

110TH CONGRESS
2D SESSION

H. R. 5577

To amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2008

Mr. THOMPSON of Mississippi (for himself, Ms. JACKSON-LEE of Texas, Mr. MARKEY, Ms. LORETTA SANCHEZ of California, Mr. DICKS, Ms. HARMAN, Mr. DEFazio, Mrs. LOWEY, Ms. NORTON, Ms. ZOE LOFGREN of California, Mrs. CHRISTENSEN, Mr. ETHERIDGE, Mr. LANGEVIN, Mr. CUELLAR, Mr. CARNEY, Ms. CLARKE, Mr. AL GREEN of Texas, Mr. PERLMUTTER, and Mr. PASCRELL) 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 extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Chemical Facility Anti-
3 Terrorism Act of 2008”.

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

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

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

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

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

22 (4) The Secretary of Homeland Security issued
23 interim final regulations called the Chemical Facility
24 Anti-Terrorism Standards (hereinafter referred to in
25 this section as “CFATS”), which became effective
26 on June 8, 2007.

1 (5) Such regulations, which are in the process
2 of being implemented by the Secretary, largely ad-
3 dress the concerns of Congress with respect to chem-
4 ical facility security.

5 (6) However, under current law, the statutory
6 authority of the Secretary of Homeland Security to
7 regulate security practices at chemical facilities and
8 the CFATS regulations will sunset in October of
9 2009.

10 (b) PURPOSE.—The purpose of this Act is to give
11 permanent status to the CFATS regulations and to pro-
12 vide additional Congressional guidance for the future im-
13 plementation of such regulations.

14 **SEC. 3. SENSE OF CONGRESS.**

15 (a) SENSE OF CONGRESS WITH RESPECT TO CFATS
16 REGULATIONS.—It is the sense of Congress that—

17 (1) the Secretary of Homeland Security should
18 develop and administer all requirements of this Act
19 to extend and modify the regulations called the
20 Chemical Facility Anti-Terrorism Standards (herein-
21 after referred to in this section as “CFATS”), as in
22 effect on the date of the enactment of this Act; and

23 (2) in carrying out this Act, the Secretary
24 should use such rules, regulations, or tools developed
25 for purposes of the CFATS regulations as the Sec-

1 retary determines are appropriate, including the list
2 of chemicals of concern under Appendix A and the
3 Top Screen tool used to determine which facilities
4 are covered facilities under such regulations.

5 (b) SENSE OF CONGRESS WITH RESPECT TO CHEM-
6 ICAL SECURITY.—It is the sense of Congress that—

7 (1) the Secretary of Homeland Security should
8 take a holistic approach to securing sources of
9 chemicals against a terrorist attack, which should
10 not only secure the physical facilities at which haz-
11 ardous chemicals are stored or manufactured, but
12 should also secure the supply chain of such chemi-
13 cals; and

14 (2) in keeping with the direction that Congress
15 has previously issued to the Secretary to address
16 various aspects of the supply of hazardous chemi-
17 cals, the Secretary should expediently exercise the
18 Secretary’s existing authority to ensure that by fo-
19 cusing on chemicals at fixed-site facilities, risk is not
20 transferred to other potential sources of such chemi-
21 cals.

1 **SEC. 4. EXTENSION, MODIFICATION, AND RECODIFICATION**
2 **OF AUTHORITY OF SECRETARY OF HOME-**
3 **LAND SECURITY TO REGULATE SECURITY**
4 **PRACTICES AT CHEMICAL FACILITIES.**

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

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

11 **“SEC. 2101. DEFINITIONS.**

12 “In this title, the following definitions apply:

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

15 “(A) at which a chemical is or may be
16 used, stored, manufactured, processed or dis-
17 tributed; and

18 “(B) for which the Secretary requires the
19 owner or operator of the chemical facility to
20 submit information pursuant to section
21 2102(b)(2).

22 “(2) The term ‘chemical facility security per-
23 formance standard’ means a risk-based standard es-
24 tablished by the Secretary to ensure or enhance the
25 security of a chemical facility against a chemical fa-
26 cility terrorist incident that is designed to address—

1 “(A) restricting the area perimeter;

2 “(B) securing site assets;

3 “(C) screening and controlling access to
4 the facility and to restricted areas within the
5 facility by screening or inspecting individuals
6 and vehicles as they enter, including—

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

14 “(ii) measures implementing a regu-
15 larly updated identification system that
16 checks the identification of chemical facil-
17 ity personnel and other persons seeking ac-
18 cess to the chemical facility and that dis-
19 courages abuse through established dis-
20 ciplinary measures;

21 “(D) methods to deter, detect, and delay a
22 chemical facility terrorist incident, creating suf-
23 ficient time between detection of a chemical fa-
24 cility terrorist incident and the point at which

1 the chemical facility terrorist incident becomes
2 successful, including measures to—

3 “(i) deter vehicles from penetrating
4 the chemical facility perimeter, gaining un-
5 authorized access to restricted areas, or
6 otherwise presenting a hazard to poten-
7 tially critical targets;

8 “(ii) deter chemical facility terrorist
9 incidents through visible, professional, well-
10 maintained security measures and systems,
11 including security personnel, detection sys-
12 tems, barriers and barricades, and hard-
13 ened or reduced value targets;

14 “(iii) detect chemical facility terrorist
15 incidents at early stages through counter
16 surveillance, frustration of opportunity to
17 observe potential targets, surveillance and
18 sensing systems, and barriers and barri-
19 cades; and

20 “(iv) delay a chemical facility terrorist
21 incident for a sufficient period of time so
22 as to allow appropriate response through
23 on-site security response, barriers and bar-
24 ricades, hardened targets, and well-coordi-
25 nated response planning;

1 “(E) securing and monitoring the shipping,
2 receipt, and storage of a substance of concern
3 for the chemical facility;

4 “(F) deterring theft or diversion of a sub-
5 stance of concern;

6 “(G) deterring insider sabotage;

7 “(H) deterring cyber sabotage, including
8 by preventing unauthorized onsite or remote ac-
9 cess to critical process controls, including super-
10 visory control and data acquisition systems, dis-
11 tributed control systems, process control sys-
12 tems, industrial control systems, critical busi-
13 ness systems, and other sensitive computerized
14 systems;

15 “(I) developing an emergency plan to re-
16 spond to chemical facility terrorist incidents
17 with the guidance of the Secretary that in-
18 cludes, as appropriate, an early warning system
19 for local emergency response providers and the
20 community surrounding the facility, and exer-
21 cising such plan internally and with the assist-
22 ance of local law enforcement officials and
23 emergency response providers to enhance the
24 collective response to terrorism;

1 “(J) maintaining effective monitoring,
2 communications, and warning systems, includ-
3 ing—

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

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

13 “(iii) measures to allow the chemical
14 facility to promptly identify and respond to
15 security system and equipment failures or
16 malfunctions;

17 “(K) ensuring mandatory annual security
18 training, exercises, and drills of chemical facil-
19 ity personnel;

20 “(L) performing personnel surety for indi-
21 viduals with access to restricted areas or critical
22 assets by conducting appropriate background
23 checks and ensuring appropriate credentials for
24 unescorted visitors and chemical facility per-
25 sonnel, including permanent and part-time per-

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

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

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

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

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

11 “(M) escalating the level of protective
12 measures for periods of elevated threat;

13 “(N) specific threats, vulnerabilities, or
14 risks identified by the Secretary for that chem-
15 ical facility;

16 “(O) reporting of significant security inci-
17 dents to the Department and to appropriate
18 local law enforcement officials;

19 “(P) identifying, investigating, reporting,
20 and maintaining records of significant security
21 incidents and suspicious activities in or near the
22 site;

23 “(Q) establishing one or more officials and
24 an organization responsible for security and for
25 compliance with these standards;

1 “(R) maintaining appropriate records re-
2 relating to the security of the facility;

3 “(S) assessing, as appropriate, or utilizing
4 methods to reduce the consequences of a ter-
5 rorist attack; or

6 “(T) any additional security performance
7 standards the Secretary may specify.

8 “(3) The term ‘chemical facility terrorist inci-
9 dent’ means an act or attempted act of terrorism
10 committed at, near, or against a chemical facility,
11 including—

12 “(A) the release of a substance of concern
13 from a chemical facility into the surrounding
14 area as a consequence of an act of terrorism;

15 “(B) the obtaining of a substance of con-
16 cern by any person for the purpose of using the
17 substance at a location other than the chemical
18 facility in furtherance of an act of terrorism; or

19 “(C) the sabotage of a chemical facility or
20 a substance of concern at a chemical facility in
21 furtherance of an act of terrorism.

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

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

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

9 “(6) The term ‘covered chemical facility’ means
10 a chemical facility that the Secretary assigns to a
11 risk-based tier under section 2102(c) that is re-
12 quired to submit a security vulnerability assessment
13 and site security plan under section 2103.

14 “(7) The term ‘environment’ has the meaning
15 given the term in section 101 of the Comprehensive
16 Environmental Response Compensation and Liability
17 Act of 1980 (42 U.S.C. 9601).

18 “(8) The term ‘owner or operator of a chemical
19 facility’ means any of the following:

20 “(A) The person who owns a chemical fa-
21 cility.

22 “(B) The person who leases such a facility.

23 “(C) The person who operates such a facil-
24 ity.

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

5 “(10) The term ‘substance of concern’ means a
6 chemical substance in quantity and form that is des-
7 ignated by the Secretary under section 2102(a) as a
8 chemical substance that poses a risk of being used
9 in furtherance of a chemical facility terrorist inci-
10 dent.

