assessment and facility security plan
18 under the provisions of chapter 701 of title 46,
19 United States Code, or section 1433 of the Safe
20 Drinking Water Act (42 U.S.C. 300i-2) shall not be
21 subject to the requirements of this section, unless
22 the Secretary, after reviewing the vulnerability as-
23 sessment or facility security plan prepared by the
24 chemical facility, finds, in consultation with the ap-

1 appropriate authorities, that the chemical facility re-
2 quires more stringent security measures.

3 “(2) COORDINATION.—In the case of any facil-
4 ity required to be licensed under chapter 40 of title
5 18, United States Code, the Secretary shall pre-
6 scribe the rules and regulations for the implementa-
7 tion of this section with the concurrence of the At-
8 torney General and avoid unnecessary duplication of
9 regulatory requirements.

10 “(g) PERIODIC REVIEW BY CHEMICAL FACILITY RE-
11 QUIRED.—

12 “(1) SUBMISSION OF REVIEW.—Not later than
13 3 years after the date on which a vulnerability as-
14 sessment or facility security plan required under this
15 section is submitted, and at least once every 5 years
16 thereafter (or on such a schedule as the Secretary
17 may establish by regulation), the owner or operator
18 of the chemical facility covered by the vulnerability
19 assessment or facility security plan shall submit to
20 the Secretary a review of the adequacy of the vulner-
21 ability assessment or facility security plan that in-
22 cludes a description of any changes made to the vul-
23 nerability assessment or facility security plan.

24 “(2) REVIEW OF REVIEW.—The Secretary
25 shall—

1 “(A) ensure that a review required under
2 paragraph (1) is submitted not later than the
3 applicable date; and

4 “(B) not later than 6 months after the
5 date on which a review is submitted under
6 paragraph (1), review the review and notify the
7 facility submitting the review of the Secretary’s
8 approval or disapproval of the review.

9 **“SEC. 1804. RECORD KEEPING; SITE INSPECTIONS.**

10 “(a) RECORD KEEPING.—The Secretary shall require
11 each chemical facility required to submit a vulnerability
12 assessment or facility security plan under section 1803 to
13 maintain a current copy of the assessment and the plan
14 at the facility.

15 “(b) RIGHT OF ENTRY.—For purposes of carrying
16 out this title, the Secretary (or a designee of the Sec-
17 retary) shall have, on presentation of credentials, a right
18 of entry to, on, or through any property of a chemical fa-
19 cility on the list maintained by the Secretary under section
20 1802(a)(1) or any property on which any record required
21 to be maintained under this section is located.

22 “(c) INSPECTIONS AND VERIFICATIONS.—The Sec-
23 retary shall, at such time and place as the Secretary deter-
24 mines to be appropriate, conduct or require the conduct
25 of facility security inspections and verifications and may,

1 by regulation, authorize third party inspections and
2 verifications by persons trained and certified by the Sec-
3 retary for that purpose. Such an inspection or verification
4 shall ensure and evaluate compliance with—

5 “(1) this title and any regulations prescribed to
6 carry out this title; and

7 “(2) any security standards or requirements
8 adopted by the Secretary in furtherance of the pur-
9 poses of this title.

10 “(d) REQUESTS FOR RECORDS.—In carrying out this
11 title, the Secretary (or a designee of the Secretary) may
12 require the submission of or, on presentation of creden-
13 tials, may at reasonable times obtain access to and copy
14 any documentation necessary for—

15 “(1) reviewing or analyzing a vulnerability as-
16 sessment or facility security plan submitted under
17 section 1803; or

18 “(2) implementing such a facility security plan.

19 “(e) COMPLIANCE.—If the Secretary determines that
20 an owner or operator of a chemical facility required to sub-
21 mit a vulnerability assessment or facility security plan
22 under section 1803 fails to maintain, produce, or allow
23 access to records or to the property of the chemical facility
24 as required by this section, the Secretary shall issue an
25 order requiring compliance with this section.