11 “(11) The term ‘method to reduce the con-
12 sequences of a terrorist attack’ includes—

13 “(A) input substitution;

14 “(B) catalyst or carrier substitution;

15 “(C) process redesign (including reuse or
16 recycling of a substance of concern);

17 “(D) product reformulation;

18 “(E) procedure simplification;

19 “(F) technology modification;

20 “(G) use of less hazardous substances or
21 benign substances;

22 “(H) use of smaller quantities of sub-
23 stances of concern;

24 “(I) reduction of hazardous pressures or
25 temperatures;

1 “(J) reduction of the possibility and poten-
2 tial consequences of equipment failure and
3 human error;

4 “(K) improvement of inventory control and
5 chemical use efficiency; and

6 “(L) reduction or elimination of the stor-
7 age, transportation, handling, disposal, and dis-
8 charge of substances of concern.

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

11 “(a) SUBSTANCES OF CONCERN.—

12 “(1) DESIGNATION BY THE SECRETARY.—The
13 Secretary may designate any chemical substance as
14 a substance of concern and establish and revise the
15 threshold quantity for a substance of concern.

16 “(2) MATTERS FOR CONSIDERATION.—In desig-
17 nating a chemical substance or establishing or ad-
18 justing the threshold quantity for a chemical sub-
19 stance under paragraph (1), the Secretary shall con-
20 sider the potential extent of death, injury, and seri-
21 ous adverse effects to human health, the environ-
22 ment, critical infrastructure, national security, the
23 national economy, and public welfare that would re-
24 sult from a chemical facility terrorist incident.

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

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

6 “(A) The potential threat or likelihood that
7 the chemical facility will be the target of a
8 chemical facility terrorist incident.

9 “(B) The potential extent and likelihood of
10 death, injury, or serious adverse effects to
11 human health, the environment, critical infra-
12 structure, national security, the national econ-
13 omy, and public welfare that could result from
14 a chemical facility terrorist incident.

15 “(C) The proximity of the chemical facility
16 to population centers.

17 “(2) SUBMISSION OF INFORMATION.—The Sec-
18 retary may require the submission of information
19 with respect to the quantities of substances of con-
20 cern that are used, stored, manufactured, processed,
21 or distributed by any chemical facility to determine
22 whether to designate a chemical facility as a covered
23 chemical facility for purposes of this title.

24 “(c) ASSIGNMENT OF CHEMICAL FACILITIES TO
25 RISK-BASED TIERS.—

1 “(1) ASSIGNMENT.—The Secretary shall assign
2 each covered chemical facility to one of at least four
3 risk-based tiers established by the Secretary.

4 “(2) PROVISION OF INFORMATION.—The Sec-
5 retary may request, and the owner or operator of a
6 covered chemical facility shall provide, any additional
7 information beyond any information required to be
8 submitted under subsection (b)(2) that is needed for
9 the Secretary to assign the chemical facility to the
10 appropriate tier under paragraph (1).

11 “(3) HIGH-RISK CHEMICAL FACILITIES.—At
12 least one of the tiers established by the Secretary for
13 the assignment of chemical facilities under this sub-
14 section shall be a tier designated for high-risk chem-
15 ical facilities.

16 “(4) AUTHORITY TO REVIEW.—The Secretary
17 shall periodically review the criteria under subsection
18 (b)(1) and may, at any time, determine whether a
19 chemical facility is a covered chemical facility or is
20 no longer a covered chemical facility or change the
21 tier assignment under paragraph (1) of any covered
22 chemical facility.

23 “(5) NOTIFICATION.—Not later than 60 days
24 after the date on which the Secretary determines
25 that a chemical facility is a covered chemical facility

1 or is no longer a covered chemical facility or changes
2 the tier assignment under paragraph (1) of a cov-
3 ered chemical facility, the Secretary shall notify the
4 owner or operator of that chemical facility of that
5 determination or change together with the reason for
6 the determination or change.

7 **“SEC. 2103. SECURITY VULNERABILITY ASSESSMENTS AND**
8 **SITE SECURITY PLANS.**

9 “(a) SECURITY VULNERABILITY ASSESSMENT AND
10 SITE SECURITY PLAN REQUIRED FOR COVERED CHEM-
11 ICAL FACILITIES.—

12 “(1) REQUIREMENT FOR SECURITY VULNER-
13 ABILITY ASSESSMENT AND SITE SECURITY PLAN.—

14 The Secretary shall—

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

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

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

1 “(ii) information related to the criti-
2 cality of the covered chemical facility for
3 purposes of assessing the degree to which
4 the facility is critical to the economy or na-
5 tional security of the United States;

6 “(iii) the proximity or interrelation-
7 ship of the covered chemical facility to
8 other critical infrastructure, including any
9 utility or infrastructure (including trans-
10 portation) upon which the chemical facility
11 relies to operate safely and securely; and

12 “(iv) recommended best practices for
13 securing chemical facilities;

14 “(C) require the owner or operator of each
15 such covered chemical facility to—

16 “(i) conduct an assessment of the vul-
17 nerability of the covered chemical facility
18 to a chemical facility terrorist incident;

19 “(ii) prepare and implement a site se-
20 curity plan for that covered chemical facil-
21 ity that addresses the security vulnerability
22 assessment and the risk-based chemical se-
23 curity performance standards under sub-
24 section (c); and

1 “(iii) include appropriate supervisory
2 and non-supervisory employees of the cov-
3 ered chemical facility, and any employee
4 representatives, as appropriate, in devel-
5 oping the security vulnerability assessment
6 and site security plan required under this
7 clause; and

8 “(D) set deadlines for the completion of se-
9 curity vulnerability assessments and site secu-
10 rity plans.

11 “(2) CRITERIA.—The Secretary shall ensure
12 that the requirements under paragraph (1)—

13 “(A) are risk-based;

14 “(B) are performance-based; and

15 “(C) take into consideration—

16 “(i) the cost and technical feasibility
17 of compliance by a covered chemical facil-
18 ity with the requirements under this title;

19 “(ii) the different quantities and
20 forms of substances of concern stored,
21 used, and handled at covered chemical fa-
22 cilities; and

23 “(iii) the criteria under section
24 2102(a)(2).

1 “(b) MINIMUM REQUIREMENTS FOR HIGH-RISK
2 CHEMICAL FACILITIES.—

3 “(1) REQUIREMENTS FOR SECURITY VULNER-
4 ABILITY ASSESSMENTS.—In the case of a covered
5 chemical facility assigned to a high-risk tier under
6 section 2102(c)(3), the Secretary shall require that
7 the security vulnerability assessment required under
8 this section for that chemical facility include each of
9 the following:

10 “(A) The identification of any hazard that
11 could result from a chemical facility terrorist
12 incident at the facility.

13 “(B) Any vulnerability of the chemical fa-
14 cility with respect to—

15 “(i) physical security;

16 “(ii) programmable electronic devices,
17 computers, computer or communications
18 networks, Supervisory Control and Data
19 Acquisition systems, Process Control Sys-
20 tems, or other automated systems used by
21 the chemical facility;

22 “(iii) alarms, cameras, and other pro-
23 tection systems;

24 “(iv) communication systems;

25 “(v) insider threats; and

1 “(vi) the structural integrity of equip-
2 ment for storage, handling, and other pur-
3 poses.

4 “(C) Consideration of information relating
5 to threats relevant to the chemical facility that
6 is provided by the Secretary in accordance with
7 paragraph (3).

8 “(D) Such other information as the Sec-
9 retary determines is appropriate.

10 “(2) REQUIREMENTS FOR SITE SECURITY
11 PLANS.—In the case of a covered chemical facility
12 assigned to a high-risk tier under section
13 2102(e)(3), the Secretary shall require that the site
14 security plan required under this section for that
15 chemical facility include each of the following:

16 “(A) A description of security measures se-
17 lected by the facility that—

18 “(i) address the vulnerabilities of the
19 facility identified in the security vulner-
20 ability assessment; and

21 “(ii) meet the risk-based chemical fa-
22 cility security performance standards es-
23 tablished by the Secretary.

24 “(B) A plan and schedule for periodic
25 drills and exercises to be conducted at the

1 chemical facility the development and execution
2 of which includes participation by appropriate
3 supervisory and non-supervisory facility employ-
4 ees and any employee representatives, local law
5 enforcement agencies, and emergency response
6 providers.

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

13 “(D) An identification of any steps taken
14 to coordinate with State, local, and tribal law
15 enforcement agencies, emergency response pro-
16 viders, the Department and other Federal agen-
17 cies, and Federal officials on security measures
18 and plans for the collective response to a chem-
19 ical facility terrorist incident.

20 “(E) A specification of the security officer
21 who will be the point of contact for incident
22 management purposes and for Federal, State,
23 local, and tribal law enforcement and emer-
24 gency response providers.

1 “(F) A description of enhanced security
2 measures to be used during periods of time
3 when the Secretary determines that heightened
4 terrorist threat conditions exist.

5 “(G) An assessment and, as appropriate, a
6 plan to implement methods to reduce the con-
7 sequences of a terrorist attack.

8 “(3) PROVISION OF THREAT-RELATED INFOR-
9 MATION.—

10 “(A) RESPONSIBILITIES OF THE SEC-
11 RETARY.—The Secretary shall provide in a
12 timely manner, to the maximum extent prac-
13 ticable under applicable authority and in the in-
14 terests of national security, to an owner, oper-
15 ator, or security officer of a chemical facility as-
16 signed to the high-risk tier under section
17 2102(c)(3), or another appropriate person,
18 threat information that is relevant to that
19 chemical facility, including an assessment of the
20 most likely method that could be used by ter-
21 rorists to exploit any vulnerabilities of the
22 chemical facility and the likelihood of the suc-
23 cess of such method.

24 “(B) RESPONSIBILITIES OF OWNER OR OP-
25 ERATOR.—The Secretary shall require the

1 owner or operator of a covered chemical facility
2 to provide in a timely manner to the Secretary
3 a full report on any intentional, attempted, or
4 accidental penetration of the physical security
5 or cyber security of the covered chemical facil-
6 ity.

7 “(4) RED TEAM EXERCISES.—The Secretary
8 shall conduct red team exercises at chemical facili-
9 ties selected by the Secretary that have been as-
10 signed to a high-risk tier under section 2102(c)(3).
11 The Secretary shall ensure that each such facility
12 shall undergo a red team exercise during the six-year
13 period that begins on the effective date of the regu-
14 lations prescribed to carry out this title. The exer-
15 cises required under this paragraph shall be—

16 “(A) conducted after informing the owner
17 or operator and any employee representative of
18 the selected chemical facility and receiving posi-
19 tive confirmation from such owner or operator
20 and employee representative, if any;

21 “(B) designed to identify at the selected
22 chemical facility—

23 “(i) any vulnerabilities of the chemical
24 facility;

1 “(ii) possible methods of a chemical
2 facility terrorist incident at that facility;
3 and

4 “(iii) any weaknesses in the security
5 plan of the chemical facility; and

6 “(C) conducted so as not to compromise
7 the security or safety of the chemical facility
8 during the exercises.

9 “(5) PROVISION OF TECHNICAL GUIDANCE.—

10 The Secretary shall provide, upon request, assistance
11 and guidance to a covered chemical facility con-
12 ducting a security vulnerability assessment or site
13 security plan required under this section.

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

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

21 “(A) require separate and increasingly
22 stringent risk-based chemical security perform-
23 ance standards for site security plans as the
24 level of risk associated with the tier increases;
25 and

1 “(B) permit each covered chemical facility
2 submitting a site security plan to select a com-
3 bination of security measures that satisfy the
4 risk-based chemical security performance stand-
5 ards established by the Secretary under this
6 subsection.

7 “(2) CRITERIA.—In establishing the risk-based
8 chemical security performance standards under
9 paragraph (1), the Secretary shall consider the cri-
10 teria under subsection (a)(2).

11 “(3) GUIDANCE.—The Secretary shall provide
12 guidance to each covered chemical facility regarding
13 the types of security performance measures that, if
14 applied, could satisfy the requirements under this
15 section, including measures using methods to reduce
16 the consequences of a terrorist attack that, if ap-
17 plied, could result in the Secretary removing the fa-
18 cility from the list or assigning the facility to a lower
19 risk tier.

20 “(d) CO-LOCATED CHEMICAL FACILITIES.—The Sec-
21 retary shall allow the owner or operator of two or more
22 chemical facilities that are located geographically close to
23 each other or otherwise co-located to develop and imple-
24 ment coordinated security vulnerability assessments and

1 site security plans, at the discretion of the owner or oper-
2 ator of the chemical facilities.

3 “(e) ALTERNATE SECURITY PROGRAMS SATISFYING
4 REQUIREMENTS FOR SECURITY VULNERABILITY ASSESS-
5 MENT AND SITE SECURITY PLAN.—

6 “(1) DETERMINATION BY THE SECRETARY.—In
7 response to a request by an owner or operator of a
8 covered chemical facility, or at the discretion of the
9 Secretary, the Secretary may accept an alternative
10 security program that the Secretary determines
11 meets all or part of the requirements of this section
12 and that provides for an equivalent level of security
13 to the level of security provided for by the require-
14 ments of this title.

15 “(2) USE OF ALTERNATE SECURITY PRO-
16 GRAMS.—

17 “(A) USE BY INDIVIDUAL CHEMICAL FA-
18 CILITIES.—Upon review and written determina-
19 tion by the Secretary under paragraph (1) that
20 the alternate security program of a covered
21 chemical facility subject to the requirements of
22 this section satisfies some or all of the require-
23 ments of this section, the chemical facility may
24 use that alternate security program.

1 “(B) USE BY CLASSES OF CHEMICAL FA-
2 CILITIES.—At the discretion of the Secretary,
3 the Secretary may identify a class or category
4 of covered chemical facilities subject to the re-
5 quirements of this section that may use an al-
6 ternate security program recognized under this
7 section in order to comply with all or part of
8 the requirements of this section.

9 “(3) PARTIAL RECOGNITION.—If the Secretary
10 finds that an alternate security program satisfies
11 only part of the requirements of this section, the
12 Secretary may allow a covered chemical facility sub-
13 ject to the requirements of this section to comply
14 with that alternate security program for purposes of
15 that requirement, but shall require the covered
16 chemical facility to submit any additional informa-
17 tion required to satisfy the requirements of this sec-
18 tion not met by that alternate security program.

19 “(4) NOTIFICATION.—If the Secretary does not
20 approve an alternate security program for which a
21 petition is submitted under paragraph (1), the Sec-
22 retary shall provide to the person submitting a peti-
23 tion under paragraph (1) written notification that
24 includes an explanation of the reasons why the ap-
25 proval was not made.

1 “(5) REVIEW REQUIRED.—Nothing in this sub-
2 section shall relieve the Secretary of the obligation—

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

6 “(B) to approve or disapprove each such
7 assessment or plan on an individual basis.

8 “(f) OTHER AUTHORITIES.—

9 “(1) OTHER PROVISIONS OF LAW.—A covered
10 chemical facility that is required to prepare a secu-
11 rity vulnerability assessment or site security plan or
12 to submit or develop other relevant documents under
13 chapter 701 of title 46, United States Code, the
14 Federal Water Pollution Control Act (33 U.S.C.
15 1251 et seq.), or section 1433 of the Safe Drinking
16 Water Act (42 U.S.C. 300i–2) shall submit such
17 plan or documents to the Secretary. The Secretary
18 shall determine the extent to which actions taken by
19 such a chemical facility pursuant to another provi-
20 sion of law fulfill the requirements of this section
21 and may require such a chemical facility to complete
22 any additional action required by this section. The
23 Secretary shall work with the heads of the other
24 Federal departments and agencies with authority
25 with respect to such a covered chemical facility to

1 ensure that requirements under other provisions of
2 law and the requirements under this title are non-
3 duplicative and non-contradictory.

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

12 “(g) ROLE OF EMPLOYEES.—

13 “(1) DESCRIPTION OF ROLE REQUIRED.—As
14 appropriate, security vulnerability assessments or
15 site security plans required under this section should
16 describe the roles or responsibilities that chemical
17 facility employees are expected to perform to deter
18 or respond to a chemical facility terrorist incident.

19 “(2) TRAINING FOR EMPLOYEES.—The owner
20 or operator of a covered facility required to submit
21 a site security plan under this section shall annually
22 provide each employee of the facility with a min-
23 imum of 8 hours of training. Such training shall in-
24 clude—

1 “(A) an identification and discussion of
2 substances of concern that pose a risk to the
3 workforce, emergency response providers, and
4 the community;

5 “(B) a discussion of the prevention, pre-
6 paredness, and response plan for the facility,
7 including off-site consequence impacts;

8 “(C) an identification of opportunities to
9 reduce or eliminate the vulnerability of the fa-
10 cility to a terrorist incident through the use of
11 methods to reduce the consequences of a ter-
12 rorist attack; and

13 “(D) a discussion and practice of appro-
14 priate emergency response procedures.

15 **“SEC. 2104. RECORD KEEPING; SITE INSPECTIONS.**

16 “(a) RECORD KEEPING.—The Secretary shall require
17 each covered chemical facility required to submit a secu-
18 rity vulnerability assessment or site security plan under
19 section 2103 to maintain a current copy of the assessment
20 and the plan at the chemical facility.

21 “(b) RIGHT OF ENTRY.—For purposes of carrying
22 out this title, the Secretary (or a designee of the Sec-
23 retary) shall have, at a reasonable time and on presen-
24 tation of credentials, a right of entry to, on, or through
25 any property of a covered chemical facility or any property

1 on which any record required to be maintained under this
2 section is located.

3 “(c) INSPECTIONS AND VERIFICATIONS.—

4 “(1) IN GENERAL.—The Secretary shall, at
5 such time and place as the Secretary determines to
6 be reasonable and appropriate, conduct or require
7 the conduct of chemical facility security inspections
8 and verifications and may, by regulation, authorize
9 third-party inspections and verifications by persons
10 trained and certified by the Secretary for that pur-
11 pose.

12 “(2) REQUIREMENTS.—To ensure and evaluate
13 compliance with this title, including any regulations
14 or requirements adopted by the Secretary in further-
15 ance of the purposes of this title, in conducting or
16 requiring an inspection or verification under para-
17 graph (1), the Secretary shall—

18 “(A) consult with owners, operators, and
19 supervisory and non-supervisory employees of
20 the covered chemical facility, and any employee
21 representatives, as appropriate; and

22 “(B) provide an opportunity to such own-
23 ers, operators, employees, and employee rep-
24 resentatives to be present during the inspection

1 or verification for the purpose of providing as-
2 sistance when and where it is appropriate.

3 “(d) REQUESTS FOR RECORDS.—

4 “(1) IN GENERAL.—In carrying out this title,
5 the Secretary (or a designee of the Secretary) may
6 require the submission of or, on presentation of cre-
7 dentials, may at reasonable times obtain access to
8 and copy any documentation necessary for—

9 “(A) reviewing or analyzing a security vul-
10 nerability assessment or site security plan sub-
11 mitted under section 2103; or

12 “(B) implementing such a site security
13 plan.

14 “(2) PROPER HANDLING OF RECORDS.—In ac-
15 cessing or copying any documentation under para-
16 graph (1), the Secretary (or a designee of the Sec-
17 retary) shall ensure that the documentation is han-
18 dled and secured appropriately.

19 “(e) PROVISION OF RECORDS TO EMPLOYEE REP-
20 RESENTATIVES.—If a covered chemical facility required to
21 submit a security vulnerability assessment or site security
22 plan submitted under section 2103 has an employee rep-
23 resentative, the owner or operator of the facility shall pro-
24 vide the employee representative with a copy of any secu-
25 rity vulnerability assessment or site security plan sub-

1 mitted. The employee representative shall ensure that any
2 such assessment or plan provided to the representative is
3 handled and secured appropriately in accordance with sec-
4 tion 2108.