1 **“SEC. 1805. ENFORCEMENT.**

2 “(a) SUBMISSION OF INFORMATION.—

3 “(1) INITIAL SUBMISSION.—The Secretary shall
4 specify in regulations prescribed under section
5 1803(a), specific deadlines for the submission of the
6 vulnerability assessments and facility security plans
7 required under this title to the Secretary. The Sec-
8 retary may establish different submission require-
9 ments for the different tiers of chemical facilities
10 under section 1802(c).

11 “(2) MAJOR CHANGES REQUIREMENT.—The
12 Secretary shall specify in regulations prescribed
13 under section 1803(a), specific deadlines and re-
14 quirements for the submission by a facility required
15 to submit a vulnerability assessment or facility secu-
16 rity plan under that section of information describ-
17 ing—

18 “(A) any change in the use by the facility
19 of more than a threshold amount of any sub-
20 stance of concern; and

21 “(B) any significant change in a vulner-
22 ability assessment or facility security plan sub-
23 mitted by the facility.

24 “(3) FAILURE TO COMPLY.—If an owner or op-
25 erator of a chemical facility fails to submit a vulner-
26 ability assessment or facility security plan in accord-

1 ance with this title, the Secretary shall issue an
2 order requiring the submission of a vulnerability as-
3 sessment or facility security plan in accordance with
4 section 1804(e).

5 “(b) REVIEW OF SECURITY PLAN.—

6 “(1) IN GENERAL.—

7 “(A) DEADLINE FOR REVIEW.—Not later
8 than 180 days after the date on which the Sec-
9 retary receives a vulnerability assessment or fa-
10 cility security plan under this title, the Sec-
11 retary shall review and approve or disapprove
12 such assessment or plan.

13 “(B) DESIGNEE.—The Secretary may des-
14 ignate a person (including a third party entity
15 certified by the Secretary) to conduct a review
16 under this subsection.

17 “(2) DISAPPROVAL.—The Secretary shall dis-
18 approve a vulnerability assessment or facility secu-
19 rity plan if the Secretary determines that—

20 “(A) the vulnerability assessment or facil-
21 ity security plan does not comply with regula-
22 tions prescribed under section 1803; or

23 “(B) in the case of a facility security plan,
24 the plan or the implementation of the plan is
25 insufficient to address—

1 “(i) any vulnerabilities identified in a
2 vulnerability assessment of the chemical fa-
3 cility or associated oversight actions taken
4 under section 1803; or

5 “(ii) the threat of a chemical facility
6 terrorist incident at the chemical facility.

7 “(3) SPECIFIC SECURITY MEASURES NOT RE-
8 QUIRED.—The Secretary shall not disapprove a facil-
9 ity security plan under this section based solely on
10 the specific chemical facility security measures that
11 the chemical facility selects to meet the security per-
12 formance requirements established by the Secretary
13 under section 1803(c).

14 “(4) PROVISION OF NOTIFICATION OF DIS-
15 APPROVAL.—If the Secretary disapproves the vulner-
16 ability assessment or facility security plan submitted
17 by a chemical facility under this title or the imple-
18 mentation of a facility security plan by such a facil-
19 ity, the Secretary shall—

20 “(A) provide the owner or operator of the
21 facility a written notification of the disapproval
22 that includes a clear explanation of deficiencies
23 in the assessment, plan, or implementation of
24 the plan;

1 “(B) provide guidance to assist the facility
2 in addressing such deficiency;

3 “(C) in the case of a facility for which the
4 owner or operator of the facility does not ad-
5 dress such deficiencies by such date as the Sec-
6 retary determines to be appropriate, issue an
7 order requiring the owner or operator to correct
8 specified deficiencies by a specified date; and

9 “(D) in the case of a facility assigned to
10 the high-risk tier under section 1802(c)(4), con-
11 sult with the owner or operator the facility to
12 identify appropriate steps to be taken by the
13 owner or operator to address the deficiencies
14 identified by the Secretary.

15 “(5) REVISION OF DISAPPROVED ASSESSMENT
16 OR PLAN.—If the Secretary disapproves a vulner-
17 ability assessment or facility security plan submitted
18 under this title, the Secretary shall require the
19 owner or operator of the chemical facility that sub-
20 mitted the assessment or plan to revise the assess-
21 ment or plan to address any deficiencies identified
22 by the Secretary and to submit to the Secretary the
23 revised assessment or plan.