5 “(f) COMPLIANCE.—If the Secretary determines that
6 an owner or operator of a covered chemical facility re-
7 quired to submit a security vulnerability assessment or site
8 security plan under section 2103 fails to maintain,
9 produce, or allow access to records or to the property of
10 the covered chemical facility as required by this section,
11 the Secretary shall issue an order requiring compliance
12 with this section.

13 **“SEC. 2105. ENFORCEMENT.**

14 “(a) SUBMISSION OF INFORMATION.—

15 “(1) INITIAL SUBMISSION.—The Secretary shall
16 establish specific deadlines for the submission to the
17 Secretary of the security vulnerability assessments
18 and site security plans required under this title. The
19 Secretary may establish different submission re-
20 quirements for the different tiers of chemical facili-
21 ties under section 2102(c).

22 “(2) MAJOR CHANGES REQUIREMENT.—The
23 Secretary shall establish specific deadlines and re-
24 quirements for the submission by a covered chemical
25 facility of information describing—

1 “(A) any change in the use by the covered
2 chemical facility of more than a threshold
3 amount of any substance of concern that could
4 affect the requirements of the chemical facility
5 under this title; and

6 “(B) any significant change in a security
7 vulnerability assessment or site security plan
8 submitted by the covered chemical facility.

9 “(3) PERIODIC REVIEW BY CHEMICAL FACILITY
10 REQUIRED.—The Secretary shall require the owner
11 or operator of a covered chemical facility required to
12 submit a security vulnerability assessment or site se-
13 curity plan under this section to periodically submit
14 to the Secretary a review of the adequacy of the se-
15 curity vulnerability assessment or site security plan
16 that includes a description of any changes made to
17 the security vulnerability assessment or site security
18 plan.

19 “(b) REVIEW OF SITE SECURITY PLAN.—

20 “(1) DEADLINE FOR REVIEW.—Not later than
21 180 days after the date on which the Secretary re-
22 ceives a security vulnerability assessment or site se-
23 curity plan under this title, the Secretary shall re-
24 view and approve or disapprove such assessment or
25 plan.

1 “(2) DISAPPROVAL.—The Secretary shall dis-
2 approve a security vulnerability assessment or site
3 security plan if the Secretary determines that—

4 “(A) the security vulnerability assessment
5 or site security plan does not comply with the
6 requirements under section 2103; or

7 “(B) in the case of a site security plan, the
8 plan or the implementation of the plan is insuf-
9 ficient to address any vulnerabilities identified
10 in a security vulnerability assessment of the
11 covered chemical facility or associated oversight
12 actions taken under section 2103 or section
13 2104, including a red team exercise.

14 “(3) PROVISION OF NOTIFICATION OF DIS-
15 APPROVAL.—If the Secretary disapproves the secu-
16 rity vulnerability assessment or site security plan
17 submitted by a covered chemical facility under this
18 title or the implementation of a site security plan by
19 such a chemical facility, the Secretary shall—

20 “(A) provide the owner or operator of the
21 covered chemical facility a written notification
22 of the disapproval, that—

23 “(i) includes a clear explanation of de-
24 ficiencies in the assessment, plan, or imple-
25 mentation of the plan; and

1 “(ii) requires the owner or operator of
2 the covered chemical facility to revise the
3 assessment or plan to address any defi-
4 ciencies and, by such date as the Secretary
5 determines is appropriate, to submit to the
6 Secretary the revised assessment or plan;

7 “(B) provide guidance to assist the owner
8 or operator of the covered chemical facility in
9 addressing such deficiency;

10 “(C) in the case of a covered chemical fa-
11 cility for which the owner or operator of the fa-
12 cility does not address such deficiencies by such
13 date as the Secretary determines to be appro-
14 priate, issue an order requiring the owner or
15 operator to correct specified deficiencies by a
16 specified date; and

17 “(D) in the case of a covered chemical fa-
18 cility assigned to a high-risk tier under section
19 2102(c)(3), upon the request of the owner or
20 operator of the facility, consult with the owner
21 or operator to identify appropriate steps to be
22 taken by the owner or operator to address the
23 deficiencies identified by the Secretary.

24 “(4) ORDER TO CEASE OPERATIONS.—If the
25 Secretary determines that the owner or operator of

1 a chemical facility assigned to a high-risk tier under
2 section 2102(c)(3) continues to be in noncompliance
3 after an order for compliance is issued under para-
4 graph (3), the Secretary may issue an order to the
5 owner or operator to cease operations at the facility
6 until the owner or operator complies with the order
7 issued under paragraph (3). Notwithstanding the
8 preceding sentence, the Secretary may not issue an
9 order to cease operations under this paragraph to
10 the owner or operator of a drinking water or waste-
11 water facility unless the Secretary determines that
12 continued operation of the facility represents a clear
13 and present danger to homeland security.

14 “(c) REPORTING PROCESS.—

15 “(1) ESTABLISHMENT.—The Secretary shall es-
16 tablish, and provide information to the public re-
17 garding a process by which any person may submit
18 a report to the Secretary regarding problems, defi-
19 ciencies, or vulnerabilities at a covered chemical fa-
20 cility associated with the risk of a chemical facility
21 terrorist incident.

22 “(2) CONFIDENTIALITY.—The Secretary shall
23 keep confidential the identity of a person that sub-
24 mits a report under paragraph (1) and any such re-
25 port shall be treated as protected information under

1 section 2108(f) to the extent that it does not consist
2 of publicly available information.

3 “(3) ACKNOWLEDGMENT OF RECEIPT.—If a re-
4 port submitted under paragraph (1) identifies the
5 person submitting the report, the Secretary shall re-
6 spond promptly to such person to acknowledge re-
7 ceipt of the report.

8 “(4) STEPS TO ADDRESS PROBLEMS.—The Sec-
9 retary shall review and consider the information pro-
10 vided in any report submitted under paragraph (1)
11 and shall take appropriate steps under this title to
12 address any problem, deficiency, or vulnerability
13 identified in the report.

14 “(d) RETALIATION PROHIBITED.—

15 “(1) PROHIBITION.—No owner or operator of a
16 chemical facility, profit or not-for-profit corporation,
17 association, or any contractor, subcontractor or
18 agent thereof, or a Federal, State, local, or tribal
19 government agency may discharge any employee or
20 otherwise discriminate against any employee with re-
21 spect to his compensation, terms, conditions, secu-
22 rity clearance or other access to classified or sen-
23 sitive information, or other privileges of employment
24 because the employee (or any person acting pursu-
25 ant to a request of the employee)—

1 “(A) notified the Secretary, the owner or
2 operator of a chemical facility, or the employ-
3 ee’s employer of an alleged violation of this
4 title, including communications related to car-
5 rying out the employee’s job duties;

6 “(B) refused to engage in any practice
7 made unlawful by this title, if the employee has
8 identified the alleged illegality 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 subsection (a) may bring

1 an action governed by the rules and procedures,
2 legal burdens of proof, and remedies applicable
3 under subsections (c) through (g) of section 20109
4 of title 49, United States Code.

5 **“SEC. 2106. PENALTIES.**

6 “(a) CIVIL PENALTIES.—

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

11 “(A) any order issued by the Secretary
12 under this title; or

13 “(B) any site security plan approved by
14 the Secretary under this title.

15 “(2) RELIEF.—In any action under paragraph
16 (1), a court may issue an order for injunctive relief
17 and may award a civil penalty of not more than
18 \$50,000 for each day on which a violation occurs or
19 a failure to comply continues.

20 “(b) PENALTIES FOR UNAUTHORIZED DISCLO-
21 SURE.—Any officer or employee of a Federal, State, local,
22 or tribal government agency who, in a manner or to an
23 extent not authorized by law, knowingly discloses any
24 record containing protected information described in sec-
25 tion 2108(f) shall—

1 “(1) be imprisoned not more than 1 year, fined
2 under chapter 227 of title 18, United States Code,
3 or both; and

4 “(2) if an officer or employee of the Govern-
5 ment, be removed from Federal office or employ-
6 ment.

7 “(c) TREATMENT OF INFORMATION IN ADJUDICA-
8 TIVE PROCEEDINGS.—In a proceeding under this title, in-
9 formation protected under section 2108, or related vulner-
10 ability or security information, shall be treated in any judi-
11 cial or administrative action as if the information were
12 classified material.

13 **“SEC. 2107. FEDERAL PREEMPTION.**

14 “(a) IN GENERAL.—Nothing in this title shall pre-
15 clude or deny any right of any State or political subdivi-
16 sion thereof to adopt or enforce any regulation, require-
17 ment, or standard of performance with respect to chemical
18 facility security to deter, detect, or respond to a chemical
19 facility terrorist incident that is more stringent than a reg-
20 ulation, requirement, or standard of performance issued
21 pursuant to this title, or shall otherwise impair any right
22 or jurisdiction of any State or political subdivision thereof
23 with respect to chemical facilities within that State or po-
24 litical subdivision thereof unless a direct conflict exists be-
25 tween this title and the regulation, requirement, or stand-

1 ard of performance issued by a State or political subdivi-
2 sion thereof.

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

8 **“SEC. 2108. PROTECTION OF INFORMATION.**

9 “(a) PROHIBITION OF PUBLIC DISCLOSURE OF PRO-
10 TECTED INFORMATION.—

11 “(1) IN GENERAL.—The Secretary shall ensure
12 that protected information, as described in sub-
13 section (f), is not disclosed except as provided in this
14 title.

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

18 “(A) by any Federal agency under section
19 552 of title 5, United States Code; or

20 “(B) under any State or local law.

21 “(b) REGULATIONS.—

22 “(1) IN GENERAL.—In carrying out the require-
23 ments of this title, the Secretary shall prescribe such
24 regulations, and may issue such orders, as necessary

1 to prohibit the unauthorized disclosure of protected
2 information, as described in subsection (f).

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

5 “(A) allow for information sharing, on a
6 confidential basis, with and between, Federal,
7 State, local, and tribal law enforcement offi-
8 cials, and emergency response providers, and
9 appropriate supervisory and non-supervisory
10 chemical facility personnel, and employee rep-
11 resentatives, if any, with security, operational,
12 or fiduciary responsibility for the facility;

13 “(B) provide for the confidential use of
14 protected information in any administrative or
15 judicial proceeding, including placing under seal
16 any such information that is contained in any
17 filing, order, or other document used in such
18 proceedings that could otherwise become part of
19 the public record;

20 “(C) limit access to protected information
21 to persons designated by the Secretary; and

22 “(D) ensure, to the maximum extent prac-
23 ticable, that—

24 “(i) protected information shall be
25 maintained in a secure location; and

1 “(ii) access to protected information
2 shall be limited as may be necessary to—

3 “(I) enable enforcement of this
4 title; or

5 “(II) address an imminent and
6 substantial threat to security or an
7 imminent chemical facility terrorist
8 incident.

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

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

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

24 “(f) PROTECTED INFORMATION.—

1 “(1) IN GENERAL.—For purposes of this sec-
2 tion, protected information includes the following:

3 “(A) The criteria and data used by the
4 Secretary to assign chemical facilities to risk-
5 based tiers under section 2102 and the tier to
6 which each such facility is assigned.

7 “(B) The security vulnerability assess-
8 ments and site security plans submitted to the
9 Secretary under this title.

10 “(C) Information concerning the risk-based
11 chemical facility security performance standards
12 for a chemical facility under section 2103(c).

13 “(D) Any other information generated or
14 collected by a Federal, State, local, or tribal
15 government agency or by a chemical facility for
16 the purpose of carrying out or complying with
17 this title—

18 “(i) that describes any vulnerability of
19 a chemical facility to an act of terrorism;

20 “(ii) that describes the assignment of
21 any chemical facility to a risk-based tier
22 under this title; or

23 “(iii) that describes any security
24 measure (including any procedure, equip-
25 ment, training, or exercise) for the protec-

1 tion of a chemical facility from an act of
2 terrorism.

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

5 “(A) information that is publicly available;

6 “(B) information that a chemical facility
7 has disclosed other than in accordance with this
8 section; or

9 “(C) information that, if disclosed, would
10 not be detrimental to the security of a chemical
11 facility.

12 **“SEC. 2109. CERTIFICATION BY THIRD-PARTY ENTITIES.**

13 “(a) **CERTIFICATION BY THIRD-PARTY ENTITIES.**—
14 The Secretary may designate a third-party entity to carry
15 out any function under subsection (e)(5) of section 2103,
16 subsection (b), (c), or (d) of section 2104, or subsection
17 (b)(1) of section 2105.

18 “(b) **QUALIFICATIONS.**—The Secretary shall estab-
19 lish standards for the qualifications of third-party entities,
20 including knowledge of physical infrastructure protection,
21 cybersecurity, chemical facility security, hazard analysis,
22 chemical process engineering, chemical process safety re-
23 views, and other such factors that the Secretary deter-
24 mines to be necessary.

1 “(c) PROCEDURES AND REQUIREMENTS FOR PRI-
2 VATE ENTITIES.—Before designating a third-party entity
3 to carry out a function under subsection (a), the Secretary
4 shall—

5 “(1) develop, document, and update, as nec-
6 essary, minimum standard operating procedures and
7 requirements applicable to such entities designated
8 under subsection (a), including—

9 “(A) conducting a 90-day independent re-
10 view of the procedures and requirements (or up-
11 dates thereto) and the results of the analyses of
12 such procedures (or updates thereto) pursuant
13 to subtitle G of title VIII; and

14 “(B) upon completion of the independent
15 review under subparagraph (A), designating
16 any procedure or requirement (or any update
17 thereto) as a qualified anti-terrorism technology
18 pursuant to section 862(b);

19 “(2) conduct safety and hazard analyses of the
20 standard operating procedures and requirements de-
21 veloped under paragraph (1);

22 “(3) conduct a review of the third-party enti-
23 ties’ business engagements to ensure that no conflict
24 exists that could compromise the execution of any
25 functions under subsection (e)(5) of section 2103,

1 subsection (b), (c), or (d) of section 2104, or sub-
2 section (c)(1) of section 2105; and

3 “(4) conduct a review of the third-party enti-
4 ties’ business practices and disqualify any of these
5 organizations that offer related auditing or con-
6 sulting services to chemical facilities as private sec-
7 tor vendors.

8 “(d) ENSURING CONTRACTING WITH CERTAIN
9 SMALL BUSINESS CONCERNS.—

10 “(1) REQUIREMENTS FOR PRIME CONTRACTS.—

11 The Secretary shall include in each contract awarded
12 to a third-party entity—

13 “(A) a requirement that the third-party
14 entity develop and implement a plan for the
15 award of subcontracts, as appropriate, to small
16 business concerns and disadvantaged business
17 concerns in accordance with other applicable re-
18 quirements, including the terms of such plan,
19 as appropriate; and

20 “(B) a requirement that the third-party
21 entity shall submit to the Secretary, during per-
22 formance of the contract, periodic reports de-
23 scribing the extent to which the contractor has
24 complied with such plan, including specification
25 (by total dollar amount and by percentage of

1 the total dollar value of the contract) of the
2 value of subcontracts awarded at all tiers of
3 subcontracting to small business concerns, in-
4 cluding socially and economically disadvantaged
5 small businesses concerns, small business con-
6 cerns owned and controlled by service-disabled
7 veterans, HUBZone small business concerns,
8 small business concerns eligible to be awarded
9 contracts pursuant to section 8(a) of the Small
10 Business Act (15 U.S.C. 637(a)), and histori-
11 cally black colleges and universities and His-
12 panic-serving institutions, tribal colleges and
13 universities, and other minority institutions.

14 “(2) DEFINITIONS.—For purposes of this sub-
15 section:

16 “(A) The terms ‘socially and economically
17 disadvantaged small businesses concern’, ‘small
18 business concern owned and controlled by serv-
19 ice-disabled veterans’, and ‘HUBZone small
20 business concern’ have the meaning given such
21 terms under the Small Business Act (15 U.S.C.
22 631 et seq.).

23 “(B) The term ‘historically black colleges
24 and universities’ means part B institutions

1 under title III of the Higher Education Act of
2 1965 (20 U.S.C. 1061).

3 “(C) The term ‘Hispanic-serving institu-
4 tion’ has the meaning given such term under
5 title V of the Higher Education Act of 1965
6 (20 U.S.C. 1101a(a)(5)).

7 “(D) The term ‘tribal colleges and univer-
8 sities’ has the meaning given such term under
9 the Tribally Controlled College or University
10 Assistance Act of 1978 (25 U.S.C. 1801 et
11 seq.).

12 “(3) UTILIZATION OF ALLIANCES.—The Sec-
13 retary shall, to the maximum extent practicable,
14 seek to facilitate the award of contracts to conduct
15 certification under subsection (a) to alliances of
16 business concerns referred to in paragraph (1)(B).

17 “(4) ANNUAL REPORT.—

18 “(A) IN GENERAL.—By not later than Oc-
19 tober 31 of each year, the Secretary shall sub-
20 mit to the Committee on Homeland Security of
21 the House of Representatives and the Com-
22 mittee on Homeland Security and Govern-
23 mental Affairs of the Senate a report on the
24 award of contracts to conduct certification
25 under subsection (a) to business concerns re-

1 ferred to in paragraph (1)(B) during the fiscal
2 year preceding the fiscal year in which the re-
3 port is submitted.

4 “(B) CONTENTS.—The Secretary shall in-
5 clude in each report under subparagraph (A)—

6 “(i) a specification of the value of
7 such contracts, by dollar amount and as a
8 percentage of the total dollar value of all
9 contracts awarded by the Department in
10 such fiscal year;

11 “(ii) a specification of the total dollar
12 value of such contracts awarded to each of
13 the categories of business concerns referred
14 to in paragraph (1)(B); and

15 “(iii) if the percentage of the total
16 dollar value of contracts awarded under
17 this section specified under clause (i) is
18 less than 25 percent, an explanation of—

19 “(I) why the percentage is less
20 than 25 percent; and

21 “(II) what will be done to ensure
22 that the percentage for the following
23 fiscal year will not be less than 25
24 percent.

1 “(e) TECHNICAL REVIEW AND APPROVAL.—Not later
2 than 60 days after the date on which the results of the
3 safety and hazard analysis of the standard operating pro-
4 cedures and requirements are completed under subsection
5 (c)(2), the Secretary shall—

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

9 “(2) approve or disapprove such procedures and
10 requirements (or updates thereto).

11 “(f) EFFECT OF APPROVAL.—

12 “(1) ISSUANCE OF CERTIFICATE OF CONFORM-
13 ANCE.—In accordance with section 863(d)(3), the
14 Secretary shall issue a certificate of conformance to
15 a third-party entity to perform a function under sub-
16 section (a) if the entity—

17 “(A) demonstrates to the satisfaction of
18 the Secretary the ability to perform functions in
19 accordance with standard operating procedures
20 and requirements (or updates thereto) approved
21 by the Secretary under this section;

22 “(B) agrees to—

23 “(i) perform such function in accord-
24 ance with such standard operating proce-

1 dures and requirements (or updates there-
2 to); and

3 “(ii) maintain liability insurance cov-
4 erage at policy limits and in accordance
5 with conditions to be established by the
6 Secretary pursuant to section 864; and

7 “(C) signs an agreement to protect the
8 proprietary and confidential information of any
9 chemical facility with respect to which the enti-
10 ty will perform such function.

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

19 “(3) RECIPROCAL WAIVER OF CLAIMS.—A re-
20 ciprocal waiver of claims shall be deemed to have
21 been entered into between a third-party entity that
22 receives a certificate of conformance under para-
23 graph (1) and its contractors, subcontractors, sup-
24 pliers, vendors, customers, and contractors and sub-
25 contractors of customers involved in the use or oper-

1 ation of any function performed by the third-party
2 entity under subparagraph (a).