24 “(6) NO PRIVATE RIGHT OF ACTION.—Nothing
25 in this title confers upon any private person a right

1 of action against an owner or operator of a chemical
2 facility to enforce any provision of this title.

3 “(c) REPORTING PROCESS.—

4 “(1) ESTABLISHMENT.—The Secretary shall es-
5 tablish, and provide information to the public re-
6 garding, a process by which any person may submit
7 a report to the Secretary regarding problems, defi-
8 ciencies, or vulnerabilities at a chemical facility.

9 “(2) CONFIDENTIALITY.—The Secretary shall
10 keep confidential the identity of a person that sub-
11 mits a report under paragraph (1) and any such re-
12 port shall be treated as protected information under
13 section 1808(f) to the extent that it does not consist
14 of publicly available information.

15 “(3) ACKNOWLEDGMENT OF RECEIPT.—If a re-
16 port submitted under paragraph (1) identifies the
17 person submitting the report, the Secretary shall re-
18 spond promptly to such person to acknowledge re-
19 ceipt of the report.

20 “(4) STEPS TO ADDRESS PROBLEMS.—The Sec-
21 retary shall review and consider the information pro-
22 vided in any report submitted under paragraph (1)
23 and shall take appropriate steps under this title to
24 address any problem, deficiency, or vulnerability
25 identified in the report.

1 “(5) RETALIATION PROHIBITED.—

2 “(A) PROHIBITION.—No employer may
3 discharge any employee or otherwise discrimi-
4 nate against any employee with respect to the
5 compensation of, or terms, conditions, or privi-
6 leges of the employment of, such employee be-
7 cause the employee (or a person acting pursu-
8 ant to a request of the employee) submitted a
9 report under paragraph (1).

10 “(B) ENFORCEMENT PROCESS.—The Sec-
11 retary shall establish—

12 “(i) a process by which an employee
13 can notify the Secretary of any retaliation
14 prohibited under this paragraph; and

15 “(ii) a process by which the Secretary
16 may take action as appropriate to enforce
17 this section.

18 **“SEC. 1806. PENALTIES.**

19 “(a) ADMINISTRATIVE PENALTIES.—

20 “(1) IN GENERAL.—The Secretary may issue
21 an administrative penalty of not more than
22 \$250,000 for failure to comply with an order issued
23 by the Secretary under this title.

24 “(2) PROVISION OF NOTICE.—Before issuing a
25 penalty under paragraph (1), the Secretary shall

1 provide to the person against which the penalty is to
2 be assessed—

3 “(A) written notice of the proposed pen-
4 alty; and

5 “(B) the opportunity to request, not later
6 than 30 days after the date on which the notice
7 is received, a hearing on the proposed penalty.

8 “(3) PROCEDURES FOR REVIEW.—The Sec-
9 retary may prescribe regulations outlining the proce-
10 dures for administrative hearings and appropriate
11 review, including necessary deadlines.

12 “(b) CIVIL PENALTIES.—

13 “(1) IN GENERAL.—The Secretary may bring
14 an action in a United States district court against
15 any owner or operator of a chemical facility that vio-
16 lates or fails to comply with—

17 “(A) any order or directive issued by the
18 Secretary under this title; or

19 “(B) any facility security plan approved by
20 the Secretary under this title.

21 “(2) RELIEF.—In any action under paragraph
22 (1), a court may issue an order for injunctive relief
23 and may award a civil penalty of not more than
24 \$50,000 for each day on which a violation occurs or
25 a failure to comply continues.

1 “(c) CRIMINAL PENALTIES.—An owner or operator
2 of a chemical facility who knowingly and intentionally vio-
3 lates any order issued by the Secretary under this title
4 shall be fined not more than \$100,000, imprisoned for not
5 more than 1 year, or both.

6 “(d) TREATMENT OF INFORMATION IN ADJUDICA-
7 TIVE PROCEEDINGS.—In a proceeding under this section,
8 vulnerability assessments, facility security plans, and
9 other information submitted to or obtained by the Sec-
10 retary under this title, or related vulnerability or security
11 information, shall be treated in any judicial or administra-
12 tive action as if the information were classified material.