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

10 “(g) MONITORING.—The Secretary shall regularly
11 monitor and inspect the operations of a third-party entity
12 that performs a function under subsection (a) to ensure
13 that the entity is meeting the minimum standard oper-
14 ating procedures and requirements established under sub-
15 section (c) and any other applicable requirement under
16 this section.

17 **“SEC. 2110. METHODS TO REDUCE THE CONSEQUENCES OF**
18 **A TERRORIST ATTACK.**

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

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

4 “(2) the degree to which each method to reduce
5 the consequences of a terrorist attack could, if ap-
6 plied, reduce the potential extent of death, injury, or
7 serious adverse effects to human health resulting
8 from a terrorist release;

9 “(3) the technical viability, costs, avoided costs
10 (including liabilities), savings, and applicability of
11 applying each method to reduce the consequences of
12 a terrorist attack; and

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

16 “(b) IMPLEMENTATION.—

17 “(1) IMPLEMENTATION.—The owner or oper-
18 ator of a chemical facility assigned to a high-risk
19 tier under section 2102(c)(3) that is required to con-
20 duct an assessment under subsection (a) shall imple-
21 ment methods to reduce the consequences of a ter-
22 rorist attack on the chemical facility if the Secretary
23 determines, based on an assessment in subsection
24 (a), that the implementation of such methods at the
25 facility—

1 “(A) would significantly reduce the risk of
2 death, injury, or serious adverse effects to
3 human health resulting from a chemical facility
4 terrorist incident but would not increase the in-
5 terim storage of a substance of concern outside
6 the facility or directly result in the creation of
7 a new covered chemical facility assigned to a
8 high-risk tier under section 2102(c)(3) or the
9 assignment of an existing facility to a high-risk
10 tier;

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

13 “(C) would not significantly and demon-
14 strably impair the ability of the owner or oper-
15 ator of the covered chemical facility to continue
16 the business of the facility at a location within
17 the United States.

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

19 “(A) IN GENERAL.—An owner or operator
20 of a covered chemical facility who is unable to
21 comply with the Secretary’s determination
22 under paragraph (1) shall, within 60 days of re-
23 ceipt of the Secretary’s determination, provide
24 to the Secretary a written explanation that in-
25 cludes the reasons thereto.

1 “(B) REVIEW.—Not later than 60 days of
2 receipt of an explanation submitted under sub-
3 paragraph (A), the Secretary after consulting
4 with the owner or operator who submitted such
5 explanation, shall provide to the owner or oper-
6 ator a written determination of whether imple-
7 mentation shall be required pursuant to para-
8 graph (1). If the Secretary determines that imple-
9 mentation is required, the facility shall be re-
10 quired to begin implementation within 180 days
11 of that determination.

12 “(c) PROVISION OF INFORMATION ON ALTERNATIVE
13 APPROACHES.—

14 “(1) IN GENERAL.—The Secretary shall provide
15 information to chemical facilities on the use and
16 availability of methods to reduce the consequences of
17 a terrorist attack at a covered chemical facility to
18 aid a covered chemical facility in meeting the re-
19 quirements of subsection (a).

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

23 “(A) general and specific types of such
24 methods;

1 “(B) combinations of chemical sources,
2 substances of concern, and hazardous processes
3 or conditions for which such methods could be
4 appropriate;

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

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

9 “(E) emerging technologies that could be
10 transferred from research models or prototypes
11 to practical applications;

12 “(F) the availability of technical assistance
13 and best practices; and

14 “(G) such other matters as the Secretary
15 determines is appropriate.

16 “(3) COLLECTION OF INFORMATION.—The Sec-
17 retary may collect information necessary to fulfill
18 the requirements of paragraph (1)—

19 “(A) from information obtained from own-
20 ers or operators of chemical facilities pursuant
21 to this title, including those who have registered
22 such facilities pursuant to part 68 of title 40
23 Code of Federal Regulations (or successor regu-
24 lations);

1 “(B) from studies and reports published by
2 academic institutions, National Laboratories,
3 and other relevant and reputable public and pri-
4 vate sector experts; and

5 “(C) through such other methods as the
6 Secretary deems appropriate.

7 “(4) PUBLIC AVAILABILITY.—Information made
8 available publicly under this subsection shall not
9 identify any specific chemical facility, violate the
10 protection of information provisions under section
11 2108, or disclose any confidential or proprietary in-
12 formation.

13 “(d) PROTECTED INFORMATION.—An assessment
14 prepared under subsection (a) is protected information
15 under section 2108(f).

16 “(e) FUNDING FOR METHODS TO REDUCE THE CON-
17 SEQUENCES OF A TERRORIST ATTACK.—The Secretary
18 shall make funds available to help defray the cost of imple-
19 menting methods to reduce the consequences of a terrorist
20 attack to covered chemical facilities that are required by
21 the Secretary to implement such methods or that volun-
22 tarily choose to implement such methods. In making such
23 funds available, the Secretary shall give special consider-
24 ation to those facilities required by the Secretary to imple-
25 ment methods to reduce the consequences of a terrorist

1 attack pursuant to subsection (b) and water and waste-
2 water facilities administered by State, local, tribal, or mu-
3 nicipal authorities that are subject to the Federal Water
4 Pollution Control Act (33 U.S.C. 1251 et seq.) or section
5 1433 of the Safe Drinking Water Act (42 U.S.C. 300i-
6 2).

7 “(f) PUBLICLY-OWNED WATER AND WASTEWATER
8 TREATMENT FACILITIES.—Notwithstanding any other
9 provision of this title, the Secretary may not require a
10 publicly-owned facility regulated under the Safe Drinking
11 Water Act (42 U.S.C. 300i–2) or the Federal Water Pollu-
12 tion Control Act (33 U.S.C. 1251 et seq.) to implement
13 methods to reduce the consequences of a terrorist attack
14 under subsection (b) unless that facility receives funding
15 under subsection (e).

16 **“SEC. 2111. APPLICABILITY.**

17 “This title shall not apply to—

18 “(1) any chemical facility that is owned and op-
19 erated by the Secretary of Defense, the Attorney
20 General, or the Secretary of Energy;

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

1 “(3) any chemical facility that is owned or oper-
2 ated by a licensee or certificate holder of the Nu-
3 clear Regulatory Commission.

4 **“SEC. 2112. SAVINGS CLAUSE.**

5 “Nothing in this title shall affect or modify in any
6 way any obligation or liability of any person under any
7 other Federal law, including section 112 of the Clean Air
8 Act (42 U.S.C. 7412), the Federal Water Pollution Con-
9 trol Act (33 U.S.C. 1251 et seq.), the Resource Conserva-
10 tion and Recovery Act of 1976 (42 U.S.C. 6901 et seq.),
11 the National Environmental Policy Act of 1969 (42 U.S.C.
12 4321 et seq.), the Occupational Safety and Health Act (29
13 U.S.C. 651 et seq.), the National Labor Relations Act (29
14 U.S.C. 151 et seq.), the Emergency Planning and Commu-
15 nity Right to Know Act of 1996 (42 U.S.C. 11001 et seq.),
16 the Safe Drinking Water Act (42 U.S.C. 300f et seq.),
17 the Maritime Transportation Security Act of 2002 (Pubic
18 Law 107–295), and the Comprehensive Environmental
19 Response, Compensation, and Liability Act of 1980 (42
20 U.S.C. 9601 et seq.).

21 **“SEC. 2113. OFFICE OF CHEMICAL FACILITY SECURITY.**

22 “(a) IN GENERAL.—There is in the Department an
23 Office of Chemical Facility Security, headed by a Director,
24 who shall be a member of the Senior Executive Service
25 in accordance with subchapter VI of chapter 33 of title

1 5, United States Code, under section 5382 of that title,
2 and who shall be responsible for carrying out the respon-
3 sibilities of the Secretary under this title.

4 “(b) PROFESSIONAL QUALIFICATIONS.—The indi-
5 vidual selected by the Secretary as the Director Office of
6 Chemical Facility Security should have a demonstrated
7 knowledge of physical infrastructure protection,
8 cybersecurity, chemical facility security, hazard analysis,
9 chemical process engineering, chemical process safety re-
10 views, and other such factors that the Secretary deter-
11 mines to be necessary.

12 “(c) SELECTION PROCESS.—The Secretary shall
13 make a reasonable effort to select an individual to serve
14 as the Director from among a group of candidates that
15 is diverse with respect to race, ethnicity, age, gender, and
16 disability characteristics and submit to the Committee on
17 Homeland Security of the House of Representatives and
18 the Committee on Homeland Security and Governmental
19 Affairs of the Senate information on the selection process,
20 including details on efforts to assure diversity among the
21 candidates considered for this position.

22 **“SEC. 2114. SECURITY BACKGROUND CHECKS OF COVERED**
23 **INDIVIDUALS AT CERTAIN CHEMICAL FACILI-**
24 **TIES.**

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

1 “(1) IN GENERAL.—The Secretary shall issue
2 regulations to require a covered chemical facility as-
3 signed to a high-risk tier under section 2102(c)(3)
4 to subject covered individuals who have access to re-
5 stricted areas or critical assets or who are deter-
6 mined to require security background checks under
7 risk-based guidance to security background checks
8 based on risk-based guidance. Such regulations shall
9 set forth—

10 “(A) the scope of the security background
11 checks, including the types of disqualifying of-
12 fenses and the time period covered for each cov-
13 ered individual;

14 “(B) the processes to conduct the security
15 background checks;

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

19 “(D) a redress process for adversely-af-
20 fected covered individuals consistent with sub-
21 sections (b) and (c).

22 “(2) ENFORCEMENT.—If the owner or operator
23 of a covered chemical facility that is subject to para-
24 graph (1) fails to comply with the requirements of
25 that paragraph, the Secretary may issue a penalty

1 against the owner or operator in accordance with
2 section 2106.

3 “(3) REQUIREMENT FOR REDRESS PROCESS.—

4 If a covered chemical facility performs a security
5 background check on a covered individual to comply
6 with regulations issued by the Secretary under para-
7 graph (1), the Secretary shall not consider the facil-
8 ity in compliance unless an adequate redress process
9 as described in subsection (c) is provided to covered
10 individuals.

11 “(b) REQUIREMENTS.—Upon issuance of a final reg-
12 ulation under subsection (a), or any future rule, regula-
13 tion, directive or guidance, by the Secretary regarding a
14 security background check of a covered individual, the
15 Secretary shall prohibit the covered chemical facility from
16 making an adverse employment decision, including re-
17 moval or suspension of the employee, due to such rule,
18 regulation, directive, or guidance with respect to a covered
19 individual unless the covered individual—

20 “(1) has been convicted of, has been found not
21 guilty of by reason of insanity of, or is under want,
22 warrant, or indictment for a permanent disqualifying
23 criminal offense listed in part 1572 of title 49, Code
24 of Federal Regulations;

1 “(2) was convicted of or found not guilty by
2 reason of insanity of an interim disqualifying crimi-
3 nal offense listed in part 1572 of title 49, Code of
4 Federal Regulations, within 7 years of the date on
5 which the chemical facility performs the security
6 background check;

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

12 “(4) is determined, as a result of the security
13 background check, to be a known terrorist or to have
14 terrorist ties; or

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

18 “(c) REDRESS PROCESS.—Upon the issuance of a
19 final regulation under subsection (a), or any future rule,
20 regulation, directive, or guidance, requiring a covered
21 chemical facility to perform a security background check
22 of a covered individual, the Secretary shall—

23 “(1) require an adequate redress process for a
24 covered individual subjected to an adverse employ-
25 ment decision, including removal or suspension of

1 the employee, due to such rule, regulation, directive,
2 or guidance that is consistent with the appeals and
3 waiver processes established for applicants for com-
4 mercial motor vehicle hazardous materials endorse-
5 ments and transportation workers at ports, as re-
6 quired by section 70105(c) of title 46, United States
7 Code, including all rights to hearings before an ad-
8 ministration law judge, scope of review, a review of
9 an unclassified summary of classified evidence equiv-
10 alent to the summary provided in part 1515 of title
11 49, Code of Federal Regulations, and procedures for
12 new evidence for both appeals and waiver decisions;

13 “(2) have the authority to order an appropriate
14 remedy, including reinstatement of the covered indi-
15 vidual, should the Secretary determine that a cov-
16 ered chemical facility wrongfully made an adverse
17 employment decision regarding a covered individual
18 pursuant to such rule, regulation, directive, or guid-
19 ance;

20 “(3) ensure that the redress process required
21 under this subsection affords to the covered indi-
22 vidual a full disclosure of any public-record event
23 covered by subsection (b) that provides the basis for
24 an adverse employment decision; and

1 “(4) ensure that covered individual receives the
2 individual’s full wages and benefits until all appeals
3 and waiver procedures are exhausted.

4 “(d) FALSE STATEMENTS.—

5 “(1) IN GENERAL.—A covered chemical facility
6 may not knowingly misrepresent to an employee or
7 other relevant person, including an arbiter involved
8 in a labor arbitration, the scope, application, or
9 meaning of any rules, regulations, directives, or
10 guidance issued by the Secretary related to security
11 background check requirements for covered individ-
12 uals when conducting a security background check
13 under this section.

14 “(2) DEADLINE FOR REGULATIONS.—Not later
15 than 1 year after the date of enactment of the
16 Chemical Facility Anti-Terrorism Act of 2008, the
17 Secretary shall issue a regulation that prohibits a
18 covered chemical facility from knowingly misrep-
19 senting to an employee or other relevant person, in-
20 cluding an arbiter involved in a labor arbitration, the
21 scope, application, or meaning of any rules, regula-
22 tions, directives, or guidance issued by the Secretary
23 related to security background check requirements
24 for covered individuals when conducting a security
25 background check.

1 “(e) RESTRICTIONS ON USE AND MAINTENANCE OF
2 INFORMATION.—Information obtained under this section
3 by the Secretary or a covered chemical facility that is an
4 employer of a covered individual shall be handled as fol-
5 lows:

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

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

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

17 “(4) The Secretary may share such information
18 with other Federal law enforcement agencies.

19 “(f) RIGHTS AND RESPONSIBILITIES.—Nothing in
20 the section shall be construed to abridge any right or re-
21 sponsibility of a covered individual or covered chemical fa-
22 cility under any other Federal, State, local, or tribal law
23 or collective bargaining agreement.

24 “(g) NO PREEMPTION OF FEDERAL OR STATE
25 LAW.—Nothing in this section shall be construed to pre-

1 empt a Federal, State, local, or tribal law that requires
2 criminal history background checks, checks on the author-
3 ization of an individual to work in the United States, or
4 other background checks of covered individuals.

5 “(h) DEFINITION OF SECURITY BACKGROUND
6 CHECK.—The term ‘security background check’ means a
7 review at no cost to any covered individual of the following
8 for the purpose of identifying individuals who may pose
9 a threat to chemical facility security, to national security,
10 or of terrorism.

11 “(1) Relevant databases to verify and validate
12 identity.

13 “(2) Relevant criminal history databases.

14 “(3) In the case of an alien (as defined in sec-
15 tion 101 of the Immigration and Nationality Act (8
16 U.S.C. 1101(a)(3))), the relevant data bases to de-
17 termine the status of the alien under the immigra-
18 tion laws of the United States.

19 “(4) Relevant databases to identify terrorists or
20 people with known ties to terrorists.

21 “(5) Other relevant information or data bases,
22 as determined by the Secretary.

23 “(i) INCLUDED INDIVIDUALS.—The Secretary shall
24 require any individual at a covered chemical facility or as-
25 sociated with a covered chemical facility who is provided

1 a copy of a security vulnerability assessment or site secu-
2 rity plan to be subjected to a security background check.

3 “(j) SAVINGS CLAUSE.—Nothing in this section shall
4 be construed as creating any new right or modifying any
5 existing right of an individual to appeal a determination
6 by the Secretary as a result of a check against a terrorist
7 watch list.

8 **“SEC. 2115. NATIONAL CHEMICAL SECURITY CENTER OF**
9 **EXCELLENCE.**

10 “(a) ESTABLISHMENT.—

11 “(1) IN GENERAL.—The Secretary shall estab-
12 lish a National Chemical Security Center of Excel-
13 lence to conduct research and education and to de-
14 velop technologies to lower the overall risk of ter-
15 rorist chemical attack, including technologies or
16 practices to decrease threats, vulnerabilities, and
17 consequences in order to ensure the security of
18 chemical facilities.

19 “(2) ADDITIONAL REQUIREMENTS.—In estab-
20 lishing the National Chemical Security Center of Ex-
21 cellence under paragraph (1), or in reorganizing any
22 other chemical, biological, or agricultural Center of
23 Excellence established before the date of enactment
24 of the Chemical Facility Anti-Terrorism Act of
25 2008, the Secretary shall—

1 “(A) recognize the unique scientific, tech-
2 nical, and funding requirements of the chem-
3 ical, biological, and agricultural fields with re-
4 spect to the mission of the Department of
5 Homeland Security; and

6 “(B) maintain the National Chemical Se-
7 curity Center of Excellence and any such other
8 chemical, biological, or agricultural Center of
9 Excellence as a distinct entity with respect to
10 organization and funding.

11 “(b) DESIGNATION OF LEAD INSTITUTION.—The
12 Secretary shall select at least one of the institutions identi-
13 fied in subsection (c) as the lead institution responsible
14 for coordinating the National Chemical Security Center of
15 Excellence. Any member institution that is part of the con-
16 sortium under subsection (c) may serve as a lead institu-
17 tion for the Center.

18 “(c) MEMBER INSTITUTIONS; CONSORTIUM.—

19 “(1) CONSORTIUM.—The lead institution se-
20 lected under subsection (b) shall execute agreements
21 with the other institutions of higher education iden-
22 tified in this subsection and other institutions des-
23 ignated by the Secretary to develop a consortium to
24 assist in accomplishing the goals of the Center.

1 “(2) MEMBERS.—The National Chemical Secu-
2 rity Center of Excellence shall consist of at least
3 three institutions of higher education with current
4 expertise or the capability to produce appropriate ex-
5 pertise, including—

6 “(A) one historically black college or uni-
7 versity; and

8 “(B) one Hispanic-serving institution.

9 “(3) INCLUSIONS.—The Secretary shall ensure
10 that an appropriate number of any additional part-
11 ner colleges or universities designated by the Sec-
12 retary under this subsection are historically black
13 colleges and universities, Hispanic-serving institu-
14 tions, and tribal colleges and universities.

15 “(4) DEFINITIONS.—For the purposes of this
16 subsection, the terms ‘historically black colleges and
17 universities’, ‘Hispanic-serving institutions’, and
18 ‘tribal colleges and universities’ have the meanings
19 given such terms under section 2109(d)(2).

20 **“SEC. 2116. AUTHORIZATION OF APPROPRIATIONS.**

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

23 “(1) \$325,000,000 for fiscal year 2010, of
24 which \$100,000,000 shall be made available to pro-

1 vide funding for methods to reduce the consequences
2 of a terrorist attack pursuant to section 2110(e);

3 “(2) \$300,000,000 for fiscal year 2011, of
4 which \$75,000,000 shall be made available to pro-
5 vide funding for methods to reduce the consequences
6 of a terrorist attack pursuant to section 2110(e);
7 and

8 “(3) \$275,000,000 for fiscal year 2012, of
9 which \$50,000,000 shall be made available to pro-
10 vide funding for methods to reduce the consequences
11 of a terrorist attack pursuant to section 2110(e).”.

12 (b) CLERICAL AMENDMENT.—The table of contents
13 in section 1(b) of such Act is amended by adding at the
14 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. Record keeping; site inspections.