13 **“SEC. 1807. FEDERAL PREEMPTION.**

14 “(a) IN GENERAL.—A State or local government may
15 not prescribe, issue, or continue in effect a law, regulation,
16 standard or order that may frustrate the purposes of this
17 title or any regulations or standards prescribed under this
18 title.

19 “(b) APPLICATION FOR REVIEW.—A person, State,
20 or local government directly affected by a requirement of
21 a State or local government may submit to the Secretary,
22 as provided in regulations that the Secretary shall pre-
23 scribe, an application asking the Secretary to decide
24 whether the requirement is preempted by this title.

1 **“SEC. 1808. PROTECTION OF INFORMATION.**

2 “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-
3 TECTED INFORMATION.—

4 “(1) IN GENERAL.—The Secretary shall ensure
5 that protected information, as described in sub-
6 section (f), is not disclosed except as provided in this
7 title.

8 “(2) SPECIFIC PROHIBITIONS.—In carrying out
9 paragraph (1), the Secretary shall ensure that pro-
10 tected information is not disclosed—

11 “(A) by any Federal agency under section
12 552 of title 5, United States Code; or

13 “(B) under any State or local law.

14 “(b) REGULATIONS.—

15 “(1) IN GENERAL.—Not later than 1 year after
16 the date of enactment of the Chemical Facility Anti-
17 Terrorism Act of 2006, the Secretary shall prescribe
18 such regulations, or issue such orders, as necessary
19 to prohibit the unauthorized disclosure of protected
20 information, as described in subsection (f).

21 “(2) REQUIREMENTS.—The regulations pre-
22 scribed under paragraph (1) shall—

23 “(A) permit information sharing, on a con-
24 fidential basis, with Federal, State and local
25 law enforcement officials and first responders

1 and chemical facility personnel, as necessary to
2 further the purposes of this title;

3 “(B) provide for the confidential use of
4 protected information in any administrative or
5 judicial proceeding, including placing under seal
6 any such information that is contained in any
7 filing, order, or other document used in such
8 proceedings that could otherwise become part of
9 the public record; and

10 “(C) limit access to protected information
11 to persons designated by the Secretary.

12 “(c) OTHER OBLIGATIONS UNAFFECTED.—Nothing
13 in this section affects any obligation of the owner or oper-
14 ator of a chemical facility to submit or make available in-
15 formation to a Federal, State, or local government agency
16 under, or otherwise to comply with, any other law.

17 “(d) SUBMISSION OF INFORMATION TO CONGRESS.—
18 Nothing in this title shall be construed as authorizing the
19 withholding of any information from Congress.

20 “(e) DISCLOSURE OF INDEPENDENTLY FURNISHED
21 INFORMATION.—Nothing in this title shall be construed
22 as affecting any authority or obligation of a Federal agen-
23 cy to disclose any record or information that the Federal
24 agency obtains from a chemical facility under any other
25 law.

1 “(f) PROTECTED INFORMATION.—For purposes of
2 this section, protected information includes the following:

3 “(1) The criteria and data used by the Sec-
4 retary to assign chemical facilities to risk-based tiers
5 under section 1802 and the tier to which each such
6 facility is assigned.

7 “(2) The vulnerability assessments and facility
8 security plans submitted to the Secretary under this
9 title.

10 “(3) Information concerning the security per-
11 formance requirements for a chemical facility under
12 section 1803(e).

13 “(4) Any other information generated or col-
14 lected by a Federal, State, or local government agen-
15 cy or by a chemical facility for the purpose of car-
16 rying out or complying with this title that—

17 “(A) describes any vulnerability of a chem-
18 ical facility to an act of terrorism;

19 “(B) describes the assignment of any
20 chemical facility to a risk-based tier under this
21 title;

22 “(C) describes any security measure (in-
23 cluding any procedure, equipment, training, or
24 exercise) for the protection of a chemical facility
25 from an act of terrorism; or

1 “(D) the disclosure of which the Secretary
2 determines would be detrimental to the security
3 of any chemical facility.