“Sec. 2105. Enforcement.

“Sec. 2106. Penalties.

“Sec. 2107. Federal preemption.

“Sec. 2108. Protection of information.

“Sec. 2109. Certification by third-party entities.

“Sec. 2110. Methods to reduce the consequences of a terrorist attack.

“Sec. 2111. Applicability.

“Sec. 2112. Savings clause.

“Sec. 2113. Office of Chemical Facility Security.

“Sec. 2114. Security background checks of covered individuals at certain chem-
ical facilities.

“Sec. 2114. National chemical security center of excellence.

“Sec. 2115. Authorization of appropriations.”.

15 (c) CONFORMING REPEAL.—

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

4 (2) EFFECTIVE DATE.—The amendment made
5 by paragraph (1) shall take effect on October 1,
6 2009.

7 (d) REGULATIONS.—In carrying out the require-
8 ments of title XXI of the Homeland Security Act of 2002,
9 as added by subsection (a), the Secretary may, to the ex-
10 tent that the Secretary determines is appropriate, use any
11 of the regulations known as CFATS regulations, as in ef-
12 fect immediately before the enactment of this Act, that
13 the Secretary determines carry out such requirements.

14 (e) COMPLIANCE WITH PREEXISTING TIMELINES.—
15 In the case of a chemical facility that is required to submit
16 a security vulnerability assessment and site security plan
17 under section 2103 of the Homeland Security Act of 2002,
18 as added by subsection (a), and that, as of the date of
19 the enactment of this Act, is subject to the regulations
20 known as CFATS regulations, as in effect immediately be-
21 fore the date of the enactment of this Act, the Secretary
22 may require the facility to adhere to any timelines applica-
23 ble under such regulations instead of any applicable
24 timeline under subsection (i) of that section.

25 (f) DEADLINES.—

1 (1) DEADLINE FOR ISSUING CERTAIN GUID-
2 ANCE.—Not later than October 1, 2009, the Sec-
3 retary of Homeland Security shall update any guid-
4 ance, recommendations, suggested action items, or
5 any other widely disseminated voluntary action item
6 relating to performing a security background check
7 (as such term is defined in section 2114(g) of the
8 Homeland Security Act of 2002, as added by sub-
9 section (a)) of a covered individual (as that term is
10 defined in section 2101(5) of such Act, as so added)
11 that was issued to a covered chemical facility (as
12 that term is defined in section 2101(6) of such Act,
13 as so added) prior to that date to ensure that such
14 guidance, recommendations, suggested action items
15 or other widely disseminated voluntary action item is
16 compliance with section 2114(a)(1) of such Act, as
17 so added.

18 (2) DEADLINE FOR HIGH-RISK FACILITIES TO
19 SUBMIT SECURITY VULNERABILITY ASSESSMENTS
20 AND SITE SECURITY PLANS.—

21 (A) IN GENERAL.—The owner or operator
22 of a chemical facility assigned to a high-risk
23 tier under paragraph (3) of subsection (c) of
24 section 2102 of the Homeland Security Act of

1 2002, as added by section 4, shall submit to the
2 Secretary of Homeland Security—

3 (i) the security vulnerability assess-
4 ment required under that subsection by
5 not later than 3 months after the date on
6 which the Secretary prescribes regulations
7 to carry out that subsection; and

8 (ii) the site security plan required
9 under that subsection by not later than 4
10 months after receiving notice that the Sec-
11 retary has approved the security vulner-
12 ability assessment submitted under clause
13 (i).

14 (B) EXTENSION.—The Secretary may ex-
15 tend the deadline under subparagraph (A) for a
16 chemical facility for not longer than six months.

17 (C) FACILITIES COVERED BY CFATS.—The
18 owner or operator of a chemical facility as-
19 signed to a high-risk tier under section
20 2102(c)(3) of the Homeland Security Act of
21 2002, as added by subsection (a), who, before
22 October 1, 2009, submits a security vulner-
23 ability assessment or site security plan under
24 the regulations known as CFATS regulations,
25 as in effect immediately before the enactment of

1 this Act, shall be required to submit an adden-
2 dum to the facility's security vulnerability as-
3 sessment or site security plan to reflect any ad-
4 ditional requirements of this Act or the amend-
5 ments made by this Act.

6 **SEC. 5. ANNUAL REPORT TO CONGRESS.**

7 (a) ANNUAL REPORT.—Not later than one year after
8 the date of the enactment of this Act, and annually there-
9 after for the next four years, the Secretary of Homeland
10 Security shall submit to Congress a report on progress in
11 achieving compliance with title XXI of the Homeland Se-
12 curity Act of 2002, as added by section 4. Each such re-
13 port shall include—

14 (1) an assessment of the effectiveness of the
15 site security plans developed under this title;

16 (2) any lessons learned in implementing this
17 title (including as a result of a red-team exercise);
18 and

19 (3) any recommendations of the Secretary to
20 improve the programs, plans, and procedures under
21 this title, including the feasibility of programs to in-
22 crease the number of economically disadvantaged
23 businesses eligible to perform third-party entity re-
24 sponsibilities pursuant to sections 2103(e)(5),

1 2104(b) and (c), and 2105(b)(1) of such Act, as so
2 added.

3 (b) PROTECTED INFORMATION.—A report under this
4 section may not include information protected under sec-
5 tion 2108 of such Act, as so added.

6 **SEC. 6. INSPECTOR GENERAL REPORT.**

7 (a) REPORT REQUIRED.—Not later than October 1,
8 2010, the Inspector General of the Department of Home-
9 land Security shall submit to the Committee on Homeland
10 Security of the House of Representatives and the Com-
11 mittee on Homeland Security and Governmental Affairs
12 of the Senate a report that reviews the effectiveness of
13 the implementation of title XXI of the Homeland Security
14 Act of 2002, as added by subsection (a), including the ef-
15 fectiveness of site security plans required under such title
16 and any recommendations to improve the programs, plans,
17 and procedures required under such title, including the
18 Secretary's dissemination of best practices under section
19 2103(a)(1)(A) of such Act, as so added, and the partici-
20 pating rates of economically disadvantaged businesses eli-
21 gible to perform third-party entity responsibilities pursu-
22 ant to sections 2103(e)(5), 2104(b), (c), and (d), and
23 2105(b)(1) of such Act, as so added.

24 (b) CLASSIFIED ANNEX.—The report required under
25 subsection (a) shall be in unclassified form but may in-

1 clude a classified annex, if the Inspector General deter-
2 mines a classified annex is necessary.

3 **SEC. 7. DEADLINE FOR REGULATIONS.**

4 (a) IN GENERAL.—The Secretary shall conduct the
5 rulemaking process so that final rules carrying out the
6 provisions of this Act and the amendments made by this
7 Act are effective on October 1, 2009.

8 **SEC. 8. CHEMICAL FACILITY TRAINING PROGRAM.**

9 (a) IN GENERAL.—Subtitle A of title VIII of the
10 Homeland Security Act of 2002 (6 U.S.C. 361) is amend-
11 ed by adding at the end the following new section:

12 **“SEC. 802. CHEMICAL FACILITY TRAINING PROGRAM.**

13 “(a) IN GENERAL.—The Secretary shall establish a
14 Chemical Facility Security Training Program (referred to
15 in this section as the ‘Program’) for the purpose of en-
16 hancing the collective response to terrorism and the capa-
17 bilities of chemical facilities to prevent, prepare for, re-
18 spond to, mitigate against, and recover from threatened
19 or actual chemical facility terrorist incidents.

20 “(b) REQUIREMENTS.—The Program shall provide
21 training that—

22 “(1) reaches multiple disciplines, including Fed-
23 eral, State, local, and tribal government officials,
24 chemical facility owners, operators, and employees,

1 and governmental and nongovernmental emergency
2 response providers;

3 “(2) utilizes multiple training mediums and
4 methods;

5 “(3) addresses chemical facility security and
6 site security plans, including—

7 “(A) site security plans and procedures for
8 differing threat levels;

9 “(B) physical security, security equipment
10 and systems, access control, and methods for
11 preventing and countering theft;

12 “(C) recognition and detection of weapons
13 and devices;

14 “(D) security incident procedures, includ-
15 ing procedures for communicating with emer-
16 gency response providers;

17 “(E) evacuation procedures and use of ap-
18 propriate personal protective equipment; and

19 “(F) other requirements that the Secretary
20 deems appropriate.

21 “(4) is consistent with, and supports implemen-
22 tation of, the National Incident Management Sys-
23 tem, the National Response Framework, the Na-
24 tional Infrastructure Protection Plan, the National

1 Preparedness Guidelines, and other national initia-
2 tives;

3 “(5) includes consideration of existing security
4 and hazardous chemical training programs including
5 Federal or industry programs; and

6 “(6) is evaluated against clear and consistent
7 performance measures.

8 “(c) NATIONAL VOLUNTARY CONSENSUS STAND-
9 ARDS.—The Secretary shall—

10 “(1) support the promulgation, and regular up-
11 dating as necessary and appropriate of national vol-
12 untary consensus standards for chemical facility se-
13 curity training ensuring that training is consistent
14 with such standards; and

15 “(2) ensure that the training provided under
16 this section is consistent with such standards.

17 “(d) TRAINING PARTNERS.—In developing and deliv-
18 ering training under the Program, the Secretary shall—

19 “(1) work with government training programs,
20 chemical facilities, academic institutions, industry
21 and private organizations, employee organizations,
22 and other relevant entities that provide specialized
23 state-of-the-art training; and

24 “(2) utilize, as appropriate, training provided
25 by industry, public safety academies, Federal pro-

1 grams, employee organizations, State and private
2 colleges and universities, and other chemical facili-
3 ties.”.

4 (b) CLERICAL AMENDMENT.—The table of contents
5 in section 1(b) of such Act is amended by inserting after
6 the item relating to section 801 the following:

“Sec. 802. Chemical facility training program.”.

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