4 **“SEC. 1809. CERTIFICATION OF THIRD-PARTY ENTITIES.**

5 “(a) CERTIFICATION OF THIRD-PARTY AUDITORS.—
6 The Secretary may designate a third-party entity to carry
7 out any function under subsection (e)(5) of section 1803,
8 subsection (b) or (c) of section 1804, or subsection (b)(1)
9 of section 1805.

10 “(b) PROCEDURES AND REQUIREMENTS FOR PRI-
11 VATE ENTITIES.—Before designating a third-party entity
12 to carry out a function under subsection (a), the Secretary
13 shall—

14 “(1) develop, document, and update, as nec-
15 essary, minimum standard operating procedures and
16 requirements applicable to such entities designated
17 under subsection (a), including—

18 “(A) conducting a 90-day independent re-
19 view of the procedures and requirements (or up-
20 dates thereto) and the results of the analyses of
21 such procedures (or updates thereto) pursuant
22 to subtitle G; and

23 “(B) upon completion of the independent
24 review under subparagraph (A), designating
25 any procedure or requirement (or any update

1 thereto) as a qualified anti-terrorism technology
2 pursuant to section 862(b); and

3 “(2) conduct safety and hazard analyses of the
4 standard operating procedures and requirements de-
5 veloped under paragraph (1).

6 “(c) TECHNICAL REVIEW AND APPROVAL.—Not later
7 than 60 days after the date on which the results of the
8 safety and hazard analysis of the standard operating pro-
9 cedures and requirements are completed under paragraph
10 (1)(B), the Secretary shall

11 “(1) complete a technical review of the proce-
12 dures and requirements (or updates thereto) under
13 sections 862(b) and 863(d)(2); and

14 “(2) approve or disapprove such procedures and
15 requirements (or updates thereto).

16 “(d) EFFECT OF APPROVAL.—

17 “(1) ISSUANCE OF CERTIFICATE OF CONFORM-
18 ANCE.—In accordance with section 863(d)(3), the
19 Secretary shall issue a certificate of conformance to
20 a third-party entity to perform a function under sub-
21 section (a) if the entity—

22 “(A) demonstrates to the satisfaction of
23 the Secretary the ability to perform validations
24 in accordance with standard operating proce-
25 dures and requirements (or updates thereto)

1 approved by the Secretary under subsection
2 (c)(2); and

3 “(B) agrees to—

4 “(i) perform such function in accord-
5 ance with such standard operating proce-
6 dures and requirements (or updates there-
7 to); and

8 “(ii) maintain liability insurance cov-
9 erage at policy limits and in accordance
10 with conditions to be established by the
11 Secretary pursuant to section 864; and

12 “(C) signs an agreement to protect the
13 proprietary and confidential information of any
14 chemical facility with respect to which the enti-
15 ty will perform such function.

16 “(2) LITIGATION AND RISK MANAGEMENT PRO-
17 TECTIONS.—A third-party entity that maintains li-
18 ability insurance coverage at policy limits and in ac-
19 cordance with conditions to be established by the
20 Secretary pursuant to section 864 and receives a
21 certificate of conformance under paragraph (1) shall
22 receive all applicable litigation and risk management
23 protections under sections 863 and 864.

24 “(3) RECIPROCAL WAIVER OF CLAIMS.—A re-
25 ciprocal waiver of claims shall be deemed to have

1 been entered into between a third-party entity that
2 receives a certificate of conformance under para-
3 graph (1) and its contractors, subcontractors, sup-
4 pliers, vendors, customers, and contractors and sub-
5 contractors of customers involved in the use or oper-
6 ation of any function performed by the third-party
7 entity under subparagraph (a).

8 “(4) INFORMATION FOR ESTABLISHING LIMITS
9 OF LIABILITY INSURANCE.—A third-party entity
10 seeking a certificate of conformance under para-
11 graph (1) shall provide to the Secretary necessary
12 information for establishing the limits of liability in-
13 surance required to be maintained by the entity
14 under section 864(a).

15 “(e) MONITORING.—The Secretary shall regularly
16 monitor and inspect the operations of a third-party entity
17 that performs a function under subparagraph (a) to en-
18 sure that the entity is meeting the minimum standard op-
19 erating procedures and requirements established under
20 subsection (b) and any other applicable requirement under
21 this section.

22 **“SEC. 1810. ANNUAL REPORT TO CONGRESS.**

23 “(a) ANNUAL REPORT.—Not later than one year
24 after the date of enactment of the Chemical Facility Anti-
25 Terrorism Act of 2006 and annually thereafter, the Sec-

1 retary shall publish a report on progress in achieving com-
2 pliance with this title, including—

3 “(1) an assessment of the effectiveness of the
4 facility security plans developed under this title;

5 “(2) any lessons learned in implementing this
6 title; and

7 “(3) any recommendations of the Secretary to
8 improve the programs, plans, and procedures under
9 this title.

10 “(b) PROTECTED INFORMATION.—A report under
11 this section may not include information protected under
12 section 1808.

13 **“SEC. 1811. APPLICABILITY.**

14 “This title shall not apply to—

15 “(1) any facility that is owned and operated by
16 the Department of Defense, the Department of Jus-
17 tice, or the Department of Energy;

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; or

22 “(3) any facility that is owned or operated by
23 a licensee or certificate holder of the Nuclear Regu-
24 latory Commission.

1 **“SEC. 1812. SAVINGS CLAUSE.**

2 “Nothing in this title is intended to affect section 112
3 of the Clean Air Act (42 U.S.C. 7412), the Clean Water
4 Act, the Resource Conservation and Recovery Act, and the
5 National Environmental Policy Act of 1969.”.

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

“TITLE XVIII—REGULATION OF CHEMICAL FACILITIES

“Sec. 1801. Definitions.

“Sec. 1802. Designation and ranking of chemical facilities.

“Sec. 1803. Vulnerability assessments and facility security plans.

“Sec. 1804. Record keeping; site inspections.

“Sec. 1805. Enforcement.

“Sec. 1806. Penalties.

“Sec. 1807. Federal preemption.

“Sec. 1808. Protection of information.

“Sec. 1809. Certification of third-party auditors.

“Sec. 1810. Annual report to Congress.

“Sec. 1811. Applicability.

“Sec. 1812. Savings clause.

9 **SEC. 3. REPORT TO CONGRESS.**

10 (a) UPDATED REPORT.—Not later than 1 year after
11 the date of enactment of this Act, the Secretary of Home-
12 land Security shall submit to the Committee on Homeland
13 Security of the House of Representatives and the Com-
14 mittee on Homeland Security and Governmental Affairs
15 of the Senate an update of the national strategy for the
16 chemical sector that is required to be submitted by the
17 Secretary to the Committee on Appropriations of the
18 House of Representatives and the Committee of Appro-

1 priations of the Senate by not later than February 10,
2 2006.

3 (b) PROTECTED INFORMATION.—A report under this
4 section may not include information protected under sec-
5 tion 1808 of the Homeland Security Act of 2002, as added
6 by section 3.

7 **SEC. 4. INSPECTOR GENERAL REPORT.**

8 (a) REPORT REQUIRED.—Not later than 1 year after
9 the date on which the regulations required to be prescribed
10 under this Act are prescribed, the Inspector General of
11 the Department of Homeland Security shall submit a re-
12 port to the Committee on Homeland Security of the House
13 of Representatives and the Committee on Homeland Secu-
14 rity and Governmental Affairs of the Senate that reviews
15 the effectiveness of the implementation of this Act, includ-
16 ing the effectiveness of facility security plans required
17 under this Act and any recommendations to improve the
18 programs, plans, and procedures required under this Act.

19 (b) CLASSIFIED ANNEX.—The Inspector General
20 may issue a classified annex to the report if the Inspector
21 General determines a classified annex is necessary.

22 **SEC. 5. DEADLINE FOR REGULATIONS.**

23 The Secretary shall prescribe the regulations required
24 to be prescribed under section 1803(a) of the Homeland
25 Security Act of 2002, as added by section 1(a), by not

1 later than one year after the date of the enactment of this
2 Act.

○